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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 155680. July 2, 2012]

FIRST LEVERAGE AND SERVICES GROUP, INC., *petitioner, vs.* **SOLID BUILDERS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED.— [I]t is settled that under Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*. This Court is not a trier of facts and it is not its function to analyze or weigh evidence. The jurisdiction of this Court over cases brought to it *via* petition for review on *certiorari* is limited to the review and rectification of errors allegedly committed by the lower courts. These issues should be properly threshed out before the trial court.

2. ID.; ID.; JUDGMENT ON THE PLEADINGS; PROPER WHERE THERE IS NO OSTENSIBLE ISSUE AS DEFENDING PARTY'S ANSWER FAILED TO RAISE AN ISSUE.— Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations

of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. If an answer does in fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper.

3. ID.; ID.; SUMMARY JUDGMENT; PROPER WHERE PLEADINGS SHOW THAT THERE ARE NO GENUINE ISSUES OF FACT TO BE TRIED.— Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays where the pleadings on file show that there are no genuine issues of fact to be tried. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute. A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant. It must be stressed that trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact.

4. ID.; ID.; APPEALS; RULE THAT REVERSAL OF JUDGMENT ON APPEAL AFFECTS ONLY THE APPEALING PARTY; NOT APPLICABLE WHERE RIGHTS OF THE OTHER PARTIES WILL BE AFFECTED, THAT REVERSAL AS TO ONE OPERATES AS REVERSAL AS TO ALL.— This Court has always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties are so interwoven and dependent

on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all. This exception, which is based on a communality of interest of said parties, is recognized in this jurisdiction.

APPEARANCES OF COUNSEL

Salva Salva & Salva for petitioner.
Melanio L. Zoreta for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] dated June 17, 2002 and October 21, 2002, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 47218.

The instant petition arose from a Complaint for Annulment of Promise to Sell, *Mandamus* and Prohibitory Injunction filed with the Regional Trial Court (RTC) of Manila by herein petitioner First Leverage and Services Group, Inc. (First Leverage) against PNB Republic Bank (PNB Republic).

In its Amended Complaint,[3] wherein it impleaded herein respondent Solid Builders, Inc. (Solid Builders) as additional defendant, dated April 11, 1996, First Leverage alleged the following:

x x x x x x x x x

2. [PNB] Republic is the owner of two (2) parcels of land situated in Kaybagal South, Tagaytay City, covered by Transfer

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Romeo A. Brawner (Chairman) and Mario L. Guariña III concurring; *rollo*, pp. 47-79.

[2] *Id.* at 81.

[3] Annex "C" to Petition, pp. 82-91.

Certificate of Title No. T-4211 with an area of 1,906,710 square meters and Transfer Certificate of Title No. T-4050 with an area of 369,234 square meters. Both parcels of land are part of the acquired assets of [PNB] Republic.

3. Sometime in the mid-1980's, [PNB] Republic put up the aforementioned parcels of land for sale by public bidding. Two (2) public biddings were conducted but both were considered failed public biddings for failure to meet certain requirements. Hence, [PNB] Republic put up the two (2) parcels of land for negotiated sale.

4. [The total appraised value of the said parcels of land as of June 16, 1994 was ₱73,817,000.00]

5. On June 20, 1994, the Loan Recovery and Acquired Assets Division (LRAAD, for brevity) of [PNB] Republic received a formal offer from Solid [Builders] for the purchase of the parcel of land covered by TCT No. T-4050, for ₱12,500,000.00 with thirty percent (30%) down payment and with the balance payable in five (5) years at nineteen percent (19%) interest per annum.

6. On June 23, 1994, the LRAAD received another formal offer from Solid [Builders] for the purchase of the parcel of land covered by TCT No. T-4211 for ₱47,000,000.00 with twenty percent (20%) down and with the balance payable in five (5) years at nineteen percent (19%) interest per annum.

7. In a letter dated July 7, 1994, Jeremias Dimla II, LRAAD's Senior Manager, informed Solid [Builders] that the latter's offer of ₱47,000,000.00 for the parcel of land covered by TCT No. 4211 was unacceptable but suggested that it improve its offer.

8. On August 2, 1994, LRAAD received a letter from Solid [Builders] proposing a package price for the two (2) parcels of land x x x for ₱61,000,000.00 with ₱1,000,000.00 option/earnest money, twenty-five percent (25%) downpayment within ninety (90) days from date of acceptance/approval and with the balance payable quarterly for three (3) years at primary market interest rates.

9. On August 17, 1994, the LRAAD received a letter from [First Leverage] offering to purchase the two (2) parcels x x x for ₱70,000,000.00 in cash. Although none of the LRAAD employees admitted having received [First Leverage's] letter-offer, x x x Dimla admitted having received a copy thereof on August 18, 1994. x x x

10. The reason given by Jeremias Dimla II as regards the non-official receipt of the letter-offer of [First Leverage] was at the time the offer was made LRAAD had already received Solid [Builders'] acceptance letter dated August 15, 1994, as regards the APPROVAL by the LRAAD of Solid [Builder's] offer, contained in its letter dated August 2, 1994, subject to certain terms and conditions. Allegedly, the APPROVAL was communicated to Solid by a letter dated August 12, 1994, of the LRAAD through Jeremias Dimla II. Under this package the price for the two (2) parcels of land was ₱67,000,000.00 payable as follows: 30% downpayment payable within 90 days from receipt of approval; the balance payable within three (3) years by monthly amortization covered by postdated checks with interest at prevailing non-prime rate. Accordingly, [PNB] Republic refused to receive petitioner's letter-offer.

11. In a letter dated September 1, 1994, [First Leverage], through Atty. Ariel F. Aguirre, reiterated [its] offer to buy the two (2) parcels of land for ₱70,000,000.00 in CASH. Atty. Aguirre likewise demanded that Solid [Builders'] offer be rejected on the ground that Solid [Builders'] offer as against that of [First Leverage] was: first, prejudicial to [PNB] Republic; and secondly, would subject [PNB] Republic's officers to anti-graft charges. x x x

12. In reply to Atty. Aguirre's letter, [PNB] Republic x x x replied that [it] did not officially receive [First Leverage's] letter-offer of August 17, 1994, since as of August 17, 1994, [PNB] Republic had already contracted to sell the two (2) parcels of land to Solid [Builders]. x x x

13. Notwithstanding said [PNB] Republic's reply letter dated September 6, 1994, Atty. Aguirre persisted by forwarding another letter dated September 7, 1994, reiterating [First Leverage's] offer to buy the two (2) parcels of land for ₱70,000,000.00 in CASH. Atty. Aguirre, in addition, demanded that First Leverage be furnished copies of documents relative to [PNB] Republic's transaction with Solid [Builders].

14. Because of [PNB] Republic's failure to properly respond to Atty. Aguirre's letter, Atty. Aguirre forwarded a further letter dated September 14, 1994, again reiterating [First Leverage's] offer to purchase the two (2) parcels of land for ₱70,000,000.00 in CASH. x x x

15. On September 19, 1994, [PNB] Republic, despite the better offer of [First Leverage] and through the *ultra vires* acts of its officers, executed with Solid [Builders] a Deed of Promise to Sell covering the two (2) parcels of land. x x x

16. By reason of the threat of Atty. Aguirre of taking administrative, criminal and/or civil action against Republic and its officers by refusing to accept [First Leverage's] offer and [accepting] Solid [Builder's] offer, [PNB] Republic referred Atty. Aguirre's letter of September 14, 1994, to the Office of the Government Corporate Counsel [OGCC] for legal opinion.

17. The OGCC rendered an opinion, x x x, dated December 7, 1994, the thrust of which is as follows:

> a) The Loans and Assets Recovery Committee, (Committee for brevity) to which LRAAD referred Solid [Builders'] offer for approval was not authorized to approve said offer for under existing policies any sale or disposition of acquired assets whose value exceeds ₱3,000,000.00 must be approved by [PNB] Republic's Board of Directors.
>
> b) One of the essential requisites of a valid contract, insofar as [PNB] Republic and Solid [Builders are concerned], is missing, namely consent as provided for in Art. 1318 of the Civil Code.

x x x x x x x x x

18. There are no existing offers within the period of negotiation except those submitted by [First Leverage] and Solid [Builders]. The period to negotiate the sale of the aforedescribed two (2) parcels of land had already lapsed as clearly indicated by the alleged (though invalid) acceptance of Solid [Builders'] offer.

19. By letter dated December 13, 1994, [First Leverage] demanded that its offer be calendared for approval by [PNB] Republic's Board of Directors x x x. However, the Board of Directors, without any justifiable, valid or lawful reason, refused to approve [First Leverage's] valid, legal and subsisting offer which, as against Solid [Builders'] offers is definitely more advantageous to [PNB] Republic in particular and to the Government in general.

x x x x x x x x x[4]

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[4] *Id.* at 83-88.

In its Answer to the Amended Complaint, PNB Republic denied the material allegations in the said Amended Complaint and contended that the Complaint states no cause of action; that the sale of the subject properties to Solid Builders was validly approved or thereafter ratified and confirmed by its board of directors; that PNB Republic was justified in selling the subject properties to Solid Builders because at that time, the latter's offer was the highest and most advantageous; at the time that First Leverage submitted its offer to buy the subject properties, the offer of Solid Builders was already approved.[5]

On the other hand, Solid Builders filed its Amended Answer asserting, in the same manner as PNB Republic, that the Complaint states no cause of action; that several months before First Leverage even thought of buying the disputed properties, Solid Builders and PNB Republic had already been negotiating the sale thereof which later led to the execution of a Deed of Promise to Sell the same; as of the time of execution of the said Deed, Republic had never known of any intention on the part of First Leverage to offer to buy the litigated properties; that First Leverage had not acquired any right over the said properties which can be protected; that the contract between Solid Builders and PNB Republic was legal and not *ultra vires,* and in accordance with the rules and regulations of the Bank. In its cross-claim against PNB Republic, Solid Builders prays that, if the disputed Deed of Promise to Sell is declared null and void, it shall be given the right to recover the amounts it had already paid to and received by PNB Republic, the value of the improvements it introduced on the subject property as well as compensatory and exemplary damages and attorney's fees.[6]

After Pre-Trial Conference was concluded, First Leverage filed a Motion for Judgment on the Pleadings and/or Resolution of Case Based on Admissions and Stipulations of Facts of the Parties. Solid Builders opposed the said Motion.

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[5] Annex "D" to Petition, *rollo,* pp. 121-131.

[6] Annex "E" to Petition, *rollo,* pp. 171-176.

On December 23, 1996, the RTC rendered Judgment, the dispositive portion of which reads as follows:

> WHEREFORE, in the interest of speedy and substantial justice, judgment is hereby rendered in favor of the plaintiff and against the two (2) defendants PNB Republic Bank and Solid Builders, Inc.:
>
> (a) Granting the plaintiff's instant Motion for Judgment on the Pleadings, *etc.*, dated September 30, 1996;
>
> (b) Declaring null and void the alleged approval by the Loans and Assets Recovery Board Committee (LARBC) of the defendant Solid's verbal offer supposedly made on August 11, 1994 to buy the two (2) properties in question;
>
> (c) Declaring null and void the Deed of Promise to Sell, dated September 19, 1994, executed by and between the two (2) defendants;
>
> (d) Ordering the issuance of a Writ of *Mandamus* commanding the defendant Bank, thru its Board of Directors, to approve within a period of ten (10) days from receipt hereof, the plaintiff's superior and written offer of August 17, 1994 to purchase the two (2) parcels of land involved herein for the cash price of ₱70,000,000.00 over that of the alleged verbal and inferior offer of the defendant Solid, payable in three (3) years on installment basis, in order to protect the public interest.
>
> (e) Ordering the defendants to pay the costs of suit.
>
> SO ORDERED.[7]

Solid Builders and PNB Republic filed their respective Motions for Reconsideration, but the RTC denied them in its Order[8] dated February 10, 1997.

Aggrieved, PNB Republic filed a special civil action for *certiorari* with this Court which case was referred to the CA. Subsequently, PNB Republic's petition for *certiorari* was subsequently denied due course and dismissed by the appellate court on the ground that the petition was resorted to as a substitute for a lost appeal.

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[7] *Rollo*, pp. 244-245.

[8] *Id.* at 247-248.

Solid Builders, on the other hand, filed an appeal with the CA.

On June 17, 2002, the CA rendered its assailed Decision, which disposed as follows:

> WHEREFORE, premises considered, as to defendant-appellant Solid Builders, the assailed decision of the lower court is hereby **ANNULLED** and **SET ASIDE**. The case is **REMANDED** to the lower court for further proceedings, and the lower court is (1) **DIRECTED** to **SET** for preliminary hearing the special and affirmative defenses of Solid Builders as grounds for the dismissal of the amended complaint of plaintiff-appellee First Leverage, (2) to **RESOLVE** with dispatch this particular incident, and (3) to **PROCEED** to trial on the merits, if warranted.
>
> No pronouncement as to costs.
>
> SO ORDERED.[9]

First Leverage filed a Motion for Reconsideration,[10] but the same was denied by the CA in its Resolution[11] dated October 21, 2002.

Hence, the instant petition for review on *certiorari* where First Leverage advances the following arguments:

> I. THE LOWER COURT CORRECTLY RENDERED THE JUDGMENT DATED DECEMBER 23, 1996 AS A SUMMARY JUDGMENT;
>
> II. SINCE ONLY SOLID BUILDERS, INC. APPEALED FROM THE JUDGMENT DATED DECEMBER 23, 1996, SAID JUDGMENT HAS BECOME FINAL AND EXECUTORY INSOFAR AS PNB-REPUBLIC IS CONCERNED; and
>
> III. CONSEQUENTLY THE APPEAL OF SOLID BUILDERS HAS BECOME MOOT AND ACADEMIC INSOFAR AS FIRST LEVERAGE AND SERVICES GROUP, INC. IS CONCERNED.[12]

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[9] *Id.* at 78. (Emphases supplied.)

[10] CA *rollo*, pp. 247-273.

[11] *Rollo*, p. 81.

[12] *Id.* at 34.

In its first assigned error, First Leverage argues that, in the instant case, there is no genuine issue as to any material or relevant fact which may proscribe a summary judgment; that the CA erred in not upholding the decision of the RTC because the same is supported by established facts, admissions and/or stipulations as well as documents admitted by the parties.

In its second and third assignments of error, First Leverage contends that since PNB Republic did not appeal the judgment of the RTC, the same has become final and executory insofar as PNB Republic is concerned. As such, First Leverage avers that it has already acquired vested rights enforceable by a writ of execution as against PNB Republic. First Leverage concludes that the appeal of Solid Builders with the CA, which in essence seeks to enforce its contract with PNB Republic, is already rendered moot and academic, and that it has become *functus officio* insofar as First Leverage is concerned, considering that the said contract was already awarded in favor of the latter.

The Court finds the petition without merit.

At the outset, the Court stresses that First Leverage's first assigned error raises issues of fact. Certainly the questions as to whether First Leverage's formal offer to buy the subject properties was validly made within the negotiation period; whether its offer is more advantageous to PNB Republic and to the Government than the offer of Solid Builders; whether Solid Builders did not make any formal offer to buy the disputed properties; whether the Deed of Promise to Sell in favor of Solid Builders was validly approved by the Loan and Assets Recovery Board Committee and the Board of Directors of PNB Republic; and, whether the said Deed of Promise to Sell was hastily executed in violation of law and contrary to public policy, are all questions which call for a review of the evidence on record to determine if they have factual basis. However, it is settled that under Rule 45 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*.[13]

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[13] *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 178647, February 13, 2009, 579 SCRA 414, 417.

This Court is not a trier of facts and it is not its function to analyze or weigh evidence.[14] The jurisdiction of this Court over cases brought to it *via* petition for review on *certiorari* is limited to the review and rectification of errors allegedly committed by the lower courts.[15] These issues should be properly threshed out before the trial court.

Coming to the merits of the case, First Leverage contends that during the pre-trial conference, Solid Builders made admissions and entered into stipulation of facts, on the basis of which the RTC validly rendered its judgment.

The Court reiterates the ruling of the CA that what has been rendered by the RTC is not a judgment on the pleadings. Rather, it is a summary judgment.

Pertinent provisions of Section 1, Rule 34 of the Rules of Court state that:

> Section 1. *Judgment on the pleadings.* – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x

On the other hand, Sections 1 and 3, Rule 35 of the same Rules provide:

> Section 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
>
> Sec. 3. *Motion and proceedings thereon.* – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing,

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[14] *Quitoriano v. Department of Agrarian Reform Adjudication Board (DARAB)*, G.R. No. 171184, March 4, 2008, 547 SCRA 617, 627.

[15] *Id.*

the judgment sought shall be rendered forthwith if the pleadings show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings.[16] In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue.[17] The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.[18] If an answer does in fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper.[19]

In the case of a summary judgment, issues apparently exist — *i.e.*, facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer — but the issues thus arising from the pleadings are sham, fictitious or not genuine, as shown by affidavits, depositions, or admissions.[20]

In the present case, a perusal of the Amended Answer as well as the Pre-Trial Brief filed by Solid Builders would readily show that it denied the material allegations in First Leverage's

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[16] *Tan v. De la Vega*, G.R. No. 168809, March 10, 2006, 484 SCRA 538, 545.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

Complaint and that defenses were raised to refute these allegations. Stated differently, Solid Builders' pleadings tendered factual issues. Hence, the CA correctly held that the RTC rendered a summary judgment and not a judgment on the pleadings.

The Court agrees with the CA, however, that even a summary judgment is not proper in the instant case.

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays where the pleadings on file show that there are no genuine issues of fact to be tried.[21] A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.[22] There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.[23] A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.[24]

It must be stressed that trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact.[25] As already stated, the burden of demonstrating clearly the absence of genuine issues of fact rests upon the movant, in this case First Leverage, and not upon Solid Builders who opposed the motion for summary judgment. Any doubt as to the propriety of the

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[21] *Maritime Industry Authority v. Marc Properties Corporation*, G.R. No. 173128, February 15, 2012.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Philippine Bank of Communications v. Go*, G.R. No. 175514, February 14, 2011, 642 SCRA 693, 706, citing *Asian Construction and Development Corporation v. Philippine Commercial International Bank*, G.R. No. 153827, April 25, 2006, 488 SCRA 192.

rendition of a summary judgment must thus be resolved against First Leverage.

In the present case, the Court agrees with the CA that genuine issues exist which call for a full blown trial. The CA held as follows:

> First Leverage asserted in its amended complaint that there was no such valid perfected contract to sell. PNB Republic, however, insisted in its answer that the LARBC, duly authorized by the Bank's board of directors, validly approved the award of the properties to Solid Builders, and that even assuming that the LARBC was not fully authorized to approve the sale, the said action of LARBC was subsequently duly ratified and confirmed by the board of directors. Its co-defendant, Solid Builders, maintained also in its answer that the perfection, approval and execution of the deed of promise to sell in its favor were legal and not *ultra vires*. Thus, PNB Republic's and Solid Builders' respective answers to the complaint tendered an issue.[26]

Indeed, in its Amended Complaint, First Leverage contended that "[b]y [PNB] Republic's execution of a Deed of Promise to Sell with Solid [Builders], [PNB] Republic is determined to award the sale of the parcels of land covered by TCT No. 4050 and TCT No. 4211 to the damage and prejudice of [First Leverage] as well as the Government, in spite of the illegality of the approval of the offer of Solid [Builders] by the Loans and Assets Recovery Board Committee of [PNB] Republic. There is a compelling necessity, therefore, for a declaration of the nullity of the approval by said Committee of Solid [Builder's] offer to purchase the aforecited parcels of land."[27]

On the other hand, in its Amended Answer, [Solid Builders] averred that "[PNB] Republic acts through duly authorized officers and the perfection, approval and execution of the Deed of Promise to Sell by [PNB] Republic in favor of Solid [Builders] was in accordance with the rules and regulations of the bank pursuant

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[26] *Rollo*, p. 69.

[27] Annex "C" to Petition, *id.* at 89.

to its corporate mandate. [PNB] Republic has always maintained that the Deed of Promise to Sell the litigated property in favor of Solid [Builders] was legal and not *ultra vires* and up to this very moment [PNB] Republic and Solid [Builders] have been faithfully performing their respective obligations under the Deed of Promise to Sell the litigated property."[28] In the same manner, respondent, in its Pre-Trial Brief, contended that "[t]he perfected contract by and between Defendant Solid [Builders] and PNB [Republic] was made in good faith and is not tainted by illegality, *ultra vires* act, nor infirmed by and for whatever reason, but is perfectly valid, legal and in full force and effect."[29]

Thus, the Court finds no cogent reason to deviate from the ruling of the CA that genuine issues of fact were properly raised before the RTC, particularly with regard to the validity and existence of a perfected contract to sell, and that these issues could only be resolved through a full-blown hearing.

Anent the second and third assignment of errors, it is true that PNB Republic did not appeal the judgment of the RTC. This Court has always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal.[30] An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all.[31] This exception, which is based on a communality of interest of said parties, is recognized

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[28] Annex "E" to Petition, *id.* at 173.

[29] Annex "J" to Petition, *id.* at 208.

[30] *Dadizon v. Bernadas*, G.R. No. 172367, June 5, 2009, 588 SCRA 678, 684.

[31] *Republic v. Institute for Social Concern*, G.R. No. 156306, January 28, 2005, 449 SCRA 512, 524, citing *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81.

in this jurisdiction.[32] In the instant case, the rights and liabilities of Solid Builders and PNB Republic are, no doubt, intertwined and inseparable. The enforcement of the rights of Solid Builders under the contract it entered into with PNB Republic is completely dependent upon the latter's performance of its obligations thereunder. Assuming that Solid Builders' offer to purchase the disputed properties is subsequently proven to be superior to that of First Leverage, PNB Republic shall be required to proceed with its contract to sell the subject properties to Solid Builders. Thus, to allow the execution of the RTC judgment, by requiring PNB Republic to sell the questioned lots to First Leverage, without first determining with finality whether the latter's offer to buy the disputed properties is indeed superior to Solid Builders' offer would not only result in the deprivation of Solid Builders' right to due process but, more importantly, an unwarranted defeat or forfeiture of its substantive rights.

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals, dated June 17, 2002, as well as its Resolution of October 21, 2002 in CA-G.R. SP No. 47218, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[32] *Dadizon v. Bernadas, supra* note 30.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 194581. July 2, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO MIRASOL AGUSTIN *alias* "DANNY" and GEORGE SALAS HARDMAN,** *accused,* **DANILO MIRASOL AGUSTIN *alias* "DANNY,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— [L]ike the CA, we resolve this case guided by these time-tested principles in deciding 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.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— [W]e agree with the RTC and the CA in finding victim ZZZ's credibility beyond doubt. Our jurisprudence has time and again held that we give great weight to the trial court's assessment when what is at issue is the victim's credibility. The trial court's finding of facts is conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. We hold on to this because the trial court had all the opportunity to observe directly the witnesses' deportment and manner of testifying. It can better evaluate the testimonial evidence of witnesses than the appellate court can do.

3. ID.; ID.; ALIBI; FAILS IN THE PRESENCE OF POSITIVE IDENTIFICATION OF ACCUSED.— [B]etween the alibi and denial of the accused-appellant and the positive identification and credible testimony of the victim, we cannot but give weight to the latter, especially because the distance between the place

where the rape was committed and the workplace of the accused-appellant is simply a walking distance.

4. CRIMINAL LAW; RAPE; FAILURE TO IMMEDIATELY REPORT THE CRIME DID NOT NEGATE RAPE IN THE CASE AT BAR.— To escape liability, accused-appellant Agustin also belabors the issue of the victim's failure to immediately report her ordeal. He insists that there is no truth to the victim's accusation because it took one year before she finally had the courage to tell another person of the rape. This argument must also fail. **First,** we have always held that there is no standard behavior expected of rape victims; depending on the circumstances and their personal and emotional situation, victims react differently. **Second,** it is not rare for young girls to hide for some time the violation of their honor because of the threats on their lives. In the instant case, the victim was a minor and had no family to run to. As such, she only had the accused-appellant to take care of her and to feed her. The accused-appellant and his co-accused also threatened her with harm and even death. Thus, all these justify her silence and the delay in reporting her ordeal.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; FAILURE TO FILE PROPER INFORMATIONS AS TO THE OTHER ACTS OF RAPE IN THE CASE AT BAR, A GREAT BLUNDER.— [W]e reiterate here our dismay for the prosecution's failure to file the proper informations as to the other acts of rape. [V]ictim ZZZ was violated five times: the first, the fourth, and the fifth by accused-appellant Agustin; the second by accused Hardman; and the third instance by both accused-appellant Agustin and accused Hardman. We can only convict accused-appellant Agustin for the rape committed on January 25, 2005, since it was the rape committed on said date which was properly charged in an information. The trial court was correct in not convicting accused-appellant Agustin for the other acts of rape because, as held in *People v. Guiwan*, the accused-appellant cannot be convicted of other acts of rape committed on other dates where the information filed against him charges only one (1) rape, which he committed on January 25, 2005. The trial court was also correct in acquitting accused Hardman despite proof of the commission of the acts of rape on the

second and third instances because, *first*, he was not properly charged in those instances and *second*, he was not present at the fifth or during the January 25, 2005 act of rape. Indeed, this is a great blunder, if not an injustice, committed by the prosecutor against victim ZZZ.

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.*:

This case saddens us as victim ZZZ[1] did not truly get the full weight of justice because of technicalities and failure on the part of the prosecutor to file the proper informations. We join the trial court in its belief that both Danilo Mirasol Agustin (accused-appellant Agustin) and George Hardman (accused Hardman) raped ZZZ for a number of times. But like the trial court, we are saddened that a guilty man escapes punishment due to the prosecutor's inadvertence to file the proper informations, a knowledge that any prosecutor must possess if our criminal justice system should work.[2] Notwithstanding this sorry event, we are tasked to review the present case.

The Case

We now resolve the appeal under Rule 124 filed by accused-appellant Agustin from the Decision[3] dated February 18, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03518.

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[1] Consistent with *People v. Cabalquinto*, 533 Phil. 703 (2006), we will withhold the real name of the rape victim and will use instead the initials ZZZ.

[2] CA *rollo*, p. 57.

[3] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Priscilla J. Baltazar-Padilla and Francisco P. Acosta, concurring; *rollo*, pp. 2-20.

Antecedent Facts

Private complainant victim ZZZ was a 12-year-old girl who was then residing at San Fernando, Pampanga. Her father who had another partner is now deceased, while her mother has another family.[4]

One day, her stepmother fetched her from her grandmother's house. Her stepmother brought her to Guadalupe in Makati City and was left there. Victim ZZZ then walked towards Parañaque City until she reached a *Barangay* Hall in that city where she met accused-appellant Agustin. The latter then offered to feed her at his house which was just near the *Barangay* Hall.[5]

Accused-appellant Agustin brought ZZZ to the ground floor of the house he was renting from accused Hardman. She stayed with accused-appellant Agustin for one year, starting from the time accused-appellant Agustin brought her to the house. In her one year stay with accused-appellant Agustin, victim ZZZ was molested by accused-appellant Agustin and accused Hardman five times on separate occasions.[6]

On the first instance, accused-appellant Agustin raped victim ZZZ by inserting his penis into her mouth. On the second instance, accused Hardman inserted his penis into ZZZ's private part after lubricating it with cooking oil and thereafter, Hardman put his penis into ZZZ's mouth. On the third instance, both accused-appellant Agustin and accused Hardman raped victim ZZZ. While her hands were tied, Agustin and Hardman succeedingly ravaged her youthful body, both inserted their penises into her organ. Accused Hardman even poked his penis into the mouth of ZZZ while it was discharging semen. On the fourth instance, accused-appellant Agustin raped ZZZ again in the former's house. And finally, on the fifth instance, ZZZ was

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[4] CA *rollo,* p. 18.

[5] *Id.*

[6] *Id.*

again raped by accused-appellant Agustin at the house of accused George Hardman.[7]

In all these five instances, victim ZZZ would watch pornographic materials with accused-appellant Agustin. It would happen either in the morning or in the evening at accused-appellant Agustin's house and while his wife was away. As much as ZZZ would want to escape, she could not do so because the door was closed. Victim ZZZ also did not muster the courage to report to authorities her ordeal because accused-appellant Agustin and accused Hardman warned her against telling anybody, otherwise they would kill her. Accused-appellant Agustin threatened victim ZZZ that she would be riddled with bullets; he even hit her with a belt. Victim ZZZ did not tell accused-appellant Agustin's wife because she believed the latter would not believe her story. Every time she was raped, she felt pain.[8]

After the fifth instance of rape, accused-appellant Agustin transferred to Purok 4 near the Silverio Compound because accused-appellant Agustin and accused Hardman quarreled. Victim ZZZ went with accused-appellant Agustin to his new home at the Silverio Compound. It was at that place where victim ZZZ had the courage to report the incident to a certain Ate Lilia, victim ZZZ's neighbor, who subsequently reported the incident to a certain Ate Baby who then reported the matter to the *barangay*.[9]

Accused Hardman was the first to be apprehended and was followed by accused-appellant Agustin. Police Officer Tan (PO Tan) and Ms. Cherylyn Tan's (Cherylyn) testimonies were dispensed with after the parties stipulated on them. Meanwhile, Dr. Irene Baluyot (Dr. Baluyot) testified as an expert witness. Dr. Baluyot's final medical report showed bruises and multiple scars on victim ZZZ's body, while the anogenital examination showed healing abrasion and redness in the perihymenal area

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[7] *Id.* at 19.

[8] *Id.* at 18-19.

[9] *Id.* at 19.

fossa navicularis as well as scratch marks and scars on the perineum or the media aspect of the thigh of the child victim ZZZ.[10]

Accused-appellant Agustin was subsequently charged in an Information[11] dated January 28, 2005 with the crime of Rape under Article 266-A, par. 1(a) and Article 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353 in relation to Section 5(b), R.A. No. 7610, and which was docketed as Criminal Case No. 05-0143. The Information states as follows:

> That on or about the 25th day of January 2005, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, by means of force, threats or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with complainant [victim ZZZ], a minor 12 years old, against her will and consent, which acts are detrimental to the normal growth and development of the minor-complainant.
>
> CONTRARY TO LAW.[12]

During trial, aside from the testimony of victim ZZZ, the prosecution also presented Dr. Baluyot who testified on the Final Medical Report on victim ZZZ. Meanwhile, the defense presented both accused-appellant Agustin and accused Hardman.[13]

Accused-appellant Agustin in his defense simply denied the accusation against him. He claimed that he reported for work everyday, including Saturdays and Sundays, from 6:00 o'clock in the morning to 6 o'clock in the evening; and that on January 25, 2005, he reported for work at 6:00 o'clock in the morning and went home at nighttime and that he did not go home in the afternoon of January 25, 2005. He also denied that his co-

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[10] *Id.* at 19-20.

[11] *Id.* at 12.

[12] *Id.*

[13] *Id.* at 50-53.

accused Hardman raped victim ZZZ. However, while he was denying the accusation against him, accused-appellant Agustin could not offer any motive or reason why victim ZZZ charged him of rape.[14]

As to accused Hardman, he admitted knowing victim ZZZ since the latter lived with accused-appellant Agustin at the ground floor of his house; he claimed knowing accused-appellant Agustin for one year. He alleged that on January 25, 2005, he started working at about 5:00 o'clock in the morning and that at around noontime, he was at the corner of Valley 2 and Dr. A. Santos Avenue doing his work as a barker. He asserted that he went home at 6:30 in the evening, rested and did not go out of the house. He was allegedly with his wife, his child, his stepson Joel, a certain Leovina Morong, Jeffrey, Shirley and other unnamed individuals. However, defense did not present any of the named individuals above. He also claimed that he did not see victim ZZZ on that day nor did he go to the house of accused-appellant Agustin. He denied raping the victim.[15]

The Ruling of the RTC

The RTC, after weighing all the pieces of evidence, found accused-appellant Agustin and accused Hardman guilty of the crime charged. The RTC noted that victim ZZZ recounted several episodes of sexual molestation involving both accused-appellant Agustin and accused Hardman, but they were indicted only for the rape committed on January 25, 2005. Thus, while the RTC believes that both accused-appellant Agustin and accused Hardman were found guilty, it only convicted Agustin since Hardman did not conspire with Agustin when the latter raped ZZZ on January 25, 2005.[16]

On the defense of accused-appellant Agustin, the RTC found it hard to believe his alibi and denial since his statement that he was in some other place was not corroborated by other testimonies.

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[14] *Id.* at 52-53.

[15] *Id.* at 53.

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

Furthermore, it was also proven that even if he was at work at the time of the rape he could easily go to the *locus criminis* because of its proximity to his place of work.[17]

The RTC also gave credence to the testimony of victim ZZZ because despite her tender age of 12 years old, she was able to narrate the event that happened on January 25, 2005. In fact, the testimony of Dr. Baluyot strengthened the claim of ZZZ and belied altogether accused-appellant Agustin's defense.[18]

On the guilt of accused Hardman, the RTC has this to say:

> ***It should be stressed that the Court believes that both accused had molested the private complainant but given the fact that what appeared in the information was only the abuse committed on 25 January 2005 which was proven to have been committed by accused Danilo Agustin, the Court can do no less but acquit the accused George Hardman.***
>
> If it were the intention of the prosecution to indict the accused of several episodes as narrated by the private complainant, several informations could have been filed, as the molestations committed in this case could not be considered a continuing crime, there having been separate criminal intents, thus:
>
> > "Where the information against the accused charges only one (1) rape he cannot be convicted of five (5) counts of rape committed on other dates (*People vs. Guiwan*, 331 SCRA 70, April, 27, 2000)."[19]

Accused-appellant Agustin was sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with the period of his confinement considered part of the service of his sentence and to indemnify victim ZZZ by way of moral damages in the amount of ₱100,000.00. The RTC acquitted accused Hardman of the crime charged in the information because of reasonable doubt on his guilt.[20]

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[17] *Id.* at 57.

[18] *Id.* at 57.

[19] *Id.*

[20] *Id.* at 58.

The Ruling of the CA

The CA affirmed with modification the ruling of the RTC, reducing the award of moral damages from ₱100,000.00 to ₱50,000.00 and directing accused-appellant Agustin to pay civil indemnity to victim ZZZ in the amount of ₱50,000.00.[21] In affirming the RTC Decision, the CA followed the long settled rule that it will not disturb the findings of the trial court as to the credibility of the witnesses because it is in a better position to observe the witnesses' candor and behavior in the witness stand. In the instant case, the trial court found ZZZ's testimony credible for being categorical, straightforward and consistent. The CA also stressed the fact that the victim was a minor, aged 12 years old, and that settled is the rule that when a woman, especially if a minor, declares she has been raped she reveals all that is necessary to prove that rape was committed. In addition, ZZZ's testimony was corroborated by the medical findings of Dr. Baluyot who conducted the medical examination on her and found that a healing abrasion at 7 o'clock area and redness at 5 o'clock area in the victim's perihymenal area and fossa navicularis are consistent with ZZZ's allegation that she was raped before the examination. The CA also did not give due credence to accused-appellant Agustin's contention that the RTC should have not believed ZZZ because for more than a year she did not report the incidents of rape accused-appellant Agustin and accused Hardman committed against her. The CA chose to give weight to the fact that Agustin and Hardman hurt her and threatened her of harm so as to instill fear in ZZZ's young mind, forcing her to keep her silence on her ordeal. Finally, the CA agreed with the RTC in disregarding the defenses accused-appellant Agustin and accused Hardman raised. It held that denial and alibi are inherently weak and cannot prevail over the rape victim's positive identification of her rapist, and it cannot be believed when accused-appellant failed to prove the physical impossibility of his presence at the *locus criminis* at the time of rape.[22]

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[21] *Rollo*, p. 20.

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

Issues

Considering that accused-appellant Agustin and plaintiff-appellee People adopted their respective briefs[23] before the CA, we now rule on the matter based on the lone assignment of error which the accused-appellant raised in his brief[24] before the CA, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[25]

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, albeit a reduction in the award of moral damages from ₱100,000.00 to ₱50,000.00 and an addition of ₱50,000.00 as civil indemnity.

Accused-appellant Agustin claims that the trial court gravely erred in giving credence to the victim ZZZ's version despite numerous inconsistencies and contradictions in her testimony. Accused-appellant Agustin further argues that ZZZ's silence and failure to report her ordeal for one year are actions contrary to human experience. He insists that because of the above arguments, the prosecution failed to prove his guilt with moral certainty.

We disagree with accused-appellant Agustin's contentions.

Offhand, like the CA, we resolve this case guided by these time-tested principles in deciding 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

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[23] *Id.* at 28-30 and 34-35.

[24] CA *rollo*, pp. 37-47.

[25] *Id.* at 39.

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.[26]

With these principles in mind, we agree with the RTC and the CA in finding victim ZZZ's credibility beyond doubt. Our jurisprudence has time and again held that we give great weight to the trial court's assessment when what is at issue is the victim's credibility. The trial court's finding of facts is conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. We hold on to this because the trial court had all the opportunity to observe directly the witnesses' deportment and manner of testifying. It can better evaluate the testimonial evidence of witnesses than the appellate court can do.[27]

Furthermore, based on the records and the observations of the court *a quo*, victim ZZZ who was then only 12 years old graphically narrated the beastly acts done to her, to wit:

T: *Kailan nangyari yung ginawang masama sa iyo ni Danilo?*
S: *Noong Martes* (January 25, 2005).

T: *Saan naman yun nangyari?*
S: *Sa loob ng bahay namin* (Silverio Compound, Purok 4, Bgy. San Isidro, Parañaque City.

x x x x x x x x x

T: *Paano nag-umpisa yung masamang nangyari sayo?*
A: *Tinawag po ako ni Tito Danilo sa kapitbahay namin, sumigaw siya tinawag nya ako kasi may utos daw sya.*

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[26] *People v. Ben Rubio*, G.R. No. 195239, March 7, 2012; *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 230; *People v. Sanchez*, 320 Phil. 60, 68 (1995).

[27] *Id.* See also *People v. Apattad*, G.R. No. 193188, August 10, 2011, 655 SCRA 335, 349, citing *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 590.

T: *Pagpunta mo sa kanya ano inutos niya?"*
S: ***Chupain ko daw sya.***

T: ***Ginawa mo ba?***
S: ***Hindi po, tinalikuran ko sya tapos sinampal niya ako.***

T: ***Pagkasampal nya sayo ano nangyari?***
S: ***Umiyak po ako tapos hinila nya damit ko kaya napunit tapos sinabi niya "ayaw mo ng chupa" tapos hinubad nya po ang short ko pati panty ko.***

T: ***Ano yung sumunod na nangyari?***
S: ***Pinahiga niya ako tapos pinasukan niya ako, ipinasok nya yung titi nya sa pepe ko.***

x x x x x x x x x

T: *Ilang beses ka ginawan ng masama ni Tito Danilo?*
S: ***Tatlo, una noong nakatira kami sa Valley 2 magkasama sila ni Kuya George pumunta sa bahay si Kuya George tapos sabi nya wag daw akong maingay kaya sumigaw ako tapos nagising si Tito Danilo sabi nya wag daw akong maingay kaya sumigaw ako tapos sinabi ni Kuya George na sya daw mauna sa akin kasi sya daw ang may-ari ng bahay pero sinabi naman ni Tito Danilo na sya daw mauna kasi sya daw ang nag-ampon sa akin. Nauna nga po si Kuya George, nagjakol sya tapos sinabi nya "chupain mo, chupain mo" pero hindi ko ginawa tapos pinasok niya na yung titi niya sa pepe ko tapos noong may lumabas na parang sipon sinabi nya kay Tito Danilo na "Danny ikaw naman." Hinawakan yung kamay ko ni Kuya George, pinasukan na ako ni Tito Danilo tapos sinabi ni Kuya George na "bilisan mo lang kasi ako naman" pagtapos ni Kuya George uli pumasok sa akin tapos si Tito Danilo uli. Tapos sinabi ni Tito Danilo na wag daw akong maingay kasi tatadtarin daw nya ako ng bala tapos sabi ni Kuya George "ako din magtagu-tago ka na papatayin kita pag maingay ka."*** *Tapos yung pangatlo yung kinuwento ko kanina.*[28] (Emphasis supplied)

Rightfully, the RTC and the CA gave credence to the testimony of the victim who did not only narrate her ordeal in a

[28] CA *rollo*, pp. 22-23.

straightforward, convincing, and consistent manner, but also in a graphic and nauseating fashion. Indeed, we cannot imagine that a 12-year-old girl could describe vividly how accused-appellant Agustin and his co-accused Hardman deflowered and continuously ravaged her. We cannot imagine a child, as young as the victim, could utter words which are unutterable, unless she in fact saw and experienced the same. But the hard truth looks us in the eyes and tells us that victim ZZZ, a child at that time, has experienced the greatest injustice that an adult can do to a little girl – to deprive her of her dignity, her childhood and her innocence.

From the foregoing, between the alibi and denial of the accused-appellant and the positive identification and credible testimony of the victim, we cannot but give weight to the latter, especially because the distance between the place where the rape was committed and the workplace of the accused-appellant is simply a walking distance. As we have always held:

> Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. [S]ince alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.[29] (Citation omitted)

To escape liability, accused-appellant Agustin also belabors the issue of the victim's failure to immediately report her ordeal. He insists that there is no truth to the victim's accusation because it took one year before she finally had the courage to tell another person of the rape. This argument must also fail. **First,** we have always held that there is no standard behavior expected of rape victims; depending on the circumstances and their personal and emotional situation, victims react differently. **Second,** it is

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[29] *People v. Henry Arpon y Juntilla*, G.R. No. 183563, December 14, 2011.

not rare for young girls to hide for some time the violation of their honor because of the threats on their lives.[30] In the instant case, the victim was a minor and had no family to run to. As such, she only had the accused-appellant to take care of her and to feed her. The accused-appellant and his co-accused also threatened her with harm and even death. Thus, all these justify her silence and the delay in reporting her ordeal.

Finally, we reiterate here our dismay for the prosecution's failure to file the proper informations as to the other acts of rape. As shown above, victim ZZZ was violated five times: the first, the fourth, and the fifth by accused-appellant Agustin; the second by accused Hardman; and the third instance by both accused-appellant Agustin and accused Hardman. We can only convict accused-appellant Agustin for the rape committed on January 25, 2005, since it was the rape committed on said date which was properly charged in an information. The trial court was correct in not convicting accused-appellant Agustin for the other acts of rape because, as held in *People v. Guiwan*,[31] the accused-appellant cannot be convicted of other acts of rape committed on other dates where the information filed against him charges only one (1) rape, which he committed on January 25, 2005.

The trial court was also correct in acquitting accused Hardman despite proof of the commission of the acts of rape on the second and third instances because, *first*, he was not properly charged in those instances and *second*, he was not present at the fifth or during the January 25, 2005 act of rape. Indeed, this is a great blunder, if not an injustice, committed by the prosecutor against victim ZZZ.

One Last Note

We cannot close this chapter in ZZZ's life without mentioning the responsibility of her parents on what befell her. Of course,

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[30] *People v. Cacayan*, G.R. No. 180499, July 9, 2008, 557 SCRA 550, 563.

[31] 387 Phil. 82 (2000).

her father has gone to the life beyond. But the violation of her honor could not have happened if her mother did not abandon her for another family and if her stepmother did not leave her alone, like a cat, to fend for herself in the wilderness of the city. We cannot close our eyes and simply decide this case without advocating for a stronger law against parents or guardians who leave a helpless child alone to fend for herself.

WHEREFORE, the Decision dated February 18, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03518 is hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

SECOND DIVISION

[G.R. No. 198585. July 2, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **METRO INDEX REALTY AND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; LAWS RELATIVE TO REGISTRATION OF PROPERTY (PD 1529); ORDINARY REGISTRATION PROCEEDINGS; APPLICATIONS; BY THOSE WHO HAVE ACQUIRED OWNERSHIP OF PRIVATE LANDS (PATRIMONIAL) BY PRESCRIPTION UNDER THE LAW; IMPORT THEREOF, CLARIFIED.— [R]espondent's evidence purportedly demonstrate[ed] that its predecessors-in-interest started to possess and occupy the subject properties sometime in 1956 [and], the reasonable conclusion is that its claim of having acquired an imperfect title over the subject

properties is premised on its supposed compliance with the requirements of Section 14(2), which states: SEC. 14. *Who may apply*. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: x x x (2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws. That properties of the public dominion are not susceptible to prescription and that only properties of the State that are no longer earmarked for public use, otherwise known as patrimonial, may be acquired by prescription are fundamental, even elementary, principles in this jurisdiction. In *Heirs of Mario Malabanan v. Republic*, this Court, in observance of the foregoing, clarified the import of Section 14(2) and made the following declarations: (a) the prescriptive period for purposes of acquiring an imperfect title over a property of the State shall commence to run from the date an official declaration is issued that such property is no longer intended for public service or the development of national wealth; and (b) prescription will not run as against the State even if the property has been previously classified as alienable and disposable as it is that official declaration that converts the property to patrimonial.

2. ID.; ID.; ID.; ID.; BY THOSE IN POSSESSION AND OCCUPATION OF PROPERTY AS OWNER SINCE JUNE 12, 1945 OR EARLIER; RELIGIOUS PAYMENT OF TAXES DOES NOT NECESSARILY MEAN ACTUAL OCCUPATION.— [T]he CA erred in concluding that the possession and occupation of the respondent and its predecessors-in-interest was in the manner contemplated by law. The CA is definitely mistaken in downplaying the importance and indispensability of demonstrating actual cultivation and development in substantiating a claim of imperfect title and in putting much premium on the religious payment of realty taxes effected by the respondent and its predecessors-in-interest. It is well-settled that tax declarations are mere bases for inferring possession. They must be coupled with proof of actual possession for them to constitute "well-nigh incontrovertible" evidence of a claim of ownership.

3. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF CONSTRUCTIVE POSSESSION; NOT APPLICABLE WHERE THERE IS ONLY CASUAL CULTIVATION.— [I]t is undisputed that the number of coconut trees is unspecified while the number of fruit-bearing trees is too few (three *santol*, one *avocado* and one star apple). However, the CA haphazardly ruled that this warranted the application of the doctrine of constructive possession without considering the size of the subject properties contrary to this Court's pronouncements in *Spouses Rumarate v. Hernandez*. x x x Rather than proof of constructive possession, the presence of a meager number of plantings on the subject properties shows that the respondent and its predecessors-in-interest engaged in mere casual cultivation, which does not constitute possession under claim of ownership. x x x Furthermore, in *Wee v. Republic*, this Court held it is not enough that improvements or signs of use and cultivation can be found on the property; there must be proof that the use or development of the property is attributable to the applicant and his predecessors-in-interest.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
John Paul M. Refuerzo for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated September 14, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 94616.

The Facts

Sometime in June 2006, Metro Index Realty and Development Corporation (respondent) filed with the Regional Trial Court

[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia Salvador and Sesinando E. Villon, concurring; *rollo*, pp. 48-55.

(RTC), Naic, Cavite an application for judicial confirmation of title over three (3) parcels of land located at *Barangay* Alulod/ Mataas na Lupa, Indang, Cavite. These properties have a consolidated area of 39,490 square meters and more particularly described as Lot No. 16742 Csd-04-014277-D, Lot No. 17154 and Lot No. 17155 Cad-459-D of the Indang Cadastre.

During the hearings on the application, which was docketed as LRC Case No. NC-2005-0006, the respondent presented two (2) witnesses, Enrico Dimayuga (Enrico) and Herminia Sicap-Fojas (Herminia). Enrico, who was the respondent's Project Documentation Officer, testified that: (a) the respondent bought the subject properties from Herminia, Melinda Sicap (Melinda), and Hernando Sicap (Hernando); (b) the subject properties had been declared for tax purposes in the respondent's name since 2006; (c) the subject properties are alienable and disposable as evidenced by the certification issued by the Department of Environment and Natural Resources (DENR); (d) as shown by their respective affidavits, the adjoining lot owners had no adverse claim and objections to the respondent's application; and (e) the respondent and its predecessors-in-interest had been in possession of the subject properties for more than fifty (50) years. Herminia, on the other hand, testified that: (a) she and her siblings, Melinda and Hernando, inherited the subject properties from their parents, Brigido Sicap and Juana Espineli; (b) their parents had been in possession of the subject properties since 1956 as shown by the tax declarations in their name; (c) from the time they inherited the subject properties, they had actively cultivated them and religiously paid the taxes due;[2] and (d) the subject properties are planted with coconut, banana, *santol*, *palay* and corn.[3]

On August 7, 2009, the RTC issued a Decision[4] granting the respondent's application, ratiocinating that:

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[2] *Id.* at 58-60.

[3] *Id.* at 38.

[4] Penned by Judge Lerio C. Castigador; *id.* at 56-61.

From the evidence presented by the applicant thru counsel, this Court finds that the land being applied for registration is alienable and disposable land; that it is not within any military or naval reservation; that the possession of herein applicant as well as that of its predecessor(s)-in-interest has (sic) been open, public[,] continuous, notorious and adverse to the whole world and therefore, the applicant is entitled to the relief prayed for.[5]

On appeal to the CA, the same was denied. In its assailed decision, the CA ruled that while only a few trees are found on the subject properties, this fact coupled with the diligent payment of taxes since 1956 sufficed to substantiate the claim that the respondent and its predecessors-in-interest had been in possession in the manner and for the length of time required by law.

Although as a rule, tax declarations are not conclusive evidence of ownership, they are proof that the holder has a claim of title over the property and serve as sufficient basis for inferring possession.

It may be true that only few trees are planted and grown on the lots, but this does not mean that appellee and their predecessors-in-interest do now own them. Surely, ownership is not measured alone by the number or kind of crops planted on the land. 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. Actual possession consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property. The general rule is that the possession and cultivation of a portion of a tract under claim of ownership of its entirely (sic) is a constructive possession of the entire tract, so long as no portion thereof is in the adverse possession of another. At any rate, some owners may be hardworking enough to fully utilize their lands, some may not be as hardworking. But both do not retain or lose their ownership on the basis alone of the degree of hard work they put into their respective lands.

This Court finds that while appellee's predecessors-in-interest may not have fully tilled the lots, this does not destroy their open, continuous, exclusive and notorious possession thereof, in the concept of owner. They have proven their particular acts of ownership

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[5] *Id.* at 60.

by planting crops on the lots, declaring them for tax purposes in their names, religiously paying taxes thereon since 1956 onward, and retaining peaceful, open, uninterrupted, exclusive and notorious possession of it for over 50 years. x x x:[6] (Citation omitted)

In the instant petition, this Court is urged to reverse the CA as the respondent allegedly failed to prove its compliance with the requirements of either Section 14(1) or Section 14(2) of Presidential Decree (P.D.) No. 1529. Assuming that the respondent's application was anchored on Section 14(1), there is no evidence that possession and occupation of its predecessors-in-interest commenced on June 12, 1945 or earlier. In fact, the earliest tax declaration presented by the respondent was for the year 1956. On the other hand, assuming that the respondent's claim of imperfect title is based on Section 14(2), the subject properties cannot be acquired by prescription as there is no showing that they had been classified as patrimonial at least thirty (30) years prior to the filing of the application. The respondent failed to show proof of an official declaration that the subject properties are no longer intended for public service or for the development of national wealth; hence, the subject properties cannot be acquired by prescription.

In any case, the petitioner posited, the CA erred in finding that the respondent and its predecessors-in-interest possessed and occupied the property openly, continuously, notoriously and exclusively for more than fifty (50) years. Tax declarations, *per se*, are not conclusive evidence of ownership. Alternatively, while the tax declarations are accompanied by the claim that the subject properties are planted with coconut and fruit-bearing trees, their numbers are insignificant to suggest actual cultivation. Moreover, only the tax declarations in the name of the respondent show the existence of these fruit-bearing trees.

Our Ruling

Finding merit in the foregoing submissions, this Court resolves to **GRANT** this petition. The issue of whether the respondent

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[6] *Id.* at 53-54.

had proven that it is entitled to the benefits of P.D. No. 1529 on confirmation of imperfect titles should be resolved against it.

It is not clear from the assailed decision of the CA as well as that of the RTC whether the grant of the respondent's application is based on Section 14(1) or Section 14(2) of P.D. No. 1529. Nonetheless, considering the respondent's evidence purportedly demonstrating that its predecessors-in-interest started to possess and occupy the subject properties sometime in 1956 and not on June 12, 1945 or earlier, the reasonable conclusion is that its claim of having acquired an imperfect title over the subject properties is premised on its supposed compliance with the requirements of Section 14(2), which states:

> SEC. 14. *Who may apply.* – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
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> x x x x x x x x x
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> (2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

That properties of the public dominion are not susceptible to prescription and that only properties of the State that are no longer earmarked for public use, otherwise known as patrimonial, may be acquired by prescription are fundamental, even elementary, principles in this jurisdiction. In *Heirs of Mario Malabanan v. Republic*,[7] this Court, in observance of the foregoing, clarified the import of Section 14(2) and made the following declarations: (a) the prescriptive period for purposes of acquiring an imperfect title over a property of the State shall commence to run from the date an official declaration is issued that such property is no longer intended for public service or the development of national wealth; and (b) prescription will not run as against the State even if the property has been previously classified as alienable and disposable as it is that official declaration that converts the property to patrimonial. Particularly:

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[7] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable and disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.[8]

The Court deemed it appropriate to reiterate the foregoing principles in *Republic v. Rizalvo, Jr.*[9] as follows:

On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14(2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of national wealth or that the property has been converted into patrimonial. x x x[10]

Simply put, it is not the notorious, exclusive and uninterrupted possession and occupation of an alienable and disposable public land for the mandated periods that converts it to patrimonial. The indispensability of an official declaration that the property is now held by the State in its private capacity or placed within the commerce of man for prescription to have any effect against the State cannot be overemphasized. This Court finds no evidence of such official declaration and for this reason alone, the respondent's application should have been dismissed outright.

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[8] *Id.* at 210.

[9] G.R. No. 172011, March 7, 2011, 644 SCRA 516.

[10] *Id.* at 526, citing *Heirs of Mario Malabanan v. Republic*, *supra* note 7.

It is rather unfortunate that the lower courts operated on the erroneous premise that a public land, once declared alienable and disposable, can be acquired by prescription. Indeed, familiarity with the principles cited above would have instantly alerted them to the inherent incongruity of such proposition. *First*, an alienable and disposable land of the public domain is not necessarily patrimonial. For while the property is no longer for public use, the intent to use it for public service or for the development of national wealth is presumed unless the contrary is expressly manifested by competent authority. *Second*, while the State had already deemed it proper to release the property for alienation and disposition, the only mode which the law provides for its acquisition is that provided under Section 14(1) of P.D. No. 1529.

It was therefore of no moment if the respondent and its predecessors-in-interest had allegedly been in possession and occupation of the subject properties for more than fifty (50) years for the subject properties cannot be acquired by prescription for as long as they remain reserved for public service or the development of national wealth. That there was much ado on whether the evidence on the character and nature of the respondent's possession and that of its predecessors-in-interest measured up to the standards imposed by law and jurisprudence is definitely futile and otiose; the primary question of whether the subject properties are patrimonial, hence, may be acquired by prescription should have been addressed first hand but regrettably neglected.

Worse than its failure to see that the subject properties cannot be acquired by prescription, the CA erred in concluding that the possession and occupation of the respondent and its predecessors-in-interest was in the manner contemplated by law. The CA is definitely mistaken in downplaying the importance and indispensability of demonstrating actual cultivation and development in substantiating a claim of imperfect title and in putting much premium on the religious payment of realty taxes

effected by the respondent and its predecessors-in-interest. It is well-settled that tax declarations are mere bases for inferring possession. They must be coupled with proof of actual possession for them to constitute "well-nigh incontrovertible" evidence of a claim of ownership.[11]

Moreover, it is undisputed that the number of coconut trees is unspecified while the number of fruit-bearing trees is too few (three *santol*, one *avocado* and one star apple). However, the CA haphazardly ruled that this warranted the application of the doctrine of constructive possession without considering the size of the subject properties contrary to this Court's pronouncements in *Spouses Rumarate v. Hernandez*:[12]

> However, the records do not support the argument of respondents that Santiago's alleged possession and cultivation of Lot No. 379 is in the nature contemplated by the Public Land Act which requires more than constructive possession and casual cultivation. As explained by the Court in *Director of Lands v. Intermediate Appellate Court*:
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> > It must be underscored that the law speaks of "possession and occupation." Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words *open, continuous, exclusive* and *notorious*, the word *occupation* serves to highlight the fact that for one to qualify under paragraph (b) of the aforesaid section, his possession of the land must not be mere fiction. As this Court stated, through then Mr. Justice Jose P. Laurel, in *Lasam vs. The Director of Lands*:

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[11] See *Republic v. Heirs of Doroteo Montoya*, G.R. No. 195137, June 13, 2012; *Heirs of Bienvenido and Araceli Tanyag v. Gabriel*, G.R. No. 175763, April 11, 2012.

[12] 521 Phil. 447 (2006).

> "x x x Counsel for the applicant invokes the doctrine laid down by us in *Ramos vs. Director of Lands* (39 Phil. 175, 180). (See also *Rosales vs. Director of Lands*, 51 Phil. 302, 304). But it should be observed that the application of the doctrine of constructive possession in that case is subject to certain qualifications, and this court was careful to observe that among these qualifications is 'one particularly relating to the size of the tract in controversy with reference to the portion actually in possession of the claimant.' While, therefore, '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,' possession under paragraph 6 of Section 54 of Act No. 926, as amended by paragraph (b) of Section 45 of Act No. 2874, is not gained by mere nominal claim. The mere planting of a sign or symbol of possession cannot justify a Magellan-like claim of dominion over an immense tract of territory. Possession as a means of acquiring ownership, while it may be constructive, is not a mere fiction x x x."

Earlier, in *Ramirez vs. The Director of Lands*, this Court noted:

> "x x x The mere fact of declaring uncultivated land for taxation purposes and visiting it every once in a while, as was done by him, does not constitute acts of possession."[13] (Citation omitted)

Rather than proof of constructive possession, the presence of a meager number of plantings on the subject properties shows that the respondent and its predecessors-in-interest engaged in mere casual cultivation, which does not constitute possession under claim of ownership. As ruled in *Republic of the Philippines, et al. v. Hon. Vera etc., et al.*:[14]

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[13] *Id.* at 462-463.

[14] 205 Phil. 164 (1983).

A mere casual cultivation of portions of the land by the claimant does not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious so as to give rise to a presumptive grant from the State.[15]

Republic of the Philippines v. Intermediate Appellate Court,[16] which is an illustration of what is considered casual cultivation, states:

But even granting that the witnesses presented by herein respondent applicants were indeed *bona fide* overseers and tenants or workers of the land in question, it appears rather strange why only about 3,000 coconut trees and some fruit trees were planted (2,000 coconut trees on Lot 1 which is 119 hectares, and 1,000 coconut trees on Lot 2 which is 19 hectares) on the vast tract of land subject of the instant petition. In a practical and scientific way of planting, a one-hectare land can be planted to about 114 coconut trees. In the instant case, if the hired tenants and workers of respondent applicants managed to plant only 3,000 coconut trees, it could only mean that about only 25 hectares out of the 138 hectares claimed by herein respondent applicants were cleared, cultivated, and planted to coconut trees and fruit trees. Once planted, a coconut is left to grow and need not be tended or watched. This is not what the law considers as possession under claim of ownership. On the contrary, it merely showed *casual or occasional* cultivation of portions of the land in question. In short, possession is not exclusive nor notorious, much less continuous, so as to give rise to a presumptive grant from the government.[17]

Furthermore, in *Wee v. Republic*,[18] this Court held it is not enough that improvements or signs of use and cultivation can be found on the property; there must be proof that the use or development of the property is attributable to the applicant and his predecessors-in-interest:

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[15] *Id.* at 172.

[16] 224 Phil. 247 (1985).

[17] *Id.* at 254-255.

[18] G.R. No. 177384, December 8, 2009, 608 SCRA 72.

We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate the petitioner's right to the registration of title in her favor.[19]

This Court does not see why this case should be decided otherwise given that the evidence of the alleged overt acts of possession in the two cases cited above and in this case are unsatisfactory and cannot be considered as "well-nigh incontrovertible" that the law and jurisprudence requires.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated September 14, 2011 of the Court of Appeals in CA-G.R. CV No. 94616 is hereby **REVERSED** and **SET ASIDE**. The respondent's application for original registration of Lot No. 16742 Csd-04-014277-D, Lot No. 17154 and Lot No. 17155 Cad-459-D of the Indang Cadastre is **DENIED** for lack of merit.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

[19] *Id.* at 84.

EN BANC

[A.M. No. P-06-2186. July 3, 2012]
(Formerly A.M. OCA I.P.I. No. 05-2256-P)

FILOMENA B. CONSOLACION, *complainant, vs.* **LYDIA S. GAMBITO, Court Stenographer, Municipal Circuit Trial Court, Binalonan, Pangasinan,** *respondent.*

[A.M. No. P-12-3026. July 3, 2012]
(Formerly A.M. OCA I.P.I. No. 05-2081-P)

JUDGE EMMA S. INES-PARAJAS, *complainant, vs.* **LYDIA S. GAMBITO, Court Stenographer, Municipal Circuit Trial Court, Binalonan, Pangasinan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— The rules do not provide a definition of, or enumeration of the acts constituting, conduct prejudicial to the best interest of the service. In *Ito v. De Vera*, the Court held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary. In *Largo v. Court of Appeals*, it was stated that if an employee's questioned conduct tarnished the image and integrity of his public office, he was liable for conduct prejudicial to the best interest of the service. The basis for his liability was Republic Act *(R.A.)* No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The Code, particularly its Section 4(c), commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Gambito's misrepresentation regarding the ownership and actual status of the tricycle which she sold to Filomena B. Consolacion *(Consolacion)* for

₱65,000.00 unquestionably undermined the people's faith in the Judiciary. Gambito, a long time court stenographer, took advantage of her being a court employee and her friendship with Consolacion when she induced the latter to buy the tricycle and promised her that she would give her the documents proving ownership of the tricycle with the assurance that it was not encumbered. x x x [Gambito] failed to present the Original Certificate of Registration of the subject tricycle, despite several demands. [Further,] there was a chattel mortgage constituted on the tricycle and that it had already been foreclosed. x x x Doubtless, Gambito's unethical transactions and lack of forthrightness affected the Judiciary of which she was a part. As a court employee, she was expected to act in conformity with the strict standard required of all public officers and employees. x x x Although Consolacion later withdrew her complaint, it does not help Gambito's cause as these late recantations are viewed by the Court with disfavor. x x x Another point against Gambito was her transaction with Billamanca. She admitted that she facilitated two (2) cases for the amount of ₱15,000.00 [but the] amount given was only ₱7,000.00, delivered in installments. Gambito likewise confessed that she received in installments the amount of ₱9,000.00 from Lolita Erum *(Erum)*, which was supposed to be for the bail of the latter's husband, and that she used the money to buy her medicines and the college books of her daughter.

3. ID.; ID.; ID.; DISHONESTY, GRAVE MISCONDUCT AND CONDUCT GROSSLY PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PROPER PENALTY IS DISMISSAL.— Under the Civil Service Law and its implementing rules, dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service are grave offenses punishable by dismissal from the service. Under Section 52(A)(11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dismissal is the penalty for improper solicitation for the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture or retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. Time and again, this Court has emphasized the heavy burden and responsibility of court

personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.

D E C I S I O N

PER CURIAM:

This disposition concerns the consolidated report of the Office of the Court Administrator *(OCA)*, contained in its November 4, 2011 Memorandum,[1] finding that respondent Lydia S. Gambito *(Gambito)* had committed acts constituting three (3) counts of conduct prejudicial to the best interest of the service.

The factual and procedural antecedents appear in the November 4, 2011 Memorandum of the OCA as follows:

A.M. No. P-06-2186

In an Affidavit-Complaint dated July 25, 2005, which was filed with the OCA on August 1, 2005, complainant Filomena B. Consolacion charged respondent Ms. Lydia S. Gambito, a court stenographer at the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, with **"misrepresentation and unlawful acts."** Complainant alleged that sometime in November 2002, respondent came to her house and convinced her to buy her (respondent's) "claimed tricycle," which she described as, "Honda (Make), KB503-022-019947E (Motor No.), KB503-022-19947 (Chassis No.), MC-AR-8213 (Plate No.)," for ₱65,000.00. Respondent allegedly needed the money for her son's "deployment for work abroad." As she wanted to help respondent and the latter's son, she agreed to buy the said tricycle after respondent promised her that she [respondent] would present to her [complainant] the documents evidencing her ownership of the tricycle. Respondent allegedly assured her that the said tricycle

[1] *Rollo* (A.M. No. P-06-286), pp. 90-98; (A.M. No. P-12-3026), pp. 135-143.

was not encumbered. She handed to respondent the amount of ₱65,000.00 after they executed a "Deed of Sale of a Motorized Tricycle," and respondent thereafter delivered and transferred "her possession of the tricycle." Allegedly, respondent also promised her to deliver the "Original Certificate of Registration" of the tricycle on or before January 31, 2003. Respondent, however, failed to make good her promise and, despite demands, she failed to deliver the said document. Complainant further claimed that her repeated efforts to meet with respondent at the latter's place of work was in vain, as respondent was always not around every time she would go there.

Complainant claimed that on July 14, 2005, "a Branch Manager of the PR Bank" in Urdaneta City, together with "a couple of policemen," came to her house and "took possession and control of the tricycle [she] bought from [respondent] "on the claimed ground that the said bank already owned it via foreclosure of the "Chattel Mortgage" supposedly executed by [respondent] over the tricycle." She insisted that respondent never informed her "about her [respondent's] mortgage transaction with said PR Bank." In fact, she claimed that had respondent told her at the beginning that the tricycle had been mortgaged, she would not have bought it despite respondent's "financial plea."

In her **Comment** dated January 30, 2006, respondent alleged that when her son applied for work abroad, she borrowed money for her son's placement fee from relatives and friends, including complainant to whom she gave the tricycle as a "security," assuring her "that her money [would] be returned after two months" following the arrival of her son abroad, "or deliver to her the certificate of registration also within that period." However, the recruitment agency failed to send her son abroad, and they were unable to get back the money they paid to the said agency, as its manager could no longer be found and the person who recruited her son had already died. She claimed to have suffered "trauma caused by the money taken away from [them] by the recruiter." Consequently, she "suffered complicated illness (sic), spending much for medications up to the present and causing [her] to be financially handicapped most of the time." She also claimed that it was not her intention "not to settle [her] obligation," but since she is the only breadwinner of her family, her meager salary is insufficient to meet all the needs of her family, as well as the payment of her obligations. She also informed the Court that there was "an ongoing conciliation with [complainant]," and if the latter would be

amenable, she would pay her "installment term until [her] obligation will be fully paid."

In a Resolution dated June 28, 2006, the Court re-docketed the complaint against respondent as a regular administrative matter, and referred the same to the Executive Judge of the Regional Trial Court, Urdaneta City, Pangasinan for investigation, report and recommendation.

In her Report dated February 9, 2011, Executive Judge Tita Rodriguez Villarin, Regional Trial Court, Urdaneta City, Pangasinan, gave the following account, without any evaluation or the required recommendation, thus:

> *On January 17, 2007, complainant testified before then Executive Judge Rodolfo G. Nabor. Her testimony is summarized as follows: In November 2002, respondent went to her house and offered to sell respondent's Honda motorcycle, colored red, with plate number MC-AR-8213. Respondent executed a Deed of Sale notarized by Atty. Garcia (Exhibit "A"). Respondent promised to deliver to the complainant the original certificate of registration of the motorcycle (Exhibit "B"-promissory note). Complainant paid the whole amount of the consideration of the sale. The motorcycle was delivered to the complainant. Respondent did not make good her promise to deliver the certificate of registration despite demands. On July 14, 2005, the manager of PR Bank, Urdaneta City and two armed men went to complainant's house and took the motorcycle. According to the PR Bank Manager, the motorcycle was mortgaged and the same was foreclosed. On verification, she found out that there was a chattel mortgage executed by respondent (Exhibit "C"). The motorcycle was brought to the police station and the incident was entered in the police blotter (Exhibit "D"). When the motorcycle was taken, she suffered damage because she paid Php65,000.00 to buy said tricycle. She also lost daily income from the tricycle. She gathered the necessary documents and brought them to the Office of the Prosecutor. Thereat, she executed an affidavit-complaint (Exhibit "E"), which was the one submitted to the Court Administrator.*
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> *After complainant testified, this case was scheduled several times but were postponed on motion of the respondent because she has no lawyer and she was sick. The Court noted*

respondent was really very sick. She was so slim and always coughing.

On September 17, 2010, both respondent and complainant appeared and jointly manifested (that) they agreed to the withdrawal of the complaint.

In her affidavit of withdrawal executed before Prosecutor Francisville Asuncion, complainant Consolacion stated (that) she is withdrawing her complaint against respondent because they have already settled their differences.

On October 29, 2010, respondent submitted a letter informing the Court (that) she is not anymore presenting evidence because of the withdrawal of the complaint.

Indeed, in her Affidavit of Withdrawal of Complaint dated September 17, 2010, complainant declared that she and respondent have "already settled [their] differences" and that she is "no longer interested to pursue said case against the respondent." She thus requests "that the said administrative case be dismissed."[2]

x x x x x x x x x

A.M. OCA IPI No. 05-2081-P

In her letter dated November 16, 2004, complainant Judge Emma S. Ines-Parajas, then Presiding Judge of the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan (now Presiding Judge of the Regional Trial Court, Branch 50, Tayug, Pangasinan), complained to the Court Administrator that she "discovered the [following] **misdeeds**" of respondent Ms. Lydia Gambito, a court stenographer of the said first level court, thus:

1. Respondent allegedly agreed to facilitate the issuance of a certificate of title in favor of Norma Billamanca for a fee of Php10,000.00, assuring Ms. Billamanca that complainant judge could help "facilitate the processing of the papers." Respondent was even asking for an additional amount of ₱3,000.00 from Ms. Billamanca "to be paid to [complainant judge]." The latter claimed that respondent admitted to her in the presence of court stenographer Cristeta Magat on October 29, 2004 that she **used her [complainant judge's] name** "to exact money from Ms. Billamanca."

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[2] *Rollo* (A.M. No. P-06-2186), pp. 90-91.

2. Complainant judge claimed that in the third week of October 2004, Lolita Erum of Balangobong, Binalonan, Pangasinan complained to her that respondent "**offered to help post**" **the bail** for her husband, Virgilio Erum, "who [was] an accused in a case pending before MTCC, Urdaneta City," and "**received the amount of ₱9,000.00**" **from Ms. Erum, but "no bail was posted."** Respondent reportedly "refused to return the amount despite several demands."

3. The sister of Aboy Abellera of Capas, Binalonan, Pangasinan, who is an accused in Criminal Case No. 7480, also complained that respondent **received 10,000.00 "from the former for his bail.**" However, "**no bail was posted** and the accused is still languishing in jail."

4. Peter Grey filed a **complaint for sum of money** against respondent before the Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, which arose from the failure of respondent to pay her debt to Mr. Grey.

5. Jose Fiesta of Bued, Binalonan, Pangasinan reported to complainant judge that **respondent and her son failed to pay the rental of the house owned by Mr. Fiesta for the month of August 2004 as well as the electric bills** for the duration of their stay at the said house.

6. Similarly, Federico Fernandez of Yakal St., Villa Pozorrubio, Pozzorubio, Pangasinan also complained that respondent rented his house in Villa Pozzorubio after she left the house of Mr. Fiesta, but failed to pay her obligation of ₱13,837.00 "representing **unpaid rentals and unpaid loans**."

7. Nancy Esguerra of Ipil St., Villa Pozorrubio also complained that the **son of respondent** "committed **estafa** against her and that [respondent] **denied that she knew the whereabouts of her son.**"

8. In 2003, **respondent allegedly collected the amount of ₱2,000.00** from the mother of Eduardo Dapreza of Sitio Orno, Sta. Maria Norte, Binalonan, Pangasinan, who is an accused in Criminal Case No. 7388, "as bail because a warrant of arrest has been issued against him." However, complainant judge pointed out that "the record of the **case does not show that a warrant of arrest was issued against the accused,** the case being covered by the Rules on Summary Procedure."

Complainant judge also reported that respondent "was **often absent without filing [an] application for leave in advance.**" She, thus, recommended "that pending investigation of the foregoing cases, [respondent] be suspended to prevent her from further using her position in [her] Court to exact money from other persons."

In her **letter-comment** dated June 4, 2005, respondent explained that her transaction with Ms. Billamanca involved two cases, an ejectment and a petition for issuance of lost title, for which she would spend ₱15,000.00. Instead of paying the said amount in full, Ms. Billamanca gave her "payment in installment." "The first was ₱3,000.00, then after a month, ₱2,000.00 then after several weeks, she gave ₱2,000.00 and a bracelet worth ₱1,800.00." She further explained that "the ₱15,000.00 was supposed to be used for publication, filing fee and Sheriff's fee," but since the full amount was not given, the cases were not filed in Court.

She admitted "the allegations in paragraph 2, with the justification that Mrs. Lolita Erum handed [her] in installment the amount of ₱9,000.00 supposedly for the bond of her husband with nine (9) cases. First, she gave ₱1,000.00, after several weeks, she gave ₱5,000.00." After several days, ₱2,000.00." She explained that as "the bailbond Surety Company did not accept [the said amount] and because [she] need[ed] medication and her daughter who is in college need[ed] money to buy her books, [she] used the money."

She likewise admitted the existence of a civil case for sum of money against her. She explained that the money she borrowed from the plaintiff was used by her son who applied for work abroad, but he was a victim of illegal recruitment. She claimed that they could no longer get back the money from the recruiter because the latter is already dead.

She branded the complaint of Mrs. Esguerra against her son to be "baseless, fabricated and lies." She also denied the allegation of Mrs. Fiesta as "[they] even sold [their] refrigerator" to enable them to pay their obligation to him.

Finally, she "vehemently den[ied] that she has not been filing her application for leave of absence, the truth [being] that [she] was sick during those times and [she] was not able to file [her] leave beforehand." She claimed to have filed her "leave," attaching thereto her medical certificate, when she returned to work.

In a Resolution dated February 15, 2006, the Court referred this administrative matter "to the Executive Judge of Urdaneta City, Pangasinan for investigation, report and recommendation within sixty (60) days from receipt of the records," and "suspend[ed] respondent pending investigation of the case."

There being no compliance with the February 15, 2006 Resolution more than four (4) years after its issuance, the Court, in a Resolution dated December 13, 2010, required the Executive Judge, Regional Trial Court, Urdaneta City, Pangasinan, to submit a status report on this matter within ten (10) days from notice.

In her report dated February 9, 2011, Executive Judge Tita Rodriguez Villarin, Regional Trial Court, Urdaneta City, Pangasinan, gave the following account, thus:

> *Records show that complainant Judge Parajas started her testimony on June 7, 2006 before then Judge Rodrigo G. Nabor (now retired). Thereafter, Judge Parajas did not anymore return to continue her testimony.*
>
> *The testimony of Judge Parajas is summarized as follows: (S)he was the Presiding Judge of MCTC, Binalonan-Laoac, Pangasinan when she filed the instant complaint. About the second week of October 2004, she was informed of a confrontation between respondent Gambito and one Norma Billamanca of Santiago, Binalonan, Pangasinan. She summoned said Ms. Billamanca to her Court. Ms. Billamanca admitted that she contracted the services of respondent Gambito for the issuance of new transfer certificate of title for the amount of ₱10,000.00; and that respondent told Ms. Billamanca (that) Judge Parajas could help facilitate the processing for the issuance of new transfer certificate of title because Judge Parajas knows people at the Registry of Deeds. After Ms. Billamanca left the Court, Judge Parajas confronted respondent regarding what Ms. Billamanca said. Respondent cried and admitted she used the name of Judge Parajas to exact money from Ms. Billamanca. During the confrontation and admission of respondent, one of the stenographers of the court, Ms. Cristeta Magas, was present.*
>
> *Records show that Peter Grey, the plaintiff in Civil Case No. 611 for sum of money against respondent, gave his testimony on July 5, 2006 before then Executive Judge Rodrigo Nabor. However, the transcript of proceedings is not attached*

to the records. An order was issued on December 15, 2010 requiring the stenographers who took down the proceedings to submit their transcripts. But to date no transcript of the testimony of Peter Grey was submitted.

On August 17, 2006, Norma Billamanca appeared before then Executive Judge Nabor, but she refused to testify, per order dated August 17, 2006. Thereafter, this case was set several times but the same were postponed because the witnesses of complainant did not appear despite notice, and respondent was always sick and had no lawyer to assist her. The Court noted that indeed respondent was very sick. She was so slim and coughing hard.

On October 29, 2010, the respondent appeared and submitted a letter informing the Court she is not anymore presenting evidence. When asked in open Court, respondent manifested that she is still sickly, that she could not afford a lawyer, that she could even hardly provide for her fare in going to court, and that she will accept the decision of the Court.[3] [Emphases supplied]

On November 4, 2011, the OCA submitted its Memorandum containing the consolidated report on the complaints. It found Gambito to have committed acts constituting three (3) counts of conduct prejudicial to the best interest of the service and recommended that she be dismissed from the service with forfeiture of all retirement benefits. The recommendation reads:

PREMISES CONSIDERED, we respectfully recommend that:

1. OCA IPI No. 05-2081-P be RE-DOCKETED as a regular administrative matter;

2. These two (2) administrative matters be CONSOLIDATED; and

3. Ms. Lydia S. Gambito, Court Stenographer, Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, be ADJUDGED GUILTY of three (3) counts of conduct prejudicial to the best interest of the service, and be DISMISSED from the service with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to re-employment in

[3] *Id.* at 94-96.

> any government office, including government-owned and controlled corporations.[4]

Although the witnesses did not appear during the investigation and some of the testimonies of those who did were not completed, the OCA assessed the cases against Gambito because of her admissions 1) that she entered into a "transaction" with Norma Billamanca *(Billamanca)* to facilitate two (2) cases for which the latter agreed to give her ₱15,000.00 supposedly to be spent for publication, filing fee and sheriff's fee; and 2) that she received on different occasions from Billamanca payment in installment amounting to ₱7,000.00 and a bracelet valued at ₱1,800.00, but the cases were not filed in court because Billamanca failed to give her the full amount of ₱15,000.00. Gambito likewise failed to refute in her letter-comment the allegation of Judge Emma S. Ines-Parajas *(Judge Ines-Parajas)* that she admitted to the latter, in the presence of another court stenographer, that she used the complainant-judge's name to exact money from Billamanca. The OCA stated that such failure was considered as an implied admission.

Furthermore, the OCA found that Gambito took advantage of her position as a court employee as she used the name of the complainant-judge to exact money from unsuspecting and hapless individuals. The OCA also stated that Gambito failed to live up to the high ethical standards required of court employees thereby prejudicing the best interest of the administration of justice. Gambito violated Section 52, paragraph A(20), Rule IV of the Revised Rules on Administrative Cases in the Civil Service, which refers to conduct prejudicial to the best interest of the service and which is classified as a grave offense punishable with dismissal on the second offense.

Considering that Gambito committed on different occasions and under different circumstances three (3) separate unlawful acts, all constituting conduct prejudicial to the best interest of the service, the OCA recommended that the extreme penalty of dismissal be imposed on her.

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[4] *Id.* at 90-98.

ISSUE

WHETHER OR NOT RESPONDENT GAMBINO IS ADMINISTRATIVELY LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND, IF SO, WHETHER OR NOT HER OFFENSE WARRANTS THE PENALTY OF DISMISSAL FROM THE SERVICE.

The Court's Ruling

The Court finds the evaluation and assessment of OCA to be well-taken.

The rules do not provide a definition of, or enumeration of the acts constituting, conduct prejudicial to the best interest of the service. In *Ito v. De Vera*,[5] the Court held that conduct prejudicial to the best interest of the service refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary.[6]

In *Largo v. Court of Appeals*,[7] it was stated that if an employee's questioned conduct tarnished the image and integrity of his public office, he was liable for conduct prejudicial to the best interest of the service. The basis for his liability was Republic Act *(R.A.)* No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The Code, particularly its Section 4(c), commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.[8]

In the case at bench, Gambito's misrepresentation regarding the ownership and actual status of the tricycle which she sold to Filomena B. Consolacion *(Consolacion)* for ₱65,000.00 unquestionably undermined the people's faith in the Judiciary. Gambito, a long time court stenographer, took advantage of

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[5] A.M. No. P-01-1478, December 13, 2006, 511 SCRA 1, 11-12.

[6] *Toledo v. Perez*, A.M. Nos. P-03-1677 and P-07-2317, July 15, 2009, 593 SCRA 5, 11-12.

[7] G.R. No. 177244, November 20, 2007, 537 SCRA 721, 732.

[8] *Id.* at 733.

her being a court employee and her friendship with Consolacion when she induced the latter to buy the tricycle and promised her that she would give her the documents proving ownership of the tricycle with the assurance that it was not encumbered.

For her misrepresentation and assurance, Consolacion trusted her and immediately gave her the amount of ₱65,000.00. Consolacion claimed that she was sincere in helping Gambito's son and was disappointed when she failed to present the Original Certificate of Registration of the subject tricycle, despite several demands. What was even more painful for Consolacion was the fact that there was a chattel mortgage constituted on the tricycle and that it had already been foreclosed.

In her Comment,[9] Gambito explained that the money she received from Consolacion was used to pay her son's placement fee. She gave the tricycle as security with the assurance that the money would be returned after two (2) months from her son's arrival from abroad or upon the delivery of the certificate of registration. She was not able to return the money because her son became a victim of an illegal recruiter and she could not get the money back because the recruiter had passed away. What she did not disclose, however, was that the tricycle was already the subject of an earlier chattel mortgage in favor of PR Bank, Urdaneta City.

Doubtless, Gambito's unethical transactions and lack of forthrightness affected the Judiciary of which she was a part. As a court employee, she was expected to act in conformity with the strict standard required of all public officers and employees. In *San Jose, Jr. v. Camurongan*,[10] the Court held that the strictest standards have always been valued in judicial service. Verily, everyone involved in the dispensation of justice, from the presiding judge to the lowliest clerk, is expected to live up to the strictest norm of competence, honesty and integrity in the public service.[11] Although Consolacion later withdrew

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[9] *Rollo* (A.M. No. P-06-2186), pp. 10-11.

[10] 522 Phil. 80, 83 (2006).

[11] *Toledo v. Perez*, *supra* note 6.

her complaint, it does not help Gambito's cause as these late recantations are viewed by the Court with disfavor.

The Court stresses that the conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.[12]

Another point against Gambito was her transaction with Billamanca. She admitted in her letter-comment,[13] dated June 14, 2005, that she facilitated two (2) cases (ejectment case and petition for the issuance of lost title) for the amount of ₱15,000.00, which was supposed to be used for publication, filing fee and sheriff's fee. She explained that the cases were not filed in court because Billamanca failed to give her the full amount of ₱15,000.00. The amount given was only ₱7,000.00, delivered in installments.

Gambito likewise confessed that she received in installments the amount of ₱9,000.00 from Lolita Erum *(Erum)*, which was supposed to be for the bail of the latter's husband who had nine (9) pending cases, and that she used the money to buy her medicines and the college books of her daughter.

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[12] *Hernando v. Bengson*, A.M. No. P-09-2686, March 28, 2011, 646 SCRA 439.

[13] *Rollo* (A.M. No. P-12-3026), pp. 20-21.

Indeed, Gambito's unauthorized transactions with Billamanca and Erum constitute conduct grossly prejudicial to the interest of the service. Under the Civil Service Law and its implementing rules, dishonesty, grave misconduct and conduct grossly prejudicial to the best interest of the service are grave offenses punishable by dismissal from the service.[14]

Under Section 52(A)(11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dismissal is the penalty for improper solicitation for the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture or retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.[15]

Time and again, this Court has emphasized the heavy burden and responsibility of court personnel. They have been constantly reminded that any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided. Thus, the Court does not hesitate to condemn and sanction such improper conduct, act or omission of those involved in the administration of justice that violates the norm of public accountability and diminishes or tends to diminish the faith of the public in the Judiciary.[16]

WHEREFORE, Lydia S. Gambito, Court Stenographer, Municipal Circuit Trial Court, Binalonan-Laoac, Pangasinan, is hereby found **GUILTY** of three (3) counts of conduct prejudicial to the best interest of the service, and is hereby **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations.

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[14] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 602.

[15] *Villaros v. Orpiano*, 459 Phil. 1, 8 (2003).

[16] *Ito v. De Vera*, *supra* note 5 at 11.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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

Abad, J., on official leave.

EN BANC

[G.R. No. 182069. July 3, 2012]

ARNOLD D. VICENCIO, *petitioner, vs.* **HON. REYNALDO A. VILLAR and HON. JUANITO G. ESPINO, JR., in their capacity as Acting Chairman and Commissioner, respectively, of the Hon. Commission on Audit, and ELIZABETH S. ZOSA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADING REQUIRED TO BE VERIFIED; VERIFICATION BASED ON KNOWLEDGE, INFORMATION AND BELIEF, TREATED AS AN UNSIGNED PLEADING.— Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief" or "knowledge, information and belief," shall be treated as an unsigned pleading. [It] produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.

2. POLITICAL LAW; LOCAL GOVERNMENT; VICE-MAYOR; NO INHERENT AUTHORITY TO ENTER INTO CONTRACTS ON BEHALF OF THE LOCAL GOVERNMENT UNIT;

AUTHORITY GIVEN TO VICE-MAYOR YAMBAO IN CASE AT BAR IS NOT A "CONTINUING AUTHORITY" FOR ANY PERSON WHO ENTERS THE OFFICE OF THE VICE-MAYOR.— Under Section 456 of R.A. 7160, or the Local Government Code, the following are the powers and duties of a city vice-mayor: x x x Under this provision, therefore, there is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor. Thus, the authority of the vice-mayor to enter into contracts on behalf of the city was strictly circumscribed by the ordinance granting it. Ordinance No. 15-2003 specifically authorized Vice-Mayor Yambao to enter into contracts for consultancy services. As this is not a power or duty given under the law to the Office of the Vice-Mayor, Ordinance No. 15-2003 cannot be construed as a "continuing authority" for any person who enters the Office of the Vice- Mayor to enter into subsequent, albeit similar, contracts.

3. ID.; STATUTORY CONSTRUCTION; GENERAL RULE.— Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Thus, the ordinance should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. In the instant case, there is no reason to depart from this rule, since the subject ordinance is not at all impossible, absurd, or unjust.

APPEARANCES OF COUNSEL

Rodolfo C. Delos Santos for petitioner.
The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, seeking to annul Decision No.

2008-022 dated 15 February 2008 of the Commission on Audit (COA).[1]

On 30 October 2003, the City Council or the *Sangguniang Panglungsod ng* Malabon (SPM), presided over by Hon. Benjamin Galauran, then acting Vice-Mayor, adopted and approved City Ordinance No. 15-2003, entitled "An Ordinance Granting Authority to the City Vice-Mayor, Hon. Jay Jay Yambao, to Negotiate and Enter into Contract for Consultancy Services for Consultants in the *Sanggunian* Secretariat Tasked to Function in their Respective Areas of Concern x x x."[2]

On 9 December 2003 and 1 March 2004, the City of Malabon, represented by Hon. Galauran, entered into separate Contracts for Consultancy Services with Ms. Jannette O. Vijiga,[3] Mr. Meynardo E. Virtucio[4] and Mr. Hernando D. Dabalus (2003 Consultancy Contracts).[5]

Subsequently, during the May 2004 elections, petitioner was elected City Vice-Mayor of Malabon. By virtue of this office, he also became the Presiding Officer of the SPM and, at the same time, the head of the *Sanggunian* Secretariat.

To complement the manpower requirements of the existing *Sanggunian* Secretariat, petitioner deemed it necessary to hire the services of consultants with the end view of augmenting and upgrading its performance capability for the effective operation of the legislative machinery of the city.

Petitioner thus wrote a letter dated 19 July 2004 to Atty. Danilo T. Diaz , the City Legal Officer of Malabon, inquiring as to whether it was still necessary for the SPM to ratify a

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[1] *Rollo*, pp. 21-25. Issued by acting COA Chairperson Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[2] *Id.* at 33-34.

[3] *Id.* at 39-41.

[4] *Id.* at 42-44.

[5] *Id.* at 45-47.

newly entered contract of consultancy services between it and the candidate for the consultancy position. The letter states in part:

> This is an inquiry regarding the hiring of consultants by virtue of an ordinance giving authority to the City Vice Mayor to enter into consultancy services (Ordinance no. 15-2003).
>
> As you very well know, the services of the consultants hired by the former administration, particularly by the Sangguniang Panglungsod, ended last June 30, 2004. Hence, we are confronted by this inquiry:
>
> > Would there still be a need for the Sangguniang Panglungsod to ratify a newly entered contract of consultancy services between the SP and the candidate for said consultancy position?
>
> Kindly render your humble opinion on the matter.[6]

Atty. Diaz then responded to the said inquiry through a letter dated 26 July 2004, which categorically stated that ratification was no longer necessary, provided that the services to be contracted were those stipulated in the ordinance. The letter states thus:

> In response to your query contained in your letter dated July 19, 2004, regarding the hiring of consultants for the Sanggunian Secretariat by virtue of Ordinance No. 15-2003, giving authority to the City Vice Mayor to enter into consultancy services and whether there is still a need for ratification of said consultancy contract by the Sanggunian, the answer is, such a ratification is no longer necessary provided that the contract of consultancy services to be executed is precisely the services stipulated in said ordinance. In essence, the Ordinance no. 15-2003 already stated what consultancy services should be secured and hence, if the contract for consultancy services to be executed is precisely those as provided in said ordinance, ratification is a mere surplasage.[7]

On 21 January 2005, the SPM adopted City Ordinance No. 01-2005 entitled "An Ordinance Appropriating Funds to Cover the

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[6] *Id.* at 48.

[7] *Id.* at 49.

Various Expenditures and Activities of the Local Government of Malabon City for the Period from January 01, 2005 to December 31, 2005." The total amount of funds appropriated was ₱511,070,019 for the spending of the entire city government. Out of this amount, ₱792,000 was earmarked for consultancy services under the Legislative Secretariat.

On 1 February 2005, petitioner, representing the City Government of Malabon City, entered into Contracts for Consultancy Services with Ms. Jennifer S. Catindig[8] and Atty. Rodolfo C. delos Santos (2005 Consultancy Contracts).[9] On 11 February 2005, another Contract for Consultancy Services was entered into between Mr. Marvin T. Amiana[10] and the city government.

After the signing of their respective contracts, the three consultants rendered consultancy services to the SPM. Thereafter, they were correspondingly paid for their services pursuant to the contracts therefor.

On 19 December 2005, Audit Observation Memorandum (AOM) No. 2005-12-019[11] was issued by Ms. Atenie F. Padilla, Supervising Auditor of the City Auditor's Office, Malabon City, disallowing the amount of three hundred eighty-four thousand nine hundred eighty pesos (₱384,980) for being an improper disbursement. The AOM disclosed the following pertinent findings:

- City Ordinance No. 15-2003 dated October 30, 2003 was used as basis of authority in hiring consultants. Analysis of the said City Ordinance revealed that it specifically authorized the former Vice-Mayor, Hon. Mark Allan Jay G. Yambao to enter into a contract for consultancy services in the Sangguniang Secretariat covering the period June to December 2003 only. Said ordinance does not give authority to the incumbent City

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[8] *Id.* at 50-52.

[9] *Id.* at 53-56.

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

[11] *Id.* at 101-102.

Vice-Mayor Arnold D. Vicencio to hire consultants for CY 2005.

- Progress accomplishment report for the month, to determine the services rendered were not attached to the disbursement vouchers.
- No information as to what method had been made by BAC in the hiring of individual consultants whether through the selection from several registered professionals who offered consulting services or through direct hiring without the intervention of the BAC.
- Copies of the approved contracts together with supporting documents were not submitted to the City Auditor's Office within five (5) days from execution of the contract for review and evaluation contrary to COA Circular No. 76-34 dated July 15, 1976, thus the City Auditor's Office was precluded to conduct timely review/evaluation to inform management of whatever deficiencies noted so that immediate remedial measures could be properly taken.[12]

On 12 May 2006, respondent Elizabeth S. Zosa issued Notice of Disallowance (ND) No. 06-009-101 (05)[13] containing the result of the evaluation conducted on the AOM issued by Ms. Padilla. The persons held liable for the disallowed amount relative to the hiring of the three consultants were the following: (1) petitioner, in his capacity as City Vice-Mayor, for certifying that the expenses/cash advances were necessary, lawful and incurred under his direct supervision and for approving the transaction; (2) Mr. Eustaquio M. Angeles, in his capacity as Officer-in-Charge, City Accountant, for certifying to the completeness and propriety of the supporting documents of the expenditures; and (3) Ms. Catindig, Atty. Delos Santos, and Mr. Amiana, as payees. The above-named persons were further directed to settle the said disallowance immediately. Pursuant to Sections 48, 50 and 51 of Presidential Decree No. (P.D.) 1445,

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[12] *Id.* at 102.

[13] *Id.* at 103-104.

the parties found liable had a period of six months within which to file an appeal. The disallowance was anchored on the following findings:

– There was no authority for the incumbent City Vice-Mayor Arnold D. Vicencio to hire consultants for CY 2005. City Ordinance No. 15-2003 dated October 30, 2003 which was used as basis of authority to hire consultants specifically authorized the former Vice-Mayor, Hon. Mark Allan Jay G. Yambao to enter into a contract for consultancy services in the Sangguniang Secretariat covering the period June to December 2003 only.

– There were no Progress Accomplishment Reports for the month, to determine the services rendered.

– No information as to what method had been made by BAC in the hiring of individual consultants whether through the selection from several registered professionals who offered consulting services or through direct hiring without the intervention of the BAC.[14]

On 22 June 2006, the SPM wrote a letter[15] informing Ms. Padilla that the three consultants hired by petitioner rendered services covering the period January to December 2005. In its view, the hiring of these consultants and the services they rendered were in good faith.

Aggrieved by the disallowance, petitioner appealed it to the Adjudication and Settlement Board (ASB) of the COA. On 12 June 2007, the ASB issued Decision No. 2007-030,[16] the dispositive portion of which reads as follows:

Premises considered, the instant appeal of Hon. Arnold Vicencio is hereby denied. Accordingly, Notice of Disallowance No. 06-009-101 (05) dated 12 May 2006 involving the amount of ₱384,980.00 representing fees to consultants Mr. Marvin T. Amiana, Atty. Rodolfo Delos Santos and Ms. Jennifer Catindig, is hereby affirmed. However, the instant appeal of Mr. Estaquio Angeles is hereby granted. Mr.

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[14] *Id.*

[15] *Id.* at 105-106.

[16] *Id.* at 120-124.

Angeles is therefore excluded from the persons liable listed under Notice of Disallowance No. 06-009-101 (05).[17]

Thereafter, herein petitioner filed a letter dated 7 July 2007,[18] addressed to Hon. Guillermo N. Carague, COA Chairperson. The letter prayed for the reversal and setting aside of the earlier Decision of the ASB. On 15 February 2008, public respondent issued the assailed Order. It appears that the letter of petitioner was treated as an appeal to the Commission Proper of the COA and was subsequently denied. The dispositive portion states:

> WHEREFORE, premises considered, the instant motion for reconsideration, which was treated as an appeal, is denied.[19]

On 28 March 2008, the instant Petition was filed, raising the following issue:

> WHETHER OR NOT PUBLIC RESPONDENT COMMISSION ON AUDIT COMMITTED SERIOUS ERRORS AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT AFFIRMED ASB DECISION NO. 2007-030, RELATIVE TO THE DISALLOWANCE OF DISBURSEMENTS CONCERNING THE SERVICES RENDERED BY HIRED CONSULTANTS FOR THE SANGGUNIANG PANLUNGSOD NG MALABON.

On 8 April 2008, this Court directed respondents to comment on the Petition. On 28 July 2008, they filed their Comment, in which they averred that Ordinance No. 15-2003 specifically authorized the expenditure of funds for the compensation of consultants only from June to December 2003. Thus, the contracts for consultancy entered into in 2005 were contrary to the ordinance cited and were therefore void for being unauthorized and bereft of any legal basis. There is also no room for interpretation of the ordinance, as the same is clear, and, additionally, actually contains no preamble. Further, respondents argue that to allow

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[17] *Id.* at 124.

[18] *Id.* at 125-126.

[19] *Id.* at 11.

the disbursement of public funds to pay for the services of the consultants, despite the absence of authority for the same, would allow a circumvention of the applicable COA rules and circulars.

Petitioner thereafter filed his Reply to the Comment, in compliance with this Court's 12 August 2008 Resolution. In his Reply, he contended that he had the authority to enter into the consultancy contracts pursuant to Ordinance No. 15-2003. As the ordinance was ambiguous, there was a need to interpret its provisions by looking into the intent of the law. He also manifested that the Ombusdman had dismissed the administrative and criminal Complaints for violation of Republic Act No. (R.A.) 6713 and for Usurpation of Authority, previously filed against him over the same transactions. The Ombudsman held that, while Ordinance No. 15-2003 specifically mentions then Vice-Mayor Yambao, the intent in passing the law may not be ignored. It was the intention of the city council to authorize the Office of the Vice-Mayor to enter into consultancy contracts, and not Vice-Mayor Yambao only. Petitioner also argued that the ends of substantial justice and equity would be better served by allowing the disbursement for consultancy services that have already been rendered.

We deny the Petition.

At the outset, we note that the Petition has a procedural flaw that should merit its outright dismissal. Through the Verification and Certification attached to the instant Petition, petitioner states that the contents of the Petition "are true and correct of [his] own personal knowledge and belief and based on authentic records and/or documents."[20] Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief" or "knowledge, information and belief," shall be treated as an unsigned pleading. A pleading, therefore, in which the verification is based merely on the party's knowledge and belief – as in the instant Petition

[20] *Id.* at 18.

– produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.[21]

In any case, we find no grave abuse of discretion on the part of the COA in issuing the assailed Decision.

Petitioner contends that the ordinance authorizes the Office of the Vice-Mayor, and not Vice-Mayor Yambao in particular, to enter into consultancy contracts. Notably, it was even Hon. Vice-Mayor Benjamin C. Galauran, who was acting Vice-Mayor at the time, who entered into the 2003 Consultancy Contracts. Petitioner also argues that there is no indication from the preamble of the ordinance, which can be read from the minutes of the SPM meeting, that the ordinance was specifically designed to empower only Vice-Mayor Yambao, or to limit such power to hire for the period June to December 2003 only.

We disagree.

Under Section 456 of R.A. 7160, or the Local Government Code, the following are the powers and duties of a city vice-mayor:

ARTICLE II

The City Vice-Mayor

SECTION 456. Powers, Duties and Compensation. — (a) The city vice-mayor shall:

(1) Be the presiding officer of the sangguniang panlungsod and sign all warrants drawn on the city treasury for all expenditures appropriated for the operation of the sangguniang panlungsod;

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the sangguniang panlungsod, except those whose manner of appointment is specifically provided in this Code;

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[21] *Negros Oriental Planters Association, Inc. (NOPA) v. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City*, G.R. No. 179878, 24 December 2008, 575 SCRA 575.

(3) Assume the office of the city mayor for the unexpired term of the latter in the event of permanent vacancy as provided for in Section 44, Book I of this Code;

(4) Exercise the powers and perform the duties and functions of the city mayor in cases of temporary vacancy as provided for in Section 46, Book I of this Code; and

(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(b) The city vice-mayor shall receive a monthly compensation corresponding to Salary Grade twenty-eight (28) for a highly urbanized city and Salary Grade twenty-six (26) for a component city, as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

Under this provision, therefore, there is no inherent authority on the part of the city vice-mayor to enter into contracts on behalf of the local government unit, unlike that provided for the city mayor.[22] Thus, the authority of the vice-mayor to enter into contracts on behalf of the city was strictly circumscribed by the ordinance granting it. Ordinance No. 15-2003 specifically authorized Vice-Mayor Yambao to enter into contracts for consultancy services. As this is not a power or duty given under the law to the Office of the Vice-Mayor, Ordinance No. 15-2003 cannot be construed as a "continuing authority" for any person who enters the Office of the Vice- Mayor to enter into subsequent, albeit similar, contracts.

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[22] R.A. 7160, Sec. 456 (b)(1)(vi) provides:

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(vi) Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance; x x x.

Ordinance No. 15-2003 provides in full:

City Ordinance No. 15-2003

An Ordinance Granting Authority to the City Vice Mayor, Hon. Jay Jay G. Yambao, to Negotiate, and Enter into a Contract for Consultancy Services in the Sanggunian Secretariat Tasked to Function in their Respective Areas of Concern, as Aforementioned, To Wit:

(1) A Legal Consultant

(2) A Consultant on Education Affairs and

(3) A Management Consultant

That said consultants shall be paid/compensated at the rate of Twenty Two Thousand Pesos (₱22,000.00) each, per month, effective upon approval of this ordinance subject to the usual accounting and auditing procedures, rules and/or regulations;

That the source of funds for appropriations thereof shall be made available for expenditures to be earmarked for payment/compensation for said consultants, covering the period from June to December of 2003, thereby authorizing further the City Vice Mayor to effect the necessary funding thereof, pursuant to the pertinent provision, aforecited, in Chapter 4, Section 336 of R.A. 7160;

That copies of this ordinance be furnished all concerned for their information and guidance.

Adopted: October 30, 2003.[23]

Ordinance No. 15-2003 is clear and precise and leaves no room for interpretation. It only authorized the then City Vice-Mayor to enter into consultancy contracts in the specific areas of concern. Further, the appropriations for this particular item were limited to the savings for the period June to December 2003. This was an additional limitation to the power granted to Vice-Mayor Yambao to contract on behalf of the city. The fact that any later consultancy contract would necessarily require further appropriations from the city council strengthens the contention that the power granted under Ordinance No. 15-2003

[23] *Rollo*, pp. 33-34.

was limited in scope. Hence, petitioner was without authority to enter into the 2005 Consultancy Contracts.

Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[24] Thus, the ordinance should be applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice.[25] In the instant case, there is no reason to depart from this rule, since the subject ordinance is not at all impossible, absurd, or unjust.

Section 103 of P.D. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, petitioner's act of entering into a contract on behalf of the local government unit without the requisite authority therefor was in violation of the Local Government Code. While petitioner may have relied on the opinion of the City Legal Officer, such reliance only serves to buttress his good faith. It does not, however, exculpate him from his personal liability under P.D. 1445.

In sum, the COA's assailed Decision was made in faithful compliance with its mandate and in judicious exercise of its general audit power as conferred on it by the Constitution.[26] The COA was merely fulfilling its mandate in observing the policy that government funds and property should be fully protected and conserved; and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and

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[24] *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910 (2000).

[25] *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684 (1998).

[26] *Veloso v. Commission on Audit*, G.R. No. 193677, 6 September 2011, 656 SCRA 767.

property should be prevented.[27] Thus, no grave abuse of discretion may be imputed to the COA.

WHEREFORE, the Commission on Audit Decision dated 4 January 2008 is hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Abad, JJ.,* on leave.

EN BANC

[G.R. No. 187298. July 3, 2012]

JAMAR M. KULAYAN, TEMOGEN S. TULAWIE, HJI. MOH. YUSOP ISMI, JULHAJAN AWADI, and SPO1 SATTAL H. JADJULI, *petitioners, vs.* **GOV. ABDUSAKUR M. TAN, in his capacity as Governor of Sulu; GEN. JUANCHO SABAN, COL. EUGENIO CLEMEN PN, P/SUPT. JULASIRIM KASIM and P/SUPT. BIENVENIDO G. LATAG, in their capacity as officers of the Phil. Marines and Phil. National Police, respectively,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDICIAL DEPARTMENT; HEIRARCHY OF COURTS; WHERE THE ISSUANCE OF AN EXTRAORDINARY WRIT IS ALSO WITHIN THE

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[27] *Id.*

COMPETENCE OF THE CA OR THE RTC, IT IS IN EITHER OF THESE COURTS AND NOT IN THE SUPREME COURT THAT THE SPECIFIC ACTION FOR THE ISSUANCE OF SUCH WRIT MUST BE SOUGHT.— We first dispose of respondents' invocation of the doctrine of hierarchy of courts which allegedly prevents judicial review by this Court in the present case, citing for this specific purpose, *Montes v. Court of Appeals* and *Purok Bagong Silang Association, Inc. v. Yuipco*. Simply put, the doctrine provides that where the issuance of an extraordinary writ is also within the competence of the CA or the RTC, it is in either of these courts and not in the Supreme Court, that the specific action for the issuance of such writ must be sought unless special and important laws are clearly and specifically set forth in the petition. The reason for this is that this Court is a court of last resort and must so remain if it is to perform the functions assigned to it by the Constitution and immemorial tradition. It cannot be burdened with deciding cases in the first instance.

2. ID.; ID.; ID.; ID.; CASES OF TRANSCENDENTAL IMPORTANCE TO THE PUBLIC THAT INVOLVE RESTRICTIVE CUSTODY, AN EXCEPTION.— The said rule, however, is not without exception. In *Chavez v. PEA-Amari*, the Court stated: "PEA and AMARI claim petitioner ignored the judicial hierarchy by seeking relief directly from the Court. The principle of hierarchy of courts applies generally to cases involving factual questions. As it is not a trier of facts, the Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional questions of transcendental importance to the public. The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for *mandamus* which falls under the original jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case."

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR INVOLVES ACTS OF A PUBLIC OFFICIAL WHICH PERTAIN TO RESTRICTIVE CUSTODY, AND IS THUS IMPRESSED WITH TRANSCENDENTAL PUBLIC IMPORTANCE.— The instant case stems from a petition for *certiorari* and prohibition, over which the Supreme Court possesses original jurisdiction.

More crucially, this case involves acts of a public official which pertain to restrictive custody, and is thus impressed with transcendental public importance that would warrant the relaxation of the general rule. The Court would be remiss in its constitutional duties were it to dismiss the present petition solely due to claims of judicial hierarchy. In *David v. Macapagal -Arroyo*, the Court highlighted the transcendental public importance involved in cases that concern restrictive custody, because judicial review in these cases serves as "a manifestation of the crucial defense of civilians 'in police power' cases due to the diminution of their basic liberties under the guise of a state of emergency." Otherwise, the importance of the high tribunal as the court of last resort would be put to naught, considering the nature of "emergency" cases, wherein the proclamations and issuances are inherently short-lived.

4. POLITICAL LAW; CONSTITUTION; EXECUTIVE DEPARTMENT; ONLY THE PRESIDENT, AS EXECUTIVE, IS AUTHORIZED TO EXERCISE EMERGENCY POWERS.— As early as *Villena v. Secretary of Interior,* it has already been established that there is one repository of executive powers, and that is the President of the Republic. This means that when Section 1, Article VII of the Constitution speaks of executive power, it is granted to the President and no one else. x x x Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof. x x x Springing from the well-entrenched constitutional precept of One President is the notion that there are certain acts which, by their very nature, may only be performed by the president as the Head of the State. One of these acts or prerogatives is the bundle of Commander-in-Chief powers to which the "calling-out" powers constitutes a portion. The President's Emergency Powers, on the other hand, is balanced only by the legislative act of Congress, as embodied in the second paragraph of Section 23, Article 6 of the Constitution: x x x The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof. By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone.

As noted in *Villena,* "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law x x x. In the case of *Integrated Bar of the Philippines v. Zamora,* the Court had occasion to rule that the calling-out powers belong solely to the President as commander-in-chief.

5. ID.; ID.; ID.; ONLY THE PRESIDENT IS AUTHORIZED TO EXERCISE SUPERVISION AND CONTROL OVER THE POLICE FORCES.— In addition to being the commander-in-chief of the armed forces, the President also acts as the leader of the country's police forces, under the mandate of Section 17, Article VII of the Constitution, which provides that, "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." During the deliberations of the Constitutional Commission on the framing of this provision, Fr. Bernas defended the retention of the word "control," employing the same rationale of singularity of the office of the president, as the *only* Executive under the presidential form of government. Regarding the country's police force, Section 6, Article XVI of the Constitution states that: "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law."

6. ID.; ID.; ID.; ID.; A LOCAL CHIEF EXECUTIVE MAY EXERCISE CONTROL OF THE POLICE ONLY IN DAY-TO-DAY OPERATIONS.— A local chief executive, such as the provincial governor, exercises operational supervision over the police, and may exercise control only in day-to-day operations. x x x [A]ccording to the framers, it is still the President who is authorized to exercise supervision and control over the police, through the National Police Commission. x x x ***In the discussions of the Constitutional Commission regarding the above provision it is clear that the framers never intended for local chief executives to exercise unbridled***

control over the police in emergency situations. This is without prejudice to their authority over police units in their jurisdiction as provided by law, and their prerogative to seek assistance from the police in day to day situations, as contemplated by the Constitutional Commission. But as a civilian agency of the government, the police, through the NAPOLCOM, properly comes within, and is subject to, the exercise by the President of the power of executive control. x x x **Given the foregoing, respondent provincial governor is *not* endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police, and his own Civilian Emergency Force. The calling-out powers contemplated under the Constitution is *exclusive* to the President**. An exercise by another official, even if he is the local chief executive, is *ultra vires*, and may not be justified by the invocation of Section 465 of the Local Government Code.

7. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; THE POWERS GRANTED TO LOCAL GOVERNMENT UNITS ARE FISCAL, ECONOMIC, AND ADMINISTRATIVE IN NATURE AND SHOULD NOT BE UNDULY STRETCHED TO CONFER CALLING OUT POWERS IN LOCAL EXECUTIVES.— The Local Government Code does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted by the Constitution to the President in matters of security and defense. The intent behind the powers granted to local government units is fiscal, economic, and administrative in nature. The Code is concerned only with powers that would make the delivery of basic services more effective to the constituents, and should not be unduly stretched to confer calling-out powers on local executives. In the sponsorship remarks for Republic Act 7160, it was stated that the devolution of powers is a step towards the autonomy of local government units (LGUs), and is actually an experiment whose success heavily relies on the power of taxation of the LGUs. The underpinnings of the Code can be found in Section 5, Article II of the 1973 Constitution, which allowed LGUs to create their own sources of revenue.

8. ID.; ID.; ID.; PROVINCIAL GOVERNOR CANNOT INVOKE SECTION 465 OF THE LOCAL GOVERNMENT CODE TO JUSTIFY THE EXERCISE OF EMERGENCY POWERS IN CASE AT BAR.— On 31 March 2009, Governor Tan issued Proclamation No. 1, Series of 2009 (Proclamation 1-09), declaring a state of emergency in the province of Sulu. It cited the kidnapping incident as a ground for the said declaration, describing it as a terrorist act pursuant to the Human Security Act (R.A. 9372). It also invoked Section 465 of the Local Government Code of 1991 (R.A. 7160), which bestows on the Provincial Governor the power to carry out emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same Proclamation, respondent Tan called upon the PNP and the CEF to set up checkpoints and chokepoints, conduct general search and seizures including arrests, and other actions necessary to ensure public safety. x x x Petitioners cite the implementation of "General Search and Seizure including arrests in the pursuit of the kidnappers and their supporters," as being violative of the constitutional proscription on general search warrants and general seizures. Petitioners rightly assert that this alone would be sufficient to render the proclamation void, as general searches and seizures are proscribed, for being violative of the rights enshrined in the Bill of Rights. x x x In fact, respondent governor has arrogated unto himself powers exceeding even the martial law powers of the President, because as the Constitution itself declares, "A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of the jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ." We find, and so hold, that there is nothing in the Local Government Code which justifies the acts sanctioned under the said Proclamation. x x x Respondents cannot rely on paragraph 1, subparagraph (vii) of Article 465 of the Local Government Code, as the said provision expressly refers to calamities and disasters, whether man-made or natural. The governor, as local chief executive of the province, is certainly empowered to enact and implement emergency measures during

these occurrences. But the kidnapping incident in the case at bar cannot be considered as a calamity or a disaster. Respondents cannot find any legal mooring under this provision to justify their actions. Paragraph 2, subparagraph (vi) of the same provision is equally inapplicable for two reasons. *First*, the Armed Forces of the Philippines does not fall under the category of a "national law enforcement agency," to which the National Police Commission (NAPOLCOM) and its departments belong. Its mandate is to uphold the sovereignty of the Philippines, support the Constitution, and defend the Republic against all enemies, foreign and domestic. Its aim is also to secure the integrity of the national territory. *Second*, there was no evidence or even an allegation on record that the local police forces were inadequate to cope with the situation or apprehend the violators. If they were inadequate, the recourse of the provincial governor was to ask the assistance of the Secretary of Interior and Local Government, or such other authorized officials, for the assistance of national law enforcement agencies.

9. ID.; CONSTITUTION; POLICY OF ONE POLICE FORCE; THE ORGANIZATION OF PRIVATE CITIZEN ARMIES IS PROSCRIBED; CASE AT BAR.— Pursuant to the national policy to establish one police force, the organization of private citizen armies is proscribed. Section 24 of Article XVIII of the Constitution mandates that: Private armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces (CHDF) not consistent with the citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force. Additionally, Section 21 of Article XI states that, "The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government." Taken in conjunction with each other, it becomes clear that the Constitution does not authorize the organization of private armed groups similar to the CEF convened by the respondent Governor. The framers of the Constitution were themselves wary of armed citizens' groups. x x x Thus, with the discussions in the Constitutional Commission as guide, the creation of the Civilian Emergency Force (CEF) in the present case, is also invalid.

APPEARANCES OF COUNSEL

Jamar M. Kulayan for petitioners.

Brillantes Navarro Jumamil Arcilla Escolin & Martinez Law Offices for Gov. Abdusakur M. Tan.

D E C I S I O N

SERENO, *J.*:

On 15 January 2009, three members from the International Committee of the Red Cross (ICRC) were kidnapped in the vicinity of the Provincial Capitol in Patikul, Sulu.[1] Andreas Notter, a Swiss national and head of the ICRC in Zamboanga City, Eugenio Vagni, an Italian national and ICRC delegate, and Marie Jean Lacaba, a Filipino engineer, were purportedly inspecting a water and sanitation project for the Sulu Provincial Jail when they were seized by three armed men who were later confirmed to be members of the Abu Sayyaf Group (ASG).[2] The leader of the alleged kidnappers was identified as Raden Abu, a former guard at the Sulu Provincial Jail. News reports linked Abu to Albader Parad, one of the known leaders of the Abu Sayyaf.

On 21 January 2009, a task force was created by the ICRC and the Philippine National Police (PNP), which then organized a parallel local group known as the Local Crisis Committee.[3] The local group, later renamed Sulu Crisis Management Committee, convened under the leadership of respondent Abdusakur Mahail Tan, the Provincial Governor of Sulu. Its armed forces component was headed by respondents General Juancho Saban, and his deputy, Colonel Eugenio Clemen. The PNP component was headed by respondent Police Superintendent

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[1] Petition for *Certiorari* and Prohibition, *rollo*, p. 8.

[2] "Red cross won't return to Sulu yet," 27 October 2010, 5:44:00, by Jerome Aning, at http://www.inquirer.net/specialfeatures/redcrossabduction/view.php?db=1&article=20101027-299979. Last visited 11 September 2011.

[3] *Supra* note 1.

Bienvenido G. Latag, the Police Deputy Director for Operations of the Autonomous Region of Muslim Mindanao (ARMM).[4]

Governor Tan organized the Civilian Emergency Force (CEF), a group of armed male civilians coming from different municipalities, who were redeployed to surrounding areas of Patikul.[5] The organization of the CEF was embodied in a "Memorandum of Understanding"[6] entered into between three parties: the provincial government of Sulu, represented by Governor Tan; the Armed Forces of the Philippines, represented by Gen. Saban; and the Philippine National Police, represented by P/SUPT. Latag. The *Whereas* clauses of the Memorandum alluded to the extraordinary situation in Sulu, and the willingness of civilian supporters of the municipal mayors to offer their services in order that "the early and safe rescue of the hostages may be achieved."[7]

This Memorandum, which was labeled 'secret' on its all pages, also outlined the responsibilities of each of the party signatories, as follows:

> Responsibilities of the Provincial Government:
>
> 1) The Provincial Government shall source the funds and logistics needed for the activation of the CEF;
>
> 2) The Provincial Government shall identify the Local Government Units which shall participate in the operations and to propose them for the approval of the parties to this agreement;
>
> 3) The Provincial Government shall ensure that there will be no unilateral action(s) by the CEF without the knowledge and approval by both parties.

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[4] *Rollo,* p. 9.

[5] "State of emergency in Sulu; attack looms," The Philippine Star, updated 1 April 2009, 12:00, by Roel Pareño and James Mananghaya, at http://www.philstar.com/Article.aspx?articleid=454055. Last visited 11 September 2011.

[6] *Rollo,* pp. 242- 244.

[7] *Id.* at 242.

Responsibilities of AFP/PNP/ TF ICRC (Task Force ICRC):

1) The AFP/PNP shall remain the authority as prescribed by law in military operations and law enforcement;

2) The AFP/PNP shall ensure the orderly deployment of the CEF in the performance of their assigned task(s);

3) The AFP/PNP shall ensure the safe movements of the CEF in identified areas of operation(s);

4) The AFP/PNP shall provide the necessary support and/or assistance as called for in the course of operation(s)/movements of the CEF.[8]

Meanwhile, Ronaldo Puno, then Secretary of the Department of Interior and Local Government, announced to the media that government troops had cornered some one hundred and twenty (120) Abu Sayyaf members along with the three (3) hostages.[9] However, the ASG made contact with the authorities and demanded that the military pull its troops back from the jungle area.[10] The government troops yielded and went back to their barracks; the Philippine Marines withdrew to their camp, while police and civilian forces pulled back from the terrorists' stronghold by ten (10) to fifteen (15) kilometers. Threatening that one of the hostages will be beheaded, the ASG further demanded the evacuation of the military camps and bases in the different *barangays* in Jolo.[11] The authorities were given no later than 2:00 o'clock in the afternoon of 31 March 2009 to comply.[12]

On 31 March 2009, Governor Tan issued Proclamation No. 1, Series of 2009 (Proclamation 1-09), declaring a state of emergency in the province of Sulu.[13] It cited the kidnapping

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[8] Memorandum of Understanding, p. 2 of 3; *rollo*, p. 243.

[9] *Supra* note 5.

[10] Petition for *Certiorari* and Prohibition, *rollo*, p. 9.

[11] *Supra* note 5.

[12] *Supra* note 10.

[13] Petition for *Certiorari* and Prohibition, *rollo*, pp. 9-10.

incident as a ground for the said declaration, describing it as a terrorist act pursuant to the Human Security Act (R.A. 9372). It also invoked Section 465 of the Local Government Code of 1991 (R.A. 7160), which bestows on the Provincial Governor the power to carry out emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence.

In the same Proclamation, respondent Tan called upon the PNP and the CEF to set up checkpoints and chokepoints, conduct general search and seizures including arrests, and other actions necessary to ensure public safety. The pertinent portion of the proclamation states:

> NOW, THEREFORE, BY VIRTUE OF THE POWERS VESTED IN ME BY LAW, I, ABDUSAKUR MAHAIL TAN, GOVERNOR OF THE PROVINCE OF SULU, DO HEREBY DECLARE A STATE OF EMERGENCY IN THE PROVINCE OF SULU, AND CALL ON THE PHILIPPINE NATIONAL POLICE WITH THE ASSISTANCE OF THE ARMED FORCES OF THE PHILIPPINES AND THE CIVILIAN EMERGENCY FORCE TO IMPLEMENT THE FOLLOWING:
>
> 1. The setting-up of checkpoints and chokepoints in the province;
> 2. The imposition of curfew for the entire province subject to such Guidelines as may be issued by proper authorities;
> 3. The conduct of General Search and Seizure including arrests in the pursuit of the kidnappers and their supporters; and
> 4. To conduct such other actions or police operations as may be necessary to ensure public safety.
>
> DONE AT THE PROVINCIAL CAPITOL, PROVINCE OF SULU THIS 31ST DAY OF MARCH 2009.
>
> Sgd. Abdusakur M. Tan
> Governor.[14]

On 1 April 2009, SPO1 Sattal Jadjuli was instructed by his superior to report to respondent P/SUPT. Julasirim Kasim.[15]

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[14] *Id.*

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

Upon arriving at the police station, he was booked, and interviewed about his relationship to Musin, Jaiton, and Julamin, who were all his deceased relatives. Upon admitting that he was indeed related to the three, he was detained. After a few hours, former *Punong Barangay* Juljahan Awadi, Hadji Hadjirul Bambra, Abdugajir Hadjirul, as well as PO2 Marcial Hajan, SPO3 Muhilmi Ismula, *Punong Barangay* Alano Mohammad and jeepney driver Abduhadi Sabdani, were also arrested.[16] The affidavit[17] of the apprehending officer alleged that they were suspected ASG supporters and were being arrested under Proclamation 1-09. The following day, 2 April 2009, the hostage Mary Jane Lacaba was released by the ASG.

On 4 April 2009, the office of Governor Tan distributed to civic organizations, copies of the "Guidelines for the Implementation of Proclamation No. 1, Series of 2009 Declaring a State of Emergency in the Province of Sulu."[18] These Guidelines suspended all Permits to Carry Firearms Outside of Residence (PTCFORs) issued by the Chief of the PNP, and allowed civilians to seek exemption from the gun ban only by applying to the Office of the Governor and obtaining the appropriate identification cards. The said guidelines also allowed general searches and seizures in designated checkpoints and chokepoints.

On 16 April 2009, Jamar M. Kulayan, Temogen S. Tulawie, Hadji Mohammad Yusop Ismi, Ahajan Awadi, and SPO1 Sattal H. Jadjuli, residents of Patikul, Sulu, filed the present Petition for *Certiorari* and Prohibition,[19] claiming that Proclamation 1-09 was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, as it threatened fundamental freedoms guaranteed under Article III of the 1987 Constitution.

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[16] *Id.* at 9.

[17] Affidavit of the Apprehending Officer, attached as Annex B to respondents' Comment, *id.* at 245.

[18] Attached as Annex B to Petition, *id.* at 69-73.

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

Petitioners contend that Proclamation No. 1 and its Implementing Guidelines were issued *ultra vires,* and thus null and void, for violating Sections 1 and 18, Article VII of the Constitution, which grants the President sole authority to exercise emergency powers and calling-out powers as the chief executive of the Republic and commander-in-chief of the armed forces.[20] Additionally, petitioners claim that the Provincial Governor is not authorized by any law to create civilian armed forces under his command, nor regulate and limit the issuances of PTCFORs to his own private army.

In his Comment, Governor Tan contended that petitioners violated the doctrine on hierarchy of courts when they filed the instant petition directly in the court of last resort, even if both the Court of Appeals (CA) and the Regional Trial Courts (RTC) possessed concurrent jurisdiction with the Supreme Court under Rule 65.[21] This is the only procedural defense raised by respondent Tan. Respondents Gen. Juancho Saban, Col. Eugenio Clemen, P/SUPT. Julasirim Kasim, and P/SUPT. Bienvenido Latag did not file their respective Comments.

On the substantive issues, respondents deny that Proclamation 1-09 was issued *ultra vires,* as Governor Tan allegedly acted pursuant to Sections 16 and 465 of the Local Government Code, which empowers the Provincial Governor to carry out emergency measures during calamities and disasters, and to call upon the appropriate national law enforcement agencies to suppress disorder, riot, lawless violence, rebellion or sedition.[22] Furthermore, the *Sangguniang Panlalawigan* of Sulu authorized the declaration of a state of emergency as evidenced by Resolution No. 4, Series of 2009 issued on 31 March 2009 during its regular session.[23]

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[20] *Id.* at 14.

[21] *Id.* at 118.

[22] Comment, pp. 7-10; *id.* at 123-126.

[23] Attached as Annex A to the Comment, *id.* at 247- 249.

The threshold issue in the present case is whether or not Section 465, in relation to Section 16, of the Local Government Code authorizes the respondent governor to declare a state of emergency, and exercise the powers enumerated under Proclamation 1-09, specifically the conduct of general searches and seizures. Subsumed herein is the secondary question of whether or not the provincial governor is similarly clothed with authority to convene the CEF under the said provisions.

We grant the petition.

I. Transcendental public importance warrants a relaxation of the Doctrine of Hierarchy of Courts

We first dispose of respondents' invocation of the doctrine of hierarchy of courts which allegedly prevents judicial review by this Court in the present case, citing for this specific purpose, *Montes v. Court of Appeals* and *Purok Bagong Silang Association, Inc. v. Yuipco*.[24] Simply put, the doctrine provides that where the issuance of an extraordinary writ is also within the competence of the CA or the RTC, it is in either of these courts and not in the Supreme Court, that the specific action for the issuance of such writ must be sought unless special and important laws are clearly and specifically set forth in the petition. The reason for this is that this Court is a court of last resort and must so remain if it is to perform the functions assigned to it by the Constitution and immemorial tradition. It cannot be burdened with deciding cases in the first instance.[25]

The said rule, however, is not without exception. In *Chavez v. PEA-Amari*,[26] the Court stated:

PEA and AMARI claim petitioner ignored the judicial hierarchy by seeking relief directly from the Court. The principle of hierarchy

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[24] Respectively, G.R. No. 143797, 4 May 2006, 489 SCRA 432, and G.R. No. 135092, 4 May 2006, 489 SCRA 382.

[25] *Montes v. CA*, *supra* note 24.

[26] 433 Phil. 506 (2002).

of courts applies generally to cases involving factual questions. As it is not a trier of facts, the Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional questions of transcendental importance to the public. The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for *mandamus* which falls under the original jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case.[27]

The instant case stems from a petition for *certiorari* and prohibition, over which the Supreme Court possesses original jurisdiction.[28] More crucially, this case involves acts of a public official which pertain to restrictive custody, and is thus impressed with transcendental public importance that would warrant the relaxation of the general rule. The Court would be remiss in its constitutional duties were it to dismiss the present petition solely due to claims of judicial hierarchy.

In *David v. Macapagal-Arroyo*,[29] the Court highlighted the transcendental public importance involved in cases that concern restrictive custody, because judicial review in these cases serves as "a manifestation of the crucial defense of civilians 'in police power' cases due to the diminution of their basic liberties under the guise of a state of emergency."[30] Otherwise, the importance of the high tribunal as the court of last resort would be put to

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[27] *Id.* at 524.

[28] In relation to Sections 1 and 2, Rule 65 of the Revised Rules of Court, par. 2, Sec. 4 thereof states: "The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the *Sandiganbayan* if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals."

[29] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, 3 May 2006, 489 SCRA 160.

[30] *Id.* at 214.

naught, considering the nature of "emergency" cases, wherein the proclamations and issuances are inherently short-lived. In finally disposing of the claim that the issue had become moot and academic, the Court also cited transcendental public importance as an exception, stating:

Sa kabila ng pagiging akademiko na lamang ng mga isyu tungkol sa mahigpit na pangangalaga (restrictive custody) at pagmonitor ng galaw (monitoring of movements) ng nagpepetisyon, dedesisyunan namin ito (a) dahil sa nangingibabaw na interes ng madla na nakapaloob dito, (b) dahil sa posibilidad na maaaring maulit ang pangyayari at (c) dahil kailangang maturuan ang kapulisan tungkol dito.

The moot and academic principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when [the] constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.

…There is no question that the issues being raised affect the public interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, the military and the police, on the extent of the protection given by constitutional guarantees. And lastly, respondents contested actions are capable of repetition. Certainly, the petitions are subject to judicial review.

Evidently, the triple reasons We advanced at the start of Our ruling are justified under the foregoing exceptions. Every bad, unusual incident where police officers figure in generates public interest and people watch what will be done or not done to them. Lack of disciplinary steps taken against them erode public confidence in the police institution. As petitioners themselves assert, the restrictive custody of policemen under investigation is an existing practice, hence, the issue is bound to crop up every now and then. The matter is capable of repetition or

susceptible of recurrence. It better be resolved now for the education and guidance of all concerned.[31] (Emphasis supplied)

Hence, the instant petition is given due course, impressed as it is with transcendental public importance.

II. Only the President is vested with calling-out powers, as the commander-in-chief of the Republic

i. One executive, one commander-in-chief

As early as *Villena v. Secretary of Interior*,[32] it has already been established that there is one repository of executive powers, and that is the President of the Republic. This means that when Section 1, Article VII of the Constitution speaks of executive power, it is granted to the President and no one else.[33] As emphasized by Justice Jose P. Laurel, in his *ponencia* in *Villena*:

> With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other.[34]

Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof.

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[31] As cited and applied in *Manalo v. Calderon,* G.R. No. 178920, 15 October 2007, 536 SCRA 290, 304.

[32] 67 Phil. 451 (1939).

[33] Fr. Joaquin Bernas, S.J., *The 1987 Philippine Constitution A Comprehensive Reviewer,* (2006), p. 290.

[34] *Supra* note 32, at 464.

ii. The exceptional character of Commander-in-Chief powers dictate that they are exercised by one president

Springing from the well-entrenched constitutional precept of One President is the notion that there are certain acts which, by their very nature, may only be performed by the president as the Head of the State. One of these acts or prerogatives is the bundle of Commander-in-Chief powers to which the "calling-out" powers constitutes a portion. The President's Emergency Powers, on the other hand, is balanced only by the legislative act of Congress, as embodied in the second paragraph of Section 23, Article 6 of the Constitution:

> Article 6, Sec. 23(2). In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.[35]

> Article 7, Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension

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[35] 1987 CONSTITUTION.

for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.[36]

The power to declare a state of martial law is subject to the Supreme Court's authority to review the factual basis thereof.[37] By constitutional fiat, the calling-out powers, which is of lesser gravity than the power to declare martial law, is bestowed upon the President alone. As noted in *Villena*, "(t)here are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of *habeas corpus* and proclaim martial law x x x.[38]

Indeed, while the President is still a civilian, Article II, Section 3[39] of the Constitution mandates that civilian authority is, at all times, supreme over the military, making the civilian president the nation's supreme military leader. The net effect of Article II, Section 3, when read with Article VII, Section 18, is that a civilian President is the ceremonial, legal and administrative head of the armed forces. The Constitution does not require that the President must be possessed of military training and talents, but as Commander-in-Chief, he has the power to direct military operations and to determine military strategy. Normally, he would be expected to delegate the actual command of the armed forces to military experts; but the ultimate power is his.[40]

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[36] *Id.*

[37] 1987 CONSTITUTION, Art. VII, Sec. 18 (2).

[38] *Supra* note 32.

[39] The provisions reads: "Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."

[40] *Supra* note 33, at 314.

As Commander-in-Chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual.[41]

In the case of *Integrated Bar of the Philippines v. Zamora,*[42] the Court had occasion to rule that the calling-out powers belong solely to the President as commander-in-chief:

> **When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom.** This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis.
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> **There is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power.**[43] (Emphasis supplied)

Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three

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[41] *Id.*, citing *Fleming v. Page*, 9 How 603, 615 U.S. (1850).

[42] 392 Phil. 618.

[43] *Id.* at 640.

powers and provided for their revocation and review without any qualification.[44]

That the power to call upon the armed forces is discretionary on the president is clear from the deliberation of the Constitutional Commission:

FR. BERNAS. It will not make any difference. I may add that **there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of *habeas corpus,* then he can impose martial law. This is a graduated sequence.**

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of *habeas corpus*, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.

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MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.

x x x Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his

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[44] *Supra* note 33, at 314-315.

judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion.[45] (Emphasis Supplied)

In the more recent case of *Constantino, Jr. v. Cuisia,*[46] the Court characterized these powers as exclusive to the President, precisely because they are of exceptional import:

> These distinctions hold true to this day as they remain embodied in our fundamental law. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of *habeas corpus*, and the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar *gravitas* and exceptional import.[47]

In addition to being the commander-in-chief of the armed forces, the President also acts as the leader of the country's police forces, under the mandate of Section 17, Article VII of the Constitution, which provides that, "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." During the deliberations of the Constitutional Commission on the framing of this provision, Fr. Bernas defended the retention of the word "control," employing the same rationale of singularity of the office of the president, as the *only* Executive under the presidential form of government.[48]

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[45] Record of the Constitutional Commission, 29 July 1986, Tuesday, Vol. 2, p. 409.

[46] G.R. No. 106064 , 13 October 2005, 472 SCRA 505.

[47] *Id.* at 534.

[48] Journal of the Constitutional Commission, 29 July 1986, Tuesday, Vol. 1, p. 488.

Regarding the country's police force, Section 6, Article XVI of the Constitution states that: "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law."[49]

A local chief executive, such as the provincial governor, exercises operational supervision over the police,[50] and may exercise control only in day-to-day operations, *viz*:

> Mr. Natividad: **By experience, it is not advisable to provide either in our Constitution or by law full control of the police by the local chief executive and local executives, the mayors. By our experience, this has spawned warlordism, bossism and sanctuaries for vices and abuses.** If the national government does not have a mechanism to supervise these 1,500 legally, technically separate police forces, plus 61 city police forces, fragmented police system, we will have a lot of difficulty in presenting a modern professional police force. So that **a certain amount of supervision and control will have to be exercised by the national government.**
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> **For example, if a local government, a town cannot handle its peace and order problems or police problems, such as riots, conflagrations or organized crime, the national government may come in, especially if requested by the local executives. Under that situation, if they come in under such an extraordinary situation, they will be in control.** But if the day-to-day business of police investigation of crime, crime prevention, activities, traffic control, is all lodged in the mayors, and if they are in complete operational control of the day-to-day business of police service, what the national government would control would be the administrative aspect.
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[49] 1987 CONSTITUTION, Art. VXI, Sec. 6.

[50] *Carpio v. Executive Secretary*, G.R. No. 96409, 14 February 1992, 206 SCRA 290.

Mr. de los Reyes: so the operational control on a day-to-day basis, meaning, the usual duties being performed by the ordinary policemen, will be under the supervision of the local executives?

Mr. Natividad: Yes, Madam President.

x x x x x x x x x

Mr. de los Reyes: But in exceptional cases, even the operational control can be taken over by the National Police Commission?

Mr. Natividad: If the situation is beyond the capacity of the local governments.[51] (Emphases supplied)

Furthermore according to the framers, it is still the President who is authorized to exercise supervision and control over the police, through the National Police Commission:

Mr. Rodrigo: Just a few questions. The President of the Philippines is the Commander-in-Chief of all the armed forces.

Mr. Natividad: Yes, Madam President.

Mr. Rodrigo: Since the national police is not integrated with the armed forces, I do not suppose they come under the Commander-in-Chief powers of the President of the Philippines.

Mr. Natividad: They do, Madam President. By law, they are under the supervision and control of the President of the Philippines.

Mr. Rodrigo: Yes, but the President is not the Commander-in-Chief of the national police.

Mr. Natividad: He is the President.

Mr. Rodrigo: Yes, the Executive. But they do not come under that specific provision that the President is the Commander-in-Chief of all the armed forces.

Mr. Natividad: No, not under the Commander-in-Chief provision.

Mr. Rodrigo: There are two other powers of the President. The President has control over ministries, bureaus and offices, and supervision over local governments. Under which does the police fall, under control or under supervision?

Mr. Natividad: Both, Madam President.

Mr. Rodrigo: Control and supervision.

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[51] Record of the Constitutional Commission, 1 October 1986, Wednesday, pp. 293-294.

Mr. Natividad: Yes, in fact, the National Police Commission is under the Office of the President.[52]

In the discussions of the Constitutional Commission regarding the above provision it is clear that the framers never intended for local chief executives to exercise unbridled control over the police in emergency situations. This is without prejudice to their authority over police units in their jurisdiction as provided by law, and their prerogative to seek assistance from the police in day to day situations, as contemplated by the Constitutional Commission. But as a civilian agency of the government, the police, through the NAPOLCOM, properly comes within, and is subject to, the exercise by the President of the power of executive control.[53]

iii. The provincial governor does not possess the same calling-out powers as the President

Given the foregoing, respondent provincial governor is *not* endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces, the police, and his own Civilian Emergency Force. The calling-out powers contemplated under the Constitution is *exclusive* to the President. An exercise by another official, even if he is the local chief executive, is *ultra vires*, and may not be justified by the invocation of Section 465 of the Local Government Code, as will be discussed subsequently.

Respondents, however, justify this stance by stating that nowhere in the seminal case of *David v. Arroyo,* which dealt squarely with the issue of the declaration of a state of emergency, does it limit the said authority to the President alone. Respondents contend that the ruling in *David* expressly limits the authority

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[52] *Id.* at 296.

[53] *Supra* note 50.

to declare a **national** emergency, a condition which covers the entire country, and does not include emergency situations in local government units.[54] This claim is belied by the clear intent of the framers that in all situations involving threats to security, such as lawless violence, invasion or rebellion, even in localized areas, it is still the President who possesses the sole authority to exercise calling-out powers. As reflected in the Journal of the Constitutional Commission:

> Thereafter, Mr. Padilla proposed on line 29 to insert the phrase OR PUBLIC DISORDER in lieu of "invasion or rebellion." Mr. Sumulong stated that the committee could not accept the amendment because under the first section of Section 15, the President may call out and make use of the armed forces to prevent or suppress not only lawless violence but even invasion or rebellion without declaring martial law. He observed that by deleting "invasion or rebellion" and substituting PUBLIC DISORDER, the President would have to declare martial law before he can make use of the armed forces to prevent or suppress lawless invasion or rebellion.
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> **Mr. Padilla, in reply thereto, stated that the first sentence contemplates a lighter situation where there is some lawless violence in a small portion of the country or public disorder in another at which times, the armed forces can be called to prevent or suppress these incidents. He noted that the Commander-in-Chief can do so in a minor degree but he can also exercise such powers should the situation worsen.** The words "invasion or rebellion" to be eliminated on line 14 are covered by the following sentence which provides for "invasion or rebellion." He maintained that the proposed amendment does not mean that under such circumstances, the President cannot call on the armed forces to prevent or suppress the same.[55] (Emphasis supplied)

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[54] Comment, *rollo*, p. 128.

[55] Journal of the Constitutional Commission, 30 July 1986, Wednesday, Vol. 1, p. 513.

III. Section 465 of the Local Government Code cannot be invoked to justify the powers enumerated under Proclamation 1-09

Respondent governor characterized the kidnapping of the three ICRC workers as a terroristic act, and used this incident to justify the exercise of the powers enumerated under Proclamation 1-09.[56] He invokes Section 465, in relation to Section 16, of the Local Government Code, which purportedly allows the governor to carry out emergency measures and call upon the appropriate national law enforcement agencies for assistance. But a closer look at the said proclamation shows that there is no provision in the Local Government Code nor in any law on which the broad and unwarranted powers granted to the Governor may be based.

Petitioners cite the implementation of "General Search and Seizure including arrests in the pursuit of the kidnappers and their supporters,"[57] as being violative of the constitutional proscription on general search warrants and general seizures. Petitioners rightly assert that this alone would be sufficient to render the proclamation void, as general searches and seizures are proscribed, for being violative of the rights enshrined in the Bill of Rights, particularly:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[58]

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[56] Proclamation No. 01, Series of 2009, attached to the Comment as Annex A, *rollo*, p. 67.

[57] *Id.* at 68.

[58] 1987 CONSTITUTION, Art. III, Sec. 2.

In fact, respondent governor has arrogated unto himself powers exceeding even the martial law powers of the President, because as the Constitution itself declares, "A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of the jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ."[59]

We find, and so hold, that there is nothing in the Local Government Code which justifies the acts sanctioned under the said Proclamation. Not even Section 465 of the said Code, in relation to Section 16, which states:

Section 465. *The Chief Executive: Powers, Duties, Functions, and Compensation.*

x x x x x x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the province and its inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection, shall:

x x x x x x x x x

(vii) **Carry out such emergency measures as may be necessary during and in the aftermath of man-made and natural disasters and calamities;**

(2) Enforce all laws and ordinances relative to the governance of the province and the exercise of the appropriate corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing, shall:

x x x x x x x x x

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[59] 1987 CONSTITUTION, Art. XVII, Sec. 18 (4).

> **(vi) Call upon the appropriate national law enforcement agencies to suppress disorder, riot, lawless violence, rebellion or sedition or to apprehend violators of the law when public interest so requires and the police forces of the component city or municipality where the disorder or violation is happening are inadequate to cope with the situation or the violators.**
>
> **Section 16.** *General Welfare.* – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (Emphases supplied)

Respondents cannot rely on paragraph 1, subparagraph (vii) of Article 465 above, as the said provision expressly refers to calamities and disasters, whether man-made or natural. The governor, as local chief executive of the province, is certainly empowered to enact and implement emergency measures during these occurrences. But the kidnapping incident in the case at bar cannot be considered as a calamity or a disaster. Respondents cannot find any legal mooring under this provision to justify their actions.

Paragraph 2, subparagraph (vi) of the same provision is equally inapplicable for two reasons. *First*, the Armed Forces of the Philippines does not fall under the category of a "national law enforcement agency," to which the National Police Commission (NAPOLCOM) and its departments belong. Its mandate is to uphold the sovereignty of the Philippines, support the Constitution, and defend the Republic against all enemies, foreign and domestic. Its aim is also to secure the integrity of

the national territory.[60] *Second*, there was no evidence or even an allegation on record that the local police forces were inadequate to cope with the situation or apprehend the violators. If they were inadequate, the recourse of the provincial governor was to ask the assistance of the Secretary of Interior and Local Government, or such other authorized officials, for the assistance of national law enforcement agencies.

The Local Government Code does not involve the diminution of central powers inherently vested in the National Government, especially not the prerogatives solely granted by the Constitution to the President in matters of security and defense.

The intent behind the powers granted to local government units is fiscal, economic, and administrative in nature. The Code is concerned only with powers that would make the delivery of basic services more effective to the constituents,[61] and should not be unduly stretched to confer calling-out powers on local executives.

In the sponsorship remarks for Republic Act 7160, it was stated that the devolution of powers is a step towards the autonomy of local government units (LGUs), and is actually an experiment whose success heavily relies on the power of taxation of the LGUs. The underpinnings of the Code can be found in Section 5, Article II of the 1973 Constitution, which allowed LGUs to create their own sources of revenue.[62] During the interpellation made by Mr. Tirol addressed to Mr. de Pedro, the latter emphasized that "Decentralization is an administrative concept and the process of shifting and delegating power from a central point to subordinate levels to promote independence, responsibility, and quicker decision-making. … ***(I)t does not***

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[60] 1987 Constitution, Art. II, Sec. 3.

[61] Journal and Record of the House of Representatives Proceedings and Debates, Fourth Regular Session 1990-1991, Vol. 1 (July 23-September 3, 1990), prepared by the Publication and Editorial Division under the supervision of Hon. Quirino D. Abad Santos, Jr., Secretary, House of Representatives, Proceedings of 14 August 1990, Tuesday.

[62] *Id.*, Proceedings of 25 July 1990, Wednesday.

involve any transfer of final authority from the national to field levels, nor diminution of central office powers and responsibilities. Certain government agencies, including the police force, are exempted from the decentralization process because their functions are not inherent in local government units."[63]

IV. Provincial governor is not authorized to convene CEF

Pursuant to the national policy to establish one police force, the organization of private citizen armies is proscribed. Section 24 of Article XVIII of the Constitution mandates that:

> Private armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces (CHDF) not consistent with the citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force.

Additionally, Section 21of Article XI states that, "The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government."

Taken in conjunction with each other, it becomes clear that the Constitution does not authorize the organization of private armed groups similar to the CEF convened by the respondent Governor. The framers of the Constitution were themselves wary of armed citizens' groups, as shown in the following proceedings:

> MR. GARCIA: **I think it is very clear that the problem we have here is a paramilitary force operating under the cloak, under the mantle of legality is creating a lot of problems precisely by being able to operate as an independent private army for many regional warlords. And at the same time, this**

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[63] *Id.*

I think has been the thrust, the intent of many of the discussions and objections to the paramilitary units and the armed groups.

MR. PADILLA: My proposal covers two parts: the private armies of political warlords and other armed forces not recognized by constituted authority which shall be dismantled and dissolved. In my trips to the provinces, I heard of many abuses committed by the CHDF (Civilian Home Defense Forces), specially in Escalante, Negros Occidental. But I do not know whether a particular CHDF is approved or authorized by competent authority. If it is not authorized, then the CHDF will have to be dismantled. If some CHDFs, say in other provinces, are authorized by constituted authority, by the Armed Forces of the Philippines, through the Chief of Staff or the Minister of National Defense, if they are recognized and authorized, then they will not be dismantled. But I cannot give a categorical answer to any specific CHDF unit, only the principle that if they are armed forces which are not authorized, then they should be dismantled.[64] (Emphases supplied)

Thus, with the discussions in the Constitutional Commission as guide, the creation of the Civilian Emergency Force (CEF) in the present case, is also invalid.

WHEREFORE, the instant petition is **GRANTED**. Judgment is rendered commanding respondents to desist from further proceedings in implementing Proclamation No. 1, Series of 2009, and its Implementing Guidelines. The said proclamation and guidelines are hereby declared **NULL** and **VOID** for having been issued in grave abuse of discretion, amounting to lack or excess of jurisdiction.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Abad, JJ.,* on leave.

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[64] *Supra* note 45, p. 386.

EN BANC

[G.R. No. 189767. July 3, 2012]

PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), *petitioner, vs.* **COMMISSION ON AUDIT and REYNALDO A. VILLAR, Chairman, Commission on Audit,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA); GRANT OF PER DIEMS TO *EX OFFICIO* MEMBERS OF THE PEZA BOARD; LACK OF LEGAL BASIS THEREOF, REITERATED.— The lack of legal basis to grant per diems to *ex officio* members of the PEZA Board, including their representatives, has already been settled by no less than the Court *En Banc* in the case of *Bitonio, Jr.* where we held that the amendatory law, R.A. No. 8748, purposely deleted the last paragraph of Section 11 of R.A. No. 7916 that authorized the grant of per diems to PEZA Board members as it was in conflict with the proscription laid down in the 1987 Constitution. x x x The constitutional prohibition explained in *Civil Liberties Union* case still stands and this Court finds no reason to revisit the doctrine laid down therein as said interpretation, to this Court's mind, is in consonance with what our Constitution provides.

2. ID.; ID.; ID.; ID.; ALLEGATION OF GOOD FAITH NOT APPRECIATED AS PEZA WAS AWARE OF THE LACK OF LEGAL BASIS.— Neither can this Court give credence to PEZA's claim of good faith. [T]he term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and **freedom from knowledge of circumstances which ought to put the holder upon inquiry**; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together **with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious**." x x x In *Civil Liberties Union*, this Court clarified the prohibition under Section 13, Article VII of the Constitution and emphasized

that a public official holding an *ex officio* position as provided by law has no right to receive additional compensation for the *ex officio* position. x x x It bears stressing that the *Civil Liberties Union* case was **promulgated in 1991**, **or a decade before the subject disallowed payments of per diems for the period starting 2001 were made by PEZA**. x x x PEZA's actual knowledge that the disbursements are being questioned by virtue of the notices of disallowance issued to them by the COA and knowledge of the pronouncements of the Court in the *Civil Liberties Union* case and in other cases where *ex officio members* in several government agencies were prohibited from receiving additional compensation, militate against its claim of good faith.

APPEARANCES OF COUNSEL

Procolo M. Olaivar and *Nestor Hun A. Nadal* for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is a petition for *certiorari* under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to annul Commission on Audit (COA) Decision No. 2009-081[1] which affirmed the Decision[2] of the Director, Cluster IV - Industrial and Area Development and Regulatory, Corporate Government Sector, COA, affirming Notice of Disallowance Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03)[3] for the payment of ₱5,451,500.00 worth of per diems to *ex officio* members of the Board of Directors of petitioner Philippine Economic Zone Authority (PEZA).

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[1] Dated September 15, 2009. *Rollo*, pp. 23-30.

[2] Dated March 17, 2008.

[3] All issued in July 2007. *Rollo*, pp. 31-85.

The Facts

The PEZA Board of Directors is composed of 13 members which include the Undersecretaries of the Department of Finance, the Department of Labor and Employment, the Department of the Interior and Local Government, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Public Works and Highways, the Department of Science and Technology and the Department of Energy. Said Undersecretaries serve in *ex officio* capacity and were granted per diems by PEZA for every attendance in a board meeting.

On September 13, 2007, the PEZA Auditor Corazon V. Español issued Notice of Disallowance Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03) on the following payments of per diems to *ex officio* members of the PEZA Board for the period 2001-2006:

N.D. No.	DATE	PAYEE	TOTAL AMOUNT
2006-001-101 (02-06)	7/26/07	Eduardo R. Soliman, Jr.	₱ 632,000.00
2006-002-101 (02-05)	7/16/07	Juanita D. Amatong	448,000.00
2006-003-101 (01-02)	7/16/07	Anselmo S. Avenido	162,000.00
2006-004-101 (01)	7/16/07	Rosalinda Dimapilis-Baldoz	45,000.00
2006-005-101(05)	7/16/07	Benedicto Ernesto R. Bitonio, Jr.	56,000.00
2006-006-101 (05-06)	7/19/07	Manuel M. Bonoan	112,000.00
2006-007-101 (01-02)	7/19/07	Arturo D. Brion	177,000.00
2006-008-101 (05/06)	7/19/07	Armando A. De Castro	144,000.00

2006-009-101 (02-06)	7/19/07	Fortunato T. De La Peña	904,000.00
2006-010-101(01)	7/19/07	Roseller S. Dela Peña	36,000.00
2006-011-101(01-05)	7/23/07	Cyril Del Callar	762,000.00
2006-012-101(03)	7/23/07	Renato A. De Rueda	48,000.00
2006-013-101(01-06)	7/23/07	Cesar M. Drilon, Jr.	811,000.00
2006-014-101(03-05)	7/23/07	Josephus B. Jimenez	336,000.00
2006-015-101(01)	7/23/07	Rufino C. Lirag, Jr.	63,000.00
2006-016-101(06)	7/26/07	Gaudencio A. Mendoza, Jr.	16,000.00
2006-017-101(03-04)	7/26/07	Rolando L. Metin	256,000.00
2006-018-101(01-02)	7/26/07	Edmundo V. Mir	124,500.00
2006-019-101(05-06)	7/26/07	Melinda L. Ocampo	104,000.00
2006-020-101(05-06)	7/26/07	Luzviminda G. Padilla	56,000.00
2006-021-101(01-03)	7/26/07	Ramon J.P. Paje	159,000.00
		TOTAL	~~₱~~5,451,500.00[4]

The disallowance was based on this Court's April 4, 2006 *En Banc* Resolution dismissing the petition for *certiorari* in *Cyril del Callar, et al., Members of the Board of Directors, Philippine Economic Zone Authority v. COA and Guillermo*

[4] *Rollo*, pp. 23-24, 31-85.

N. Caragues, Chairman, COA[5] which assailed COA Decision No. 2006-009 dated January 31, 2006 affirming the March 29, 2002 decision of the Director, then Corporate Audit Office II, disallowing the payment of per diems of *ex officio* members of the PEZA Board of Directors. Said disallowance was based on COA Memorandum No. 97-038 dated September 19, 1997 implementing Senate Committee Report No. 509 and this Court's ruling in *Civil Liberties Union v. Executive Secretary*.[6]

On October 31, 2007, the Deputy Director General for Finance and Administration of PEZA moved to reconsider[7] the subject Notices of Disallowance (NDs) and prayed that the concerned *ex officio* members be allowed to retain the per diems already received as they received them in good faith. It was contended that the payment of the per diems covered the period when the April 4, 2006 Supreme Court Resolution was not yet final and thus, PEZA honestly believed that the grant of the same was moral and legal. In the same vein, the *ex officio* members received them in good faith. The motion cited the cases of *Home Development Mutual Fund v. Commission on Audit*[8] and *De Jesus v. Commission on Audit*[9] as bases.

In a letter[10] dated November 16, 2007, PEZA Auditor Español denied the motion for reconsideration. She stated that the PEZA Management continued paying the per diems even after they were duly notified through said NDs that such was in violation of the Constitution as explained in the *Civil Liberties Union* case. She opined that the receipt of the NDs in effect notified the recipients and PEZA officials that such payment was illegal and hence, the failure of PEZA to heed the notices cannot be deemed consistent with the presumption of good faith.

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[5] G.R. No. 171802, April 4, 2006 (Unsigned Resolution).

[6] G.R. Nos. 83896 & 83815, February 22, 1991, 194 SCRA 317.

[7] *Rollo*, pp. 86-88.

[8] G.R. No. 157001, October 19, 2004, 440 SCRA 643.

[9] G.R. No. 156641, February 5, 2004, 422 SCRA 287.

[10] *Rollo*, pp. 89-90.

By letter[11] dated January 4, 2008, PEZA Director General Lilia B. De Lima appealed the denial of their motion for reconsideration to the Office of the Cluster Director, COA. De Lima reiterated their claim of good faith contending that the *Del Callar* case had yet to be decided with finality when the subject per diems were disbursed. She argued that since the issue on the propriety of giving per diems to *ex officio* members was still unresolved, and because PEZA firmly believed that it had legal basis, it continued to pay the per diems despite knowledge and receipt of NDs. Good faith, therefore, guided PEZA in releasing the payments.

In a 2nd Indorsement[12] dated March 17, 2008, the COA Cluster Director, Ma. Cristina Dizon-Dimagiba, denied PEZA's appeal. She ruled that PEZA's claim of good faith cannot be given merit because in several other instances previous payments of per diems have been disallowed. She noted that by the time PEZA received the notices of disallowance, it can be said that there is already an iota of doubt as to whether the said transaction is valid or not. Hence, good faith can no longer apply.

On April 30, 2008, PEZA filed a petition for review[13] before the COA to assail the denial of its appeal by the Office of the Cluster Director. PEZA reiterated the same arguments it raised in its appeal.

On September 15, 2009, the COA rendered the assailed decision denying PEZA's petition for review. The dispositive portion reads:

WHEREFORE, foregoing premises considered, the instant petition is hereby DENIED for lack of merit. Accordingly, ND Nos. 2006-001-101 (02-06) to 2006-021-101 (01-03) in the total amount of ₱5,451,500.00 representing payment of per diems to *ex-officio* members of the Board of Directors of PEZA are hereby AFFIRMED. All the recipients and the persons liable thereon are

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[11] *Id.* at 91-94.

[12] *Id.* at 96.

[13] *Id.* at 97-105.

required to refund the said disallowed per diems. The Auditor of PEZA is also directed to inform this Commission of the settlement made thereon.[14]

The COA ruled that the last paragraph of Section 11 of Republic Act (R.A.) No. 7916 authorizing the members of the Board to receive per diems was deleted in the amendatory law, R.A. No. 8748. Hence, from the time of the effectivity of R.A. No. 8748 in 1999, the members of the PEZA Board of Directors were no longer entitled to per diems. It further held that the payments to and receipt by *ex officio* members of the PEZA Board of per diems for CYs 2001-2006 run counter to the express prohibition in Section 13, Article VII of the 1987 Constitution.

The COA also dismissed PEZA's claim of good faith in making the disbursements of per diems to the *ex officio* members of its Board. It ruled:

> As to the petitioners' claim of "good faith," it must be emphasized that under the *Bitonio* case, as early as 1998, PEZA was already notified of the illegality of the payment of per diems to *ex-officio* members of the PEZA Board thru the NDs issued by the COA Auditor from 1995 to 1998 on the payment of per diem to every board meeting attended by the petitioner Benedicto Ernesto R. Bitonio, Jr. as representative of the Secretary of Labor to the PEZA. This was anchored on the case of *Civil Liberties Union v. Executive Secretary, supra,* which affirmed COA Decision Nos. 2001-045 and 98-017-101(97) dated January 30, 2001 and October 9, 1998, respectively, which declared that:
>
> "x x x The framers of R.A. No. 7916 (*Special Economic Zone Act of 1995*) must have realized the flaw in the law which is the reason why the law was later amended by R.A. No. 8748 to cure such defect.
>
> x x x x x x x x x
>
> Likewise, the last paragraph as to the payment of *per diems* to the members of the Board of Directors was also deleted, considering that such stipulation was clearly in conflict with proscription set by the Constitution.

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[14] *Id.* at 29.

> Prescinding from the above, the petitioner (*Benedicto Ernesto R. Bitonio, Jr.*) is indeed, not entitled to receive a per diem for his attendance at board meetings during his tenure as member of the Board of Directors of the PEZA." (italics ours)

After the Bitonio case, the Auditor again disallowed the payments of per diems granted for the period 1999 to 2000 by PEZA to the *ex-officio* members of the PEZA Board under ND Nos. 2001-001-101 to 2001-008-101, which were upheld under COA Decision No. 2006-009 dated January 31, 2006. Thus, PEZA was repeatedly notified of the illegality of the payment of the said per diems. However, similar disbursements were continued, ignoring the Auditor's findings. At the time they first received the ND in 1998, it can be said that there should already have been a doubt to say the least, on the legality of the said transaction which should have made management discontinue such payments. But even after the promulgation of the SC decision in the Bitonio case, PEZA continued the payment of the same until year 2006. Indeed, such actuation is incompatible with good faith. Hence, even if the per diems were granted prior to the finality of the *Cyril Del Callar v. COA* case cited by herein petitioner, PEZA management was already aware that the payment thereof had been declared illegal by the SC in the earlier aforecited cases.[15]

PEZA now comes to this Court seeking to annul the assailed decision on the following grounds:

REPUBLIC ACT NO. 7916, AS AMENDED BY REPUBLIC ACT NO. 8748 ALLOWS THE PAYMENT OF *PER DIEMS* TO THE MEMBERS OF THE PEZA BOARD OF DIRECTORS.

THE *EX-OFFICIO* MEMBERS OF THE PEZA BOARD OF DIRECTORS SHOULD NO LONGER BE REQUIRED TO REFUND THE *PER DIEMS* ALREADY RECEIVED BECAUSE THEY WERE OF THE HONEST BELIEF THAT THEY WERE LEGALLY ENTITLED TO RECEIVE THE SAME.[16]

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

[16] *Id.* at 7.

PEZA argues that contrary to the COA's position, the last paragraph of Section 11, R.A. No. 7916 authorizing the members of the PEZA Board to receive per diems still exists because it was never deleted in R.A. No. 8748. It contends that just because the last paragraph of Section 11, R.A. No. 7916 does not appear in Section 1 of R.A. No. 8748 but is merely represented by the characters "x x x" does not mean that it has already been deleted. PEZA submits that since there was no repeal by R.A. No. 8748 and neither was the last paragraph of Section 11 of R.A. No. 7916 declared void or unconstitutional by this Court, the provision enjoys the presumption of validity and therefore, PEZA cannot be faulted for relying on the authority granted by law.

PEZA also insists on its claim of good faith. It emphasizes that the per diems were granted by PEZA in good faith as it honestly believed that the grant of the same was legal and similarly, the *ex officio* members of the PEZA Board received the per diems in good faith.

COA, for its part, opposes PEZA's contention that the last paragraph of Section 11 of R.A. No. 7916 authorizing the grant of per diems to *ex officio* members of the PEZA Board was not deleted by its amendatory law, R.A. No. 8748, citing this Court's ruling in *Bitonio, Jr. v. Commission on Audit*.[17]

COA likewise contends that the deletion of the last paragraphs of the subject provision merely conformed with the Constitution. It argues that the position of the undersecretaries of the Cabinet as members of the Board is in an *ex officio* capacity or part of their principal office and thus, they were already being paid in their respective Departments. To allow them to receive additional compensation in PEZA would amount to double compensation. COA submits that this is precisely the reason why this Court, in several cases, declared unconstitutional the payment of additional compensation to *ex officio* officials.

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[17] G.R. No. 147392, March 12, 2004, 425 SCRA 437.

The Issues

Does the PEZA have legal basis in granting per diems to the *ex officio* members of its Board? And if there is no legal basis, was there good faith in PEZA's grant and the *ex officio* members' receipt of the per diems?

Our Ruling

The Court finds the petition devoid of merit.

The lack of legal basis to grant per diems to *ex officio* members of the PEZA Board, including their representatives, has already been settled by no less than the Court *En Banc* in the case of *Bitonio, Jr.* where we held that the amendatory law, R.A. No. 8748, purposely deleted the last paragraph of Section 11 of R.A. No. 7916 that authorized the grant of per diems to PEZA Board members as it was in conflict with the proscription laid down in the 1987 Constitution. We held in *Bitonio, Jr.*:

> The framers of R.A. No. 7916 must have realized the flaw in the law which is the reason why the law was later amended by R.A. No. 8748 to cure such defect. In particular, Section 11 of R.A. No. 7916 was amended to read:
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> > SECTION 11. *The Philippine Economic Zone Authority (PEZA) Board.* – There is hereby created a body corporate to be known as the Philippine Economic Zone Authority (PEZA) attached to the Department of Trade and Industry. The Board shall have a director general with the rank of department undersecretary who shall be appointed by the President. The director general shall be at least forty (40) years of age, of proven probity and integrity, and a degree holder in any of the following fields: economics, business, public administration, law, management or their equivalent, and with at least ten (10) years relevant working experience preferably in the field of management or public administration.
> >
> > The director general shall be assisted by three (3) deputy directors general each for policy and planning, administration and operations, who shall be appointed by the PEZA Board, upon the recommendation of the director general. The deputy directors general shall be at least thirty-five (35) years old,

> with proven probity and integrity and a degree holder in any of the following fields: economics, business, public administration, law, management or their equivalent.
>
> *The Board shall be composed of thirteen (13) members as follows*: the Secretary of the Department of Trade and Industry as Chairman, the Director General of the Philippine Economic Zone Authority as Vice-chairman, *the undersecretaries* of the Department of Finance, the Department of Labor and Employment, the Department of [the] Interior and Local Government, the Department of Environment and Natural Resources, the Department of Agriculture, the Department of Public Works and Highways, the Department of Science and Technology, the Department of Energy, the Deputy Director General of the National Economic and Development Authority, one (1) representative from the labor sector, and one (1) representative from the investors/business sector in the ECOZONE. In case of the unavailability of the Secretary of the Department of Trade and Industry to attend a particular board meeting, the Director General of PEZA shall act as Chairman.

As can be gleaned from above, the members of the Board of Directors was increased from 8 to 13, specifying therein that it is the undersecretaries of the different Departments who should sit as board members of the PEZA. The option of designating his representative to the Board by the different Cabinet Secretaries was deleted. Likewise, the last paragraph as to the payment of *per diems* to the members of the Board of Directors was also deleted, considering that such stipulation was clearly in conflict with the proscription set by the Constitution.

Prescinding from the above, the petitioner is, indeed, not entitled to receive a *per diem* for his attendance at board meetings during his tenure as member of the Board of Directors of the PEZA.[18] (Italics in the original.)

PEZA's insistence that there is legal basis in its grant of per diems to the *ex officio* members of its Board does not hold water. The constitutional prohibition explained in *Civil Liberties Union* case still stands and this Court finds no reason to revisit

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[18] *Id.* at 445-446.

the doctrine laid down therein as said interpretation, to this Court's mind, is in consonance with what our Constitution provides.

Neither can this Court give credence to PEZA's claim of good faith.

In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and **freedom from knowledge of circumstances which ought to put the holder upon inquiry**; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together **with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious**."[19]

Definitely, PEZA cannot claim that it was not aware of circumstances pointing to the possible illegality of the disbursements of per diems to the *ex officio* members of the Board. In *Civil Liberties Union*, this Court clarified the prohibition under Section 13, Article VII of the Constitution and emphasized that a public official holding an *ex officio* position as provided by law has no right to receive additional compensation for the *ex officio* position. This Court ruled:

> It bears repeating though that in order that such additional duties or functions may not transgress the prohibition embodied in Section 13, Article VII of the 1987 Constitution, **such additional duties or functions must be *required by the primary functions of the official concerned, who is to perform the same in an ex-officio capacity as provided by law, without receiving any additional compensation therefor.***
>
> **The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the**

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[19] *Civil Service Commission v. Maala*, G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399, citing *Black's Law Dictionary*, 6th ed., 1993, p. 693. Emphasis supplied.

compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. **For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution.**[20] (Italics in the original; emphasis supplied.)

It bears stressing that the *Civil Liberties Union* case was **promulgated in 1991**, **or a decade before the subject disallowed payments of per diems for the period starting 2001 were made by PEZA**. Thus, even if the *Bitonio* case was only promulgated in 2004 when part of the disallowed payments have already been made, PEZA should have been guided by the *Civil Liberties Union* case and acted with caution. It would have been more prudent for PEZA, if it honestly believed that there is a clear legal basis for the per diems and there was a chance that this Court might rule in their favor while the *Bitonio* case was pending, to withhold payment of the per diem instead of paying them. PEZA's actual knowledge that the disbursements are being questioned by virtue of the notices of disallowance issued to them by the COA and knowledge of the pronouncements of the Court in the *Civil Liberties Union* case and in other cases[21] where *ex officio members* in several government agencies were prohibited from receiving additional compensation, militate against its claim of good faith.

WHEREFORE, in light of the foregoing, the present petition is **DISMISSED**. The assailed COA Decision No. 2009-081 dated September 15, 2009 is **AFFIRMED** and **UPHELD**.

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[20] *Civil Liberties Union v. Executive Secretary*, *supra* note 6, at 335.

[21] See *National Amnesty Commission v. Commission on Audit*, G.R. No.156982, September 8, 2004, 437 SCRA 655 and *Dela Cruz v. Commission on Audit*, G.R. No. 138489, November 29, 2001, 371 SCRA 157.

No costs.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, Senior Associate Justice, certifies that *J.* Abad left his vote concurring with *ponencia* of *J.* Villarama, Jr.

Brion, J., no part.

Bersamin, J., on official leave.

SECOND DIVISION

[A.M. No. P-12-3067. July 4, 2012]
(Formerly A.M. OCA IPI No. 10-3400-P)

RHEA AIRENE P. KATAGUE, RODOLFO E. KATAGUE, RONA SALVACION K. DELA, *complainants, vs.* **JERRY A. LEDESMA, Sheriff IV, Regional Trial Court, Branch 48, Bacolod City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFF; RETURN OF WRIT OF EXECUTION; PERIODIC REPORTS ON THE STATUS OF A WRIT OF EXECUTION IS MANDATORY.— The manner in which a writ of execution is to be returned to the court, as well as the requisite reports to be made by the sheriff or officer, is explicitly outlined in Section 14, Rule 39 of the Rules of Court. x x x [Accordingly,] periodic reporting must be done by the sheriff regularly and consistently every thirty (30) days until the judgment is fully satisfied. It is mandatory for the sheriff to make a return of the writ of execution, so that the

court and the litigants may be apprised of the proceedings undertaken in the enforcement of the writ. The return will enable the courts to take the necessary steps to ensure the speedy execution of decisions. The failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability.

2. ID.; ID.; ID.; ID.; ID.; ID.; FAILURE TO MAKE PERIODIC REPORTS ON THE STATUS OF A WRIT OF EXECUTION IS SIMPLE NEGLECT OF DUTY.— [R]espondent is guilty of simple neglect of duty, defined as "the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference." As officers of the court, sheriffs are charged with the knowledge of what proper action to take in case there are questions on the writ needing to be clarified; they are charged as well with the knowledge of what they are bound to comply with. Sheriffs are expected to know the rules of procedure pertaining to their functions as officers of the court, relative to the implementation of writs of execution, and should at all times show a high degree of professionalism in the performance of their duties. Any act deviating from the procedure laid down by the Rules of Court is misconduct that warrants disciplinary action.

3. ID.; ID.; ID.; PROPER PENALTY FOR SIMPLE NEGLECT OF DUTY.— [T]he Revised Rules on Administrative Cases (Rules) classify simple neglect of duty as a less grave offense and punish it with the penalty of suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. x x x [D]ue to the absence of any mitigating circumstance, we impose on respondent the penalty of suspension for fifteen (15) days without pay x x x with a **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

R E S O L U T I O N

SERENO, *J.*:

At bench is an administrative case that involves respondent Jerry A. Ledesma (respondent), employed as Sheriff IV of the Regional Trial Court, Branch 48, Bacolod City. The Office of the Court Administrator (OCA) found him guilty of simple neglect of duty for his failure to submit periodic reports and to make a return of the Writ of Execution in accordance with the Rules of Court. The OCA recommends that he be reprimanded.

The administrative case arose from three (3) separate but related Verified Complaints filed by complainants Rhea Airene P. Katague, Rodolfo E. Katague and Rona Salvacion K. Dela (complainants) on various dates[1] in their capacities as defendants in another related case entitled "*Eustaquio Dela Torre v. Rodolfo Katague, et al.,*" docketed as Civil Case No. 08-13303 (Civil Case), and pending before Regional Trial Court of Bacolod City, Branch 48 (RTC Branch 48). The various Complaints contained similar allegations charging respondent, employed as Sheriff IV in RTC Branch 48, with gross neglect in the performance of his official duties, inefficiency and incompetency, as well as violation of the Anti-graft and Corrupt Practices Act.

THE FACTS

Complainants alleged that on 17 December 2009, Presiding Judge Gorgonio J. Ybañez of RTC Branch 48 issued a Writ of Execution directed to the Provincial Sheriff of Negros Occidental ordering the latter to cause plaintiff therein, Eustaquio dela

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[1] Complainant Rhea Airene P. Katague initially filed her Complaint dated 23 April 2010 against respondent for Gross Neglect in the Performance of His Official Duty, Inefficiency and Incompetency, with the Office of Administrative Services (OAS) of Court. On the other hand, complainants Rodolfo E. Katague and Rona Salvacion K. Dela initially filed their Complaints dated 04 May 2010 and 11 May 2010, respectively, against respondent for violation of the Anti-Graft and Corrupt Practices Act, with the Office of the Ombudsman (Visayas) [OMB] at Cebu City. In turn, the OAS and OMB indorsed the Complaints to the OCA.

Torre (Dela Torre), to vacate the subject premises in connection with the Civil Case. Subsequently, respondent, employed as Sheriff IV of the said court, personally served a Notice to Vacate upon Dela Torre on 22 December 2009. The Writ of Execution was implemented after the five (5)-day grace period, and Dela Torre peacefully vacated the premises. However, pieces of equipment and other lumber products were left behind, as their removal would take approximately two (2) days to accomplish. Complainants claimed that contrary to the assurance of respondent that he would return the following day to remove the said effects, he failed to do so.

Complainants further alleged that respondent again committed himself to the accomplishment of the task on 09 January 2010; again, he failed to do so. On 08 January 2010, a Third-Party Intervention (Intervention) in the Civil Case was filed by Riza L. Schlosser (Schlosser), who asserted a purported fifty-one percent (51%) share in the properties left behind by Dela Torre. Schlosser was the petitioner in a related liquidation proceeding entitled "*Riza L. Schlosser v. Eustaquio Dela Torre*," docketed as Civil Case No. 09-13439 (Liquidation Case), pending before the Regional Trial Court of Bacolod City, Branch 54 (RTC Branch 54).

Complainants (defendants in the Civil Case) opposed the Intervention of Schlosser. On 14 January 2010, during the hearing thereon, both parties reached a compromise and agreed to transfer the equipment and lumber products to a particular portion of the same compound until 28 February 2010 with the proper payment of rentals. Complainants alleged that respondent yet again failed to facilitate the said transfer.

On 29 January 2010, a Motion was filed by complainants to enforce the Writ of Execution in the Civil Case. Consequently, the trial court issued an Order directing the enforcement of the writ, but still to no avail. Complainants alleged that respondent's explanation, that police assistance was needed to facilitate the enforcement, was baseless. They even allegedly facilitated the accomplishment of three (3) out of the four (4) listed requirements in the writ in order to aid respondent in its implementation.

Subsequently, complainants yet again moved to have the writ implemented. Despite repeated requests, however, respondent allegedly still did not act upon the motion. Eventually, as stated earlier, the aggrieved complainants filed their respective Verified Complaints.

As required by the OCA, respondent filed three (3) Comments[2] pertaining to each of the three (3) Complaints. He alleged that he had done everything to comply with the trial court's orders and processes; and, if there was any delay in the execution process, it was never intentional, but caused by factors and circumstances beyond his control. He further explained that he had indeed issued a Notice to Vacate directed to Dela Torre, who was then no longer actually occupying the premises. Respondent alleged, though, that by virtue of the Liquidation Case, the remaining subject equipment and lumber stocks could not be removed from the premises, thus, admitting that he had indeed scheduled the removal on 09 January 2010, but he was unable to do so. He claimed that he had been informed by Atty. Lorenzo S. Alminaza, counsel for Schlosser, that the effects were already in *custodia legis* in relation to the Liquidation Case. Respondent likewise confirmed that Schlosser sought to intervene in the Civil Case, and that an agreement to transfer the effects was eventually reached between the parties. However, the transfer was not implemented, because Schlosser refused to cooperate, purportedly for safety reasons and for lack of adequate shelter in the premises where the proposed transfer was to be effected.

Accordingly, the trial court directed respondent to seek assistance from the Bacolod City Police Office to maintain the peace during the implementation of the writ. On 11 March 2010, respondent wrote a letter to Police Superintendent Celestino Guara (Guara) and sought Guara's assistance as instructed. Instead of acting upon it, Guara coursed it through

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[2] Comments dated 14 July 2010, 01 September 2010 and 26 July 2010 filed by respondent.

Police Chief Inspector Noel E. Polines, who in turn indorsed it to the Legal Department of the PNP Regional Office at Iloilo City for review and to the Regional Director for final approval. The letter was not acted upon by the regional office despite respondent's follow-ups.

Thereafter, proceedings in the Liquidation Case ensued and an Order was issued by the trial court approving the liquidation of the properties of Schlosser and Dela Torre. These properties included the subject equipment and lumber stocks, which were then still inside the premises of the compound. Respondent explained that, with this development, he again made several manifestations and personal follow-ups with the Bacolod City Police regarding his request for police assistance, but to no avail. Eventually, the police heeded his request. On 12 May 2010, he wasted no time and immediately implemented the Writ of Execution, by which the subject effects were removed from complainants' compound and delivered to the possession and custody of Schlosser. Upon completion of the execution proceedings, he issued a Sheriff's Return of Service.

As earlier stated, the OCA found respondent liable for simple neglect of duty. It ruled that he had failed to submit periodic reports as required by the Rules of Court, which prompted several follow-ups by complainants. Thus, it recommended the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court:

1. That the administrative complaint against Jerry A. Ledesma, Sheriff IV, Regional Trial Court, Branch 48, Bacolod City, be **RE-DOCKETED** as a regular administrative matter; and

2. That respondent Sheriff Jerry A. Ledesma be found liable for Simple Neglect of Duty; be **REPRIMANDED**; and be **STERNLY WARNED** that a commission of a similar act in the future will be dealt with more severely.

The Court's Ruling

The Court affirms the OCA's findings. We find respondent guilty of simple neglect of duty for his failure to make periodic reports on the status of the writ he was tasked to implement. We, however, modify the penalty imposed on him.

The manner in which a writ of execution is to be returned to the court, as well as the requisite reports to be made by the sheriff or officer, is explicitly outlined in Section 14, Rule 39 of the Rules of Court, quoted as follows:

> Sec. 14. Return of writ of execution.–The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. **If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. **The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.** (Emphasis supplied)

In accordance with the above-cited rule, periodic reporting must be done by the sheriff regularly and consistently every thirty (30) days until the judgment is fully satisfied. It is mandatory for the sheriff to make a return of the writ of execution, so that the court and the litigants may be apprised of the proceedings undertaken in the enforcement of the writ. The return will enable the courts to take the necessary steps to ensure the speedy execution of decisions.[3] The failure of a sheriff to make periodic reports on the status of a writ of execution warrants administrative liability.[4]

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[3] *Zamudio v. Auro*, A.M. No. P-04-1793, 08 December 2008, 573 SCRA 178.

[4] *Dignum v. Diamla*, 522 Phil. 369 (2006).

In the instant case, respondent was able to sufficiently explain the circumstances surrounding the delay in the implementation of the writ. He was justified in not pushing through with his plan of removing the subject effects, considering that the latter were in *custodia legis*, and that the Intervention of Schlosser was yet to be heard at that time. He complied with the instruction to seek police assistance and was not remiss in his responsibility to follow up his request. Indeed, the delay in the implementation of the writ was caused by circumstances beyond his control. However, this Court faults respondent for not submitting his periodic reports on the progress of his implementation of the writ. Obviously, such reports could have properly apprised complainants of the reasons behind the seeming delay in the execution of the writ and prevented them from speculating too much. These could have also appeased complainants and shown the efforts that respondent had undertaken in order to subvert any delay. Although he submitted his Sheriff's Return upon completion, it was clearly not the *periodic* report required of him as outlined in the Rules.

In fine, respondent is guilty of simple neglect of duty, defined as "the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference."[5] As officers of the court, sheriffs are charged with the knowledge of what proper action to take in case there are questions on the writ needing to be clarified; they are charged as well with the knowledge of what they are bound to comply with.[6] Sheriffs are expected to know the rules of procedure pertaining to their functions as officers of the court,[7] relative to the implementation of writs of execution, and should at all times show a high degree of professionalism in the performance of their duties. Any act deviating from the

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[5] *Reyes v. Cabusao*, 502 Phil. 1, 7 (2005).

[6] *Stilgrove v. Sabas*, A.M. No. P-06-2257, 28 March 2008, 550 SCRA 28.

[7] *Zarate v. Untalan*, 494 Phil. 208 (2005).

procedure laid down by the Rules of Court is misconduct that warrants disciplinary action.[8]

With regard to the penalty to be imposed upon respondent, the Revised Rules on Administrative Cases (Rules) classify simple neglect of duty as a less grave offense and punish it with the penalty of suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.[9] We note that there was no mitigating circumstance presented that could be acknowledged in favor of respondent.

Therefore, pursuant to the above-mentioned Rules and due to the absence of any mitigating circumstance, we impose on him not the penalty of reprimand as recommended by the OCA, but the penalty of suspension for fifteen (15) days without pay.

WHEREFORE, this Court finds respondent Sheriff Jerry A. Ledesma **GUILTY** of Simple Neglect of Duty and is accordingly **SUSPENDED** for a period of fifteen (15) days without pay, with a **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[8] *OCA v. Tolosa,* A.M. No. P-09-2715, 13 June 2011, 651 SCRA 696.

[9] Revised Rules on Administrative Cases, Sec. 46 D (1), Rule 10.

SECOND DIVISION

[G.R. No. 161090. July 4, 2012]

SPOUSES ROMEO LL. PLOPENIO and ROSIELINDA PLOPENIO represented by GAVINO PLOPENIO, *petitioners, vs.* **DEPARTMENT OF AGRARIAN REFORM and LAND BANK OF THE PHILIPPINES,** *respondents.*

[G.R. No. 161092. July 4, 2012]

EDUARDO LL. PLOPENIO represented by GAVINO PLOPENIO, *petitioner, vs.* **DEPARTMENT OF AGRARIAN REFORM and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SPECIAL AGRARIAN COURT – REGIONAL TRIAL COURT (SAC-RTC) DECISION SHOULD BE APPEALED TO THE COURT OF APPEALS.— [P]etitioners resorted to a wrongful mode of appeal by filing the instant Rule 45 Petitions directly with this Court. [Under] Section 60 of the Comprehensive Agrarian Reform Law, x x x Petitioners should have appealed the SAC-RTC Decision to the Court of Appeals. x x x While the general rule is that appeals raising pure questions of law from decisions of RTCs are taken to this Court via a Rule 45 petition, decisions of trial courts designated as SACs are only appealable to the Court of Appeals. We have repeatedly ruled that the right to appeal is a remedy of statutory origin. As such, this right must be exercised only in the manner and in accordance with the provisions of the law authorizing its exercise. The special jurisdiction of the SAC-RTC is conferred and regulated by the Comprehensive Agrarian Reform Law, and appeals therefrom are governed by Section 60 thereof. That law expressly states that appeals from SACs must be taken to the Court of Appeals without making a distinction between appeals raising questions of fact and those dealing purely with questions of law.

2. POLITICAL LAW; DARAB RULES OF PROCEDURE; PETITIONS BEFORE THE SAC-RTC FILED OUT OF TIME IN CASE AT BAR.— Petitions before the SAC-RTC were [also] filed out of time. Under the 1994 DARAB Rules of Procedure (1994 DARAB Rules), which were effective during the pendency of this case before the PARAD, the decision of the adjudicator on land valuation and on the preliminary determination and payment of just compensation shall be brought directly to the SAC within 15 days from receipt of the notice thereof. Parties aggrieved by the adjudicator's decision are allowed to file one motion for reconsideration. In the event of a denial of the motion for reconsideration, the 1994 DARAB Rules provide: SECTION 12. x x x. The filing of a motion for reconsideration shall suspend the running of the period within which the appeal must be perfected. If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal. While a petition for the fixing of just compensation filed with the RTC-SAC is not an appeal from the PARAD's decision, but an original action before the court *a quo*, the rule in Section 12 of the 1994 DARAB Rules should find analogous application. A party aggrieved by the PARAD's decision is given 15 days to file the original petition before the SAC-RTC. The pendency of a motion for reconsideration of the decision suspends the running of the period within which the petition may be filed before the RTC-SAC. Consequently, upon receipt of the order denying the motion for reconsideration, the reglementary period for filing the petition before the RTC-SAC again commences to run. In this case, petitioners x x x filed their Petitions 16 days after they received the Order denying their Motion for Reconsideration. Clearly, the Petitions before the SAC-RTC were filed out of time.

APPEARANCES OF COUNSEL

LBP Legal Department for Land Bank of the Philippines.
Asido Law and Notarial Office for Spouses Plopenio.
Ramon SG Cabañes for Department of Agrarian Reform.

D E C I S I O N

SERENO, *J.*:

In these consolidated Rule 45 Petitions, we rule on the proper mode of appeal from the decision of a Regional Trial Court (RTC) designated as a Special Agrarian Court (SAC).

In G.R. No. 161090, petitioner-spouses Romeo Ll. Plopenio and Rosielinda Plopenio assail the Decision[1] and Order[2] of the SAC-RTC Branch 23, Naga City, in Civil Case No. 2003-007.

In G.R. No. 161092, petitioner Eduardo Ll. Plopenio (Eduardo) questions the Decision[3] and Order[4] of the same court in Civil Case No. 2003-004.

THE FACTS

Petitioner-spouses own 11.8643 hectares of coconut land in Caramoan, Camarines Sur, while petitioner Eduardo owns 22.8349 hectares of coconut land in the same locality. In 2000, the land of their brother Gavino Plopenio, likewise located in Caramoan, Camarines Sur, was valued by the Department of Agrarian Reform Adjudication Board (DARAB) at ₱51,125.60 per hectare in DARAB Case No. V-LV-040-CS-00. On this basis, petitioners offered their entire landholdings to the Department of Agrarian Reform (DAR) for acquisition and distribution pursuant to Republic Act No. (R.A.) 6657, or the Comprehensive Agrarian Reform Law.[5]

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[1] *Rollo* (G.R. No. 161090), pp. 24-27, RTC Decision dated 7 October 2003, penned by Judge Pablo M. Paqueo, Jr.

[2] *Id.* at 28, Order dated 14 November 2003, penned by Judge Pablo M. Paqueo, Jr.

[3] *Rollo* (G.R. No. 161092), pp. 24-27, RTC Decision dated 7 October 2003, penned by Judge Pablo M. Paqueo, Jr.

[4] *Id.* at 28, Order dated 14 November 2003, penned by Judge Pablo M. Paqueo, Jr.

[5] *Rollo* (G.R. No. 161090), p. 11, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

On 26 October 2001, public respondent Land Bank sent a Notice of Valuation and Adjudication valuing the land of petitioner-spouses at ₱23,485.00 per hectare[6] and that of petitioner Eduardo at ₱22,856.62 per hectare.[7] Dissatisfied with Land Bank's offer, petitioners rejected the Notice of Valuation and Acquisition and referred the matter to the Provincial Agrarian Reform Adjudicator (PARAD) of Camarines Sur for summary administrative proceedings.[8]

The PARAD affirmed the valuation made by Land Bank in a Decision dated 5 September 2002, a copy of which petitioners received on 27 September 2002.[9]

On 11 October 2002, or 14 days thereafter, petitioners filed their Motion for Reconsideration.[10] The PARAD denied their Motion in an Order dated 20 November 2002, which petitioners received on 21 December 2002.[11]

Petitioners then filed separate Petitions before the SAC-RTC on 6 January 2003, or 16 days after their receipt of the PARAD's Order. They explained that they were allowed to file their appeal 15 days from the receipt of the Order of denial of their Motion for Reconsideration. Since the 15th day fell on a Sunday, they reasoned that they should be allowed to file their appeal until 6 January 2003.[12]

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[6] *Rollo* (G.R. No. 161090), p. 11, Petition dated 28 December 2003.

[7] *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

[8] *Rollo* (G.R. No. 161090), p. 11, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

[9] *Rollo* (G.R. No. 161090), p. 24, RTC Decision in Civil Case No. 2003-007; *Rollo* (G.R. No. 161092), p. 24, RTC Decision in Civil Case No. 2003-004.

[10] *Id.*

[11] *Rollo* (G.R. No. 161090), p. 11, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

[12] *Rollo* (G.R. No. 161090), pp. 11-12, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

In its Answer, Land Bank alleged that the Decision of the PARAD had already attained finality after the lapse of the 15-day period, counted from petitioners' receipt of the PARAD's Decision. Thus, it argued that the SAC-RTC should no longer entertain the Petitions.[13]

In its assailed Decisions, the SAC-RTC ruled that the Decision of the PARAD had already attained finality because petitioners failed to file their Petitions on time. The lower court thus dismissed the appeal in this wise:

> WHEREFORE, with all the foregoing this court finds merit in [respondent Land Bank's] special and affirmative defense, that the filing of these petitions is now barred by prior final and executory judgment hence wanting of a valid cause of action.
>
> The petitions therefore are hereby ordered dismissed for lack of valid cause of action.
>
> SO ORDERED.[14]

Petitioners moved for reconsideration of the SAC-RTC's Decision, but their motions were denied for lack of merit.[15]

From the Decisions and Orders of the SAC-RTC, petitioners then filed the instant Petitions for Review directly before this Court. On 24 July 2006, we resolved to consolidate the cases at bar, considering that the factual milieu and legal issues involved in both cases are similar in nature.

THE COURT'S RULING

At the outset, we rule that the consolidated Petitions are immediately dismissible because petitioners resorted to a

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[13] *Rollo* (G.R. No. 161090), p. 12, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 12, Petition dated 28 December 2003.

[14] *Rollo* (G.R. No. 161090), p. 27, RTC Decision in Civil Case No. 2003-007; *Rollo* (G.R. No. 161092), p. 27, RTC Decision in Civil Case No. 2003-004.

[15] *Rollo* (G.R. No. 161090), p. 28, Order in Civil Case No. 2003-007; *Rollo* (G.R. No. 161092), p. 28, Order in Civil Case No. 2003-004.

wrongful mode of appeal by filing the instant Rule 45 Petitions directly with this Court.

Section 60 of the Comprehensive Agrarian Reform Law provides:

> Section 60. Appeals. – An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the **Court of Appeals** within fifteen (15) days from receipt of notice of the decision; otherwise, the decision shall become final.
>
> An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision. (Emphasis supplied)

Clearly, following the letter of the Comprehensive Agrarian Reform Law, petitioners should have appealed the SAC-RTC Decision to the Court of Appeals.

Petitioners propose to carve out an exception to this rule by arguing that because the instant Petitions raise only pure questions of law, the proper mode of appeal is via a Rule 45 Petition to this Court.[16]

We do not agree. While the general rule is that appeals raising pure questions of law from decisions of RTCs are taken to this Court via a Rule 45 petition, decisions of trial courts designated as SACs are only appealable to the Court of Appeals.

We have repeatedly ruled that the right to appeal is a remedy of statutory origin. As such, this right must be exercised only in the manner and in accordance with the provisions of the law authorizing its exercise.[17] The special jurisdiction of the SAC-RTC is conferred and regulated by the Comprehensive Agrarian Reform Law, and appeals therefrom are governed by Section 60 thereof. That law expressly states that appeals from SACs must

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[16] *Rollo* (G.R. No. 161090), pp. 53-54, Reply dated 9 July 2004; *Rollo* (G.R. No. 161092), p. 98, Reply dated 9 May 2006.

[17] *Oro v. Diaz*, 413 Phil. 416 (2001).

be taken to the Court of Appeals without making a distinction between appeals raising questions of fact and those dealing purely with questions of law. *Ubi lex non distinguit nec nos distinguere debemus.* Where the law does not distinguish, neither should we. Consequently, we rule that the only mode of appeal from decisions of the SAC-RTC is via a Rule 42 petition for review[18] to the Court of Appeals, without any distinction as to whether the appeal raises questions of fact, questions of law, or mixed questions of fact and law.

Furthermore, even if we were to allow the appeals to prosper, we find that the Petitions before the SAC-RTC were filed out of time.

Under the 1994 DARAB Rules of Procedure (1994 DARAB Rules), which were effective during the pendency of this case before the PARAD, the decision of the adjudicator on land valuation and on the preliminary determination and payment of just compensation shall be brought directly to the SAC within 15 days from receipt of the notice thereof.[19] Parties aggrieved by the adjudicator's decision are allowed to file one motion for reconsideration.[20]

In the event of a denial of the motion for reconsideration, the 1994 DARAB Rules provide:

> SECTION 12. x x x. The filing of a motion for reconsideration shall suspend the running of the period within which the appeal must be perfected. If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.[21]

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[18] *Land Bank of the Philippines v. De Leon*, 437 Phil. 347 (2002).

[19] 1994 DARAB RULES OF PROCEDURE, Rule XIII, Section 11.

[20] *Id.*

[21] 1994 DARAB RULES OF PROCEDURE, Rule VIII, Section 12.

While a petition for the fixing of just compensation filed with the RTC-SAC is not an appeal from the PARAD's decision, but an original action before the court *a quo*,[22] the rule in Section 12 of the 1994 DARAB Rules should find analogous application. A party aggrieved by the PARAD's decision is given 15 days to file the original petition before the SAC-RTC. The pendency of a motion for reconsideration of the decision suspends the running of the period within which the petition may be filed before the RTC-SAC. Consequently, upon receipt of the order denying the motion for reconsideration, the reglementary period for filing the petition before the RTC-SAC again commences to run.

In this case, petitioners received a copy of the PARAD Decision on 27 September 2002.[23] They filed their Motion for Reconsideration thereof on 11 October 2002, or 14 days from their receipt of a copy of the Decision.[24] On 21 December 2002, they received the Order denying their motion.[25] Hence, petitioners only had one more day within which to file their Petitions with the SAC-RTC for the determination of just compensation for their respective properties. Since 22 December 2002 fell on a Sunday, they had until 23 December 2002 to file their Petitions. However, they only filed their Petitions on 6 January 2003, or 16 days after they received the Order denying their Motion for Reconsideration. Clearly, the Petitions before the SAC-RTC were filed out of time.

From the foregoing discussion, we therefore find that the instant Petitions should be denied.

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[22] *Land Bank of the Philippines v. Martinez*, G.R. No. 169008, 31 July 2008, 560 SCRA 776.

[23] *Rollo* (G.R. No. 161090), p. 24, RTC Decision in Civil Case No. 2003-007; *Rollo* (G.R. No. 161092), p. 24, RTC Decision in Civil Case No. 2003-004.

[24] *Id.*

[25] *Rollo* (G.R. No. 161090), p. 11, Petition dated 28 December 2003; *Rollo* (G.R. No. 161092), p. 11, Petition dated 28 December 2003.

WHEREFORE, in view of the foregoing, the consolidated Petitions for Review are hereby **DENIED**, and the assailed Decisions and Orders of the Special Agrarian Court–Regional Trial Court, Branch 23, Naga City in Civil Case Nos. 2003-007 and 2003-004 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

THIRD DIVISION

[G.R. No. 171050. July 4, 2012]

FAR EAST BANK AND TRUST COMPANY (now Bank of the Philippine Islands), *petitioner, vs.* **TENTMAKERS GROUP, INC., GREGORIA PILARES SANTOS and RHOEL P. SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; ONLY QUESTIONS OF LAW ARE ALLOWED.— In petitions for review on *certiorari* under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the factual findings and conclusions of the CA is not the function of this Court, for this Court is not a trier of facts. Neither is it its function to reexamine and weigh anew the respective evidence of the parties. The factual findings of the CA are generally binding on this Court.

2. COMMERCIAL LAW; BANKS; HIGHEST DEGREE OF DILIGENCE IS EXPECTED IN ABIDING BY BANKING RULES AND PROCEDURES; CASE AT BAR.— Banking business is impressed with public interest. Of paramount

importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected. In handling loan transactions, banks are under obligation to ensure compliance by the clients with all the documentary requirements pertaining to the approval and release of the loan applications. For failure of its branch manager to exercise the requisite diligence in abiding by the Manual of Regulations for Banks (MORB) and the banking rules and practices, FEBTC was negligent in the selection and supervision of its employees.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo & Burkley for petitioner.
Marcelino R. Bautista Law Office for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the July 28, 2005 Decision[1] and the January 6, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. No. CV-71543 entitled "*Far East Bank and Trust Company v. Tentmakers Group, Inc., Gregoria Pilares Santos & Rhoel P. Santos.*" The CA reversed and set aside the June 11, 2001 Decision of the Regional Trial Court, Branch 60, Makati City *(RTC),* and dismissed petitioner's complaint in Civil Case No. 98-910.

THE FACTS

The signatures of respondents, Gregoria Pilares Santos *(Gregoria)* and Rhoel P. Santos *(Rhoel),* President and Treasurer

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[1] Annex "A" of Petition, *rollo*, pp. 33-41. Penned by Associate Justice Vicente Q. Roxas with Associate Justice Portia Alino-Hormachuelos and Associate Justice Juan Q. Enriquez, Jr., concurring.

[2] Annex "B" of Petition, *id.* at 43-44.

of respondent Tentmakers Group, Inc. *(TGI)* respectively, appeared on the three (3) promissory notes for loans contracted with petitioner Far East Bank and Trust Company *(FEBTC)*, now known as Bank of the Philippine Islands *(BPI)*. The first two (2) promissory notes were signed by both of them on July 5, 1996, as evidenced by Promissory Note No. 2-038-965034[3] for ₱255,000.00 and Promissory Note No. 2-038-965040[4] for ₱155,000.00. Gregoria and Rhoel alleged that they did sign on "blank" promissory notes intended for future use. The sixty (60)-day notes became due and demandable on September 3, 1996.

On August 7, 1996, Promissory Note No. 2-038-965003[5] for ₱140,000.00, a thirty (30)-day note, was executed allegedly in the same manner as the first two promissory notes.

After a futile demand, FEBTC filed a Complaint[6] before the RTC for the payment of the principal of the promissory notes which amounted to a total of ₱887,613.37 inclusive of interest, penalty charges and attorney's fees. In the said complaint, Gregoria and Rhoel were impleaded to be jointly and severally liable with TGI for the unpaid promissory notes.

In defense, the respondents alleged that FEBTC had no right at all to demand from them the amount being claimed; that records would show the absence of any resolution coming from the Board of Directors of TGI, authorizing the signatories to receive the proceeds and the FEBTC to release any loan; that FEBTC violated the rules and regulations of the Central Bank as well as its own policy when it failed to require the respondents to submit the said board resolution, it allegedly being a condition *sine qua non* before granting a loan to a corporate entity, for the protection of the depositors/borrowers; that it was FEBTC's branch manager, a certain Liza Liwanag, who represented to Gregoria and Rhoel that they could avail of additional working

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[3] *Rollo*, p. 34.

[4] *Id.*

[5] *Id.* at 35.

[6] *Id.*

capital for TGI by having them sign the promissory notes in advance, which were blank at the time, so they would be ready for future use; that Liza Liwanag's act of not requiring the aforesaid board resolution was against bank policy; that this irregularity caused damage to FEBTC with its own employee defrauding the bank; that the respondents had no knowledge that a loan had been taken out in its name; and that FEBTC could not present any proof that the respondents duly received the various amounts reflected in the three (3) promissory notes.[7]

In the "Answer with Counterclaim and Cross-claim,"[8] the respondents alleged that Salvador Bernardo, Jr. and Luisa Bernardo of Eliezer Crafts, who were erroneously impleaded as "cross-defendants,"[9] were the ones who received the proceeds of the promissory notes.

The respondents failed to appear during the pre-trial. Thereafter, FEBTC was allowed to present evidence *ex-parte*. The respondents filed their motion for reconsideration, but the same was denied by the RTC. A subsequent attempt to have their pre-trial brief admitted was also denied.[10]

After trial, the RTC rendered its decision[11] in favor of FEBTC, the dispositive portion of which states:

> WHEREFORE, in view of the foregoing, the Complaint filed is herein GRANTED. Defendants Tentmakers Group, Inc., Gregoria P. Santos and Rhoel P. Santos are held jointly and severally liable to pay plaintiff Far East Bank and Trust Co. in the amount of ₱1,181,764.68 plus attorney's fees equivalent to 10% of the total amount claimed.
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> SO ORDERED.[12]

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

[8] Records, p. 34.

[9] They were not impleaded as party defendants.

[10] *Rollo*, p. 36.

[11] Dated June 11, 2001, Annex "C" of Petition, *id.* at 45-51.

[12] *Rollo*, p. 51.

The RTC found sufficient basis to award FEBTC's claim. It ruled that the liability of the individual respondents, Gregoria and Rhoel, was based on their having assumed personal and solidary liability for the amounts represented under the promissory notes as shown by their respective signatures appearing in the aforesaid documents. It upheld the validity and binding effect of the said promissory notes as the respondents did not deny the due execution thereof or their signatures appearing therein.

As earlier stated, in its July 28, 2005 Decision, the CA reversed and set aside the RTC judgment. The decretal portion of the CA decision reads:

> WHEREFORE, premises considered, the Regional Trial Court of Makati, Branch 60's June 11, 2001 Decision is hereby **REVERSED and SET ASIDE**. The Complaint filed on April 17, 1998 is hereby **DISMISSED**.
>
> SO ORDERED.[13]

The CA, taking judicial notice of the usual banking practice involving loan agreements, held that although there were promissory notes, there was no board resolution/corporate secretary's certificate designating the signatories for the corporation, and there was no disclosure that the signatories acted as agents thereof. There were no collaterals either to ensure the payment of the loan. In the conferment of such unsecured loans, FEBTC, its bank manager in particular, also failed to comply with the guidelines set forth under the Manual of Regulations for Banks,[14] when it allegedly approved and released the subject loans to Gregoria and Rhoel. These deficiencies, according to the CA, cast doubt on the loan transaction which appeared more like an "inside job" with the branch manager or bank employee securing the signatures of Gregoria and Rhoel, after which the said manager/employee simply "filled in the blanks."[15]

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[13] *Id.* at 41.

[14] 95 O.G. No. 8, Supplement.

[15] *Rollo*, p. 39.

The CA held that "[b]anks should always have adequate audit mechanisms to make sure that their employees follow accepted banking rules and practices to safeguard the interest of the investing public and preserve the public confidence on banks."[16]

Further, the CA found that there was no evidence presented to prove that Gregoria and Rhoel or TGI received the proceeds of the three (3) promissory notes.

FEBTC filed a motion for reconsideration[17] of the said decision. The CA, however, in its January 6, 2006 Resolution, denied the motion for lack of merit.

Hence, FEBTC interposes the present petition before this Court anchored on the following

GROUNDS

(A)

IN ITS 28 JULY 2005 DECISION, THE COURT OF APPEALS, ERRED IN RULING THAT PETITIONER DID NOT COMPLY WITH THE GUIDELINES UNDER THE MANUAL OF REGULATION FOR BANKS, THAT THERE WAS NO BOARD RESOLUTION/CORPORATE SECRETARY'S CERTIFICATE DESIGNATING THE SIGNATORIES FOR THE CORPORATION; THERE WAS NO DISCLOSURE THAT THE SIGNATORIES ACTED AS AGENTS; THAT THERE WERE NO COLLATERALS/CHATTEL MORTGAGE/REAL ESTATE MORTGAGE/PLEDGES TO ENSURE PAYMENT OF THE LOAN. THIS FACTUAL FINDING EXPRESSLY CONFLICTS WITH THE FINDING OF THE TRIAL COURT AND CONTRADICTED BY THE EVIDENCE ON RECORD.

(B)

IN ITS 28 JULY 2005 DECISION, THE COURT OF APPEALS, MADE A CONCLUSION THAT IS GROUNDED ENTIRELY ON SPECULATIONS, SURMISES, OR CONJECTURES. THERE IS NO EVIDENCE ON RECORD THAT WARRANTS AN

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[16] *Id.* at 41.

[17] Dated August 29, 2005, Annex "E" of Petition, *id.* at 73-81.

INFERENCE OF AN "INSIDE JOB" WITH THE BRANCH MANAGER OR BANK EMPLOYEE HAVING SECURED THE SIGNATURES OF RESPONDENTS [DEFENDANTS-APPELLANTS] GREGORIA AND RHOEL AFTER WHICH THE MANAGER AND EMPLOYEE SIMPLY "FILLED IN THE BLANKS" THIS FACTUAL FINDING, EXPRESSLY CONFLICTS WITH THE FINDING OF THE TRIAL COURT AND CONTRADICTED BY THE EVIDENCE ON RECORD, EXHIBITS, "G" "H" AND "I" BEFORE THE TRIAL COURT.

(C)

IN ITS 28 JULY 2005 DECISION, THE COURT OF APPEALS, MADE A CONCLUSION THAT IS GROUNDED ENTIRELY ON SPECULATIONS, SURMISES, OR CONJECTURES. THERE IS NO EVIDENCE ON RECORD THAT WARRANTS AN INFERENCE THAT THE BANK [HEREIN PETITIONER, THEN PLAINTIFF-APPELLEE], IN FACT, DID NOT DENY NOR DISPROVE THAT THIRD PERSONS HAD RECEIVED THE PROCEEDS OF THE THREE PROMISSORY NOTES; NAMELY, SALVADOR BERNARDO, JR. AND LUISA BERNARDO OF ELIEZER CRAFTS WHO WERE NOT CONNECTED WITH TGI. NO DEMAND ON THEM WAS EVER MADE FOR [THE] RETURN OF THE PROCEEDS THEY HAD RECEIVED. THIS FACTUAL FINDING, EXPRESSLY CONFLICTS WITH THE FINDING OF THE TRIAL COURT AND CONTRADICTED BY THE EVIDENCE ON RECORD, EXHIBITS A TO K OF PETITIONER [THEN PLAINTIFF-APPELLEE] BEFORE THE TRIAL COURT.[18]

The issue to be resolved is whether the CA rendered a decision that is grounded entirely on speculations, surmises, or conjectures when it ruled in favor of the respondents.

FEBTC contends that the evidence on record showed its compliance with the banking rules and regulations through board resolutions issued by TGI fully authorizing Gregoria and Rhoel to transact business with it. It submits that the materiality of the said board resolutions was already ruled upon by the RTC. It asserts that Gregoria and Rhoel were solidarily liable for the

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

amounts represented under the three promissory notes having signed the same. It adds that there was no specific denial, under oath, of the genuineness and due execution of the said documents as required under Section 8, Rule 8 of the Rules of Court. According to FEBTC, it merely acted within its rights as creditor in demanding payment of the overdue obligation from the solidary creditors, which included Gregoria and Rhoel. It argues that the inference of an "inside job" by the CA was a mere speculation not supported by any credible evidence. It further argues that the CA erred when it gave weight to the allegation that third persons had received the proceeds of the promissory notes because the proceeds were credited to the account of TGI. There was no evidence on record that such proceeds were credited to the account of an entity called "Eliezer Crafts."

In their Comment,[19] the respondents counter that they did not receive the proceeds of the three promissory notes. The same argument was reiterated in their Memorandum.[20] The respondents posit that it is true that they signed the Promissory Notes, but they vehemently deny having received the amounts reflected thereon. They aver that FEBTC miserably failed to present any check, voucher, or any document to show actual receipt by them of the aforementioned amounts from the bank. They argue that the RTC gravely erred in finding Gregoria and Rhoel personally liable for the amounts under the promissory notes, they being mere signatories of the company's account, acting in behalf of TGI, which was the one principally transacting business with FEBTC. This, the respondents say, was very clear from the wordings of the Certificate of Board Resolution of TGI submitted to FEBTC.

The petition is bereft of merit.

It should be noted that the questions raised in this petition involve the correctness of the factual findings of the CA. In petitions for review on *certiorari* under Rule 45, only questions

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[19] Dated June 26, 2006, *id.* at 102.

[20] Dated March 1, 2007, *id.* at 128.

of law may be raised by the parties and passed upon by this Court. An inquiry into the veracity of the factual findings and conclusions of the CA is not the function of this Court, for this Court is not a trier of facts. Neither is it its function to reexamine and weigh anew the respective evidence of the parties.[21]

The factual findings of the CA are generally binding on this Court.[22] There are recognized exceptions[23] to this rule. FEBTC, however, has failed to satisfactorily show the applicability of any of those exceptions in this case to warrant a reexamination of the findings.

In any case, even granting that factual issues may be considered, the facts would not make a good case for FEBTC because there was no evidence adduced to prove that the respondents received the amount demanded in its complaint. Contrary to the claim of FEBTC, nowhere in the records of this case can one find a document evidencing that Gregoria and Rhoel, or TGI for that matter, received the proceeds of the three (3) promissory notes. Moreover, FEBTC violated the rules and regulations of the Bangko Sentral ng Pilipinas *(BSP)* by its failure to strictly follow the guidelines in the conferment of unsecured loans set forth under the Manual of Regulations for Banks (MORB), to quote:

Sec. X319 Loans Against Personal Security. The following regulations shall govern credit accommodations against personal security granted by banks.[24]

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[21] *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148, 152, citing *Development Bank of the Philippines v. Licuanan*, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 651.

[22] *Republic of the Philippines v. Rural Bank of Kabacan, Inc.*, G.R. No. 185124, January 25, 2012.

[23] See *Asian Terminals, Inc. v. Malayan Insurance, Co. Inc.*, G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126-127.

[24] This provision of Section X319 of the Manual of Regulations for Banks has been amended by Circular No. 622 Series of 2008.

§ X319.1 General guidelines. Before granting credit accommodations against personal security, banks must exercise proper caution by ascertaining that the borrowers, co-makers, endorsers, sureties and/or guarantors possess good credit standing and are financially capable of fulfilling their commitments to the bank. For this purpose, banks shall keep records containing information on the credit standing and financial capacity of credit applicants.

§ X319.2 Proof of financial capacity of borrower. In addition to the usual personal information sheet about the borrower, banks shall require that an application for a credit accommodation against personal security be accompanied by:

a. A copy of the latest income tax returns of the borrower and his co-maker duly stamped as received by the BIR; and

b. If the credit accommodation exceeds ₱500,000.00, a copy of the borrower's balance sheet duly certified by an Independent Certified Public Accountant (CPA), and in case he is engaged in business, also a copy of the profit and loss statement duly certified by a CPA.

The above documents shall be required to be submitted annually for as long as the credit accommodation is outstanding.

A perusal of the evidentiary records discloses that none of the above-enumerated guidelines was complied with by FEBTC, particularly the bank manager. As the CA stated, banking institutions usually require the following documentations involving loan agreements to be presented before approving any loan or release of the proceeds thereof:

1) Promissory Notes duly signed by the parties;

2) Evidence of Receipt of Proceeds of the Promissory Notes;

3) If a corporation is involved, the appropriate copy of the Board Resolution and a duly notarized Corporate Secretary's Certificate is required to indicate who the authorized signatories are;

4) If agents sign, they must disclose their principal; and

5) Real Estate Mortgage/Chattel Mortgage/Pledges to secure the payment of the loan.

In this case, although there were promissory notes, there was no proof of receipt by the respondents of the same amounts reflected in the said promissory notes. There was no Board Resolution/Corporate Secretary's Certificate either, designating the authorized signatories for the corporation specifically for the loan covered by the Promissory Notes. Even granting *arguendo* that the two Board Resolutions (Exhibits "A" and "B") dated March 3, 1995 and April 11, 1995, respectively, authorizing Gregoria and Rhoel to transact business with FEBTC, were binding, still the petition would not prosper as there was no evidence of crediting of the proceeds of the promissory notes. Further, there were no collaterals, real estate mortgage, chattel mortgage or pledges to ensure the payment of the loan. The Court is in accord with the CA when the latter wrote:

> The bank was remiss in the surveillance of its people because the bank auditors could have easily "spotted" the anomaly that the loan transaction: (1) did not have any Board Resolution/Corporate Secretary's Certificate; (2) did not have collateral/Real Estate Mortgage/Chattel Mortgage/Pledge and was given "clean"; and (3) there was no disclosure that TGI was the principal involved as borrower – all in violation of accepted banking rules and practices.
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> Time and again, the Supreme Court has stressed that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest degree of diligence. A bank's liability as obligor is not merely vicarious but primary, wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment.
>
> The laxity of the bank cannot be allowed to prejudice the clients of the bank who may unsuspectingly become victims of fraud most likely perpetrated by insiders or employees of the bank, which is made possible when the bank did not follow accepted banking rules and practices and prescribed requirements by the Bangko Sentral in dealing with loan transactions.[25]

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[25] *Rollo*, p. 40.

The CA was, thus, correct when it dismissed FEBTC's complaint against the respondents.

As to the allegation that there is no evidence on record that warrants an inference that the transaction was attended by irregularities purely orchestrated by FEBTC's branch manager, the Court gives credence to the respondents' stance that:

> xxx. Those are material facts which have not been refuted by the petitioner especially the issue of irregularities orchestrated by the petitioner's Branch Manager Liza Liwanag. Not even an Affidavit of Denial was adduced by the petitioner. The bank's silence on this point is tantamount to acquiescence to respondents' position, more so on the sudden disappearance of the said Bank Manager which under the law and jurisprudence that flight being an evidence/indication of guilt.[26]

Evidently, this is a case where the respondents are being used as a "scapegoat" to answer for the damage and prejudice brought about by the negligence of FEBTC's own employees. The branch manager should have appeared and explained the circumstances. Thus, the CA cannot be faulted for making such a ruling.

The bottom line is that FEBTC miserably failed to present any document that would serve as basis for its claim that the proceeds of the three promissory notes were indeed credited to the account of the respondents. Indeed, the Court finds no evidentiary basis to sustain the RTC's finding of actual receipt by TGI of the amounts stated in the promissory notes. Accordingly, the Court affirms the CA decision for being more in accord with the facts and evidence on record.

On a final note, FEBTC should have been more circumspect in dealing with its clients. It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman *pater familias*

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[26] *Id.* at 134.

or a good father of a family. The highest degree of diligence is expected.[27] In handling loan transactions, banks are under obligation to ensure compliance by the clients with all the documentary requirements pertaining to the approval and release of the loan applications. For failure of its branch manager to exercise the requisite diligence in abiding by the MORB and the banking rules and practices, FEBTC was negligent in the selection and supervision of its employees. In *Equitable PCI Bank v. Tan*,[28] the Court ruled:

> xxx. Banks handle daily transactions involving millions of pesos. By the very nature of their works the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.[29]

For the loss suffered by FEBTC due to its laxity and carelessness to police its own personnel, the bank has no one to blame but itself. As correctly concluded by the CA, this situation partakes of the nature of *damnum absque injuria*.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated July 28, 2005 and its Resolution of January 6, 2006, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[27] *Citibank, N.A. v. Dinopol,* G.R. No. 188412, November 22, 2010, 635 SCRA 649, 659.

[28] G.R. No. 165339, August 23, 2010, 628 SCRA 520.

[29] *Id.* at 537-538, citing *Citibank, N.A. v. Spouses Cabamongan,* 522 Phil. 476, 492 (2006).

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 172035. July 4, 2012]

FERNANDO Q. MIGUEL, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; SUFFICIENCY THEREOF; CASE AT BAR.— In deference to the constitutional right of an accused to be informed of the nature and the cause of the accusation against him, Section 6, Rule 110 of the Revised Rules of Criminal Procedure (Rules) requires, *inter alia*, that the information shall state the designation of the offense given by the statute and the acts or omissions imputed which constitute the offense charged. Additionally, the Rules requires that these acts or omissions and its attendant circumstances "must be stated in ordinary and concise language" and "in terms sufficient to enable a person of common understanding to know what offense is being charged x x x and for the court to pronounce judgment." The test of the information's sufficiency is whether the crime is described in intelligible terms and with such particularity with reasonable certainty so that the accused is duly informed of the offense charged. In particular, whether an information validly charges an offense depends on whether the material facts alleged in the complaint or information shall establish the essential elements of the offense charged as defined in the law. The *raison d'etre* of the requirement in the Rules is to enable the accused to suitably prepare his defense. In arguing against the validity of the information, the petitioner appears to go beyond the standard of a "person of common understanding" in appreciating the import of the phrase "acting with evident bad faith and manifest partiality." A reading of the information clearly reveals that the phrase "*acting* with evident bad faith and manifest partiality" was merely a continuation of the prior allegation of the acts *of the petitioner*, and that he ultimately acted with evident bad faith and manifest partiality in giving unwarranted benefits and advantages to his co-accused private individuals. This is what a plain and non-legalistic reading of the information would yield.

2. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SUSPENSION AND LOSS OF BENEFITS (SECTION 13); REQUIRED PRIOR HEARING THEREIN DOES NOT MEAN "ACTUAL" HEARING MUST BE CONDUCTED.— While the suspension of a public officer under [Section 13 of RA 3019] is mandatory, the suspension requires a prior hearing to determine "the validity of the information" filed against him, "taking into account the serious and far reaching consequences of a suspension of an elective public official even before his conviction." The accused public official's right to challenge the validity of the information before a suspension order may be issued includes the right to challenge the (i) validity of the criminal proceeding leading to the filing of an information against him, and (ii) propriety of his prosecution on the ground that the acts charged do not constitute a violation of R.A. No. 3019 or of the provisions on bribery of the Revised Penal Code. x x x [The case of *Luciano v. Mariano*, however,] emphasizes that no hard and fast rule exists in regulating its conduct. With the purpose of a pre-suspension hearing in mind, the absence of an *actual* hearing alone cannot be determinative of the validity of a suspension order. x x x Since a pre-suspension hearing is basically a due process requirement, when an accused public official is given an adequate opportunity to be heard on his possible defenses against the mandatory suspension under R.A. No. 3019, then an accused would have no reason to complain that no actual hearing was conducted. It is well settled that "to be heard" does not only mean oral arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, has been accorded, no denial of procedural due process exists.

3. ID.; ID.; ID.; ID.; SUSPENSION IS NOT A PENALTY BUT A MERE PREVENTIVE MEASURE.— Another reason that militates against the petitioner's position relates to the nature of Section 13 of R.A. No. 3019; it is *not* a penal provision that would call for a liberal interpretation in favor of the accused public official and a strict construction against the State. The suspension required under this provision is ***not* a penalty**, as it is not imposed as a result of judicial proceedings; in fact, if acquitted, the accused official shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during

his suspension. Rather, the suspension under Section 13 of R.A. No. 3019 is a mere **preventive measure** that arises from the legal presumption that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. Suspension under R.A. No. 3019 being a mere preventive measure whose duration shall in no case exceed ninety (90) days, the adequacy of the opportunity to contest the validity of the information and of the proceedings that preceded its filing *vis-à-vis* the merits of the defenses of the accused cannot be measured alone by the absence or presence of an actual hearing. An opportunity to be heard on one's defenses, however unmeritorious it may be, against the suspension mandated by law equally and sufficiently serves both the due process right of the accused and the mandatory nature of the suspension required by law.

APPEARANCES OF COUNSEL

Ferrer and Associates Law Office for petitioner.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for *certiorari* under Rule 65[1] filed by Fernando Q. Miguel (*petitioner*), assailing the January 25, 2006 and March 27, 2006 resolutions[2] of the Sandiganbayan. These resolutions (i) ordered the petitioner's suspension from public office and (ii) denied the petitioner's motion for reconsideration of the suspension order.

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[1] RULES OF COURT.

[2] Penned by Associate Justice Godofredo L. Legaspi, and concurred in by Associate Justices Efren N. dela Cruz and Norberto Y. Geraldez, Sr.

THE ANTECEDENT FACTS

On May 29, 1996, then Vice Mayor Mercelita M. Lucido and other local officials[3] of Koronadal City, South Cotabato filed a letter-complaint with the Office of the Ombudsman-Mindanao (*Ombudsman*)[4] charging the petitioner, among others,[5] with violation of Republic Act (*R.A.*) No. 3019, in connection with the consultancy services for the architectural aspect, the engineering design, and the construction supervision and management of the proposed Koronadal City public market (*project*).[6]

In a June 27, 1996 order, the Ombudsman directed the petitioner, among others, to submit his counter-affidavit. On October 23, 1996, after moving for an extension, the petitioner filed his counter-affidavit.[7] In its July 29, 1999 resolution, the Ombudsman found probable cause against the petitioner and some private individuals for violation of R.A. No. 3019 and against the petitioner alone for Falsification of Public Document under Article 171, par. 4 of the Revised Penal Code.[8]

On March 1, 2000, the Ombudsman filed the corresponding informations with the Sandiganbayan.[9] The information for violation of Section 3(e) of R.A. No. 3019 reads:

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[3] The *Sangguniang Bayan* members-complainants are as follows: Rose Dideles, Rene Jumilla, Pablito Subere and Edwin Abris; *rollo*, p. 5.

[4] *Id.* at 83.

[5] Gaspar E. Nepomuceno, Jesus G. Casus, Ernesto R. Lagdameo, Jr., Bonifacio M. Madarcos, and Vinci Nicholas R. Villaseñor; *id.* at 103.

[6] *Id.* at 110-113.

[7] *Id.* at 124-125.

[8] *Id.* at 5 and 83.

[9] The case for violation of R.A. No. 3019 was docketed as Criminal Case No. 25819 (*id.* at 103). The Office of the Special Prosecutor filed a Motion to drop Ernesto R. Lagdameo, Jr., Bonifacio M. Madarcos, Jesus G. Casus and Vinci Nicholas R. Villaseñor from the Information (*id.* at 106 and 108). The falsification case was docketed as Criminal Case No. 25820 (*id.* at 103).

That on 10 January 1995 or sometime prior or subsequent thereto, in the Municipality of Koronadal, South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the [petitioner], a high ranking public officer in his capacity as former Municipal Mayor of Koronadal, South Cotabato, and as such while in the performance of his official functions, **committing** the offense in relation to his office, **taking** advantage of his official position, conspiring and confederating with the private [individuals] xxx **acting with evident bad faith and manifest partiality**, did then and there willfully, unlawfully and criminally give unwarranted benefits and advantages to said [accused], by inviting them to participate in the prequalification of consultants to provide the Detailed Architectural & Engineering Design and Construction Supervision and Management of the proposed Koronadal Public Market, without causing the publication of said invitation in a newspaper of general circulation, thereby excluding other consultants from participating in said prequalification.[10] (Emphases and underscoring added)

On motions separately filed by two of the petitioner's co-accused,[11] the Sandiganbayan ordered the Office of the Special Prosecutor (*OSP*) to conduct a reinvestigation. On August 21, 2000, the petitioner, through counsel, followed suit and orally moved for a reinvestigation, which the Sandiganbayan likewise granted. The Sandiganbayan gave the petitioner ten (10) days within which to file his counter-affidavit with the OSP.[12]

Instead of submitting his counter-affidavit, the petitioner asked[13] the Sandiganbayan for a thirty-day extension to submit his counter-affidavit. Shortly before the expiry of the extension requested, the petitioner asked[14] the OSP for an additional thirty-day period to file his counter-affidavit. Despite the two extensions

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[10] *Id.* at 117.

[11] On March 3, 2000 and June 5, 2000, Bonifacio M. Madarcos and Ernesto R. Lagdameo, Jr., respectively, filed a Motion for Reinvestigation; *id.* at 103-104.

[12] *Id.* at 104.

[13] Dated August 30, 2000; *ibid.*

[14] Dated September 28, 2000; *id.* at 105.

asked and granted, the petitioner asked the OSP anew for a twenty-day extension period.[15]

Despite the extension period asked and given, the petitioner failed to file his counter-affidavit, prompting Prosecutor Norberto B. Ruiz to declare that the petitioner had waived his right to submit countervailing evidence (April 25, 2001 resolution). On July 31, 2001, then Ombudsman Aniano Desierto approved the resolution.[16]

On August 7, 2001, Prosecutor Ruiz asked the Sandiganbayan for the arraignment and trial of the petitioner and of the other accused private individuals.[17]

On August 6, 2002, after several extensions sought and granted, the petitioner filed a Motion to Quash and/or Reinvestigation for the criminal cases against him. On February 18, 2003, the Sandiganbayan denied the petitioner's motion because of the pending OSP reinvestigation – this, despite the OSP's earlier termination of the reinvestigation for the petitioner's continuous failure to submit his counter-affidavit.[18] The petitioner did not question the denial of his motion.

On November 3, 2004, the petitioner was arraigned; he pleaded not guilty in both criminal cases.[19]

On April 28, 2005, the OSP filed a Motion to Suspend [the petitioner] *Pendente Lite*. On June 27, 2005, the petitioner filed his "Vigorous Opposition" based on the "obvious and fatal defect of the [i]nformation" in failing to allege that the giving of unwarranted benefits and advantages was done through manifest partiality, evident bad faith or gross inexcusable negligence.[20]

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[15] Dated October 29, 2000; *ibid.*

[16] *Id.* at 106.

[17] *Ibid.*

[18] *Id.* at 27.

[19] *Id.* at 6.

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

On January 25, 2006, the Sandiganbayan promulgated the assailed resolution[21] suspending the petitioner *pendente lite* –

> WHEREFORE, PREMISES CONSIDERED, the Prosecution's Motion is GRANTED. As prayed for, the Court hereby orders the suspension of [the petitioner] from his position as City Mayor, Koronadal City, South Cotabato, and from any other public position he now holds. His suspension shall be for a period of ninety (90) days only.[22]

On February 2, 2006, the petitioner moved for reconsideration of his suspension order and demanded for a pre-suspension hearing.[23] The Sandiganbayan denied his motion,[24] prompting him to file this *certiorari* petition to challenge the validity of his suspension order.

THE PETITION

The petitioner claims that the Sandiganbayan gravely abused its discretion in ordering his suspension despite the failure of the information to allege that the giving of unwarranted benefits and advantages *by the petitioner* was made through "manifest partiality, evident bad faith or gross inexcusable negligence." He alleges that the phrases "evident bad faith" and "manifest partiality" actually refers not to him, but to his co-accused,[25] rendering the information fatally defective.

The petitioner bewails the lack of hearing before the issuance of his suspension order. Citing *Luciano, et al. v. Hon. Mariano, etc., et al.*,[26] he claims that "[n]owhere in the records of the [case] can [one] see any order or resolution requiring the [p]etitioner to show cause at a specific date of hearing why he

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[21] *Id.* at 21-24.

[22] *Id.* at 24.

[23] *Id.* at 13.

[24] *Id.* at 26-28.

[25] *Id.* at 67.

[26] 148-B Phil. 178 (1971).

should not be ordered suspended."[27] For the petitioner, the requirement of a pre-suspension hearing can only be satisfied if the Sandiganbayan ordered an actual hearing to settle the "defect" in the information.

THE OSP'S COMMENT

The OSP argues for the sufficiency of the information since all the elements of the offense under Section 3(b) of R.A. No. 3019 are specifically pleaded by way of ultimate facts. These elements are:

1. The petitioner was the Municipal Mayor of Koronadal, South Cotabato at the time material to the acts complained of;
2. The petitioner acted with manifest partiality and evident bad faith when he invited only his co-accused private individuals to participate in the prequalification of consultants for the project instead of publishing it in a newspaper of general circulation; and
3. The petitioner's actions, performed in relation to his office, gave unwarranted benefits and advantages to his co-accused.[28]

The OSP faults the petitioner for his attempt to mislead the Court on the sufficiency of the allegations in the information, by conveniently failing to cite the phrase "acting with evident bad faith and manifest partiality" when the petitioner quoted the "relevant" portions of the information in his petition.

Citing *Juan v. People*,[29] the OSP argues that while no actual pre-suspension hearing was conducted, the events preceding the issuance of the suspension order already satisfied the purpose of conducting a pre-suspension hearing – *i.e.*, basically, to determine the validity of the information. Here, the petitioner

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[27] *Rollo*, pp. 13-14.

[28] *Rollo*, p. 45.

[29] 379 Phil. 125 (2000).

was afforded his right to preliminary investigation both by the Ombudsman and by the OSP (when the petitioner moved for a reinvestigation with the Sandiganbayan); the acts for which the petitioner was charged constitute a violation of R.A. No. 3019 and Title VII, Book II of the Revised Penal Code; and the petitioner already moved to quash the information, although unsuccessfully, after he had been declared to have waived his right to submit countervailing evidence in the reinvestigation by the OSP.[30]

ISSUES

There are only two issues presented for our resolution:

1. Whether the information, charging the petitioner with violation of Section 3(e) of R.A. No. 3019, is valid; and
2. If it is valid, whether the absence of an actual pre-suspension hearing renders invalid the suspension order against the petitioner.

THE COURT'S RULING

We dismiss the petition for failure to establish any grave abuse of discretion in the issuance of the assailed resolutions.

The information for violation of R.A. No. 3019 is valid

In deference to the constitutional right of an accused to be informed of the nature and the cause of the accusation against him,[31] Section 6, Rule 110 of the Revised Rules of Criminal Procedure (Rules)[32] requires, *inter alia*, that the information

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[30] Citing *Socrates v. Sandiganbayan*, 324 Phil. 151 (1996).

[31] CONSTITUTION, Article III, Section 14(2).

[32] Section 6, Rule 110 of the Revised Rules of Criminal Procedure reads:

SEC. 6. *Sufficiency of complaint or information.* — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate

shall state the designation of the offense given by the statute and the acts or omissions imputed which constitute the offense charged. Additionally, the Rules requires that these acts or omissions and its attendant circumstances "must be stated in ordinary and concise language" and "in terms sufficient to enable a person of common understanding to know what offense is being charged x x x and for the court to pronounce judgment."[33]

The test of the information's sufficiency is whether the crime is described in intelligible terms and with such particularity with reasonable certainty so that the accused is duly informed of the offense charged. In particular, whether an information validly charges an offense depends on whether the material facts alleged in the complaint or information shall establish the essential elements of the offense charged as defined in the law. The *raison d'etre* of the requirement in the Rules is to enable the accused to suitably prepare his defense.[34]

In arguing against the validity of the information, the petitioner appears to go beyond the standard of a "person of common understanding" in appreciating the import of the phrase "acting with evident bad faith and manifest partiality." A reading of the information clearly reveals that the phrase "*acting* with evident bad faith and manifest partiality" was merely a continuation of the prior allegation of the acts *of the petitioner*, and that he ultimately acted with evident bad faith and manifest partiality

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date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[33] Section 9, Rule 110 of the Revised Rules of Criminal Procedure reads:

SEC. 9. *Cause of the accusation.* — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment.

[34] *Lazarte, Jr. v. Sandiganbayan*, G.R. No. 180122, March 13, 2009, 581 SCRA 431.

in giving unwarranted benefits and advantages to his co-accused private individuals. This is what a plain and non-legalistic reading of the information would yield.

Notably, in his petition, the petitioner would have us believe that this elemental phrase was actually omitted in the information[35] when, in his reaction to the OSP's comment, what the petitioner actually disputes is simply the *clarity* of the phrase's position, in relation with the other averments in the information. Given the supposed ambiguity of the subject being qualified by the phrase "acting with evident bad faith and manifest partiality," the remedy of the petitioner, if at all, is merely to move for a bill of particulars and not for the quashal of an information which sufficiently alleges the elements of the offense charged.[36]

The pre-suspension order is valid

Section 13 of R.A. No. 3019 reads:

> Section 13. *Suspension and loss of benefits.* Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

While the suspension of a public officer under this provision is mandatory,[37] the suspension requires a prior hearing to determine "the validity of the information"[38] filed against him,

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[35] See *Dela Chica v. Sandiganbayan*, G.R. No. 144823, December 8, 2003, 417 SCRA 242.

[36] REVISED RULES OF CRIMINAL PROCEDURE, Rule 116, Section 9; and *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004, 435 SCRA 371, 388-389.

[37] *Flores v. Layosa*, G.R. No. 154714, August 12, 2004, 436 SCRA 337, 345.

[38] *Luciano, et al. v. Hon. Mariano, etc., et al., supra* note 26, at 183-184; and *People v. Albano*, Nos. L-45376-77, July 26, 1988, 163 SCRA 511, 517.

"taking into account the serious and far reaching consequences of a suspension of an elective public official even before his conviction."[39] The accused public official's right to challenge the validity of the information before a suspension order may be issued includes the right to challenge the (i) validity of the criminal proceeding leading to the filing of an information against him, and (ii) propriety of his prosecution on the ground that the acts charged do not constitute a violation of R.A. No. 3019 or of the provisions on bribery of the Revised Penal Code.[40]

In *Luciano v. Mariano*[41] that the petitioner relied upon, the Court required, "by way of broad guidelines for the lower courts in the exercise of the power of suspension," that –

(c) …upon the filing of such information, **the trial court should issue an order with proper notice requiring the accused officer to show cause** at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. **Where either the prosecution seasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show-cause order of the trial court would no longer be necessary**. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information or withholding such suspension in the contrary case.

(d) **No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge** the validity of the criminal proceedings against him, *e.g.* that he has not been afforded the right of due preliminary investigation; that the acts for which he stands charged do not constitute a violation of the provisions of Republic Act No. 3019 or of the bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from

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[39] *Ibid.*

[40] *People v. Albano, supra* note 38, at 518-519; and *Socrates v. Sandiganbayan, supra* note 30, at 179.

[41] *Supra* note 26, at 192-193.

office under Section 13 of the Act; or he may present a motion to quash the information on any of the grounds provided in Rule 117 of the Rules of Court. (Emphasis supplied)

The petitioner questions the absence of any show cause order issued by the Sandiganbayan before his suspension in office was ordered. As clear as the day, however, *Luciano* considered it unnecessary for the trial court to issue a show cause order when the motion, seeking the suspension of the accused *pendente lite*, has been submitted by the prosecution, as in the present case.

The purpose of the law in requiring a pre-suspension hearing is to determine the validity of the information so that the trial court can have a basis to either suspend the accused and proceed with the trial on the merits of the case, withhold the suspension and dismiss the case, or correct any part of the proceedings that impairs its validity. That hearing is similar to a challenge to the validity of the information by way of a motion to quash.[42]

While a pre-suspension hearing is aimed at securing for the accused **fair and adequate opportunity** to challenge the validity of the information or the regularity of the proceedings against him,[43] *Luciano* likewise emphasizes that no hard and fast rule exists in regulating its conduct.[44] With the purpose of a pre-suspension hearing in mind, the absence of an *actual* hearing alone cannot be determinative of the validity of a suspension order.

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[42] *Talaga, Jr. v. Sandiganbayan*, G.R. No. 169888, November 11, 2008, 570 SCRA 622, 632.

[43] *Segovia v. Sandiganbayan*, G.R. No. 124067, March 27, 1998, 288 SCRA 328, 339.

[44] *Santiago v. Sandiganbayan*, G.R. No. 128055, April 18, 2001, 356 SCRA 636, 645; and *Flores v. Layosa*, G.R. No. 154714, August 12, 2004, *supra* note 37, at 345-346.

In *Bedruz v. Sandiganbayan*,[45] the Court considered the opposition of the accused (to the prosecution's motion to suspend *pendente lite*) as sufficient to dispense with the need to actually set the prosecution's motion for hearing. The same conclusion was reached in *Juan v. People*,[46] where the Court ruled:

> In the case at bar, while there was no pre-suspension hearing held to determine the validity of the Informations that had been filed against petitioners, we believe that the numerous pleadings filed for and against them have achieved the goal of this procedure. The right to due process is satisfied nor just by an oral hearing but by the filing and the consideration by the court of the parties' pleadings, memoranda and other position papers.

Since a pre-suspension hearing is basically a due process requirement, when an accused public official is given an adequate opportunity to be heard on his possible defenses against the mandatory suspension under R.A. No. 3019, then an accused would have no reason to complain that no actual hearing was conducted.[47] It is well settled that "to be heard" does not only mean oral arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, has been accorded, no denial of procedural due process exists.[48]

In the present case, the petitioner (i) filed his Vigorous Opposition (to the OSP's Motion to Suspend Accused *Pendente Lite*), and after receiving an adverse ruling from the Sandiganbayan, (ii) moved for reconsideration of the suspension order issued against him, and (iii) filed a Reply to the OSP's Opposition to his plea for reconsideration.[49] Given this opportunity, we find

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[45] G.R. No. 161640, December 9, 2005, 513 Phil. 400 (2005).

[46] *Supra* note 29, at 140.

[47] *Flores v. Layosa*, *supra* note 37, at 345-346.

[48] *Tan v. Atty. Balon, Jr.*, A.C. No. 6483, August 31, 2007, 531 SCRA 645, 655-656.

[49] *Rollo*, p. 109.

that the petitioner's continued demand for the conduct of an actual pre-suspension hearing — based on the same alleged "defect in the information,"[50] which we have found wanting — has legally nothing to anchor itself on.

Another reason that militates against the petitioner's position relates to the nature of Section 13 of R.A. No. 3019; it is *not* a penal provision that would call for a liberal interpretation in favor of the accused public official and a strict construction against the State.[51] The suspension required under this provision is ***not* a penalty**, as it is not imposed as a result of judicial proceedings; in fact, if acquitted, the accused official shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during his suspension.[52]

Rather, the suspension under Section 13 of R.A. No. 3019 is a mere **preventive measure**[53] that arises from the legal presumption that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused.[54]

Suspension under R.A. No. 3019 being a mere preventive measure whose duration shall in no case exceed ninety (90) days,[55] the adequacy of the opportunity to contest the validity

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[50] *Id.* at 95.

[51] *Villaseñor v. Sandiganbayan*, G.R. No. 180700, March 4, 2008, 547 SCRA 658, 666-668.

[52] *Bayot v. Sandiganbayan*, No. 61776 to No. 61861, March 23, 1984, 128 SCRA 383.

[53] *Villaseñor v. Sandiganbayan*, *supra* note 50, at 666-667; and *Segovia v. Sandiganbayan*, *supra* note 43, at 336.

[54] *Bolastig v. Sandiganbayan*, G.R. No. 110503, August 4, 1994, 235 SCRA 103, 108.

[55] *Deloso v. Sandiganbayan*, G.R. Nos. 86899-903, May 15, 1989, 173 SCRA 409, 419.

of the information and of the proceedings that preceded its filing *vis-à-vis* the merits of the defenses of the accused cannot be measured alone by the absence or presence of an actual hearing. An opportunity to be heard on one's defenses, however unmeritorious it may be, against the suspension mandated by law equally and sufficiently serves both the due process right of the accused and the mandatory nature of the suspension required by law.

Lest it be forgotten, Section 13 of R.A. No. 3019 reinforces the principle enshrined in the Constitution that a public office is a public trust.[56] In light of the constitutional principle underlying the imposition of preventive suspension of a public officer charged under a valid information and the nature of this suspension, the petitioner's demand for a trial-type hearing in the present case would only overwhelmingly frustrate, rather than promote, the orderly and speedy dispensation of justice.

WHEREFORE, we hereby **DISMISS** the petition for lack of merit.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

[56] CONSTITUTION, Article XI, Section 1; *Berona v. Sandiganbayan,* G.R. No. 142456, July 27, 2004, 435 SCRA 303.

THIRD DIVISION

[G.R. No. 172438. July 4, 2012]

METROPOLITAN CEBU WATER DISTRICT, *petitioner, vs.* **MACTAN ROCK INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); RATIONALE FOR ITS CREATION.— The Construction Industry Arbitration Commission *(CIAC)* was created in 1985 under Executive Order *(E.O.)* No. 1008 (Creating an Arbitration Machinery for the Philippine Construction Industry), in recognition of the need to establish an arbitral machinery that would expeditiously settle construction industry disputes. The prompt resolution of problems arising from, or connected to, the construction industry was considered necessary and vital for the fulfillment of national development goals, as the construction industry provided employment to a large segment of the national labor force, and was a leading contributor to the gross national product.

2. ID.; ID.; ID.; SCOPE OF JURISDICTION.— The jurisdiction of the CIAC as a quasi-judicial body is confined to construction disputes, that is, those arising from, or connected to, contracts involving "all on-site works on buildings or altering structures from land clearance through completion including excavation, erection and assembly and installation of components and equipment." The CIAC has jurisdiction over all such disputes whether the dispute arises before or after the completion of the contract.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A FINAL AND EXECUTORY JUDGMENT IS BEYOND THE JURISDICTION OF ANY COURT TO REVIEW OR MODIFY.— This Court has held time and again that a final and executory judgment, no matter how erroneous, cannot be changed, even by this Court. Nothing is more settled in law than that once a judgment attains finality, it thereby becomes immutable and unalterable. It may no longer be modified in

any respect, even if such modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. In its Decision in the First Petition, the CA affirmed the arbitral body's finding in CIAC Case No. 12-2004 that the case was within its jurisdiction. Such decision having become final, it is beyond the jurisdiction of this Court, or any court or body, for that matter, to review or modify, even supposing for the sake of argument, that it is indeed erroneous.

4. ID.; ID.; *LITIS PENDENCIA*; A DIVISION OF THE COURT OF APPEALS (CA) MAY REFUSE TO RENDER JUDGMENT ON THE ISSUE OF JURISDICTION WHEN SUCH ISSUE IS STILL PENDING BEFORE ANOTHER DIVISION OF THE SAME COURT.— The 19th Division was correct in refusing to render judgment on the issue of jurisdiction as, at that time, the issue was still pending before another division of the CA. *Litis pendentia* is predicated on the principle that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. It is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits. With the two petitions then pending before the CA, all the elements of *litis pendentia* were present, that is, identity of the parties in the two actions, substantial identity in the causes of action and in the reliefs sought by the parties, and identity between the two actions such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other. In both cases, MCWD was the petitioner and MRII, the respondent. Although they differ in form, in essence, the two cases involved a common issue, that is, MCWD's challenge to the jurisdiction of the CIAC over the arbitration proceedings arising from the Water Supply Contract between the petitioner and respondent.

5. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); JURISDICTION; CIAC HAS JURISDICTION TO ORDER

THE REFORMATION OF A WATER SUPPLY CONTRACT.— The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. It cannot be fixed by the will of the parties to the dispute, nor can it be expanded or diminished by stipulation or agreement. The text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. This jurisdiction cannot be altered by stipulations restricting the nature of construction disputes, appointing another arbitral body, or making that body's decision final and binding. Thus, unless specifically excluded, all incidents and matters relating to construction contracts are deemed to be within the jurisdiction of the CIAC. Based on the previously cited provision outlining the CIAC's jurisdiction, it is clear that with regard to contracts over which it has jurisdiction, the only matters that have been excluded by law are disputes arising from employer-employee relationships, which continue to be governed by the Labor Code of the Philippines. Moreover, this is consistent with the policy against split jurisdiction. x x x Where the law does not delineate, neither should we. Neither the provisions of the Civil Code on reformation of contracts nor the law creating the CIAC exclude the reformation of contracts from its jurisdiction. Jurisprudence further dictates that the grant of jurisdiction over related and incidental matters is implied by law. Therefore, because the CIAC has been held to have jurisdiction over the Contract, it follows that it has jurisdiction to order the reformation of the Contract as well.

6. ID.; ID.; ID.; CIAC MAY STILL PROCEED WITH THE ARBITRATION PROCEEDINGS ALTHOUGH ONE OF THE PARTIES REFUSED TO PARTICIPATE IN SUCH PROCEEDINGS; EFFECTS.— Though one party can refuse to participate in the arbitration proceedings, this cannot prevent the CIAC from proceeding with the case and issuing an award in favor of one of the parties. Section 4.2 of the Revised Rules of Procedure Governing Construction Arbitration (*CIAC Rules*) specifically provides that where the jurisdiction of the CIAC is properly invoked by the filing of a Request for Arbitration in accordance with CIAC Rules, the failure of a respondent to appear, which amounts to refusal to arbitrate, will not stay the

> proceedings, notwithstanding the absence of the respondent or the lack of participation of such party. In such cases, the CIAC is mandated to appoint the arbitrator/s in accordance with the Rules, and the arbitration proceedings shall continue. The award shall then be made after receiving the evidence of the claimant. In such a case, all is not lost for the party who did not participate. Even after failing to appear, a respondent is still given the opportunity, under the CIAC Rules, to have the proceedings reopened and be allowed to present evidence, although with the qualification that this is done before an award is issued[.] x x x In this case, there being a valid arbitration clause mutually stipulated by the parties, they are both contractually bound to settle their dispute through arbitration before the CIAC. MCWD refused to participate, but this should not affect the authority of the CIAC to conduct the proceedings, and, thereafter, issue an arbitral award.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Jesusito G. Morallos Follosco Morallos & Herce for respondent.
Arlene G. Lapuz-Ureta for Garnishee Merchants Savings Bank & Loan Association.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 assailing the February 20, 2006 Decision[1] and the March 30, 2006 Resolution[2] of the Court of Appeals *(CA)* in CA–G.R. CEB SP. No. 00623.

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[1] *Rollo*, pp. 23-31. Nineteenth Division, penned by Associate Justice Isaias P. Dicdican, with Associate Justice Ramon M. Bato, Jr. and Associate Justice Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 43-44.

THE FACTS

Petitioner Metropolitan Cebu Water District *(MCWD)* is a government-owned and controlled corporation *(GOCC)* created pursuant to Presidential Decree *(PD)* No. 198,[3] as amended, with its principal office address at the MCWD Building, Magallanes corner Lapu-Lapu Streets, Cebu City.[4] It is mandated to supply water within its service area in the cities of Cebu, Talisay, Mandaue, and Lapu-Lapu and the municipalities of Compostela, Liloan, Consolacion, and Cordova in the Province of Cebu.[5]

Respondent Metro Rock Industries, Inc. *(MRII)* is a domestic corporation with principal office address at the 2nd Level of the Waterfront Cebu Hotel and Casino, Lahug, Cebu City.[6]

On May 19, 1997, MCWD entered into a Water Supply Contract[7] *(the Contract)* with MRII wherein it was agreed that the latter would supply MCWD with potable water, in accordance with the World Health Organization *(WHO)* standard or the Philippine national standard, with a minimum guaranteed annual volume.[8]

On March 15, 2004, MRII filed a Complaint[9] against MCWD with the Construction Industry Arbitration Commission *(CIAC)*, citing the arbitration clause (Clause 18)[10] of the Contract. The

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[3] Provincial Water Utilities Act of 1973.

[4] *Rollo*, p. 2.

[5] *Id.* at 24.

[6] *Id.* at 2-3.

[7] *Id.* at 45-50.

[8] *Id.* at 24.

[9] *Id.* at 51-68.

[10] "V. DISPUTES AND JURISDICTION:

18. Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, if the same cannot be settled amicably, may be submitted for arbitration to an Arbitration Tribunal in accordance with Executive Order No. 1008 dated 4 February 1985, otherwise

case was docketed as CIAC Case No. 12-2004. In the said complaint, MRII sought the reformation of Clause 17 of the Contract, or the Price Escalation/De-Escalation Clause, in order to include Capital Cost Recovery in the price escalation formula, and to have such revised formula applied from 1996 when the bidding was conducted, instead of from the first day when MRII started selling water to MCWD. It also sought the payment of the unpaid price escalation/adjustment, and the payment of unpaid variation/extra work order and interest/cost of money up to December 31, 2003.[11]

On May 7, 2002, MCWD filed its Answer[12] dated April 27, 2004, which included a motion to dismiss the complaint on the ground that the CIAC had no jurisdiction over the case, as the Contract was not one for construction or infrastructure.

The CIAC thereafter issued an order[13] denying MCWD's motion to dismiss, and calling the parties to a preliminary conference for the review and signing of the Terms of Reference.[14]

MCWD, thus, filed a petition for *certiorari*[15] under Rule 65 with the CA, questioning the jurisdiction of the CIAC. The petition was docketed as CA-G.R. SP. No. 85579 *(First Petition).*

Meanwhile, the CIAC proceeded with the preliminary conference scheduled on June 10 and July 22, 2004 which MWCD opted not to attend. MRII and the CIAC both signed the Terms of Reference. Pursuant to the Terms of Reference

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known as the Construction Industry Arbitration Law and the place of arbitration shall be the City of Cebu, Philippines, otherwise said dispute or controversy arising out of the contract or breach thereof shall be submitted to the court of law having jurisdiction thereof (sic) where MCWD is located."

[11] *Rollo*, pp. 66-67.

[12] *Id.* at 69-82.

[13] *Id.* at 83-84.

[14] *Id.* at 85-90.

[15] *Id.* at 91-100.

and the CIAC Order dated July 22, 2004, MRII submitted its documentary evidence and affidavits of its witnesses.[16]

On August 27, 2004, MRII submitted its Formal Offer of Evidence and its memorandum of arguments in the form of a proposed/draft decision. MCWD did not attend the hearings. It did not submit evidence other than those annexed to its Answer. Neither did it file a formal offer of evidence, or a memorandum of legal arguments.[17]

Decision of the CIAC

The CIAC promulgated its Decision[18] on April 14, 2005, the dispositive portion of which reads:

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

1. Ordering the reformation of Clause 17 of the Water Supply Contract to read:

17[.] Price Escalation and/or De-Escalation shall be based on the parametric formula:

17.1 Power Rate Price Adjustment/Power Cost Adjustment

$$\frac{\text{Current Power Rate - Base Power Rate}}{\text{Base Power Rate}} \times 30\% \text{ of base selling price of water}$$

17.2 Consumer Price Index (CPI) Adjustment/Operating Cost Adjustment:

$$\frac{\text{Current CPI – Base CPI}}{\text{Base CPI}} \times 40\% \text{ of base selling price of water}$$

17.3 Capital Cost Recovery Adjustment:

$$\frac{\text{Current Peso to Base Peso to US\$ US\$ Exchange Rate – Exchange Rate}}{\text{Base Peso to US \$ Exchange Rate}} \times 30\% \text{ of base selling price of water}$$

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[16] *Id.* at 25.

[17] *Id.*

[18] *Id.* at 101-120, with Chairperson Guadalupe O. Mansueto and Eliseo I. Evangelista, concurring and Federico Y. Alikpala, Jr., dissenting.

Price escalation shall be reckoned from January 1999 when the water was first delivered by Mactan Rock Industries, Inc. to the MCWD facilities in Mactan. The base CPI, base US$ Exchange Rate and the Base Power Rate shall be the prevailing rate in January 1999, while the Base Selling Price of water shall mean the 1996 rate per cubic meter of water as provided for in the Water Supply Contract.

2. Ordering Respondent Metropolitan Cebu Water District to pay Claimant, Mactan Rock Industries, Inc[.] under the reformed Clause 17 of the Water Supply Contract, the net amount of **Php12,126,296.70** plus legal interest of six percent (6%) per annum from the (sic) March 15, 2004, the date of filling (sic) of the case with the Construction Industry Arbitration Commission, the rate increased to twelve percent (12%) per annum from the date the herein Decision have (sic) become final and executory until the foregoing amounts shall have been fully paid[.]

3. Claimant Mactan Rock Industries, Inc. and Metropolitan Cebu Water District shall share equally the cost of arbitration.

SO ORDERED.[19]

Decision of the CA in CA-G.R. SP No. 85579 *- Petition for certiorari under Rule 65 with the Court of Appeals questioning the jurisdiction of the CIAC*

Meanwhile, on October 28, 2005, the CA in its decision[20] in the First Petition upheld the jurisdiction of the CIAC over the case. The CA held that when parties agree to settle their disputes arising from or connected with construction contracts, the CIAC acquires primary jurisdiction.[21] Citing *Philrock Inc. v.*

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

[20] *Id.* at 131-138. Eighteenth Division, penned by Executive Justice Mercedes Gozo-Dadole, with Associate Justice Pampio A. Abarintos and Associate Justice Enrico A. Lanzanas, concurring.

[21] *Id.* at 135.

Construction Industry Arbitration Commission,[22] the CA stated that the CIAC may resolve not only the merits of such controversies, but may also award damages, interest, attorney's fees, and expenses of litigation, when appropriate.[23]

Second, the CA held that the claims in question fall under the jurisdiction of the CIAC. Thus:

> Xxx Section 4 of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law delineates CIAC's jurisdiction as "original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arise before or after the completion of the contract, or after abandonment thereof." Moreover, Section 5 (k) of Republic Act No. 9184 otherwise known as [the] Government Procurement Reform Act expressly defines "infrastructure project" as including "water supply[,]" construction, rehabilitation[,] demolition, repair, restoration and maintenance.
>
> Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration. It is to be highlighted that the dispute in the case at bar arose from the parties' incongruent positions with regard to clause 17 of the Water Supply Contract[,] specifically the price escalation/adjustment. The instant case involves technical discrepancies that are better left to an arbitral body that has expertise in those areas. Nevertheless, in any event, the inclusion of an arbitration clause in a contract does not *ipso facto* divest the courts of jurisdiction to pass upon the findings of arbitral bodies, because the awards are still judicially reviewable under certain conditions.[24] (Citations omitted.)

MCWD's motion for reconsideration of the decision in the First Petition was still pending when it filed the petition for

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[22] 412 Phil. 236 (2001), cited at *rollo*, p. 135.

[23] *Rollo*, p. 135.

[24] *Id.* at 137-138.

review[25] under Rule 43 *(Second Petition)* appealing the decision of the CIAC. The motion for reconsideration was eventually denied in a Resolution[26] dated May 3, 2006. MCWD did not appeal from the denial of the motion. It, thus, became final and executory.[27]

Decision of the CA in CA-G.R. CEB SP. No. 00623 *– Petition for review under Rule 43 appealing the decision of the CIAC*

Aggrieved by the CIAC Decision, MCWD filed a petition for review under Rule 43 with the CA which was docketed as CA-G.R. CEB SP. No. 00623.

The CA, however, dismissed the petition in its Decision dated February 20, 2006. The Court therein stated that the issue of jurisdiction had already been resolved by the 18th Division in the First Petition, where the CA upheld the jurisdiction of the CIAC over Arbitration Case No. 12-2004.

Citing jurisprudence, the CA also ruled that there being an arbitration clause in the Contract, the action for reformation of contract instituted by MRII in this case fell squarely within the jurisdiction of the CIAC, not the courts. In relation to this, the CA noted that the present rule is that courts will look with favor upon amicable agreements to settle disputes through arbitration, and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator. MCWD being a signatory and a party to the Water Supply Contract, it cannot escape its obligation under the arbitration clause.[28]

The CA also held that the CIAC did not err in finding that the Water Supply Contract is clear on the matter of the reckoning period for the computation of the escalation cost from January 9,

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[25] CA *rollo*, pp. 2-18.

[26] *Rollo*, pp. 203-204.

[27] *Id.* at 171 and 394.

[28] *Rollo*, p. 28.

1999, or the first day of delivery of water. Moreover, the CA found that the CIAC did not err in ruling that the contract be reformed to include Capital Cost Recovery in the parametric formula for price escalation. Neither did it err in holding that the Capital Cost Recovery shall be 30% of the Base Selling Price of water as a consequence of the reformation of Clause 17.

Finally, the CA stressed that "factual findings of administrative agencies which are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect but even finality when supported by substantial evidence."[29]

MCWD filed a motion for reconsideration but it was denied in the CA Resolution dated March 30, 2006.

Thus, this petition.

ISSUES

MCWD raises the following issues in its petition for review:

MAY THE CONSTRUCTION INDUSTRY [ARBITRATION] COMMISSION EXERCISE JURISDICTION OVER DISPUTES ARISING FROM A WATER SUPPLY CONTRACT?

MAY A PARTY, WHO IS A SIGNATORY TO THE WATER SUPPLY CONTRACT[,] IN EFFECT SUBMITTING ITSELF TO THE JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION, QUESTION THE JURISDICTION OF [THE] CIAC?

DOES THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION HAVE THE (SIC) JURISDICTION OVER A COMPLAINT PRAYING FOR A REFORMATION OF A WATER SUPPLY CONTRACT?

MAY THE COURT OF APPEALS REFUSE TO RENDER A [SIC] JUDGMENT ON AN ISSUE BECAUSE THIS HAS BEEN ALREADY SETTLED IN A DECISION RENDERED BY ANOTHER DIVISION OF THE COURT OF APPEALS IN A PETITION FOR *CERTIORARI*, EVEN IF THE SAID DECISION

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

HAS NOT YET BEEN (SIC) FINAL DUE TO A TIMELY FILING OF A MOTION FOR RECONSIDERATION?[30]

RULING OF THE COURT

Creation of the CIAC

The Construction Industry Arbitration Commission *(CIAC)* was created in 1985 under Executive Order *(E.O.)* No. 1008 (Creating an Arbitration Machinery for the Philippine Construction Industry), in recognition of the need to establish an arbitral machinery that would expeditiously settle construction industry disputes. The prompt resolution of problems arising from, or connected to, the construction industry was considered necessary and vital for the fulfillment of national development goals, as the construction industry provided employment to a large segment of the national labor force, and was a leading contributor to the gross national product.[31]

Under Section 4 of E.O. No. 1008, the CIAC's jurisdiction was specifically delineated as follows:

> **SECTION 4. Jurisdiction** – The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arise before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

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[30] *Id.* at 10-11.

[31] *Licomcen Incorporated v. Foundation Specialists, Inc.*, G.R. Nos. 167022 and 169678, April 4, 2011, 647 SCRA 83, 96.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Underscoring supplied)

The jurisdiction of the CIAC as a quasi-judicial body is confined to construction disputes,[32] that is, those arising from, or connected to, contracts involving "all on-site works on buildings or altering structures from land clearance through completion including excavation, erection and assembly and installation of components and equipment."[33] The CIAC has jurisdiction over all such disputes whether the dispute arises before or after the completion of the contract.[34]

Whether the CIAC has jurisdiction over the dispute

As earlier stated, following the denial of its motion to dismiss by CIAC, MCWD filed the First Petition with the CA, which decided in favor of MRII and upheld the jurisdiction of the CIAC.

Not being in conformity, MCWD filed a motion for reconsideration.

While the said motion was pending with the CA, MCWD filed the Second Petition with the same court. Eventually, the motion was denied, and MCWD never appealed the case. Thus, the decision of the CA in the First Petition became final and executory.

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[32] *National Housing Authority v. First United Constructors Corporation*, G.R. No. 176535, September 7, 2011, 657 SCRA 175, 210-211.

[33] *Fort Bonifacio Development Corporation v. Sorongon*, G.R. No. 176709, May 8, 2009, 587 SCRA 613, 621, citing *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, 516 Phil. 561, 569 (2006). See also *Fort Bonifacio Development Corporation v. Domingo*, G.R. No. 180765, February 27, 2009, 580 SCRA 397, 407.

[34] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 373 (1999).

The question now is whether such final and executory decision is binding such that courts are generally precluded from passing judgment on the issue of jurisdiction in the present petition.

The Court finds in the affirmative.

This Court has held time and again that a final and executory judgment, no matter how erroneous, cannot be changed, even by this Court. Nothing is more settled in law than that once a judgment attains finality, it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if such modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[35]

In its Decision in the First Petition, the CA affirmed the arbitral body's finding in CIAC Case No. 12-2004 that the case was within its jurisdiction. Such decision having become final, it is beyond the jurisdiction of this Court, or any court or body, for that matter, to review or modify, even supposing for the sake of argument, that it is indeed erroneous.

Also, the parties apparently characterized the Contract as one involving construction, as its arbitration clause specifically refers disputes, controversies or claims arising out of or relating to the Contract or the breach, termination or validity thereof, if the same cannot be settled amicably, to an arbitration tribunal, in accordance with E.O. No. 1008, or the Construction Industry Arbitration Law:

V. DISPUTES AND JURISDICTION:

18. Any dispute, controversy or claim arising out of or relating to this contract or the breach, termination or invalidity thereof, if the same cannot be settled amicably, may be submitted for arbitration to an Arbitration Tribunal in accordance with Executive Order No. 1008 dated 4 February 1985, otherwise known as the Construction

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[35] *Heirs of Maximino Derla v. Heirs of Catalina Derla Vda. De Hipolito*, G.R. No. 157717, April 13, 2011, 648 SCRA 638, 653, citing *Dapar v. Biascan*, 482 Phil. 385, 405 (2004).

Industry Arbitration Law and the place of arbitration shall be the City of Cebu, Philippines, otherwise said dispute or controversy arising out of the contract or breach thereof shall be submitted to the court of law having jurisdiction thereof in the city where MCWD is located.[36]

Had the parties been of the mutual understanding that the Contract was *not* of construction, they could have instead referred the matter to arbitration citing Republic Act *(R.A.)* No. 876, or The Arbitration Law. Having been passed into law in 1953, the said statute was already in existence at the time the contract was entered into, and could have been applied to arbitration proceedings other than those specifically within the arbitral jurisdiction of the CIAC.

Whether the CA erred in refusing to render judgment on the issue of jurisdiction

On a related matter, MWCD also raises the issue of whether the 19th Division of the CA, Cebu City, erred in refusing to render judgment on the issue of jurisdiction raised in the Second Petition on the ground that it had already been settled by the 18th Division in its decision in the First Petition, even if the 18th Division decision had not yet become final due to a timely filing of a motion for reconsideration.

The Court rules in the negative.

The 19th Division was correct in refusing to render judgment on the issue of jurisdiction as, at that time, the issue was still pending before another division of the CA.

Litis pendentia is predicated on the principle that a party should not be allowed to vex another more than once regarding the same subject matter and for the same cause of action. It is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided

[36] *Rollo*, p. 49.

for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits.[37]

With the two petitions then pending before the CA, all the elements of *litis pendentia* were present, that is, identity of the parties in the two actions, substantial identity in the causes of action and in the reliefs sought by the parties, and identity between the two actions such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[38]

In both cases, MCWD was the petitioner and MRII, the respondent. Although they differ in form, in essence, the two cases involved a common issue, that is, MCWD's challenge to the jurisdiction of the CIAC over the arbitration proceedings arising from the Water Supply Contract between the petitioner and respondent.

To determine whether there is identity of the rights asserted and reliefs prayed for, grounded on the same facts and bases, the following tests may be utilized: (1) whether the same evidence would support and sustain both the first and the second causes of action, also known as the "same evidence" test; or (2) whether the defenses in one case may be used to substantiate the complaint in the other.[39] Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first case.[40]

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[37] *Subic Telecommunications Co., Inc. v. Subic Bay Metropolitan Authority*, G.R. No. 185159, October 12, 2009, 603 SCRA 470, 481-482.

[38] *Umale v. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 161.

[39] *Cabreza, Jr. v. Cabreza*, G.R. No. 181962, January 16, 2012 and *Umale v. Canoga Park Development Corporation*, G.R. No. 167246, July 20, 2011, 654 SCRA 155, 162. (Citations omitted in both cases.)

[40] *Umale v. Canoga Park Development Corporation*, *supra* note 38.

In the First Petition, MCWD argued that the CIAC's issuance of its Order[41] dated May 28, 2004 was tainted with grave abuse of discretion amounting to excess or lack of jurisdiction. Thus, MCWD stated in its prayer:

> WHEREFORE, in light of the premises laid down, petitioner most respectfully prays:
>
> 1. Upon the filing of this Petition, a Writ of Preliminary Injunction or restraining order be issued forthwith, enjoining the respondent from proceeding with the hearing of the case until further orders from the Honorable Court of Appeals;
>
> 2. After consideration, petitioner also prays that the Order dated May 28, 2004, denying petitioner's motion to dismiss be declared without force and effect;
>
> 3. Petitioner also prays that the Construction Industry Arbitration Commission be barred from hearing the case filed by Mactan Rock Industries, Inc., private respondent herein.
>
> Other measures of relief, which are just and equitable under the foregoing premise are also prayed for.[42]

The Second Petition, on the other hand, raised the following issues:

> a. Whether or not the Arbitral Tribunal of CIAC gravely erred in taking and exercising jurisdiction over the complaint filed by the respondent;
>
> b. Whether or not the Arbitral Tribunal of CIAC gravely erred in reforming Clause 17 of the Contract;
>
> c. Whether or not the same tribunal gravely committed an error in considering Capital Cost Recovery Adjustment in awarding in favor of the complainant, when the same is extraneous to the provisions of the contract;[43]

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[41] *Rollo*, pp. 83-84.

[42] *Id.* at 98.

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

Thus, it prayed:

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of the Honorable Court that a Judgment be issued reversing the findings of the Arbitral Tribunal of the Construction Industry Arbitration Commission in its Decision dated April 14, 2005, as far as the order of reformation of the water supply contract and in granting the monetary award.

It is further prayed that the decision rendered by the Arbitral Tribunal be declared invalid for want of jurisdiction to arbitrate and to order the reformation of the water supply contract;

It is also prayed that the decision awarding money to the respondent be strike (sic) down as erroneous and without legal basis for lack of jurisdiction by the Arbitral Tribunal, which rendered the Decision.

It is also prayed that a Temporary Restraining Order and a Writ of Preliminary Injunction be issued at the outset, ordering the stay of execution pending the resolution of the issues raised in the Petition.

Other measures of relief, which are just and equitable, are also prayed for.[44]

In both cases, the parties also necessarily relied on the same laws and arguments in support of their respective positions on the matter of jurisdiction.

In the First Petition, in support of its argument, that the CIAC had no jurisdiction to arbitrate the causes of action raised by MRII, MCWD cited the portions of the Contract on the obligations of the water supplier, E.O. No. 1008 (specifically Section 4 on jurisdiction), the Rules of Procedure Governing Construction Arbitration (Section 1, Article III). It also alleged that in issuing the order denying its motion to dismiss, the CIAC misread the provisions of LOI No. 1186 and R.A. No. 9184 on the definition of an infrastructure project.[45]

MRII, however, opined that the CIAC had jurisdiction over the complaint and, therefore, correctly denied petitioner's motion

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[44] *Id.* at 15.

[45] *Rollo,* pp. 94-96.

to dismiss. MRII argued that *certiorari* was not a proper remedy in case of denial of a motion to dismiss and that the claims fell squarely under CIAC's original and exclusive jurisdiction. MRII, in support of its position, cited Section 1 of LOI No. 1186 and Section 5(k) of R.A. No. 9184. MRII further proposed that, as shown by MCWD's pro-forma Water Supply Contract, Specifications, Invitation to Submit Proposal, Pre-Bid Conference minutes, Addendum No. 1, and MRII's Technical and Financial Proposals, the undertaking contemplated by the parties is one of infrastructure and of works, rather than one of supply or mere services.[46]

In the Second Petition, in support of the issue of jurisdiction, MCWD again relied on Section 4 of E.O. No. 1008 and Section 1, Article III of the Rules of Procedure Governing Construction Arbitration. It also brought to fore the alleged faulty conclusion of MRII that a water supply contract is subsumed under the definition of an infrastructure project under LOI 1186.[47]

In its Comment, MRII reiterated and adopted its arguments before the CIAC, and insisted that the undertaking contemplated by the parties was one of infrastructure and of works, as distinguished from "mere supply from off-the-shelf or from mere services."[48] Section 1 of LOI No. 1186, to define "infrastructure" and Section 5(k) of R.A. No. 9184 to include "water supply," were again cited. In support of its arguments, MRII cited anew MCWD's pro-forma Water Supply Contract, Specifications (in its Invitation to Submit Proposal), pronouncements at the Pre-Bid Conference, Addendum No. 1, and MRII's Technical and Financial Proposals. MRII further extensively reproduced the content of the joint affidavit of Messrs. Antonio P. Tompar and Lito R. Maderazo, MRII's President/CEO and Financial Manager, respectively.[49]

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[46] *Id.* at 211-214.

[47] CA *rollo*, pp. 9-10.

[48] *Id.* at 137.

[49] *Id.* at 116-130; 153-171.

Given that the same arguments were raised on the matter of CIAC jurisdiction, the parties thus relied on substantially the same evidence in both petitions. MCWD annexed to both petitions copies of the Water Supply Contract, the complaint filed by MRII with the CIAC, and its Answer to the said complaint. On the other hand, MRII presented Addendum No. 1 to the Water Supply Contract and its Technical and Financial Proposals.

Moreover, the first cause of action in the Second Petition, that is, the CIAC's having assumed jurisdiction, allegedly unlawfully, over the dispute arising from the Water Supply Contract, obviously existed at the time the First Petition was filed, as the latter case dealt with the jurisdiction of the CIAC over the complaint filed.

Finally, any judgment that may be rendered in the First Petition on the matter of whether the CIAC has jurisdiction over the arbitration proceedings, regardless of which party was successful, would amount to *res judicata* in the Second Petition, insofar as the issue of jurisdiction is concerned. In fact, what MCWD should have done was to appeal to the Court after the denial of its motion for reconsideration in the First Petition. For not having done so, the decision therein became final and, therefore, immutable.

Thus, following the above discussion, the 19th Division was correct in refusing to render judgment on the issue of jurisdiction in the Second Petition.

Whether the CIAC had jurisdiction to order the reformation of the Water Supply Contract

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law.[50] It cannot be fixed by the will

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[50] *Licomcen Incorporated v. Foundation Specialists, Inc.*, *supra* note 31 at 97. See also *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*, G.R. No. 180640, April 24, 2009, 586 SCRA

of the parties to the dispute, nor can it be expanded or diminished by stipulation or agreement.[51] The text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. This jurisdiction cannot be altered by stipulations restricting the nature of construction disputes, appointing another arbitral body, or making that body's decision final and binding.[52]

Thus, unless specifically excluded, all incidents and matters relating to construction contracts are deemed to be within the jurisdiction of the CIAC. Based on the previously cited provision outlining the CIAC's jurisdiction, it is clear that with regard to contracts over which it has jurisdiction, the only matters that have been excluded by law are disputes arising from employer-employee relationships, which continue to be governed by the Labor Code of the Philippines. Moreover, this is consistent with the policy against split jurisdiction.

In fact, in *National Irrigation Administration v. Court of Appeals*,[53] it was held that the CIAC had jurisdiction over the dispute, and not the contract. Therefore, even if the contract preceded the existence of the CIAC, since the dispute arose when the CIAC had already been constituted, the arbitral board was exercising current, and not retroactive, jurisdiction. In the same case, it was held that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute to the CIAC because this right has been vested upon each party by law.

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746. 761, cited in *William Golangco Construction Corporation v. Ray Burton Development Corporation*, G.R. No. 163582, August 9, 2010, 627 SCRA 74.

[51] *Id.*

[52] *Id.*

[53] 376 Phil. 362 (1999).

This is consistent with the principle that when an administrative agency or body is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are deemed to be included within its jurisdiction since the law does not sanction a split of jurisdiction, as stated in *Peña v. Government Service Insurance System*.[54]

In *Peña*, the Court held that although the complaint for specific performance, annulment of mortgage, and damages filed by the petitioner against the respondent included title to, possession of, or interest in, real estate, it was well within the jurisdiction of the Housing and Land Use Regulatory Board *(HLURB)*, a quasi-judicial body, as it involved a claim against the subdivision developer, Queen's Row Subdivision, Inc., as well as the Government Service Insurance System *(GSIS)*.

This case was later cited in *Badillo v. Court of Appeals*,[55] where the Court concluded that the HLURB had jurisdiction over complaints for annulment of title. The Court also held that courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion, such as that of the HLURB, the sole regulatory body for housing and land development. It was further pointed out that the extent to which an administrative agency may exercise its powers depends on the provisions of the statute creating such agency.

The *ponencia* further quoted from *C.T. Torres Enterprises, Inc. v. Hibionada*:[56]

> The argument that only courts of justice can adjudicate claims resoluble under the provisions of the Civil Code is out of step with the fast-changing times. There are hundreds of administrative bodies now performing this function by virtue of a valid authorization from the legislature. This quasi-judicial function, as it is called, is exercised by them as an incident of the principal power entrusted to them of regulating certain activities falling under their particular expertise.

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[54] G.R. No. 159520, September 19, 2006, 502 SCRA 383.

[55] G.R. No. 131903, June 26, 2008, 555 SCRA 435.

[56] G.R. No. 80916, November 9, 1990, 191 SCRA 268, 272-273.

In the Solid Homes case for example the Court affirmed the competence of the Housing and Land Use Regulatory Board to award damages although this is an essentially judicial power exercisable ordinarily only by the courts of justice. This departure from the traditional allocation of governmental powers is justified by expediency, or the need of the government to respond swiftly and competently to the pressing problems of the modern world.

In *Bagunu v. Spouses Aggabao*,[57] the Court ruled that the RTC must defer the exercise of its jurisdiction on related issues involving the same subject matter properly within its jurisdiction, such as the distinct cause of action for reformation of contracts involving the same property, since the DENR assumed jurisdiction over the lot in question, pursuant to its mandate.

In *National Housing Authority v. First United Constructors Corporation*,[58] the Court held that there was no basis for the exclusion of claims for business losses from the jurisdiction of the CIAC because E.O. No. 1008 "excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC."[59] Section 4 provides that "(t)he jurisdiction of the CIAC may include but is not limited to x x x," underscoring the expansive character of the CIAC's jurisdiction. Very clearly, the CIAC has jurisdiction over a broad range of issues and claims arising from construction disputes, including but not limited to claims for unrealized profits and opportunity or business losses. What E.O. No. 1008 emphatically excludes is only disputes arising from employer-employee relationships.[60]

Where the law does not delineate, neither should we. Neither the provisions of the Civil Code on reformation of contracts nor

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[57] G.R. No. 186487, August 15, 2011, 655 SCRA 413.

[58] G.R. No. 176535, September 7, 2011, 657 SCRA 175.

[59] *Id.* at 241.

[60] *Id.* at 242.

the law creating the CIAC exclude the reformation of contracts from its jurisdiction. Jurisprudence further dictates that the grant of jurisdiction over related and incidental matters is implied by law. Therefore, because the CIAC has been held to have jurisdiction over the Contract, it follows that it has jurisdiction to order the reformation of the Contract as well.

Whether MCWD can validly refuse to participate in the arbitration proceedings

In light of the finality of the CA decision on the matter of jurisdiction, the only remaining issue to be disposed of is whether the CIAC could proceed with the case even if the MCWD refused to participate in the arbitration proceedings.

The Court rules in the affirmative. Though one party can refuse to participate in the arbitration proceedings, this cannot prevent the CIAC from proceeding with the case and issuing an award in favor of one of the parties.

Section 4.2 of the Revised Rules of Procedure Governing Construction Arbitration (*CIAC Rules*) specifically provides that where the jurisdiction of the CIAC is properly invoked by the filing of a Request for Arbitration in accordance with CIAC Rules, the failure of a respondent to appear, which amounts to refusal to arbitrate, will not stay the proceedings, notwithstanding the absence of the respondent or the lack of participation of such party. In such cases, the CIAC is mandated to appoint the arbitrator/s in accordance with the Rules, and the arbitration proceedings shall continue. The award shall then be made after receiving the evidence of the claimant.

In such a case, all is not lost for the party who did not participate. Even after failing to appear, a respondent is still given the opportunity, under the CIAC Rules, to have the proceedings reopened and be allowed to present evidence, although with the qualification that this is done before an award is issued:

4.2.1 In the event that, before award, the Respondent who had not earlier questioned the jurisdiction of the Tribunal, appears and offers

to present his evidence, the Arbitral Tribunal may, for reasons that justifies (sic) the failure to appear, reopen the proceedings, require him to file his answer with or without counterclaims, pay the fees, where required under these Rules, and allow him to present his evidence, with limited right to cross examine witnesses already in the discretion of the Tribunal. Evidence already admitted shall remain. The Tribunal shall decide the effect of such controverting evidence presented by the Respondent on evidence already admitted prior to such belated appearance.

Thus, under the CIAC Rules, even without the participation of one of the parties in the proceedings, the CIAC is still required to proceed with the hearing of the construction dispute.[61]

This Court has held that the CIAC has jurisdiction over a dispute arising from a construction contract even though only one of the parties requested for arbitration.[62] In fact, in *Philrock, Inc. v. Construction Industry Arbitration Commission*,[63] the Court held that the CIAC retained jurisdiction even if both parties had withdrawn their consent to arbitrate.

In this case, there being a valid arbitration clause mutually stipulated by the parties, they are both contractually bound to settle their dispute through arbitration before the CIAC. MCWD refused to participate, but this should not affect the authority of the CIAC to conduct the proceedings, and, thereafter, issue an arbitral award.

Now, with the CIAC decision being questioned by MCWD, the Court takes a cursory reading of the said decision. It reveals that the conclusions arrived at by CIAC are supported by facts and the law. Article 1359 of the Civil Code states that when there has been a meeting of the minds of the parties to a contract, but their true intention is not expressed in the

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[61] *Heunghwa Industry Co., Ltd. v. DJ Builders Corporation*, G.R. No. 169095, December 8, 2008, 573 SCRA 240, 263.

[62] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 374 (1999).

[63] 412 Phil. 236 (2001).

instrument purporting to embody the agreement by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed. The CIAC, in this case, found that the parametric formula for price escalation reflected in the Water Supply Contract involved two items: Power Rate Price Adjustment (30% of the base selling price of water) and Consumer Price Index Adjustment (40% of the base selling price of water). The remaining 30% of the selling price of water, which should have been for Capital Cost Recovery, was inadvertently left out in this parametric formula. Thus, the Contract should be reformed accordingly to reflect the intention of the parties to include in the price escalation formula the Capital Cost Recovery Adjustment. These conclusions were affirmed by the CA in the assailed decision of February 20, 2006.

As noted by MCWD in its reply, however, the dispositive portion of the CIAC decision reforming the price escalation formula is inconsistent with what was stated in the body of the decision. The formula contained in the body of the decision is as follows:

PRICE ADJUSTMENT COMPUTATION
Based on Reformed Clause 17 of the Water Supply Contract

1. Power Cost Adjustment:

x x x x x x x x x

Current Power Rate – Base Power Rate x 30% of Base Selling Price of water
Base Power Rate

x x x x x x x x x

2. Operating Cost Adjustment - Local

x x x x x x x x x

Current CPI – Base CPI ***x 30% of*** 40% of Base Selling Price of Water
Base CPI

x x x x x x x x x

3. Operating Cost Adjustment – Foreign

x x x x x x x x x

Current Forex – Base Forex x 70% of 40% of Base Selling Price of Water
Base Forex

x x x x x x x x x

4. Capital Cost Adjustment – Local

x x x x x x x x x

Current CPI – Base CPI x 30% of 30% of Base Selling Price of Water
Base CPI

x x x x x x x x x

5. Capital Cost Adjustment – Foreign

x x x x x x x x x

Current Forex – Base Forex ***x 70% of*** 30% of Base Selling Price of Water
Base Forex

x x x x x x x x x[64]

The dispositive portion of the decision, however, reads:

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

1. Ordering the reformation of Clause 17 of the Water Supply Contract to read:

   17[.] Price Escalation and/or De-Escalation shall be based on the parametric formula:

   17.1 Power Rate Price Adjustment/Power Cost Adjustment

   Current Power Rate – Base Power Rate x 30% of Base Selling Price of water
   Base Power Rate

   17.2 Consumer Price Index (CPI) Adjustment/Operatiing (sic) Cost Adjustment:

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[64] *Rollo*, pp. 114-117. The portions that were inadvertently deleted in the dispositive portion appear in bold italics.

Current CPI – Base CPI x 40% of Base Selling Price of Water
Base CPI

17.3 Capital Cost Recovery Adjustment:

Current Peso to Base Peso to US$

US$ Exchange Rate – Exchange Rate x 30% of base selling price of water
Base Peso to US $ Exchange Rate

The general rule is that where there is a conflict between the *fallo,* or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or conclusions of the court ordering nothing. However, where one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail.[65]

Following the reasoning of the CIAC in this case, there are three components to price adjustment: (1) Power Cost Adjustment (30% of the base selling price of water); (2) Operating Cost Adjustment (40% of the base selling price of water); and (3) Capital Cost Adjustment (30% of the base selling price of water).

In turn, the second component—Operating Cost Adjustment—is computed based on Local Operating Cost Adjustment (30%), and Foreign Operating Cost Adjustment (70%).

Capital Cost Adjustment, on the other hand, is composed of Local Capital Cost Adjustment (30%), and Foreign Capital Cost Adjustment (70%).

This is consistent with the formula set forth in the body of the CIAC decision. If the formula in the dispositive portion were to be followed, Operating Cost Adjustment would be computed with the Local Operating Cost Adjustment representing the entire 40% of the base selling price of water instead of just

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[65] *Cobbarubias v. People*, G.R. No. 160610, August 14, 2009, 596 SCRA 77, 89-90.

30% of the Operating Cost Adjustment. Moreover, if the Capital Cost Recovery Adjustment were to be computed based solely on Foreign Capital Cost Recovery Adjustment, it would represent the entire 30% of the base selling price of water, and not just 70% of the Capital Cost Recovery Adjustment. The omission of the marked portions of the formula as stated in the body of the CIAC decision represents substantial changes to the formula for price escalation. It is thus clear that the formula as stated in the body of the decision should govern.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in C.A.-G.R. CEB SP. No. 00623 are **AFFIRMED** with the modification that the formula for the computation of the Capital Cost Recovery Adjustment in the *fallo* of the CIAC decision should be amended to read as follows:

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

1. Ordering the reformation of Clause 17 of the Water Supply Contract to read:

    17. Price Escalation and/or De-Escalation shall be based on the parametric formula:

        17.1. Power Rate Price Adjustment/Power Cost Adjustment

$$\frac{\text{Current Power Rate - Base Power Rate}}{\text{Base Power Rate}} \times 30\% \text{ of base selling price of water}$$

        17.2 Consumer Price Index (CPI) Adjustment/Operating Cost Adjustment:

$$\frac{\text{Current CPI – Base CPI}}{\text{Base CPI}} \times 30\% \text{ of } 40\% \text{ of base selling price of water}$$

17.3 Capital Cost Recovery Adjustment:

Current Peso to Base Peso to US$
US$ Exchange Rate – Exchange Rate x 70% of 30% of base selling price of water
Base Peso to US $ Exchange Rate

Price escalation shall be reckoned from January 1999 when the water was first delivered by Mactan Rock Industries, Inc. to the MCWD facilities in Mactan. The base CPI, base US$ Exchange Rate and the Base Power Rate shall be the prevailing rate in January 1999, while the Base Selling Price of water shall mean the 1996 rate per cubic meter of water as provided for in the Water Supply Contract.

2. Ordering Respondent Metropolitan Cebu Water District to pay Claimant, Mactan Rock Industries, Inc. under the reformed Clause 17 of the Water Supply Contract, the net amount of **Php12,126,296.70** plus legal interest of six percent (6%) per annum from March 15, 2004, the date of filing of the case with the Construction Industry Arbitration Commission, and twelve percent (12%) per annum from the date this Decision becomes final and executory, until the foregoing amounts shall have been fully paid.

3. Claimant Mactan Rock Industries, Inc. and Metropolitan Cebu Water District shall share the cost of arbitration equally.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 175123. July 4, 2012]

MOLDEX REALTY, INC. and ANSELMO AGERO, *petitioners, vs.* **SPOUSES RICARDO J. VILLABONA and GILDA G. VILLABONA, and EDUARDO J. VILLABONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COMPROMISE AGREEMENT IN DEFERENCE TO COURT TRIAL IS HIGHLY ENCOURAGED; CASE AT BAR.— [U]pon failure of respondents and their counsel, Atty. Suarez, to appear during the 18 January 2001 hearing, the RTC decreed that their presentation of evidence was considered closed and terminated. On the same day, petitioners were ordered to present their evidence on 9 February 2001. However, the hearing scheduled for that day was also cancelled and reset due to the absence of Atty. Suarez. Again, on 9 March 2001, he was absent; thus, the trial was rescheduled for 5 April 2001. Thereafter, the parties exerted efforts to reach a compromise agreement, prompting the trial court to postpone the scheduled hearings. Neither did the court resolve respondents' 13 March 2001 Motion for Reconsideration questioning the 18 January 2001 Order, which considered respondents' presentation of evidence closed and terminated. It is clear from the records that since 18 January 2001, petitioners did not have the opportunity to present their evidence through no fault of their own. Most of the time, counsel for respondents did not attend the scheduled hearings. While it is true that some of the postponements were attributable to petitioners, these were agreed upon by the parties in order to reach an amicable settlement. It must be emphasized that, in this jurisdiction, a compromise agreement is highly encouraged as provided under the Civil Code, Articles 2029 and 2030.

2. ID.; ID.; ID.; WHERE PARTIES FAIL TO REACH AN AMICABLE SETTLEMENT, COURT MUST CONTINUE WITH THE ORDER OF TRIAL; CASE AT BAR.— Upon failure of the parties to present an amicable settlement, what

the trial court should have done was to continue the trial by resolving respondents' Motion for Reconsideration and allowing petitioners to present their evidence in chief. Rather, the RTC immediately considered the case submitted for decision on 12 November 2001. After realizing that no formal offer of evidence had been submitted by petitioners, it recalled the 12 November 2001 Order, through another Order dated 28 November 2001, and required petitioners to submit their formal offer of evidence. Clearly, the procedure adopted by the RTC was contrary to that provided in Rule 30, Section 5 of the Rules of Court.

APPEARANCES OF COUNSEL

Macavinta & Sta. Ana Law Offices for petitioner.
Cecilio V. Suarez, Jr. for respondents.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for Review under Rule 45 of the Rules of Court. Petitioners assail the Decision[1] dated 6 October 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 74435, affirming the Decision[2] dated 28 January 2002 in Civil Case No. 3276-AF of Branch 25 of the Regional Trial Court (RTC), Third Judicial Region of Cabanatuan City. The undisputed facts follow.

The case arose when respondents filed on 4 August 1998 a Complaint[3] against herein petitioners and Levi P. Sayo (Sayo) for the annulment of Transfer Certificate of Title (TCT) Nos. NT-250333 and NT-250334 registered under the name of Moldex Realty, Inc. (Moldex), and formerly covered by Original Certificate

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[1] *Rollo*, pp. 7-25; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Rodrigo V. Cosico and Celia C. Librea-Leagogo, concurring.

[2] *Rollo*, pp. 70-75.

[3] Records, pp. 2-6.

of Title (OCT) Nos. 3322 and 3323, respectively. Respondents likewise prayed for the award of damages.

Respondent Eduardo J. Villabona (Eduardo) alleged that he was the true owner of Lot No. 2346, covered by OCT No. 3322; and respondent spouses Ricardo Villabona (Ricardo) and Gilda Villabona (Gilda), of Lot No. 2527, covered by OCT No. 3323. They acquired these properties by virtue of a Deed of Sale dated 1 June 1977 executed by their parents, Rafael Villabona (Rafael) and Ursula Jose Villabona (Ursula).

Respondents claimed that sometime in January 1996, petitioner Moldex, through its alleged representative Sayo, negotiated for the purchase of the subject properties, whereby Lot No. 2346 would be sold for ₱1,132,080 and Lot No. 2527 for ₱511,320. Sayo then was able to successfully obtain from respondent Ricardo the original copy of OCT Nos. 3322 and 3323. According to respondents, Sayo encashed the check payment of petitioner Moldex for Lot No. 2346, while petitioner Anselmo Agero (Agero) encashed that for Lot No. 2527.

Respondents further alleged that petitioners caused the cancellation and transfer of OCT Nos. 3322 and 3323 through allegedly falsified Deeds of Absolute Sale[4] executed on 21 May 1996. They maintained that the deeds were falsified, because these were executed after the deaths of Rafael and Ursula on 3 June 1993 and 17 October 1990, respectively.

In support of their claims, respondents attached to their Complaint photocopies of the Deed of Sale executed by them and their parents, Rafael and Ursula; TCT Nos. NT-250333 and NT-250334; Certificates of Death of Rafael and Ursula; and Deeds of Absolute Sale allegedly executed between spouses Rafael and Ursula and petitioner Moldex.

In his Answer,[5] petitioner Agero denied being an agent of respondent Moldex in the purchase of the subject properties.

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[4] *Id.* at 16-17.

[5] *Id.* at 29-36.

He further denied having received money representing the purchase price of these lots.

Petitioner Moldex, meanwhile, alleged that Sayo and Agero were respondents' real estate brokers and offered the subject properties for sale. It contended that respondents had executed Deeds of Absolute Sale on 21 May 1996, whereby Lot No. 2527 was sold for ₱383,490 and Lot No. 2346 for ₱849,060. In consideration of the sale of the two parcels of land, it issued on 13 May 1996 United Coconut Planters Bank (UCPB) Check No. 0000344050 in the sum of ₱1,132,080, which was endorsed by respondent Ricardo. The check was subsequently deposited and the amount therein stated withdrawn. Petitioner Moldex further alleged that respondent Ricardo voluntarily handed the titles over to Sayo, so that the latter could cause the transfer thereof. Finally, it denied having any knowledge of or participation in the alleged falsified Deeds of Absolute Sale. Petitioner Moldex attached to its Answer[6] photocopies of the deeds[7] it executed with respondent Ricardo, as well as the UCPB check including the dorsal part thereof.[8]

On 31 May 2000, respondents filed an Amended Complaint impleading Atty. Elias Estrella, the Deputy Register of Deeds of Cabanatuan City; Atty. Alfredo G. Ortaleza, the lawyer who notarized the alleged falsified Deeds of Absolute Sale; and Jacinto Uy, the chairperson of the Board of Directors of petitioner Moldex.

Trial ensued. After the presentation of Ricardo as the first witness on 5 October 2000, Atty. Cecilio Suarez, counsel for respondents, prayed for a resetting of the hearing for the presentation of another witness. The 14 December 2000 hearing was likewise reset for 18 January 2001 upon agreement of the parties. At the 18 January 2001 hearing, Judge Johnson L. Ballutay, the RTC executive judge, issued an Order, to wit:

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[6] *Id.* at 42-49.

[7] *Id.* at 54-59.

[8] *Id.* at 60.

When this case was called for the second time this morning, it was only defendant Levi P. Sayo and Atty. Samuel Acorda for the Moldex Realty, Inc. and Atty. Lamberto Magbitang for the defendant Anselmo S. Agero were in Court. There was no representation on the part of the plaintiffs [sic] neither for [sic] the plaintiffs themselves were in Court.

In view of this, the presentation of the evidence for the plaintiffs is hereby considered closed and terminated specially so that there was a promise on the part of the plaintiffs, through counsel, that a settlement will be arrived at and a compromise agreement will be presented today, yet nothing was heard over [sic] on the part of the plaintiffs as well as counsel.

WHEREFORE, premises considered, the defendants are hereby allowed to present evidence on February 9, 2001 at 8:30 o'clock in the morning.[9]

The 9 February 2001 hearing was likewise reset, because Atty. Suarez was again absent.[10] He was again absent at the 9 March 2001 hearing, prompting the court to reiterate its Order of 18 January 2001.[11]

On 13 March 2001, respondents filed a Motion for Reconsideration of the RTC Order dated 18 January 2001, insisting that they were still to present two more witnesses.[12]

However, at the hearing scheduled on 16 March 2001, respondents and Atty. Suarez were absent yet again.[13]

The 5 April 2001 hearing was reset once more, upon agreement of the parties, in anticipation of an amicable settlement.[14]

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[9] *Id.* at 134.

[10] *Id.* at 136.

[11] *Id.* at 139.

[12] *Id.* at 140-142.

[13] *Id.* at 143.

[14] *Id.* at 145.

On 23 May 2001, Atty. Suarez moved for the cancellation of the hearing scheduled for 25 May 2001 because of a previously scheduled one in another court. He further manifested that a compromise agreement had been approved by respondents and may be submitted for the approval of the trial court once the agreement was signed by the parties.[15]

During the 28 May 2001 hearing, Atty. Suarez and respondents were likewise absent. Petitioners objected to the resetting of the hearing on account of the numerous postponements attributable to the nonappearance of respondents and their counsel.[16] On 26 June 2001, upon agreement of the parties, the hearing was reset for 31 July 2001,[17] and had to be reset two times more for possible amicable settlement of the case.

Finally, with Atty. Suarez still failing to appear at the 12 November 2001 hearing, the RTC issued an Order submitting the case for decision based on whatever evidence had been adduced.[18]

On 28 November 2001, the trial court issued another Order, this time stating that there being no formal offer of evidence from petitioners, it thus resolved to set aside the previous Order. The court gave 15 days for petitioners to submit their written formal offer of evidence from receipt of the Order, after which the case was to be deemed submitted for resolution.[19]

On 28 January 2002, without waiting for the submission of the written formal offer of evidence, the RTC rendered its assailed Decision, the dispositive portion of which states:

WHEREFORE**,** premises considered:

1. Declaring Transfer Certificate of Title Nos. NT-250333 and NT-250334 both of the Registry of Deeds of Cabanatuan

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[15] *Id.* at. 148-149.

[16] *Id.* at 152.

[17] *Id.* at 154.

[18] *Id.* at 162.

[19] *Id.* at 163.

City in the name of Moldex Realty Inc. is hereby declared null and void;

2. Ordering jointly and severally the defendants to pay the plaintiffs the amount of ₱100,000.00 Philippine Currency, as actual, moral and exemplary damages; and,

3. To pay the plaintiffs the sum of ₱10,000.00 as attorney[']s fees.

SO ORDERED.[20]

On the same day that petitioner Moldex received a copy of the Decision, 5 February 2002, it filed a Manifestation asking for a clarification of the trial court's Order dated 28 November 2001, which it received on 29 January 2002. It alleged that it was in a quandary over whether to file its formal offer of evidence, considering that it had not yet presented any, and that the court had already ordered respondents' presentation of evidence as closed and terminated without any formal offer. Moreover, petitioners stated:

5. That defendant Moldex Realty, Inc. is more than willing to present its evidence but the court asked defendants [sic] counsel during the last hearing on November 12, 2001, if they wish to submit the case for decision and they agreed, considering that plaintiffs had been delaying the proceedings by their continuous absence and that they (plaintiffs) had not formally offered their evidence and rested their case;

6. That for all intents and purposes of the law and pursuant to the Rules of Court, plaintiffs had not presented evidence at all.[21]

After it received a copy of the RTC's Decision, however, petitioner Moldex filed a Motion for Reconsideration[22] on 11 February 2002. It alleged that Judge Ballutay gravely erred and abused his discretion when he rendered the assailed Decision before respondents had completed their evidence and rested

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[20] *Id.* at 169.

[21] *Rollo*, p. 76.

[22] Records, pp. 172-176.

their case, and before defendants had the opportunity to adduce evidence; that the Decision was rendered without the 15-day period given to petitioners to formally submit their evidence pursuant to the 28 November 2001 Order, which was received only on 29 January 2002; that the Decision was tantamount to a judgment on the pleadings and/or summary judgement; and that the Decision was contrary to the law and the facts.

On 27 February 2002, the RTC issued an Order[23] denying the Motion for Reconsideration for the following reasons: counsel for petitioner Moldex, Atty. Samuel Acorda, was absent on several hearing dates; he manifested in open court during the 31 May 2000 hearing that petitioner Moldex had nothing to do with the case; the parties failed to submit a compromise agreement despite manifesting that they would; and the case had already dragged on for a number of years.

On appeal, the CA affirmed the ruling of the trial court. It held that petitioners had been given ample time to present their evidence, but failed to do so and in fact agreed to submit the case for resolution. It further ruled that the trial court based its findings on the documents attached to the Complaint, pointing out that these documents had been properly identified and marked during the testimony of Ricardo. Neither did the CA find the RTC's resolution of the case reprehensible despite the fact that the 15 days given to petitioners to submit their formal offer of evidence had not yet lapsed.

Moreover, delving into the merits of the case, the CA held that petitioner Moldex failed to prove that it had actually paid respondents the value of the subject properties. Furthermore, the appellate court held that the Deeds of Absolute Sale, which were purportedly signed by Ursula and Rafael Villabona, were null and void. Thus, the dispositive portion of the CA Decision reads:

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[23] *Id.* at 182-183.

WHEREFORE, premises considered, the assailed Decision, dated January 28, 2002, of the Regional Trial Court (Branch 25, Cabanatuan City), is hereby **AFFIRMED** *in toto*.

SO ORDERED.[24]

Hence, this Petition.

To recapitulate, upon failure of respondents and their counsel, Atty. Suarez, to appear during the 18 January 2001 hearing, the RTC decreed that their presentation of evidence was considered closed and terminated. On the same day, petitioners were ordered to present their evidence on 9 February 2001. However, the hearing scheduled for that day was also cancelled and reset due to the absence of Atty. Suarez. Again, on 9 March 2001, he was absent; thus, the trial was rescheduled for 5 April 2001. Thereafter, the parties exerted efforts to reach a compromise agreement, prompting the trial court to postpone the scheduled hearings. Neither did the court resolve respondents' 13 March 2001 Motion for Reconsideration questioning the 18 January 2001 Order, which considered respondents' presentation of evidence closed and terminated.

It is clear from the records that since 18 January 2001, petitioners did not have the opportunity to present their evidence through no fault of their own. Most of the time, counsel for respondents did not attend the scheduled hearings. While it is true that some of the postponements were attributable to petitioners, these were agreed upon by the parties in order to reach an amicable settlement. It must be emphasized that, in this jurisdiction, a compromise agreement is highly encouraged as provided under the Civil Code. Articles 2029 and 2030 thereof reads:

Art. 2029. The court shall endeavour to persuade the litigants in a civil case to agree upon some fair compromise.

Art. 2030. Every civil action or proceeding shall be suspended:

(1) If willingness to discuss a possible compromise is expressed by one or both parties; or

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[24] *Rollo*, p. 25.

(2) If it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

The duration and terms of the suspension of the civil action or proceeding and similar matters shall be governed by such provisions of the rules of court as the Supreme Court shall promulgate. Said rules of court shall likewise provide for the appointment and duties of amicable compounders.

Furthermore, upon failure of the parties to present an amicable settlement, what the trial court should have done was to continue the trial by resolving respondents' Motion for Reconsideration and allowing petitioners to present their evidence in chief. Rather, the RTC immediately considered the case submitted for decision on 12 November 2001. After realizing that no formal offer of evidence had been submitted by petitioners, it recalled the 12 November 2001 Order, through another Order dated 28 November 2001, and required petitioners to submit their formal offer of evidence.

Clearly, the procedure adopted by the RTC was contrary to that provided in Rule 30, Section 5 of the Rules of Court, which states:

SECTION 5. Order of trial. — Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

(a) The plaintiff shall adduce evidence in support of his complaint;

(b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;

(c) The third-party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;

(d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;

(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence.

Moreover, without verifying the date of receipt by petitioners of the 28 November 2001 Order, and without waiting for the submission of their formal offer of evidence, the RTC rendered its Decision. Not only the parties, but even the court itself is bound by its own Order. The RTC further brushed aside petitioner Moldex's Manifestation filed on 5 February 2002 that it still had to present evidence to prove its case, as well as its explanation that it only received the 28 November 2001 Order on 29 January 2002.

It is equally important to note that the trial court relied merely on the Annexes of photocopied documents attached to the Complaint, without giving the same weight to those attached to petitioner Moldex's Answer. On the one hand, respondents claim that the titles to the subject properties were transferred by virtue of falsified Deeds of Absolute Sale executed by their deceased parents in favor of petitioner Moldex. On the other hand, petitioner Moldex alleges that the titles were transferred to its name by virtue of the Deeds of Absolute Sale executed by respondents themselves. It further claims that payment had been made upon Ricardo's endorsement of the check, extinguishing its obligation to him. Clearly, there were still substantial issues that needed to be threshed out that necessitated the presentation of evidence.

In *Borje v. Court of First Instance of Misamis Occidental, Branch II*,[25] we said:

Verily, the above discussion shows the need of presentation of proof for the respective allegations of the parties. For the respondent Court to make a summary finding of lack of malice or bad faith on the part of private respondents from those controverted facts and then decree the dismissal of the case is, therefore, violative of due process. **In view of the doubtful question of facts presented herein, respondent court, in the exercise of sound discretion, should have refused to consider and decide in a summary manner and should have allowed the parties to present proof in support of their respective stand. This is because the right to a hearing, which is the right of the parties interested or affected to present their respective cases and submit evidence in support thereof, is one of the primary cardinal rights of litigants.**

The importance of this right has been underscored in several cases of this nature decided by this Court. In one of such cases, *De Leon vs. Henson*, this Court ruled that the dismissal of an action upon a motion to dismiss constitutes a denial of due process, if, from a consideration of the pleadings, it appears that there are issues of fact which cannot be decided without a trial of the case on the merits. Similarly, in *Constantino vs. Estenzo*, citing *Garanciang, et al. vs. Garanciang, et al*. and *Boñaga vs. Soler*, this Court held as follows:

> "x x x **Summary or outright dismissals of actions are not proper where there are factual matters in dispute which need presentation and appreciation of evidence. The demands of a fair, impartial and wise administration of justice call for faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. 'Short cuts' in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice**."[26] (Emphasis supplied)

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[25] 177 Phil. 532 (1979).

[26] *Id.* at 541-542.

It was therefore incumbent on the RTC to allow the presentation of petitioner's evidence for the proper disposal of the case.

In all, we find that the trial court violated the parties' due process when it proceeded with the trial contrary to the procedure provided by the Rules of Court. It failed to resolve respondents' Motion for Reconsideration questioning the 18 January 2001 Order and prevented petitioners from presenting their evidence in chief.

WHEREFORE, in view of the foregoing, the 6 October 2006 Decision of the Court of Appeals in CA-G.R. CV No. 74435 and the 28 January 2002 Decision and 27 February 2002 Order of Branch 25 of the Regional Trial Court of Cabanatuan City in Civil Case No. 3276-AF are hereby **REVERSED** and **SET ASIDE**.

Let this case be remanded to Branch 25 of the Regional Trial Court of Cabanatuan City, which is hereby **ORDERED** to resolve respondents' Motion for Reconsideration dated 6 March 2001 and to proceed with the trial thereafter, as provided under the Rules of Court.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

FIRST DIVISION

[G.R. No. 175851. July 4, 2012]

EMILIA LIM, *petitioner, vs.* **MINDANAO WINES & LIQUOR GALLERIA, a Single Proprietorship Business Outfit Owned by Evelyn S. Valdevieso,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ISSUES NEVER RAISED FOR RESOLUTION BEFORE THE COURTS BELOW DO NOT MERIT ATTENTION FROM THE HIGH COURT.— Emilia claims that she was deprived of due process when the courts below declared her civilly liable. In support of this, she cites *Salazar v. People* wherein it was held that a court cannot rule upon the civil aspect of the case should it grant a demurrer to evidence with leave of court since the accused is entitled to adduce controverting evidence on the civil liability. Emilia likewise contends that Mindanao Wines is not a juridical person, it being a single proprietorship only and thus, not the real party in interest in this case. We note, however, that Emilia had never invoked before the courts below the ruling in *Salazar*. Neither did she specify in her pleadings filed therein whether her demurrer was filed with or without leave of court. It is only now that Emilia is claiming that the same was filed with leave of court in an apparent attempt to conform the facts of this case with that in *Salazar*. The same goes true with regard to the questioned *locus standi* of Mindanao Wines. Emilia likewise did not raise in her pleadings filed with the RTC or the CA that the civil aspect is dismissible for lack of cause of action because Mindanao Wines is not a juridical person and thus not a real party in interest. In fact, the courts below all along considered Mindanao Wines as the plaintiff and the trial proceeded as such. x x x To allow Emilia to wage a legal blitzkrieg and blindside Mindanao Wines is a violation of the latter's due process rights.

2. CRIMINAL LAW; THE EXTINCTION OF PENAL ACTION DOES NOT CARRY WITH IT THE EXTINCTION OF THE CIVIL LIABILITY WHERE THE ACQUITTAL IS BASED

ON REASONABLE DOUBT; CASE AT BAR.— "The extinction of the penal action does not carry with it the extinction of the civil liability where x x x the acquittal is based on reasonable doubt as only preponderance of evidence is required" in civil cases. x x x [T]he MTCC dismissed the criminal cases because one essential element of BP 22 was missing, *i.e.*, the fact of the bank's dishonor. x x x This, however, only means that the trial court cannot convict Emilia of the crime since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of such proof of dishonor does not mean that Emilia has no existing debt with Mindanao Wines, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence.

3. REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE; DETERMINATION THEREOF DOES NOT NEED THE PRESENTATION OF EVIDENCE BY BOTH PARTIES.— "Preponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence **on either side** and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto." [A] determination of this quantum of evidence does not need the presentation of evidence by both parties. x x x [E]ven when a respondent does not present evidence, a complainant in a civil case is nevertheless burdened to substantiate his or her claims by preponderance of evidence before a court may rule on the reliefs prayed for by the latter. Settled is the principle that "parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent."

APPEARANCES OF COUNSEL

Alabastro & Olaguer Law Offices for petitioner.
Liza Galicia Galicia Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Acquittal from a crime does not necessarily mean absolution from civil liability.

Despite her acquittal from the charges of violation of *Batas Pambansa Bilang* 22 (BP 22) or the Bouncing Checks Law, the lower courts still found petitioner Emilia Lim (Emilia) civilly liable and ordered her to pay the value of the bounced checks, a ruling which was upheld by the Court of Appeals (CA) in its June 30, 2006 Decision[1] and November 9, 2006 Resolution[2] in CA-G.R. SP No. 64897.

In this Petition for Review on *Certiorari*, Emilia prays for the reversal and setting aside of the said rulings of the CA. She contends that since her acquittal was based on insuffiency of evidence, it should then follow that the civil aspect of the criminal cases filed against her be likewise dismissed. Hence, there is no basis for her adjudged civil liability.

Factual Antecedents

Sales Invoice No. 1711[3] dated November 24, 1995, as well as Statement of Accounts No. 076[4] indicate that respondent Mindanao Wines and Liquor Galleria (Mindanao Wines) delivered several cases of liquors to H & E Commercial owned by Emilia, for which the latter issued four Philippine National Bank (PNB) postdated checks worth ₱25,000.00 each. When two of these checks, particularly PNB Check Nos. 951453[5] and 951454[6]

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[1] CA *rollo*, pp. 115-132; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Sixto C. Marella, Jr.

[2] *Id.* at 156-160.

[3] *Id.* at 23.

[4] *Id.* at 28.

[5] *Id.* at 26.

[6] *Id.* at 24.

dated October 10, 1996 and October 20, 1996, respectively, bounced for the reasons 'ACCOUNT CLOSED' and 'DRAWN AGAINST INSUFFICIENT FUNDS,' Mindanao Wines, thru its proprietress Evelyn Valdevieso, demanded from H & E Commercial the payment of their value through two separate letters both dated November 18, 1996.[7] When the demands went unheeded, Mindanao Wines filed before Branch 2 of the Municipal Trial Court in Cities (MTCC) of Davao City Criminal Case Nos. 68,309-B-98 and 68,310-B-98 against Emilia for violations of BP 22.[8]

During trial, the prosecution presented its sole witness, Nieves Veloso (Nieves), accountant and officer-in-charge of Mindanao Wines. She testified that Emilia has been a customer of Mindanao Wines who purchased from it assorted liquors. In fact, Sales Invoice No. 1711 covered the orders made by Emilia from Mindanao Wines and these orders were delivered by the

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[7] *Id.* at 25 and 27.

[8] Section 1 of the said law provides:

Section 1. *Checks without sufficient funds.* – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

latter's salesman Marcelino Bersaluna[9] (Marcelino) to H & E Commercial in San Francisco, Agusan del Sur. For the same, Marcelino received the four PNB checks and accordingly endorsed them to Mindanao Wines. Out of these four PNB checks, two were already paid, *i.e.*, one was collected while the other redeemed in court.[10]

With regard to the bounced PNB Check Nos. 951453 and 951454, Nieves claimed that upon her instructions Marcelino went to H & E Commercial more than 10 times to collect their value. But since his efforts were in vain, two demand letters were thus sent to Emilia which were duly received by her as the same were 'signed by the recipient of the letters.'[11]

On cross, Nieves admitted that she neither saw Emilia issue the checks nor accompanied Marcelino in delivering the orders to H & E Commercial or in collecting the unpaid checks.[12] Asked about the corresponding sales order covering Sales Invoice No. 1711, she acknowledged that the sales order was unsigned and explained that sales orders of customers are handled by the Credit and Collection Department of Mindanao Wines.[13]

After the prosecution rested its case, Emilia filed a Demurrer to Evidence[14] claiming insufficiency of evidence. She asserted that not one of the elements of BP 22 was proven because the witness merely relied upon the reports of the salesman; that the purchases covered by Sales Invoice No. 1711 were unauthorized because the corresponding job order was unsigned; and that it was never established that the bank dishonored the checks or that she was even sent a notice of dishonor.

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[9] CA *rollo*, p. 88.

[10] *Id.* at 89.

[11] *Id.* at 94 and 98.

[12] *Id.* at 101-103.

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

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

Ruling of the Municipal Trial Court in Cities

In its December 10, 1999 Order,[15] the MTCC granted the Demurrer to Evidence. It ruled that while Emilia did issue the checks for value, the prosecution nevertheless miserably failed to prove one essential element that consummates the crime of BP 22, *i.e.*, the fact of dishonor of the two subject checks. It noted that other than the checks, no bank representative testified about presentment and dishonor. Hence, the MTCC acquitted Emilia of the criminal charges. However, the MTCC still found her civilly liable because when she redeemed one of the checks during the pendency of the criminal cases, the MTCC considered the same as an acknowledgement on her part of her obligation with Mindanao Wines. Pertinent portions of the MTCC Order read:

> The elements of B.P. Blg. 22 must concur before one can be convicted of this offense. Since one element is wanting, it is believed that the guilt of the accused has not been established beyond reasonable doubt. The Court, however, opines that the accused is civilly liable. There is evidence on record that an account was contracted. She should, therefore, pay.
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> WHEREFORE, the demurrer to evidence is granted and these cases are ordered DISMISSED.
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> Accused, however, is adjudged to pay complainant the total amounts of the 2 checks which is ₱50,000.00, with interest at the rate of 12% per annum to be computed from the date of notice which is November 18, 1996 until the amount is paid in full; to reimburse complainant of the expenses incurred in filing these cases in the amount of ₱1,245.00, and to pay attorney's fees of ₱10,000.00.
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> SO ORDERED.[16]

Ruling of the Regional Trial Court

Dissatisfied that her acquittal did not carry with it her exoneration from civil liability, Emilia appealed to the Regional

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[15] *Id.* at 36-39; penned by Presiding Judge Antonina B. Escovilla.

[16] *Id.* at 38-39.

Trial Court (RTC) of Davao City, Branch 13. Emilia contended that since the MTCC dismissed the criminal cases 'on the ground of insufficient evidence,' the civil aspect of the criminal cases should likewise be automatically dismissed. She argued that the court may only award damages for the civil aspect of BP 22 if the criminal cases have been dismissed on 'reasonable doubt' upon proof of preponderance of evidence.

The RTC was not persuaded by Emilia's contentions. The RTC clarified that the MTCC dismissed the criminal cases based on 'reasonable doubt' and not on 'insufficiency of evidence.' And while the prosecution failed to prove criminal liability beyond reasonable doubt, Emilia's indebtedness was nonetheless proven by preponderance of evidence, the quantum of evidence required to prove the same. Thus, the RTC declared in its January 5, 2001 Order[17] that:

> The prosecution however had established that the accused had issued the checks subject of these cases. The accused had impliedly admitted that she was the maker of the checks subject of [these] case[s] when she redeemed a third check from the complainant. In fact, the accused had never categorically denied having issued the checks subject of these cases. When the accused filed the Demurrer to Evidence, she had hypothetically admitted the evidence presented by the prosecution to be true, and this includes the allegation of the prosecution that the accused issued the checks subject of these cases for value.[18]

Thus, it dismissed the appeal, *viz*:

> WHEREFORE, in view of the foregoing, the appeal of the accused in these cases is hereby DISMISSED, and the decision appealed from is hereby AFFIRMED *IN TOTO*.
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> SO ORDERED.[19]

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[17] *Id.* at 44-45; penned by Judge Isaac G. Robillo, Jr.

[18] *Id.* at 45.

[19] *Id.*

Ruling of the Court of Appeals

Undeterred, Emilia filed before the CA a Petition for Review[20] still insisting that the MTCC's dismissal was based on 'insufficiency of evidence' and that same pertains to both the criminal and civil aspects of BP 22. She reiterated that there was no basis for the civil award made by the MTCC since the prosecution failed to show evidence of her civil liability and that a court can only award civil liability in cases of acquittals based on reasonable doubt and not on insufficiency of evidence.

In its June 30, 2006 Decision, the CA emphasized that even if acquitted, an accused may still be held civilly liable if a) the acquittal was based on reasonable doubt or b) the court declared that the liability of the accused is only civil. Just like the RTC, the CA ruled that the dismissal of the criminal cases against Emilia was expressly based on reasonable doubt, hence, she is not free from civil liability because the same is not automatically extinguished by acquittal based on said ground. The CA further declared that even granting that her acquittal was for 'insufficiency of evidence,' the same is still akin to a dismissal based on reasonable doubt.

Respecting the factual conclusions of the lower courts anent Emilia's civil liability, the CA noted that Emilia had never denied issuing the subject checks for value which, in themselves constituted evidence of indebtedness. Moreover, she failed to refute the prosecution's evidence when she filed a Demurrer to Evidence. The CA therefore affirmed the assailed Order of the RTC except that it deleted the award of attorney's fees, thus:

> WHEREFORE, premises considered, the assailed Order of the Regional Trial Court (RTC), Br. 13, Davao City, affirming *in toto* the Order of the Municipal Trial Court in Cities (MTCC), Br. 2, Davao City as to the civil liability of Emilia Lim, is hereby *AFFIRMED* with the sole modification that the award of attorney's fees in favor of the Respondent is DELETED.
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> SO ORDERED.[21]

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

[21] *Id.* at 132.

On Motion for Reconsideration,[22] Emilia asserted that by granting her Demurrer to Evidence based on insufficiency of evidence, the MTCC acknowledged that there is absolutely no case against her. She alleged that the 'preponderance of evidence' required in determining civil liability does not apply to her as she never presented any evidence at all, implying that in such a determination, both parties should have presented their respective evidence for the purpose of ascertaining as to which of the evidence presented is superior.

The CA, however, rejected the motion in its Resolution[23] dated November 9, 2006. It held that 'insufficiency' does not mean the 'total absence of evidence,' but that 'evidence is lacking of what is necessary or required to make out her case.' The CA explained that the MTCC acquitted Emilia because the quantum of evidence required for a finding of guilt beyond reasonable doubt was insufficient to convict her of BP 22. However, the extinction of the civil aspect does not necessarily follow such acquittal. The CA also disregarded Emilia's argument that a 'preponderance of evidence' should be a comparison of evidence of the opposing parties as such interpretation would lead to absurdity because by simply refusing to present evidence, a defendant can then be easily absolved from a civil suit.

Hence, this petition raising the following assignment of errors:

1) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE AWARD OF CIVIL LIABILITY IN FAVOR OF THE RESPONDENT AND AGAINST THE PETITIONER IS A NULLITY FOR LACK OF DUE PROCESS, APART FROM THE FACT THAT THE COMPLAINANT IS NOT A JURIDICAL PERSON OR IS NOT THE REAL PARTY IN INTEREST.

2) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT BECAUSE THE GROUND FOR THE DISMISSAL WAS FOR "INSUFFICIENCY OF EVIDENCE"

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[22] *Id.* at 139-147.

[23] *Supra* note 2.

AND NOT ON "REASONABLE DOUBT," THE DISMISSAL OF THE CRIMINAL CASES CARRIES WITH IT THE DISMISSAL OF THE CIVIL CASES DEEMED INSTITUTED THEREIN.

3) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS APPLICATION OF THE CONCEPT OF "PREPONDERANCE OF EVIDENCE."

4) THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THERE IS NO PIECE OF "ADMISSIBLE EVIDENCE" PRESENTED THAT MAY BE TAKEN INTO ACCOUNT TO PROVE CIVIL LIABILITY.[24]

In sum, the core issue in this petition is whether the dismissal of Emilia's BP 22 cases likewise includes the dismissal of their civil aspect.

Our Ruling

The petition lacks merit.

Emilia's allegations that she was denied due process and that Mindanao Wines is not the real party in interest do not merit our attention as these were never raised for resolution before the courts below.

Emilia claims that she was deprived of due process when the courts below declared her civilly liable. In support of this, she cites *Salazar v. People*[25] wherein it was held that a court cannot rule upon the civil aspect of the case should it grant a demurrer to evidence with leave of court since the accused is entitled to adduce controverting evidence on the civil liability. Emilia likewise contends that Mindanao Wines is not a juridical person, it being a single proprietorship only and thus, not the real party in interest in this case.

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[24] *Rollo*, p. 17.

[25] 458 Phil. 504 (2003).

We note, however, that Emilia had never invoked before the courts below the ruling in *Salazar*. Neither did she specify in her pleadings filed therein whether her demurrer was filed with or without leave of court. It is only now that Emilia is claiming that the same was filed with leave of court in an apparent attempt to conform the facts of this case with that in *Salazar*. The same goes true with regard to the questioned *locus standi* of Mindanao Wines. Emilia likewise did not raise in her pleadings filed with the RTC or the CA that the civil aspect is dismissible for lack of cause of action because Mindanao Wines is not a juridical person and thus not a real party in interest. In fact, the courts below all along considered Mindanao Wines as the plaintiff and the trial proceeded as such.

Obviously, these new issues are mere afterthoughts. They were raised only for the first time in this petition for review on *certiorari*. Never were they presented before the RTC and the CA for resolution. To allow Emilia to wage a legal blitzkrieg and blindside Mindanao Wines is a violation of the latter's due process rights:

> It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.[26]

For this reason, the said issues do not merit the Court's consideration.

Notwithstanding her acquittal, Emilia is civilly liable.

"The extinction of the penal action does not carry with it the extinction of the civil liability where x x x the acquittal is based

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[26] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

on reasonable doubt as only preponderance of evidence is required"[27] in civil cases. On this basis, Emilia insists that the MTCC dismissed the BP 22 cases against her not on the ground of reasonable doubt but on insufficiency of evidence. Hence, the civil liability should likewise be extinguished. Emilia's Demurrer to Evidence, however, betrays this claim. Asserting insufficiency of evidence as a ground for granting said demurrer, Emilia herself argued therein that *the prosecution has not proven [her] guilt beyond reasonable doubt*.[28] And in consonance with such assertion, the MTCC in its judgment expressly stated that her guilt was indeed not established beyond reasonable doubt, hence the acquittal.[29]

In any case, even if the Court treats the subject dismissal as one based on insufficiency of evidence as Emilia wants to put it, the same is still tantamount to a dismissal based on reasonable doubt. As may be recalled, the MTCC dismissed the criminal cases because one essential element of BP 22 was missing, *i.e.*, the fact of the bank's dishonor. The evidence was insufficient to prove said element of the crime as no proof of dishonor of the checks was presented by the prosecution. This, however, only means that the trial court cannot convict Emilia of the crime since the prosecution failed to prove her guilt beyond reasonable doubt, the quantum of evidence required in criminal cases. Conversely, the lack of such proof of dishonor does not mean that Emilia has no existing debt with Mindanao Wines, a civil aspect which is proven by another quantum of evidence, a mere preponderance of evidence.

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[27] *Alferez v. People of the Philippines*, G.R. No. 182301, January 31, 2011, 641 SCRA 116, 125, citing *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513. Other bases mentioned therein for the finding of civil liability despite the acquittal of the accused from the criminal case are "a) the court declares that the liability of the accused is only civil; and b) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted."

[28] CA *rollo*, p. 32.

[29] *Id.* at 38.

Emilia also avers that a court's determination of preponderance of evidence necessarily entails the presentation of evidence of both parties. She thus believes that she should have been first required to present evidence to dispute her civil liability before the lower courts could determine preponderance of evidence.

We disagree.

"Preponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence **on either side** and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[30] Contrary to Emilia's interpretation, a determination of this quantum of evidence does not need the presentation of evidence by both parties. As correctly reasoned out by the CA, Emilia's interpretation is absurd as this will only encourage defendants to waive their presentation of evidence in order for them to be absolved from civil liability for lack of preponderance of evidence. Besides, Emilia should note that even when a respondent does not present evidence, a complainant in a civil case is nevertheless burdened to substantiate his or her claims by preponderance of evidence before a court may rule on the reliefs prayed for by the latter. Settled is the principle that "parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent."[31]

Lastly, we see no reason to disturb the ruling of the CA anent Emilia's civil liability. As may be recalled, the CA affirmed the lower courts' factual findings on the matter. Factual findings

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[30] *Peñalber v. Ramos*, G.R. No. 178645, January 30, 2009, 577 SCRA 509, 526-527, citing *Ong v. Yap*, 492 Phil. 188, 196-197 (2005). Emphasis supplied.

[31] *Gajudo v. Traders Royal Bank*, 519 Phil. 791, 803 (2006), citing *Saguid v. Court of Appeals*, 451 Phil. 825, 837.

of the trial court, when affirmed by the CA, will not be disturbed.[32] Also, "[i]t is a settled rule that in a petition for review on *certiorari* under Rule 45 of the Rules of [Court], only questions of law may be raised by the parties and passed upon by this Court."[33] Moreover, "it is well to remember that a check may be evidence of indebtedness. A check, the entries of which are in writing, could prove a loan transaction."[34] While Emilia is acquitted of violations of BP 22, she should nevertheless pay the debt she owes.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The challenged June 30, 2006 Decision and November 9, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 64897 are hereby **AFFIRMED** *in toto*.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Brion,*[**] *Villarama, Jr.,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[32] *Maxwell Heavy Equipment Corporation v. Yu*, G.R. No. 179395, December 15, 2010, 638 SCRA 653, 658, citing *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002); *Austria v. Court of Appeals*, 384 Phil. 408, 415 (2000).

[33] *Jarantilla Jr. v. Jarantilla*, G.R. No. 154486, December 1, 2010, 636 SCRA 299, 308.

[34] *Gaw v. Chua*, G.R. No. 160855, April 16, 2008, 551 SCRA 505, 519, citing *Pacheco v. Court of Appeals*, 377 Phil. 627, 637 (1999) and *Spouses Tan v. Villapaz*, 512 Phil. 366, 376 (2005).

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

[**] Per Special Order No. 1247 dated June 29, 2012.

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

SECOND DIVISION

[G.R. No. 176556. July 4, 2012]

BRIGIDO B. QUIAO, *petitioner, vs.* **RITA C. QUIAO, KITCHIE C. QUIAO, LOTIS C. QUIAO, PETCHIE C. QUIAO, represented by their mother RITA QUIAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE COURT CANNOT REVIEW OR MODIFY A JUDGMENT ALREADY FINAL AND EXECUTORY.— In the case at bar, the trial court rendered its Decision on October 10, 2005. The petitioner neither filed a motion for reconsideration nor a notice of appeal. On December 16, 2005, or after 67 days had lapsed, the trial court issued an order granting the respondent's motion for execution; and on February 10, 2006, or after 123 days had lapsed, the trial court issued a writ of execution. Finally, when the writ had already been partially executed, the petitioner, on July 7, 2006 or after 270 days had lapsed, filed his Motion for Clarification on the definition of the "net profits earned." From the foregoing, the petitioner had clearly slept on his right to question the RTC's Decision dated October 10, 2005. For 270 days, the petitioner never raised a single issue until the decision had already been partially executed. Thus at the time the petitioner filed his motion for clarification, the trial court's decision has become final and executory. A judgment becomes final and executory when the reglementary period to appeal lapses and no appeal is perfected within such period. Consequently, no court, not even this Court, can arrogate unto itself appellate jurisdiction to review a case or modify a judgment that became final.

2. ID.; ID.; ID.; VOID JUDGMENT; NOT PRESENT IN THE CASE AT BAR AS THE TRIAL COURT ACQUIRED JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES.— "A judgment is null and void when the court which rendered it had no power to grant the relief or no jurisdiction over the subject matter or over the parties or both." In other

words, a court, which does not have the power to decide a case or that has no jurisdiction over the subject matter or the parties, will issue a void judgment or a *coram non judice*. The questioned judgment does not fall within the purview of a void judgment. For sure, the trial court has jurisdiction over a case involving legal separation. Republic Act (R.A.) No. 8369 confers upon an RTC, designated as the Family Court of a city, the exclusive original jurisdiction to hear and decide, among others, complaints or petitions relating to marital status and property relations of the husband and wife or those living together. The Rule on Legal Separation provides that "the petition [for legal separation] shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner." In the instant case, herein respondent Rita is found to reside in Tungao, Butuan City for more than six months prior to the date of filing of the petition; x x x the RTC also acquired jurisdiction over the persons of both parties, considering that summons and a copy of the complaint with its annexes were served upon the herein petitioner and that the herein petitioner filed his Answer to the Complaint.

3. CIVIL LAW; FAMILY CODE; FAMILY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; ARTICLE 129 IN RELATION TO ARTICLE 63(2) ON LIQUIDATION, RETROACTIVELY APPLIED TO SUCH PROPERTY RELATION CONSTITUTED PRIOR TO FAMILY CODE. — Article 129 of the Family Code applies to the present case since the parties' property relation is governed by the system of relative community or conjugal partnership of gains. x x x From the record, we can deduce that the petitioner and the respondent tied the marital knot on January 6, 1977. Since at the time of the exchange of marital vows, the operative law was the Civil Code of the Philippines (R.A. No. 386) and since they did not agree on a marriage settlement, the property relations between the petitioner and the respondent is the system of relative community or conjugal partnership of gains. x x x And under this property relation, "the husband and the wife place in a common fund the fruits of their separate property

and the income from their work or industry." The husband and wife also own in common all the property of the conjugal partnership of gains. [S]ince at the time of the dissolution of the petitioner and the respondent's marriage the operative law is already the Family Code, the same applies in the instant case and the applicable law in so far as the liquidation of the conjugal partnership assets and liabilities is concerned is Article 129 of the Family Code in relation to Article 63(2) of the Family Code. The latter provision is applicable because according to Article 256 of the Family Code "[t]his Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other law."

4. ID.; ID.; ID.; ID.; NO VIOLATION OF ALLEGED "VESTED RIGHT" OF SPOUSE OVER HALF OF THE COMMON PROPERTIES OF THE CONJUGAL PARTNERSHIP WHEN THE TRIAL COURT FORFEITED THE SAME IN FAVOR OF THE CHILDREN IN CASE AT BAR.— [P]etitioner asks: Was his vested right over half of the common properties of the conjugal partnership violated when the trial court forfeited them in favor of his children pursuant to Articles 63(2) and 129 of the Family Code? We respond in the negative. x x x [W]hile one may not be deprived of his "vested right," he may lose the same if there is due process and such deprivation is founded in law and jurisprudence, [as in the case at bar.] Petitioner was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her. In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties. Further, when the Decision was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as "net profits," pursuant to Article 129(7) of the Family Code. Thus, the petitioner cannot claim being deprived of his right to due process. Furthermore, we take note that the alleged deprivation of the petitioner's "vested right" is one founded, not only in the provisions of the Family Code, but in Article 176 of the Civil Code. This provision is like Articles 63 and 129 of the Family Code on the forfeiture of the guilty spouse's share in

the conjugal partnership profits. x x x Under Article 176 of the Civil Code, his share of the conjugal partnership profits may be forfeited if he is the guilty party in a legal separation case. Thus, after trial and after the petitioner was given the chance to present his evidence, the petitioner's vested right claim may in fact be set aside under the Civil Code since the trial court found him the guilty party.

5. ID.; ID.; ID.; ID.; ID.; NET PROFITS AS DEFINED UNDER ART. 102 (4) APPLIED IN THE INSTANT CASE.— As Article 129 of the Family Code applies to the property relations of the parties, the computation and the succession of events will follow the provisions under Article 129 of the said Code. [A]s to the definition of "net profits," we cannot but refer to Article 102(4) of the Family Code, since it expressly provides that for purposes of computing the net profits subject to forfeiture under Article 43, No. (2) and Article 63, No. (2), Article 102(4) applies. In this provision, net profits "shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution." x x x [W]e make it clear, however, that Article 102(4) of the Family Code applies in the instant case **for purposes only of defining "net profit."**

6. ID.; ID.; ID.; ID.; ID.; LIQUIDATION OF CONJUGAL PARTNERSHIP OF GAINS IN CASE AT BAR, DISCUSSED. — [W]hen a couple enters into a **regime of conjugal partnership of gains** under Article 142 of the Civil Code, "the husband and the wife place in common fund the fruits of their separate property and income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage." From the foregoing provision, each of the couple has his and her own property and debts. The law does not intend to effect a mixture or merger of those debts or properties between the spouses. Rather, it establishes a complete separation of capitals. Considering that the couple's marriage has been dissolved under the Family Code, Article 129 of the same Code applies in the liquidation of the couple's properties in the event that the conjugal partnership of gains is dissolved. x x x In the normal course of events, the following are the steps in the liquidation

of the properties of the spouses: (a) An inventory of all the actual properties shall be made, separately listing the couple's conjugal properties and their separate properties. In the instant case, **the trial court found that the couple has no separate properties when they married.** x x x (b) Ordinarily, the benefit received by a spouse from the conjugal partnership during the marriage is returned in equal amount to the assets of the conjugal partnership; and if the community is enriched at the expense of the separate properties of either spouse, a restitution of the value of such properties to their respective owners shall be made. (c) Subsequently, the couple's conjugal partnership shall pay the debts of the conjugal partnership; while the debts and obligation of each of the spouse shall be paid from their respective separate properties. But if the conjugal partnership is not sufficient to pay all its debts and obligations, the spouses with their separate properties shall be solidarily liable. (d) Now, what remains of the separate or exclusive properties of the husband and of the wife shall be returned to each of them. In the instant case, **since it was already established by the trial court that the spouses have no separate properties, there is nothing to return to any of them.**

APPEARANCES OF COUNSEL

Reserva Filoteo Law Office for petitioner.
Noreen Salise-Gonzaga for respondents.

D E C I S I O N

REYES, *J.*:

The family is the basic and the most important institution of society. It is in the family where children are born and molded either to become useful citizens of the country or troublemakers in the community. Thus, we are saddened when parents have to separate and fight over properties, without regard to the message they send to their children. Notwithstanding this, we must not shirk from our obligation to rule on this case involving legal separation escalating to questions on dissolution and partition of properties.

The Case

This case comes before us *via* Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court. The petitioner seeks that we vacate and set aside the Order[2] dated January 8, 2007 of the Regional Trial Court (RTC), Branch 1, Butuan City. In lieu of the said order, we are asked to issue a Resolution defining the net profits subject of the forfeiture as a result of the decree of legal separation in accordance with the provision of Article 102(4) of the Family Code, or alternatively, in accordance with the provisions of Article 176 of the Civil Code.

Antecedent Facts

On October 26, 2000, herein respondent Rita C. Quiao (Rita) filed a complaint for legal separation against herein petitioner Brigido B. Quiao (Brigido).[3] Subsequently, the RTC rendered a Decision[4] dated October 10, 2005, the dispositive portion of which provides:

> WHEREFORE, viewed from the foregoing considerations, judgment is hereby rendered declaring the legal separation of plaintiff Rita C. Quiao and defendant-respondent Brigido B. Quiao pursuant to Article 55.
>
> As such, the herein parties shall be entitled to live separately from each other, but the marriage bond shall not be severed.
>
> Except for Letecia C. Quiao who is of legal age, the three minor children, namely, Kitchie, Lotis and Petchie, all surnamed Quiao shall remain under the custody of the plaintiff who is the innocent spouse.
>
> Further, except for the personal and real properties already foreclosed by the RCBC, all the remaining properties, namely:

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[1] *Rollo*, pp. 7-35.

[2] Penned by Judge Eduardo S. Casals; *id.* at 115-122.

[3] *Id.* at 36.

[4] *Id.* at 36-57.

1. coffee mill in Balongagan, Las Nieves, Agusan del Norte;
2. coffee mill in Durian, Las Nieves, Agusan del Norte;
3. corn mill in Casiklan, Las Nieves, Agusan del Norte;
4. coffee mill in Esperanza, Agusan del Sur;
5. a parcel of land with an area of 1,200 square meters located in Tungao, Butuan City;
6. a parcel of agricultural land with an area of 5 hectares located in Manila de Bugabos, Butuan City;
7. a parcel of land with an area of 84 square meters located in Tungao, Butuan City;
8. Bashier Bon Factory located in Tungao, Butuan City;

shall be divided equally between herein [respondents] and [petitioner] subject to the respective legitimes of the children and the payment of the unpaid conjugal liabilities of [₱]45,740.00.

[Petitioner's] share, however, of the net profits earned by the conjugal partnership is forfeited in favor of the common children.

He is further ordered to reimburse [respondents] the sum of [₱]19,000.00 as attorney's fees and litigation expenses of [₱]5,000.00[.]

SO ORDERED.[5]

Neither party filed a motion for reconsideration and appeal within the period provided for under Section 17(a) and (b) of the Rule on Legal Separation.[6]

On December 12, 2005, the respondents filed a motion for execution[7] which the trial court granted in its Order dated December 16, 2005, the dispositive portion of which reads:

"Wherefore, finding the motion to be well taken, the same is hereby granted. Let a writ of execution be issued for the immediate enforcement of the Judgment.

SO ORDERED."[8]

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

[6] A.M. No. 02-11-11-SC.

[7] *Rollo*, p. 185.

[8] *Id.* at 59.

Subsequently, on February 10, 2006, the RTC issued a Writ of Execution[9] which reads as follows:

> NOW THEREFORE, that of the goods and chattels of the [petitioner] BRIGIDO B. QUIAO you cause to be made the sums stated in the afore-quoted DECISION [sic], together with your lawful fees in the service of this Writ, all in the Philippine Currency.
>
> But if sufficient personal property cannot be found whereof to satisfy this execution and your lawful fees, then we command you that of the lands and buildings of the said [petitioner], you make the said sums in the manner required by law. You are enjoined to strictly observed Section 9, Rule 39, Rule [sic] of the 1997 Rules of Civil Procedure.
>
> You are hereby ordered to make a return of the said proceedings immediately after the judgment has been satisfied in part or in full in consonance with Section 14, Rule 39 of the 1997 Rules of Civil Procedure, as amended.[10]

On July 6, 2006, the writ was partially executed with the petitioner paying the respondents the amount of ₱46,870.00, representing the following payments:

(a) ₱22,870.00 – as petitioner's share of the payment of the conjugal share;

(b) ₱19,000.00 – as attorney's fees; and

(c) ₱5,000.00 – as litigation expenses.[11]

On July 7, 2006, or *after more than nine months* from the promulgation of the Decision, the petitioner filed before the RTC a Motion for Clarification,[12] asking the RTC to define the term "Net Profits Earned."

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[9] *Id.* at 58-59.

[10] *Id.* at 59.

[11] *Id.* at 60.

[12] *Id.* at 61-69.

To resolve the petitioner's Motion for Clarification, the RTC issued an Order[13] dated August 31, 2006, which held that the phrase "NET PROFIT EARNED" denotes "the remainder of the properties of the parties after deducting the separate properties of each [of the] spouse and the debts."[14] The Order further held that after determining the remainder of the properties, it shall be forfeited in favor of the common children because the offending spouse does not have any right to any share of the net profits earned, pursuant to Articles 63, No. (2) and 43, No. (2) of the Family Code.[15] The dispositive portion of the Order states:

> WHEREFORE, there is no blatant disparity when the sheriff intends to forfeit all the remaining properties after deducting the payments of the debts for only separate properties of the defendant-respondent shall be delivered to him which he has none.
>
> The Sheriff is herein directed to proceed with the execution of the Decision.
>
> IT IS SO ORDERED.[16]

Not satisfied with the trial court's Order, the petitioner filed a Motion for Reconsideration[17] on September 8, 2006. Consequently, the RTC issued another Order[18] dated November 8, 2006, holding that although the Decision dated October 10, 2005 has become final and executory, it may still consider the Motion for Clarification because the petitioner simply wanted to clarify the meaning of "net profit earned."[19] Furthermore, the same Order held:

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[13] *Id.* at 70-76.

[14] *Id.* at 75.

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

[16] *Id.* at 75-76.

[17] *Id.* at 77-86.

[18] *Id.* at 87-91.

[19] *Id.* at 90.

ALL TOLD, the Court Order dated August 31, 2006 is hereby ordered set aside. NET PROFIT EARNED, which is subject of forfeiture in favor of [the] parties' common children, is ordered to be computed in accordance [with] par. 4 of Article 102 of the Family Code.[20]

On November 21, 2006, the respondents filed a Motion for Reconsideration,[21] praying for the correction and reversal of the Order dated November 8, 2006. Thereafter, on January 8, 2007,[22] the trial court had changed its ruling again and granted the respondents' Motion for Reconsideration whereby the Order dated November 8, 2006 was set aside to reinstate the Order dated August 31, 2006.

Not satisfied with the trial court's Order, the petitioner filed on February 27, 2007 this instant Petition for Review under Rule 45 of the Rules of Court, raising the following:

Issues

I

IS THE DISSOLUTION AND THE CONSEQUENT LIQUIDATION OF THE COMMON PROPERTIES OF THE HUSBAND AND WIFE BY VIRTUE OF THE DECREE OF LEGAL SEPARATION GOVERNED BY ARTICLE 125 (SIC) OF THE FAMILY CODE?

II

WHAT IS THE MEANING OF THE NET PROFITS EARNED BY THE CONJUGAL PARTNERSHIP FOR PURPOSES OF EFFECTING THE FORFEITURE AUTHORIZED UNDER ARTICLE 63 OF THE FAMILY CODE?

III

WHAT LAW GOVERNS THE PROPERTY RELATIONS BETWEEN THE HUSBAND AND WIFE WHO GOT MARRIED IN 1977? CAN THE FAMILY CODE OF THE PHILIPPINES BE GIVEN

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[20] *Id.* at 91.

[21] *Id.* at 92-97.

[22] *Id.* at 115-122.

RETROACTIVE EFFECT FOR PURPOSES OF DETERMINING THE NET PROFITS SUBJECT OF FORFEITURE AS A RESULT OF THE DECREE OF LEGAL SEPARATION WITHOUT IMPAIRING VESTED RIGHTS ALREADY ACQUIRED UNDER THE CIVIL CODE?

IV

WHAT PROPERTIES SHALL BE INCLUDED IN THE FORFEITURE OF THE SHARE OF THE GUILTY SPOUSE IN THE NET CONJUGAL PARTNERSHIP AS A RESULT OF THE ISSUANCE OF THE DECREE OF LEGAL SEPARATION?[23]

Our Ruling

While the petitioner has raised a number of issues on the applicability of certain laws, we are well-aware that the respondents have called our attention to the fact that the Decision dated October 10, 2005 has attained finality when the Motion for Clarification was filed.[24] Thus, we are constrained to resolve first the issue of the finality of the Decision dated October 10, 2005 and subsequently discuss the matters that we can clarify.

The Decision dated October 10, 2005 has become final and executory at the time the Motion for Clarification was filed on July 7, 2006.

Section 3, Rule 41 of the Rules of Court provides:

> Section 3. *Period of ordinary appeal*. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

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[23] *Id.* at 18.

[24] *Id.* at 143-146.

In *Neypes v. Court of Appeals*,[25] we clarified that to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, we held that "it would be practical to allow a fresh period of 15 days within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration."[26]

In *Neypes*, we explained that the "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the RTCs; Rule 42 on petitions for review from the RTCs to the Court of Appeals (CA); Rule 43 on appeals from quasi-judicial agencies to the CA and Rule 45 governing appeals by *certiorari* to the Supreme Court. We also said, "The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution."[27] In other words, a party litigant may file his notice of appeal within a fresh 15-day period from his receipt of the trial court's decision or final order denying his motion for new trial or motion for reconsideration. Failure to avail of the fresh 15-day period from the denial of the motion for reconsideration makes the decision or final order in question final and executory.

In the case at bar, the trial court rendered its Decision on October 10, 2005. The petitioner neither filed a motion for reconsideration nor a notice of appeal. On December 16, 2005, or after 67 days had lapsed, the trial court issued an order granting the respondent's motion for execution; and on February 10, 2006, or after 123 days had lapsed, the trial court issued a writ of execution. Finally, when the writ had already been partially executed, the petitioner, on July 7, 2006 or after 270 days had lapsed, filed his Motion for Clarification on the definition of the "net profits earned." From the foregoing, the

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[25] 506 Phil. 613, 629 (2005).

[26] *Id.* at 626.

[27] *Id.* at 627.

petitioner had clearly slept on his right to question the RTC's Decision dated October 10, 2005. For 270 days, the petitioner never raised a single issue until the decision had already been partially executed. Thus at the time the petitioner filed his motion for clarification, the trial court's decision has become final and executory. A judgment becomes final and executory when the reglementary period to appeal lapses and no appeal is perfected within such period. Consequently, no court, not even this Court, can arrogate unto itself appellate jurisdiction to review a case or modify a judgment that became final.[28]

The petitioner argues that the decision he is questioning is a void judgment. Being such, the petitioner's thesis is that it can still be disturbed even after 270 days had lapsed from the issuance of the decision to the filing of the motion for clarification. He said that "a void judgment is no judgment at all. It never attains finality and cannot be a source of any right nor any obligation."[29] But what precisely is a void judgment in our jurisdiction? When does a judgment becomes void?

"A judgment is null and void when the court which rendered it had no power to grant the relief or no jurisdiction over the subject matter or over the parties or both."[30] In other words, a court, which does not have the power to decide a case or that has no jurisdiction over the subject matter or the parties, will issue a void judgment or a *coram non judice*.[31]

The questioned judgment does not fall within the purview of a void judgment. For sure, the trial court has jurisdiction over a case involving legal separation. Republic Act (R.A.) No. 8369 confers upon an RTC, designated as the Family Court of a city, the exclusive original jurisdiction to hear and decide, among

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[28] *PCI Leasing and Finance, Inc., v. Milan*, G.R. No. 151215, April 5, 2010, 617 SCRA 258.

[29] *Rollo*, p. 166.

[30] See Moreno, Federico B., *Philippine Law Dictionary*, 3rd ed., 1988, p. 998.

[31] *People v. Judge Navarro*, 159 Phil. 863, 874 (1975).

others, complaints or petitions relating to marital status and property relations of the husband and wife or those living together.[32] The Rule on Legal Separation[33] provides that "the petition [for legal separation] shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner."[34] In the instant case, herein respondent Rita is found to reside in Tungao, Butuan City for more than six months prior to the date of filing of the petition; thus, the RTC, clearly has jurisdiction over the respondent's petition below. Furthermore, the RTC also acquired jurisdiction over the persons of both parties, considering that summons and a copy of the complaint with its annexes were served upon the herein petitioner on December 14, 2000 and that the herein petitioner filed his Answer to the Complaint on January 9, 2001.[35] Thus, without doubt, the RTC, which has rendered the questioned judgment, has jurisdiction over the complaint and the persons of the parties.

From the aforecited facts, the questioned October 10, 2005 judgment of the trial court is clearly not void *ab initio*, since it was rendered within the ambit of the court's jurisdiction. Being such, the same cannot anymore be disturbed, even if the modification is meant to correct what may be considered an erroneous conclusion of fact or law.[36] In fact, we have ruled that for "[as] long as the public respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may

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[32] R.A. No. 8369, Section 5(d).

[33] A.M. No. 02-11-11-SC.

[34] *Id.* at Section 2(c).

[35] *Rollo*, p. 38.

[36] *Sps. Edillo v. Sps. Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 601-602.

be reviewed or corrected only by appeal."[37] Granting without admitting that the RTC's judgment dated October 10, 2005 was erroneous, the petitioner's remedy should be an appeal filed within the reglementary period. Unfortunately, the petitioner failed to do this. He has already lost the chance to question the trial court's decision, which has become immutable and unalterable. What we can only do is to clarify the very question raised below and nothing more.

For our convenience, the following matters cannot anymore be disturbed since the October 10, 2005 judgment has already become immutable and unalterable, to wit:

(a) The finding that the petitioner is the offending spouse since he cohabited with a woman who is not his wife;[38]

(b) The trial court's grant of the petition for legal separation of respondent Rita;[39]

(c) The dissolution and liquidation of the conjugal partnership;[40]

(d) The forfeiture of the petitioner's right to any share of the net profits earned by the conjugal partnership;[41]

(e) The award to the innocent spouse of the minor children's custody;[42]

(f) The disqualification of the offending spouse from inheriting from the innocent spouse by intestate succession;[43]

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[37] *Lim v. Judge Vianzon*, 529 Phil. 472, 483-484 (2006); See also *Herrera v. Barretto and Joaquin*, 25 Phil. 245, 256 (1913), citing *Miller v. Rowan*, 251 Ill., 344.

[38] *Rollo*, pp. 50-51.

[39] *Id.* at 51.

[40] *Id.*

[41] *Id.* at 51-52.

[42] *Id.* at 52 and 56.

[43] *Id.* at 52.

(g) The revocation of provisions in favor of the offending spouse made in the will of the innocent spouse;[44]

(h) The holding that the property relation of the parties is conjugal partnership of gains and pursuant to Article 116 of the Family Code, all properties acquired during the marriage, whether acquired by one or both spouses, is presumed to be conjugal unless the contrary is proved;[45]

(i) The finding that the spouses acquired their real and personal properties while they were living together;[46]

(j) The list of properties which Rizal Commercial Banking Corporation (RCBC) foreclosed;[47]

(k) The list of the remaining properties of the couple which must be dissolved and liquidated and the fact that respondent Rita was the one who took charge of the administration of these properties;[48]

(l) The holding that the conjugal partnership shall be liable to matters included under Article 121 of the Family Code and the conjugal liabilities totaling ₱503,862.10 shall be charged to the income generated by these properties;[49]

(m) The fact that the trial court had no way of knowing whether the petitioner had separate properties which can satisfy his share for the support of the family;[50]

(n) The holding that the applicable law in this case is Article 129(7);[51]

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[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.* at 52-53.

[48] *Id.* at 53.

[49] *Id.* at 53-54.

[50] *Id.* at 55.

[51] *Id.*

(o) The ruling that the remaining properties not subject to any encumbrance shall therefore be divided equally between the petitioner and the respondent without prejudice to the children's legitime;[52]

(p) The holding that the petitioner's share of the net profits earned by the conjugal partnership is forfeited in favor of the common children;[53] and

(q) The order to the petitioner to reimburse the respondents the sum of ₱19,000.00 as attorney's fees and litigation expenses of ₱5,000.00.[54]

After discussing lengthily the immutability of the Decision dated October 10, 2005, we will discuss the following issues for the enlightenment of the parties and the public at large.

Article 129 of the Family Code applies to the present case since the parties' property relation is governed by the system of relative community or conjugal partnership of gains.

The petitioner claims that the court *a quo* is wrong when it applied Article 129 of the Family Code, instead of Article 102. He confusingly argues that Article 102 applies because there is no other provision under the Family Code which defines net profits earned subject of forfeiture as a result of legal separation.

Offhand, the trial court's Decision dated October 10, 2005 held that Article 129(7) of the Family Code applies in this case. We agree with the trial court's holding.

First, let us determine what governs the couple's property relation. From the record, we can deduce that the petitioner and the respondent tied the marital knot on January 6, 1977.

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[52] *Id.* at 56.

[53] *Id.* at 57.

[54] *Id.*

Since at the time of the exchange of marital vows, the operative law was the Civil Code of the Philippines (R.A. No. 386) and since they did not agree on a marriage settlement, the property relations between the petitioner and the respondent is the system of relative community or conjugal partnership of gains.[55] Article 119 of the Civil Code provides:

> Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Thus, from the foregoing facts and law, it is clear that what governs the property relations of the petitioner and of the respondent is conjugal partnership of gains. And under this property relation, "the husband and the wife place in a common fund the fruits of their separate property and the income from their work or industry."[56] The husband and wife also own in common all the property of the conjugal partnership of gains.[57]

Second, since at the time of the dissolution of the petitioner and the respondent's marriage the operative law is already the Family Code, the same applies in the instant case and the applicable law in so far as the liquidation of the conjugal partnership assets and liabilities is concerned is Article 129 of the Family Code in relation to Article 63(2) of the Family Code. The latter provision is applicable because according to Article 256 of the Family Code "[t]his Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other law."[58]

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[55] CIVIL CODE OF THE PHILIPPINES, Art. 119.

[56] *Id.* at Art. 142.

[57] *Id.* at Art. 143.

[58] FAMILY CODE OF THE PHILIPPINES, Art. 256.

Now, the petitioner asks: Was his vested right over half of the common properties of the conjugal partnership violated when the trial court forfeited them in favor of his children pursuant to Articles 63(2) and 129 of the Family Code?

We respond in the negative.

Indeed, the petitioner claims that his vested rights have been impaired, arguing: "As earlier adverted to, the petitioner acquired vested rights over half of the conjugal properties, the same being owned in common by the spouses. If the provisions of the Family Code are to be given retroactive application to the point of authorizing the forfeiture of the petitioner's share in the net remainder of the conjugal partnership properties, the same impairs his rights acquired prior to the effectivity of the Family Code."[59] In other words, the petitioner is saying that since the property relations between the spouses is governed by the regime of Conjugal Partnership of Gains under the Civil Code, the petitioner acquired vested rights over half of the properties of the Conjugal Partnership of Gains, pursuant to Article 143 of the Civil Code, which provides: "All property of the conjugal partnership of gains is owned in common by the husband and wife."[60] Thus, since he is one of the owners of the properties covered by the conjugal partnership of gains, he has a vested right over half of the said properties, even after the promulgation of the Family Code; and he insisted that no provision under the Family Code may deprive him of this vested right by virtue of Article 256 of the Family Code which prohibits retroactive application of the Family Code when it will prejudice a person's vested right.

However, the petitioner's claim of vested right is not one which is written on stone. In *Go, Jr. v. Court of Appeals*,[61] we define and explained "vested right" in the following manner:

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[59] *Rollo*, p. 29.

[60] CIVIL CODE OF THE PHILIPPINES, Art. 143.

[61] G.R. No. 172027, July 29, 2010, 626 SCRA 180, 201.

A vested right is one whose existence, effectivity and extent do not depend upon events foreign to the will of the holder, or to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.

To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.[62] (Citations omitted)

In our *en banc* Resolution dated October 18, 2005 for *ABAKADA Guro Party List Officer Samson S. Alcantara, et al. v. The Hon. Executive Secretary Eduardo R. Ermita*,[63] we also explained:

The concept of "vested right" is a consequence of the **constitutional guaranty of due process** that expresses a present fixed interest which in right reason and natural justice is protected against arbitrary state action; it includes not only legal or equitable title to the enforcement of a demand but also exemptions from new obligations created after the right has become vested. Rights are considered vested when the right to enjoyment is a present interest, absolute, unconditional, and perfect or fixed and irrefutable.[64] (Emphasis and underscoring supplied)

From the foregoing, it is clear that while one may not be deprived of his "vested right," he may lose the same if there is

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[62] *Id.* at 199.

[63] The Court consolidated the following cases: *ABAKADA Guro Party List Officer Samson S. Alcantara, et al. v. The Hon. Executive Secretary Eduardo R. Ermita*, G.R. No. 168056; *Aquilino Q. Pimentel, Jr., et al. v. Executive Secretary Eduardo R. Ermita, et al.*, G.R. No. 168207; *Association of Pilipinas Shell Dealers, Inc., et al. v. Cesar V. Purisima, et al.*, G.R. No. 168461; *Francis Joseph G. Escudero v. Cesar V. Purisima, et al.*, G.R. No. 168463; and *Bataan Governor Enrique T. Garcia, Jr. v. Hon. Eduardo R. Ermita, et al.*, G.R. No. 168730.

[64] *Id.*

due process and such deprivation is founded in law and jurisprudence.

In the present case, the petitioner was accorded his right to due process. *First,* he was well-aware that the respondent prayed in her complaint that all of the conjugal properties be awarded to her.[65] In fact, in his Answer, the petitioner prayed that the trial court divide the community assets between the petitioner and the respondent as circumstances and evidence warrant after the accounting and inventory of all the community properties of the parties.[66] *Second,* when the Decision dated October 10, 2005 was promulgated, the petitioner never questioned the trial court's ruling forfeiting what the trial court termed as "net profits," pursuant to Article 129(7) of the Family Code.[67] Thus, the petitioner cannot claim being deprived of his right to due process.

Furthermore, we take note that the alleged deprivation of the petitioner's "vested right" is one founded, not only in the provisions of the Family Code, but in Article 176 of the Civil Code. This provision is like Articles 63 and 129 of the Family Code on the forfeiture of the guilty spouse's share in the conjugal partnership profits. The said provision says:

> Art. 176. In case of legal separation, the guilty spouse shall forfeit his or her share of the conjugal partnership profits, which shall be awarded to the children of both, and the children of the guilty spouse had by a prior marriage. However, if the conjugal partnership property came mostly or entirely from the work or industry, or from the wages and salaries, or from the fruits of the separate property of the guilty spouse, this forfeiture shall not apply.
>
> In case there are no children, the innocent spouse shall be entitled to all the net profits.

From the foregoing, the petitioner's claim of a vested right has no basis considering that even under Article 176 of the

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[65] *Rollo,* p. 37.

[66] *Id.* at 39.

[67] *Id.* at 55-57.

Civil Code, his share of the conjugal partnership profits may be forfeited if he is the guilty party in a legal separation case. Thus, after trial and after the petitioner was given the chance to present his evidence, the petitioner's vested right claim may in fact be set aside under the Civil Code since the trial court found him the guilty party.

More, in *Abalos v. Dr. Macatangay, Jr.*,[68] we reiterated our long-standing ruling that:

> [P]rior to the liquidation of the conjugal partnership, the interest of each spouse in the conjugal assets is inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of each spouse is limited to the net remainder or "*remanente liquido*" (*haber ganancial*) resulting from the liquidation of the affairs of the partnership after its dissolution. Thus, the right of the husband or wife to one-half of the conjugal assets does not vest until the dissolution and liquidation of the conjugal partnership, or after dissolution of the marriage, when it is finally determined that, after settlement of conjugal obligations, there are net assets left which can be divided between the spouses or their respective heirs.[69] (Citations omitted)

Finally, as earlier discussed, the trial court has already decided in its Decision dated October 10, 2005 that the applicable law in this case is Article 129(7) of the Family Code.[70] The petitioner did not file a motion for reconsideration nor a notice of appeal. Thus, the petitioner is now precluded from questioning the trial court's decision since it has become final and executory. The doctrine of immutability and unalterability of a final judgment prevents us from disturbing the Decision dated October 10, 2005 because final and executory decisions can no longer be reviewed nor reversed by this Court.[71]

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[68] 482 Phil. 877-894 (2004).

[69] *Id.* at 890-891.

[70] *Rollo*, p. 55.

[71] *Malayan Employees Association-FFW v. Malayan Insurance Co.,*

From the above discussions, Article 129 of the Family Code clearly applies to the present case since the parties' property relation is governed by the system of relative community or conjugal partnership of gains and since the trial court's Decision has attained finality and immutability.

The net profits of the conjugal partnership of gains are all the fruits of the separate properties of the spouses and the products of their labor and industry.

The petitioner inquires from us the meaning of "net profits" earned by the conjugal partnership for purposes of effecting the forfeiture authorized under Article 63 of the Family Code. He insists that since there is no other provision under the Family Code, which defines "net profits" earned subject of forfeiture as a result of legal separation, then Article 102 of the Family Code applies.

What does Article 102 of the Family Code say? Is the computation of "net profits" earned in the conjugal partnership of gains the same with the computation of "net profits" earned in the absolute community?

Now, we clarify.

First and foremost, we must distinguish between the applicable law as to the property relations between the parties and the applicable law as to the definition of "net profits." As earlier discussed, Article 129 of the Family Code applies as to the property relations of the parties. In other words, the computation and the succession of events will follow the provisions under Article 129 of the said Code. Moreover, as to the definition of "net profits," we cannot but refer to Article 102(4) of the Family Code, since it expressly provides that for purposes of computing the net profits subject to forfeiture under Article 43, No. (2)

Inc., G.R. No. 181357, February 2, 2010, 611 SCRA 392, 399; *Catmon Sales Int'l. Corp. v. Atty. Yngson, Jr.,* G.R. No. 179761, January 15, 2010, 610 SCRA 236, 245.

and Article 63, No. (2), Article 102(4) applies. In this provision, net profits "shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution."[72] Thus, without any iota of doubt, Article 102(4) applies to both the dissolution of the absolute community regime under Article 102 of the Family Code, and to the dissolution of the conjugal partnership regime under Article 129 of the Family Code. Where lies the difference? As earlier shown, the difference lies in the processes used under the dissolution of the absolute community regime under Article 102 of the Family Code, and in the processes used under the dissolution of the conjugal partnership regime under Article 129 of the Family Code.

Let us now discuss the difference in the processes between the absolute community regime and the conjugal partnership regime.

On Absolute Community Regime:

When a couple enters into a **regime of absolute community**, the husband and the wife becomes joint owners of all the properties of the marriage. Whatever property each spouse brings into the marriage, and those acquired during the marriage (except those excluded under Article 92 of the Family Code) form the common mass of the couple's properties. And when the couple's marriage or community is dissolved, that common mass is divided between the spouses, or their respective heirs, equally or in the proportion the parties have established, irrespective of the value each one may have originally owned.[73]

Under Article 102 of the Family Code, upon dissolution of marriage, an inventory is prepared, listing separately all the properties of the absolute community and the exclusive properties

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[72] FAMILY CODE OF THE PHILIPPINES, Art. 102(4).

[73] *Id.* at Art. 91; See also Tolentino, Arturo, M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES: VOLUME ONE WITH THE FAMILY CODE OF THE PHILIPPINES*, 379 (1990).

of each; then the debts and obligations of the absolute community are paid out of the absolute community's assets and if the community's properties are insufficient, the separate properties of each of the couple will be solidarily liable for the unpaid balance. Whatever is left of the separate properties will be delivered to each of them. The net remainder of the absolute community is its net assets, which shall be divided between the husband and the wife; and for purposes of computing the net profits subject to forfeiture, said profits shall be the increase in value between the market value of the community property at the time of the celebration of the marriage and the market value at the time of its dissolution.[74]

Applying Article 102 of the Family Code, the "net profits" requires that we first find the market value of the properties at the time of the community's dissolution. From the totality of the market value of all the properties, we subtract the debts and obligations of the absolute community and this result to the net assets or net remainder of the properties of the absolute community, from which we deduct the market value of the properties at the time of marriage, which then results to the net profits.[75]

Granting without admitting that Article 102 applies to the instant case, let us see what will happen if we apply Article 102:

(a) According to the trial court's finding of facts, both husband and wife have no separate properties, thus, the remaining properties in the list above are all part of the absolute community. And its market value at the time of the dissolution of the absolute community constitutes the "market value at dissolution."

(b) Thus, when the petitioner and the respondent finally were legally separated, all the properties which remained will be liable for the debts and obligations of the community. Such debts

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[74] FAMILY CODE OF THE PHILIPPINES, Art. 102.

[75] Tolentino, Arturo, M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES: VOLUME ONE WITH THE FAMILY CODE OF THE PHILIPPINES*, 401-402 (1990).

and obligations will be subtracted from the "market value at dissolution."

(c) What remains after the debts and obligations have been paid from the total assets of the absolute community constitutes the net remainder or net asset. And from such net asset/remainder of the petitioner and respondent's remaining properties, the market value at the time of marriage will be subtracted and the resulting totality constitutes the "net profits."

(d) **Since both husband and wife have no separate properties,** and nothing would be returned to each of them, what will be divided equally between them is simply the "net profits." However, in the Decision dated October 10, 2005, the trial court forfeited the half-share of the petitioner in favor of his children. Thus, if we use Article 102 in the instant case (which should not be the case), nothing is left to the petitioner since both parties entered into their marriage without bringing with them any property.

On Conjugal Partnership Regime:

Before we go into our disquisition on the Conjugal Partnership Regime, we make it clear that Article 102(4) of the Family Code applies in the instant case **for purposes only of defining "net profit**." As earlier explained, the definition of "net profits" in Article 102(4) of the Family Code applies to both the absolute community regime and conjugal partnership regime as provided for under Article 63, No. (2) of the Family Code, relative to the provisions on Legal Separation.

Now, when a couple enters into a **regime of conjugal partnership of gains** under Article 142 of the Civil Code, "the husband and the wife place in common fund the fruits of their separate property and income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage."[76] From the foregoing

[76] CIVIL CODE OF THE PHILIPPINES, Art. 142.

provision, each of the couple has his and her own property and debts. The law does not intend to effect a mixture or merger of those debts or properties between the spouses. Rather, it establishes a complete separation of capitals.[77]

Considering that the couple's marriage has been dissolved under the Family Code, Article 129 of the same Code applies in the liquidation of the couple's properties in the event that the conjugal partnership of gains is dissolved, to wit:

> Art. 129. Upon the dissolution of the conjugal partnership regime, the following procedure shall apply:
>
> (1) An inventory shall be prepared, listing separately all the properties of the conjugal partnership and the exclusive properties of each spouse.
>
> (2) Amounts advanced by the conjugal partnership in payment of personal debts and obligations of either spouse shall be credited to the conjugal partnership as an asset thereof.
>
> (3) Each spouse shall be reimbursed for the use of his or her exclusive funds in the acquisition of property or for the value of his or her exclusive property, the ownership of which has been vested by law in the conjugal partnership.
>
> (4) The debts and obligations of the conjugal partnership shall be paid out of the conjugal assets. In case of insufficiency of said assets, the spouses shall be solidarily liable for the unpaid balance with their separate properties, in accordance with the provisions of paragraph (2) of Article 121.
>
> (5) Whatever remains of the exclusive properties of the spouses shall thereafter be delivered to each of them.
>
> (6) Unless the owner had been indemnified from whatever source, the loss or deterioration of movables used for the benefit of the family, belonging to either spouse, even due to fortuitous event, shall be paid to said spouse from the conjugal funds, if any.

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[77] Tolentino, Arturo, M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES: VOLUME ONE*, 365 (1974).

(7) The net remainder of the conjugal partnership properties shall constitute the profits, which shall be divided equally between husband and wife, unless a different proportion or division was agreed upon in the marriage settlements or unless there has been a voluntary waiver or forfeiture of such share as provided in this Code.

(8) The presumptive legitimes of the common children shall be delivered upon the partition in accordance with Article 51.

(9) In the partition of the properties, the conjugal dwelling and the lot on which it is situated shall, unless otherwise agreed upon by the parties, be adjudicated to the spouse with whom the majority of the common children choose to remain. Children below the age of seven years are deemed to have chosen the mother, unless the court has decided otherwise. In case there is no such majority, the court shall decide, taking into consideration the best interests of said children.

In the normal course of events, the following are the steps in the liquidation of the properties of the spouses:

(a) An inventory of all the actual properties shall be made, separately listing the couple's conjugal properties and their separate properties.[78] In the instant case, **the trial court found that the couple has no separate properties when they married.**[79] Rather, the trial court identified the following conjugal properties, to wit:

1. coffee mill in Balongagan, Las Nieves, Agusan del Norte;

2. coffee mill in Durian, Las Nieves, Agusan del Norte;

3. corn mill in Casiklan, Las Nieves, Agusan del Norte;

4. coffee mill in Esperanza, Agusan del Sur;

5. a parcel of land with an area of 1,200 square meters located in Tungao, Butuan City;

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[78] Tolentino, Arturo, M., *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES: VOLUME ONE WITH THE FAMILY CODE OF THE PHILIPPINES*, 472 (1990).

[79] *Rollo*, p. 55.

6. a parcel of agricultural land with an area of 5 hectares located in Manila de Bugabos, Butuan City;

7. a parcel of land with an area of 84 square meters located in Tungao, Butuan City;

8. Bashier Bon Factory located in Tungao, Butuan City.[80]

(b) Ordinarily, the benefit received by a spouse from the conjugal partnership during the marriage is returned in equal amount to the assets of the conjugal partnership;[81] and if the community is enriched at the expense of the separate properties of either spouse, a restitution of the value of such properties to their respective owners shall be made.[82]

(c) Subsequently, the couple's conjugal partnership shall pay the debts of the conjugal partnership; while the debts and obligation of each of the spouses shall be paid from their respective separate properties. But if the conjugal partnership is not sufficient to pay all its debts and obligations, the spouses with their separate properties shall be solidarily liable.[83]

(d) Now, what remains of the separate or exclusive properties of the husband and of the wife shall be returned to each of them.[84] In the instant case, **since it was already established by the trial court that the spouses have no separate properties,**[85] **there is nothing to return to any of them.** The listed properties above are considered part of the conjugal partnership. Thus, ordinarily, what remains in the above-listed properties should be divided equally between the spouses and/or their respective heirs.[86] However, since the trial court found

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

[81] FAMILY CODE OF THE PHILIPPINES, Art. 129(2).

[82] *Id.* at Art. 129(3).

[83] *Id.* at Art. 129(4).

[84] *Id.* at Art. 129(5).

[85] *Rollo*, p. 55.

[86] FAMILY CODE OF THE PHILIPPINES, Art. 129(7).

the petitioner the guilty party, his share from the net profits of the conjugal partnership is forfeited in favor of the common children, pursuant to Article 63(2) of the Family Code. Again, lest we be confused, like in the absolute community regime, nothing will be returned to the guilty party in the conjugal partnership regime, because **there is no separate property which may be accounted for in the guilty party's favor.**

In the discussions above, we have seen that in both instances, the petitioner is not entitled to any property at all. Thus, we cannot but uphold the Decision dated October 10, 2005 of the trial court. However, we must clarify, as we already did above, the Order dated January 8, 2007.

WHEREFORE, the Decision dated October 10, 2005 of the Regional Trial Court, Branch 1 of Butuan City is **AFFIRMED**. Acting on the Motion for Clarification dated July 7, 2006 in the Regional Trial Court, the Order dated January 8, 2007 of the Regional Trial Court is hereby **CLARIFIED** in accordance with the above discussions.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

THIRD DIVISION

[G.R. No. 180245. July 4, 2012]

PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., *petitioner, vs.* **TAKENAKA CORPORATION and ASAHIKOSAN CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ALLEGED DENIAL OF DUE PROCESS NEGATED AS PARTY WAS GIVEN OPPORTUNITY TO BE HEARD IN THE MOTION TO DISMISS.— The Court does not see any reason to overturn the CA's finding that there was no grave abuse of discretion on the part of the trial court in denying the Motion to Dismiss and the Motion to Set the Motion to Dismiss for Hearing. x x x [T]here is no showing of such capricious or whimsical exercise of judgment or arbitrary and despotic exercise of power committed by the trial court. In fact, records reveal that both parties were given ample opportunity to be heard. A hearing on the Motion to Dismiss was held [and] both parties submitted their pleadings setting forth their claims, arguments and supporting evidence. x x x It is an oft-repeated principle that where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING; VERIFICATION/ CERTIFICATION DEFECT RELAXED IN CASE AT BAR AS IT AFFECTS IMPORTANT PUBLIC UTILITY, AN INTERNATIONAL AIRPORT.— [O]n the issue of the Verification/Certification, the court has the power to give due course to the complaint even with the supposed defect, if special circumstances warrant. Even assuming *arguendo,* that the form used to show Mr. Kurebayashi's authority to execute the Verification and Certification Against Forum Shopping is defective, petitioner should bear in mind that this Court may relax the application of procedural rules for the greater interest of substantial justice. x x x This case is one of those that deserves a more lenient application of procedural rules,

considering that it affects one of the most important public utilities of our country. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, this Court has already stated that these cases involving the construction and operation of the country's premier international airport, has attained transcendental importance.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for petitioner.

Castillo Laman Tan Pantaleon & San Jose for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated July 27, 2007, and the CA Resolution[2] dated October 23, 2007, denying herein petitioner's motion for partial reconsideration, be reversed and set aside.

The antecedent facts were accurately narrated in the CA Decision as follows.

In 1997, by way of a Concession Agreement, the Philippine Government awarded to petitioner the right to build and operate the NAIA International Passenger Terminal III ("NAIA IPT3"). Petitioner then contracted respondents Takenaka Corporation, and Asahikosan Corporation ("private respondents") to construct and equip NAIA IPT3.

Private respondents are both foreign corporations organized under the laws of Japan, but only respondent Takenaka Corporation is licensed to do business in the Philippines through its local branch office.

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[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Sesinando E. Villon, concurring; *rollo*, pp. 37-72.

[2] *Id.* at 73-76.

Claiming that petitioner made no further payments after May 2002 despite continued performance of their obligations, private respondents filed two collection suits before the High Court of Justice, Queen's Bench Division, Technology and Construction Court in London, England ("London Court"), docketed as Claim No. HT-04-248 and Claim No. HT-05-269. In both claims, respondent Takenaka Corporation was designated as the First Claimant and respondent Asahikosan Corporation, the Second Claimant.

Ruling in favor of private respondents, the London Court issued an *Order* dated February 18, 2005 in Claim No. HT-04-248 and an *Order* dated December 2, 1005 (sic) in Claim No. HT-05-269, directing that –

Claim No. HT-04-248

"1. Judgment be entered for the First Claimant in the sum of 6,602,971.00 United States dollars, together with interest in the sum of 116,825,365.34 Philippine pesos up to and including 18 February 2005.

2. Judgment be entered for the Second Claimant in the sum of 8,224,236.00 United States dollars, together with interest in the sum of 2,947,564.87 United States dollars up to and including 18 February 2005, being a total of 11,171,800.87 United States dollars.

3. Save for the costs of and caused by the amendment of the particulars of claim, which will be the subject of a separate order, the Defendant to pay the First Claimant's and the Second Claimant's costs in the action, to be subject to detailed assessment if not agreed."

Claim No. HT-05-269

"1. Judgment be entered for the First Claimant in the sum of 21,688,012.18 United States dollars, together with interest in the sum of 6,052,805.83 United States dollars.

2. Judgment be entered for the Second Claimant in the sum of 30,319,248.36 United States dollars, together with interest in the sum of 5,442,628.26 United States dollars.

3. The Defendant to pay the Claimants' costs in the action, to be subject to detailed assessment if not agreed."

On March 1, 2006, private respondents filed a *Complaint*, docketed as Civil Case No. 06-171, before the Regional Trial Court of Makati City, Br. 58, to enforce the aforesaid *Orders* of the London Court.

Petitioner filed a Motion to Dismiss the Complaint on the grounds of: (a) defective verification and certification against forum shopping, because there was no board resolution showing that Mr. Takeshi Kurebayashi was authorized by private respondents to sign the verification and certification of non-forum shopping, and the special powers of attorney executed in favor of Mr. Kurebayashi by the Executive Vice-President and President of respondents Takenaka Corporation and Asahikosan Corporation, respectively, were not only insufficient but also improperly authenticated since the said officers never personally appeared before the notary public, and finally, Mr. Kurebayashi was not competent to guarantee that respondent Asahikosan Corporation has not engaged in forum shopping, not being an employee or member of the said corporation; (b) forum shopping, because the Complaint was allegedly private respondents' third attempt to file the same claim, the first attempt being private respondents' voluntary submission to the jurisdiction of the Pasay Court in Civil Case No. 04-0876, the expropriation case filed by the Republic of the Philippines against herein petitioner, where private respondents manifested that they are not objecting to the taking of the condemned property (NAIA IPT3), provided that they are justly compensated for their claims as unpaid contractors, and the second attempt having been made before the Supreme Court in G.R. No. 166429 where private respondents moved for partial reconsideration (in intervention) of the Supreme Court's decision affirming, with modification, the Pasay Court's Order allowing the full release to herein petitioner of the funds deposited by the Republic of the Philippines for the expropriation of the NAIA IPT3; (c) payment, novation, abandonment or extinguishment of the claims, inasmuch as private respondents have allegedly entered into a contract with the Philippine government pursuant to which private respondents supposedly received payment of US$10Million from the Philippine government, with the latter committing to deliver more; and (d) non-compliance with a condition precedent, because petitioner failed to resort to arbitration before the Construction Industry Arbitration Commission (CIAC) as allegedly provided by the terms of the parties' agreement.

During the hearing of the Motion to Dismiss on April 7, 2006, private respondents asked for time to file their Opposition. Private respondents subsequently filed their Opposition, which was followed by petitioner's Reply, private respondents' Rejoinder and petitioner's Sur-Rejoinder.

On May 9, 2006, petitioner filed a Motion to Set its Motion to Dismiss for hearing, to enable it to present evidence on the alleged payment, novation and extinguishment of its obligations to private respondents. Thereafter, petitioner filed a Request for Subpoena *Duces Tecum Ad Testificandum* to direct Mr. Takeshi Kurebayashi to appear and testify in court, and to bring the alleged General Framework Agreement ("GFA") between private respondents and the Philippine government as represented by the Manila International Airport Authority (MIAA). Petitioner likewise filed a Motion for Production and Inspection of Documents to require private respondents, or any of its officers and representatives, to produce and permit the inspection, copying and photographing of the GFA by petitioner.

Private respondents opposed the said Motions and Request, arguing that the Motion to Dismiss need not be heard anew because the ground sought to be proved, *i.e.*, payment, novation or extinguishment of obligation, was based on mere newspaper reports which are hearsay evidence. Private respondents also asserted that Mr. Kurebayashi may not be compelled to testify as an adverse party witness without first being served interrogatories. They further argued that discovery of documents may not be allowed until the answer is filed since the materiality of the document requested cannot be determined until the issues are joined. And assuming for the sake of argument that petitioner could prove the partial payment of US$10Million, the payment would allegedly not extinguish petitioner's total obligation as to result in the dismissal of the action.

Petitioner thereafter filed with the trial court, and served upon the President of respondent Takenaka Corporation, Written Interrogatories which, among others, asked if Takenaka entered into a General Framework Agreement with the Philippine government, what its salient features are, and if any amount has been paid to Takenaka by the Philippine government.

Private respondents moved to expunge the Written Interrogatories, arguing that written interrogatories cannot be served without leave of court before an Answer has been filed.

On June 26, 2006, petitioner filed a Motion for Leave to serve its Written Interrogatories on the President of respondent Takenaka Corporation. That same day, respondent judge issued the first assailed Omnibus Order denying petitioner's Motion to Dismiss, Motion to Set the Motion to Dismiss for hearing, Motion for Production and Inspection of Documents, and Written Interrogatories.

Respondent judge held that Mr. Takeshi Kurebayashi was duly authorized to represent both private respondents noting the Special Powers of Attorney attached to the Verification and Certification against Forum Shopping, which were executed by the representative directors of private respondents, and accompanied by Notarial Certificates executed in Tokyo by a Japanese Notary, giving authority to Mr. Kurebayashi to file the Complaint. Respondent judge observed that under Articles 261 and 78 of the Commercial Law of Japan, corporations may act through their representative directors, similar to the Executive Committee under Philippine Corporation Law. Respondent judge held that under the principle of *lex loci celebrationis*, the validity of the Special Powers of Attorney is determined by the law of the place where they were executed.

Respondent judge rejected petitioner's claim of forum shopping, holding that private respondents simply served notice on the Pasay Court and the Supreme Court about their being unpaid contractors. Respondent judge found that private respondents merely prayed that the said Courts hold in abeyance the release of the funds to petitioner until such time they can enforce the London Court Orders by virtue of a final judgment, which neither the Pasay court nor the Supreme Court may render because the case before them was one for expropriation.

Respondent judge likewise rejected petitioner's assertion that its obligation has been extinguished by payment or novation. According to respondent judge, petitioner's claim that private respondents had entered into a contract with the Philippine government was based on alleged newspaper articles which are inadmissible in evidence for being hearsay. If at all, said respondent judge, such claim should be raised as an affirmative defense in the Answer and substantiated in a full-blown trial. And assuming private respondents were indeed paid US$10Million under the alleged contract with the Philippine government, the same is but a small portion of the total amount claimed which is around US$198Million, excluding attorney's fees and costs of suit.

Anent private respondents' alleged failure to resort to arbitration, respondent judge held that "this ground, which actually assails the jurisdiction of the foreign court," is "a matter of affirmative or special defense" which should be threshed out in a trial.

Finally, respondent judge held that the Motion for Production and Inspection of Documents and the Written Interrogatories are modes of discovery that can only be availed of after the Answer has been filed, pursuant to A.M. No. 03-1-09-SC.

Dissatisfied with respondent judge's ruling, petitioner moved for reconsideration of the June 26, 2006 Omnibus Order.

Noting that petitioner "failed to attach a copy of the alleged General Framework (of) Agreement in its Motion for Reconsideration that will give flesh and blood to its bones of contentions that (private respondents') claim has already been paid, novated or extinguished," respondent judge issued his Order dated September 5, 2006, directing petitioner to submit the alleged GFA within 5 days from notice.

Accordingly, petitioner filed a Request for Subpoena *Duces Tecum* for Alfonso Cusi, General Manager or Records Custodian of MIAA, to bring the GFA, vouchers, receipts and other papers proving MIAA's alleged payments to respondent Takenaka Corporation.

On September 22, 2006, respondent judge granted petitioner's request and directed the issuance of the subpoena *duces tecum*.

On September 27, 2006, the MIAA, through the Office of the Solicitor General, filed a Motion to Quash the subpoena *duces tecum*, without serving a copy of their motion on the parties. The MIAA averred that the subpoena was oppressive and unreasonable for it allegedly violated Section 6, Rule 21, and petitioner allegedly failed to show the relevance of the documents sought to be produced. The MIAA added that "(t)he only objective that (petitioner) has in asking for the GFA is to use against the Government and shift its burden of paying its EPC contractors, Takenaka Corporation and Asahikosan Corporation for the unpaid services rendered before the government expropriated the NAIA Terminal III." The MIAA averred that "(petitioner) is venturing into a 'fishing expedition' to evade its obligations to Takenaka Corporation and Asahikosan Corporation, and shifting the burden to the Government."

On October 9, 2006, respondent judge issued the second assailed Order quashing the subpoena *duces tecum*, because the MIAA was not given ample opportunity to prepare for the submission of the requested document, and because petitioner had to show the relevancy of the said document in the light of MIAA's contention that petitioner is merely shifting the burden to pay its contractors for unpaid services rendered before the expropriation of the NAIA IPT3.

Consequently, petitioner moved for reconsideration of the October 9, 2006 Order.

On January 15, 2007, respondent judge issued the third assailed Omnibus Order, denying petitioner's motions for reconsideration of the assailed June 26, 2006 Omnibus Order, and October 9, 2006 Order.[3]

Petitioner then filed a petition for *certiorari*, prohibition and *mandamus* with the CA, alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to set another hearing for the motion to dismiss, when it denied the Motion to Dismiss and the Motion for Production and Inspection of Documents, and the Written Interrogatories. The CA ruled that since a hearing on the Motion to Dismiss was held on April 7, 2006 and, thereafter, both parties filed an exchange of pleadings, then petitioner had reasonable opportunity to be heard, which was the essence of due process. The CA concluded that the trial court did not commit grave abuse of discretion in denying petitioner's motion to dismiss and the motion to set said motion for hearing. However, the CA ruled that it was grave abuse of discretion for the trial judge not to grant the motion for production and inspection of documents and written interrogatories, because Section 1, Rule 25, in relation to Section 1, Rule 23 provides that written interrogatories may be served even before the Answer is filed so long as leave of court has been obtained, and Section 1, Rule 27 states that the motion for production of documents or things may be filed while the action is pending, which includes the period before the Answer is filed. With regard to the quashal of the subpoena *duces tecum*, the CA held that MIAA's Motion

[3] *Id.* at 38-47.

to Quash should not have been acted upon by the trial court because it did not contain a Notice of Hearing, making it a mere scrap of paper. Thus, it held that the issuance of the Order dated October 9, 2007 quashing the subject subpoena was done with grave abuse of discretion. On July 27, 2007, the CA rendered the assailed Decision, disposing as follows:

> WHEREFORE, the petition is **GRANTED IN PART**. The assailed *Order* dated October 9, 2006, which quashed the subpoena *duces tecum*, is hereby ***SET ASIDE***. The assailed *Omnibus Order* dated June 26, 2006 is ***SET ASIDE IN PART*** insofar as it denied petitioner's *Motion for Production and Inspection of Documents* and *Written Interrogatories*. The assailed *Omnibus Order* dated January 15, 2007 is likewise ***SET ASIDE IN PART*** insofar as it denied reconsideration of the June 26, 2006 denial of the *Motion for Production and Inspection of Documents* and *Written Interrogatories*, and the October 9, 2006 quashal of the subpoena *duces tecum*. The assailed June 26, 2006 and January 15, 2007 *Omnibus Orders* are ***AFFIRMED IN PART*** insofar as they denied the *Motion to Set the Motion to Dismiss* for hearing, and the *Motion to Dismiss*.
>
> SO ORDERED.[4]

Petitioner moved for partial reconsideration of the CA Decision, but the same was denied in a Resolution dated October 23, 2007.

Hence, this petition for review on *certiorari* where petitioner alleges that the CA erred (1) in ruling that the Complaint is not fatally defective despite the fact that only a Special Power of Attorney, and not a Board Resolution was attached to the Verification and Certification Against Forum Shopping; and (2) in depriving petitioner the right to present evidence on its Motion to Dismiss.

On the other hand, respondents countered in their Comment that the petition should be dismissed outright because it was filed out of time; it did not include a material portion of the record below, *i.e.*, respondents' Comment to the petition before

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[4] *Id.* at 71. (Emphases supplied.)

the CA; and the CA did not err in ruling that Mr. Kurebayashi was duly authorized by respondents to sign the verification/certification of non-forum shopping, because under the laws of Japan, under which laws respondents were incorporated, the board of directors of a Japanese corporation may appoint one or more Representative Directors who shall have the authority to perform all acts within court proceedings and out-of-court acts relating to the business of the corporation, and Mr. Kurebayashi was validly appointed by respondents' Representative Directors to execute the Verification/Certification.

The Court finds the petition unmeritorious.

At the outset, respondents must be disabused of the belief that the petition was filed late. Petitioner originally had only until December 14, 2007 within which to file action. However, the Court indeed suspended office transactions on December 14, 2007 due to the celebration of the Christmas party so the Court's receiving section was closed. Petitioner, therefore, had until the next working day, or until December 17, 2007, within which to file the petition. As long as the petition was filed on that last day of December 17, 2007, then it is considered to have been filed on time. Records show that the petition was indeed filed on December 17, 2007. Hence, it is of no moment that the Secretary's Certificate attached to the Verification and Certification of Non-Forum Shopping was notarized on December 17, 2007, or later than December 14, 2007.

Having resolved the question on the timeliness of the petition, we go on to discuss the main issues in this case.

The Court does not see any reason to overturn the CA's finding that there was no grave abuse of discretion on the part of the trial court in denying the Motion to Dismiss and the Motion to Set the Motion to Dismiss for Hearing. The established definition of grave abuse of discretion was reiterated in *Ligeralde v. Patalinghug*[5] in this wise:

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[5] G.R. No. 168796, April 15, 2010, 618 SCRA 315.

x x x By grave abuse of discretion is meant such **capricious or whimsical exercise of judgment** as is equivalent to lack of jurisdiction. The abuse of discretion must be **patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where **the power is exercised in an arbitrary and despotic manner** by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.[6] (Emphases supplied)

In this case, there is no showing of such capricious or whimsical exercise of judgment or arbitrary and despotic exercise of power committed by the trial court. In fact, records reveal that both parties were given ample opportunity to be heard. A hearing on the Motion to Dismiss was, in fact, held on April 7, 2006. Thereafter, both parties submitted their pleadings setting forth their claims, arguments and supporting evidence. Petitioner points out that at the April 7, 2006 hearing, the parties were only allowed to file their pleadings, and no actual hearing, or presentation of evidence, was conducted. It is an oft-repeated principle that where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[7] Moreover, the issues that petitioner seeks to tackle in the requested hearing on the motion to dismiss, *i.e.*, novation, payment, extinguishment or abandonment of the obligation, are the meat of their defense and would require the presentation of voluminous evidence. Such issues are better threshed out during trial proper. Thus, the trial court was not amiss in ruling that petitioner already had the opportunity to be heard and there was no longer any need to set **another** hearing on the motion to dismiss.

It also appears from the RTC's Orders and the CA's Decision that any and all evidence and argument advanced by both parties

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[6] *Id.* at 320.

[7] *Gomez v. Alcantara*, G.R. No. 179556, February 13, 2009, 579 SCRA 472, 488; *Trans Middle East (Phils.) Equities, Inc. v. Sandiganbayan*, G.R. No. 129434, August 18, 2006, 499 SCRA 308, 317.

were seriously taken into consideration by said lower courts in arriving at their rulings. Such being the case, there could be no grave abuse of discretion committed by the trial court.

Lastly, on the issue of the Verification/Certification, the court has the power to give due course to the complaint even with the supposed defect, if special circumstances warrant. Even assuming *arguendo*, that the form used to show Mr. Kurebayashi's authority to execute the Verification and Certification Against Forum Shopping is defective, petitioner should bear in mind that this Court may relax the application of procedural rules for the greater interest of substantial justice. Thus, in *Cua, Jr. v. Tan*,[8] this Court explained thus:

x x x Although the submission of a certificate against forum shopping is deemed obligatory, it is not jurisdictional. Hence, in this case in which such a certification was in fact submitted – only, it was defective – the Court may still refuse to dismiss and may, instead, give due course to the Petition in light of attendant exceptional circumstances.

x x x x x x x x x

x x x [I]n the interest of substantial justice, the strict application of procedural technicalities should not hinder the speedy disposition of this case on the merits. x x x

x x x x x x x x x

x x x Indeed, where, as here, there is a strong showing that a grave miscarriage of justice would result from the strict application of the Rules, the Court will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, **if the application of the Rules would tend to frustrate rather than**

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

promote justice, it is always within the power of the Court to suspend the Rules, or except a particular case from its operation.[9] (Emphasis supplied)

This case is one of those that deserves a more lenient application of procedural rules, considering that it affects one of the most important public utilities of our country. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[10] this Court has already stated that these cases involving the construction and operation of the country's premier international airport, has attained transcendental importance.[11] Therefore, the Court sees it fit to relax the rules in this case to arrive at a full settlement of the parties' claims and avoid further delay in the administration of justice.

IN VIEW OF THE FOREGOING, the petition is **DENIED**. The Court of Appeal's Decision dated July 27, 2007, and the CA Resolution dated October 23, 2007 in CA-G.R. SP No. 98166 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[9] *Id.* at 686-687.

[10] G.R. Nos. 155001, 155547 & 155661, May 5, 2003, 402 SCRA 612.

[11] *Id.* at 646.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 182059. July 4, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CAMILO D. NICART and MANUEL T. CAPANPAN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUG; ELEMENTS THEREOF PRESENT IN CASE AT BAR.— PO1 Decena attested that Nicart took his marked money, walked over to Capanpan and exchanged it with a sachet of *shabu.* Afterwards, Nicart walked back to PO1 Decena and gave the item to him. SPO3 Matias, on the other hand, testified as to the circumstances of the arrest of Capanpan, the recovery of the marked money, and the confiscation of another sachet of *shabu* in his possession. The seized items, the Chemistry Report issued by P/Sr. Insp. Annalee R. Forro stating that the contents of the sachets tested for *shabu*, and the marked money were all presented in court. These were coupled with the stipulation between the prosecution and the defense that the substances earlier forwarded to the laboratory for examination and those presented in court were the same specimens examined and tested positive for *shabu*. Thus, present in the instant case are the following requisites for illegal sale of *shabu*: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; x x x (b) the delivery of the thing sold and the payment for the thing[; and (c)] the presentation in court of the *corpus delicti* as evidence." Likewise present are the essential elements of illegal possession of a dangerous drug, to wit: "(a) [that] the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) [that] such possession is not authorized by law; and (c) [that] the accused freely and consciously possessed the drug."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED

BY APPELLATE COURT, RESPECTED.— [T]he "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings." Likewise basic is the rule that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."

3. ID.; ID.; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTY, UPHELD.— [A]fter a close examination of the records, we are strongly convinced that the trial court and the Court of Appeals validly gave credence to the testimonies of PO1 Decena and SPO3 Matias. x x x Also, during cross-examination, the counsel for the defense attempted but failed to elicit answers inconsistent with the earlier statement of PO1 Decena in his Affidavit of Arrest. This further strengthened the latter's credibility. x x x In addition, the admission of Nicart and Capanpan that they did not know any of the apprehending officers prior to the arrest ruled out any ill motive on the part of the members of the team to falsely testify against them, for which reason, regularity in the performance of their duties is presumed.

4. CRIMINAL LAW; DANGEROUS DRUGS ACT; CHAIN OF CUSTODY; OBSERVED IN CASE AT BAR.— [I]t is evident that the apprehending officers observed the requirement of unbroken chain of custody when it marked the heat-sealed plastic containers of the seized items with their initials in front of the accused, and transmitted the same to the laboratory for examination. x x x Notably, the last requirement, that is, that the forensic chemist should attest to the fact that the substances produced in court are the same specimens she found positive for *shabu*, had been substantially complied with in the instant case because the prosecution and the defense stipulated that Exhibits "E-1" and "E-2" (the two heat-sealed transparent plastic sachets both containing 0.03 gram of white crystalline substance recovered from the accused), which were presented in court were the same substances subject of both Exhibit "B-1" (the request for laboratory examination dated July 3, 2003) and Exhibit "C-1" (Chemistry Report No. D-1271-03E issued by

P/Sr. Insp. Annalee R. Forro), and that the same were regularly examined by the said officer.

5. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER CREDIBLE TESTIMONY AND POSITIVE IDENTIFICATION OF APPELLANTS.— All considered, the credible testimonies of the arresting officers and their positive identification of the appellants should prevail over the bare denial of the defense nor the conflicting and incomplete testimonies of their witnesses. "Denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters."

6. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF *SHABU*; CAN HAPPEN IN A PUBLIC PLACE TO A TOTAL STRANGER.— As to the circumstances obtaining in the sale of *shabu*, we uphold the ruling of the Court of Appeals. Thus: x x x In the first place, the buy-bust operation took place at nighttime xxx. Thus, the illegal transaction could hardly be said to have been made in plain and public view. Besides, the prosecution witnesses described the place as "*parang squatter*." It must be observed that in this kind of community, crimes committed brazenly and in broad daylight are not uncommon occurrences. x x x We here repeat that "we know that drug pushing has been committed with so much casualness even between total strangers."

7. ID.; ID.; BUY-BUST OPERATION; PRIOR SURVEILLANCE, NOT REQUIRED.— It is a well-settled rule that prior surveillance is not required, especially when the team is accompanied to the scene by the informant. The case of *People v. Quintero* cited by the defense is not on all fours with the present case. In that case, the buy-bust team relied solely on the description given by the informant that the subject was "wearing white t-shirt, khaki pants and tennis shoes" and, without prior surveillance, proceeded to the area unaccompanied by the informant. On the other hand, the informant in the case at bar accompanied by the team to the area and introduced the accused to the poseur-buyer.

8. ID.; ID.; ILLEGAL SALE OF *SHABU*; PENALTY.— Sec. 5, Article II of R.A. No. 9165 is clear that the quantity of *shabu* sold is not material in the determination of the corresponding penalty therefor. Regardless of the amount of the substance sold, a person found guilty of such unauthorized sale shall suffer the penalty of life imprisonment and a fine ranging from Five Hundred Thousand (₱500,000.00) pesos to Ten Million Pesos (₱10,000,000.00).

9. ID.; ID.; ILLEGAL POSSESSION OF *SHABU* WEIGHING LESS THAN FIVE (5) GRAMS; PENALTY.— [U]nder Section 11, Article II of [RA 9165], the crime of illegal possession of *shabu* weighing less than five (5) grams carries with it the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).

10. ID.; ID.; ILLEGAL SALE OF *SHABU* AND ILLEGAL POSSESSION OF *SHABU* WEIGHING 0.3 GRAM; PROPER PENALTY IN CASE AT BAR APPLYING THE INDETERMINATE SENTENCE LAW.— [Applying the Indeterminate Sentence Law, the appropriate penalty] with respect to the crime of illegal sale of *shabu*, due to the absence of any mitigating circumstance, the trial court correctly imposed the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) as these are within the period and range of the fine prescribed by law. As regards the crime of illegal possession of 0.3 gram of *shabu*, the penalty of imprisonment for an indeterminate term of twelve years (12) and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of ₱300,000.00, which is within the range of the amount imposable therefor is likewise in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before us for final review is the Decision[1] dated 25 October 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01901, which affirmed the Joint Decision[2] dated 11 May 2005 of the Regional Trial Court, Branch 164, Pasig City in Criminal Case Nos. 12625-D and 12626-D. The trial court found accused-appellant Camilo Nicart (Nicart) guilty beyond reasonable doubt of illegal sale of *shabu* in violation of Section 5, Article II of Republic Act 9165 (RA 9165) and accused-appellant Manuel Capanpan (Capanpan) guilty beyond reasonable doubt of illegal sale and illegal possession of *shabu* in violation of Sections 5 and 11, Article II of the same Act.[3]

The Facts

On 4 July 2003, an Information[4] charging Nicart and Capanpan with violation of Section 5, Article II of RA 9165 was filed before the Regional Trial Court, Branch 164, Pasig City. A

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[1] *Rollo*, pp. 2-23. Penned by Court of Appeals Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring.

[2] CA *rollo*, pp. 14-20. Penned by Judge Librado S. Correa.

[3] *Id.* at 19-20.

[4] The accusatory portion of the Information dated 4 July 2003 in Criminal Case No. 12625-D reads:

On or about July 3, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the above accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Joy Decena, a police poseur buyer, one (1) heat-sealed transparent plastic sachet, containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Records, p. 1.

separate Information[5] against Capanpan was also filed on even date for violation of Section 11, Article II of the same Act.

Nicart and Capanpan were arraigned on 31 July 2003. In Criminal Case No. 12625-D, both pleaded not guilty.[6] Capanpan likewise entered a plea of not guilty in Criminal Case No. 12626-D.[7]

On trial, the prosecution presented witnesses PO1 Joy Decena (PO1 Decena) and SPO3 Leneal T. Matias (SPO3 Matias), both of the Station Drug Enforcement Unit of the Pasig City Police Station. The testimony of P/Sr. Insp. Annalee R. Forro, a Forensic Chemical Officer of the Eastern Police District Crime Laboratory Office in Mandaluyong City, on the other hand, was dispensed with after the public prosecutor and the defense counsel stipulated on the integrity of the seized items, that is, "that Exhibits 'E-1' and 'E-2' (the two heat-sealed transparent plastic sachets both containing 0.03 gram of white crystalline substance [which were recovered from the appellants]) were the same specimens mentioned in Exhibit 'B-1' (the request for laboratory examination dated 3 July 2003) and Exhibit 'C-1' (Chemistry Report No. D-1271-03E issued by P/Sr. Insp. Annalee R. Forro), and that the same were regularly examined by the said chemical officer."[8]

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[5] The accusatory portion of the Information dated 4 July 2003 in Criminal Case No. 12626-D reads:

On or about July 3, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the above accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously possess one (1) heat-sealed transparent plastic sachet containing crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Id. at 1.

[6] *Id.* at 7.

[7] *Id.*

[8] *Rollo*, p. 4. Decision dated 25 October 2007 of the Court of Appeals.

The trial court's summary of the testimonies of the prosecution witnesses adopted by the Court of Appeals[9] is hereto reproduced, to wit:

On July 2, 2003, at around 10:30 in the evening, a concerned citizen reported to the office of the Station Drug Enforcement Unit of the Pasig City Police Station that a certain Milo was engaged in drug pushing at Baltazar Street, Bolante, Brgy. Pinagbuhatan, Pasig City. The police officers who were then present immediately relayed the information to their Chief, P/Sr. Insp. Jojie A. Tabios, who decided to conduct a buy-bust operation to entrap and apprehend the suspect. He formed a team composed of witness PO1 Joy Decena who was designated as the *poseur*-buyer and PO1 Allan Mapula, witness SPO3 Leneal Matias and PO1 Clarence Nipales as the back-up team. As poseur-buyer, PO1 Joy Decena was supplied with a 100 peso bill. He promptly marked the 100-peso bill with his initials "JD." The concerned citizen joined the group and offered to accompany and introduce poseur-buyer PO1 Decena to Milo who was later on identified as accused Camilo D. Nicart.

At around 11:00 o'clock that evening, the team proceeded to Bolante to conduct the buy-bust operation. Arriving at the place after 10-15 minutes, PO1 Decena and the informant alighted from the police mobile car and walked towards a *sari-sari* store. The informant saw a man sitting in front of the sari-sari store whom he identified as Milo, the subject of the operation. The informant and Camilo greeted each other and then the informant introduced PO1 Decena as someone who wanted to buy some items (*shabu*) from him for the sum of "*piso*" (100 pesos). Decena handed the marked 100-peso bill to Camilo. The latter then walked to the other side of the street where he talked to a male person. Camilo handed the money to the person who was identified later as accused Manuel T. Capanpan. The latter, in turn, gave Camilo a plastic sachet containing white crystalline substance. Upon receiving the plastic sachet containing the suspected *shabu* from Camilo, PO1 Decena immediately grabbed the former by the hand and introduced himself as a police officer and that he was arresting him for violation of the dangerous drugs law. He handcuffed Camilo and frisked him. Decena, however, did not recover anything illegal from Camilo except the

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[9] *Id.* at 5-7.

plastic sachet containing white crystalline substance that he bought from him.

Meanwhile, the back-up team of Decena came forward and upon Decena's urging, arrested the man wearing a striped shirt (later identified as accused Manuel Capanpan) from whom Camilo got the plastic sachet containing suspected *shabu* that he sold to PO1 Decena. SPO3 Leneal Matias conducted a search on the body of Manuel and recovered another plastic sachet of white crystalline substance that appeared to be *shabu*. The pocket of Capanpan also yielded the 100-peso bill that poseur-buyer PO1 Decena paid to Camilo. Matias then placed the initials "MCT" on the plastic sachet the he recovered from Capanpan. The one bought by Decena from accused Camilo was marked with the initials "CDN."

The two accused, Capanpan and Nicart boarded the police mobile car and were brought to the SDEU office where they were turned over to the police investigator on duty. The two (2) plastic sachets containing white crystalline substance were then sent to the Eastern Police District Laboratory Office in Mandaluyong City x x x. The two (2) heat-sealed transparent plastic sachets, each containing 0.03 gram of white crystalline substance, were then examined by P/Sr. Insp. Annalee R. Forro, a forensic chemical officer of EPD Crime Laboratory Office, who later issued Chemistry Report No. D-1271-03E with a finding that both specimens contained methylamphetamine hydrochloride, a dangerous drug.

The defense, on the other hand, presented the following witnesses: (1) Nicart and Capanpan; (2) Maricel Capanpan, sister of Capanpan; and (3) Lorna Guiban, Vice-Chairman of the *Barangay* Security Force of *Barangay* Pinagbuhatan, Pasig City. Below is the summary of the version of the defense lifted from the decision of the Court of Appeals.[10]

Accused Camilo Nicart essentially testified that he was only buying milk at the *sari-sari* store along Baltazar Street, Pinagbuhatan, Pasig City, when the police officers arrived and arrested him. After frisking him, he was taken to the police station where he was detained. He averred that he was arrested at around 8:00 o'clock in the evening, and not 10:30 as claimed by the prosecution witnesses, and that

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[10] *Id.* at 7-9.

there were children playing in front of the store at that time. He did not react when he was arrested and brought to the police station nor when he was put in jail because he did not commit any offense. He only got angry during the inquest proceeding when he asked the prosecutor why they were being charged when they did not commit any crime.

For his part, accused Manuel T. Capanpan testified that he was just sitting on a bench in front of his house across the *sari-sari* store when he saw Camilo Nicart being arrested and frisked by the police officers. The police officers then brought Camilo to their vehicle. Thereafter, the police officers went back and arrested him also. He and Camilo were then brought to the police station. He maintained that he and Camilo were arrested at around 8:00 in the evening. He claimed that he was with his neighbors when he was arrested and that there were also several people in the store where Camilo was arrested. He admitted, however, that these people only watched them when they were arrested. The witness also averred that he knew Camilo because the latter was a customer in his beauty parlor. Finally, he admitted that he did not know the police officers previous to his arrest, much less had a prior disagreement with them.

Maricel Capanpan testified that on July 2, 2003, at about 10:30 p.m., she was standing beside the door of her house when she saw accused Camilo Nicart buying "*gatas*," "*asukal*" at "*tinapay*" at the *sari-sari* store located across the street. She then saw four persons in civilian clothes approach and start frisking Camilo. The four persons then handcuffed Camilo and placed him inside a police mobile car. Thereafter, two of them approached her brother, accused Manuel T. Capanpan, and arrested him. They then brought his [sic] brother to the car and drove away.

Finally, Lorna Guiban testified that she was Vice-Chairman of the Barangay Security Force of Barangay Pinagbuhatan, Pasig City. On July 2, 2003, at around 10:30 p.m., she was buying cigarettes from a *sari-sari* store at Baltazar Street in Pinagbuhatan while waiting for the person who would give her the key to the *barangay* outpost she was supposed to open. Accused Camilo Nicart then arrived and bought Nestogen and sugar. Thereafter, two (2) motorcycles arrived and the riders alighted and suddenly frisked Nicart, took his wallet and handcuffed him. She averred that she was a meter away from them when Camilo was arrested. The arresting officers then proceeded to the house across the street and arrested accused Manuel Capanpan,

who was sitting in front of his house. The arresting officers then brought Camilo and Manuel to a car and drove away. She admitted that she did not intervene because the two accused did not ask for help. She also admitted that she did not put the incident in the blotter at their outpost.

On 11 May 2005, the trial court convicted both Nicart and Capanpan.[11] The dispositive portion of the Joint Decision reads:

WHEREFORE:

1. In Criminal Case No. 12625-D, the court finds accused Camilo Nicart *y* Dilmonte, and accused Manuel Capanpan *y* Tismo, both GUILTY beyond reasonable doubt of selling 0.03 gram of methamphetamine hydrochloride in violation of Sec. 5, Article II of R.A. 9165, and hereby imposes upon them the penalty of life imprisonment and fine of Five Hundred Thousand Pesos with the accessory penalties under Sec. 35 of said R.A. 9165.

2. In Criminal Case No. 12626-D, the court finds accused Manuel T. Capanpan GUILTY beyond reasonable doubt of illegal possession of 0.03 gram of methamphetamine hydrochloride in violation of Sec. 11, Art. II of R.A. 9165 and hereby imposes upon him an indeterminate penalty of imprisonment of Twelve (12) years and One (1) day, as minimum, to Sixteen years, as maximum, and fine of Three Hundred Thousand (₱300,000.00) pesos with the accessory penalties under Sec. 35 of R.A. 9165.[12]

On appeal, the Court of Appeals AFFIRMED *in toto*[13] the trial court's Joint Decision of 11 May 2005. Hence, the instant appeal.

We also affirm the appellants' conviction.

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[11] Records in Criminal Case No. 12625-D, pp. 80-86. Joint Decision dated 11 May 2005.

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

[13] *Rollo*, p. 23. Decision dated 25 October 2007.

Presence of the elements of illegal sale and illegal possession of a dangerous drug

PO1 Decena attested that Nicart took his marked money, walked over to Capanpan and exchanged it with a sachet of *shabu*. Afterwards, Nicart walked back to PO1 Decena and gave the item to him. SPO3 Matias, on the other hand, testified as to the circumstances of the arrest of Capanpan, the recovery of the marked money, and the confiscation of another sachet of *shabu* in his possession. The seized items, the Chemistry Report issued by P/Sr. Insp. Annalee R. Forro stating that the contents of the sachets tested for *shabu*, and the marked money were all presented in court. These were coupled with the stipulation between the prosecution and the defense that the substances earlier forwarded to the laboratory for examination and those presented in court were the same specimens examined and tested positive for *shabu*.

Thus, present in the instant case are the following requisites for illegal sale of *shabu*: "(a) the identities of the buyer and the seller, the object of the sale, and the consideration; xxx (b) the delivery of the thing sold and the payment for the thing[; and (c)] the presentation in court of the *corpus delicti* as evidence."[14] Likewise present are the essential elements of illegal possession of a dangerous drug, to wit: "(a) [that] the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) [that] such possession is not authorized by law; and (c) [that] the accused freely and consciously possessed the drug."[15]

Credibility of the witnesses and their testimonies

Time and again, we hold that the "findings of the trial courts which are factual in nature and which involve credibility are

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[14] *People v. Bautista*, G.R. No. 177320, 22 February 2012 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

[15] *Id.* citing *People v. Naquita, id.*

accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings."[16] Likewise basic is the rule that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."[17]

Further, after a close examination of the records, we are strongly convinced that the trial court and the Court of Appeals validly gave credence to the testimonies of PO1 Decena and SPO3 Matias.

Pertinent portions of the testimony of PO1 Decena (the *poseur*-buyer)[18] read:

Q: So, while you were along Baltazar Street and Bolante, you reached a certain store there and what happened, Mr. [W]itness?
A: A man was sitting there.
Q: How many individuals did you see in that store, Mr. [W]itness, in that night?
A: In front of the store only one (1) person.

x x x x x x x x x

Q: So, what happened after that, Mr. [W]itness, because you were walking with your informant?
A: Sir, our informant *binati iyong tao*.
Q: *Iyong nakaupo?*
A: Yes, sir.
Q: What is the statement made by the informant?
A: *Pare kamusta*.
Q: What was the answer to that statement by that person greeted by your informant?

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[16] *People v. Presas*, G.R. No. 182525, 2 March 2011, 644 SCRA 443, 449 citing *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 615 SCRA 202 further citing *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

[17] *People v. Sabadlab*, G.R. No. 186392, 18 January 2012 citing *People v. Mayingque*, G.R. No. 179709, 6 July 2010, 624 SCRA 123, 140.

[18] TSN, 4 December 2003, pp. 7-11, 15.

A: *Ayos lang.*
Q: What happened after that?
A: *Sabi ni Milo, sir, bakit napa[s]yal kayo.*
Q: What was the answer of the informant?
A: The confidential informant asked Milo *kung meron ba tayo diyang items.*
Q: What was the answer of *alias* Milo to that statement?
A: *Meron sir.*

x x x x x x x x x

Q: What happened after that?
A: *Magkano ba ang kukunin?*
Q: What was the answer of the informant?
A: *Piso lang.*
Q: After that statement of *piso lang*, what did *alias* Milo do if any?
A: *Nagtanong kung nasaan ang pera, sir.*
Q: So, what exactly was the statement of *alias* Milo?
A: *Pera, sir.*
Q: *What did the informant do noong sinabing pera?*
A: *Sabi ng confidential informant, pare ko kukuha.*
Q: And that informant was referring to whom?
A: To me, sir.
Q: So, what did you do?
A: I handed the buy-bust money.
Q: To whom did you handed that?
A: To Milo, sir.
Q: What did you do after that?
A: He crossed the road.
Q: *Sino tumawid?*
A: *Si Milo, sir.*
Q: Where to?
A: *Sa tapat.*

x x x x x x x x x

Q: *What happened noong tumawid siya?*
A: *Lumapit pa sa isang lalaki.*
Q: So, how many persons did you see on the other edge of the road at this point?
A: *Marami.*
Q: More than ten (10) less than ten (10)?
A: 5-6, sir.

x x x x x x x x x

Q: When Milo approached those guys, what happened Mr. [W]itness?
A: *Ibinigay, sir, niya ang pera sa kausap niya tapos may inabot sa kanya.*
Q: So, what happened after that?
A: *Bumalik po sa amin, sir.*
Q: *Sino?*
A: *Si Milo.*
Q: *Noong bumalik sa iyo si Milo, what did you do?*
A: *Tapos inabot sakin ang plastic sachet ng shabu.*
Q: How many pieces, Mr. [W]itness?
A: One (1).

x x x x x x x x x

Q: I'm asking you on the sachet of *shabu* that you bought from Milo, what did you do with it?
A: I marked it.
Q: What markings did you put on that object?
A: CDN.
Q: In what place did you put the markings, on the place of the arrest or in your office?
A: In the place of the arrest, sir.

His testimony was sufficiently corroborated by the testimony of SPO3 Matias, who further testified on the confiscation of another sachet of *shabu* in possession of Capanpan.[19] Thus:

Q: You said that something was handed to *alias* Milo by Joey Decena, what did that person do?
A: He approached another person sir.
Q: You said there was only one person standing in front of the store. Where was that second person you are referring to. The one approached by *alias* Milo?
A: He was at the other side of the street.
Q: Was the person visible from where you were? I am referring to the second person.
A: Yes sir.

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[19] TSN, 23 February 2004, pp. 9-11.

Q: So what happened when *alias* Milo approached the other person at the other side of the street?
A: They had also a brief conversation.
Q: For how long did that conversation last?
A: Few seconds only.
Q: What happened after that few seconds of conversation with the second person?
A: I saw Milo handed something to the other male person.
Q: In return what did that other person do?
A: I saw him handed something to Milo.
Q: After that, what else Milo do?
A: Milo returned to Joy Decena and the confidential informant and handed something to Joy Decena.
Q: What did you notice Decena do?
A: After receiving that something from Milo, he immediately grabbed the hands of Milo.
Q: What did you and your companions do immediately thereafter?
A: We gave support to Decena.

x x x x x x x x x

Q: Who arrested the second person?
A: It was PO1 Nepales who accosted the accused and I was the one who frisked the accused.

x x x x x x x x x

Q: Who was that person arrested by PO1 Nepales?
A: Manuel Capanpan.
Q: You said that Manuel Capanpan was frisked by Nepales?
A: I was the one.
Q: What happened after you frisked Capanpan?
A: After frisking accused Manuel Capanpan, I instructed him to empty his pocket.
Q: Did he comply?
A: Yes sir.
Q: What happened after that person complied with your instruction?
A: And thereafter I confiscated from his possession from his right hand the buy bust money and another one piece heat sealed transparent plastic sachet containing undeterminable amount of white crystalline substance.

Q: After that what else did you do if any [M]r. [W]itness?
A: The evidence confiscated from the accused were marked.
Q: You marked what evidence?
A: The plastic sachet that I confiscated.
Q: You confiscated from whom?
A: From accused Manuel Capanpan.

Also, during cross-examination, the counsel for the defense attempted but failed to elicit answers inconsistent with the earlier statement of PO1 Decena in his Affidavit of Arrest. This further strengthened the latter's credibility. Thus:

Q: And you were assigned as poseur-buyer, right?
A: Yes, ma'am.
Q: And you were given 100 peso-bill?
A: Yes, ma'am.
Q: You were the first person to whom this Chief first handed that 100 peso bill?
A: Yes, ma'am.
Q: **And upon giving it to you, you put it in your pocket to be used as a buy-bust money, right?**
A: No, ma'am, I put my markings.
Q: You put first your markings?
A: Yes, ma'am. *(Emphasis supplied)*[20]

In addition, the admission of Nicart and Capanpan that they did not know any of the apprehending officers prior to the arrest ruled out any ill motive on the part of the members of the team to falsely testify against them, for which reason, regularity in the performance of their duties is presumed. In *People v. Tion*, this Court elucidated:

> x x x [T]here is likewise no showing that the police officers framed up Joey. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit. **Settled is the rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police**

[20] TSN, 4 December 2003, pp. 22-23.

officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. The records do not show any allegation of improper motive on the part of the buy-bust team. Thus, the presumption of regularity in the performance of duties of the police officers must be upheld.[21] *(Emphasis supplied)*

We also reject the contention of the defense that the expertise of the apprehending officers in drug operations affords them the benefit of concocting a story to make it appear that the appellants were caught *in flagrante delicto*. In citing *People v. Deocariza*,[22] where this Court declared that "[c]ourts must hence be extra vigilant in trying drug charges lest an innocent person is made to suffer the very severe penalties for drug offenses,"[23] the defense failed to note that the circumstances of that case are totally different from the present case. Unlike the straightforward and corroborated testimonies in the instant case, the Court found the lone testimony of the arresting officer in *Deocariza* seriously flawed. It observed:

x x x The sergeant testified that the accused was caught in the course of a buy-bust operation prepared and planned by Sgt. Bonete. The operation was apparently conceived upon receipt of a report from an undisclosed informant of rampant selling of illegal drugs at a basketball court beside the store where accused was arrested. In a notable departure from the ordinary or standard operating procedure of law enforcement agents in this respect, the "tip" from their informant did not identify any suspect, much less mention the name of the accused. The tip intimated only that illicit drug trafficking was rampant in San Juan, Molo Blvd. Nothing more. Yet no surveillance of that area was first conducted by the law enforcement agents before the actual "bust." They had no suspect, not even a description of the suspect's face nor a name. Yet the testimony of Sgt. Deocampo clearly

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[21] *People v. Tion*, G.R. No. 172092, 16 December 2009, 608 SCRA 299, 316-317.

[22] G.R. No. 103396, 3 March 1993, 219 SCRA 488.

[23] *Id.* at 500.

stated that as soon as the information was called in, the anti-narcotics agents immediately repaired to the area and conducted a buy-bust operation. We note also that the agents did not meet their informer at the designated place. Neither did their informer introduce the poseur-buyer to any suspect. It is unlikely for officers of the law to deal so cavalierly with "tips" about drug trafficking as not to even concern themselves with securing names and identities of alleged or probable suspects.[24]

It also bears emphasis that the law provides for safeguards against the conviction of innocent persons. The rule on chain of custody is one of them. In the case at bar, it is evident that the apprehending officers observed the requirement of unbroken chain of custody when it marked the heat-sealed plastic containers of the seized items with their initials in front of the accused, and transmitted the same to the laboratory for examination. These were in accordance with the following pronouncements of this Court:

> Early this year, this Court expounded on the requirement of proof of the existence of the prohibited drugs. The prosecution has to establish the integrity of the seized article in that it had been preserved from the time the same was seized from the accused to the time it was presented in evidence at the trial.[25] **Here, the prosecution established through PO1 Quimson's testimony that he got the two sachets of white crystalline substances from Catentay and marked them with his initials on them, that would have been sufficient to ensure the integrity of the substances until they shall have reached the hands of the forensic chemist.** *(Emphasis supplied.)*

The integrity of the seized articles would remain even if PO1 Quimson coursed their transmittal to the crime laboratory through the investigator-on-case since they had been sealed and marked. It does not matter that another person, probably a police courier would eventually deliver the sealed substances

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[24] *Id.* at 495-496.

[25] *People v. Catentay*, G.R. No. 183101, 6 July 2010, 624 SCRA 206, 211 citing *People of the Philippines v. Peralta*, G.R. No. 173472, 26 February 2010, 613 SCRA 763.

by hand to the crime laboratory. But, unfortunately, because the prosecution did not present the forensic chemist who opened the sachets and examined the substances in them, the latter was unable to attest to the fact that the substances presented in court were the same substances he found positive for *shabu.*[26] *(Emphasis supplied.)*

Notably, the last requirement, that is, that the forensic chemist should attest to the fact that the substances produced in court are the same specimens she found positive for *shabu*, had been substantially complied with in the instant case because the prosecution and the defense stipulated that Exhibits "E-1" and "E-2" (the two heat-sealed transparent plastic sachets both containing 0.03 gram of white crystalline substance recovered from the accused), which were presented in court were the same substances subject of both Exhibit "B-1" (the request for laboratory examination dated July 3, 2003) and Exhibit "C-1" (Chemistry Report No. D-1271-03E issued by P/Sr. Insp. Annalee R. Forro), and that the same were regularly examined by the said officer.[27]

Finally, the defense posited that appellants were neither caught selling nor in possession of *shabu* as allegedly testified to by defense witness Lorna Guiban. There were, however, glaring inconsistencies between the testimony of Lorna Guiban and that of the appellants. *First*, both appellants maintained that they were arrested at 8:00 o'clock in the evening. On the other hand, Lorna Guiban testified that the incident took place at a later time around 10:30 in the evening. *Second*, Nicart, on cross examination, admitted that there were no adults within the vicinity of the store at the time of his arrest. Portions of his testimony read:

Q: At the time, when you were arrested there were any other persons within the vicinity of the store (sic)?
A: There were children?
[Q]: How about adults?

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[26] *Id.* at 211-212.

[27] *Rollo*, p. 3. Decision dated 25 October 2007 of the Court of Appeals.

[Q]: So you were the only adult in the vicinity?
A: Yes, sir.[28]

Lorna Guiban, on the other hand, claimed that she was more or less one (1) meter away from Nicart in front of the same store and was in fact ten (10) minutes ahead of him in that store. She testified:

Q: How far were you from Milo Nicar (sic)?
A: More or less one meter.

x x x x x x x x x

Q: Who arrived at the *sari-sari* store first, you or Camilo?
A: *Ako po.*

Q: How long have you been there when Camilo arrived?
A: More or less 10 minutes.

Q: What were you waiting for, x x x?
A: *Yong sukli at yong susi po. Kasi may hinihintay po akong tao.*[29]

Surely, Nicart would have noticed the presence of Lorna Guiban had she been actually one (1) meter away from him.

Moreover, we note that Lorna Guiban could not render a full account of what transpired prior to Nicart's arrival at the store so that she may categorically state that no illegal transaction was completed on that fateful night. Thus:

Q: Did you know Camilo where came from before he went to the *sari-sari* store (sic)?
A: *Nalaman ko na lang po na bumibili siya.*
Q: You did not notice where he came from?
A: No, sir.
Q: You did not even notice whom he was talking to before he went near you to the store?
A: No, sir.[30]

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[28] TSN, 14 February 2005, p. 12.

[29] TSN, 21 June 2004, pp. 17, 25-26.

[30] *Id.* at 26.

All considered, the credible testimonies of the arresting officers and their positive identification of the appellants should prevail over the bare denial of the defense[31] nor the conflicting and incomplete testimonies of their witnesses. "Denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters."[32]

Sale of shabu in a public place; sale to total strangers

As to the circumstances obtaining in the sale of *shabu*, we uphold the ruling of the Court of Appeals. Thus:

> Accused-appellants further contend that the alleged drug peddling took place in a crowded and busy street. Thus, it was improbable and incredible for them to have boldly peddled the dangerous drug within the plain view of the entire community. We are not persuaded.
>
> In the first place, the buy-bust operation took place at nighttime xxx. Thus, the illegal transaction could hardly be said to have been made in plain and public view. Besides, the prosecution witnesses described the place as "*parang squatter*." It must be observed that in this kind of community, crimes committed brazenly and in broad daylight are not uncommon occurrences. Indeed, in the aforecited case of *People v[.] Ahmad*, the Supreme Court held:
>
> > … This Court has taken notice that peddlers of illicit drugs have been known, with ever-increasing casualness and recklessness, to offer and sell for the right price their wares to anybody, be they strangers or not. **The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade as these factors may even serve to camouflage the same. Neither is it contrary to human experience for drug pushers to conduct the actual exchange of illegal drugs at their own homes. This may even prove to be a preference**

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[31] *People v. Bautista*, *supra* note 14.

[32] *People v. De Vera*, G.R. No. 112006, 7 July 1997, 275 SCRA 87, 93 citing *People v. Belga*, 258 SCRA 583, 594 (1996); *Abadilla v. Tabiliran, Jr.*, 249 SCRA 447 (1995).

> **by drug dealers, for it gives them a sense of security as they would always have a place to seek refuge in or people to seek assistance from in case a transaction gets bungled up and they get pursued by authorities.**[33] *(Citations omitted; Emphasis supplied in the Court of Appeals' decision.)*

We here repeat that "we know that drug pushing has been committed with so much casualness even between total strangers."[34]

Validity of a buy-bust operation in the absence of a prior surveillance

It is a well-settled rule that prior surveillance is not required, especially when the team is accompanied to the scene by the informant.[35]

The case of *People v. Quintero*[36] cited by the defense is not on all fours with the present case. In that case, the buy-bust team relied solely on the description given by the informant that the subject was "wearing white t-shirt, khaki pants and tennis shoes" and, without prior surveillance, proceeded to the area unaccompanied by the informant.[37] On the other hand, the informant in the case at bar accompanied the team to the area and introduced the accused to the poseur-buyer.

Penalties

Sec. 5, Article II of R.A. No. 9165 is clear that the quantity of *shabu* sold is not material in the determination of the corresponding penalty therefor. Regardless of the amount of the substance sold, a person found guilty of such unauthorized sale shall suffer the penalty of life imprisonment and a fine

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

[34] *People v. Bautista*, *supra* note 14.

[35] *People v. Jandal*, G.R. No. 179936, 11 April 2012.

[36] G.R. Nos. 80315-16, 16 November 1994, 238 SCRA 173.

[37] *Id.* at 174.

ranging from Five Hundred Thousand (₱500,000.00) pesos to Ten Million Pesos (₱10,000,000.00).[38]

On the other hand, under Section 11, Article II of the same Act, the crime of illegal possession of *shabu* weighing less than five (5) grams carries with it the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).[39]

Likewise applicable in the determination of the appropriate penalty is the Indeterminate Sentence Law,[40] which provides that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed

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[38] **SECTION 5.** ***Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[39] **SECTION 11.** ***Possession of Dangerous Drugs.*** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.0) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

3. Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x, methamphetamine hydrochloride or "*shabu*," or xxx.

[40] Act No. 4103.

by said law and the minimum shall not be less than the minimum term prescribed by the same."[41]

Accordingly, with respect to the crime of illegal sale of *shabu*, due to the absence of any mitigating circumstance,[42] the trial court correctly imposed the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) as these are within the period and range of the fine prescribed by law.[43] As regards the crime of illegal possession of 0.3 gram of *shabu*, the penalty of imprisonment for an indeterminate term of twelve years (12) and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of ₱300,000.00, which is within the range of the amount imposable therefor is likewise in order.[44]

WHEREFORE, the Decision dated 25 October 2007 of the Court of Appeals in CA-G.R. CR-HC No. 01901 is **AFFIRMED**, and, thereby the 11 May 2005 Joint Decision of the Regional Trial Court in Criminal Case Nos. 12625-D and 12626-D is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[41] Sec. 1, Act No. 4103, as amended.

[42] *People v. Bautista, supra* note 14.

[43] *People v. Sabadlab, supra* note 17.

[44] *Id.*

THIRD DIVISION

[G.R. No. 183260. July 4, 2012]

PHILIPPINE SPORTS COMMISSION, CESAR PRADAS, NOEL ELNAR, EMERENCIANA SAMSON, CESAR ABALON, JULIA LLANTO, EDGARDO MATEO and ERIC BUHAIN, *petitioners, vs.* **DEAR JOHN SERVICES, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT; EXCEPT ONLY IN CASES IN WHICH ALTERNATIVE METHODS OF PROCUREMENT ARE ALLOWED, ALL GOVERNMENT PROCUREMENT SHALL BE DONE BY COMPETITIVE BIDDING; PUBLIC BIDDING, ELABORATED.— Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding. In the case of *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, the Court held: Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest; and not designed to injure or defraud the government. It has been held that the three principles in bidding are the offer to the public, opportunity for competition, and a basis for the exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption. As pointed out in the case of *Power Sector Assets and Liabilities Management*

Corporation v. Pozzolanic Philippines Incorporated, an essential element of a publicly bidded contract is that all bidders must be on equal footing, not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidded upon.

2. ID.; ID.; ID.; ID.; STEPS IN THE PROCUREMENT PROCESS. — Essentially, the procurement process involves the following steps: (1) pre-procurement conference; (2) advertisement of the invitation to bid; (3) pre-bid conference; (4) eligibility check of prospective bidders; (5) submission and receipt of bids; (6) modification and withdrawal of bids; (7) bid opening and examination; (8) bid evaluation; (9) post qualification; (10) award of the contract; and (11) notice to proceed. Parenthetically, from the first step of the procurement procedure, E.O. No. 40 and its implementing rules are clear to the effect that approved budget for the contract and the source of the finding should be divulged to prospective bidders.

3. ID.; ID.; ID.; ID.; CONTRACT GRANTED WITHOUT THE COMPETITIVE BIDDING REQUIRED BY LAW IS VOID AND THE PARTY TO WHOM IT IS AWARDED CANNOT BENEFIT FROM IT.— Under the Rules Implementing E.O. No. 40, the BAC shall indicate in the Invitation to Bid relevant information regarding the proposed project and the standards that would be used in determining the pre-qualification and post-qualification of the prospective bidders and in the evaluation of bids. It shall indicate, among others, a brief description of the project to be bids; the approved budget for the contract to be bid; the criteria to be used by the agency concerned for the eligibility check; the availability of the bidding documents; and the date, time and place of the deadline for the submission of the eligibility requirements. In other words, the BAC shall furnish all information on the projects necessary for prospective bidders to properly prepare their bids in order to give them fair and equal opportunity to bid. Admittedly, PSC-BAC did not disclose in any of the bidding documents the amount of the AAE. The Bid Bulletin which was posted in conspicuous places and the "*Instruction to Bidders*" that was distributed to qualified bidders did not indicate the amount of the AAE. Petitioners' contention, that they were not bound to disclose

the AAE and the Dear John Services never demanded its disclosure, is untenable. Under the law, the PSB-BAC is mandated to disclose not only the description of the items to be procured, and the eligibility requirements, among others, but also the approved budget of the project. Competitive bidding is an essential element of a public bidding. Thus, it should be conducted fairly and openly with full and free opportunity for competition among bidders. It has been held in a long line of cases that a contract granted without the competitive bidding required by law is void and the party to whom it is awarded cannot benefit from it. Had Dear John Services and CBMI known all the information regarding the bidding, a different set of bids might have emerged.

4. ID.; ID.; ID.; EXECUTIVE ORDER NO. 40 AND ITS IMPLEMENTING RULES AND REGULATIONS; IMPOSITION OF A MINIMUM AMOUNT TO BE OFFERED IN THE BID IS PROHIBITED; STRICT ADHERENCE OF THE PRINCIPLES, RULES AND REGULATIONS ON PUBLIC BIDDING MUST BE SUSTAINED TO PRESERVE THE INTEGRITY AND THE FAITH OF THE GENERAL PUBLIC ON THE PROCEDURE.— [S]ection 25 of E.O. No. 40 and its IRR prohibit the BAC from imposing a minimum amount to be offered in the bid. It states: Section 25. Ceiling for Bid Price. The approved budget for the contract shall be the upper limit or ceiling for the bid price. Bid prices which exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award. For this purpose, the approved budget for the contract shall be that approved by the head of the agency. Consequently, the provision in the "Instruction to Bidders" stating that no award of the contract shall be made to a bidder whose bid price is lower than the allowable government estimate *(AGE)* or AAE is not valid. The rule on the matter is clear. The PSC-BAC is obliged to observe and enforce the same in the procurement of goods and services for the project. The law on public bidding is not an empty formality. A strict adherence to the principles, rules and regulations on public bidding must be sustained if only to preserve the integrity and the faith of the general public on the procedure.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Garin Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the April 17, 2008 Decision[1] and the June 11, 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 88606, which reversed and set aside the November 29, 2006 Decision[3] of the Regional Trial Court, Branch 196, Parañaque City *(RTC)*, in Civil Case No. 02-0212, entitled *"Dear John Services, Inc. v. Philippine Sports Commission."*

The Facts:

In December 2001, respondent Philippine Sports Commission *(PSC)* published an *"Invitation to Bid"* for its janitorial and security services. Pursuant thereto, respondent Dear John Services, Inc. *(Dear John Services)* submitted its letter[4] signifying its intent to participate in the bidding and subsequently paid the bidding fee.[5]

On March 8, 2002, PSC Chairman Eric Buhain *(Buhain)*, in a memorandum,[6] cancelled the pre-bidding conference pending evaluation of all procedures and documents relative to the bidding policies.

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[1] *Rollo*, pp. 52-67. Penned by Associate Justice Martin S. Villarama, Jr. (now member of this Court) and concurred in by Associate Justice Noel G. Tijam and Associate Justice Myrna Dimaranan Vidal.

[2] *Id.* at 68.

[3] Records, pp. 580-587.

[4] Annex "A", records, p. 496.

[5] Annex "B", *id.* at 498-499.

[6] Annex "E", *id.* at 501.

When the review was completed, the *"Invitation to Apply for Eligibility and to Bid"* was re-advertised in order to comply with the requirements set forth in Executive Order *(E.O.)* No. 40, Series of 2001 and in its Implementing Rules and Regulations.[7] The pre-bidding and bidding dates were then scheduled to April 16, 2002 and April 26, 2002, respectively.

Among the bidders who qualified and submitted the necessary documents for prequalification were Dear John Services[8] and Consolidated Building Maintenance, Inc.[9] *(CBMI)*. A procedure for the conduct of the public bidding, entitled *"Instruction to Bidders,"*[10] was given to the qualified bidders.

The bidding was held as scheduled and the sealed bids were opened. Dear John Services' bid amounted to ₱18,560,078.00 while that of CBMI amounted to ₱27,419,097.00. PSC, however, awarded the contract to CBMI because Dear John Services allegedly failed to reach the 60% lower limit of the Approved Agency Estimate *(AAE)*.[11]

Dear John Services sent a letter,[12] dated May 8, 2002, to Buhain requesting that its bid be reconsidered and stating therein that the AAE amounting to ₱32,554,050.00 should have been disclosed prior to the bidding and that its revelation after the opening of the bid was highly irregular.

Subsequently, Dear John Services filed a Complaint[13] against PSC for injunction before the RTC praying, among others, that a temporary restraining order *(TRO)* be issued enjoining PSC and its officers *(petitioners)* from awarding the janitorial services

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[7] Annex "G", *id.* at 503.

[8] Annex "I", *id.* at 505.

[9] Records, p. 515.

[10] Annex "J", records, pp. 506-514.

[11] Annex "K", *id.* at 515.

[12] Annex "L", *id.* at 516.

[13] Records, pp. 49-58.

to CBMI; that a preliminary injunction be issued restraining PSC from availing of CBMI's janitorial services; and that after the hearing, the injunction be made permanent.

On May 14, 2002, the RTC issued a TRO, enjoining PSC from awarding its janitorial services to CBMI and/or allowing the latter to perform its contract in the event that it had been awarded.[14] The said TRO was extended until May 20, 2002.[15]

Thereafter, the prayer for the extension of the TRO and the request for the issuance of the writ of preliminary mandatory injunction were denied in the RTC Order,[16] dated May 20, 2002.

The Complaint was later on amended to include Buhain, in his capacity as Chairman of PSC, and the chairman and members of the Bids and Awards Committee *(BAC)*, namely, Cesar Pradas, Eugene De Vera, Noel Elnar, Emerenciana Samson, Cesar Abalon, Julia Llanto, and Edgardo Mateo.[17]

After the trial on the merits, the RTC dismissed the complaint, in its November 29, 2006 Decision, for lack of merit. It upheld the authority of the PSC to award the service contract to CBMI because the latter's bid was advantageous to the government.

On appeal, the CA, in the subject decision, reversed and set aside the RTC decision, as it disposed:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated November 29, 2006 of the Regional Trial Court of Parañaque City, Branch 196 in Civil Case No. 02-0212 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered ordering the individual defendants-appellees, jointly and severally, to pay plaintiff-appellant the sum of Two Hundred Thousand Pesos (₱200,000.00) as nominal damages.

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[14] *Id.* at 8.

[15] *Id.* at 83.

[16] *Id.* at 89.

[17] *Id.* at 261-267.

Needless to reiterate, the Amended Complaint as against defendant-appellee Philippine Sports Commission is dismissed.

No pronouncement as to costs.

SO ORDERED.[18]

In coming up with the said decision, the CA explained:

x x x x x x x x x

The controversy revolved around the so-called "Agency Approved Estimate" which is nowhere found or mentioned in EO 40 or its IRR. What EO 40 mandates is the use of the lowest calculated and responsive bid intended to be transparent, objective and non-discretionary criteria, and the approved budget contract *(ABC)* as the ceiling of the bid price. It is significant to note that appellees are mandated to disclose the "approved budget for the contract" in the Invitation to Bid pursuant to Sec. 14 of EO 40, another feature of the law aimed at ensuring transparency and objectivity in the bidding process. Records do not show compliance with said requirement. While Sec. 27, bids tendered must be post-qualified to determine if they satisfied all the conditions and requirements in the bidding documents, specifically the condition imposed in the Instructions to Bidders that the bid amount should not be lower that 60% of the "AAE," this lower limit violates the rule laid down in EO 40 which prohibits such lower limit to the contract amount. Sec. 25 of the IRR reiterated the rule that "there shall be no lower limit to or floor on the amount of the award."

Moreover, the non-disclosure of the AAE prior to the bidding contravenes the policy of transparency, on the assumption that such AAE is equivalent to ABC since the latter amount is required to be disclosed in the Invitation to Bid. Neither can the AAE be equated with the "Lowest Calculated and Responsive Bid" considering the admission in the testimony of BAC Chairman Cesar Pradas that the AAE was determined even prior to the bidding held on April 26, 2002, or more precisely as early as April 18, 2002. The imposition of the 60% below AAE ceiling for the bids therefore has no legal basis and contrary to the prohibition against a floor price for the amount of the award under EO 40.

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[18] *Rollo*, p. 66.

4.2 Award of Contract

Award of Contract will be made in accordance with the provisions of EO 40 and its implementing Rules and Regulations (IRR). The PSC, however, is not bound to accept the lowest bid or any bid nor will be responsible for or pay any expenses which maybe incurred by any Bidder in the preparation or submission of its Bid. The PBAC-BAC also reserves the right to award the contract to the bidder whose Bid is evaluated to be the most advantageous to the government.

No award of contract shall be made to a Bidder whose bid price is higher than the allowable government estimate (AGE) or the Approved Agency Estimate (AAE) whichever is higher, or lower than seventy percent (70%) of the AGE, for the purpose of these implementing rules and regulations, the AGE shall be equal to one-half (1.5) of all responsive bids. For purpose of determining the average of all responsible bids, bids higher than One Hundred Twenty Percent (120%) of the AAE or lower than sixty percent (60%) of the AAE shall not be considered.

Upon careful and thorough evaluation of Bids, the winning Bidder shall be informed through written Notice of Award.

The PSC is not bound to justify the selection of the successful Bidder to any Bidder or other interested party.

The above conditions in the Instruction to Bidders does not comply with the requirements of EO 40 and its IRR, and are offensive to due process as they contravene the principles of transparency, objectivity and non-discretionary criteria established therein. The fact that appellant voluntarily accepted these conditions and submitted its bid without any question regarding the existence of or amount of the AAE is of no moment, in view of the irregular bidding procedure. Appellees had not been transparent and objective about the so-called AAE as to whether it represents the approved budget contract or the lower calculated and responsive bid provided in EO 40. Thus, although it is conceded that there is no evidence of collusion or that the conditions imposed by appellees were made the basis of a fraudulent award, it cannot be gainsaid that the bidding instructions were arbitrarily issued and the entire bidding procedure did not comply with EO 40 and its IRR.

Appellees' reliance on the following reservation clause in the Instruction to Bidders, likewise holds no water.

> 1.4 Rejection of Bids, Disqualification of Bidder and other sanctions
>
> The office of the PSC reserves the right to reject any or all bids and waives any required formality in the bids received. The right is also reserved to reject the bid of any bidder (a) that is above AAE or AGE (b) who had previously failed to satisfactorily perform or complete any contract services undertaken by him/her or was eligible on the basis of suppressed or false information.
>
> The PSC assumes no obligation whatsoever to compensate or indemnify bidders for any expenses or loss that may be incurred in the preparation of the bids nor does it guarantee that an award will be made.
>
> The PSC will reject any non-complying Bid, *i.e.*, a Bid that fails to meet any requirement, terms or condition set forth in the Tender Documents as well as relevant laws, rules and regulations.
>
> Notwithstanding the eligibility of any contractor to submit Bids for the proposed contract, PSC reserves the right to review its Eligibility requirements, statements and other relevant information before and/or after the submission and before award of the Contract. Should such review uncover any misrepresentation made in the Eligibility statement, the BAC shall disqualify the contractor from submitting a Bid or shall not make any award to prospective Contracting Agencies.

Under Sec. 29 of EO 40, such reservation clause is essential.

> Sec. 29. Reservation Clause. The government reserves the right to reject any all bids, or declare a failure of bidding, or not award the contract for any justifiable reason including among others, if there is evidence of collusion between relevant public officers or employees of the agency or the BAC and any of the which restricts, suppresses or nullifies competition, or if the BAC is found to have failed to follow the prescribed bidding procedures.

The Supreme Court has ruled in *National Power Corporation vs. Philipp Brothers Oceanic, Inc*. where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality. And where the government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice unless an unfairness or injustice is shown. Accordingly, a bidder has no ground of action to compel the Government to award the contract in his favor, nor compel it to accept his bid. Even the lowest bid or any bid may be rejected.

Generally, the discretion to accept or repea[l] a bid and award contract is of such wide latitude that the Court will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award. The exercise of the discretion is a policy decision vested in the government agencies entrusted with that function. The exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the concerned government agencies, not by the courts. The role of the courts is to ascertain whether a branch or instrumentality of the government has transgressed its constitutional boundaries. Courts will not interfere with executive or legislative discretion exercised within those boundaries.

This policy has been reiterated in a more recent case, thus:

> Further, LWUA made a reservation to reject bids as the Invitation to Prequalify and Bid published in the June 6, 1992 issue of the Philippine Daily Inquirer shows:
>
> > LWUA reserves the right to reject any or all the bids, to waive any formality found therein and to accept such bid or a part thereof as may be deemed most advantageous to LWUA. (Empahsis (sic) and underscoring supplied)
>
> The discourse in his "A TREATISE ON GOVERNMENT CONTRACT UNDER PHILIPPINE LAW" of former Commissioner of the Commission on Audit Bartolome C. Fernandez, Jr. is enlightening:
>
> > It is a settled rule that where the invitation to bid contains a reservation for the Government to reject any or all bids, the lowest or highest bidder, as the case may be, is not entitled to an award as a matter of right for it

> does not become the ministerial duty of the Government to make such award. Thus, it has been held that where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality, that all bids may be rejected, even if arbitrarily and unwise, or under a mistake, and that in the exercise of a sound discretion, the award may be made to another than the lowest bidder. And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown. Accordingly, he has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid.
>
> Verily, a reservation in the advertisement for bids of the right to reject any bid generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly performed, may not be reviewed by the courts. In such cases, there is no binding obligation to award the contract to any bidder and in the exercise of such discretion the award may be made validly to whoever among the participating bidders has submitted the most advantageous bid.
>
> Contrary then to the assertion of petitioner, the bidding was carried out in accordance with its purpose of protecting public interest by giving the public the best possible advantages through open competition.

However, a reading of the decisional rule on reservation of right to reject cautions against injustice, unfairness, arbitrariness, fraudulent acts or grave abuse of discretion. A contrary conclusion would be anathema to the purposes for which public biddings are founded – to give the public the best possible advantages through open competition – as it would give the unscrupulous a plain escape to rig the bidding process. Grave abuse of discretion is committed when an act is: 1) done contrary to the Constitution, the law or jurisprudence, or 2) executed whimsically or arbitrarily in a manner so patent and so gross as to amount to an evasion of a positive duty, or to a virtual

refusal to perform the duty enjoined. The bidding conducted by the appellees is clearly tainted with irregularity and grave abuse, resulting in prejudice and material loss to appellant.[19]

x x x x x x x x x.

Petitioners filed their motion for reconsideration but was denied in the June 11, 2008 CA Resolution. Hence, this petition, anchored on the following:

GROUNDS RELIED UPON IN THE PETITION

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE JUDGMENT OF THE LOWER COURT CONSIDERING THAT:

I

RESPONDENT FAILED TO REACH THE 60% LOWER LIMIT OF THE AAE.

II

PETITIONER PSC HAD BASIS TO REJECT RESPONDENT'S BID BECAUSE OF THE RESERVATION CLAUSE IN THE INSTRUCTION TO BIDDERS.[20]

Petitioners point out that the "*Instruction to Bidders*" clearly provides that the bid price should not be less than 60% of the AAE. When Dear John Services submitted its bid, it expressed its assent in the "*Instruction to Bidders*" and so it was bound by the terms and conditions stated therein.

They explain that the condition that the bid amount should not be lower than 60% of the AAE is necessary in order to ensure compliance with the minimum wage, 13th month pay, state insurance and other benefits imposed by statutes, and to guarantee efficient and effective performance by the winning bidder.

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[19] *Id.* at 61-65.

[20] *Id.* at 35.

Petitioners further aver that there is nothing in E.O. No. 40 that mandates the disclosure of the AAE to bidders. Besides, Dear John Services never demanded its disclosure during the opening of the bids.

The Court finds no merit in the petition.

Public bidding, as a method of government procurement, is governed by the principles of transparency, competitiveness, simplicity, and accountability.[21] By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition and in order to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[22] Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.[23]

In the case of *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[24] the Court held:

> Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking, but also that it be legitimate, fair and honest; and not designed to injure or defraud the government.

It has been held that the three principles in bidding are the offer to the public, opportunity for competition, and a basis for the exact comparison of bids. A regulation of the matter which

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[21] *Commission on Audit v. Link Worth International, Inc.,* G.R. No. 182559, March 13, 2009, 581 SCRA 501, 509.

[22] *Danville Maritime, Inc. v. Commission on Audit,* 256 Phil. 1092, 1103 (1989).

[23] *Commission on Audit v. Link Worth International, Inc., supra* note 21.

[24] 450 Phil. 744, 814 (2003).

excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption.[25]

As pointed out in the case of *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*,[26] an essential element of a publicly bidded contract is that all bidders must be on equal footing, not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidded upon.

In the case at bench, PSC-BAC failed to comply with the requirements and procedures for competitive bidding specified under E.O. No. 40.

Section 14 of E.O. No. 40 provides:

> Section 14. Invitation to Bid. The invitation to bid shall contain, among others: a brief description of the items to be procured; the eligibility requirements; the place, date and time of the deadlines for receipt of eligibility requirements and bids; the approved budget for the contract to be bid; time and place of the opening of bids; and the contract duration or delivery. [Underlining supplied]

Section 14 of the Implementing Rules and Regulations *(IRR)* of E.O. No. 40 specifically mandates the BAC to include in the "*Invitation to Apply for Eligibility and to Bid*" the following information to guide the prospective bidders, to wit:

> **Section 14. Invitation to Bid**
>
> 14.1. *Contents of the Invitation to Apply for Eligibility and to Bid*
>
> x x x x x x x x x
>
> 1. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned agency, as well as its designated contact person;

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[25] *Malaga v. Penachos, Jr.*, G.R. No. 86695, September 3, 1992, 213 SCRA 516, 526.

[26] G.R. No. 183789, August 24, 2011, 656 SCRA 214, 231-232.

2. For the procurement of:

   a) Goods, the name of the contract to be bid and a brief description of the goods to be procured;

   b) Civil works, the name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works; and

   c) Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;

3. The criteria to be used by the agency in the following: (i) eligibility check of prospective bidders; (ii) examination and evaluation of bids; and (iii) post qualification; which shall be on a non-discretionary "pass/fail" basis;

4. **The approved budget for the contract to be bid and the source of funding**;

5. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;

6. The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids; and

7. The contract duration or delivery schedule. [Emphasis supplied]

Essentially, the procurement process involves the following steps: (1) pre-procurement conference; (2) advertisement of the invitation to bid; (3) pre-bid conference; (4) eligibility check of prospective bidders; (5) submission and receipt of bids; (6) modification and withdrawal of bids; (7) bid opening and examination; (8) bid evaluation; (9) post qualification; (10) award of the contract; and (11) notice to proceed.[27] Parenthetically, from the first step of the procurement procedure, E. O. No. 40

[27] Sections 13-30 of E.O. No. 40.

and its implementing rules are clear to the effect that the approved budget for the contract and the source of the funding should be divulged to prospective bidders.

Under the Rules Implementing E.O. No. 40, the BAC shall indicate in the Invitation to Bid relevant information regarding the proposed project and the standards that would be used in determining the pre-qualification and post-qualification of the prospective bidders and in the evaluation of bids. It shall indicate, among others, a brief description of the project to be bid; the approved budget for the contract to be bid; the criteria to be used by the agency concerned for the eligibility check; the availability of the bidding documents; and the date, time and place of the deadline for the submission of the eligibility requirements. In other words, the BAC shall furnish all information on the projects necessary for prospective bidders to properly prepare their bids in order to give them fair and equal opportunity to bid.

Admittedly, PSC-BAC did not disclose in any of the bidding documents the amount of the AAE. The Bid Bulletin which was posted in conspicuous places and the *"Instruction to Bidders"* that was distributed to qualified bidders did not indicate the amount of the AAE. Petitioners' contention, that they were not bound to disclose the AAE and that Dear John Services never demanded its disclosure, is untenable. Under the law, the PSC-BAC is mandated to disclose not only the description of the items to be procured, and the eligibility requirements, among others, but also the approved budget of the project. Competitive bidding is an essential element of a public bidding. Thus, it should be conducted fairly and openly with full and free opportunity for competition among bidders. It has been held in a long line of cases that a contract granted without the competitive bidding required by law is void and the party to whom it is awarded cannot benefit from it.[28] Had Dear John Services and CBMI known all the information regarding the bidding, a different set of bids might have emerged.

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[28] *Malaga v. Penachos, Jr., supra* note 25.

Moreover, Section 25 of E.O. No. 40 and its IRR prohibit the BAC from imposing a minimum amount to be offered in the bid. It states:

> Section 25. Ceiling for Bid Price. The approved budget for the contract shall be the upper limit or ceiling for the bid price. Bid prices which exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award. For this purpose, the approved budget for the contract shall be that approved by the head of the agency. [Underscoring supplied]

Consequently, the provision in the *"Instruction to Bidders"* stating that no award of the contract shall be made to a bidder whose bid price is lower than the allowable government estimate *(AGE)* or AAE is not valid. The rule on the matter is clear. The PSC-BAC is obliged to observe and enforce the same in the procurement of goods and services for the project. The law on public bidding is not an empty formality.[29] A strict adherence to the principles, rules and regulations on public bidding must be sustained if only to preserve the integrity and the faith of the general public on the procedure.[30]

WHEREFORE, the petition is **DENIED**. The April 17, 2008 Decision and the June 11, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 88606 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[29] *Nava v. Palattao*, 531 Phil. 345, 367 (2006).

[30] *Agan, Jr. v. PIATCO*, 450 Phil. 744, 812-813.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 184482. July 4, 2012]

BETHEL REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **HOUSING AND LAND USE REGULATORY BOARD, and SPOUSES MARJORIE and NEMESIO VISAYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT BE A SUBSTITUTE FOR LOST APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY, ESPECIALLY IF ONE'S OWN NEGLIGENCE OR ERROR IN ONE'S CHOICE OF REMEDY OCCASIONED SUCH LOSS OR LAPSE.— Settled is the rule that the special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion. In the instant case, it would appear that the petitioner failed to exhaust all other remedies available to it. Rule V of the 1996 Rules of Procedure of the HLURB then in force provides: Section 3. *Review of Judgment of Default*. – If the party declared in default who for good cause was unable to file a motion to lift the order of default, and a judgment by default was consequently rendered, he may still file a petition for review of the judgment by default with the Board in accordance with Rule XII of these Rules and whatever defenses he has against the complainant may still be raised in said petition. Relative thereto, Rule XII of the same Rules read: Section 1. *Petition for Review*. – The aggrieved party on any legal ground and upon payment of the review fee, may file with the Regional Office a verified petition for review of the arbiter's decision within thirty (30) calendar days from receipt thereof. After a review of the decision of the arbiter, the aggrieved party may also file a motion for reconsideration of the decision of the Board of Commissioners and eventually appeal the same to the Office of the President

x x x. Accordingly, inasmuch as *certiorari* cannot be a substitute for lost appeal or any plain, speedy, and adequate remedy for that matter, "especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse," its petition before the Court of Appeals must fail.

2. ID.; ID.; ID.; THE PETITION MUST BE INSTITUTED NOT LATER THAN SIXTY (60) DAYS FROM NOTICE OF JUDGMENT; RATIONALE; FAILURE TO INDICATE IN THE PETITION THE DATE WHEN NOTICE OF JUDGMENT OR FINAL ORDER OR RESOLUTION SUBJECT THEREOF WAS RECEIVED WARRANTS THE DISMISSAL OF THE PETITION.— [E]ven assuming that *certiorari* is the only remedy left to petitioner, we sustain the Court of Appeals' denial of the petition for failure to comply with Section 3, Rule 46 of the Rules of Court. x x x. The special civil action for *certiorari* under Rule 65 of the Rules of Court may be instituted not later than sixty (60) days from notice of the judgment, order or resolution. To ensure compliance with the prescribed period, Section 3, Rule 46 of the Rules of Court provides that the petition shall indicate the date when "notice of the judgment or final order or resolution subject thereof was received" failure of which shall warrant the dismissal of the petition. x x x. That petitioner was never served a copy of the assailed decision does not necessarily mean that he was unable to secure a copy thereof. If that were true, there would not have been any petition before the Court of Appeals. A certified true copy of the decision is a required attachment to the petition otherwise its petition may be dismissed in accordance with Section 1, paragraph 2, Rule 65 of the Rules of Court. Moreover, if we allow petitioner's excuse from the statement of material dates, we will disregard the constitutional right of parties to a speedy disposition of their case. This Court, in a number of cases, ratiocinated. "x x x The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case."

3. ID.; ID.; ID.; WHEN THERE IS AN ALLEGATION THAT A COPY OF THE JUDGMENT WAS NOT RECEIVED, AND FOR THE PURPOSE OF DETERMINING THE TIMELINESS OF THE FILING OF THE PETITION, THE PHRASE "WHEN NOTICE OF THE JUDGMENT OR FINAL ORDER OR RESOLUTION SUBJECT THEREOF WAS RECEIVED" MEANS KNOWLEDGE OF THE EXISTENCE OF THE JUDGMENT.— [T]he 60-day period within which to file the petition must be strictly observed such that, in this case where there is an allegation that the petitioner did not receive a copy of the judgment, and for the purpose of determining the timeliness of the filing of the petition, that is, "sixty (60) days from notice of the judgment, order or resolution," the phrase "when notice of the judgment or final order or resolution subject thereof was received" under Sec. 3, Rule 46 of the same Rules should be taken to mean *knowledge of the existence* of the judgment.

4. ID.; RULES OF PROCEDURE; PROCEDURAL RULES ARE REQUIRED TO BE FOLLOWED EXCEPT ONLY FOR THE MOST PERSUASIVE REASONS; PROCEDURAL RULES WILL NOT BE LIBERALLY APPLIED WHERE THE PARTY CONSCIOUSLY DISREGARDED THE PROCEDURE.— We find in this case no justifiable reason to be liberal in the application of procedural rules. On the contrary, there must be exactness rather than latitude in compliance with the rules considering the circumstances that show petitioner's conscious disregard of procedure x x x. For these reasons, we resolve to strictly observe the Rules of Court guided by the following pronouncements of this Court: It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudiced to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

We see in petitioner's actions a deliberate intent to avoid a determination of whether or not the Court of Appeals may still take cognizance of its petition.

APPEARANCES OF COUNSEL

Rodolfo T. Gascon for petitioner.
Donato Zarate & Rodriguez for respondents.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a *Petition for Review on Certiorari* assailing the issuances of the Court of Appeals, to wit: (a) the Amended Decision[1] dated 26 May 2008 denying the *Petition for Certiorari, Annulment, Injunction with prayer for TRO and/or Preliminary Injunction* for failure to indicate in the petition the material date when the petitioner received the notice of the assailed decision of the Housing and Land Use Regulatory Board (HLURB); and (b) the Resolution[2] dated 16 September 2008 denying petitioner's Motion for Reconsideration of the Amended Decision.

In denying the petition, the Amended Decision of the Court of Appeals effectively reinstated the Decision[3] dated 8 September 2000 of the HLURB, which ordered the petitioner, among others, to immediately deliver the Transfer Certificate of Title of the subdivision lot it sold to private respondents.

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[1] CA *rollo*, pp. 235-243. Penned by Associate Justice Noel G. Tijam, with Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Sesinando E. Villon, concurring.

[2] *Id.* at 263-265.

[3] *Id.* at 90-93. Penned by Atty. Dunstan T. San Vicente, Housing and Land Use Arbiter and approved by Jesse A. Obligacion, Regional Director.

The Factual Antecedents

On 3 March 1994, petitioner Bethel Realty and Development Corporation sold to private respondents spouses Nemesio and Marjorie Visaya a parcel of lot located in the Municipality of Taytay, Province of Rizal. Upon respondents' full payment of the purchase price on 24 March 1997, the contracting parties executed a Deed of Absolute Sale. However, despite several demands, petitioner failed to deliver the Transfer Certificate of Title covering the subject lot. Marjorie sought the help of the HLURB.

Proceedings with the HLURB

The HLURB Legal Services Group indorsed Marjorie's letter dated 16 September 1999 to the appropriate field office after the same was verified and acknowledged before a Notary Public.[4] The field office, in turn, treated the same as a verified complaint[5] and correspondingly issued a summons dated 16 November 1999 to the president/general manager of the petitioner.[6] On 23 December 1999, petitioner was declared in default for failure to file an answer to the complaint.[7] Thereafter, on 8 September 2000, the HLURB rendered its decision[8] in HLURB Case No. REM-102599-10727 in favor of the respondents, pertinent portions of which read:

> Complainants religiously paid their due installments or zealously complied with their obligations xxx, they further paid the sum of x x x representing their full payment of the purchase price xxx.
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> x x x x x x x x x
>
> x x x [C]omplainants demanded from respondent immediate delivery of the Transfer Certificate of Title of the subject lot but the latter promised to deliver the same later on. Complainants made several

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[4] *Id.* at 60. Order dated 23 December 1999.

[5] *Id.*

[6] *Id.* at 56.

[7] *Id.* at 60. Order dated 23 December 1999.

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

demands for the delivery of the title of the lot but respondent failed and continuous to fail to deliver the same (sic).

To apparently reassure complainants, the respondent issued to them its tax declaration. But no Transfer Certificate of Title was later issued to them.

Compound[ing] their woes and dismay, complainants found out that the project named Leviticus V had no license to sell. Neither is it registered as such with this Board. Complainants likewise found out that the subdivision was not developed contrary to the provisions of law and implementing rules and regulations of P.D. No. 957.

Furthermore, entrance to the project was denied to the complainants by inhabitants of the adjoining subdivision project for failure of respondent to pay the necessary compensation for the easement of the road right of way.

x x x x x x x x x

WHEREFORE, this Office hereby renders judgment against the respondent and orders it to immediately deliver to the complainants the Transfer Certificate of Title of the subdivision lot in question. In the event that it fails to do so, or on account of some legal or physical impossibility to deliver, the respondent is thus ordered to refund to complainants the total amount paid to it plus interest and damages reckoned from the date of filing this complaint until fully paid.

Respondent is hereby ordered to pay damages to herein complainant in the sum of ₱20,000.00, and furthermore, to pay this Board administrative fine of Ten Thousand Pesos (₱10,000.00) for violation of Sections 4, 5 and 25 of Presidential Decree No. 957.[9]

The sheriff of the Regional Trial Court, Antipolo City, attempted to implement the decision by virtue of the Writ of Execution and *Alias* Writ of Execution issued by the HLURB.[10] In the last Sheriff's Report dated 1 July 2002, it was stated that he could not locate the exact address of the petitioner.[11]

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[9] *Id.* at 91-93.

[10] *Id.* at 94-99.

[11] HLURB Records, p. 139.

Proceedings with the Court of Appeals

In a *Petition for Certiorari with Injunction*[12] filed on 29 October 2003 and docketed as CA G.R. SP No. 80225, petitioner sought to nullify the decision and the entire proceedings in the HLURB. On 7 November 2003, the Court of Appeals dismissed the petition in the following manner:

> x x x [A]side from the assailed Decision and Writs of Execution, petitioner **failed to attach to the petition copies of all pleadings and documents and other material portions of the record relevant and pertinent thereto**, a non compliance with Section 1, Rule 65 and Section 3, Rule 46 of the revised Rules on Civil Procedure, hence, the petition is dismissible under the last paragraph of said Section 3. *(Emphasis supplied.)*
>
> ACCORDINGLY, the petition is hereby DISMISSED OUTRIGHT.[13]

Petitioner re-filed the petition on 5 March 2004, now docketed as CA-G.R. SP No. 82579.[14] This time, while copies of the required documents were attached, the same were neither duplicate originals nor certified true copies. This necessitated the issuance of a Resolution[15] dated 11 March 2004, to wit:

> x x x [T]he documents attached to the Petition, specifically Annexes "A to F", are neither duplicate originals nor certified true copies.
>
> WHEREFORE, petitioners are hereby **ordered** to submit, within five (5) days from notice hereof, clear and legible duplicate originals or certified true copies of the aforesaid documents. *(Emphasis in*

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[12] *Rollo*, pp. 24-32.

[13] *Id.* at 49. Resolution dated 7 November 2003 penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes (now a member of the Court), concurring.

[14] *Id.* at 50-60.

[15] CA *rollo*, p. 41. Penned by Associate Justices Noel G. Tijam, with then Associate Justice Ruben T. Reyes and Associate Justice Edgardo P. Cruz, concurring.

the original.) **Failure to do so shall merit the dismissal of the instant Petition.**[16] *(Emphasis supplied.)*

Petitioner partially complied with the Resolution of 11 March 2004 prompting the Court of Appeals to order anew the submission of certified true copies of four (4) of the annexes earlier mentioned, with a warning that its failure to do so will warrant the dismissal of the petition. Its Resolution[17] of 1 June 2004 reads in part:

> In Compliance with Our Resolution dated March 11, 2004, petitioner submitted certified true copies of the documents specifically Annexes B, B-1, C and D and mere photocopies of Annexes A, E, F and F-1. Accordingly, petitioner is hereby ordered anew to submit within five (5) days from notice certified true copies of Annexes "A, E, F and F-1". **Failure to do so shall merit the dismissal of the instant Petition.**[18] *(Emphasis supplied.)*

On 22 June 2004, petitioner filed its *Compliance with Urgent Motion for Issuance of TRO*.[19] Thereafter, on 17 November 2004, the Court of Appeals resolved to issue a temporary restraining order against the enforcement of the assailed HLURB Decision upon payment of an injunctive bond of ₱346,800.00.[20]

On 21 December 2007, the Court of Appeals granted the petition. The dispositive portion of the Decision reads:

> *WHEREFORE*, the instant Petition is ***GRANTED.*** The assailed Decision, dated September 8, 2000, of the Public Respondent Housing and Land Use Regulatory Board is hereby ***ANNULLED and SET ASIDE***. The Public Respondent Housing and Land Use Regulatory Board is declared without jurisdiction to take cognizance of HLURB Case No. REM-102599-10727, and all its orders and issuances in connection therewith are hereby ***ANNULLED and SET ASIDE.***[21]

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[16] *Id.*

[17] *Id.* at 73.

[18] *Id.*

[19] *Id.* at 74-76.

[20] *Id.* at 121-124. Resolution dated 17 November 2004.

[21] *Id.* at 221. Decision dated 21 December 2007.

However, acting on the respondents' Motion for Reconsideration of the Decision dated 21 December 2007, the Court of Appeals promulgated an Amended Decision[22] on 26 May 2008 denying the petition and reinstating the HLURB Decision. We quote, in part:

> It is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. xxx We took a second hard look at the records and the facts of this case and, in result discovered that **Petitioner committed a fatal error in failing to indicate when it received or was informed of the decision of the HLURB for purposes of reckoning whether the Petition was filed on time or not**. Consequently, We partially grant the Motion for Reconsideration by denying the Petition for *Certiorari*. *(Emphasis supplied.)*
>
> *WHEREFORE,* Private Respondent's Motion for Reconsideration, dated January 16, 2008, is **GRANTED IN PART** only insofar as the dismissal of the Petition for *Certiorari.*
>
> Accordingly, Our Decision, dated December 21, 2007, is hereby ***REVERSED and SET ASIDE*** and a new one issued ***denying*** the Petition xxx dated February 24, 2004. The Decision, dated September 8, 2000, of the Public Respondent Housing and Land Use Regulatory Board is ***reinstated***.[23]

Aggrieved, petitioner moved for the reconsideration of the Amended Decision denying its petition. Finding no compelling reason to modify the same, the Court of Appeals denied the motion.[24]

Issue

In this instant petition, we are not called upon to rule on the merits of the Decision of the HLURB. The sole issue raised by

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[22] *Id.* at 235-243.

[23] *Id.* at 242-243.

[24] *Id.* at 263-265. Resolution dated 16 September 2008.

the petitioner is "whether or not the Court of Appeals correctly applied and interpreted the provisions on the material data rule under Section 4, Rule 65 and Sec. 3[,] Rule 46 of the 1997 Rules of Civil Procedure"[25] warranting the denial of its petition before the Court of Appeals.

Our Ruling

We deny the petition.

Administrative remedies were available to petitioner to question the decision of the HLURB

Settled is the rule that the special civil action of *certiorari* under Rule 65 of the Rules of Court is available to an aggrieved party only when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law."[26] Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion.[27]

In the instant case, it would appear that the petitioner failed to exhaust all other remedies available to it.

Rule V of the 1996 Rules of Procedure of the HLURB then in force provides:

> Section 3. *Review of Judgment of Default.* – If the party declared in default who for good cause was unable to file a motion to lift the order of default, and a judgment by default was consequently rendered, he may still file a petition for review of the judgment by default with the Board in accordance with Rule XII of these Rules and whatever defenses he has against the complainant may still be raised in said petition.

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[25] *Rollo*, p. 15. Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[26] Section 1, Rule 65 of the Rules of Court.

[27] *Philippine Amusement and Gaming Corporation v. CA*, G.R. No. 185668, 13 December 2011.

Relative thereto, Rule XII of the same Rules read:

> Section 1. *Petition for Review.* – The aggrieved party on any legal ground and upon payment of the review fee, may file with the Regional Office a verified petition for review of the arbiter's decision within thirty (30) calendar days from receipt thereof.

After a review of the decision of the arbiter, the aggrieved party may also file a motion for reconsideration of the decision of the Board of Commissioners and eventually appeal the same to the Office of the President. Rule XVIII of the same Rules provides:

> Section 1. *Motion for Reconsideration.* – Within the period for filing an appeal from a Board decision, order or ruling of the Board of Commissioners, any aggrieved party may file a motion for reconsideration with the board x x x.
>
> x x x x x x x x x
>
> Section 2. *Appeal.* – Any party may upon notice to the Board and the other party appeal a decision rendered by the Board of Commissioners *en banc* or by one of its divisions to the Office of the President xxx.

Accordingly, inasmuch as *certiorari* cannot be a substitute for lost appeal[28] or any plain, speedy, and adequate remedy[29] for that matter, "especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse,"[30] its petition before the Court of Appeals must fail.

In addition, even assuming that *certiorari* is the only remedy left to petitioner, we sustain the Court of Appeals' denial of the petition for failure to comply with Section 3, Rule 46 of the Rules of Court.

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[28] *Id.* citing *Badillo v. Court of Appeals*, G.R. No. 131903, 26 June 2008, 555 SCRA 435, 452.

[29] Section 1, Rule 65 of the Rules of Court.

[30] *Philippine Amusement and Gaming Corporation v. CA*, *supra* note 27 citing *Badillo v. Court of Appeals*, G.R. No. 131903, 26 June 2008, 555 SCRA 435, 452.

Section 3, Rule 46 of the Rules of Court in relation to Section 4, Rule 65 of the same Rule must be strictly observed; the petitions were filed beyond the prescribed period

The special civil action for *certiorari* under Rule 65 of the Rules of Court may be instituted not later than sixty (60) days from notice of the judgment, order or resolution.[31]

To ensure compliance with the prescribed period, Section 3, Rule 46 of the Rules of Court provides that the petition shall indicate the date when "notice of the judgment or final order or resolution subject thereof was received" failure of which shall warrant the dismissal of the petition.[32]

Applying the aforesaid provision, the Court of Appeals, in its assailed Amended Decision, ruled:

In this Petition, Petitioner failed to indicate the first date, the date when the notice of the assailed decision was received. Instead, on page 4 of the petition, [Petitioner alleged that,] the assailed decision of the Public Respondent HLURB "*was never served upon petitioner Bethel Realty & Development Corporation*" but was only informed by one Atty. Carbon of the existence of the decision and the writs of execution. **Still, Petitioner failed to mention**

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[31] **SEC. 4.** *When and where to file the petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from notice of denial of the motion.

x x x x x x x x x.

[32] **SEC. 3.** *Contents and filing of petition; effect of non-compliance with requirements.* –

x x x x x x x x x

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

when was it informed of the decision. As explicitly stated in the aforementioned Rule, failure to indicate the material dates shall be sufficient ground for the dismissal of the petition.[33] *(Emphasis supplied)*

We are thus confronted with the issue of whether or not the allegation that petitioner was never served a copy of the judgment sought to be reviewed excuses compliance with the express requirement that the date of receipt of the notice of the judgment or final order should be indicated in the petition. We rule in the negative.

That petitioner was never served a copy of the assailed decision does not necessarily mean that he was unable to secure a copy thereof. If that were true, there would not have been any petition before the Court of Appeals. A certified true copy of the decision is a required attachment to the petition otherwise its petition may be dismissed in accordance with Section 1, paragraph 2, Rule 65 of the Rules of Court.[34]

Moreover, if we allow petitioner's excuse from the statement of material dates, we will disregard the constitutional right of parties to a speedy disposition of their case. This Court, in a number of cases, ratiocinated:

x x x The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the

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[33] *Rollo*, p. 112. Amended Decision dated 26 May 2008.

[34] Section 1, Rule 65 of the Rules of Court provides:

SECTION 1. *Petition for certiorari.* – xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

De los Santos v. CA, G.R. No. 147912, 26 April 2006, 488 SCRA 351, 358 citing *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

constitutional rights of the parties to a speedy disposition of their case.[35]

For these reasons, the 60-day period within which to file the petition must be strictly observed such that, in this case where there is an allegation that the petitioner did not receive a copy of the judgment, and for the purpose of determining the timeliness of the filing of the petition, that is, "sixty (60) days from notice of the judgment, order or resolution,"[36] the phrase "when notice of the judgment or final order or resolution subject thereof was received" under Sec. 3, Rule 46 of the same Rules should be taken to mean *knowledge of the existence* of the judgment.

In the case at bar, records would show that in its first petition[37] filed on 29 October 2003 and docketed as CA-G.R. SP No. 80225, petitioner alleged that "(i)t was only (i)n the month of September, 2003"[38] that it learned about the decision and writs of execution issued against the corporation. However, in its second petition[39] filed on 5 March 2004 and docketed as CA-G.R. SP No. 82579, or more than five (5) months from September 2003 when it supposedly learned of the issuance of the adverse decision and writs of execution, it omitted such material information. In its stead, for appearances of validity and timeliness in the re-filing of its petition, which was obviously re-filed way beyond the 60-day prescribed period, it merely stated that it was informed of the adverse judgment only when the writ of execution was already being implemented.[40]

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[35] *Yutingco v. Court of Appeals*, 435 Phil. 83, 91 (2002); *Prudential Guarantee and Assurance Inc. v. CA*, G.R. No. 146559, 13 August 2004, 436 SCRA 478, 482-483 citing *Yutingco v. Court of Appeals*, 386 SCRA 85, 92; *De los Santos v. Court of Appeals*, *supra* note 34, 357-358.

[36] Section 4, Rule 65 of the Rules of Court.

[37] *Rollo*, pp. 24-32. Petition for *Certiorari* with Injunction docketed as CA-G.R. No. SP No. 80225.

[38] *Id.* at 26.

[39] *Id.* at 50-60. Petition for *Certiorari* under Rule 65 of the Revised Rules of Court and Injunction docketed as CA-G.R. SP No. 82579.

[40] *Id.* at 54.

Interestingly, a closer examination of the documents would reveal that petitioner submitted machine copies of the HLURB's Notice of Decision and Decision dated 11 September 2000 and 8 September 2000, respectively, stamped "Certified True Copies" by the Acting Head, Expanded National Capital Region Field Office, Records and Information Unit, HLURB on 12 August 2003.[41] Certainly then, as early as 12 August 2003, petitioner had already secured a copy of the questioned decision.

All considered, we are left with one conclusion – both the first and second petitions were filed beyond the 60-day prescribed period counted from 12 August 2003.

Relaxation of procedural rules is allowed only when exceptional circumstances are obtaining in the case

We find in this case no justifiable reason to be liberal in the application of procedural rules.

On the contrary, there must be exactness rather than latitude in compliance with the rules considering the circumstances that show petitioner's conscious disregard of procedure:

1. Petitioner did not attach to its petition filed on 29 October 2003 copies of all pleadings and documents, and other material portions of the record relevant and pertinent thereto in violation of Section 1, Rule 65 and Section 3, Rule 46;

2. When the petitioner re-filed the petition on 5 March 2004, it did attach copies of the required documents but the same were neither duplicate originals nor certified true copies still in violation of Section 1, paragraph 2, Rule 65;

3. When the Court of Appeals, in its Resolution dated 11 March 2004,[42] afforded it an opportunity to comply with the rules within five (5) days from notice under pain of dismissal of the petition, it stated in its *Compliance and Motion for Issuance of TRO or Status Quo Order* dated 29 April 2004:

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[41] *Id.* at 77-81.

[42] CA *rollo,* p. 41.

In compliance with the Resolution of March 11, 2004, we are submitting CERTIFIED TRUE COPIES OF Annexes "A" to "F" of our petition, which are enclosed herewith.[43]

However, only Annexes "B" to "D" were certified true copies of the documents;[44]

4. When the Court of Appeals, instead of dismissing the case, again extended its leniency by giving petitioner another chance and ordered anew the submission of certified true copies of Annexes "A", "E", "F", and "F-1",[45] petitioner once again impressed upon the court that it was submitting certified true copies of all the aforesaid annexes.[46] An examination of the submitted documents would show, however, that it merely re-submitted a machine copy of Annex "F-1".[47] This time, the Court of Appeals did not notice the said omission; and

5. Most of the annexes attached to the instant petition are again mere machine copies of the original.

For these reasons, we resolve to strictly observe the Rules of Court guided by the following pronouncements of this Court:

> It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may

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[43] *Id.* at 42.

[44] *Id.* at 56-60.

[45] *Id.* at 73. Resolution dated 1 June 2004.

[46] *Id.* at 74. Compliance with Urgent Motion for Issuance of TRO dated 21 June 2004.

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

have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[48]

We see in petitioner's actions a deliberate intent to avoid a determination of whether or not the Court of Appeals may still take cognizance of its petition.

WHEREFORE, the petition is **DENIED**. The Amended Decision dated 26 May 2008 of the Court of Appeals in CA-G.R. SP No. 82579 reversing and setting aside its Decision dated 21 December 2007 and denying the petition dated 24 February 2004 is hereby **AFFIRMED**. The Decision dated 8 September 2000 of the Housing and Land Use Regulatory Board is **REINSTATED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Leonardo-de Castro,[*] *Brion,* and *Sereno, JJ.,* concur.

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[48] *De los Santos v. CA, supra* note 34 at 358-359 citing *Sea Power Shipping Enterprises, Inc. v. CA*, 412 Phil. 603 (2001), further citing *Teoville Homeowners Association Inc. v. Ferreira*, G.R. No. 140086, 8 June 2005, 459 SCRA 459.

[*] Designated additional member per raffle dated 4 April 2012.

SECOND DIVISION

[G.R. No. 189755. July 4, 2012]

EMETERIA LIWAG, *petitioner, vs.* **HAPPY GLEN LOOP HOMEOWNERS ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 957; HOUSING AND LAND USE REGULATORY BOARD (HLURB, AS SUCCESSOR OF THE NATIONAL HOUSING AUTHORITY); JURISDICTION; OUTLINED IN P.D. NO. 1344.— The jurisdiction of the HLURB is outlined in P.D. 1344, Sec. 1.: In the exercise of its functions to regulate real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have the exclusive jurisdiction to hear and decide cases of the following nature. A. Unsound real estate business practices; B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker or salesman.

2. ID.; ID.; ID.; ID.; P.D. 957 WAS PROMULGATED TO CLOSELY REGULATE REAL ESTATE SUBDIVISION AND CONDOMINIUM BUSINESSES.— It is worthy to note that the HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer, or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the Subdivision a better place to live in. This interpretation is in line with one of P.D. 957's "Whereas clauses," which provides: WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic

requirements, thus endangering the health and safety of home and lot buyers. x x x. P.D. 957 was promulgated to closely regulate real estate subdivision and condominium businesses. Its provisions were intended to encompass all questions regarding subdivisions and condominiums. The decree aimed to provide for an appropriate government agency, the HLURB, to which aggrieved parties in transactions involving subdivisions and condominiums may take recourse.

3. ID.; ID.; ID.; ID.; JURISDICTION; THE ALLEGATION IN THE COMPLAINT OF RESPONDENT ASSOCIATION – THAT THE SUBDIVISION OWNER AND DEVELOPER FRAUDULENTLY SOLD TO HERMOGENES THE LOT WHERE THE WATER FACILITY WAS LOCATED – MAKES OUT A CASE FOR AN UNSOUND REAL ESTATE BUSINESS PRACTICE OF THE SUBDIVISION OWNER AND DEVELOPER, WITHIN THE EXCLUSIVE JURISDICTION OF THE HLURB; CASE AT BAR.— We find that this statement sufficiently alleges that the subdivision owner and developer fraudulently sold to Hermogenes the lot where the water facility was located. Subdivisions are mandated to maintain and provide adequate water facilities for their communities. Without a provision for an alternative water source, the subdivision developer's alleged sale of the lot where the community's sole water source was located constituted a violation of this obligation. Thus, this allegation makes out a case for an unsound real estate business practice of the subdivision owner and developer. Clearly, the case at bar falls within the exclusive jurisdiction of the HLURB.

4. CIVIL LAW; PROPERTY; EASEMENTS; ENCUMBRANCES IMPOSED UPON AN IMMOVABLE; AN EASEMENT FOR WATER FACILITY EXISTS ON SUBJECT LOT IN CASE AT BAR.— Easements or servitudes are encumbrances imposed upon an immovable for the benefit of another immovable belonging to a different owner, for the benefit of a community, or for the benefit of one or more persons to whom the encumbered estate does not belong. x x x Contrary to petitioner's contention that the existence of the water tank on Lot 11, Block 5 is merely tolerated, we find that the easement of water facility has been voluntarily established either by Marcelo, the Subdivision owner and developer; or by F.G.R. Sales, his predecessor-in-interest

and the original developer of the Subdivision. For more than 30 years, the facility was continuously used as the residents' sole source of water. The Civil Code provides that continuous and apparent easements are acquired either by virtue of a title or by prescription of 10 years. It is therefore clear that an easement of water facility has already been acquired through prescription.

5. POLITICAL LAW; STATUTORY CONSTRUCTION; INTERPRETATION OF "OPEN SPACE" IN SECTION 1 OF P.D. NO. 1216; *EJUSDEM GENERIS*; APPLIES WHERE GENERAL WORDS FOLLOW ENUMERATION OF SPECIFIC WORDS OF SAME CLASS.— The term "open space" is defined in P.D. 1216 as "an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, *barangay* centers and other similar facilities and amenities. The decree makes no specific mention of areas reserved for water facilities. Therefore, we resort to statutory construction to determine whether these areas fall under "other similar facilities and amenities." The basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned. Applying this principle to the afore-quoted Section 1 of P.D. 1216, we find that the enumeration refers to areas reserved for the common welfare of the community. Thus, the phrase "other similar facilities and amenities" should be interpreted in like manner. Here, the water facility was undoubtedly established for the benefit of the community. Water is a basic need in human settlements, without which the community would not survive. We therefore rule that, based on the principle of *ejusdem generis* and taking into consideration the intention of the law to create and maintain a healthy environment in human settlements, the location of the water facility in the Subdivision must form part of the area reserved for open space.

6. ID.; ADMINISTRATIVE LAW; P.D. NO. 1216 "OPEN SPACES" IN SUBDIVISIONS ARE RESERVED FOR PUBLIC USE AND ARE BEYOND THE COMMERCE OF MAN; SALE

OF SUBJECT PARCEL OF LAND WAS CONTRARY TO LAW IN CASE AT BAR.— The law expressly provides that open spaces in subdivisions are reserved for public use and are beyond the commerce of man. As such, these open spaces are not susceptible of private ownership and appropriation. We therefore rule that the sale of the subject parcel of land by the subdivision owner or developer to petitioner's late husband was contrary to law. Hence, we find no reversible error in the appellate court's Decision upholding the HLURB Arbiter's annulment of the Deed of Sale.

7. CIVIL LAW; LAND REGISTRATION; RULE THAT A TORRENS TITLE IS NOT SUBJECT TO A COLLATERAL ATTACK, NOT APPLICABLE IN CASE AT BAR.— First, the rule that a collateral attack against a Torrens title is prohibited by law finds no application to this case. There is an attack on the title when the object of an action is to nullify a Torrens title, thus challenging the judgment or proceeding pursuant to which the title was decreed. In the present case, this action is not an attack against the validity of the Torrens title, because it does not question the judgment or proceeding that led to the issuance of the title. Rather, this action questions the validity of the transfer of land from Marcelo to petitioner's husband. As there is no attack – direct or collateral – against the title, petitioner's argument holds no water.

8. ID.; PRINCIPLE OF INDEFEASIBILITY OF TITLE; EXCEPTION; PETITIONER WAS NOT AN INNOCENT PURCHASER IN GOOD FAITH AND FOR VALUE IN CASE AT BAR.— Second, the principle of indefeasibility of title is not absolute, and there are well-defined exceptions to this rule. In *Aqualab Philippines, Inc. v. Heirs of Pagobo*, we ruled that this defense does not extend to a transferee who takes the title with knowledge of a defect in that of the transferee's predecessor-in-interest. In this case, Spouses Liwag were aware of the existence of the easement of water facility when Marcelo sold Lot 11, Block 5 to them. Hermogenes even executed an Affidavit dated 10 August 1982 attesting to the sufficiency of the water supply coming from an electrically operated water pump in the Subdivision. It is undisputed that the water facility in question was their only water source during that time. As residents of the Subdivision, they had even benefited for almost

30 years from its existence. Therefore, petitioner cannot be shielded by the principle of indefeasibility and conclusiveness of title, as she was not an innocent purchaser in good faith and for value.

APPEARANCES OF COUNSEL

Timbol and Associates for petitioner.

Bihag Fetizanan Gandia and Associates Law Offices for respondent.

D E C I S I O N

SERENO, *J.*:

This Rule 45 Petition assails the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 100454. The CA affirmed with modification the Decision[3] and Order[4] of the Office of the President (O.P.) in OP Case No. 05-G-224, which had set aside the Decision[5] of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-041210-0261 and affirmed the Decision[6] of the Housing and Land Use Arbiter in HLURB Case No. REM-030904-12609.

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[1] CA Decision dated 13 March 2009, penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.; *rollo*, pp. 38-54.

[2] CA Resolution on petitioner's Motion for Reconsideration dated 18 September 2009, *rollo*, pp. 55-56.

[3] Decision of the OP dated 5 March 2007; *rollo*, pp. 127-134.

[4] Order of the OP dated 26 July 2007; *rollo*, pp. 135-137.

[5] HLURB Board of Commissioners Decision dated 7 June 2005, rendered by Commissioners Romulo Q. Fabul, Teresita A. Desierto, Francisco L. Dagnalan (no signature) and Jesus Y. Pang; *rollo*, pp. 120-123.

[6] HLURB Arbiter's Decision dated 5 October 2004, penned by Atty. Joselito F. Melchor; *rollo*, pp. 86-93.

The controversy stems from a water facility in Happy Glen Loop Subdivision (the Subdivision), which is situated in Deparo, Caloocan City.

Sometime in 1978, F.G.R. Sales, the original developer of Happy Glen Loop, obtained a loan from Ernesto Marcelo (Marcelo), the owner of T.P. Marcelo Realty Corporation. To settle its debt after failing to pay its obligation, F.G.R. Sales assigned to Marcelo all its rights over several parcels of land in the Subdivision, as well as receivables from the lots already sold.[7]

As the successor-in-interest of the original developer, Marcelo represented to subdivision lot buyers, the National Housing Authority (NHA) and the Human Settlement Regulatory Commission (HSRC) that a water facility was available in the Subdivision.[8]

For almost 30 years, the residents of the Subdivision relied on this facility as their only source of water.[9] This fact was acknowledged by Marcelo and Hermogenes Liwag (Hermogenes), petitioner's late husband who was then the president of respondent Happy Glen Loop Homeowners Association (Association).[10]

Sometime in September 1995, Marcelo sold Lot 11, Block No. 5 to Hermogenes. As a result, Transfer Certificate of Title (TCT) No. C-350099 was issued to him. When Hermogenes died in 2003, petitioner Emeteria P. Liwag subsequently wrote a letter to respondent Association, demanding the removal of the overhead water tank from the subject parcel of land.[11]

Refusing to comply with petitioner's demand, respondent Association filed before the HLURB an action for specific

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[7] CA Decision dated 13 March 2009, *rollo*, pp. 39-40.

[8] *Id.* at 40.

[9] HLURB Arbiter's Decision dated 5 October 2004, *rollo*, p. 87.

[10] *Id.*

[11] CA Decision dated 13 March 2009, *rollo*, p. 40.

performance; confirmation, maintenance and donation of water facilities; annulment of sale; and cancellation of TCT No. 350099 against T.P. Marcelo Realty Corporation (the owner and developer of the Subdivision), petitioner Emeteria, and the other surviving heirs of Hermogenes.

After the parties submitted their respective position papers, Housing and Land Use Arbiter Joselito Melchor (Arbiter Melchor) ruled in favor of the Association. He invalidated the transfer of the parcel of land in favor of Hermogenes in a Decision dated 5 October 2004, the dispositive portion of which reads:[12]

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

1. Confirming the existence of an easement for water system/ facility or open space on Lot 11, Block 5 of TCT No. C-350099 wherein the deep well and overhead tank are situated,

2. Making the Temporary Restraining Order dated 01 April 2004 permanent so as to allow the continuous use and maintenance of the said water facility, *i.e.*, deep well and over head water tank, on the subject lot, by the complainant's members and residents of the subject project, and restraining all the respondents from committing the acts complained of and as described in the complaint,

3. Declaring as void *ab initio* the deed of sale dated 26 February 2001, involving Lot 11, Block 5 in favor of spouses Liwag, and TCT No. C-350099 in the name of same respondents without prejudice to complainant's right to institute a criminal action in coordination with the prosecuting arms of the government against respondents Marcelo and Liwag, and furthermore, with recourse by Liwag against T.P. and/or Marcelo to ask for replacement for controverted lot with a new one within the subject project; and

4. Ordering respondents, jointly and severally, to pay complainant the amount of ₱10,000.00 as attorney's fees and the amount of ₱20,000.00 as damages in favor of the complainant's members.

SO ORDERED.

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[12] HLURB Arbiter's Decision dated 5 October 2004, *rollo*, p. 93.

On appeal before the HLURB Board of Commissioners, the Board found that Lot 11, Block 5 was not an open space. Moreover, it ruled that Marcelo had complied with the requirements of Presidential Decree No. (P.D.) 1216 with the donation of 9,047 square meters of open space and road lots. It further stated that there was no proof that Marcelo or the original subdivision owner or developer had at any time represented that Lot 11, Block 5 was an open space. It therefore concluded that the use of the lot as site of the water tank was merely tolerated.[13]

Respondent Association interposed an appeal to the OP, which set aside the Decision of the HLURB Board of Commissioners and affirmed that of the Housing and Land Use Arbiter.[14]

The OP ruled that Lot 11, Block 5 was an open space, because it was the site of the water installation of the Subdivision, per Marcelo's official representation on file with the HLURB National Capital Region Field Office. The OP further ruled that the open space required under P.D. 957 excluded road lots; and, thus, the Subdivision's open space was still short of that required by law. Finally, it ruled that petitioner Liwag was aware of the representations made by Marcelo and his predecessors-in-interest, because he had acknowledged the existence of a water installation system as per his Affidavit of 10 August 1982.[15]

Petitioner Liwag unsuccessfully moved for reconsideration,[16] then filed a Rule 43 Petition for Review before the CA.[17]

The CA affirmed that the HLURB possessed jurisdiction to invalidate the sale of the subject parcel of land to Hermogenes and to invalidate the issuance of TCT No. C-350099 pursuant

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[13] Decision of the HLURB Board of Commissioners dated 7 June 2005, *rollo*, p. 122.

[14] Decision of the OP dated 5 March 2007, *rollo*, p. 134.

[15] *Id.* at 133-134.

[16] Order of the OP dated 26 July 2007, *rollo*, p. 137.

[17] CA Decision dated 13 March 2009, *rollo*, p. 38.

thereto.[18] The appellate court agreed with the OP that an easement for water facility existed on the subject parcel of land and formed part of the open space required to be reserved by the subdivision developer under P.D. 957.[19] However, it ruled that Arbiter Melchor should not have recommended the filing of a criminal action against petitioner, as she was not involved in the development of the Subdivision or the sale of its lots to buyers.[20] The CA likewise deleted the award of attorney's fees and damages in favor of respondent.[21]

Aggrieved, petitioner filed the instant Petition before this Court.

The Court's Ruling

We affirm the ruling of the appellate court.

I

The HLURB has exclusive jurisdiction over the case at bar

The jurisdiction of the HLURB is outlined in P.D. 1344, "Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957," *viz*:

> Sec. 1. In the exercise of its functions to regulate real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have the exclusive jurisdiction to hear and decide cases of the following nature.
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

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[18] *Id.* at 47.

[19] *Id.* at 49.

[20] *Id.* at 52.

[21] *Id.* at 53.

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker or salesman.

When respondent Association filed its Complaint before the HLURB, it alleged that Marcelo's sale of Lot 11, Block 5 to Hermogenes was done in violation of P.D. 957 in the following manner:

12. Through fraudulent acts and connivance of [T.P. and Ernesto Marcelo] and the late Liwag and without the knowledge and consent of the complainants all in violation of P.D. 957 and its implementing regulations, respondents T.P. and ***Ernesto Marcelo*** transferred the same lot where the deep well is located which is covered by TCT No. C-41785 in favor of spouses ***Hermogenes Liwag*** and ***Emeteria Liwag*** to the great damage and prejudice of complainants x x x.[22] (Emphasis in the original)

We find that this statement sufficiently alleges that the subdivision owner and developer fraudulently sold to Hermogenes the lot where the water facility was located. Subdivisions are mandated to maintain and provide adequate water facilities for their communities.[23] Without a provision for an alternative water source, the subdivision developer's alleged sale of the lot where the community's sole water source was located constituted a violation of this obligation. Thus, this allegation makes out a case for an unsound real estate business practice of the subdivision owner and developer. Clearly, the case at bar falls within the exclusive jurisdiction of the HLURB.

It is worthy to note that the HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer, or those aimed at compelling the subdivision developer to comply with its contractual and statutory

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[22] Complaint with a Prayer for a Preliminary Injunction and/or Temporary Restraining Order dated 8 March 2004, *rollo*, p. 70.

[23] Rules Implementing the Subdivision and Condominium Buyer's Protective Decree and Other Related Laws, Sec. 11(B) (4).

obligations to make the Subdivision a better place to live in.[24] This interpretation is in line with one of P.D. 957's "Whereas clauses," which provides:

> WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers. x x x.

P.D. 957 was promulgated to closely regulate real estate subdivision and condominium businesses.[25] Its provisions were intended to encompass all questions regarding subdivisions and condominiums.[26] The decree aimed to provide for an appropriate government agency, the HLURB, to which aggrieved parties in transactions involving subdivisions and condominiums may take recourse.[27]

II

An easement for water facility exists on Lot 11, Block 5 of Happy Glen Loop Subdivision

Easements or servitudes are encumbrances imposed upon an immovable for the benefit of another immovable belonging to a different owner,[28] for the benefit of a community,[29] or for the benefit of one or more persons to whom the encumbered estate does not belong.[30]

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[24] *Arranza v. B.F. Homes*, 389 Phil. 318, 329 (2000).

[25] *Christian General Assembly, Inc. v. Sps. Ignacio*, G.R. No. 164789, 27 August 2009, 597 SCRA 266.

[26] *Sps. Osea v. Ambrosio*, 521 Phil. 92 (2006).

[27] *Id.*

[28] CIVIL CODE, Art. 613.

[29] CIVIL CODE, Art. 614.

[30] *Id.*

The law provides that easements may be continuous or discontinuous and apparent or non-apparent. The pertinent provisions of the Civil Code are quoted below:

> Art. 615. Easements may be continuous or discontinuous, apparent or non-apparent.
>
> Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.
>
> Discontinuous easements are those which are used at intervals and depend upon the acts of man.
>
> Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.
>
> Non-apparent easements are those which show no external indication of their existence.

In this case, the water facility is an encumbrance on Lot 11, Block 5 of the Subdivision for the benefit of the community. It is continuous and apparent, because it is used incessantly without human intervention, and because it is continually kept in view by the overhead water tank, which reveals its use to the public.

Contrary to petitioner's contention that the existence of the water tank on Lot 11, Block 5 is merely tolerated, we find that the easement of water facility has been voluntarily established either by Marcelo, the Subdivision owner and developer; or by F.G.R. Sales, his predecessor-in-interest and the original developer of the Subdivision. For more than 30 years, the facility was continuously used as the residents' sole source of water.[31] The Civil Code provides that continuous and apparent easements are acquired either by virtue of a title or by prescription of 10 years.[32] It is therefore clear that an easement of water facility has already been acquired through prescription.

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[31] HLURB Arbiter's Decision dated 5 October 2004, *rollo*, p. 87.

[32] CIVIL CODE, Art. 620.

III

Lot 11, Block 5 of Happy Glen Loop Subdivision forms part of its open space

The term "open space" is defined in P.D. 1216 as "an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, *barangay* centers and other similar facilities and amenities.[33]

The decree makes no specific mention of areas reserved for water facilities. Therefore, we resort to statutory construction to determine whether these areas fall under "other similar facilities and amenities."

The basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned.[34]

Applying this principle to the afore-quoted Section 1 of P.D. 1216, we find that the enumeration refers to areas reserved for the common welfare of the community. Thus, the phrase "other similar facilities and amenities" should be interpreted in like manner.

Here, the water facility was undoubtedly established for the benefit of the community. Water is a basic need in human settlements,[35] without which the community would not survive. We therefore rule that, based on the principle of *ejusdem generis* and taking into consideration the intention of the law to create and maintain a healthy environment in human settlements,[36]

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[33] P.D. No. 1216, Sec. 1.

[34] *Miranda v. Abaya*, 370 Phil. 642 (1999).

[35] Rules and Standards for Economic and Socialized Housing Projects to Implement *Batas Pambansa Blg.* 220, Rule III, Sec. 5(B).

[36] P.D. 1216, first Whereas clause.

the location of the water facility in the Subdivision must form part of the area reserved for open space.

IV

The subject parcel of land is beyond the commerce of man and its sale is prohibited under the law

The law expressly provides that open spaces in subdivisions are reserved for public use and are beyond the commerce of man.[37] As such, these open spaces are not susceptible of private ownership and appropriation. We therefore rule that the sale of the subject parcel of land by the subdivision owner or developer to petitioner's late husband was contrary to law. Hence, we find no reversible error in the appellate court's Decision upholding the HLURB Arbiter's annulment of the Deed of Sale.

Petitioner attempts to argue in favor of the validity of the sale of the subject parcel of land by invoking the principle of indefeasibility of title and by arguing that this action constitutes a collateral attack against her title, an act proscribed by the Property Registration Decree.

Petitioner is mistaken on both counts.

First, the rule that a collateral attack against a Torrens title is prohibited by law[38] finds no application to this case.

There is an attack on the title when the object of an action is to nullify a Torrens title, thus challenging the judgment or proceeding pursuant to which the title was decreed.[39] In the present case, this action is not an attack against the validity of the Torrens title, because it does not question the judgment or proceeding that led to the issuance of the title. Rather, this action questions the validity of the transfer of land from Marcelo to petitioner's husband. As there is no attack – direct or collateral – against the title, petitioner's argument holds no water.

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[37] P.D. 1216, second Whereas clause.

[38] P.D. No. 1529, Sec. 48.

[39] *Heirs of Santiago v. Heirs of Santiago*, 452 Phil. 238 (2003).

Second, the principle of indefeasibility of title is not absolute, and there are well-defined exceptions to this rule.[40] In *Aqualab Philippines, Inc. v. Heirs of Pagobo*,[41] we ruled that this defense does not extend to a transferee who takes the title with knowledge of a defect in that of the transferee's predecessor-in-interest.

In this case, Spouses Liwag were aware of the existence of the easement of water facility when Marcelo sold Lot 11, Block 5 to them. Hermogenes even executed an Affidavit dated 10 August 1982 attesting to the sufficiency of the water supply coming from an electrically operated water pump in the Subdivision.[42] It is undisputed that the water facility in question was their only water source during that time. As residents of the Subdivision, they had even benefited for almost 30 years from its existence. Therefore, petitioner cannot be shielded by the principle of indefeasibility and conclusiveness of title, as she was not an innocent purchaser in good faith and for value.

From the discussion above, we therefore conclude that the appellate court committed no reversible error in the assailed Decision and accordingly affirm it *in toto*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**, and the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 100454 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[40] *Borromeo v. Descallar*, G.R. No. 159310, 24 February 2009, 580 SCRA 175.

[41] G.R. No. 182673, 12 October 2009, 603 SCRA 435.

[42] Joint Affidavit of Gerry Bautista and Hermogenes R. Liwag dated 10 August 1982, HLURB Records, p. 10.

THIRD DIVISION

[G.R. No. 192885. July 4, 2012]

SUBIC BAY METROPOLITAN AUTHORITY, *petitioner, vs.* **HONORABLE COURT OF APPEALS and SUBIC INTERNATIONAL HOTEL CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; PAYMENT OF SERVICE FEES IS DEPENDENT ON THE ACTUAL RENDITION OF SERVICES.— The Lease and Development Agreement entered into by petitioner and private respondent contains a definition of "service fees" and in that provision, the CA was correct in ruling that service fees pertain to the proportionate share of the tenant in the costs of the enumerated services which include the maintenance and operation of facilities which directly or indirectly benefit or serve the leased property or the tenant, or any of its subsidiaries, assignees, transferees or operators. Clearly, if the intention is the contrary, there would have been no need to enumerate what would constitute services covered by the "service fees." Even logic dictates that before anyone is entitled to collect service fees, one must have actually rendered a service. As correctly pointed out by the CA, petitioner did not provide most of the services enumerated in the Lease and Development Agreement x x x. As such, petitioner, not having rendered actual service cannot demand from private respondent its proportionate share of costs which were not really incurred.

2. ID.; OBLIGATIONS; RECIPROCAL OBLIGATIONS; EXPLAINED; APPLIED.— From the x x x findings of the CA, it is apparent that the questioned provisions of the contract are reciprocal in nature. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously such that the performance of one

is conditioned upon the simultaneous fulfillment of the other. For one party to demand the performance of the obligation of the other party, the former must also perform its own obligation. Accordingly, petitioner, not having provided the services that would require the payment of service fees as stipulated in the Lease Development Agreement, is not entitled to collect the same.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED.— Based on all of the x x x disquisitions, it is therefore clear that the CA did not commit any grave abuse of discretion in affirming the decision of the RTC. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment as patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

APPEARANCE OF COUNSEL

Von F. Rodriguez for petitioner.
Quijano Law Office for private respondent.

D E C I S I O N

PERALTA, ***J.*:**

This is to resolve the petition for *certiorari* under Rule 65 of the Rules of Court, dated August 2, 2010, of petitioner Subic Bay Metropolitan Authority (SBMA), seeking to reverse and set aside the Decision[1] dated January 21, 2010 of the Court of Appeals (CA), which affirmed the Decision[2] dated March 22, 2006 of the Regional Trial Court (RTC), Branch 74, Olongapo City.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Normandie B. Pizarro and Florito S. Macalino, concurring; *rollo*, pp. 22-32.

[2] Penned by Judge Ramon S. Caguioa; *id.* at 35-38.

The antecedent facts, as found by the RTC and the CA follow.

Petitioner SBMA is a government agency organized and established under Republic Act (R.A.) No. 7227 to develop the Subic Special Economic and Freeport Zone into a self-sustaining industrial, commercial and investment center. On the other hand, private respondent Subic International Hotel, Corporation (private respondent) is one of the locators of the Freeport Zone.[3]

On December 1, 1992 and June 8, 1993, petitioner and private respondent entered into two separate lease agreements whereby the private respondent undertook to help petitioner in the development and rehabilitation of the Subic Naval Base by taking over abandoned barracks and constructing hotel and restaurant facilities that will accommodate the needs of the growing number of businessmen and tourists in the Freeport Zone. The two agreements were later consolidated into a Lease and Development Agreement.[4] Section 6.1 of the said Agreement stipulated for the payment of service fees, which pertain to the proportionate share of the private respondent in the costs that the petitioner may incur in the provision of services, maintenance and operation of common facilities computed at $0.10 per square meter of the gross land area of the leased property.

Subsequently, upon a conduct of lease compliance audit, the SBMA Internal Audit Department found out that private respondent and other Freeport locators have not been charged for service fees. Thus, on August 25, 2005, petitioner issued private respondent a billing statement for accrued service fees in the amount of Two Hundred Sixty-Five Thousand Fifty-Three Dollars and Fifty Cents ($265,053.50). This led to a series of conciliation and clarificatory meetings between the parties. Consequently, the SBMA Board decided to waive the payment of future service fees and advised private respondent to lodge its protest for the payment of accumulated service fees to the accounting department.

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[3] *Rollo*, p. 22.

[4] *Id.* at 60-107.

Private respondent then formally requested for the reconsideration of the billing for accumulated service fees alleging that the services for which the billing was supposed to be based were not actually provided by petitioner but by independent contractors.

On the other hand, petitioner clarified that service fees also include other services which indirectly redound to the benefit of the tenants. Petitioner reasoned that it has a clear legal right to impose service fees under Section 13 (a) (3) of R.A. No. 7227, which does not specifically pertain to garbage collection, electricity, telephone, and water service alone but to other services such as fire protection, maintenance of common areas, police protection, and other services of similar nature.

Thus, private respondent filed a Petition for Declaratory Relief with the RTC, Branch 74, Olongapo City, praying for the determination by the Court whether petitioner has the right to collect for the accumulated service fees from the private respondent. The parties submitted a Joint Stipulation of Facts and filed a Motion for Summary Judgment.[5]

The RTC rendered its Decision dated March 22, 2006 in favor of the private respondent and declared that petitioner has no legal right under Section 6.3 of the Lease and Development Agreement to enforce the collection of previous billings for fixed service fees. The dispositive portion of the decision is as follows:

WHEREFORE, in view of the foregoing considerations, the instant Motion for Summary Judgment is granted and this Decision is hereby rendered on the basis of the Joint Stipulation of Facts and applicable laws and jurisprudence declaring that respondent Subic Bay Metropolitan Authority has no legal right under Section 6.3 of the Lease and Development Agreement dated 24 November 1996, to enforce the collection of previous billings for Fixed Service Fees at the rate of US$0.10 per square meter per month of the leased

[5] *Id.* at 42-45.

property covering the period from 01 December 1996 up to 08 February 2001 in the total amount of US$307,874.04.

SO DECIDED.[6]

The motion for reconsideration was denied in an Order[7] dated May 31, 2006. Aggrieved, petitioner appealed to the CA, however, the latter, in its Decision dated January 21, 2010, affirmed the March 22, 2006 decision of the RTC, thus:

WHEREFORE, the appeal is DISMISSED. The Decision dated March 22, 2006 of the RTC, Branch 74, Olongapo City, in Civil Case No. 137-0-04, is AFFIRMED.

SO ORDERED.[8]

According to the CA, the records show that petitioner did not actually provide most of the services enumerated in the Lease and Development Agreement and that the obligation involved in the agreement was reciprocal in nature; therefore, private respondent's obligation to pay was dependent upon petitioner's performance of its reciprocal duty to provide the agreed service, and since petitioner failed to perform its part of the deal, it cannot exact compliance from private respondent of its duty to pay.

A motion for reconsideration was filed, but it was denied. Hence, the present petition.

This Court finds this petition unmeritorious.

The core of the issue is the entitlement of SBMA to Service Fees as contained in the Lease and Development Agreement. Sections 6.1, 6.2 and 6.3 of the said Agreement provide that:

SECTION 6. SERVICE FEES

6.1 *Definition*. Tenant, its Subsidiaries, assignees, transferees or operators shall, for the entire Term of this Lease, and without

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[6] *Id.* at 38.

[7] *Id.* at 40.

[8] *Id.* at 32.

any set-off, counterclaim or deduction therefrom, pay or cause to be paid, to Landlord as "Additional Rent," its proportional share (based on the Gross Land Area of the Property) of (i) all costs which Landlord may incur in providing services or in maintaining and operating facilities which directly or indirectly benefit or serve the Property or Tenant or any of its Subsidiaries, assignees, transferees or operators, and (ii) any other similar fees or charges assessed on a non-discriminatory basis. Said costs shall be referred herein as "Service Fees" and are hereby defined to include but not be limited to a proportional share of the following costs incurred by Landlord: water, electricity, gas and telephone service; garbage removal; security; police protection; fire protection; insurance; landscaping; cost of maintaining common areas; public services befitting SBF investors generally; janitorial, sanitation and cleaning services; fees for professional services; charges under maintenance and service contracts; all maintenance and repair costs; any equipment rental; depreciation of the cost of capital improvements made to reduce Service Fees or limit increases therein; and any and all other costs of operation, whether ordinary or extraordinary. An invoice or certificate for service fees or other charges delivered by Landlord to Tenant shall be conclusive as to the amount of any such fees or charges payable by Tenant if no protest challenging the basis or amount thereof is filed with Landlord within five (5) days from receipt of such invoice or certificate. Notwithstanding any such protest, Tenant shall pay the amount reflected on such invoice or certificate pending resolution of such protest.

6.2 Estimated Service Fees. As frequently as Landlord shall deem appropriate, Landlord may give Tenant notice of Landlord's estimate of Service Fees for the then – current fiscal year ("Estimated Service Fees). Tenant shall pay throughout the Term, as Additional Rent hereunder, together with any Base Rent payment due, such instalments of Estimated Service Fees as and when Landlord may reasonably require. The amount by which Estimated Service Fees actually paid to Landlord for any year exceed actual Service Fees for such year shall be applied by Landlord to the cost of services to be rendered in future periods. The amount by which Estimated Service Fees actually paid to Landlord for any year are less than actual Service Fees for such year shall be paid by Tenant to Landlord within ten (10) days of notice thereof from Landlord.

6.3 Service Fees Fixed for Five Years. Notwithstanding the foregoing, Landlord and Tenant agree that Service Fees (excluding electricity, water, gas, sewer and telephone services) shall be (i) US$0.10 per square meter per month of the Gross Land Area of the Property on or prior to December 31, 1998, and (ii) US$0.1242 per square meter per month of the Gross Land Area of the Property between January 1, 1999 and December 31, 2000. Payment of Service Fees shall commence on 1 December 1996.

In assailing the decision of the CA, petitioner alleges that the same was made with grave abuse of discretion amounting to lack of and/or excess of jurisdiction because the payment of "Service Fees" is not dependent on the actual rendition of the services enumerated therein as the said fees comprise of the tenant's proportionate share for all the costs which petitioner as landlord may incur in providing, maintaining or operating the facilities. This is misleading.

The Lease and Development Agreement entered into by petitioner and private respondent contains a definition of "service fees" and in that provision, the CA was correct in ruling that service fees pertain to the proportionate share of the tenant in the costs of the enumerated services which include the maintenance and operation of facilities which directly or indirectly benefit or serve the leased property or the tenant, or any of its subsidiaries, assignees, transferees or operators. Clearly, if the intention is the contrary, there would have been no need to enumerate what would constitute services covered by the "service fees." Even logic dictates that before anyone is entitled to collect service fees, one must have actually rendered a service. As correctly pointed out by the CA, petitioner did not provide most of the services enumerated in the Lease and Development Agreement, thus:

A close scrutiny of the records shows that respondent-appellant did not actually provide most of the services enumerated in the lease agreement. In the case of water, electricity, telephone and cable television services in the leased property, petitioner-appellee engaged the services of private service providers to furnish the mentioned necessities. The same holds true with other services

like janitorial, security, ground maintenance and garbage collection services. Petitioner-appellee contracted a private security agency for its security needs, hired employees to take charge of ground maintenance and engaged a contractor to haul its scrap materials. For fire protection services, petitioner-appellee is billed accordingly whenever said service is extended. Thus, the concerned departments of SBMA issued certifications, attesting to the fact that no security, janitorial and garbage collection services were extended to petitioner-appellee.[9]

As such, petitioner, not having rendered actual service cannot demand from private respondent its proportionate share of costs which were not really incurred. Petitioner's claim that the nature of "service fees" is that of an additional rent for the property or a separate consideration aside from the regular base rent, as shown by the fact that it is based on the gross land area of the property and the obligation to pay this amount arises upon the actual use, occupancy and enjoyment of the leased property is illogical. If that is the case, why would the contracting parties assign the term "service fees" to replace "additional rent" if the latter is the real intention? In its Comment[10] dated November 5, 2010, private respondent properly observed the flawed reasoning of petitioner by stating that the very reason why the amount is called "service fees" is that it is a fee imposed by the government for services actually rendered.

Petitioner also raises the argument that the CA seriously erred in rendering the decision which virtually nullified and/or struck down the provision of the Lease and Development Agreement pertaining to service fees, hence, resulting to the alteration or amendment of the Lease and Development Agreement. The CA did no such thing. The said court merely interpreted the questioned provisions of the contract. In doing so, the CA thus ruled:

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

[10] *Rollo,* pp. 194-209.

Finally, it is well settled that the decisive factor in evaluating an agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. For this reason, documentary and parole evidence may be submitted and admitted to prove such intention.

Here, the attendant circumstances suggest that respondent-appellant is not entitled to service fees. It acknowledged its failure to furnish the agreed services and impliedly admitted that it is not in the position to demand for the payment of service fees when it approved the proposal for the waiver of future service fees and advised petitioner-appellee to contest the charges for accumulated service fees. Thereafter, respondent-appellant moved for the amendment of the contract, inserting a provision for the waiver of future service fees. Prior to that, the concerned departments of SBMA issued their respective certifications that they did not extend any service to petitioner-appellee.[11]

From the above findings of the CA, it is apparent that the questioned provisions of the contract are reciprocal in nature. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[12] They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other.[13] For one party to demand the performance of the obligation of the other party, the former must also perform its own obligation. Accordingly, petitioner, not having provided the services that would require the payment of service fees as stipulated in the Lease Development Agreement, is not entitled to collect the same.

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

[12] *Jaime G. Ong v. CA*, 369 Phil. 243, 252, citing *Areola v. Court of Appeals*, G.R. No. 95641, September 22, 1994, 236 SCRA 643.

[13] *Id.*

Based on all of the above disquisitions, it is therefore clear that the CA did not commit any grave abuse of discretion in affirming the decision of the RTC. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment as patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[14]

WHEREFORE, the petition for *certiorari* dated August 2, 2010 of petitioner Subic Bay Metropolitan Authority is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[14] *Tan v. Spouses Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342, citing *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287, citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005), citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002), citing *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

THIRD DIVISION

[G.R. No. 172418. July 9, 2012]

NEMESIO V. SAYCON (deceased), substituted by his heirs, JOVEN V. SAYCON and SPOUSE EILLEN G. SAYCON; REY V. SAYCON and SPOUSE PACITA S. SAYCON; ARNOLD V. SAYCON and SPOUSE EVANGELINE D. SAYCON; JEOFFREY V. SAYCON and SPOUSE ROCHEL M. SAYCON; and CHARLIE V. SAYCON, *petitioners, vs.* **ANACLETA BAROT *VDA. DE* TULABING, DIONISIO B. TULABING, ARCADIA B. TULABING, BALDOMERO B. TULABING, CARMEN TULABING, JULIA B. TULABING, HILARION BELIDA, JOEL B. TULABING, PACITA TULABING, NICOLAS B. TULABING, HENIA TULABING, VICTORIA B. TULABING, ARMANDO DEVIRA and BENITA B. TULABING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; THE COURT OF APPEALS' DENIAL OF THE OMNIBUS MOTION ON GROUND THAT IT NO LONGER HAD JURISDICTION OVER THE SAME, UPHELD; THE SUPREME COURT CANNOT REVIEW THE SAME ISSUES NOT PASSED UPON BY THE COURT OF APPEALS FOR LACK OF JURISDICTION.— The Court upholds the Court of Appeals' Resolutions denying petitioners' Omnibus Motion. As stated by the Court of Appeals, petitioners' Omnibus Motion dated September 15, 2004 was filed under the mistaken belief that the Court of Appeals still had jurisdiction on their motion as an incident of a supposed pending appeal. However, the Court of Appeals already resolved the case brought up on appeal by petitioners in its Decision promulgated on September 26, 1995, and entry of judgment was made on March 12, 1996, while the records of the case was ordered remanded to the trial court on April 17, 1996. Hence, the Court of Appeals correctly denied petitioners' Omnibus Motion dated September 15, 2004 on the ground that

it no longer had jurisdiction over the same. Consequently, this Court cannot review the same issues raised by petitioners in their Omnibus Motion as the same was not passed upon by the Court of Appeals, since it had no jurisdiction over the Omnibus Motion.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FILED OUT OF TIME IN CASE AT BAR.— Moreover, this petition was filed out of time. Petitioners received a copy of the Court of Appeals' Resolution dated August 11, 2005 on August 23, 2005. On September 7, 2005, petitioners filed a Motion for Reconsideration of the said Resolution, which motion was denied by the Court of Appeals in a Resolution dated March 23, 2006. The 15-day reglementary period within which to appeal the resolution dated March 23, 2006 would end on April 14, 2006 (Good Friday). On April 17, 2006, the first working day from April 14, 2006, petitioners filed a Motion for Extension of 15 days within which to file a petition for review on *certiorari*. On May 15, 2006, they again filed a motion for extension of another 15 days within which to file their petition. The Court granted petitioners' first and second motions for extension of time to file their petition, which extension of time totaled 45 days from the expiration of the reglementary period, and the extension was reckoned from April 14, 2006 (not April 17, 2006), with a warning that no further extension would be given. Counting the given 45-day extension from April 14, 2006, the last day for filing this petition fell on May 29, 2006, a Monday. However, petitioners filed their petition one day late on May 30, 2006.

APPEARANCES OF COUNSEL

Flores & Flores Law Office for petitioners.
Sedillo and Partners Law Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Resolutions dated August 11, 2005 and March 23, 2006 in CA-G.R. CV No. 23221, which denied petitioners' Omnibus Motion dated September 15, 2004.

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

Respondents, the heirs of the late Alejandro Tulabing, alleged that since 1950, Alejandro Tulabing had been in peaceful, open, actual and continuous possession of a fishpond situated at Dunguan, Sta. Cruz, Tanjay, Negros Oriental, containing an area of 12 hectares, declared and described under Tax Declaration No. 14663[2] as well as described under Fishpond Application No. 10852,[3] and Tulabing had been continuously paying taxes thereon.[4]

On February 9, 1970, Alejandro Tulabing leased to petitioner Nemesio Saycon a portion of the fishpond measuring four (4) hectares for a period of eight years, or from March 1, 1970 to March 31, 1978, at a yearly rental of ₱400.00.[5] On March 8, 1977, before the term of the first contract of lease expired, the same was renewed for another four years to commence on March 1, 1979 up to March 31, 1982, this time, at a yearly rental of ₱1,000.00.[6]

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

[2] Exhibit "A", records, Vol. I, p. 134.

[3] Exhibit "G", *id.* at 148.

[4] Exhibits "K" to "K-14", *id.* at 175-190.

[5] Contract of Lease, Exhibit "D", *id.* at 45.

[6] Contract of Lease, Exhibit "E", *id.* at 47.

On March 17, 1980, Alejandro Tulabing sold to Lawrence Teves seven (7) hectares of his fishpond.[7]

On November 18, 1980, Alejandro Tulabing died in Ipil, Zamboanga del Sur.

Upon termination of the second contract of lease, respondents heirs of Alejandro Tulabing approached the *Barangay* Captain of Canlargo, Bais City for the purpose of having a dialogue with petitioner Nemesio Saycon who failed to pay rentals during the term of the second lease. The *barangay* captain later issued a certification attesting to the failure of Nemesio Saycon to appear before him.

Due to the continued failure of petitioners to deliver the possession of the four-hectare portion of the fishpond that they leased from Alejandro Tulabing, respondents filed a Complaint dated August 26, 1983 for ejectment and recovery of possession of fishpond area and damages with the Regional Trial Court (RTC) of Dumaguete City, Branch 42 (trial court).

On the other hand, petitioner Nemesio Saycon claimed that he had been in possession of the fishpond they were occupying since 1969, and he had applied with the Bureau of Fisheries and Aquatic Resources (BFAR) for a Fishpond Lease Agreement[8] in 1982. Although Nemesio Saycon admitted having leased from 1980 to 1986 a portion of AlejandroTulabing's fishpond consisting of four hectares, he claimed that this portion was included in the property sold by Alejandro Tulabing to Lawrence Teves in 1981. Petitioners alleged that Alejandro Tulabing's fishpond was only seven hectares and was adjacent to their fishpond on the north.

The issue that was resolved before the trial court was whether or not the fishpond in question was the very same fishpond subject of the lease contract executed between Alejandro Tulabing as lessor and Nemesio Saycon as lessee.[9]

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[7] Deed of Absolute Sale, Exhibit "L", *id.* at 59.

[8] Exhibit "1", *id.* at 288.

[9] Exhibits "D" and "E", *id.* at 45, 47.

On August 3, 1989, the trial court rendered a Decision[10] in favor of plaintiffs, respondents herein, the dispositive portion of which reads:

> In the light of the foregoing, plaintiffs have established, by preponderance of evidence their case, judgment is hereby rendered in favor of plaintiffs and against defendants, as follows:
>
> 1. Defendants, their heirs, assigns, agents and representatives are ordered to vacate from the premises of the fishpond in question and deliver possession thereof to plaintiffs;
> 2. To pay rentals of the fishpond in question from 1979 up to the time possession thereof is delivered to plaintiffs the sum of ₱1,000.00 a year; [and]
> 3. To pay reasonable attorney's fees in the sum of ₱3,000.00 and cost.[11]

The trial court ruled in favor of respondents based on respondents' documentary evidence,[12] which showed that the boundary of Alejandro Tulabing's fishpond on the south is a fishpond claimed by Hipolito Tobias and Juanito Violeta, and these boundaries are the same boundaries since 1960, long before Nemesio Saycon allegedly started to take possession of his fishpond in 1969. According to the trial court, respondents' evidence, taken in context, clearly showed that the fishpond subject matter of the case is the very same fishpond leased to Nemesio Saycon by the late Alejandro Tulabing. Moreover, in Civil Case No. 6859,[13] Nemesio Saycon sought to enjoin Alejandro Tulabing from taking possession of the fishpond he was occupying on the ground that his lease contract with Tulabing had not yet expired. Further, Nemesio Saycon filed

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[10] *Rollo*, pp. 42-49.

[11] *Id.* at 48-49.

[12] Exhibits "A" & "B", Tax Declaration No. 14663 for the year 1974 and Tax Declaration No. 22-349 for the year 1980, records, vol. I, pp. 134, 139.

[13] Complaint for Injunction and Damages with Preliminary Injunction dated April 3, 1978, Exhibit "O", *id.* at 62.

his fishpond application with the BFAR only on January 25, 1982,[14] just immediately before the expiration of the lease, which showed his intention to retain possession of the fishpond in question in spite of the expiration of the lease contract.

Petitioners appealed the trial court's decision to the Court of Appeals.

On September 26, 1995, the Court of Appeals rendered a Decision,[15] the dispositive portion of which reads:

> WHEREFORE, the case is hereby ordered remanded to the court of origin for further trial and for whatever proceedings which may be necessary and appropriate for the sole and exclusive purpose of determining with definiteness the identity of the property claimed by appellees *vis-à-vis* the property claimed by the appellants so that the proper amendment or supplement to the decision may be arrived at, identifying therein the property which should be vacated by defendants-appellants and delivered to plaintiffs-appellees.[16]

The Court of Appeals stated that respondents failed to prove the identity of the property they seek to recover, as their Complaint and other documents submitted in evidence did not contain a definitive description of the property. The Court of Appeals cited ***Laluan v. Malpaya***,[17] which held that the prudent course was for the trial court to conduct an investigation to enable it to identify positively the land in litigation.[18] Hence, the Court of Appeals remanded the case to the trial court for further proceedings for the sole and exclusive purpose of determining the identity of the property claimed by respondents in relation to the property claimed by petitioners, so that the proper supplement to the decision would be arrived at, identifying therein the property which should be vacated by petitioners and delivered to respondents.

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[14] Exhibit "1", *id.* at 288.

[15] *Rollo*, pp. 51-56.

[16] *Id.* at 56.

[17] No. L-21231, July 30, 1975, 65 SCRA 494.

[18] *Laluan v. Malpaya, supra,* at 503.

On July 15, 1996, the trial court issued an Order[19] for the ocular and relocation survey of the subject properties, and subpoenas were issued to Engineer Constancio Silva of CENRO II of Dumaguete City and others, directing them to appear and go with the trial court Judge and his staff for the ocular and relocation survey in the morning and afternoon of September 18, 1996. All parties were duly served with copies of the said order, especially the counsel for herein petitioners, Atty. Filemon M. Repollo, who received the notice on July 29, 1996.[20] However, petitioners and their counsel did not appear despite notices to them, but the ocular inspection proceeded.

On May 4, 2004, the trial court rendered a Supplemental Decision,[21] the dispositive portion of which reads:

> WHEREFORE, supplemental judgment is hereby rendered ordering the Defendants in this case to deliver and vacate the premises of the Fishpond described in Exhibit "C-4" of plaintiffs (p. 399 of Expediente), specifically with a perimeter from points 1, 2, 3, 4, 5, 6, 13, 14, 15 and 16 in a red line thereof.[22]

The trial court stated that the fishpond application of Nemesio Saycon had an area of 57,878 square meters. However, the trial court found that 43,465 square meters of the said area is part of the fishpond application of Alejandro Tulabing.[23] Hence, segregating and deducting the area of 43,465 square meters from the fishpond application of Nemesio Saycon with an area of 57,878 square meters, the balance is 14,413 square meters, which is not a contested area and belongs to Nemesio Saycon.[24] The trial court held:

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[19] Records, Vol. II, p. 375.

[20] Supplemental Decision (RTC), *rollo*, pp. 70-71.

[21] *Rollo*, pp. 70-78.

[22] *Id.* at 78.

[23] *Id.* at 77.

[24] *Id.*

Defendant Nemesio Saycon asserted that his fishpond is his own application (Exhs. "3" and "3-a") and ADJACENT to the fishpond applied by Alejandro Tulabing. But his assertion is not the whole truth because actual relocation survey of the fishponds reveals that only the aforesaid 14,413 square meters is adjacent and outside the fishpond application of Alejandro Tulabing. Obviously, the 43,465 square meters (Exh. "C-4"), which is part of the application of Alejandro Tulabing, has been included in the application of Nemesio Saycon which has a total area of 57,878 square meters. The application of Nemesio Saycon has been substantially overlapping the area which has long been already applied by Alejandro Tulabing as per communications in the BFAR or exhibits of plaintiffs.

Nemesio Saycon admitted to have leased about four (4) hectares from Alejandro Tulabing, to which leased area he allegedly returned already to Alejandro Tulabing or to the herein plaintiffs. The aforesaid earlier Decision which is already final and executory, mandated that Nemesio Saycon has to return the leased premises and the only issue now is to identify or determine which area is to be returned and vacated.

From the foregoing illucidation and findings of facts, it clearly appears that defendant Nemesio Saycon has to vacate and be ejected from a portion of his fishpond application and present occupation as described in Exhibit "C-4" of plaintiffs and as per Sketch Plan (Exhibit "C-2", p. 399 of Expediente), specifically from points 1, 2, 3, 4, 5, 6, 13, 14, 15 and 16 with a red connecting line in said sketch plan. The "dotted" or broken blue line in the said sketch Plan (Exhibit "C-2"), which is outside Exhibit "C-4", is the remaining fishpond of Nemesio Saycon.[25]

On May 18, 2004, petitioners filed a Notice of Appeal[26] from the Supplemental Decision dated May 4, 2004, which was granted on May 28, 2004.[27]

On May 26, 2004, respondents filed a *Motion for Execution Pending Appeal*[28] praying that a writ of execution pending appeal

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[25] *Id.*

[26] *Id.* at 79.

[27] *Id.* at 80.

[28] *Id.* at 81-82.

be issued pursuant to Section 2, Rule 39 and Section 9, Rule 41 of the 1997 Rules of Civil Procedure. As grounds for the motion, respondents stated that the appeal was dilatory because the earlier decision that mandated Nemesio Saycon to return the leased premises had become final and executory, and the only issue resolved in the Supplemental Decision was the identity of the area to be returned or vacated; that delaying the execution would prejudice them (respondents), as they have been deprived of possession for a long time, and the original parties were already dead; and they (respondents) were willing to put up a bond to answer for damages in the remote possibility of reversal of judgment.

On June 2, 2004, petitioners filed an Opposition[29] to the motion for execution pending appeal and a Reply thereto was filed by respondents on June 7, 2004. The motion was submitted for resolution after its scheduled hearing.

In a Special Order[30] dated June 22, 2004, the trial court ordered the issuance of a writ of execution in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, let a writ of execution be issued in favor of plaintiffs and against the defendants in accordance with the Decision of the Court of Appeals promulgated on September 26, 1995 and the Supplemental Decision dated May 4, 2004, pending appeal.[31]

The trial court opined that a writ of execution in this case could be issued principally per the Court of Appeals' Decision which already became final and executory as of October 19, 1995, and the Supplemental Decision already specifically determined the property to be vacated by petitioners and to be delivered to respondents.

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[29] *Id.* at 83-84.

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

[31] *Id.* at 86.

On September 15, 2004, petitioners filed an Omnibus Motion[32] before the Court of Appeals, contending that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Special Order dated June 22, 2004, considering that (1) Rule 70 of the Rules of Court governs forcible entry and unlawful detainer cases filed in the inferior courts, but not an ejectment case filed directly in the RTC like the instant case; (2) if the ejectment case is filed in the RTC as what happened here, the duty of the RTC is to dismiss the case due to lack of jurisdiction because ejectment and forcible entry cases are within the exclusive jurisdiction of the Municipal Trial Court where the property is located (Section 33, Batas Pambansa [BP] No. 129); and (3) Section 21, Rule 70 of the Rules of Court applied by the trial court in its Special Order is wrong as the rule applies only in cases of ejectment originally filed in the inferior court (MTCC) and its decision is affirmed by the RTC.

Petitioners prayed that the Special Order dated June 22, 2004, granting respondents' motion for execution pending appeal, and the Order dated August 25, 2004, denying their (petitioners) motion for reconsideration, be reversed and set aside; that the trial court be ordered to forward the entire records of the case to the Court of Appeals; and that they (petitioners) be granted 30 days from receipt of resolution within which to file a Brief.

In a Resolution[33] dated August 11, 2005, the Court of Appeals denied the Omnibus Motion on the ground that it no longer had jurisdiction to rule on their motion as an incident of a supposed pending appeal. It stated that the proceedings in this case have long been terminated with the promulgation of its decision way back on September 26, 1995 and the consequent issuance of the Entry of Judgment on March 12, 1996. On April 17, 1996, the Court of Appeals ordered the records of the case remanded to the court of origin.

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[32] *Id.* at 92-100.

[33] *Id.* at 102-107.

The Court of Appeals stated that herein petitioners should have questioned the Special Order through a special civil action for *certiorari* under Rule 65 of the Rules of Court, more so that they contended that grave abuse of discretion amounting to lack or excess of jurisdiction attended the issuance thereof by the lower court.

The Court of Appeals further stated that since the Notice of Appeal had been approved on May 28, 2004, petitioners could have filed in the same appeal a motion for the issuance of a temporary restraining order or a writ of preliminary injunction, which the Court could have acted upon as an incident of the appeal.

The dispositive portion of the Court of Appeals Resolution dated August 11, 2005 reads:

> WHEREFORE, in view of the foregoing, the Omnibus Motion dated September 15, 2004 is hereby DENIED.[34]

Petitioners' motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[35] dated March 23, 2006.

Petitioners filed this petition for review on *certiorari* of the Court of Appeals' Resolutions dated August 11, 2005 and March 23, 2006 on the ground that the RTC of Dumaguete City, Branch 42 had no jurisdiction over the causes of action of the case for ejectment and recovery of possession of property, as the first level courts had jurisdiction over the same. Petitioners contend that since the RTC had no jurisdiction over the case docketed as Civil Case No. 8251, its Decision dated August 3, 1989 and Supplemental Decision dated May 4, 2004 are null and void. Consequently, the Court of Appeals had no jurisdiction over the case on appeal, and its Decision dated September 26, 1995 and Resolutions dated August 11, 2005 and March 23, 2006 are also fatally infirm and must be set aside.

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[34] *Id.* at 107.

[35] *Id.* at 114-115.

The main issue to be resolved is whether or not the Court of Appeals did not err in denying petitioners' Omnibus Motion, which sought the reversal of the trial court's Special Order dated June 22, 2004 ordering the issuance of a writ of execution in favor of respondents.

The Court upholds the Court of Appeals' Resolutions denying petitioners' Omnibus Motion.

As stated by the Court of Appeals, petitioners' Omnibus Motion dated September 15, 2004 was filed under the mistaken belief that the Court of Appeals still had jurisdiction on their motion as an incident of a supposed pending appeal. However, the Court of Appeals already resolved the case brought up on appeal by petitioners in its Decision promulgated on September 26, 1995, and entry of judgment was made on March 12, 1996,[36] while the records of the case was ordered remanded to the trial court on April 17, 1996.[37] Hence, the Court of Appeals correctly denied petitioners' Omnibus Motion dated September 15, 2004 on the ground that it no longer had jurisdiction over the same.

Consequently, this Court cannot review the same issues raised by petitioners in their Omnibus Motion as the same was not passed upon by the Court of Appeals, since it had no jurisdiction over the Omnibus Motion.

Moreover, this petition was filed out of time.

Petitioners received a copy of the Court of Appeals' Resolution dated August 11, 2005 on August 23, 2005. On September 7, 2005, petitioners filed a Motion for Reconsideration of the said Resolution, which motion was denied by the Court of Appeals in a Resolution dated March 23, 2006. The 15-day reglementary period within which to appeal the Resolution dated March 23, 2006 would end on April 14, 2006 (Good Friday). On April 17, 2006, the first working day from April 14, 2006, petitioners filed a Motion for Extension of 15 days within which to file a

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[36] CA *rollo*, p. 141.

[37] *Id.* at 140.

petition for review on *certiorari*. On May 15, 2006, they again filed a motion for extension of another 15 days within which to file their petition.

The Court granted petitioners' first and second motions for extension of time to file their petition, which extension of time totaled 45 days from the expiration of the reglementary period, and the extension was reckoned from April 14, 2006 (not April 17, 2006), with a warning that no further extension would be given.[38] Counting the given 45-day extension from April 14, 2006, the last day for filing this petition fell on May 29, 2006, a Monday. However, petitioners filed their petition one day late on May 30, 2006.

WHEREFORE, the petition is **DENIED**. The Resolutions of the Court of Appeals dated August 11, 2005 and March 23, 2006 in CA-G.R. CV No. 23221 are hereby **AFFIRMED**.

Costs against petitioners.

SO ORDERED.

Velasco, Jr. (Chairperson), Mendoza, *Reyes*,[*] and *Perlas-Bernabe, JJ.*, concur.

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[38] *Rollo*, p. 11.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

THIRD DIVISION

[G.R. No. 193089. July 9, 2012]

ROSEÑA FONTELAR OGAWA, *petitioner, vs.* **ELIZABETH GACHE MENIGISHI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN ADOPTED AND CONFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE COURT AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS.— At the outset, it should be emphasized that the factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive upon the Court and may not be reviewed on appeal. However, when the RTC and the CA differ in their findings of fact and conclusions, as in this case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.

2. ID.; ACTIONS; ACTIONABLE DOCUMENTS; A WRITTEN AND SIGNED ACKNOWLEDGMENT THAT MONEY WAS RECEIVED BUT WITHOUT TERMS AND CONDITIONS FROM WHICH A RIGHT OR OBLIGATION MAY BE ESTABLISHED CANNOT BE CONSIDERED AN ACTIONABLE DOCUMENT UPON WHICH AN ACTION OR DEFENSE MAY BE FOUNDED, HENCE, THERE IS NO NEED TO DENY ITS GENUINENESS AND DUE EXECUTION UNDER OATH.— A receipt is defined as a written and signed acknowledgment that money or good was delivered or received. Exhibit 1, upon which respondent relies to support her counterclaim, sufficiently satisfies this definition. x x x. However, while indubitably containing the signatures of both parties, a plain reading of the contents of Exhibit 1 negates any inference as to the nature of the transaction for which the 1,000.000 Yen was received and who between the parties is the obligor and the obligee. What is apparent is a mere written and signed acknowledgment that money was received. There are no terms and conditions found therein from

which a right or obligation may be established. Hence, it cannot be considered an actionable document upon which an action or defense may be founded. Consequently, there was no need to deny its genuineness and due execution under oath in accordance with Section 8, Rule 8 of the Rules of Civil Procedure x x x. Corollary thereto, the manifestation made in open court by Atty. Gerona, petitioner's counsel, cannot be construed as an admission of her liability.

3. ID.; EVIDENCE; BURDEN OF PROOF; IN A COUNTERCLAIM, THE BURDEN OF PROVING THE EXISTENCE OF THE CLAIM LIES WITH THE DEFENDANT, BY THE QUANTUM OF EVIDENCE REQUIRED BY LAW, WHICH IS PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE, DEFINED.— It is settled that the burden of proof lies with the party who asserts his/her right. In a counterclaim, the burden of proving the existence of the claim lies with the defendant, by the quantum of evidence required by law, which in this case is preponderance of evidence. x x x "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence." From the evidence on record, it is clear that respondent failed to prove her counterclaim by preponderance of evidence.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARD THEREOF, MODIFIED.— [T]he Court cannot sustain the findings of the CA that both parties are at fault. Accordingly, the award of damages granted by the RTC in favor of petitioner must be reinstated with the modification that the award of actual damages in the amount of ₱400,772.00, in the nature of a loan or forbearance of money, shall earn 12% interest *per annum* reckoned from the date of filing of the instant complaint until the finality of this Decision. Thereafter, the judgment award inclusive of interest shall bear 12% annual interest until fully paid.

APPEARANCES OF COUNSEL

Vivencia C. Layosa for petitioner.
Gavino L. Barlin for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the March 8, 2010 Decision[1] and June 21, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86362 which affirmed with modification the September 1, 2005 Decision[3] of the Regional Trial Court (RTC) of Sorsogon City, Branch 52, granting respondent's counterclaim in the amount of 1,000,000.00 Yen and deleting the award of damages as well as attorney's fees in favor of the petitioner.

The Facts

Petitioner Roseña Fontelar Ogawa and respondent Elizabeth Gache Menigishi were childhood friends and former residents of Sorsogon City. Respondent married a Japanese national, Tomohito Menigishi (Tomohito), and lived in Japan. Sometime in June 1992, the Menigishis visited the Philippines and introduced Yashoyuki Ogawa (Yashoyuki), Tomohito's friend, to petitioner. Yashoyuki and petitioner eventually got married in the Philippines and thereafter, also lived in Japan.

On January 26, 2004, petitioner filed a complaint[4] for sum of money, damages, breach of good human relation and unjust enrichment before the RTC against respondent, docketed as Civil Case No. 2004-7299, alleging that the latter borrowed from her the amounts of ₱15,000.00, ₱100,000.00 and ₱8,000.00, in September 2000, August 2001, and March 2003, respectively. Unable to pay, respondent offered to sell her building and its improvements in Sorsogon City to petitioner

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Magdangal M. de Leon and Ruben C. Ayson, concurring; *rollo*, pp. 35-50.

[2] *Id.* at 51-52.

[3] *Id.* at 64-83.

[4] *Id.* at 53-57.

for a consideration of ₱1,500,000.00 with the agreement that her outstanding loans with petitioner be deducted from the purchase price and the balance payable in installments.

As partial payment for the properties, petitioner remitted the following amounts to respondent: (a) ₱150,000.00 through the account of her friend Emma Fulleros on October 23, 2003; and (b) ₱250,772.90 by way of bank remittance to respondent's Equitable-PCI Bank Account on December 8, 2003. Having paid huge amounts and in order to protect her proprietary rights, petitioner then demanded for the execution of the corresponding deed of sale, but respondent backed out from the deal and reneged on her obligations.

In her Answer with Counterclaim,[5] respondent specifically denied her indebtedness to petitioner and claimed that it was the latter who owed her 1,000,000.00 Yen, equivalent to about ₱500,000.00, as evidenced by a receipt. In partial payment of her indebtedness, petitioner, thus, remitted the amounts of ₱150,000.00 and ₱250,000.00 to respondent, leaving a balance of ₱100,000.00. Respondent also sought reimbursement of the advances she allegedly made for the wedding expenses of petitioner and Yashoyuki in the amount of 4,000,000.00 Yen. While she admitted offering her property for sale to petitioner, respondent explained that the sale did not materialize as petitioner failed to produce the stipulated downpayment. By way of counterclaim, respondent prayed for the award of 4,000,000.00 Yen, the balance of petitioner's purported loan in the amount of ₱100,000.00; moral and exemplary damages; and attorney's fees.

The RTC Ruling

Finding that respondent was indeed indebted to petitioner in the amounts of ₱150,000.00 and ₱250,772.90 or the total amount of ₱400,772.90, the RTC rendered a Decision[6] dated September 1, 2005, thus:

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[5] *Id.* at 58-62.

[6] *Id.* at 121-140.

1. Ordering the defendant to pay the plaintiff the amount of ₱400,772.90 plus interest of 12% from the date of filing of this case until the same shall have been paid in full.

2. Ordering the defendant to reimburse the plaintiff for the actual expenses she incurred in filing the instant case, to wit:

a. ₱54,000.00 for her fare of plane tickets
b. ₱7,355.00 for docket fees

3. Ordering the defendant to pay the plaintiff the following amounts:

a. ₱25,000.00 – moral damages
b. ₱25,000.00 – exemplary damages
c. ₱50,000.00 – attorney's fees
d. ₱1,000.00 – per appearance of her lawyer

SO ORDERED.

The RTC refused to give credence to respondent's testimony on her counterclaims for being incredible, inconsistent, and contrary to human experience. It likewise disregarded the receipt presented by respondent as proof of petitioner's purported indebtedness of 1,000,000.00 Yen.

The CA Ruling

On appeal, the CA affirmed the RTC's awards of the sums of ₱150,000.00 and ₱250,772.90 in favor of petitioner and sustained the denial of respondent's counterclaim of 4,000,000.00 Yen for lack of evidence. However, it gave probative value to the receipt for 1,000,000.00 Yen and held it sufficient to establish petitioner's indebtedness to respondent, considering the purported admission of the former's counsel as well as petitioner's own failure to specifically deny the same under oath as provided for under Section 8, Rule 8 of the Rules of Court. Consequently, it granted respondent's counterclaim of 1,000,000.00 Yen. Finally, having found both parties at fault, the CA deleted the awards of damages and attorney's fees.

Issue Before The Court

In this petition, petitioner advances the question of whether the disputed receipt sufficiently established respondent's counterclaim that petitioner owed her 1,000,000.00 Yen.

Petitioner's Arguments

Petitioner argues that the receipt for 1,000,000 Yen is not a promissory note and as such, its due execution and genuineness need not be denied under oath. Moreover, she denied any admission of liability that can be deduced from her counsel's manifestation during the trial that "the one who usually prepares the receipt is the obligor or the creditor."

Respondent's Arguments

Respondent, in her Comment, prays for the dismissal of the petition insisting that the CA did not err in sustaining the obligation of petitioner in her favor on the basis of the disputed receipt which the latter never denied and her counsel even admitted.

The Court's Ruling

The Court finds merit in the petition.

At the outset, it should be emphasized that the factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive upon the Court and may not be reviewed on appeal. However, when the RTC and the CA differ in their findings of fact and conclusions, as in this case, it becomes imperative to digress from this general rule and revisit the factual circumstances surrounding the controversy.[7]

In this case, the RTC and the CA gave different interpretations on the context of the receipt (Exhibit 1) executed by the parties and arrived at incongruent findings. On one hand, the RTC considered it as having failed to establish any right on the part of respondent to collect from petitioner the purported indebtedness

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[7] *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, 438 SCRA 224-243.

of 1,000,000.00 Yen, while on the other, the CA found it sufficient to confer liability.

A receipt is defined as a written and signed acknowledgment that money or good was delivered or received.[8] Exhibit 1, upon which respondent relies to support her counterclaim, sufficiently satisfies this definition. It reads in full:

> June 13, 2003
>
> I receive the total amount of 1,000,000 Yen (x x x)
>
> Signed:
>
> Elizabeth Menigishi Roseña Ogawa

However, while indubitably containing the signatures of both parties, a plain reading of the contents of Exhibit 1 negates any inference as to the nature of the transaction for which the 1,000,000 Yen was received and who between the parties is the obligor and the obligee. What is apparent is a mere written and signed acknowledgment that money was received. There are no terms and conditions found therein from which a right or obligation may be established. Hence, it cannot be considered an actionable document[9] upon which an action or defense may be founded.

Consequently, there was no need to deny its genuineness and due execution under oath in accordance with Section 8, Rule 8 of the Rules of Civil Procedure which provides:

> Section 8. *How to contest such documents.* – When an action or defense is founded upon a written instrument, copied in, or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to

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[8] *Towne & City Development Corporation v. Court of Appeals,* G.R. No. 135043, July 14, 2004, 434 SCRA 356, 363.

[9] *Duarte v. Duran,* G.R. No. 173038, September 14, 2011.

be party to the instrument or when compliance with an order for an inspection of the original is refused.

Corollary thereto, the manifestation made in open court by Atty. Gerona, petitioner's counsel, cannot be construed as an admission of her liability. The pertinent testimony of respondent and the manifestation of Atty. Gerona on May 18, 2005 read:

> Q: Ms. Witness, on the cross-examination, the counsel asked you how come that the signature of Rosena which was marked as EXHIBIT "1-a" and your signature marked as EXHIBIT "1-b" are parallel to each other?
>
> A: Because it was Rosena who made this. I was just made to confirm that she borrowed money from me.
>
> Q: Whose handwriting are these, the wording I received One Million Yen… (interrupted)
>
> ATTY. GERONA: (TO THE COURT)
>
> That is admitted, Your Honor, because the one who usually prepares the receipt is the obligor or the creditor.[10]

From the foregoing exchange, it cannot be clearly ascertained who between the two signatories is the obligor and obligee. Atty. Gerona's statement that the one who usually prepares the receipt is the obligor or the creditor did not conclusively imply that petitioner owed respondent 1,000,000.00 Yen, or *vice versa*. Hence, absent any other evidence to prove the transaction for which the receipt was issued, the Court cannot consider Exhibit 1 as evidence of a purported loan between petitioner and respondent which the former categorically denied.

It is settled that the burden of proof lies with the party who asserts his/her right. In a counterclaim, the burden of proving the existence of the claim lies with the defendant, by the quantum of evidence required by law, which in this case is preponderance of evidence. On this score, Section 1, Rule 133 of the Revised Rules on Evidence provides:

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[10] TSN, May 18, 2005, pp. 33-34.

Section 1. *Preponderance of evidence, how determined*. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witness' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

"Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence."[11]

From the evidence on record, it is clear that respondent failed to prove her counterclaim by preponderance of evidence.

In view of the foregoing, the Court cannot sustain the findings of the CA that both parties are at fault.[12] Accordingly, the award of damages granted by the RTC in favor of petitioner must be reinstated with the modification that the award of actual damages in the amount of ₱400,772.00,[13] in the nature of a loan or forbearance of money, shall earn 12% *per annum* reckoned from the date of filing of the instant complaint until the finality of this Decision. Thereafter, the judgment award inclusive of interest shall bear 12% annual interest until fully paid.[14]

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[11] *Amoroso v. Alegre*, G.R. No. 142766, June 15, 2007, 524 SCRA 641, 652.

[12] *Rollo*, p. 48.

[13] *Id.* at 139.

[14] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95 and 96.

WHEREFORE, the instant petition is **GRANTED**. The March 8, 2010 Decision and June 21, 2010 Resolution of the Court of Appeals are **REVERSED and SET ASIDE** and the September 1, 2005 Decision of the Regional Trial Court of Sorsogon City, Branch 52 is **REINSTATED with MODIFICATION** ordering respondent Elizabeth Gache Menigishi to pay petitioner Roseña Fontelar Ogawa the amount of ₱400,772.00 plus 12% *per annum* reckoned from the date of filing of the instant complaint until the finality of this Decision. Thereafter, the judgment award inclusive of interest shall bear 12% annual interest until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Reyes,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 194608. July 9, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO BARAOIL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; AN APPEAL THROWS THE WHOLE CASE OPEN FOR REVIEW SUCH THAT THE COURT MAY, AND GENERALLY DOES, LOOK INTO THE ENTIRE RECORDS IF ONLY TO ENSURE THAT NO FACT OF WEIGHT OR SUBSTANCE HAS BEEN OVERLOOKED,

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[*] Acting Member in lieu of Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

MISAPPREHENDED, OR MISAPPLIED BY THE TRIAL COURT.— The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left to the trial courts to determine. However, an appeal throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION FOR RAPE; GUIDING PRINCIPLES.— Courts use the following principles in deciding rape cases: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things. After a meticulous review of the records of the instant case, the Court holds that the totality of the evidence adduced by the prosecution proved the guilt of the accused-appellant beyond reasonable doubt.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT RELATIVE TO THE CREDIBILITY OF THE RAPE VICTIM ARE NORMALLY RESPECTED AND NOT DISTURBED ON APPEAL, MORE SO, IF AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS.— This Court finds no cogent reason to disturb the trial court's appreciation of the credibility of the prosecution witnesses' testimony. Findings of trial courts relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court. This rule may be brushed

aside in exceptional circumstances, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts – and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court.

4. ID.; ID.; ALIBI; CANNOT PREVAIL OVER AND IS WORTHLESS IN THE FACE OF THE POSITIVE IDENTIFICATION BY A CREDIBLE WITNESS THAT AN ACCUSED PERPETRATED THE CRIME.— The accused-appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused-appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.

5. CRIMINAL LAW; RAPE; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— As to the award of damages, this Court, however, believes that the amounts so awarded should be modified in line with existing jurisprudence regarding the amounts thereof such that civil indemnity is reduced to ₱50,000.00 instead of ₱75,000.00 while exemplary damages is changed to ₱30,000.00 instead of ₱25,000.00. The accused-appellant is further liable for interest of 6% *per annum* on all the civil damages.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal from the Decision[1] dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03546, which affirmed with modification the Decision[2] dated August 15, 2008 of the Regional Trial Court (RTC), Branch 51 of Tayug, Pangasinan, in Criminal Case Nos. T-3682 and T-3683, finding Antonio Baraoil (accused-appellant) guilty for two crimes of rape defined and penalized under Republic Act (R.A.) No. 8353 and the Revised Penal Code.

On October 20, 2004, the accused-appellant was charged in two informations[3] for the crime of rape allegedly committed, as follows:

Criminal Case No. T-3682

That on or about 2:00 o'clock in the afternoon of August 8, 2004, inside the comfort room adjacent to the Apo Rice Mill at Brgy. San Maximo, [M]unicipality of Natividad, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously insert his penis into the vagina of [AAA], a minor[,] 5 years of age and thereafter finger the vagina of said [AAA], against her will and consent, to the damage and prejudice of said [AAA].

CONTRARY to Article 335 of the Revised Penal Code, as amended by Republic Act 8353.[4]

Criminal Case No. T-3683

That on or about 2:30 o'clock in the afternoon of August 8, 2004, inside the comfort room adjacent to the Apo Rice Mill located at

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 2-19.

[2] Penned by Judge Ulysses Raciles Butuyan; CA *rollo*, pp. 13-26.

[3] *Id.* at 5-8.

[4] *Id.* at 5.

Brgy. San Maximo, [M]unicipality of Natividad, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously suck the vagina of said [AAA], a minor, 5 years of age, against her will and consent, to the damage and prejudice of said [AAA].

CONTRARY to Article 335 of the Revised Penal Code, as amended by Republic Act 8353.[5]

During arraignment, the accused-appellant pleaded not guilty. Trial on the merits proceeded.

The accused-appellant is a neighbor of the victim's (AAA) family whom they consider and respect like an uncle.

According to the evidence of the prosecution, on August 8, 2004, at about 2:00 p.m., five (5) year old AAA was walking near the house of the accused-appellant when the latter saw her. He asked where she was going then he invited her to take a ride with him on his bicycle. AAA acceded because accused-appellant is a friend of her parents. The accused-appellant and AAA biked together towards the town rice mill. BBB, the elder sister of AAA, saw them. Worried about AAA's safety, BBB sought the help of CCC, her other sister, and their cousin DDD to look for AAA.

Upon arriving at the rice mill, the accused-appellant parked his bicycle against the wall, and pulled AAA inside the mill's comfort room. He pulled AAA's shorts as she was not wearing underwear. The accused-appellant then sat on a toilet bowl and unzipped his pants. He lifted AAA, seated her on his lap, and inserted his penis into AAA's vagina. AAA did not shout despite feeling pain.

The accused-appellant threatened AAA not to tell his mother or father about what happened or else he will repeat the act. He then inserted his right forefinger in AAA's vagina. AAA saw his finger that was thrust into her. AAA did not shout

[5] *Id.* at 7.

although she was about to cry. The accused-appellant removed his finger then pulled up his pants.

At that moment, BBB, CCC, and DDD arrived at the rice mill and saw the accused-appellant's bicycle. They entered and heard thumping sounds coming from the comfort room. The accused-appellant then suddenly opened its door and walked out. AAA followed him after a while towards his bicycle looking visibly sweating and walking with difficulty.

CCC approached the accused-appellant and told him that they will take AAA home. The accused-appellant refused and told them that he will take AAA home after buying a new pair of slippers he needed for himself. He bought the pair of slippers and a chocolate-filled biscuit for AAA.

After half an hour, the accused-appellant took AAA back to the comfort room of the same rice mill. There, he undressed her and sucked her vagina. While doing this, AAA begged the accused-appellant to take her home. The accused-appellant stopped and boarded her to his bicycle and brought her home.

The next day, DDD asked AAA what happened when she was with the accused-appellant. AAA did not say anything but she started to cry until she told her mother EEE all that transpired. On August 10, 2004, EEE brought AAA to the police station where they reported the incident.

For the defense, the accused-appellant denied the charges and proferred an alibi by stating that he was with his friend Renato at the fish pond at the time when the alleged rape took place. He claimed that they were fishing from 7:30 to 10:00 in the morning. They also drank gin at around 3:00 p.m. and went home at 4:00 p.m. He, moreover, claimed that AAA was nice to him before the alleged rape. However, AAA's family got mad at him after he disconnected their jumper connection from the power source. They even threatened that they will hack him to death. Thus, the accusation of AAA's family was a means of revenge.

On August 15, 2008, the RTC rendered its Decision, the decretal portion of which reads:

> WHEREFORE, finding the accused GUILTY beyond reasonable doubt of two crimes of rape, respectively defined and penalized under Republic Act No. 8353 amending the Revised Penal Code provisions on rape, the Court hereby sentences him to suffer the following:
>
> 1. the indeterminate penalty of from (sic) six (6) years of *prision correccional* maximum as minimum to ten (10) years of *prision mayor* medium as maximum, for the rape committed as charged in Criminal Case No. T-3683; and,
>
> 2. the death sentence of a protracted kind, namely *reclusion perpetua*, for the rape committed in Criminal Case No. T- 3682.
>
> Pursuant to the stipulations arrived at by the parties at the pre-trial stage, the accused is likewise condemned to indemnify the private complainant for damages in the agreed total sum of [₱]200,000.00; and, to pay the costs.
>
> SO ORDERED.[6]

The trial court lent credence to the testimony of AAA that she was raped. The trial court found her testimony categorical, straightforward and candid. Moreover, in upholding the credibility of AAA, the trial court relied heavily on established doctrines in rape cases.

On September 1, 2008, the accused-appellant filed a notice of appeal.[7] The CA, in a Decision dated May 26, 2010, affirmed the accused-appellant's conviction with modification, *viz*:

> 1. In Criminal Case No. T-3682, appellant is ordered to pay private complainant AAA, the amounts of [₱]75,000.00 as civil indemnity, [₱]50,000.00 as moral damages and [₱]25,000.00 as exemplary damages.
>
> 2. In Criminal Case No. T-3683, appellant is convicted of Acts of Lasciviousness under Art. III, Sec. 5(b) of R.A. No. 7610, in relation to Art. 336 of the Revised Penal Code. He is sentenced to

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[6] *Id.* at 72.

[7] *Id.* at 27.

imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and [twenty] 20 days of *reclusion temporal*, as maximum, and; to pay the complainant AAA [₱]15,000.00 as fine, [₱]20,000.00 as civil indemnity, [₱]15,000.00 as moral damages and [₱]15,000.00 as exemplary damages.

In both cases, costs against the appellant.

SO ORDERED.[8]

The CA sustained the conviction of the accused-appellant after finding that the testimony of AAA was credible, natural, convincing and consistent with human nature and the normal course of things. There was no reason to overturn the accused-appellant's conviction under Criminal Case No. T-3682 for the crime of statutory rape considering that AAA was undeniably under 12 years old and that the accused-appellant had carnal knowledge with her. Furthermore, the CA also found that the acts of accused-appellant fall under the category of Acts of Lasciviousness under Article 336 of the Revised Penal Code in conjunction with Section 5, R.A. No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*). However, with respect to the damages, the CA corrected the trial court's disposition on the matter and specifically awarded civil indemnity automatically upon proof of the commission of the crime, moral damages, and exemplary damages in view of the victim's minority.

Hence, this case.

The primary issue in this case is whether or not the accused-appellant's guilt has been proven beyond reasonable doubt *vis-a-vis* his main defense that the rape charges were merely concocted to get back at him as leverage against his act of disconnecting the jumper owned by AAA's family.

It should be noted that the records of this case were elevated to this Court on December 8, 2010, pursuant to the CA Resolution

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[8] *Rollo*, pp. 18-19.

dated June 23, 2010, which gave due course to the notice of appeal filed by accused-appellant. In compliance with this Court's Resolution dated January 12, 2011, the parties submitted their respective manifestations stating that they are no longer filing Supplemental Briefs with this Court and are adopting all the allegations, issues and arguments adduced in their Briefs before the CA.

This Court sustains accused-appellant's conviction.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proven. This basic constitutional principle is fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left to the trial courts to determine. However, an appeal throws the whole case open for review such that the Court may, and generally does, look into the entire records if only to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.[9]

Courts use the following principles in deciding rape cases: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[10]

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[9] *People v. De los Santos, Jr.*, G.R. No. 186499, March 21, 2012.

[10] *People v. Cruz*, G.R. No. 186129, August 4, 2009, 595 SCRA 411, 418-419.

After a meticulous review of the records of the instant case, the Court holds that the totality of the evidence adduced by the prosecution proved the guilt of the accused-appellant beyond reasonable doubt.

This Court finds no cogent reason to disturb the trial court's appreciation of the credibility of the prosecution witnesses' testimony. Findings of trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court. This rule may be brushed aside in exceptional circumstances, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[11] The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court.[12]

We quote with approval the following findings of the CA as to the ordeal gone through by AAA in the hands of the appellant, *viz*:

> AAA testified in a spontaneous and straightforward manner and never wavered in positively identifying appellant as her rapist despite grueling cross-examination. The trial court thus found the testimony of AAA to have been amply corroborated... who bravely, unabashedly, straightforwardly and consistently narrated in court her harrowing ordeal, vexation and pain in the hands of the accused.
>
> AAA was categorical in stating that appellant inserted his penis into her vagina:
>
> Q: And when the two of you were inside the comfort room of the rice mill, what did the accused do if any?
> A: He undressed me and then he sat on the toilet bowl, he unzipped his pants and he thereafter placed me on his top.

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[11] *People v. Navarette, Jr.*, G.R. No. 191365, February 22, 2012.

[12] *Supra* note 9.

Q: And while he was placing you on his top, what did he do next if any?
A: He inserted his penis into my vagina.

Q: What did you do or feel when he inserted his penis into your vagina?
A: I felt pain sir.

x x x x x x x x x

Q: And after he inserted his penis into your vagina, and after he told you that, what happened next if any?
A: He inserted his finger into my vagina sir.

Even on cross, examination AAA was unwavering:

Q: And when he sat on the toilet bowl you said he opened his zip?
A: Yes, sir.

Q: And then he lifted you and then place you on his top, is that correct?
A: Yes, sir,

Q: And then you felt pain because he was able to insert his penis into your vagina, is that what you mean?
A: Yes, sir.

Q: Now you would like to tell the Honorable Court that when he lifted you [and] placed you on hi (sic) lap and then at that time his penis entered your vagina?
A: Yes, sir.

A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.

x x x x x x x x x

x x x It is well-settled that the presentation of the medico-legal to testify on the examination of the victim and the medical certificate itself are not indispensable in a prosecution for rape. x x x

x x x x x x x x x

Verily, AAA was able to prove through her testimony that appellant inserted his penis into her vagina, thereby consummating his intention to have carnal knowledge of her. After all, the prevailing rule is that when a woman of tender age says that she was raped, she has stated everything that is necessary to prove the commission of the crime. x x x

x x x x x x x x x

We find no reason to overturn the conviction of appellant under Criminal Case No. T-3682 for the crime of statutory rape, it having been proven that AAA was under seven years of age when she was raped. The elements thereof had been overwhelmingly established in this case, specifically: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.

On the other hand, the crime of rape by sexual assault was not duly established by the prosecution. x x x

x x x x x x x x x

Under jurisprudential law, a person's tongue can be considered as an 'instrument or object' with which the crime of rape by sexual assault may be perpetrated. In the instant case, however, the record shows that no actual insertion of the tongue was done by appellant to bring the act within coverage of Art. 266-A (2) of the RPC. Not by any stretch of the imagination can the word "suck" be considered as an insertion. Thus, the act complained of cannot be considered rape by sexual assault.

Nonetheless, appellant's act falls under the category of crime of Acts of Lasciviousness, as defined under Art. 336 of the Revised Penal Code: x x x

x x x [I]n conjunction with Republic Act No. 7610, otherwise known as the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*, Section 5 x x x:[13]

The accused-appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation,

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[13] *Rollo*, pp. 9-15.

the accused-appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.[14]

As to the award of damages, this Court, however, believes that the amounts so awarded should be modified in line with existing jurisprudence regarding the amounts thereof such that civil indemnity is reduced to ₱50,000.00 instead of ₱75,000.00 while exemplary damages is changed to ₱30,000.00 instead of ₱25,000.00.[15] The accused-appellant is further liable for interest of 6% *per annum* on all the civil damages.

WHEREFORE, the assailed Decision dated May 26, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03546 is **AFFIRMED** with the **MODIFICATION** that in Criminal Case No. T-3682, accused-appellant Antonio Baraoil is ordered to pay civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00 and ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* on each of the amounts awarded reckoned from the finality of this decision.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[14] *People v. Arpon*, G.R. No. 183563, December 14, 2011.

[15] *Id.*

EN BANC

[A.C. No. 6622. July 10, 2012]

MANUEL G. VILLATUYA, *complainant, vs.* **ATTY. BEDE S. TABALINGCOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; AN AGREEMENT BETWEEN A LAWYER AND A PERSON NOT LICENSED TO PRACTICE LAW TO DIVIDE THE FEES FOR LEGAL SERVICES RENDERED WITH A PERSON IS NULL AND VOID, AND THE LAWYER INVOLVED MAY BE DISCIPLINED FOR UNETHICAL CONDUCT.— The first charge of complainant against respondent for the nonpayment of the former's share in the fees, if proven to be true is based on an agreement that is violative of Rule 9.02 of the Code of Professional Responsibility. A lawyer is proscribed by the Code to divide or agree to divide the fees for legal services rendered with a person not licensed to practice law. Based on the allegations, respondent had agreed to share with complainant the legal fees paid by clients that complainant solicited for the respondent. Complainant, however, failed to proffer convincing evidence to prove the existence of that agreement. We ruled in *Tan Tek Beng v. David* that an agreement between a lawyer and a layperson to share the fees collected from clients secured by the layperson is null and void, and that the lawyer involved may be disciplined for unethical conduct. Considering that complainant's allegations in this case had not been proven, the IBP correctly dismissed the charge against respondent on this matter.

2. ID.; ID.; ID.; A LAWYER IS PROHIBITED FROM ENGAGING IN A BUSINESS WHERE THE SAME WAS USED AS A CLOAK FOR INDIRECT SOLICITATION ON THE LAWYER'S BEHALF.— A review of the records reveals that respondent indeed used the business entities mentioned in the report to solicit clients and to advertise his legal services, purporting to be specialized in corporate rehabilitation cases.

Based on the facts of the case, he violated Rule 2.03 of the Code, which prohibits lawyers from soliciting cases for the purpose of profit. A lawyer is not prohibited from engaging in business or other lawful occupation. Impropriety arises, though, when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duties as a member of the bar. This inconsistency arises when the business is one that can readily lend itself to the procurement of professional employment for the lawyer; or that can be used as a cloak for indirect solicitation on the lawyer's behalf; or is of a nature that, if handled by a lawyer, would be regarded as the practice of law. It is clear from the documentary evidence submitted by complainant that Jesi & Jane Management, Inc., which purports to be a financial and legal consultant, was indeed a vehicle used by respondent as a means to procure professional employment; specifically for corporate rehabilitation cases. Annex "C" of the Complaint is a letterhead of Jesi & Jane Management, Inc., which proposed an agreement for the engagement of legal services. The letter clearly states that, should the prospective client agree to the proposed fees, respondent would render legal services related to the former's loan obligation with a bank. This circumvention is considered objectionable and violates the Code, because the letter is signed by respondent as President of Jesi & Jane Management, Inc., and not as partner or associate of a law firm.

3. ID.; ID.; ID.; A LAWYER MUST INFORM THE CLIENT WHETHER HE IS ACTING AS A LAWYER OR IN ANOTHER CAPACITY; REASON; PENALTY OF REPRIMAND IMPOSED FOR VIOLATION OF RULES 2.03 AND 15.08 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Rule 15.08 of the Code mandates that the lawyer is mandated to inform the client whether the former is acting as a lawyer or in another capacity. This duty is a must in those occupations related to the practice of law. The reason is that certain ethical considerations governing the attorney-client relationship may be operative in one and not in the other. In this case, it is confusing for the client if it is not clear whether respondent is offering consultancy or legal services. Considering, however, that complainant has not proven the degree of prevalence of this practice by respondent, we affirm the recommendation to reprimand the latter for violating Rules 2.03 and 15.08 of the Code.

4. ID.; ID.; DISBARMENT; THE FOCUS OF DISBARMENT PROCEEDINGS IS ON THE QUALIFICATIONS AND FITNESS OF A LAWYER TO CONTINUE MEMBERSHIP IN THE BAR AND NOT THE PROCEDURAL TECHNICALITIES IN FILING THE CASE; EXPLAINED.— We have consistently held that a disbarment case is *sui generis*. Its focus is on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case. Thus, we explained in *Garrido v. Garrido*: **Laws dealing with double jeopardy or with procedure — such as the verification of pleadings and prejudicial questions, or in this case, prescription of offenses or the filing of affidavits of desistance by the complainant — do not apply in the determination of a lawyer's qualifications and fitness for membership in the Bar. We have so ruled in the past and we see no reason to depart from this ruling. *First,* admission to the practice of law is a component of the administration of justice and is a matter of public interest because it involves service to the public. The admission qualifications are also qualifications for the continued enjoyment of the privilege to practice law. *Second,* lack of qualifications or the violation of the standards for the practice of law, like criminal cases, is a matter of public concern that the State may inquire into through this Court.**

5. ID.; ID.; ID.; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT. — In disbarment proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof. In this case, complainant submitted NSO-certified true copies to prove that respondent entered into two marriages while the latter's first marriage was still subsisting. While respondent denied entering into the second and the third marriages, he resorted to vague assertions tantamount to a negative pregnant. He did not dispute the authenticity of the NSO documents, but denied that he contracted those two other marriages. He submitted copies of the two Petitions he had filed separately with the RTC of Laguna – one in Biñan and the other in Calamba – to declare the second and the third Marriage Contracts null and void.

6. ID.; ID.; ID.; THE NSO-CERTIFIED COPIES OF THE THREE MARRIAGE CONTRACTS BEARING THE NAME OF THE RESPONDENT ARE COMPETENT AND CONVINCING EVIDENCE PROVING THAT HE COMMITTED BIGAMY WHICH RENDERS HIM UNFIT TO CONTINUE AS A MEMBER OF THE BAR.— We cannot give credence to the defense proffered by respondent. He has not disputed the authenticity or impugned the genuineness of the NSO-certified copies of the Marriage Contracts presented by complainant to prove the former's marriages to two other women aside from his wife. For purposes of this disbarment proceeding, these Marriage Contracts bearing the name of respondent are competent and convincing evidence proving that he committed bigamy, which renders him unfit to continue as a member of the bar. The documents were certified by the NSO, which is the official repository of civil registry records pertaining to the birth, marriage and death of a person. Having been issued by a government agency, the NSO certification is accorded much evidentiary weight and carries with it a presumption of regularity. In this case, respondent has not presented any competent evidence to rebut those documents.

7. ID.; ID.; ID.; COMMISSION OF BIGAMY TWICE CONSTITUTES GROSSLY IMMORAL CONDUCT AND IS A GROUND FOR DISBARMENT.— What has been clearly established here is the fact that respondent entered into marriage twice while his first marriage was still subsisting. In *Bustamante-Alejandro v. Alejandro*, we held thus: **[W]e have in a number of cases disciplined members of the Bar whom we found guilty of misconduct which demonstrated a lack of that good moral character required of them not only as a condition precedent for their admission to the Bar but, likewise, for their continued membership therein. No distinction has been made as to whether the misconduct was committed in the lawyer's professional capacity or in his private life. This is because a lawyer may not divide his personality so as to be an attorney at one time and a mere citizen at another. He is expected to be competent, honorable and reliable at all times since he who cannot apply and abide by the laws in his private affairs, can hardly be expected to do so in his professional dealings nor lead others in doing so. Professional honesty and honor are**

not to be expected as the accompaniment of dishonesty and dishonor in other relations. The administration of justice, in which the lawyer plays an important role being an officer of the court, demands a high degree of intellectual and moral competency on his part so that the courts and clients may rightly repose confidence in him. Respondent exhibited a deplorable lack of that degree of morality required of him as a member of the bar. He made a mockery of marriage, a sacred institution demanding respect and dignity. His acts of committing bigamy twice constituted grossly immoral conduct and are grounds for disbarment under Section 27, Rule 138 of the Revised Rules of Court.

APPEARANCES OF COUNSEL

Tabalingcos & Associates Law Offices for respondent.

D E C I S I O N

PER CURIAM:

In this Complaint for disbarment filed on 06 December 2004 with the Office of the Bar Confidant, complainant Manuel G. Villatuya (complainant) charges Atty. Bede S. Tabalingcos (respondent) with unlawful solicitation of cases, violation of the Code of Professional Responsibility for nonpayment of fees to complainant, and gross immorality for marrying two other women while respondent's first marriage was subsisting.[1]

In a Resolution[2] dated 26 January 2005, the Second Division of this Court required respondent to file a Comment, which he did on 21 March 2005.[3] The Complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within sixty (60) days from receipt of the record.[4]

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[1] *Rollo*, p. 1.

[2] *Id.* at 22.

[3] *Id.* at 22-35.

[4] *Id.* at 36.

On 23 June 2005, the Commission on Bar Discipline of the IBP (Commission) issued a Notice[5] setting the mandatory conference of the administrative case on 05 July 2005. During the conference, complainant appeared, accompanied by his counsel and respondent. They submitted for resolution three issues to be resolved by the Commission as follows:

1. Whether respondent violated the Code of Professional Responsibility by nonpayment of fees to complainant
2. Whether respondent violated the rule against unlawful solicitation, and
3. Whether respondent is guilty of gross immoral conduct for having married thrice.[6]

The Commission ordered the parties to submit their respective verified Position Papers. Respondent filed his verified Position Paper,[7] on 15 July 2005 while complainant submitted his on 01 August 2005.[8]

Complainant's Accusations

Complainant averred that on February 2002, he was employed by respondent as a financial consultant to assist the latter on technical and financial matters in the latter's numerous petitions for corporate rehabilitation filed with different courts. Complainant claimed that they had a verbal agreement whereby he would be entitled to ₱50,000 for every Stay Order issued by the court in the cases they would handle, in addition to ten percent (10%) of the fees paid by their clients. He alleged that, from February to December 2002, respondent was able to rake in millions of pesos from the corporate rehabilitation cases they were working on together. Complainant also claimed that he was entitled to the amount of ₱900,000 for the 18 Stay Orders issued by the

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[5] Commission on Bar Discipline Records, Vol. II, p. 1.

[6] *Id.* at 3.

[7] *Id.* at 60.

[8] *Id.* at 186.

courts as a result of his work with respondent, and a total of ₱4,539,000 from the fees paid by their clients.[9] Complainant appended to his Complaint several annexes supporting the computation of the fees he believes are due him.

Complainant alleged that respondent engaged in unlawful solicitation of cases in violation of Section 27 of the Code of Professional Responsibility. Allegedly respondent set up two financial consultancy firms, Jesi and Jane Management, Inc. and Christmel Business Link, Inc., and used them as fronts to advertise his legal services and solicit cases. Complainant supported his allegations by attaching to his Position Paper the Articles of Incorporation of Jesi and Jane,[10] letter-proposals to clients signed by respondent on various dates[11] and proofs of payment made to the latter by their clients.[12]

On the third charge of gross immorality, complainant accused respondent of committing two counts of bigamy for having married two other women while his first marriage was subsisting. He submitted a Certification dated 13 July 2005 issued by the Office of the Civil Registrar General-National Statistics Office (NSO) certifying that Bede S. Tabalingcos, herein respondent, contracted marriage thrice: first, on 15 July 1980 with Pilar M. Lozano, which took place in Dasmariñas, Cavite; the second time on 28 September 1987 with Ma. Rowena Garcia Piñon in the City of Manila; and the third on 07 September 1989 with Mary Jane Elgincolin Paraiso in Ermita, Manila.[13]

Respondent's Defense

In his defense, respondent denied the charges against him. He asserted that complainant was not an employee of his law

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[9] *Id.* at 1.

[10] *Id.* at 10-20.

[11] *Id.* at 5 & 6.

[12] Commission on Bar Discipline Records, Vol. II, pp. 202-212.

[13] *Id.* at 195, 201.

firm – Tabalingcos and Associates Law Office[14] – but of Jesi and Jane Management, Inc., where the former is a major stockholder.[15] Respondent alleged that complainant was unprofessional and incompetent in performing his job as a financial consultant, resulting in the latter's dismissal of many rehabilitation plans they presented in their court cases.[16] Respondent also alleged that there was no verbal agreement between them regarding the payment of fees and the sharing of professional fees paid by his clients. He proffered documents showing that the salary of complainant had been paid.[17]

As to the charge of unlawful solicitation, respondent denied committing any. He contended that his law firm had an agreement with Jesi and Jane Management, Inc., whereby the firm would handle the legal aspect of the corporate rehabilitation case; and that the latter would attend to the financial aspect of the case' such as the preparation of the rehabilitation plans to be presented in court. To support this contention, respondent attached to his Position Paper a Joint Venture Agreement dated 10 December 2005 entered into by Tabalingcos and Associates Law Offices and Jesi and Jane Management, Inc.;[18] and an Affidavit executed by Leoncio Balena, Vice-President for Operations of the said company.[19]

On the charge of gross immorality, respondent assailed the Affidavit submitted by William Genesis, a dismissed messenger of Jesi and Jane Management, Inc., as having no probative value, since it had been retracted by the affiant himself.[20] Respondent did not specifically address the allegations regarding his alleged bigamous marriages with two other women.

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[14] *Id.* at 61.

[15] *Id.* at 66.

[16] *Id.* at 67.

[17] *Id.* at 78-82.

[18] *Id.* at 74.

[19] *Id.* at 75.

[20] *Id.* at 10.

On 09 January 2006, complainant filed a Motion to Admit Copies of 3 Marriage Contracts.[21] To the said Motion, he attached the certified true copies of the Marriage Contracts referred to in the Certification issued by the NSO.[22] The appended Marriage Contracts matched the dates, places and names of the contracting parties indicated in the earlier submitted NSO Certification of the three marriages entered into by respondent. The first marriage contract submitted was a marriage that took place between respondent and Pilar M. Lozano in Dasmariñas, Cavite, on 15 July 1980.[23] The second marriage contract was between respondent and Ma. Rowena G. Piñon, and it took place at the Metropolitan Trial Court Compound of Manila on 28 September 1987.[24] The third Marriage Contract referred to a marriage between respondent and Mary Jane E. Paraiso, and it took place on 7 September 1989 in Ermita, Manila. In the second and third Marriage Contracts, respondent was described as single under the entry for civil status.

On 16 January 2006, respondent submitted his Opposition to the Motion to Admit filed by complainant, claiming that the document was not marked during the mandatory conference or submitted during the hearing of the case.[25] Thus, respondent was supposedly deprived of the opportunity to controvert those documents.[26] He disclosed that criminal cases for bigamy were filed against him by the complainant before the Office of the City Prosecutor of Manila. Respondent further informed the Commission that he had filed a Petition to Declare Null and Void the Marriage Contract with Rowena Piñon at the Regional Trial Court (RTC) of Biñan, Laguna, where it was docketed as Civil Case No. B-3270.[27] He also filed another Petition for

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[21] *Id.* at 215.

[22] *Id.* at 217-219.

[23] *Id.* at 217.

[24] *Id.* at 218.

[25] *Id.* at 220.

[26] *Id.* at 221.

[27] *Id.* at 226.

Declaration of Nullity of Marriage Contract with Pilar Lozano at the RTC-Calamba, where it was docketed as Civil Case No. B-3271.[28] In both petitions, he claimed that he had recently discovered that there were Marriage Contracts in the records of the NSO bearing his name and allegedly executed with Rowena Piñon and Pilar Lozano on different occasions. He prayed for their annulment, because they were purportedly null and void.

On 17 September 2007, in view of its reorganization, the Commission scheduled a clarificatory hearing on 20 November 2007.[29] While complainant manifested to the Commission that he would not attend the hearing,[30] respondent manifested his willingness to attend and moved for the suspension of the resolution of the administrative case against the latter. Respondent cited two Petitions he had filed with the RTC, Laguna, seeking the nullification of the Marriage Contracts he discovered to be bearing his name.[31]

On 10 November 2007, complainant submitted to the Commission duplicate original copies of two (2) Informations filed with the RTC of Manila against respondent, entitled "*People of the Philippines vs. Atty. Bede S. Tabalingcos*."[32] The first criminal case, docketed as Criminal Case No. 07-257125, was for bigamy for the marriage contracted by respondent with Ma. Rowena Garcia Piñon while his marriage with Pilar Lozano was still valid.[33] The other one, docketed as Criminal Case No. 07-257126, charged respondent with having committed bigamy for contracting marriage with Mary Jane Elgincolin Paraiso while his marriage with Pilar Lozano was still subsisting.[34] Each of

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[28] *Id.* at 231.

[29] *Id.* at 237.

[30] *Id.* at 238.

[31] *Id.* at 244.

[32] *Id.* at 239.

[33] *Id.* at 240.

[34] *Id.* at 256.

the Informations recommended bail in the amount of ₱24,000 for his provisional liberty as accused in the criminal cases.[35]

On 20 November 2007, only respondent attended the clarificatory hearing. In the same proceeding, the Commission denied his Motion to suspend the proceedings pending the outcome of the petitions for nullification he had filed with the RTC–Laguna. Thus, the Commission resolved that the administrative case against him be submitted for resolution.[36]

IBP's Report and Recommendation

On 27 February 2008, the Commission promulgated its Report and Recommendation addressing the specific charges against respondent.[37] The first charge, for dishonesty for the nonpayment of certain shares in the fees, was dismissed for lack of merit. The Commission ruled that the charge should have been filed with the proper courts since it was only empowered to determine respondent's administrative liability. On this matter, complainant failed to prove dishonesty on the part of respondent.[38] On the second charge, the Commission found respondent to have violated the rule on the solicitation of client for having advertised his legal services and unlawfully solicited cases. It recommended that he be reprimanded for the violation. It failed, though, to point out exactly the specific provision he violated.[39]

As for the third charge, the Commission found respondent to be guilty of gross immorality for violating Rules 1.01 and 7.03 of the Code of Professional Responsibility and Section 27 of Rule 138 of the Rules of Court. It found that complainant was able to prove through documentary evidence that respondent

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[35] *Id.* at 241 & 243.

[36] *Id.* at 256.

[37] Commission on Bar Discipline Records Vol. III, pp. 2-13. The Commission's Report and Recommendation dated 27 February 2008 was penned by Commissioner Wilfredo E.J.E. Reyes.

[38] *Id.* at 8.

[39] *Id.*

committed bigamy twice by marrying two other women while the latter's first marriage was subsisting.[40] Due to the gravity of the acts of respondent, the Commission recommended that he be disbarred, and that his name be stricken off the roll of attorneys.[41]

On 15 April 2008, the IBP Board of Governors, through its Resolution No. XVIII-2008-154, adopted and approved the Report and Recommendation of the Investigating Commissioner.[42] On 01 August 2008, respondent filed a Motion for Reconsideration, arguing that the recommendation to disbar him was premature. He contends that the Commission should have suspended the disbarment proceedings pending the resolution of the separate cases he had filed for the annulment of the marriage contracts bearing his name as having entered into those contracts with other women. He further contends that the evidence proffered by complainant to establish that the latter committed bigamy was not substantial to merit the punishment of disbarment. Thus, respondent moved for the reconsideration of the resolution to disbar him and likewise moved to archive the administrative proceedings pending the outcome of the Petitions he separately filed with the RTC of Laguna for the annulment of Marriage Contracts.[43]

On 26 June 2011, the IBP Board of Governors denied the Motions for Reconsideration and affirmed their Resolution dated 15 April 2008 recommending respondent's disbarment.[44]

The Court's Ruling

The Court affirms the recommendations of the IBP.

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[40] *Id.* at 9-10.

[41] *Id.* at 13.

[42] *Id.* at 1.

[43] *Id.* at 14-27.

[44] On the 36th page succeeding Commission on Bar Discipline Records, Vol. III (no pagination on the *rollo*).

First Charge:
Dishonesty for nonpayment of share in the fees

While we affirm the IBP's dismissal of the first charge against respondent, we do not concur with the rationale behind it.

The first charge of complainant against respondent for the nonpayment of the former's share in the fees, if proven to be true is based on an agreement that is violative of Rule 9.02[45] of the Code of Professional Responsibility. A lawyer is proscribed by the Code to divide or agree to divide the fees for legal services rendered with a person not licensed to practice law. Based on the allegations, respondent had agreed to share with complainant the legal fees paid by clients that complainant solicited for the respondent. Complainant, however, failed to proffer convincing evidence to prove the existence of that agreement.

We ruled in *Tan Tek Beng v. David*[46] that an agreement between a lawyer and a layperson to share the fees collected from clients secured by the layperson is null and void, and that the lawyer involved may be disciplined for unethical conduct. Considering that complainant's allegations in this case had not been proven, the IBP correctly dismissed the charge against respondent on this matter.

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[45] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 9.02 - A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

(a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to persons specified in the agreement; or

(b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

(c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan even if the plan is based in whole or in part, on a profit sharing agreement.

[46] 211 Phil. 547 (1983).

Second Charge:
Unlawful solicitation of clients

Complainant charged respondent with unlawfully soliciting clients and advertising legal services through various business entities. Complainant submitted documentary evidence to prove that Jesi & Jane Management Inc. and Christmel Business Link, Inc. were owned and used as fronts by respondent to advertise the latter's legal services and to solicit clients. In its Report, the IBP established the truth of these allegations and ruled that respondent had violated the rule on the solicitation of clients, but it failed to point out the specific provision that was breached.

A review of the records reveals that respondent indeed used the business entities mentioned in the report to solicit clients and to advertise his legal services, purporting to be specialized in corporate rehabilitation cases. Based on the facts of the case, he violated Rule 2.03[47] of the Code, which prohibits lawyers from soliciting cases for the purpose of profit.

A lawyer is not prohibited from engaging in business or other lawful occupation. Impropriety arises, though, when the business is of such a nature or is conducted in such a manner as to be inconsistent with the lawyer's duties as a member of the bar. This inconsistency arises when the business is one that can readily lend itself to the procurement of professional employment for the lawyer; or that can be used as a cloak for indirect solicitation on the lawyer's behalf; or is of a nature that, if handled by a lawyer, would be regarded as the practice of law.[48]

It is clear from the documentary evidence submitted by complainant that Jesi & Jane Management, Inc., which purports to be a financial and legal consultant, was indeed a vehicle used by respondent as a means to procure professional employment;

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[47] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 2.03 – A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

[48] RUBEN A. AGPALO, *LEGAL AND JUDICIAL ETHICS*, 124 (2009), citing A.B.A. Op. 57 (19 March 1932); *Re*, 97 A2d 627, 39 ALR2d 1032 (1953).

specifically for corporate rehabilitation cases. Annex "C"[49] of the Complaint is a letterhead of Jesi & Jane Management, Inc., which proposed an agreement for the engagement of legal services. The letter clearly states that, should the prospective client agree to the proposed fees, respondent would render legal services related to the former's loan obligation with a bank. This circumvention is considered objectionable and violates the Code, because the letter is signed by respondent as President of Jesi & Jane Management, Inc., and not as partner or associate of a law firm.

Rule 15.08[50] of the Code mandates that the lawyer is mandated to inform the client whether the former is acting as a lawyer or in another capacity. This duty is a must in those occupations related to the practice of law. The reason is that certain ethical considerations governing the attorney-client relationship may be operative in one and not in the other.[51] In this case, it is confusing for the client if it is not clear whether respondent is offering consultancy or legal services.

Considering, however, that complainant has not proven the degree of prevalence of this practice by respondent, we affirm the recommendation to reprimand the latter for violating Rules 2.03 and 15.08 of the Code.

Third Charge:
Bigamy

The third charge that respondent committed bigamy twice is a serious accusation. To substantiate this allegation, complainant submitted NSO-certified copies of the Marriage Contracts entered into by respondent with three (3) different women. The latter objected to the introduction of these documents, claiming that

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[49] *Rollo*, p. 6.

[50] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 15.08. – A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make clear to his client whether he is acting as a lawyer or in another capacity.

[51] AGPALO, *supra* note 48.

they were submitted after the administrative case had been submitted for resolution, thus giving him no opportunity to controvert them.[52] We are not persuaded by his argument.

We have consistently held that a disbarment case is *sui generis*. Its focus is on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case. Thus, we explained in *Garrido v. Garrido*:[53]

> Laws dealing with double jeopardy or with procedure — such as the verification of pleadings and prejudicial questions, or in this case, prescription of offenses or the filing of affidavits of desistance by the complainant — do not apply in the determination of a lawyer's qualifications and fitness for membership in the Bar. We have so ruled in the past and we see no reason to depart from this ruling. *First*, admission to the practice of law is a component of the administration of justice and is a matter of public interest because it involves service to the public. The admission qualifications are also qualifications for the continued enjoyment of the privilege to practice law. *Second*, lack of qualifications or the violation of the standards for the practice of law, like criminal cases, is a matter of public concern that the State may inquire into through this Court.

In disbarment proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers, the case against the respondent must be established by convincing and satisfactory proof.[54] In this case, complainant submitted NSO-certified true copies to prove that respondent entered into two marriages while the latter's first marriage was still subsisting. While respondent denied entering into the second and the third marriages, he resorted to vague assertions tantamount to a negative pregnant. He did not dispute the authenticity of the NSO documents, but denied that he contracted those two other marriages. He submitted copies of the two Petitions he had filed separately with the RTC of Laguna – one in Biñan and the

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[52] Commission on Bar Discipline Records, Vol. II, p. 221.

[53] A.C. No. 6593, 04 February 2010, 611 SCRA 508.

[54] *Aba v. De Guzman*, A.C. No. 7649, 14 December 2011.

other in Calamba – to declare the second and the third Marriage Contracts null and void.[55]

We find him guilty of gross immorality under the Code.

We cannot give credence to the defense proffered by respondent. He has not disputed the authenticity or impugned the genuineness of the NSO-certified copies of the Marriage Contracts presented by complainant to prove the former's marriages to two other women aside from his wife. For purposes of this disbarment proceeding, these Marriage Contracts bearing the name of respondent are competent and convincing evidence proving that he committed bigamy, which renders him unfit to continue as a member of the bar. The documents were certified by the NSO, which is the official repository of civil registry records pertaining to the birth, marriage and death of a person. Having been issued by a government agency, the NSO certification is accorded much evidentiary weight and carries with it a presumption of regularity. In this case, respondent has not presented any competent evidence to rebut those documents.

According to the respondent, after the discovery of the second and the third marriages, he filed civil actions to annul the Marriage Contracts. We perused the attached Petitions for Annulment and found that his allegations therein treated the second and the third marriage contracts as ordinary agreements, rather than as special contracts contemplated under the then Civil Code provisions on marriage. He did not invoke any grounds in the Civil Code provisions on marriage, prior to its amendment by the Family Code. Respondent's regard for marriage contracts as ordinary agreements indicates either his wanton disregard of the sanctity of marriage or his gross ignorance of the law on what course of action to take to annul a marriage under the old Civil Code provisions.

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[55] Commission on Bar Discipline Records Volume II, pp. 226-234.

What has been clearly established here is the fact that respondent entered into marriage twice while his first marriage was still subsisting. In *Bustamante-Alejandro v. Alejandro*,[56] we held thus:

> [W]e have in a number of cases disciplined members of the Bar whom we found guilty of misconduct which demonstrated a lack of that good moral character required of them not only as a condition precedent for their admission to the Bar but, likewise, for their continued membership therein. No distinction has been made as to whether the misconduct was committed in the lawyer's professional capacity or in his private life. This is because a lawyer may not divide his personality so as to be an attorney at one time and a mere citizen at another. He is expected to be competent, honorable and reliable at all times since he who cannot apply and abide by the laws in his private affairs, can hardly be expected to do so in his professional dealings nor lead others in doing so. Professional honesty and honor are not to be expected as the accompaniment of dishonesty and dishonor in other relations. The administration of justice, in which the lawyer plays an important role being an officer of the court, demands a high degree of intellectual and moral competency on his part so that the courts and clients may rightly repose confidence in him.

Respondent exhibited a deplorable lack of that degree of morality required of him as a member of the bar. He made a mockery of marriage, a sacred institution demanding respect and dignity.[57] His acts of committing bigamy twice constituted grossly immoral conduct and are grounds for disbarment under Section 27, Rule 138 of the Revised Rules of Court.[58]

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[56] A.C. No. 4256, 467 Phil. 139 (2004).

[57] *Cojuangco, Jr. v. Palma*, A.C. No. 2474, 501 Phil. 1 (2005).

[58] Rule 138, Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court,

Thus, we adopt the recommendation of the IBP to disbar respondent and order that his name be stricken from the Roll of Attorneys.

WHEREFORE, this Court resolves the following charges against Atty. Bede S. Tabalingcos as follows:

1. The charge of dishonesty is **DISMISSED** for lack of merit.
2. Respondent is **REPRIMANDED** for acts of illegal advertisement and solicitation.
3. Atty. Bede S. Tabalingcos is **DISBARRED** for engaging in bigamy, a grossly immoral conduct.

Let a copy of this Decision be attached to the personal records of Atty. Bede S. Tabalingcos in the Office of the Bar Confidant, and another copy furnished to the Integrated Bar of the Philippines.

The Clerk of Court is directed to strike out the name of Bede S. Tabalingcos from the Roll of Attorneys.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, del Castillo, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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

Bersamin and *Abad, JJ.,* on leave.

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or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

EN BANC

[A.M. No. P-06-2241. July 10, 2012]
(Formerly OCA IPI No. 06-2422-P)

JUDGE PELAGIA DALMACIO-JOAQUIN, *complainant, vs.* **NICOMEDES DELA CRUZ, Process Server, Municipal Trial Court in Cities, San Jose Del Monte, Bulacan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PROCESS SERVER; UNJUSTIFIED DELAY IN THE SERVICE OF COURT PROCESSES CONSTITUTES NEGLECT OF DUTY AND WARRANTS THE IMPOSITION OF ADMINISTRATIVE SANCTIONS; HEAVY WORKLOAD IS NOT AN ADEQUATE EXCUSE TO BE REMISS IN THE DILIGENT PERFORMANCE OF ONE'S PUBLIC DUTIES AS A PUBLIC SERVANT.— "The duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices which precisely requires utmost care on his part by ensuring that all notices assigned to him are duly served on the parties." "Unjustified delay in performing this task constitutes neglect of duty and warrants the imposition of administrative sanctions." Dela Cruz adverted to "heavy workload" as the cause of the delay in the service of the Order. During the hearing before the Investigating Judge, he contended that he has "too many subpoenas and processes" to serve. He also alleged that he is the only Process Server assigned in the sala of Judge Dalmacio-Joaquin and that he is serving 59 *barangays* of San Jose Del Monte City. We find such an excuse unsatisfactory. "All employees in the judiciary should be examples of responsibility, competence and efficiency." As Process Server, Dela Cruz ought to be aware of the importance to serve the court processes with dispatch. "It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over

the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously." Besides, "heavy workload x x x is not an adequate excuse to be remiss in the diligent performance of one's public duties as a public servant. Otherwise, every government employee charged with negligence and dereliction of duty will always use this as a convenient excuse to escape punishment to the great prejudice of public service." In this instance, we find Dela Cruz guilty of simple neglect of duty for the delay in the service of the subject Order.

2. ID.; ID.; ID.; ADMINISTRATIVE CHARGES; DISHONESTY, DEFINED AND EXPLAINED.— "This Court has defined dishonesty as the 'disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.'" "[D]ishonesty x x x is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed, by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment."

3. ID.; ID.; ID.; ID.; ABSENT ILL-MOTIVE, MALICE OR CORRUPTION, ERRONEOUS ENTRY IN THE RETURN OF SERVICE OF NOTICE CONSTITUTES NEGLIGENCE IN THE PERFORMANCE OF TASKS, AND NOT DISHONESTY.— We agree with the observation of the Investigating Judge that Dela Cruz did not deliberately or intentionally make such erroneous entries. As Dela Cruz explained, he merely relied on the persons whom he interviewed when he went to the given addresses. We are inclined to give credence to said explanation considering that no ill-motive, malice or corruption was imputed upon Dela Cruz. It was never alleged, much less established, that Dela Cruz was impelled by some evil design or corrupt motives to commit said errors or to favor any party or litigant. Hence, we find him guilty only of negligence in the performance of his tasks, and not of dishonesty. Much as we empathize with Dela Cruz considering

his heavy workload, the same however is an unacceptable excuse for him not to exercise prudence and care in verifying the information relayed to him.

4. ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, DEFINED; PENALTY OF SUSPENSION OF THREE MONTHS IMPOSED FOR SIMPLE NEGLECT OF DUTY.— [W]e find Dela Cruz guilty not of dishonesty but only of simple neglect of duty which is defined as "the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference." Considering his 24 years of service in the judiciary and his health condition, as well as the fact that no prejudice was caused to the party-litigants in the above-mentioned cases as they were all able to attend the scheduled hearings, we deem it proper to impose upon Dela Cruz the penalty of suspension of three months. However, in view of Dela Cruz's resignation on June 10, 2008, forfeiture of his salaries for three months should instead be imposed in lieu of suspension, to be deducted from whatever benefits he may be entitled to under existing laws.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an administrative complaint filed by Judge Pelagia Dalmacio-Joaquin (Judge Dalmacio-Joaquin) against Process Server Nicomedes Dela Cruz (Dela Cruz), both of the Municipal Trial Court in Cities, City of San Jose Del Monte, Bulacan, for Conduct Unbecoming of Court Personnel and Dishonesty.

Factual Antecedents

In her Complaint[1] dated March 29, 2006, Judge Dalmacio-Joaquin alleged that Dela Cruz submitted belated and false returns of service of notice. In particular, she claimed that Dela Cruz received the Order dated November 25, 2005 relative to Criminal Case No. 5744-96 on December 9, 2005 but served

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

the same to the parties only on March 23, 2006. She also alleged that Dela Cruz submitted false returns relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213. According to Judge Dalmacio-Joaquin, Dela Cruz stated in his return of service in Criminal Case Nos. 04-0488 and 04-0489 that the accused therein was no longer residing at her given address. However, during pre-trial, this was denied by the accused herself who declared in open court that she has not transferred residence. Anent Criminal Case No. 04-0483, Dela Cruz likewise indicated in his return of service that therein accused is no longer residing at his given address and that the houses thereat have already been demolished. However, during the scheduled pre-trial, the complainant manifested that the accused who is her neighbor still resides at his given address and that his house is still standing thereon. Finally, as regards Criminal Case No. 05-0213, two of the accused therein manifested during their scheduled arraignment that they are still residing at their given address contrary to the report of Dela Cruz. Hence, the trial court *motu proprio* lifted their warrants of arrest.

Judge Dalmacio-Joaquin also alleged that notwithstanding receipt of three Orders dated March 10, 2006 relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, directing him to explain why no administrative action should be taken against him for submitting false returns, Dela Cruz still failed to submit any explanation or compliance thereon. According to Judge Dalmacio-Joaquin, the aforesaid acts of Dela Cruz were unbecoming, undesirable, dishonest and even more reprehensible, undermined the integrity of the court processes and tarnished the trustworthiness of the court employees and of the judiciary.

In his Comment[2] filed on May 30, 2006, Dela Cruz denied the allegation that he deliberately delayed the service of the November 25, 2005 Order relative to Criminal Case No. 5744-96. He claimed that the same was served to the parties concerned three days before the scheduled hearing. Anent the returns

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

relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, Dela Cruz vehemently denied submitting false returns. He averred that as regards Criminal Case Nos. 04-0488 and 04-0489, he served the subpoena to Randy R. Masa, a *purok* leader in the area who told him that accused Cecilia Pareño was no longer residing at said address and has in fact transferred to another *barangay*. As regards Criminal Case No. 04-0483, Dela Cruz claimed that he personally went to the given address of the therein accused and was told by a certain Hilda Malabao that there were no longer residents thereat as the houses have already been demolished. As regards Criminal Case No. 05-0213, Dela Cruz narrated that the accused were not at their given address when he attempted to serve the court process. He averred that it was not his intention to submit incorrect or misleading returns. He also claimed that Judge Dalmacio-Joaquin only wanted to harass him as this is not the first administrative complaint she filed against him.

In view of the factual issues presented, we resolved to refer the matter to the Executive Judge of the Regional Trial Court, Malolos, Bulacan for investigation, report and recommendation.[3]

Report of the Investigating Judge

On April 23, 2009, Executive Judge Herminia V. Pasamba (Investigating Judge) submitted her Report.[4] The Investigating Judge found that service of the November 25, 2005 Order in Criminal Case No. 5744-96 was delayed for at least three months. As regards the returns relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, the Investigating Judge noted that although the same contained false entries, the same, however, were not deliberately or intentionally done as Dela Cruz merely relied on his sources. As regards the show cause order issued by Judge Dalmacio-Joaquin, the Investigating Judge noted that Dela Cruz did not file any explanation relative to said returns as directed. For reference, the Report of the Investigating Judge contained the following findings:

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[3] *Id.* at 52.

[4] *Id.* at 171-176.

The submitted returns on the three (3) orders all dated March 10, 2005 run counter [to] the explanations given during the respective dates of hearing by the private complainant/accused/defense counsel in the said cases. Respondent, on being confronted, with the false returns offered as explanation his overwhelming job as the only process server in the Municipal Trial Court in Cities of San Jose del Monte City servicing fifty-nine (59) *barangays* and even produced his still unserved processes of about ninety-eight (98) orders as of the date of his examination. As regards the November 25, 2005 order in Criminal Case No. 5744-96, it was confirmed that the same was received on December 9, 2005 but served only some three months later, at least three (3) days before the scheduled hearing. No compliance however was filed on the orders issued by the complainant Hon. Judge to the show cause [relative to] the false returns.[5]

For the above infractions, the Investigating Judge recommended that Dela Cruz be suspended from employment for a period of one year.[6]

In a Resolution[7] dated November 16, 2009, we referred the Report of the Investigating Judge to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

Report of the Office of the Court Administrator

In its Report,[8] the OCA agreed with the Investigating Judge that Dela Cruz indeed submitted false returns which amounts to dishonesty, a grave offense punishable with the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government. Considering however that on June 10, 2008, Dela Cruz had already resigned from the service "which the Court accepted without prejudice to the continuation of his administrative cases,"[9] the OCA

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[5] *Id.* at 175.

[6] *Id.*

[7] *Id.* at 469.

[8] *Id.* at 470-474.

[9] *Id.* at 472.

recommended that Dela Cruz's benefits, except accrued leave credits, be forfeited, with prejudice to re-employment in any government instrumentality.

Our Ruling

As regards the November 25, 2005 Order in Criminal Case No. 5744-96, it is undisputed that it was belatedly served by Dela Cruz only on March 23, 2006, or three months and 14 days after he received the same on December 9, 2005. However, Dela Cruz maintains that he was not remiss in his tasks despite such delay considering his heavy workload and the fact that the parties received copies of the Order three days before the scheduled hearing.

"The duty of a process server is vital to the administration of justice. A process server's primary duty is to serve court notices which precisely requires utmost care on his part by ensuring that all notices assigned to him are duly served on the parties."[10] "Unjustified delay in performing this task constitutes neglect of duty and warrants the imposition of administrative sanctions."[11]

Dela Cruz adverted to "heavy workload" as the cause of the delay in the service of the Order. During the hearing before the Investigating Judge, he contended that he has "too many subpoenas and processes"[12] to serve. He also alleged that he is the only Process Server assigned in the sala of Judge Dalmacio-Joaquin[13] and that he is serving 59 *barangays* of San Jose Del Monte City.[14]

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[10] *Rodrigo-Ebron v. Adolfo*, A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 291.

[11] *Musni v. Morales*, 373 Phil. 703, 705 (1999).

[12] TSN, February 20, 2008, pp. 4-18; *rollo*, pp. 388-403.

[13] TSN, January 16, 2008, p. 23; *id.* at 355.

[14] *Id.* at 22-23; *id.* at 354-355.

We find such an excuse unsatisfactory. "All employees in the judiciary should be examples of responsibility, competence and efficiency."[15] As Process Server, Dela Cruz ought to be aware of the importance to serve the court processes with dispatch. "It is through the process server that defendants learn of the action brought against them by the complainant. More important, it is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant. It is therefore important that summonses, other writs and court processes be served expeditiously."[16] Besides, "heavy workload x x x is not an adequate excuse to be remiss in the diligent performance of one's public duties as a public servant. Otherwise, every government employee charged with negligence and dereliction of duty will always use this as a convenient excuse to escape punishment to the great prejudice of public service."[17] In this instance, we find Dela Cruz guilty of simple neglect of duty for the delay in the service of the subject Order.

As regards the returns filed relative to Criminal Case Nos. 04-0488 and 04-0489, No. 04-0483 and No. 05-0213, we agree with both the Investigating Judge and the OCA that the same contained erroneous entries. In Criminal Case Nos. 04-0488 and 04-0489, Dela Cruz stated in his return that the accused was no longer residing at her stated address. However, this was denied by the accused herself who appeared in court during trial and declared that she has not transferred residence. In Criminal Case No. 04-0483, Dela Cruz likewise stated in his return that the accused could no longer be found at his given address and that his house was already demolished. During the pre-trial, however, the complainant appeared and manifested that accused is his neighbor; that he has not transferred residence; and that his house is still standing on the subject property. In Criminal Case No. 05-0213, two of the accused therein belied

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[15] *Aquino v. Lavadia*, 417 Phil. 770, 776 (2001).

[16] *Musni v. Morales, supra* note 11 at 709.

[17] *Ongkiko, Kalaw, Dizon, Panga and Velasco Law Offices v. Sangil-Makasiar*, 326 Phil. 31, 37 (1996).

Dela Cruz's claim that they were no longer residing at their given address.

However, we do not agree with the OCA that the above infractions amount to dishonesty. "This Court has defined dishonesty as the 'disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.'"[18] "[D]ishonesty x x x is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment."[19]

We agree with the observation of the Investigating Judge that Dela Cruz did not deliberately or intentionally make such erroneous entries. As Dela Cruz explained, he merely relied on the persons whom he interviewed when he went to the given addresses. We are inclined to give credence to said explanation considering that no ill-motive, malice or corruption was imputed upon Dela Cruz. It was never alleged, much less established, that Dela Cruz was impelled by some evil design or corrupt motives to commit said errors or to favor any party or litigant. Hence, we find him guilty only of negligence in the the performance of his tasks, and not of dishonesty. Much as we empathize with Dela Cruz considering his heavy workload, the same however is an unacceptable excuse[20] for him not to exercise prudence and care in verifying the information relayed to him.

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[18] *Re: Administrative Case for Dishonesty Against Elizabeth Ting*, 502 Phil. 264, 276-277 (2005).

[19] *Re: Anonymous Complaint Against Ms. Hermogena F. Bayani for Dishonesty*, A.M. No. 2007-22-SC, February 1, 2011, 641 SCRA 220, 223-224.

[20] *Aquino v. Lavadia*, *supra* note 15.

Finally, anent the failure of Dela Cruz to submit his explanation pursuant to the show cause orders of Judge Dalmacio-Joaquin, we find the same understandable under the circumstances. The records show that Dela Cruz received the show cause orders on March 22, 2006.[21] In Criminal Case Nos. 04-0488 and 04-0489, he was given three days from receipt, or until March 25, 2006 within which to submit his explanation. In Criminal Case No. 04-0483 and Criminal Case No. 05-0213, he was given five days from receipt, or until March 27, 2006 within which to submit his compliance. In the interim, Dela Cruz received from this Court a copy of the Resolution in A.M. OCA IPI No. 05-2299 admonishing him for failing to attach copies of the return of service to the records of the case. Notwithstanding the foregoing, Judge Dalmacio-Joaquin did not afford him much leeway as the former immediately filed before this Court on March 29, 2006 the instant complaint. Thus, we can only surmise that Dela Cruz's failure to submit his explanation was not intentional or willful but that he was merely overtaken by the turn of the events.

Notably, this is not the first time that Dela Cruz has been administratively charged. In A.M. OCA IPI No. 05-2299-P, per Resolution[22] dated February 20, 2006, the Court admonished and warned Dela Cruz it appearing that "he committed occasional errors and failed to attach copies of the return of service to the records of the cases." Note, however, that admonition and warning are not considered as penalties.[23] On the other hand, in A.M. No. P-07-2321, the Court found him guilty of insubordination because he walked out during a meeting with his chief of office and co-employees and ignored his superior's directive to return so they could finish their discussion.[24] In addition, he was found

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[21] *Rollo*, pp. 13-14, 16.

[22] *Id.* at 29.

[23] *Re: Anonymous Complaint Against Ms. Hermogena F. Bayani for Dishonesty*, *supra* note 19 at 225.

[24] *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321, April 24, 2009, 586 SCRA 344, 349.

guilty of misconduct for verbally abusing his co-employees and reporting for work drunk.[25] For said infractions, he was meted the penalty of suspension of one year without pay, with stern warning that a repetition of similar or analogous infractions shall be dealt with more severely. However, during the pendency of this case, Dela Cruz resigned from service.

In sum, we find Dela Cruz guilty not of dishonesty but only of simple neglect of duty which is defined as "the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference."[26] Considering his 24 years of service in the judiciary and his health condition,[27] as well as the fact that no prejudice was caused to the party-litigants in the above-mentioned cases as they were all able to attend the scheduled hearings, we deem it proper to impose upon Dela Cruz the penalty of suspension of three months.[28] However, in view of Dela Cruz's resignation on June 10, 2008, forfeiture of his salaries for three months should instead be imposed in lieu of suspension, to be deducted from whatever benefits he may be entitled to under existing laws.

WHEREFORE, premises considered, NICOMEDES DELA CRUZ, former Process Server, Municipal Trial Court in Cities, San Jose del Monte, Bulacan, is hereby found **GUILTY** of Simple Neglect of Duty. His salaries for three months are ordered **FORFEITED** to be deducted from whatever benefits he may be entitled to under existing laws.

SO ORDERED.

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[25] *Id.* at 349-350.

[26] *Office of the Court Administrator v. Gaspar*, A.M. No. P-07-2325, February 28, 2011, 644 SCRA 378, 382. See also *Office of the Court Administrator v. Garcia-Rañoco*, A.M. No. P-03-1717, March 6, 2008, 547 SCRA 670, 673-674.

[27] *See* Letter of Resignation, *rollo*, p. 152.

[28] *See* Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52(B)(1).

Carpio, Senior Associate Justice, concurs.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Villarama, Jr., Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Bersamin and *Abad, JJ.,* on official leave.

Perez, J., no part. Acted as OCA on the matter.

SECOND DIVISION

[A.C. No. 6910. July 11, 2012]

ISAAC C. BASILIO, PERLITA PEDROZO and JUN BASILIO, *complainants, vs.* **ATTY. VIRGIL R. CASTRO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; FAILURE OF COUNSEL TO FILE THE REQUISITE APPELLANT'S BRIEF AMOUNTED TO INEXCUSABLE NEGLIGENCE; PROPER PENALTY.— The only issue for consideration is whether Atty. Castro should be held administratively liable for his failure to file the mandatory appellants' memorandum before RTC Br. 30. This Court rules in the affirmative, adopting the findings of the IBP. In *Villaflores v. Limos*, this Court reiterated the well-settled rule that the failure of counsel to file the requisite appellant's brief amounted to inexcusable negligence, to wit: **The failure of respondent to file appellant's brief for complainant within the reglementary period constitutes gross negligence in violation of the Code of Professional Responsibility. In *Perla Compania de Seguros, Inc. v. Saquilabon,* this Court held:** x x x. **In cases involving a lawyer's failure to file a brief or other pleadings before an appellate court, we did not hesitate to suspend the erring**

member of the Bar from the practice of law for three months, six months, or even disbarment in severely aggravated cases. If it were true in this case that petitioners directed Atty. Castro to abandon their appeal, the prudent action should have been for him to file a motion to withdraw appeal before RTC Br. 30. In this regard, his failure to file the appellants' brief could indeed be construed as negligence on his part. However, it appears that the conduct of Atty. Castro was not so grave as to warrant the recommended three-month suspension. In fact, he still fulfilled his duty as counsel of petitioners by attending the pretrial conference held on 6 February 2006 in Civil Case No. 883, even after they had already filed the instant Petition against him. Thus, this Court lowers the period of suspension to two months.

R E S O L U T I O N

SERENO, *J.*:

Before this Court is an administrative complaint filed by Isaac C. Basilio, Perlita Pedrozo and Jun Basilio against respondent Atty. Virgil R. Castro (Atty. Castro).[1]

On 5 July 2004, complainants engaged the legal services of Atty. Castro to handle the following: (a) Civil Case Nos. 1427 and 1428 before the Municipal Trial Court, Second Judicial Region, Bambang, Nueva Vizcaya (MTC Bambang), and (b) Civil Case No. 883 with the Regional Trial Court, Second Judicial Region, Bambang, Nueva Vizcaya, Station-Bayombong, Branch 37 (RTC Br. 37).[2] The cases before MTC Bambang were for forcible entry filed against petitioners, while the case before RTC Br. 37 was for quieting of title filed by petitioners.[3]

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[1] *Rollo*, pp. 1-2; captioned as Petition.

[2] *Id.* at 95; Report and Recommendation, p. 2.

[3] *Id.*

In its Decision dated 10 February 2005, MTC Bambang ruled against petitioners.[4] When they appealed,[5] the Regional Trial Court, Second Judicial Region, Bambang, Nueva Vizcaya, Branch 30 (RTC Br. 30) ordered its dismissal for their failure to file the required appellants' memorandum despite notice.[6] Meanwhile, Civil Case No. 883 before RTC Br. 37 was still pending at the time of the filing of the present administrative complaint.[7]

Complainants filed before this Court a Petition dated 27 September 2005 praying for the suspension or cancellation of the license of Atty. Castro.[8] They allege that they were plaintiffs in Civil Case Nos. 1427 and 1428 before MTC Bambang, as well as in Civil Case No. 883 before RTC Br. 37. They likewise averred that they paid Atty. Castro the amounts of ₱40,000 as acceptance fee and ₱20,000 as filing fee, which he supposedly charged them despite the actual filing fee totalling only ₱1,000. Finally, they contended that he failed to prosecute the cases before MTC Bambang, resulting in their dismissal.[9]

In his Comment, Atty. Castro clarified that he was preceded by two other lawyers, who acted as petitioners' counsel in all three civil cases.[10] Upon entering his appearance in these cases, he exerted all efforts to protect the interests of his clients. Further, he asserted that petitioners ordered him to abandon the appeal he filed on their behalf before RTC Br. 30 on the ground that they were unable to file the supersedeas bond required of them by MTC Bambang to stay the execution of its 10 February 2005 Decision. He maintained that in lieu of pursuing the appeal, they had ordered him to concentrate on Civil Case No. 883, in

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[4] *Rollo*, pp. 6-11, Decision dated 10 February 2005.

[5] *Id.* at 4, Notice of Appeal dated 18 February 2005.

[6] *Id.* at 5, Order dated 26 April 2005.

[7] *Id.* at 1, Petition.

[8] *Id.* at 1-2.

[9] *Id.* at 1.

[10] *Id.* at 21-26, Comment to the Petition.

which he supposedly performed all his duties as their counsel. Moreover, he pointed out the correction that petitioners were defendants – and not plaintiffs – in Civil Case Nos. 1427 and 1428, and that he did not repeatedly postpone the hearings in the three cases, contrary to what they alleged. Finally, he maintained that he used the money he received from them to pay for his legal fees and for the filing fees for the appeal.[11]

On 28 June 2006, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[12] In the proceedings before the Investigating Commissioner, no actual hearing took place, since Atty. Castro was absent for the first setting due to a serious ailment,[13] the Investigating Commissioner was unavailable during the second,[14] and petitioners were unable to attend the third.[15] Instead, the parties were only able to file their Pre-trial Briefs.[16]

In their Pre-trial Brief, petitioners averred, in addition to the allegations discussed above, that they paid Atty. Castro the aggregate amount of ₱110,500 for attorney's fees and other expenses.[17] Of this sum, he supposedly issued an official receipt for only ₱40,000.[18] Meanwhile, he presented no additional information in his Pre-trial Brief.[19]

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[11] *Id.*

[12] *Rollo*, p. 65, Resolution dated 28 June 2006.

[13] *Id.* at 78, Order dated 25 October 2006; *id.* at 68-69, *see also* Motion to Reset Mandatory Conference/Hearing dated 17 October 2006 filed by Atty. Castro.

[14] *Id.* at 86, Order dated 6 November 2006.

[15] *Id.* at 88, Order dated 13 December 2006.

[16] *Id.* at 73-75, Pre-Trial Brief for Complainants dated 19 October 2006; *id.* at 89-91, Pre-Trial Brief for the Respondent dated 8 December 2006.

[17] *Id.* at 73-75, Pre-Trial Brief for Complainants dated 19 October 2006.

[18] *Id.*

[19] *Rollo*, pp. 89-91, Pre-Trial Brief for the Respondent dated 8 December 2006.

Upon the termination of the mandatory conference, the IBP Commissioner directed the parties to submit their respective position papers.[20] However, neither complainants nor respondent complied.[21]

In his Report and Recommendation dated 11 April 2008,[22] the Investigating Commissioner recommended that Atty. Castro be **suspended for six months**.[23] The former ruled that there was insufficient evidence to show that the latter reneged on his obligation to serve his clients in Civil Case No. 883.[24] Nonetheless, he should be held administratively liable for failing to file the requisite appellants' memorandum before RTC Br. 30.[25] The Investigating Commissioner dismissed Atty. Castro's defense that the failure of petitioners to file the supersedeas bond and their instruction to abandon the appeal were the reasons why he did not file the memorandum, to wit:

> [Atty. Castro] sought to shift the blame upon his clients for their failure to pay the supersedeas bond. Be that as it may, respondent should have done his part in filing seasonably the appellant[s'] brief. To say that he was merely following the instruction of his client[s] to abandon the appeal altogether is preposterous, if not self-serving. As a lawyer, he ought to know better. Needless to say, farmers (petitioners) are not conversant with the intricate workings of adjective law.
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> To stay the immediate execution of judgment in ejectment proceedings, the defendant-appellant must: (a) perfect his appeal; (b) file a supersedeas bond; and (c) periodically deposit the rentals

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[20] *Id.* at 88, Order dated 13 December 2006.

[21] *Id.* at 95; Report and Recommendation, p. 2.

[22] *Id.* at 94-102, Report and Recommendation.

[23] *Id.* at 102.

[24] *Id.* at 98.

[25] *Id.* at 98-99.

falling due during the pendency of the appeal. Inasmuch as respondent had perfected the appeal, he should have pursued such remedy to its logical conclusion in accordance with Rule 40, Section 7 of the Rules of Court. Regrettably, he stopped short of completing the appeal. The Order dated April 26, 2005 of the Regional Trial Court, Branch 30 showed that non-submission of the memorandum of appeal led to the dismissal of the cases.[26]

In its Resolution No. XVIII-2008-239 dated 22 May 2008, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the Investigating Commissioner ordering the **suspension of Atty. Castro for three months**.[27]

Atty. Castro then filed a Motion for Extension of Time to File Motion for Reconsideration of Resolution No. XVIII-2008-239.[28] However, no Motion for Reconsideration was filed.

The only issue for consideration is whether Atty. Castro should be held administratively liable for his failure to file the mandatory appellants' memorandum before RTC Br. 30. This Court rules in the affirmative, adopting the findings of the IBP.

In *Villaflores v. Limos*,[29] this Court reiterated the well-settled rule that the failure of counsel to file the requisite appellant's brief amounted to inexcusable negligence, to wit:

> The failure of respondent to file the appellant's brief for complainant within the reglementary period constitutes gross negligence in violation of the Code of Professional Responsibility. In *Perla Compania de Seguros, Inc. v. Saquilabon*, this Court held:
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> > An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (*Del Rosario v. Court of Appeals*, 114 SCRA 159) *A failure to file brief for*

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[26] *Id.* at 98-100.

[27] *Id.* at 93, Notice of Resolution.

[28] *Id.* at 103-104.

[29] A.C. No. 7504, 23 November 2007, 538 SCRA 140.

> *his client certainly constitutes inexcusable negligence on his part*. (*People v. Villar*, 46 SCRA 107) The respondent has indeed committed a *serious lapse in the duty owed by him to his client as well as to the Court* not to delay litigation and to aid in the speedy administration of justice. (*People v. Daban*, 43 SCRA 185; *People v. Estocada*, 43 SCRA 515).

All told, we rule and so hold that on account of respondent's failure to protect the interest of complainant, respondent indeed violated Rule 18.03, Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. This Court has been exacting in its expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.

In *People v. Cawili*, we held that the failure of counsel to submit the brief within the reglementary period is an offense that entails disciplinary action. *People v. Villar, Jr.* characterized a lawyer's failure to file a brief for his client as inexcusable neglect. In *Blaza v. Court of Appeals*, we held that the filing of a brief within the period set by law is a duty not only to the client, but also to the court. *Perla Compania de Seguros, Inc. v. Saquilabon* reiterated *Ford v. Daitol* and *In re: Santiago F. Marcos* in holding that an attorney's failure to file a brief for his client constitutes inexcusable negligence.

In cases involving a lawyer's failure to file a brief or other pleadings before an appellate court, we did not hesitate to suspend the erring member of the Bar from the practice of law for three months, six months, or even disbarment in severely aggravated cases.[30]

If it were true in this case that petitioners directed Atty. Castro to abandon their appeal, the prudent action should have

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[30] *Id.* at 150-151, citing *Perla Compania de Seguros, Inc. v. Saquilabon*, 337 Phil. 555, 558 (1997); *People v. Cawili*, 145 Phil. 605, 608 (1970); *People v. Villar, Jr.*, 150-B Phil. 97, 99 (1972); *Blaza v. Court of Appeals*, 245 Phil. 409, 413 (1988); *Ford v. Daitol*, 320 Phil. 53, 58 (1995); *In re: Santiago F. Marcos*, 240 Phil. 769, 771 (1987).

been for him to file a motion to withdraw appeal before RTC Br. 30. In this regard, his failure to file the appellants' brief could indeed be construed as negligence on his part.

However, it appears that the conduct of Atty. Castro was not so grave as to warrant the recommended three-month suspension. In fact, he still fulfilled his duty as counsel of petitioners by attending the pretrial conference held on 6 February 2006 in Civil Case No. 883, even after they had already filed the instant Petition against him.[31] Thus, this Court lowers the period of suspension to two months.

WHEREFORE, the Resolution of the IBP Board of Governors approving with modification the Report and Recommendation of the Investigating Commissioner is hereby **AFFIRMED WITH MODIFICATION**. Atty. Virgil R. Castro is hereby **SUSPENDED** from the practice of law for a period of two months, with a stern warning that a repetition of the same or a similar wrongdoing will be dealt with more severely.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

[31] *Rollo*, p. 63, Certificate of Appearance dated 6 February 2006.

THIRD DIVISION

[A.M. No. P-06-2246. July 11, 2012]
(Formerly OCA I.P.I. No. 05-2287-P)

LAMBAYONG TEACHERS AND EMPLOYEES COOPERATIVE, represented in this act by its Manager, GUDELIO S. VALEROSO, *complainant, vs.* **CARLOS P. DIAZ, in his capacity as Sheriff IV, Regional Trial Court, Branch 20, Tacurong City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; THE MERE ACT OF RECEIVING MONEY WITHOUT THE PRIOR APPROVAL OF THE COURT AND WITHOUT HIM ISSUING A RECEIPT THEREFOR CONSTITUTES MISCONDUCT IN OFFICE; ACQUIESCENCE OR CONSENT OF THE COMPLAINANT WILL NOT ABSOLVE HIM FROM LIABILITY.— Sheriff Diaz disregarded the procedure for the execution of judgments as mandated by Section 10, Rule 141 of the Rules of Court x x x. From the foregoing, a sheriff is mandated to make an estimate of the expenses which shall be approved by the court. It is only after the approval of the court that an interested party shall deposit the amount with the clerk of court. Upon the return of the writ, the sheriff must submit a liquidation and return to the interested party any unspent amount. In the case at bench, Sheriff Diaz's act of receiving ₱1,500.00 from Atty. Timbol, and ₱136.96 from Agcambot, for the expenses to be incurred in the execution of the writs, without first making an estimate and securing prior approval from the MTCC, as well as his failure to render accounting after its execution, are clear violations of the rule. Even if conceding that the sum demanded by Sheriff Diaz is reasonable, this does not justify his deviation from the procedure laid down by the rule. Neither the acquiescence nor consent of the complainant, before or after the implementation of the writ will absolve him from liability. The mere act of receiving the money without the prior approval of the court and without him issuing a receipt therefor has been considered as a misconduct in office.

2. ID.; ID.; ID.; ID.; CANNOT UNILATERALLY DEMAND SUMS OF MONEY FROM A PARTY-LITIGANT WITHOUT OBSERVING THE PROPER PROCEDURAL STEPS.— Sheriffs are reminded that they are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. Corollarily, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, such fact alone would not dispel the suspicion that such payments were made for less than noble purposes.

3. ID.; ID.; ID.; ID.; THE COURT WILL NOT TOLERATE OR CONDONE ANY CONDUCT OF JUDICIAL AGENTS OR EMPLOYEES WHICH WOULD TEND TO OR ACTUALLY DIMINISH THE FAITH OF THE PEOPLE IN THE JUDICIARY.— Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish the faith of the people in the Judiciary. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee. As such, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the Judiciary.

4. ID.; ID.; ID.; ID.; PROPER PENALTY FOR SIMPLE MISCONDUCT.— Ordinarily, Sheriff Diaz's wanton disregard of Section 10, Rule 141 of the Rules of Court, as amended, which amounts to simple misconduct is punishable with suspension for one (1) month and one (1) day to six months, for the first offense. Considering, however, that the sheriff has been previously suspended for one (1) month and one (1) day for Simple Neglect in A.M. No. P-07-2332, the penalty of fine equivalent to three (3) months salary is in order. Sheriff Diaz, in fact, has been dismissed from the service on December 12, 2011, for grave misconduct in A.M. No. P-07-2300.

APPEARANCES OF COUNSEL

Rutillo B. Pasok for complainant.

D E C I S I O N

MENDOZA, *J.*:

On September 14, 2005, Gudelio S. Valeroso *(complainant)* filed a complaint[1] for and in behalf of Lambayong District I Teachers and Employees Cooperative *(the Cooperative)* with the Office of the Court Administrator *(OCA)* against Carlos P. Diaz *(Sheriff Diaz)*, Sheriff IV of the Regional Trial Court, Branch 20, Tacurong City, for dereliction of duty, inefficiency, grave abuse of authority, and dishonesty.

The case stemmed from three (3) civil cases for collection of sum of money, attorney's fees and damages filed by the Cooperative against three (3) of its members, namely, Rona M. Tacot *(Tacot)*, Matabay T. Lucito *(Lucito)* and Jocelyn S. Constantinopla *(Constantinopla)*, before the Municipal Trial Court in Cities, Tacurong, Sultan Kudarat *(MTCC)*. After the trial, the MTCC rendered its judgment and subsequently issued three separate writs of execution on December 3, 2003, which were given to Sheriff Diaz for implementation.

Complainant alleged that Sheriff Diaz committed irregularities in the implementation of the writs of execution. Sheriff Diaz was said to have delayed the execution of the writs and it was only after they had inquired from the court that he actually executed them by garnishing the salary checks of Lucito and Constantinopla. Complainant further alleged that Sheriff Diaz failed to render an accounting on the garnished amounts and that out of the ₱16,695.17 worth of cash and checks, only ₱8,347.93 was remitted to the Cooperative.

In response,[2] Sheriff Diaz denied the allegations and stated that when he received the three writs on February 19, 2004, he immediately prepared the Sheriff's Notice and instructed Atty. Marilou S. Timbol *(Atty. Timbol)*, the Cooperative's counsel,

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[1] *Rollo*, pp. 1-4.

[2] *Id.* at 17-18 and Respondent's Judicial Affidavit, *id.* at 154-157.

to pay the amount of ₱1,500.00 to defray the necessary expenses in the implementation of the writs. He explained that it was only on March 19, 2004, when all the writs were personally served on the judgment debtors because they were not in their offices or in their respective houses every time he attempted to serve them the notices.

Sheriff Diaz further alleged that when the judgment debtors failed to comply with the notice, he served the Notice of Garnishment regarding the salaries of the judgment debtors and their co-makers on their employer, the Department of Education *(DepEd)*; that DepEd, however, did not withhold their salaries but only furnished him with machine copies of their paychecks for the month of May 2004; that he went to the complainant and told him about DepEd's refusal to withhold the salaries of the judgment debtors and their co-makers; and that the complainant advised him to collect only from the judgment debtors and exempt the co-makers from liability.

Sheriff Diaz also denied that he appropriated the cash and checks he garnished. Regarding Tacot, he claimed that he turned over to complainant the following: LBP Check in the amount of ₱14,016.50, DBP Check in the amount of ₱4,847.06 and cash amounting to ₱136.96 or a total amount of ₱19,000.56. Then, he remitted the whole amount to the Cooperative through its treasurer, Melinda Agcambot *(Agcambot)*, but the latter handed back to him the ₱136.96 cash for *merienda* and tricycle fare. Thus, only ₱18,863.56 was credited to the account of Tacot. Sheriff Diaz further claimed that by January 26, 2007, he then remitted the total amount of ₱58,276.45 to the Cooperative and submitted the Sheriff's Final Report and the Notice of Lifting of Levy/Attachment to the MTCC stating therein that the judgment against Tacot had been fully satisfied.

With regard to the case of Lucito, Sheriff Diaz stated that he had turned over to the Cooperative his (Lucito's) March 2005 salary; that on May 3, 2005, he garnished the paycheck of Lucito for the month of April 2005 in the amount of ₱3,907.06; that he gave the said check to their OIC-Clerk of Court, Pelagio

Hilario, Jr. *(Hilario),* who returned the check to Lucito after the latter had paid the legal fees; that he also garnished ₱1,000.00 cash from Lucito's June 2005 salary but returned the same after Lucito begged for its return; and that he submitted his report to the MTCC stating that the writ was not satisfied and that Lucito had no visible properties that could be levied or garnished.

Lastly, in the case of Constantinopla, Sheriff Diaz related that on May 3, 2005, he garnished the paycheck of Constantinopla in the amount of ₱3,440.67 and left the check with Hilario; that without his knowledge, Constantinopla followed and begged Hilario for the return of the check; that Hilario returned the check after Constantinopla had paid the legal fees; and that he remitted the total amount of ₱34,447.83 to the cooperative as of February 2007.

Upon the recommendation[3] of the OCA, the Court, in its Resolution,[4] dated September 18, 2006, referred the case to the Executive Judge of the Regional Trial Court, Tacurong City, for investigation, report and recommendation.

On March 18, 2011, the Investigating Judge found the charges for dereliction of duty, inefficiency and dishonesty unsubstantiated. He, however, found Diaz liable for grave abuse of discretion and recommended that the appropriate penalty be meted against him for accepting the amount of ₱1,500.00 for his expenses in the execution of the writs in violation of Section 10, Rule 141 of the Rules of Court.[5]

On March 14, 2012, the OCA, in its Memorandum,[6] adopted the recommendation of the Investigating Judge, dismissing the charges for dereliction of duty, inefficiency and dishonesty. It, however, found Sheriff Diaz guilty of simple misconduct and

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[3] *Rollo,* pp. 79-82.

[4] *Id.* at 83.

[5] *Id.* at 234-244.

[6] *Id.* at 305-315.

recommended that he be fined an amount equivalent to his three (3) months salary.

The Court finds the recommendation of the OCA in order.

Sheriff Diaz disregarded the procedure for the execution of judgments as mandated by Section 10, Rule 141 of the Rules of Court, which explicitly provides that:

> Section 10. x x x
>
> With regard to the Sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the Sheriff, subject to the approval of the court. **Upon approval of said estimated expenses, the interested party shall deposit such amount with the Clerk of Court and *ex-officio* Sheriff, who shall distribute the same to the Deputy Sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the Deputy Sheriff assigned with his return, and the Sheriff's expenses shall be taxed as costs against the judgment debtor.** [Emphasis supplied]

From the foregoing, a sheriff is mandated to make an estimate of the expenses which shall be approved by the court. It is only after the approval of the court that an interested party shall deposit the amount with the clerk of court. Upon the return of the writ, the sheriff must submit a liquidation and return to the interested party any unspent amount.

In the case at bench, Sheriff Diaz's act of receiving ₱1,500.00 from Atty. Timbol, and ₱136.96 from Agcambot, for the expenses to be incurred in the execution of the writs, without first making an estimate and securing prior approval from the MTCC, as well as his failure to render accounting after its execution, are clear violations of the rule. Even if conceding that the sum demanded by Sheriff Diaz is reasonable, this

does not justify his deviation from the procedure laid down by the rule.[7] Neither the acquiescence nor consent of the complainant, before or after the implementation of the writ will absolve him from liability.[8] The mere act of receiving the money without the prior approval of the court and without him issuing a receipt therefor has been considered as a misconduct in office.[9]

Sheriffs are reminded that they are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. Corollarily, a sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, such fact alone would not dispel the suspicion that such payments were made for less than noble purposes.[10]

Sheriffs and their deputies are the front-line representatives of the justice system, and if, through their lack of care and diligence in the implementation of judicial writs, they lose the trust reposed on them, they inevitably diminish the faith of the people in the Judiciary.[11] It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work there, from the judge to the lowest employee. As such, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the Judiciary.[12]

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[7] *Danao v. Franco, Jr.,* 440 Phil. 181, 185-186 (2002).

[8] *Judge Banalag, Jr. v. Osito,* 437 Phil. 452, 458 (2002).

[9] Letter of Atty. Socorro M. Villamer-Basilia, Clerk of Court V, RTC, Branch 4, Legaspi City, 517 Phil. 643, 647 (2006).

[10] *Tan v. Paredes,* 502 Phil. 305, 313 (2005).

[11] *Musngi v. Pascasio,* A.M. No. P-08-2454, May 7, 2008, 554 SCRA 1, 11.

[12] *Villarico v. Javier,* 491 Phil. 405, 412 (2005).

Ordinarily, Sheriff Diaz's wanton disregard of Section 10, Rule 141 of the Rules of Court, as amended, which amounts to simple misconduct[13] is punishable with suspension for one (1) month and one (1) day to six months, for the first offense.[14] Considering, however, that the sheriff has been previously suspended for one (1) month and one (1) day for Simple Neglect in A.M. No. P-07-2332,[15] the penalty of fine equivalent to three (3) months salary is in order. Sheriff Diaz, in fact, has been dismissed from the service on December 12, 2011, for grave misconduct in A.M. No. P-07-2300.[16]

WHEREFORE, respondent Sheriff Carlos P. Diaz is found **GUILTY** of simple misconduct and is hereby **FINED** in the amount equivalent to his salary for three months. Let a copy of this decision be attached to his personal records.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[13] Letter of Atty. Socorro M. Villamer-Basilia, Clerk of Court V, RTC, Branch 4, Legaspi City, *supra* note 9.

[14] Section 52 (B) (1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

[15] *Jorge v. Diaz,* September 4, 2009, 598 SCRA 188.

[16] *Pasok v. Diaz,* A.M. No. P-07-2300, December 12, 2011.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 167732. July 11, 2012]

TEAM PACIFIC CORPORATION, *petitioner, vs.* **JOSEPHINE DAZA in her capacity as MUNICIPAL TREASURER OF TAGUIG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; TAX ASSESSMENT; APPEALS; A TAXPAYER DISSATISFIED WITH A LOCAL TREASURER'S DENIAL OF OR INACTION ON HIS PROTEST OVER AN ASSESSMENT HAS THIRTY (30) DAYS WITHIN WHICH TO APPEAL TO THE COURT OF COMPETENT JURISDICTION, RECKONED FROM THE RECEIPT OF THE DENIAL OF HIS PROTEST OR THE LAPSE OF THE SIXTY (60) DAY PERIOD WITHIN WHICH THE LOCAL TREASURER IS REQUIRED TO DECIDE THE PROTEST, FROM THE MOMENT OF HIS FILING.— A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide the protest, from the moment of its filing. This much is clear from Section 195 of the *Local Government Code* x x x. Absent any showing of the formal denial of the protest by Atty. Miranda, then Chief of the Taguig Business Permit and Licensing Office, we find that TPC's filing of its petition before the RTC on 19 April 2004 still timely. Reckoned from the filing of the letter protest on 19 January 2004, Daza had sixty (60) days or until 19 March 2004 within which to resolve the same in view of the fact that 2004 was a leap year. From the lapse of said period, TPC, in turn, had thirty (30) days or until 18 March 2004 within which to file its appeal to the RTC. Since the latter date fell on a Sunday, the RTC correctly ruled that TPC's filing of its petition on 19 April 2004 was still within the period prescribed under the above quoted provision.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT APPROPRIATE REMEDY TO QUESTION THE LOCAL TREASURER'S DENIAL OF OR INACTION ON THE TAXPAYER'S PROTESTS; ESSENTIAL REQUISITES OF *CERTIORARI*; JUDICIAL FUNCTION DISTINGUISHED FROM QUASI-JUDICIAL FUNCTION.— [W]e find that TPC erroneously availed of the wrong remedy in filing a Rule 65 petition for *certiorari* to question Daza's inaction on its letter-protest. The rule is settled that, as a special civil action, *certiorari* is available only if the following essential requisites concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and, (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. Judicial function entails the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function, on the other hand, refers to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. Gauged from the foregoing definitions, Daza cannot be said to be performing a judicial or quasi-judicial function in assessing TPC's business tax and/or effectively denying its protest as then Municipal Treasurer of Taguig. For this reason, Daza's actions are not the proper subjects of a Rule 65 petition for *certiorari* which is the appropriate remedy in cases where a the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. Narrow in scope and inflexible in character, *certiorari* is an extraordinary remedy designed for the correction of errors of jurisdiction and not errors of judgment. It is likewise considered mutually exclusive with appeal like the one provided by Article 195 of the *Local Government Code* for a local treasurer's denial of or inaction on a protest.

3. ID.; APPEALS; AVAILMENT OF THE WRONG MODE OF APPEAL RENDERED THE DECISION OF THE REGIONAL TRIAL COURT FINAL AND EXECUTORY; EXCLUSIVE APPELLATE JURISDICTION OVER APPEALS FROM THE JUDGMENTS, RESOLUTIONS OR ORDERS OF THE REGIONAL TRIAL COURTS IN TAX COLLECTION CASES ORIGINALLY DECIDED BY THEM IN THEIR RESPECTIVE TERRITORIAL JURISDICTION IS VESTED WITH THE COURT OF TAX APPEALS.— Even if, in the interest of substantial justice, we were to consider its petition for *certiorari* as an appeal from Daza's denial of its protest, TPC's availment of the wrong mode of appeal from the RTC's assailed 5 April 2005 Order has, moreover, clearly rendered the same final and executory. Granted that a Rule 45 petition for review on *certiorari* is the proper mode of appeal when the issues raised are purely questions of law, TPC lost sight of the fact that, as amended by RA No. 9282, paragraph c (2) [a], Section 7 of RA No. 1125 has vested the Court of Tax Appeals (CTA) with the exclusive appellate jurisdiction over, among others, appeals from the judgments, resolutions or orders of the RTC in tax collection cases originally decided by them in their respective territorial jurisdiction. As amended by Section 9 of RA No. 9282, Section 11 of RA No. 1125 likewise requires that the appeal be perfected within thirty (30) days after receipt of the decision and shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the *1997 Rules of Civil Procedure*.

4. ID.; ID.; AVAILMENT OF THE WRONG MODE OF APPEAL AND DIRECT RESORT TO THE SUPREME COURT INSTEAD OF THE COURT OF TAX APPEALS WARRANT THE DISMISSAL OF THE PETITION; THE PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD FIXED BY LAW IS NOT ONLY MANDATORY BUT JURISDICTIONAL AND NON-COMPLIANCE WITH THESE LEGAL REQUIREMENTS IS FATAL TO A PARTY'S CAUSE.— [T]PC's erroneous availment of the wrong mode of appeal and direct resort to this Court instead of the CTA both warrant the dismissal of the petition at bench. The rule is settled that the perfection of an appeal in the manner

and within the period fixed by law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause. In *Zamboanga Forest Managers Corp. vs. Pacific Timber and Supply Co.*, we ruled as follows: Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court – not even the Supreme Court – has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for petitioner.
Fatima A. Alconcel-Relente for respondent.

D E C I S I O N

PEREZ, *J.*:

The proper remedy from the denial of an assessment protest by a local treasurer is at issue in this Rule 45 petition for review on *certiorari* filed by petitioner Team Pacific Corporation (*TPC*), assailing the Order dated 5 April 2005 issued by the Regional Trial Court (*RTC*), Branch 152, Pasig City in SCA No. 2662, dismissing its Rule 65 petition for *certiorari*.[1]

The facts are not in dispute.

[1] RTC Order dated 5 April 2005, *rollo*, pp. 32-34.

A domestic corporation engaged in the business of assembling and exporting semiconductor devices, TPC conducts its business at the FTI Complex in the then Municipality of Taguig. It appears that since the start of its operations in 1999, TPC had been paying local business taxes assessed at one-half (½) rate pursuant to Section 75 (c) of Ordinance No. 24-93, otherwise known as the *Taguig Revenue Code*. Consistent with Section 143 (c)[2] of Republic Act (RA) No. 7160, otherwise known as the *Local Government Code of 1991*, said provision of the *Taguig Revenue Code* provides as follows:

> Section 75. *Imposition of Tax.* – There is hereby imposed on the following persons, natural or juridical, who establish, operate conduct or maintain their respective businesses within the Municipality of Taguig, a graduated business tax in the amounts hereafter prescribed:
>
> x x x x x x x x x
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsections (a), (b) and (d) of this Section:
> (1) Rice and corn;

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[2] SEC. 143. *Tax on Business.* – The municipality may impose taxes on the following businesses:

> x x x x x x x x x
>
> (c) On exporters, and on manufacturers, millers, producers, wholesalers, distributors, dealers or retailers of essential commodities enumerated hereunder at a rate not exceeding one-half (½) of the rates prescribed under subsections (a), (b) and (d) of this Section:
> (1) Rice and corn;
> (2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
> (3) Cooking oil and cooking gas;
> (4) Laundry soap, detergents, and medicine;
> (5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
> (6) Poultry feeds and other animal feeds;
> (7) School supplies; and
> (8) Cement.

(2) Wheat or cassava flour, meat, dairy products, locally manufactured, processed or preserved food, sugar, salt and other agricultural, marine, and fresh water products, whether in their original state or not;
(3) Cooking oil and cooking gas;
(4) Laundry soap, detergents, and medicine;
(5) Agricultural implements, equipment and post- harvest facilities, fertilizers, pesticides, insecticides, herbicides and other farm inputs;
(6) Poultry feeds and other animal feeds;
(7) School supplies; and
(8) Cement.

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When it renewed its business license in 2004, however, TPC's business tax for the first quarter of the same year was assessed in the sum of ₱208,109.77 by respondent Josephine Daza, in her capacity as then Municipal Treasurer of Taguig. The assessment was computed by Daza by applying the full value of the rates provided under Section 75 of the *Taguig Revenue Code*, instead of the one-half (½) rate provided under paragraph (c) of the same provision. Constrained to pay the assessed business tax on 19 January 2004 in view of its being a precondition for the renewal of its business permit, TPC filed on the same day a written protest with Daza, insisting on the one-half (½) rate on which its business tax was previously assessed. In support of its position, TPC invoked Section 143 (c) of the *Local Government Code of 1991* and Section 2 of Local Finance Circular No. 4-93 of the Department of Finance which provided guidelines for the imposition of business taxes on exporters by municipalities.[3]

Subsequent to its 13 April 2004 demand for the refund and/or issuance of a tax credit for the sum of ₱104,054.88 which it considered as an overpayment of its business taxes for the same year,[4] TPC filed its 15 April 2004 Rule 65 petition for

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[3] TPC's 19 January 2004 Letter-Protest, *rollo*, p. 35.

[4] TPC's 13 April 2004 Demand for Refund, *id.* at 36.

certiorari which was docketed as SCA No. 2662 before the RTC. Alleging that no formal action was taken regarding its protest on or before 19 March 2004 or within the period of sixty (60) days from the filing thereof as prescribed under Article 195 of the *Local Government Code*, TPC maintained that it was simply informed by Atty. Marianito D. Miranda, Chief of the Taguig Business Permit and Licensing Office, that the assessment of its business tax at the full rate was justified by the fact that it was not an exporter of the essential commodities enumerated under Section 143 of the *Local Government Code* and Section 75 of the *Taguig Revenue Code*. Arguing that Daza acted with grave abuse of discretion in not applying the one-half (½) rate provided under paragraph (c) of the same provisions, TPC prayed for the issuance of a temporary restraining order and/or permanent injunction to restrain the former from assessing business taxes at the full rate, the refund of its overpayment as well as the grant of its claims for exemplary damages and attorney's fees.[5]

On 25 June 2004, Daza filed her comment to the foregoing petition, contending that the change in the administration in the then Municipality of Taguig brought about the assessment and imposition of the correct business tax on TPC. Not being an exporter of the essential commodities enumerated under the provisions in question, it was argued that TPC is not entitled to the fifty (50%) percent business tax exemption it had been granted in the previous years. Having supposedly denied the letter-protest thru Atty. Miranda, Daza likewise faulted TPC for not filing its appeal in court within thirty (30) days from receipt of the denial in accordance with Article 195 of the *Local Government Code*. Denigrating TPC's 13 April 2004 demand for the refund and/or issuance of a tax credit as a vain attempt to rectify its procedural error, Daza prayed for the dismissal of the petition for *certiorari* on the ground that the same cannot be resorted to as a substitute for a lost right of appeal and was, by itself, bereft of merit.[6]

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[5] TPC's 15 April 2004 Petition for *Certiorari*, *id.* at 37-48.

[6] Daza's 10 June 2004 Comment, *id.* at 59-62.

In its 14 July 2004 reply, TPC insisted that Daza failed to act formally on its letter-protest and took the latter to task for not attaching to her comment a copy of the supposed denial issued by Atty. Miranda.[7] Acting on the memorandum[8] and motions to resolve filed by TPC,[9] the RTC went on to render the herein assailed Order dated 5 April 2005, dismissing the petition for lack of merit. While finding that the absence of proof of Atty. Miranda's denial of TPC's letter-protest meant that the latter had thirty (30) days from the lapse of the sixty (60) days prescribed under Article 195 of the *Local Government Code* within which to perfect its appeal, the RTC ruled that, rather than the special civil action of *certiorari* provided under Rule 65 of the *1997 Rules of Civil Procedure*, an ordinary appeal would have been the proper remedy from the assessment complained against.[10] Without moving for the reconsideration of the foregoing order, TPC filed the petition at bench on 28 April 2005, on pure questions of law.[11]

In its 6 June 2006 Memorandum, TPC proffers the following issues for resolution, to wit: (a) whether or not it availed of the correct remedy against Daza's illegal assessment when it filed its petition for *certiorari* before the RTC; and, (b) whether or not, as an exporter of semiconductor devices, it should be assessed business taxes at the full rate instead of the one-half (½) rates provided under Section 75 (c) of the *Taguig Revenue Code* and 143 (c) of the *Local Government Code*. In urging the reversal of the RTC's assailed 5 April 2005 Order, TPC argues that, without the remedy of appeal being specified with particularity under Article 195 of the *Local Government Code*, a Rule 65 petition for *certiorari* is the proper and logical remedy since Daza acted with grave abuse of discretion in assessing its business

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[7] TPC's 14 July 2004 Reply, *id.* at 63-67 .

[8] TPC's 27 October 2004 Memorandum, *id.* at 68-86.

[9] TPC's 9 December 2004 and 19 January 2005 Motions to Resolve, *id.* at 98-105.

[10] RTC's 5 April 2005 Order, *id.* at 32-34.

[11] TPC's 27 April 2005 Petition, *id.* at 3-28.

taxes at the full rate. Although it is an exporter of semiconductors, TPC insists that its business tax should have been computed at one-half (½) rate in accordance with the clear intendment of the law. It likewise claimed that its position is congruent with administrative determinations as well as Daza's own act of reverting back to the half rate assessment of its business tax for the second quarter of 2006.[12]

In her memorandum, Daza, in turn, asserted that the RTC correctly dismissed TPC's petition for *certiorari* in view of its failure to avail of the proper remedy of ordinary appeal provided under Article 195 of the *Local Government Code*. As then Municipal Treasurer of Taguig, Daza argued that she did not exceed her jurisdiction or abuse her discretion in assessing TPC's business tax pursuant to Section 143 (c) of the same Code and Section 75 (c) of the *Taguig Revenue Code*. Not being an exporter of the basic commodities enumerated under the subject provisions, TPC cannot insist on the computation of its business taxes on the basis of the one-half (½) rate prescribed for a category of taxpayers to which it clearly did not belong. In view of TPC's choice of the wrong mode of appeal, Daza maintained that the assailed assessment had already attained finality and can no longer be modified.[13]

We find the dismissal of the petition in order.

Considering that the RTC's assailed 5 April 2005 order did not delve on the proper rate of business tax imposable on TPC as an exporter, we shall limit our discussion to the procedural aspects of the petition.

A taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment has thirty (30) days within which to appeal to the court of competent jurisdiction. Under the law, said period is to be reckoned from the taxpayer's receipt of the denial of his protest or the lapse of the sixty (60) day period within which the local treasurer is required to decide

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[12] TPC's 6 June 2006 Memorandum, *id.* at 136-162.

[13] Daza's 7 May 2007 Memorandum, *id.* at 199-208.

the protest, from the moment of its filing. This much is clear from Section 195 of the *Local Government Code* which provides as follows:

> SEC. 195. *Protest of Assessment*. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice canceling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Absent any showing of the formal denial of the protest by Atty. Miranda, then Chief of the Taguig Business Permit and Licensing Office, we find that TPC's filing of its petition before the RTC on 19 April 2004 still timely. Reckoned from the filing of the letter protest on 19 January 2004, Daza had sixty (60) days or until 19 March 2004 within which to resolve the same in view of the fact that 2004 was a leap year. From the lapse of said period, TPC, in turn, had thirty (30) days or until 18 March 2004 within which to file its appeal to the RTC. Since the latter date fell on a Sunday, the RTC correctly ruled that TPC's filing of its petition on 19 April 2004 was still within the period prescribed under the above quoted provision. Whether or not a Rule 65 petition for *certiorari* was the appropriate remedy from Daza's inaction on TPC's letter-protest is, however, an entirely different issue which we are now called upon to resolve, considering the RTC's ruling that it should have filed an ordinary appeal instead. As correctly observed by TPC,

after all, Section 195 of the *Local Government Code* does not elaborate on how an appeal is to be made from the denial by a local treasurer of a protest on assessment made by a taxpayer.[14]

In the case of *Yamane vs. BA Lepanto Condominium Corporation*[15] (BLCC), this Court saw fit to rule that the remedy to be pursued by the taxpayer is one cognizable by the RTC in the exercise of its original – not its appellate – jurisdiction. In said case, BLCC's *appeal* from the denial of its protest by the Makati City Treasurer was dismissed for lack of merit by the RTC, prompting said taxpayer to file a Rule 42 petition for review with the Court of Appeals (CA). After reconsidering its earlier decision to dismiss the petition on the ground that said remedy is restricted to decisions rendered by the RTC on appeal, the CA went on to render a decision finding BLCC not liable for the business tax assessed by the Makati City Treasurer. Sustaining the latter's position that the jurisdiction exercised by the RTC over BLCC's appeal was original in character, this Court ruled as follows:

> x x x [S] significantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities.
>
> From these premises, it is evident that the stance of the City Treasurer is correct as a matter of law, and that the proper remedy of the Corporation from the RTC judgment is an ordinary appeal under Rule 41 to the Court of Appeals. However, we make this pronouncement subject to two important qualifications. *First*, in

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[14] Pimentel, Jr., *The Local Government Code Revisited*, 2011 ed., p. 370.

[15] G.R. No. 154993, 25 October 2005, 474 SCRA 258.

this particular case there are nonetheless significant reasons for the Court to overlook the procedural error and ultimately uphold the adjudication of the jurisdiction exercised by the Court of Appeals in this case. Second, *the doctrinal weight of the pronouncement is confined to cases and controversies that emerged prior to the enactment of Republic Act No. 9282, the law which expanded the jurisdiction of the Court of Tax Appeals (CTA)*. (Emphasis supplied)[16]

The foregoing pronouncements notwithstanding, we find that TPC erroneously availed of the wrong remedy in filing a Rule 65 petition for *certiorari* to question Daza's inaction on its letter-protest. The rule is settled that, as a special civil action, *certiorari* is available only if the following essential requisites concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and, (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[17] Judicial function entails the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function, on the other hand, refers to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.[18]

Gauged from the foregoing definitions, Daza cannot be said to be performing a judicial or quasi-judicial function in assessing TPC's business tax and/or effectively denying its protest as

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[16] *Id.* at 269.

[17] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, 6 February 2007, 514 SCRA 346, 356.

[18] *Destileria Limtuaco & Co., Inc. v. Advertising Board of the Philippines*, G.R. No. 164242, 28 November 2008, 572 SCRA 455, 460.

then Municipal Treasurer of Taguig. For this reason, Daza's actions are not the proper subjects of a Rule 65 petition for *certiorari* which is the appropriate remedy in cases where a the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law.[19] Narrow in scope and inflexible in character,[20] *certiorari* is an extraordinary remedy designed for the correction of errors of jurisdiction and not errors of judgment.[21] It is likewise considered mutually exclusive with appeal[22] like the one provided by Article 195 of the *Local Government Code* for a local treasurer's denial of or inaction on a protest.

Even if, in the interest of substantial justice, we were to consider its petition for *certiorari* as an appeal from Daza's denial of its protest, TPC's availment of the wrong mode of appeal from the RTC's assailed 5 April 2005 Order has, moreover, clearly rendered the same final and executory. Granted that a Rule 45 petition for review on *certiorari* is the proper mode of appeal when the issues raised are purely questions of law,[23] TPC lost sight of the fact that, as amended by RA No. 9282,[24]

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[19] *Sebastian v. Hon. Horacio R. Morales*, 445 Phil. 595, 608 (2003).

[20] *Valdez v. Government Service Insurance System*, G.R. No. 146175, 30 June 2008, 556 SCRA 580, 594.

[21] *Julie's Franchise Corporation v. Hon. Chandler O. Ruiz*, G.R. No. 180988, 28 August 2009, 597 SCRA 463, 473.

[22] *Obando v. Court of Appeals*, 419 Phil. 124, 130 (2001).

[23] *Korea Exchange Bank v. Filkor Business Integrated, Inc.*, 430 Phil. 170, 179 (2002).

[24] *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes*, Approved 30 March 2004.

paragraph c (2) [a], Section 7[25] of RA No. 1125[26] has vested the Court of Tax Appeals (CTA) with the exclusive appellate jurisdiction over, among others, appeals from the judgments, resolutions or orders of the RTC in tax collection cases originally decided by them in their respective territorial jurisdiction. As amended by Section 9 of RA No. 9282,[27] Section 11 of RA No. 1125 likewise requires that the appeal be perfected within thirty (30) days after receipt of the decision and shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the *1997 Rules of Civil Procedure*.

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[25] "Section 7. Jurisdiction – The Court of Tax Appeals shall exercise:

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(c) x x x

x x x x x x x x x

(2) Exclusive appellate jurisdiction in tax collection cases:

a. Over appeals from the judgments, resolutions or orders of the Regional Trial Court in tax collection cases originally decided by them, in their respective territorial jurisdiction.

[26] *An Act Creating the Court of Tax Appeals.*

[27] Section 9. Section 11 of the same Act is hereby amended as follows:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

"Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

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To our mind, TPC's erroneous availment of the wrong mode of appeal and direct resort to this Court instead of the CTA both warrant the dismissal of the petition at bench. The rule is settled that the perfection of an appeal in the manner and within the period fixed by law is not only mandatory but jurisdictional and non-compliance with these legal requirements is fatal to a party's cause.[28] In *Zamboanga Forest Managers Corp. vs. Pacific Timber and Supply Co.*,[29] we ruled as follows:

> Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit and being the wrong mode of appeal.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[28] *Yao v. Court of Appeals*, 398 Phil. 86, 100 (2000).

[29] G.R. No. 173342, 13 October 2010, 633 SCRA 82, 92-93.

SECOND DIVISION

[G.R. No. 169272. July 11, 2012]

NATIONAL SPIRITUAL ASSEMBLY OF THE BAHA'IS OF THE PHILIPPINES, represented by its Secretary General, *petitioner, vs.* **ALFREDO S. PASCUAL, in his capacity as the Regional Executive Director, Department of Environment and Natural Resources, Regional Office No. 02,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; DEFINED; ESSENTIAL ELEMENTS.— A cause of action is the act or omission by which a party violates a right of another. A complaint states a cause of action when it contains three essential elements: (1) a right in favor of the plaintiff by whatever means and whatever law it arises; (2) the correlative obligation of the defendant to respect such right; and (3) the act or omission of the defendant violates the right of the plaintiff. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

2. ID.; MOTIONS; MOTION TO DISMISS ON GROUND OF FAILURE TO STATE A CAUSE OF ACTION; THE TEST IS WHETHER THE COURT CAN RENDER A VALID JUDGMENT ON THE COMPLAINT BASED ON THE FACTS ALLEGED AND THE PRAYER ASKED FOR.— "Failure to state a cause of action refers to the insufficiency of allegation in the pleading. In resolving a motion to dismiss based on the failure to state a cause of action only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for."

3. CIVIL LAW; OWNERSHIP; ACTION TO QUIET TITLE; INDISPENSABLE REQUISITES; NOT PRESENT.— Under Articles 476 and 477 of the Civil Code, there are two (2) indispensable requisites in an action to quiet title: (1) that the

plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that a deed, claim, encumbrance or proceeding is claimed to be casting cloud on his title. From [the] allegations, we find it clear that the petitioner no longer had any legal or equitable title to or interest in the lots. The petitioner's status as possessor and owner of the lots had been settled in the final and executory December 4, 1985 decision of the Bureau of Lands that the DENR Secretary and the OP affirmed on appeal. Thus, the petitioner is not entitled to the possession and ownership of the lots.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; THE DECISIONS AND ORDERS OF THE BUREAU OF LANDS, RENDERED PURSUANT TO ITS QUASI-JUDICIAL AUTHORITY, UPON FINALITY HAVE THE FORCE AND BINDING EFFECT OF A FINAL JUDGMENT WITHIN THE PURVIEW OF THE DOCTRINE OF *RES JUDICATA*; RATIONALE.— Jurisprudence teaches us that the decisions and orders of administrative agencies, such as the Bureau of Lands, rendered pursuant to their quasi-judicial authority, upon finality have the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. Accordingly, the petitioner is now barred from challenging the validity of the final and executory Bureau of Lands' December 4, 1985 decision.

5. REMEDIAL LAW; JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL AND EXECUTORY IT CAN NO LONGER BE DISTURBED, ALTERED OR MODIFIED IN ANY RESPECT, EXCEPT TO CORRECT CLERICAL ERRORS OR TO MAKE *NUNC PRO TUNC* ENTRIES.— Indeed, a final and executory decision can only be annulled by a petition to annul it on the ground of extrinsic fraud and lack of jurisdiction, or by a petition for relief from a final order or judgment under Rule 38 of the Revised Rules of Court. We

find it significant that the petitioner filed no such petition; instead, it filed an action to quiet title to assail the allegedly invalid final and executory December 4, 1985 decision of the Bureau of Lands. Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered or modified in any respect, except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it. "[T]he prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party." [T]he petitioner opted for the wrong remedy and must now suffer for it.

APPEARANCES OF COUNSEL

German M. Balot for petitioner.
Gil Aromin for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by the National Spiritual Assembly of the Baha'is of the Philippines (*petitioner*) to assail the December 29, 2004 decision[2] and the June 28, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 66186. The CA decision set aside the June 20, 2001 order[4] of the Regional Trial Court (*RTC*) of Santiago City, Branch 36, in Civil Case No. 36-2931 and dismissed the petitioner's complaint for quieting of title. The CA resolution denied the petitioner's subsequent motion for reconsideration.

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[1] Filed under Rule 45 of the Revised Rules of Court; *rollo*, pp. 8-19.

[2] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), and concurred in by Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid; *id.* at 24-28.

[3] *Id.* at 31.

[4] *Id.* at 75-76.

FACTUAL BACKGROUND

On December 11, 2000, the petitioner filed a complaint with the RTC for "quieting of title, injunction, annulment of *alias* writ of execution, with prayer for temporary restraining order, preliminary prohibitory injunction, and damages" against Silverio Songcuan and/or his heirs, the Secretary of the Department of Environment and Natural Resources (*DENR*), and the Regional Executive Director of the DENR, Regional Office No. 2, Tuguegarao, Cagayan.[5]

The petitioner alleged that it is the lawful and absolute owner of two (2) parcels of land, known as Cadastral Lot Nos. 3 and 361, together with the two-storey building thereon, situated in Victory Sur, Santiago City, acquired through a sale in 1967 from Armando Valdez and Emma Valdez, respectively, who, in turn, acquired ownership from Marcelina Ordoño. The petitioner had been in open, continuous and adverse possession for a period of more than thirty (30) years, and a cloud exists on its title because of an invalid December 4, 1985 decision of the Bureau of Lands.[6] This invalid decision rejected the miscellaneous sales applications of the petitioner's predecessors-in-interest for the lots, and ordered all those in privity with them (specifically including the petitioner) to vacate the lots and to remove their improvements thereon. The DENR Secretary affirmed on February 7, 1989 the Bureau of Lands' December 4, 1985 decision. Recourse to the Office of the President (*OP*) had been unavailing, and the DENR Regional Office No. 2 issued on December 10, 1996 and June 6, 2000 *alias* writs of execution pursuant to the OP's decision.

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[5] Docketed as Civil Case No. 36-2931; *id.* at 33-42.

[6] Under Executive Order No. 192 (Providing for the Reorganization of the Department of Environment, Energy and Natural Resources; Renaming it as the Department of Environment and Natural Resources, and for Other Purposes) issued on June 10, 1987, the newly created Lands Management Bureau has absorbed the functions and powers of the Bureau of Lands except those line functions and powers which were transferred to the regional field offices (*Modesto v. Urbina,* G.R. No. 189859, October 18, 2010, 633 SCRA 383, 395).

The DENR Regional Office No. 2, through Regional Executive Director Alfredo S. Pascual (*respondent*), moved to dismiss the complaint for failure to state a cause of action. It argued that the petitioner had no legal right or title to file the complaint since the final and executory Bureau of Lands' December 4, 1985 decision ruled that the petitioner was not entitled to possess the lots.

THE RTC's RULING

In its June 20, 2001 order, the RTC denied the motion to dismiss, finding that the Bureau of Lands' December 4, 1985 decision was not yet final and executory since the OP's ruling on the appeal was "unavailable."[7]

The respondent elevated his case to the CA via a Rule 65 petition for *certiorari*, questioning the propriety of the RTC's denial of his motion to dismiss.

THE CA's RULING

In its December 29, 2004 decision, the CA set aside the RTC's order and dismissed the complaint for quieting of title for failure to state a cause of action. It found that the respondent's admission of the Bureau of Lands' adverse December 4, 1985 decision precluded the respondent's claim over the lots. The Bureau of Lands' decision, being final and executory, is binding and conclusive upon the petitioner. Even assuming that the OP's ruling on the appeal was still "unavailable," the RTC should have dismissed the complaint for prematurity; an action to quiet title is not the proper remedy from an adverse decision issued by an administrative agency in the exercise of its quasi-judicial function.[8]

When the CA denied[9] on June 28, 2005 the motion for reconsideration that followed, the petitioner filed the present petition.

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[7] *Supra* note 4, at 75-A.

[8] *Supra* note 2.

[9] *Supra* note 3.

THE PETITION

The petitioner argues that the complaint sufficiently stated a cause of action when it alleged that the petitioner is in open, exclusive, continuous, public and uninterrupted possession of the lots for more than thirty (30) years in the concept of an owner, and that the December 4, 1985 decision of the Bureau of Lands is invalid since the lots ceased to be public land upon the petitioner's open, exclusive, continuous, public and uninterrupted possession of the lots for more than thirty (30) years in the concept of an owner, pursuant to *The Director of Lands v. IAC*.[10]

THE CASE FOR THE RESPONDENT

The respondent submits that the petitioner has no cause of action because the Bureau of Lands' December 4, 1985 decision is final, precluding whatever ownership rights the petitioner may have had on the lots; the petitioner had slept on its rights when it failed to initiate the proper judicial remedies against the ruling; the doctrine of primary jurisdiction disallowed the judicial determination of the lots' ownership since the qualification of applicants in miscellaneous sales applications, as well as the identity of public lands, was subject to the Bureau of Lands' technical determination.

THE ISSUE

The issue in this case is whether the CA committed a reversible error in finding that the RTC committed a grave abuse of discretion in not dismissing the petitioner's complaint for quieting of title for failure to state a cause of action.

OUR RULING

The petition lacks merit as the CA committed no reversible error in its ruling.

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[10] 230 Phil. 590 (1986).

A cause of action is the act or omission by which a party violates a right of another.[11]

A complaint states a cause of action when it contains three essential elements: (1) a right in favor of the plaintiff by whatever means and whatever law it arises; (2) the correlative obligation of the defendant to respect such right; and (3) the act or omission of the defendant violates the right of the plaintiff. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[12]

"Failure to state a cause of action refers to the insufficiency of allegation in the pleading. In resolving a motion to dismiss based on the failure to state a cause of action only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for."[13]

Under Articles 476[14] and 477[15] of the Civil Code, there are two (2) indispensable requisites in an action to quiet title: (1)

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[11] REVISED RULES OF COURT, Rule 2, Section 2.

[12] *Development Bank of the Philippines v. Castillo*, G.R. No. 163827, August 17, 2011, 655 SCRA 602, 612. See also *Heirs of Loreto C. Maramag v. Maramag*, G.R. No. 181132, June 5, 2009, 588 SCRA 774, 784.

[13] *Fort Bonifacio Development Corporation v. Sorongon*, G.R. No. 176709, May 8, 2009, 587 SCRA 613, 621. See also *Raytheon International, Inc. v. Rouzie, Jr.*, G.R. No. 162894, February 26, 2008, 546 SCRA 555, 564-565.

[14] Article 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[15] Article 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.

that the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that a deed, claim, encumbrance or proceeding is claimed to be casting cloud on his title.

In the present case, the complaint alleges that:

> 3. Plaintiff has been in open, exclusive, continuous, public and uninterrupted possession in the concept of owner of the above-mentioned Lots 3 and 361 for more than thirty (30) years since the time plaintiff bought said lots in 1967 until the present. That plaintiff bought the above-mentioned lots both on February 6, 1967 from the following vendors: Armando Valdez (for Lot 3) and Emma Valdez (for Lot 361). x x x;
>
> x x x x x x x x x
>
> 9. The reason why plaintiff is filing this case for quieting of title with prayer for restraining order and/or injunction (preliminary and later on permanent) is due to the fact that there exists a cloud on the plaintiff's ownership and/or title over Lots 3 and 361 by reason of a document, record, claim, encumbrance, or proceeding which is apparently valid or effective, but is in truth and in fact invalid, ineffective, voidable and/or unenforceable and may be prejudicial to plaintiff's ownership, rights and/or title. Hence this action to remove such cloud or prevent such cloud from being cast upon plaintiff's rights, interest or title to said property;
>
> 10. This so-called cloud is that Decision/Order issued by the Bureau of Lands dated December 4, 1985, the dispositive [portion] of which reads as follows:
>
> "WHEREFORE, the Miscellaneous Sales Application Nos. V-65683, V-75134 and (II-2) 1047 of Marcelina Ordoño, Armando Valdez and Ricardo Gonzaga are hereby rejected forfeiting in favor of the government any amount paid on account thereof. Respondents Marcelina Ordoño, Armando Valdez, and Dionisio Gonzaga and all those in privity with them including the National Spiritual Assembly of the Baha'is shall, within sixty (60) days from receipt of a copy hereof, vacate Lots 3, 360 and 361 of Ccs-116 and remove their improvements thereon. One District Land Officer concerned shall thereafter

take control and administration of the aforementioned lot until such time that the same can be disposed of in accordance with law. Protestant Silverio Songcuan shall file his appropriate public land application for Lot 361, Ccs-116 immediately upon the finality of this order."

x x x x x x x x x

11. A Motion for Reconsideration was filed on the aforementioned Decision, but the same was denied in an Order dated June 30, 1986. x x x;

12. Both the December 4, 1985 Decision and the Order dated June 30, 1986 were appealed by herein plaintiff to the Office of the Secretary of the DENR. However, the appeal was dismissed and the Decision and Order appealed from [were] affirmed in a Decision dated February 7, 1989. x x x. That Ricardo Gonzaga's recourse to the [O]ffice of the President was likewise unavailing;

13. Subsequently *Alias* Writs of Execution were issued pursuant to the above Decision, one such writ is dated December 10, 1996, while the other one is dated June 6, 2000. x x x;

x x x x x x x x x

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court, after due notice and hearing to issue judgment:

1. Declaring the plaintiff to be the true and lawful x x x possessor of Lots 3 and 361 all situated in Victory Sur, Santiago City;

2. Declaring defendants['] claims, documents or proceedings – particularly the above quoted Decision and subsequent Writs of Execution issued by the DENR and/or Bureau of Lands [-] to be null and void and having no effect whatsoever as far as plaintiff's rights of possession, ownership over Lots 3 and 361[.][16]

From these allegations, we find it clear that the petitioner no longer had any legal or equitable title to or interest in the lots.

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[16] *Rollo*, pp. 34-41.

The petitioner's status as possessor and owner of the lots had been settled in the final and executory December 4, 1985 decision of the Bureau of Lands that the DENR Secretary and the OP affirmed on appeal. Thus, the petitioner is not entitled to the possession and ownership of the lots.

Jurisprudence teaches us that the decisions and orders of administrative agencies, such as the Bureau of Lands, rendered pursuant to their quasi-judicial authority, upon finality, have the force and binding effect of a final judgment within the purview of the doctrine of *res judicata*.[17]

> The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[18]

Accordingly, the petitioner is now barred from challenging the validity of the final and executory Bureau of Lands' December 4, 1985 decision.

Indeed, a final and executory decision can only be annulled by a petition to annul it on the ground of extrinsic fraud and lack of jurisdiction, or by a petition for relief from a final order or judgment under Rule 38 of the Revised Rules of Court.[19] We find it significant that the petitioner filed no such petition; instead, it filed an action to quiet title to assail the allegedly

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[17] *National Housing Authority v. Pascual*, G.R. No. 158364, November 28, 2007, 539 SCRA 102, 112; and *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 371.

[18] *Chu v. Cunanan*, G.R. No. 156185, September 12, 2011, 657 SCRA 379, 391; and *Tumbokon v. Legaspi*, G.R. No. 153736, August 4, 2010, 626 SCRA 736, 749.

[19] *Salting v. Velez*, G.R. No. 181930, January 10, 2011, 639 SCRA 124, 131; and *Estate of Salud Jimenez v. Phil. Export Processing Zone*, 402 Phil. 271, 285 (2001).

invalid final and executory December 4, 1985 decision of the Bureau of Lands. Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered or modified in any respect, except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it.[20] "[T]he prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party."[21] In sum, in this case, the petitioner opted for the wrong remedy and must now suffer for it.

WHEREFORE, we hereby **DENY** the petition for lack of merit, and **AFFIRM** the December 29, 2004 decision and the June 28, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 66186.

Costs against the petitioner.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[20] *Salting v. Velez, supra,* at 131; and *Tamayo v. People*, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 322-323.

[21] *Ruben C. Reyes v. Tang Soat Ing (Joanna Tang) and Ando G. Sy,* G.R. No. 185620, December 14, 2011; and *Tongonan Holdings and Development Corporation v. Escaño, Jr.,* G.R. No. 190994, September 7, 2011, 657 SCRA 306, 318.

SECOND DIVISION

[G.R. No. 169957. July 11, 2012]

NATIONAL POWER CORPORATION, *petitioner*, *vs.* **SPS. FLORIMON V. ILETO and ROWENA NOLASCO, SPS. SERAFIN VALERO and TERESITA GONZALES, SPS. CORNELIO VALDERAMA and REMEDIOS CRUZ, SPS. ALEJANDRINO VALDERAMA and TEODORA STA. MARIA, RENATO VALDERAMA, all represented by SPS. CORNELIO VALDERAMA and REMEDIOS CRUZ; HEIRS OF APOLONIO DEL ROSARIO, represented by RICARDO DEL ROSARIO; DANILO BRILLO, WILFREDO BRILLO, REYNALDO BRILLO, THELMA BRILLO BORDADOR, and MA. VICTORIA BRILLO VILLARICO, represented by DANILO BRILLO; SPS. RUDY and MODESTA VELASCO; ROSEMARIE FUKUSUMl (vendee)/ DANILO HERRERA (vendor); HEIRS OF SOFIA MANGAHAS *VDA. DE* DE SILVA, ROGELIO DE SILVA, APOLONIA DE SILVA GENER, and LUCIO DE SILVA, all represented by ROGELIO DE SILVA; and, FRANCISCA MATEO-EUGENIO,** *respondents.*

[G.R. No. 171558. July 11, 2012]

DANILO BRILLO, WILFREDO BRILLO, LAURO BRILLO, REYNALDO BRILLO, THELMA BRILLO BORDADOR, the minor RIKKA OLGA VILLARICO, KRISTIAN GERALD VILLARICO, DEAN MARBIEN VILLARICO, herein represented by their legal guardian WILFREDO BRILLO, *petitioners*, *vs.* **NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; APPEALS; RULE 45 PETITION; EFFECT OF DENIAL;

EFFECT ON INCLUSION BY ANOTHER LITIGANT OF A PARTY WHOSE RULE 45 PETITION WAS EARLIER DENIED; CASE AT BAR.— We state at the outset that this Court already denied the petition for review on *certiorari* filed by the Sps. Ileto (docketed as G.R. No. 171583) in our Resolution dated April 17, 2006. This denial had the effect of making the assailed CA judgment final as to the Sps. Ileto, but ***only to prevent them from seeking any other affirmative relief from this Court.*** We note, that the NPC included the Sps. Ileto as respondents in the appeal they filed before this Court. They are thus parties to the case with respect to the issues raised in the NPC's appeal. Accordingly, the Court's determination on the issue raised by the NPC with respect to the propriety of the manner of computing just compensation will also be binding on the Sps. Ileto.

2. ID.; ID.; ID.; ID.; ID.; FACTUAL QUESTION NOT REVIEWABLE BY THE COURT; THE CASE AT BAR DOES NOT FALL WITHIN THE EXCEPTIONS TO THE RULE.— In assailing the compromise agreement between the NPC and the Heirs of Sofia Mangahas on the ground that the valuation is based on the erroneous classification of the land as residential, the OSG essentially asks this Court to determine whether the land subject of the assailed compromise agreement is residential or agricultural in nature. *This is clearly a factual question*, requiring as it does a review of the evidence introduced in, and considered by, the tribunals below. Thus, this question is not reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While jurisprudence has established several exceptions to this rule, we find that none of them apply under the present circumstances.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; COMPROMISE AGREEMENT; ONCE APPROVED BY FINAL ORDER OF THE COURT, HAS THE FORCE OF *RES JUDICATA* BETWEEN THE PARTIES.— Moreover, it is a settled doctrine that a compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and cannot be disturbed except for vices of consent or forgery. We said in *Republic v. Florendo*: When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the

parties. Having been sanctioned by the court, it is a determination of the controversy and has the force and effect of a judgment. **It is immediately executory and not appealable, except for vices of consent, forgery, fraud, misrepresentation and coercion**. Thus, although a compromise agreement has the effect and authority of *res judicata* upon the parties even without judicial approval, no execution may issue until it has received the approval of the court where the litigation is pending and compliance with the terms of the agreement is thereupon decreed.

4. ID.; ID.; ID.; ID.; ID.; NO PARTY MAY DISCARD THEM UNILATERALLY; CASE AT BAR.— Lastly, we reiterate that compromises are favored and encouraged by the courts, and parties are bound to abide by them in good faith. Since compromise agreements have the force of law between the parties, no party may discard them unilaterally. This is especially true under the present circumstances, where the NPC has already enjoyed the benefits of the assailed compromise agreement, having been in possession of the subject land since 1998.

5. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6395 (AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION) GRANTING THE NPC POWER TO ACQUIRE PROPERTY INCIDENTAL TO PURPOSE OF PROVIDING ELECTRICITY TO THE COUNTRY.— Republic Act No. 6395, entitled "An Act Revising the Charter of the National Power Corporation," grants the NPC the power to acquire "property incident to, or necessary, convenient or proper to carry out the purposes for which [it] was created," namely: the construction of generation and transmission facilities to provide electricity for the entire country. In an effort to streamline the NPC's exercise of this power, Section 3A of Republic Act No. 6395 provides: Section 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, **only a right-of-way easement** thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired. x x x (b) **With respect to the**

acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower. x x x

6. ID.; ID.; ID.; AERIAL EASEMENT OF RIGHT OF WAY; THE LANDOWNERS' RIGHT TO POSSESS AND ENJOY THEIR PROPERTIES IS INTERFERED WITH; PAYMENT OF JUST COMPENSATION, PROPER.— The NPC, relying on the above-quoted provision, argues that the CA erred when it ordered the payment of just compensation for the properties in question, given that most of the properties were subject only to an aerial easement of right of way, with the NPC requiring the use of the area above the subject lands for its transmission lines. x x x [W]hile it may be true that the transmission lines merely pass over the affected properties, the easement imposes the additional limitation that the landowners are prohibited from constructing any improvements or planting any trees that exceed three (3) meters within the aerial right of way area. This prohibition clearly interferes with the landowners' right to possess and enjoy their properties. As we explained in *National Power Corporation v. Manubay Agro-Industrial Development Corporation* x x x. True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land. Apart from interfering with the attributes of ownership, we have articulated in our observation in *National Power Corp. v. Sps. Gutierrez* that these transmission lines, because of the high-tension current that passes through them, pose a danger to the lives and limbs of those in the surrounding areas, and, thus, serve to limit the activities that can be done on these lands.

7. ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION THEREFOR IS A JUDICIAL FUNCTION.— The determination

of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. We already established in *Export Processing Zone Authority v. Dulay* that any valuation for just compensation laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

8. ID.; ID.; ID.; ID.; ID.; DETERMINATION MUST BE BASED ON ALL ESTABLISHED RULES, CORRECT LEGAL PRINCIPLES, AND COMPETENT EVIDENCE.— Although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence. The courts are proscribed from basing their judgments on speculations and surmises.

9. ID.; ID.; ID.; ID.; ID.; ID.; RTC VALUATION FOR JUST COMPENSATION NOT SUPPORTED BY EVIDENCE; REMAND OF CASH, PROPER.— In the present case, the RTC made a determination that all the properties subject of the NPC's expropriation complaint, regardless of their location or classification, should be valued at ₱250.00 per square meter. x x x It is apparent from this RTC explanation that Commissioner Tayag and Commissioner Villacorta based their recommendation for just compensation of all the properties in question solely on the value fixed in the compromise agreement between the NPC and the Heirs of Sofia Mangahas. But in accepting this recommendation, ***the RTC failed to take into consideration the fact that the property subject of the compromise agreement is located in Tigbe, Norzagaray, Bulacan, while the other properties subject of the RTC's decision are located in other municipalities in Bulacan***. Even worse, the commissioners' recommended valuation is not supported by any corroborative evidence, such as sworn declarations of realtors in the area concerned and tax declarations or zonal valuation from the Bureau of Internal Revenue. It does not even appear from the records that the commissioners conducted any ocular inspections to determine the location, nature, character, condition, and other

> specific features of the expropriated lands that should have been taken into account before making their recommendation. x x x In light of the foregoing, we find that the trial court arbitrarily fixed the amount of just compensation due the landowners at ₱250.00 per square meter. Thus, the Court has no alternative but to remand the case to the court of origin for the proper determination of just compensation.

APPEARANCES OF COUNSEL

Constantine G. Agagan for Sps. Nolasco.
King Capuchino Tan & Associates for Heirs of Sofia Mangahas *vda. de* De Silva.
Vicente D. Bordador and *Herminio L. Ruiz* for Brillo, *et al.*

D E C I S I O N

BRION, *J.*:

We resolve the consolidated petitions for review on *certiorari* assailing the decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72723 dated September 30, 2005, as well as the appellate court's resolution[2] dated February 14, 2006 denying the motions for reconsideration of Danilo Brillo, Wilfredo Brillo, Lauro Brillo, Reynaldo Brillo, Thelma Brillo Bordador, Spouses Rudy Velasco and Modesta Velasco, and Spouses Serafin Valero and Teresita Valero. The assailed CA decision affirmed with modification the decision of the Regional Trial Court (*RTC*), Branch 17, Malolos, Bulacan, in Civil Case No. 796-M-97.

BACKGROUND FACTS

On October 7, 1997, the National Power Corporation (*NPC*) filed a complaint, which was subsequently amended, seeking to expropriate certain parcels of land in Bulacan, in connection

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[1] *Rollo*, G.R. No. 169957, pp. 65-83. Penned by Associate Justice Santiago Javier Ranada, and concurred in by Associate Justices Mario L. Guariña III and Jose Catral Mendoza (now a member of this Court).

[2] *Id.* at 85.

with its Northwestern Luzon Transmission Line project. Specifically, the NPC sought to expropriate the following:

OWNER	LOCATION	TITLE NO.	AFFECTED AREA
1. Sps. Florimon Ileto and Rowena Nolasco	Sapang Putol, San Ildefonso, Bulacan	T-36242	42 sqm.
2. Sps. Florimon Ileto and Rowena Nolasco	- do -	CLOA T-6277	2,780 sqm.
3. Sps. Serafin Valero and Teresita Gonzales	BMA, Balagtas, San Rafael, Bulacan	CLOA T-1612	8,157.5 sqm.
4. Sps. Serafin Valero and Teresita Gonzales	- do -	CLOA T-1953	7,078 sqm.
5. Sps. Cornelio Valderama and Remedios Cruz	Maronquillo, San Rafael, Bulacan	CLOA T-2700	9,784 sqm.
6. Heirs of Apoloni[o] del Rosario	Salakot, San Miguel, Bulacan		16,930 sqm.
7. Danilo Brillo *et al.*	Gulod, Meycauayan, Bulacan	CLOA T-7844	15,706 sqm.
8. Sps. Modesta and Rudy Velasco	499 San Juan St., Rio Vista, Sabang, Baliuag, Bulacan	T-90121	16,608 sqm.
9. Rosemarie Fukosumi/ Danilo Herrera	Sapang Palay, San Jose del Monte, Bulacan		1,841.76 sqm.
10. Heirs of Sofia Mangahas	Tigbe, Norzagaray		9,186 sqm.
11. Francisca Mateo-Eugenio	Tigbe, Norzagaray		984 sqm.[3]

[3] CA *rollo*, pp. 64-65.

On October 22, 1997, the NPC deposited with the Land Bank of the Philippines the amount of ₱204,566.60, representing the initial provisional value of the properties sought to be expropriated. Consequently, the NPC received actual possession of these properties on December 16, 1997.[4]

To determine the issue of just compensation, the RTC constituted a team of commissioners,[5] composed of the following: Atty. Luis Manuel Bugayong, representing the NPC; *Barangay* Captain Manuel Villacorta, representing the defendants; and Branch Clerk of Court Ariston Tayag, acting as the Chairperson.[6]

On September 23, 1998, the Heirs of Sofia Mangahas and the NPC filed with the RTC a jointly executed compromise agreement where they agreed that NPC would acquire 13,855 square meters of the 95,445 square meter property owned by the Heirs of Sofia Mangahas. In turn, the NPC would pay the Heirs of Sofia Mangahas the total amount of ₱3,463,750.00 as just compensation for the property, with an assessed value of ₱250.00 per square meter. **The RTC found the compromise agreement to be proper, and rendered a partial decision approving it on September 28, 1998**.[7]

Since Commissioner Bugayong, representing the NPC, could not agree with the other commissioners on the manner of valuation, he chose to submit a separate report on February 25, 1999. He recommended in this separate report that the NPC pay an easement fee of 10% of ₱85.00 per square meter[8] for the agricultural land that would merely be traversed by the transmission lines, full market value for the land on which the steel towers would actually be constructed, plus the cost of

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[4] *Rollo*, p. 68.

[5] Pursuant to Section 5, Rule 67 of the Rules of Court.

[6] CA *rollo*, p. 66.

[7] *Id.* at 79-84.

[8] Based on the value of land fixed in the NPC Board Resolution Schedule of Fair Market Values.

crops and other improvements actually damaged during construction.[9]

In turn, Commissioner Tayag and Commissioner Villacorta submitted their report on March 4, 1999, recommending that the just compensation for all the affected lands be pegged at ₱250.00 per square meter. The report took into account another commissioners' report in a different expropriation case filed by the NPC that was pending before Branch 10 of the same court,[10] which fixed the just compensation per square meter of agricultural lands at ₱265.00, residential land at ₱1,540.00, and commercial land at ₱2,300.00. In the end, however, the commissioners were greatly persuaded by the value fixed in the compromise agreement between NPC and the Heirs of Sofia Mangahas.

The commissioners' report was set for hearing on June 7, 1999, where the Sps. Florimon V. Ileto and Rowena Nolasco, the Sps. Valero and the Brillos manifested their consent to the recommended price of ₱250.00 per square meter. Consequently, on August 20, 1999, the RTC approved the report submitted by Commissioner Tayag and Commissioner Villacorta, and rendered a decision. The RTC subsequently issued an amended decision dated September 16, 1999 to reflect the corrected spelling of the landowners' surnames and locations of properties found in the original decision. The dispositive portion of the amended decision reads:

WHEREFORE, in the light of all the foregoing, the following properties are hereby expropriated in favor of the Government:

1. 42 square meters of the land of Sps. Florimon Ileto & Rowena Nolasco situated at Sapang Putol, San Ildefonso, Bulacan covered by TCT No. T-36242 whose technical description is mentioned in Annex A of the Second Amended Complaint (p. 149, Record);

2. 2,780 square meters of the land of Sps. Florimon Ileto & Rowena Nolasco situated at Sapang Putol, San

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[9] *Rollo*, G.R. No. 169957, p. 70.

[10] Docketed as Civil Case No. 690-M-97.

Ildefonso, Bulacan covered by CLOA-T-6277 whose technical description is mentioned in Annex B of the Second Amended Complaint (p. 150, Record);

3. 999 square meters of the land of Sps. Serafin Valero & Teresita Gonzales situated at BMA, Balagtas, San Rafael, Bulacan covered by CLOA T-1612 whose technical description is mentioned in Annex C of the Second Amended Complaint (p. 151, Record);

4. 8,954 square meters of the land of Sps. Serafin Valero & Teresita Gonzales situated at BMA, Balagtas, San Rafael, Bulacan covered by CLOA T-1953 whose technical description is mentioned in Annex D of the Second Amended Complaint (p. 152, Record);

5. 9,784 square meters of the land of Sps. Cornelio Valderama & Remedios Cruz situated at Moronquillo, San Rafael, Bulacan covered by CLOA T-2700, whose technical description is mentioned in Annex E of the Second Amended Complaint (p. 153, Record);

6. 16,930 square meters of the land of the Heirs of Apolonio del Rosario situated at Salakot, San Miguel, Bulacan whose technical description is mentioned in Annex F of the Second Amended Complaint (p. 154, Record);

7. 15,706 square meters of the land of Danilo Brillo, Lauro Brillo, Wilfredo Brillo, Reynaldo Brillo, Thelma Brillo-Bordador and Ma. Victoria Brillo-Villarico situated at Garlang (Anyatam), San Ildefonso, Bulacan covered by CLOA T-7844 whose technical description is mentioned in Annex G of the Second Amended Complaint (p. 155, Record);

8. 16,608 square meters of the land of Spouses Modesta and Rudy Velasco situated at 499 San Juan St., Rio Vista, Sabang, Baliuag, Bulacan covered y (sic) T-90121 whose technical description is mentioned in Annex H of the Second Amended Complaint (p. 156, Record);

9. 1,841.76 square meters of the land of Rosemarie Fuk[o]sumi/Danilo Herrera situated at Sapang Palay, San

Jose del Monte, Bulacan whose technical description is mentioned in Annex I of the Second Amended Complaint (p. 157, Record);

10. 984.72 square meters of the land of Francisca Mateo-Eugenio situated at Tigbe, Norzagaray, Bulacan whose technical description is mentioned in Annex K of the Second Amended Complaint (p. 159, Record).

As a consequence, the Court hereby allows the National Power Corporation to remain in possession of the aforementioned areas which it had entered on December 16, 1997 and further orders it to pay the respective owners thereof the following just compensation, with legal interest from the taking of possession (Sec. 10, Rule 67 of [the] 1997 Rules of Civil Procedure), and after deducting the sums due the Government for unpaid real estate taxes and other charges:

OWNER	JUST COMPENSATION
1. Sps. Florimon Ileto & Rowena Nolasco	₱10,500.00 for the land covered by TCT No. 36242
	₱695,000.00 for the land covered by CLOA T-6277
2. Sps. Serafin Valero & Teresita Gonzales	₱249,750.00 for the land covered by CLOA-T-1612
	₱2,238,500.00 for the land covered by CLOA T-1953
3. Sps. Cornelio Valderama & Remedios Cruz	₱2,446,000.00 for the land covered by CLOA T-2700
4. Heirs of Apolonio del Rosario	₱4,232,500.00 for their land at Salakot, San Miguel, Bulacan
5. Danilo Brillo, *et al*[.]	₱3,926,500.00 for the land covered by CLOA T-7844
6. Sps. Modesta & Rudy Velasco	₱4,152,000.00 for their land at Sabang, Baliuag
7. Rosemarie Fukosumi Danilo Herrera	₱460,440.00 for their land at Sapang Palay, San Jose del Monte

8. Francisca Mateo Eugenio	₱246,180.00 for her land at Tigbe, Norzagaray

The plaintiff is further directed to pay the defendants the respective sums due them within sixty (60) days from the registration of this decision with the Registry of Deeds of Bulacan or other government agencies concerned and the issuance of the corresponding titles in the name of the plaintiff.

Let a copy of this Decision be furnished the Office of the Register of Deeds of Bulacan which is directed to register it as a memorandum on the titles concerned and to issue forthwith in favor of the plaintiff such titles over the expropriated areas described in the foregoing paragraphs.[11]

After the RTC denied NPC's motion for reconsideration, the Office of the Solicitor General (*OSG*), representing the NPC, filed an appeal with the CA, assailing the approval of the compromise agreement between the Heirs of Sofia Mangahas and the NPC, as well as the propriety of paying just compensation instead of merely the 10% easement fee prescribed in Section 3A of Republic Act No. 6395, as amended.

THE CA RULING

In its September 30, 2005 decision, the CA held that since the OSG had not been served with a copy of the partial decision that approved the compromise agreement between the NPC and the Heirs of Sofia Mangahas, this decision did not become final and executory, and could thus be properly questioned by the OSG.

The CA affirmed the validity of the compromise agreement between the Heirs of Sofia Mangahas and the NPC, noting that the NPC was represented by its duly authorized representative, Thomas Agtarap, the Vice President for Projects Management and Engineering Services, *via* NPC Board Resolution No. 97-246. The CA also upheld the ₱250.00 valuation fixed in the compromise agreement, on the ground that this is the amount of just compensation for residential lands listed by the NPC in

[11] CA *rollo*, pp. 74-76.

its Board Resolution No. 97-246, and the portion of land expropriated by the NPC is classified as residential land.

However, the CA held that the RTC erred when it fixed the valuation of the other expropriated lands at ₱250.00, distinguishing the lands owned by the Heirs of Sofia Mangahas from the other expropriated lands, based on their classification. **The CA thus computed the value of the other expropriated lands owned by the Sps. Ileto, Rosemarie Fukosumi or Danilo Herrera, and Francisca Mateo Eugenio, based on the schedule of fair market values attached to NPC Board Resolution No. 97-246**.

On the other expropriated lands, the CA found that it could not fix the value of just compensation of these properties because the schedule of fair market values for lands in their areas in Bulacan had not been submitted as evidence. **The CA thus instructed the RTC to fix the just compensation of these properties, based on the appropriate schedule of fair market values.**

Lastly, the CA held that the amounts that the NPC had already paid the landowners corresponding to the easement fee or tower occupancy fee should be deducted from the just compensation to be awarded to each landowner. The dispositive portion of the CA decision reads:

WHEREFORE, the decision appealed from is ***AFFIRMED*** with ***MODIFICATION***.

Let just compensation be paid to the following defendants, as follows:

Sps. Florimon Ileto & Rowena Nolasco	₱ 27,300.00
Sps. Florimon Ileto & Rowena Nolasco	₱166,800.00
Rosemarie Fuk[o]sumi/Danilo Herrera	₱919,008.30
Francisca Mateo Eugenio	₱ 56,129.04

The trial court is directed to compute the just compensation of the other defendants' properties based on the classification of each, in accordance with the schedule of fair market values of the National Power Corporation for the Northwestern Luzon Transmission Line,

less the initial fees paid to the defendants as easement fees or tower occupancy fees.[12] (emphases and italics supplied)

Danilo Brillo, *et al.*, Sps. Velasco, and Sps. Valero filed separate motions for reconsideration to assail the CA decision, which were all subsequently denied in the CA's February 14, 2006 resolution.

THE PRESENT PETITIONS

On April 6, 2006, Danilo Brillo, *et al.*, filed a petition for review on *certiorari* with the Court, docketed as **G.R. No. 171558**, assailing the CA's instruction to the RTC to apply the schedule of fair market values attached to NPC Board Resolution No. 97-246, to determine just compensation for their lands.

In turn, the OSG, representing the NPC, filed a petition for review on *certiorari* with the Court on April 7, 2006, docketed as **G.R. No. 169957**, to question the validity of the compromise agreement between the NPC and the Heirs of Sofia Mangahas. The OSG also claimed that the RTC erred when it decided to pay the landowners just compensation for the acquisition of the subject properties instead of paying the rate fixed for an aerial easement of right of way.

Lastly, the Sps. Ileto filed a petition for review on *certiorari*, docketed as G.R. No. 171583. However, the Court denied this petition for lack of merit in its April 17, 2006 Resolution.

On October 3, 2007, the Court issued a Resolution, ordering the consolidation of G.R. Nos. 169957 and 171558.

THE ISSUES

The OSG cites the following grounds in support of its petition in G.R. No. 169957:

I

The Compromise Agreement entered into between petitioner NPC and the heirs of Sofia Mangahas *vda. de* De Silva is null and void.

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[12] *Rollo*, G.R. No. 169957, p. 82.

II

The trial court erred in fixing the amount of just compensation purportedly for the acquisition of the property despite the fact that the NPC acquired only an aerial easement of right of way over the agricultural lands of respondents.

III

The easement fees paid to respondents heirs of Apolonio Del Rosario, Spouses Cornelio and Remedios Valderama, and Spouses Rudy and Modesta Velasco should be deducted from the correct amount of easement fee or just compensation to which they are entitled.[13]

On the other hand, the Brillos raise the following questions of law in their petition in G.R. No. 171558:

[a] Is the National Power Corporation Board Resolution No. 97-246 (Napocor Schedule of Fair Market Value) valid or constitutional and does it bind the lot owners whose land is now the subject of xxx expropriation proceeding filed by the said National Power Corporation.

x x x x x x x x x

[b] Can the Court of Appeals impose upon the trial court to follow the Napocor Board Resolution No. 97-246 in the determination of the just compensation of the petitioners' land, despite the fact that this resolution was never xxx presented during the trial nor mentioned, nor included in the decision rendered by the lower court nor raise[d] as an error by the Napocor in their appeal and totally disregard the result and findings of the trial court as to the just compensation of the petitioners' land which was reached after due hearing and recommendation of the court appointed commissioners.[14]

In sum, the issues for resolution are:

(1) WHETHER THE CA ERRED IN AFFIRMING THE VALIDITY OF THE COMPROMISE AGREEMENT BETWEEN THE NPC AND THE HEIRS OF SOFIA MANGAHAS;

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[13] *Id.* at 46-47.

[14] *Rollo,* G.R. No. 171558, pp. 16-17.

(2) WHETHER THE CA ERRED WHEN IT HELD THAT THE NPC HAD TO PAY JUST COMPENSATION TO THE LANDOWNERS INSTEAD OF A MERE AERIAL EASEMENT FEE FOR THE SUBJECT PROPERTIES; and

(3) WHETHER THE CA ERRED IN USING THE SCHEDULE OF FAIR MARKET VALUES ATTACHED TO NPC BOARD RESOLUTION NO. 97-246 TO DETERMINE THE JUST COMPENSATION OF THE OTHER SUBJECT PROPERTIES.

THE COURT'S RULING

We find the petition filed by the Brillos partially meritorious.

Procedural issue

We state at the outset that this Court already denied the petition for review on *certiorari* filed by the Sps. Ileto (docketed as G.R. No. 171583) in our Resolution dated April 17, 2006. This denial had the effect of making the assailed CA judgment final as to the Sps. Ileto, but ***only to prevent them from seeking any other affirmative relief from this Court.*** We note, that the NPC included the Sps. Ileto as respondents in the appeal they filed before this Court. They are thus parties to the case with respect to the issues raised in the NPC's appeal. Accordingly, the Court's determination on the issue raised by the NPC with respect to the propriety of the manner of computing just compensation will also be binding on the Sps. Ileto.[15]

Validity of the compromise agreement

In assailing the compromise agreement between the NPC and the Heirs of Sofia Mangahas on the ground that the valuation is based on the erroneous classification of the land as residential, the OSG essentially asks this Court to determine whether the land subject of the assailed compromise agreement is residential or agricultural in nature. *This is clearly a factual question*, requiring as it does a review of the evidence introduced in, and

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[15] See *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 20-21.

considered by, the tribunals below.[16] Thus, this question is not reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court. While jurisprudence has established several exceptions to this rule,[17] we find that none of them apply under the present circumstances.

Moreover, it is a settled doctrine that a compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and cannot be disturbed except for vices of consent or forgery. We said in *Republic v. Florendo*:[18]

> When a compromise agreement is given judicial approval, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is a determination of the controversy and has the force and effect of a judgment. **It is immediately executory and not appealable, except for vices of consent, forgery, fraud, misrepresentation and coercion.** Thus, although a compromise agreement has the effect and authority of *res judicata* upon the parties even without judicial approval, no execution may issue until it has

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[16] See *Puse v. Delos Santos-Puse*, G.R. No. 183678, March 15, 2010, 615 SCRA 500.

[17] These exceptions are as follows:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011), 650 SCRA 656, 660.

[18] G.R. No. 166866, March 27, 2008, 549 SCRA 527, 536.

received the approval of the court where the litigation is pending and compliance with the terms of the agreement is thereupon decreed. [emphasis ours]

The pleadings submitted in the present case reveal that there has never been any allegation that the assailed compromise agreement suffers from any of the vices of consent or forgery. Neither has the OSG ever claimed that the NPC was defrauded or coerced into agreeing to the compromise agreement. There is, evidently, no legal basis to question the validity of the compromise agreement.

Lastly, we reiterate that compromises are favored and encouraged by the courts,[19] and parties are bound to abide by them in good faith.[20] Since compromise agreements have the force of law between the parties, no party may discard them unilaterally.[21] This is especially true under the present circumstances, where the NPC has already enjoyed the benefits of the assailed compromise agreement, having been in possession of the subject land since 1998.

NPC's power of eminent domain

Republic Act No. 6395, entitled "An Act Revising the Charter of the National Power Corporation," grants the NPC the power to acquire "property incident to, or necessary, convenient or proper to carry out the purposes for which [it] was created,"[22] namely: the construction of generation and transmission facilities to provide electricity for the entire country.

In an effort to streamline the NPC's exercise of this power, Section 3A of Republic Act No. 6395 provides:

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[19] *Olaybar v. NLRC*, G.R. No. 108713, October 28, 1994, 237 SCRA 819, 823.

[20] *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 219, citing *Ramnani v. Court of Appeals*, 413 Phil. 195, 207 (2001).

[21] *Hernaez v. Yan Kao*, 123 Phil. 1147, 1153 (1966).

[22] Section 3(h) of RA No. 6395, as amended.

Section 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, **only a right-of-way easement** thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

x x x x x x x x x

(b) **With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value** declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor.

The NPC, relying on the above-quoted provision, argues that the CA erred when it ordered the payment of just compensation for the properties in question, given that most of the properties were subject only to an aerial easement of right of way, with the NPC requiring the use of the area above the subject lands for its transmission lines.

We have already established in a number of cases[23] the flaw behind the NPC's argument. At the heart of this argument is the mistaken assumption that what are involved are mere liens on the property in the form of aerial easements. While it may be true that the transmission lines merely pass over the affected properties, the easement imposes the additional limitation that the landowners are prohibited from constructing any improvements or planting any trees that exceed three (3) meters within the aerial right of way area. This prohibition clearly interferes with the landowners' right to possess and enjoy their properties.

As we explained in *National Power Corporation v. Manubay Agro-Industrial Development Corporation:*[24]

> Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. *Republic v. PLDT* held thus:
>
> > "x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way."

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[23] See *National Power Corporation v. Vda. De Capin*, G.R. No. 175176, October 17, 2008, 569 SCRA 648; *National Power Corporation v. Bagui*, G.R. No. 164964, October 17, 2008, 569 SCRA 401; *National Power Corporation v. Bongbong*, G.R. No. 164079, April 3, 2007, 520 SCRA 290; *National Power Corp. v. Judge Paderanga*, 502 Phil. 722 (2005); and *National Power Corporation v. Chiong*, G.R. No. 152436, June 20, 2003, 404 SCRA 527.

[24] G.R. No. 150936, August 18, 2004, 437 SCRA 60.

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.[25] [citations omitted]

Apart from interfering with the attributes of ownership, we have articulated in our observation in *National Power Corp. v. Sps. Gutierrez*[26] that these transmission lines, because of the high-tension current that passes through them, pose a danger to the lives and limbs of those in the surrounding areas, and, thus, serve to limit the activities that can be done on these lands.

We also declared in *National Power Corporation v. Purefoods Corporation*[27] that Section 3A of Republic Act No. 6395, as amended (which provides a fixed formula in the computation of just compensation in cases of acquisition of easements of right of way) is not binding upon this Court. This is in keeping with the established rule that the determination of "just compensation" in eminent domain cases is a judicial function.[28]

Determination of just compensation

Having established the necessity of paying the landowners just compensation for the affected properties instead of mere easement fees, we move on to the issue of the amount of just compensation.

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[25] *Id.* at 67-68.

[26] 271 Phil. 1 (1991).

[27] G.R. No. 160725, September 12, 2008, 565 SCRA 17.

[28] *National Power Corporation v. Tuazon*, G.R. No. 193023, June 29, 2011, 653 SCRA 84.

a) CA valuation is not supported by evidence

In the present case, the CA set aside the RTC ruling that fixed the just compensation of all the subject properties at ₱250.00 per square meter, and held that since the RTC had accepted the values in the Schedule of Fair Market Values contained in NPC Board Resolution No. 97-246 as correct, it should have applied these values in determining the just compensation of the subject lands.[29]

The Brillos disagree with this point, arguing that the determination of just compensation is a judicial function that cannot be left to the discretion of the expropriating agency. To counter the CA's statement that the RTC accepted the appraised values contained in the Schedule of Fair Market Values of NPC Board Resolution No. 97-246, the Brillos point out that there is nothing in the RTC decision that would indicate that it accepted these values. The Brillos add that NPC Board Resolution No. 97-246 was never even presented during the trial or offered in evidence as regards the validity of the values contained therein. Finally, the fact that the RTC constituted a team of commissioners to determine the just compensation of the subject properties directly contradicts the CA's ruling that the RTC had accepted the values in the Schedule of Fair Market Values appended to NPC Board Resolution No. 97-246. We find the Brillos' arguments meritorious.

The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government.[30] We already established in *Export Processing Zone Authority v. Dulay*[31] that any valuation for just compensation

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[29] *Rollo*, G.R. No. 169957, p. 79.

[30] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, July 23, 2009, 593 SCRA 619, 622, citing *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, April 29, 1987, 149 SCRA 305, 316.

[31] *Supra*.

laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation, but it may not substitute the courts' own judgment as to what amount should be awarded and how to arrive at such amount. We said:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations[,] but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[32]

The CA accepted as correct all the values set forth in the Schedule of Fair Market Values appended to NPC Board Resolution No. 97-246 on the sole ground that they had already been accepted by the trial court. However, after carefully reviewing the RTC's decision dated August 20, 1999, we find nothing there to indicate that the court *a quo* accepted these values as accurate. As a matter of fact, the subject board resolution was not even mentioned in the RTC's decision. The only time NPC Board Resolution No. 97-246 was mentioned was in the partial decision of the RTC, which dealt exclusively with the land owned by the Heirs of Sofia Mangahas, and thus, it cannot be applied to the other expropriated properties.

The "just"-ness of just compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.[33] The CA attempts to provide the legal basis for the Schedule of Fair Market Values, noting that it is based on the joint appraisal report on fair market value of

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[32] *Id.* at 316.

[33] *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010, 638 SCRA 660.

lands by Cuervo Appraisal, Inc., Development Bank of the Philippines, and the Land Bank of the Philippines, and the fair market values established by the respective Provincial Appraisal Committee of Zambales, Pangasinan, Nueva Ecija, Pampanga, and Bulacan, as well as the City Appraisal Committee of San Carlos and Cabanatuan.[34]

However, as correctly observed by the Brillos, the determination of just compensation cannot be left to the self-serving discretion of the expropriating agency. The unjustness of the CA's ruling is all the more apparent when we consider the undeniable fact that since the fair market values appended to NPC Board Resolution No. 97-246 were not presented before the lower court, the affected landowners were never given the opportunity to present their evidence to counter these valuations. In these lights, the CA gravely erred in relying solely on NPC Board Resolution No. 97-246 to determine the just compensation due the landowners.

b) RTC valuation not supported by evidence

Similarly, we cannot affirm the RTC's decision in fixing just compensation of all the subject properties at ₱250.00 per square meter, for lack of legal or factual basis.

In *National Power Corporation v. Manubay Agro-Industrial Development Corporation*,[35] we defined just compensation as:

> [T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

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[34] *Rollo*, G.R. No. 171558, p. 40.

[35] *Supra* note 24, at 68.

In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." [**The market value] is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee.** However, these values may serve as factors to be considered in the judicial valuation of the property. [citations omitted, emphasis ours]

To determine the just compensation to be paid to the landowner, the nature and character of the land at the time of its taking is the principal criterion.[36]

In the present case, the RTC made a determination that all the properties subject of the NPC's expropriation complaint, regardless of their location or classification, should be valued at ₱250.00 per square meter. In arriving at this valuation, the RTC explained, thus:

In order to determine the issue of just compensation, the Court constituted a team of three commissioners chaired by Atty. Aristan Tayag with Atty. Luis Manuel Bugayong as representative of the plaintiff and Barangay Captain Manuel Villacorta as representative of the landowners. Eventually, the team of commissioners submitted its report on March 4, 1999 adopting the recommendation of just compensation in a similar case for eminent domain docketed as Civil Case No. 690-M-97 of the Regional Trial Court of Bulacan wherein it set the just compensation for agricultural land at ₱265.00 per square meter, residential land at ₱1,540.00 per square meter, and commercial land at ₱2,300.00 per square meter. However, considering that a partial decision was already rendered wherein the lands affected were valued at ₱250.00 per square meter, the team recommended the latter amount for the remaining properties subject of expropriation.

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[36] *Id.* at 69.

It is apparent from this RTC explanation that Commissioner Tayag and Commissioner Villacorta based their recommendation for just compensation of all the properties in question solely on the value fixed in the compromise agreement between the NPC and the Heirs of Sofia Mangahas. But in accepting this recommendation, ***the RTC failed to take into consideration the fact that the property subject of the compromise agreement is located in Tigbe, Norzagaray, Bulacan, while the other properties subject of the RTC's decision are located in other municipalities in Bulacan***.

Even worse, the commissioners' recommended valuation is not supported by any corroborative evidence, such as sworn declarations of realtors in the area concerned and tax declarations or zonal valuation from the Bureau of Internal Revenue. It does not even appear from the records that the commissioners conducted any ocular inspections to determine the location, nature, character, condition, and other specific features of the expropriated lands that should have been taken into account before making their recommendation.

Although the determination of just compensation lies within the trial court's discretion, it should not be done arbitrarily or capriciously. The decision of the trial court must be based on all established rules, correct legal principles, and competent evidence. The courts are proscribed from basing their judgments on speculations and surmises.[37]

In light of the foregoing, we find that the trial court arbitrarily fixed the amount of just compensation due the landowners at ₱250.00 per square meter. Thus, the Court has no alternative but to remand the case to the court of origin for the proper determination of just compensation.

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[37] *National Power Corporation v. Bongbong*, *supra* note 23.

As a final point, we remind the court of origin that in computing the just compensation due the landowners for their expropriated properties, the amounts already received from the NPC should be deducted from the valuation. These amounts are subject, however, to legal interest, to be computed from the time the NPC took possession of the properties on December 16, 1997.[38]

WHEREFORE, premises considered, the Court renders the following judgment in the petitions at bar:

1) In **G.R. No. 169957**, the Court **DENIES** the petition for review on *certiorari* filed by the National Power Corporation, and **AFFIRMS** the decision of the Court of Appeals in CA-G.R. CV No. 72723 dated September 30, 2005, insofar as it held that the compromise agreement between the National Power Corporation and the Heirs of Sofia Mangahas is valid.

2) In **G.R. No. 171558**, the Court **PARTIALLY GRANTS** the petition for review on *certiorari* filed by Danilo Brillo, *et al.*, and **REMANDS** the case to the Regional Trial Court, Branch 17 of Malolos, Bulacan for the proper determination of just compensation of the expropriated properties, subject to legal interest from the time the National Power Corporation took possession of the properties. No costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[38] This is pursuant to Section 10, Rule 67 of the Rules of Court, which provides:

Section 10. *Rights of plaintiff after judgment and payment.* – Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, **with legal interest thereon from the taking of the possession of the property**, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of Section 2 hereof. [emphasis ours]

SECOND DIVISION

[G.R. No. 170038. July 11, 2012]

CHINA BANKING CORPORATION, *petitioner, vs.* **SPS. HARRY CIRIACO and ESTHER CIRIACO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; EXPLAINED; REQUIREMENTS FOR THE ISSUANCE OF A WRIT OF INJUNCTION.— A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. It is the "strong arm of equity," an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties. Section 3 and 5, Rule 58 of the 1997 Rules of Civil Procedure on preliminary injunction, pertinent to this case, provide the requirements for the issuance of a writ of preliminary injunction or a TRO x x x. From the provisions, it appears clearly that before a writ of preliminary injunction may be issued, a clear showing must be made that there exists a right to be protected and that the acts against which the writs is to be directed are violative of an established right. The holding of a hearing, where both parties can introduce evidence and present their side, is also required before the courts may issue a TRO or an injunctive writ.

2. ID.; ID.; ID.; GRANT OR DENIAL OF INJUNCTIVE RELIEF, WHEN MAY BE SET ASIDE.— Generally, an RTC's decision to grant or to deny injunctive relief will not be set aside on appeal, unless the trial court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction; fails to consider and make a record of the factors relevant to its determination; relies on clearly erroneous factual findings; considers clearly irrelevant or improper factors; clearly gives to much weight to one factor; relies on erroneous conclusions of law or equity; or misapplies its factual or legal conclusions. In this case, we find that the RTC abbreviated the proceedings and precipitately granted

the respondents' application for injunctive relief. The RTC did not conduct a hearing for reception of a "sampling" of the parties' respective evidence to give it an idea of the justification for its issuance pending the decision of the case on the merits. It failed to make any factual finding to support the issuance of the writ of preliminary injunction since it did not conduct any hearing on the application for the issuance of the writ of preliminary injunction or TRO. The RTC conducted the March 22, 2000 and April 24, 2000 hearings on the respondents' omnibus motion only x x x. In fact, a perusal of the August 1, 2000 order shows that the RTC granted the respondents' application for a writ of preliminary injuction based only on the respondents' **unsubstantiated** allegations x x x. Clearly, the respondents' right to injunctive relief has not been clearly and unmistakably demonstrated. The respondents have not presented evidence, testimonial or documentary, other than the bare allegations contained in their pleadings, to support their claim of fraud that brings about the irreparable injury sought to be avoided by their application for injunctive relief. Thus, the RTC's grant of the writ of preliminary injunction in favor of the respondents, despite the lack of any evidence of a clear and unmistakable right on their part, constitutes grave abuse of discretion amounting to lack of jurisdiction.

3. ID.; ID.; ID.; SHOULD BE GRANTED ONLY WHEN THE COURT IS FULLY SATISFIED THAT THE LAW PERMITS IT AND THE EMERGENCY DEMANDS IT.— Every court should remember that an injunction is a limitation upon the freedom of the defendant's action and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it; no power exists whose exercise is more delicate, which requires greater caution and deliberation, or is more dangerous in a doubtful case, than the issuance of an injunction.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for petitioner.
Bartolome Baldas, Jr. for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by China Banking Corporation (*petitioner*) to challenge the April 15, 2005 decision[2] and the October 10, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 64349. The CA decision denied the petitioner's petition for *certiorari* for lack of merit. The CA resolution denied the petitioner's subsequent motion for reconsideration.

FACTUAL BACKGROUND

On March 11, 1996, Spouses Harry and Esther Ciriaco (*respondents*) obtained a ₱1,500,000.00 loan[4] from the petitioner, secured by a real estate mortgage[5] over their 526-square meter land in La Trinidad, Benguet, covered by Transfer Certificate of Title (*TCT*) No. T-21710.[6]

When the respondents defaulted in the payment of their loan, the petitioner extrajudicially foreclosed[7] the mortgaged property and sold it at public auction where the petitioner emerged as the highest bidder. The Sheriff executed a Certificate of Sale[8] in the petitioner's favor on March 11, 1998. The Register of Deeds annotated the Certificate of Sale on TCT No. T-21710 on March 24, 1998.[9]

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Ruben T. Reyes (retired member of this Court) and Mariano C. del Castillo (now a member of this Court); *rollo*, pp. 9-19.

[3] *Id.* at 23.

[4] *Id.* at 124-125.

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

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

[7] *Id.* at 136-138.

[8] *Id.* at 139-140.

[9] *Id.* at 134.

On March 23, 1999, a day before the expiration of the redemption period, the respondents filed a complaint with the Regional Trial Court (*RTC*) of La Trinidad, Benguet, Branch 8, for Injunction to enjoin the consolidation of title in the petitioner's favor, assailing the redemption price of the foreclosed property.[10]

On July 26, 1999, the RTC dismissed the complaint for being moot due to the consolidation of title in the petitioner's favor on March 31, 1999, "without prejudice to the filing of an appropriate action."[11]

On August 17, 1999, the respondents filed a complaint with the RTC of La Trinidad, Benguet, Branch 63, for Cancellation of Consolidation of Ownership over a Real Property, Specific Performance, and Damages.[12] They again questioned the redemption price of the foreclosed property.

On September 23, 1999, the petitioner filed its Answer with Compulsory Counterclaim, denying the allegations of the respondents' complaint.[13]

On March 16, 2000, the respondents filed an Omnibus Motion for Leave to Amend Complaint and to Admit Attached Amended Complaint as well as Motion for Hearing on the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (*TRO*), with a notice of hearing on the omnibus motion scheduled on March 22, 2000.[14] The respondents sought to amend the complaint to allege further that fraud attended the consolidation of title in the petitioner's favor and to include a prayer for the issuance of a writ of preliminary injunction and/or TRO to enjoin the petitioner from disposing of the foreclosed property or taking possession thereof.

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[10] Docketed as Civil Case No. 99-CV-1353; *id.* at 141-145.

[11] *Id.* at 186.

[12] Docketed as Civil Case No. 99-CV-1395; *id.* at 188-192.

[13] *Id.* at 225-234.

[14] *Id.* at 235-237.

At the March 22, 2000 hearing, the RTC gave the petitioner ten (10) days within which to file its comment to the respondents' omnibus motion, and set the hearing on the omnibus motion on April 24, 2000.[15]

The petitioner subsequently filed its Opposition to the omnibus motion,[16] arguing that the respondents' further allegation of fraud changes the theory of the case which is not allowed, and that the respondents failed to show that they have a clear right in *esse* that should be protected by an injunctive relief.

At the April 24, 2000 hearing on the omnibus motion, the RTC gave the respondents ten (10) days to file their comment to the petitioner's opposition, and gave the petitioner ten (10) days to file its reply to the respondents' comment.[17] The respondents did not file a reply to the petitioner's opposition.

THE RTC's RULING

In its August 1, 2000 order, the RTC admitted the amended complaint and directed the petitioner to file an answer. It noted that the 1997 Rules of Civil Procedure relaxed the rule on amendments to pleadings, subject only to the limitation that they are not dilatory. It also granted the respondents' application for the issuance of a writ of preliminary injunction and/or TRO, since the respondents were entitled to prove their claim of fraud, and their claim that the interests and penalty charges imposed by the bank had no factual basis.[18]

The RTC denied[19] the petitioner's subsequent motion for reconsideration.[20] On August 24, 2000, the RTC issued a writ

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[15] *Id.* at 276.

[16] *Id.* at 277-284.

[17] *Id.* at 285.

[18] *Id.* at 286-288.

[19] March 7, 2001 order; *id.* at 311-312.

[20] *Id.* at 289-304.

of preliminary injunction, restraining the petitioner from disposing of the foreclosed property or taking possession thereof.[21]

The petitioner then filed a Rule 65 petition for *certiorari* with the CA, arguing that the RTC gravely abused its discretion in precipitately granting the respondents' application for the issuance of a writ of preliminary injunction without any hearing.[22]

THE CA's RULING

In its April 15, 2005 decision, the CA denied the petition. It found that the RTC did not commit any grave abuse of discretion since it gave the parties ample opportunity to present their respective positions on the propriety of an injunctive writ during the hearings on March 22, 2000 and April 24, 2000, and that the petitioner was also heard on its motion for reconsideration of the August 1, 2000 order.[23]

When the CA denied[24] the petitioner's motion for reconsideration,[25] the latter filed the present petition.[26]

THE PETITION

The petitioner argues that the RTC granted the respondents' application for the issuance of a writ of preliminary injunction and/or TRO, despite the lack of a hearing thereon; the RTC conducted hearings on the respondents' omnibus motion only, not on the respondents' application for the issuance of a writ of preliminary injunction and/or TRO, which has not yet been set for hearing.

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[21] *CA rollo*, p. 44.

[22] *Rollo*, pp. 314-348.

[23] *Supra*, note 2.

[24] *Supra*, note 3.

[25] *Rollo*, pp. 66-80.

[26] *Id.* at 35-46.

THE CASE FOR THE RESPONDENTS

The respondents submit that the RTC gave the petitioner ample opportunity to be heard on his opposition to the respondents' application for the issuance of a writ of preliminary injunction and/or TRO at the March 22, 2000 and April 24, 2000 hearings, and on the petitioner's motion for reconsideration of the August 1, 2000 order.

THE ISSUE

The core issue boils down to whether the CA erred in finding that the RTC did not commit any grave abuse of discretion in granting the respondents' application for the issuance of a writ of preliminary injunction and/or TRO.

OUR RULING

We find merit in the petition.

A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts.[27] It is the "strong arm of equity,"[28] an extraordinary peremptory remedy that must be used with extreme caution,[29] affecting as it does the respective rights of the parties.[30]

Sections 3 and 5, Rule 58 of the 1997 Rules of Civil Procedure on preliminary injunction, pertinent to this case, provide the requirements for the issuance of a writ of preliminary injunction or a TRO:

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[27] *REVISED RULES OF CIVIL PROCEDURE*, Rule 58, Section 1.

[28] *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 575.

[29] *Dejuras v. Villa*, G.R. No. 173428, November 22, 2010, 635 SCRA 569, 578-579.

[30] *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 345.

SEC. 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

SEC. 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or persons sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case

is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.[31]

From the provisions, it appears clearly that before a writ of preliminary injunction may be issued, a clear showing must be made that there exists a right to be protected and that the acts against which the writ is to be directed are violative of an established right.[32] The holding of a hearing, where both parties can introduce evidence and present their side, is also required before the courts may issue a TRO or an injunctive writ.[33]

Generally, an RTC's decision to grant or to deny injunctive relief will not be set aside on appeal, unless the trial court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction; fails to consider and make a record of the factors relevant to its determination; relies on clearly erroneous factual findings; considers clearly irrelevant or improper factors; clearly gives too much weight to one factor; relies on erroneous conclusions of law or equity; or misapplies its factual or legal conclusions.[34]

In this case, we find that the RTC abbreviated the proceedings and precipitately granted the respondents' application for injunctive relief. The RTC did not conduct a hearing for reception of a "sampling" of the parties' respective evidence

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[31] Incorporated from Administrative Circular No. 20-95, *Re: Special Rules for Temporary Restraining Orders and Preliminary Injunctions* dated September 12, 1995.

[32] *Presidential Commission on Good Government v. Sandiganbayan (Second Division)*, G.R. No. 152500, September 14, 2011, 657 SCRA 477, 494.

[33] *Fortune Life Insurance Company, Inc. v. Luczon, Jr.*, A.M. No. RTJ-05-1901, November 30, 2006, 509 SCRA 65, 71-72. See also *Newsounds Broadcasting Network, Inc. v. Dy*, G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 357.

[34] *Ngo v. Allied Banking Corporation*, G.R. No. 177420, October 6, 2010, 632 SCRA 391, 397; and *Almeida v. Court of Appeals*, 489 Phil. 648, 663-664 (2005).

to give it an idea of the justification for its issuance pending the decision of the case on the merits.[35] It failed to make any factual finding to support the issuance of the writ of preliminary injunction since it did not conduct any hearing on the application for the issuance of the writ of preliminary injunction or TRO. The RTC conducted the March 22, 2000 and April 24, 2000 hearings on the respondents' omnibus motion only – whether to admit the amended complaint and whether to hold a hearing on the respondents' application for a writ of preliminary injunction.

In fact, a perusal of the August 1, 2000 order shows that the RTC granted the respondents' application for a writ of preliminary injunction based only on the respondents' **unsubstantiated** allegations, thus:

> Going now to the application for a writ of preliminary injunction and/or temporary restraining order, the plaintiffs aver that a writ should issue forbidding the defendant bank from taking possession of the subject property and disposing of the same beyond recovery by them tending to make any favorable judgment in their favor ineffective.
>
> The Complaint alleges that had defendant bank not committed fraud, plaintiffs could have redeemed the property subject matter hereof. Furthermore, considering that the redemption price of the property foreclosed appears to have been bloated, thereby making it difficult for plaintiffs to redeem their property, to deny the application would in effect be condoning the act of the defendant bank in imposing interests and penalty charges which plaintiffs claim as not having been agreed upon by them.
>
> In view of the foregoing, plaintiffs are entitled to prove their claim of fraud and their claim that the interests and penalty charges imposed by the bank have no factual basis.[36]

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[35] *Recto v. Escaler,* G.R. No. 173179, October 20, 2010, 634 SCRA 180, 191; and *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company,* 500 Phil. 438, 461 (2005).

[36] *Rollo,* p. 287.

Clearly, the respondents' right to injunctive relief has not been clearly and unmistakably demonstrated. The respondents have not presented evidence, testimonial or documentary, other than the bare allegations contained in their pleadings, to support their claim of fraud that brings about the irreparable injury sought to be avoided by their application for injunctive relief. Thus, the RTC's grant of the writ of preliminary injunction in favor of the respondents, despite the lack of any evidence of a clear and unmistakable right on their part, constitutes grave abuse of discretion amounting to lack of jurisdiction.

Every court should remember that an injunction is a limitation upon the freedom of the defendant's action and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it;[37] no power exists whose exercise is more delicate, which requires greater caution and deliberation, or is more dangerous in a doubtful case, than the issuance of an injunction.[38]

WHEREFORE, the petition is **GRANTED**. The April 15, 2005 decision and the October 10, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 64349 are **REVERSED** and **SET ASIDE**. The August 1, 2000 and March 7, 2001 orders of the Regional Trial Court of La Trinidad, Benguet, Branch 63 are **MODIFIED**. The Writ of Preliminary Injunction issued in Civil Case No. 99-CV-1395 is declared **VOID** and is therefore **SET ASIDE**.

Costs against the respondents.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[37] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 90; *Tanduay Distillers, Inc. v. Ginebra San Miguel, Inc.*, G.R. No. 164324, August 14, 2009, 596 SCRA 114, 135-136.

[38] *Pahila-Garrido v. Tortogo, supra* note 28 at 578; and *Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381 and 170889, August 26, 2008, 563 SCRA 254, 280.

SECOND DIVISION

[G.R. No. 171337. July 11, 2012]

BENJAMIN CUA (CUA HIAN TEK), *petitioner, vs.* **WALLEM PHILIPPINES SHIPPING, INC. and ADVANCE SHIPPING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; MOTION TO DISMISS ON GROUND OF PRESCRIPTION; COURTS ARE EMPOWERED TO DISMISS ACTIONS ON THE BASIS OF PRESCRIPTION EVEN IF IT IS NOT RAISED BY THE DEFENDANT SO LONG AS THE FACTS SUPPORTING THIS GROUND ARE EVIDENT FROM THE RECORDS.— Section 1, Rule 16 of the Rules of Court enumerates the grounds on which a motion to dismiss a complaint may be based, and the prescription of an action is included as one of the grounds under paragraph (f). The defendant may either raise the grounds in a motion to dismiss or plead them as an affirmative defense in his answer. The failure to raise or plead the grounds generally amounts to a waiver, except if the ground pertains to (1) lack of jurisdiction over the subject matter, (2) *litis pendentia*, (3) *res judicata*, or (4) prescription. If the facts supporting any of these four listed grounds are apparent from the pleadings or the evidence on record, the courts may consider these grounds *motu proprio* and accordingly dismiss the complaint. Accordingly, no reversible error may be attributed to the CA in considering prescription as a ground to dismiss Cua's action despite Wallem's supposed waiver of the defense. The Court, therefore, need not resolve the question of whether Wallem actually waived the defense of prescription; an inquiry into this question is useless, as courts are empowered to dismiss actions on the basis of prescription even if it is not raised by the defendant so long as the facts supporting this ground are evident from the records. In the present case, what is decisive is whether the pleadings and the evidence support a finding that Cua's claim has prescribed, and it is on this point that we disagree with the CA's findings. We find that the CA failed to appreciate the admissions made by the respondents in their pleadings that negate a finding of prescription of Cua's claim.

2. COMMERCIAL LAW; CARRIAGE OF GOODS BY SEA ACT (COGSA); AN AGREEMENT BETWEEN THE CARRIER AND SHIPPER/CONSIGNEE EXTENDING THE ONE-YEAR PERIOD TO FILE A CLAIM FOR LOSS OR DAMAGE TO THE CARGO IS RECOGNIZED AS VALID.— The COGSA is the applicable law for all contracts for carriage of goods by sea to and from Philippine ports in foreign trade; it is thus the law that the Court shall consider in the present case since the cargo was transported from Brazil to the Philippines. Under **Section 3(6) of the COGSA**, the carrier is discharged from liability for loss or damage to the cargo "unless the suit is brought within **one year after delivery of the goods** or the date when the goods should have been delivered." Jurisprudence, however, recognized the validity of an agreement between the carrier and the shipper/consignee extending the one-year period to file a claim.

3. REMEDIAL LAW; PLEADINGS AND PRACTICES; THE ALLEGATION OF AN AGREEMENT EXTENDING THE PERIOD TO FILE AN ACTION IS A MATERIAL AVERMENT THAT MUST BE SPECIFICALLY DENIED BY THE DEFENDANT, OTHERWISE, THE ALLEGATION IS DEEMED ADMITTED.— The vessel MV *Argo Trader* arrived in Manila on July 8, 1989; Cua's complaint for damages was filed before the RTC of Manila on November 12, 1990. Although the complaint was clearly filed beyond the one-year period, Cua additionally alleged in his complaint (under paragraph 11) that **"[t]he defendants x x x agreed to extend the time for filing of the action up to November 12, 1990."** The allegation of an agreement extending the period to file an action in Cua's complaint is a material averment that, under Section 11, Rule 8 of the Rules of Court, must be specifically denied by the respondents; otherwise, the allegation is deemed admitted. A specific denial is made by specifying each material allegation of fact, the truth of which the defendant does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, *together with the matter which he relied upon to support the denial*. **A review of the pleadings submitted by the respondents**

discloses that they failed to specifically deny Cua's allegation of an agreement extending the period to file an action to November 12, 1990. Wallem's motion to dismiss simply referred to the fact that Cua's complaint was filed more than one year from the arrival of the vessel, but it did not contain a denial of the extension. Advance Shipping's motion to dismiss, on the other hand, focused solely on its contention that the action was premature for failure to first undergo arbitration. While the joint answer submitted by the respondents denied Cua's allegation of an extension, they made no further statement other than a bare and unsupported contention that Cua's "complaint is barred by prescription and/or laches[.]" The respondents did not provide in their joint answer any factual basis for their belief that the complaint had prescribed.

4. ID.; ID.; ID.; THE PETITIONER'S ALLEGATION OF AN EXTENSION OF THE PERIOD TO FILE AN ACTION WAS CONSIDERED AS AN ADMITTED FACT FOR FAILURE OF THE RESPONDENTS TO SPECIFICALLY DENY THE AGREEMENT ON THE SAME.— We cannot consider the respondents' discussion on prescription in their Memorandum filed with the RTC, since their arguments were based on Cua's supposed failure to comply with Article 366 of the Code of Commerce, not Section 3(6) of the COGSA – the relevant and material provision in this case. Article 366 of the Code of Commerce requires that a claim be made with the carrier within 24 hours from the delivery of the cargo; the respondents alleged that they were informed of the damage and shortage only on September 13, 1989, months after the vessel's arrival in Manila. Since the COGSA is the applicable law, the respondents' discussion to support their claim of prescription under Article 366 of the Code of Commerce would, therefore, not constitute a refutation of Cua's allegation of extension. Given the respondents' failure to specifically deny the agreement on the extension of the period to file an action, the Court considers the extension of the period as an admitted fact.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Benjamin Santos & Ray Montri C. Santos for respondents.

D E C I S I O N

BRION, *J.*:

Petitioner Benjamin Cua invokes the Court's power of review, through a petition for review on *certiorari*,[1] to set aside the decision dated May 16, 2005[2] and the resolution dated January 31, 2006[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 53538. The CA rulings reversed the decision dated December 28, 1995[4] of the Regional Trial Court (*RTC*), Branch 31, Manila, in Civil Case No. 90-55098, where the RTC ordered the respondents, Wallem Philippines Shipping, Inc. (*Wallem*) and Advance Shipping Corporation (*Advance Shipping*), jointly and severally liable to pay damages in favor of Cua.

THE FACTS

On November 12, 1990, Cua filed a civil action for damages against Wallem and Advance Shipping before the RTC of Manila.[5] Cua sought the payment of ₱2,030,303.52 for damage to 218 tons and for a shortage of 50 tons of shipment of Brazilian Soyabean consigned to him, as evidenced by Bill of Lading No. 10. He claimed that the loss was due to the respondents' failure to observe extraordinary diligence in carrying the cargo. Advance Shipping (a foreign corporation) was the owner and manager of M/V *Argo Trader* that carried the cargo, while Wallem was its local agent.

Advance Shipping filed a motion to dismiss the complaint,[6] assailing the RTC's jurisdiction over Cua's claim; it argued

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 3-11.

[2] Penned by Associate Justice Santiago Javier Ranada, and concurred in by Associate Justices Rebecca de Guia Salvador and Mario L. Guariña III; *id.* at 14-20.

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

[4] Penned by Judge Regino T. Veridiano II; CA *rollo*, pp. 110-115.

[5] RTC records, pp. 1-3.

[6] *Id.* at 11-20.

that Cua's claim should have first been brought to arbitration. Cua opposed Advance Shipping's argument; he contended that he, as a consignee, was not bound by the Charter Party Agreement, which was a contract between the ship owner (Advance Shipping) and the charterers.[7] The RTC initially deferred resolving the question of jurisdiction until after trial on the merits,[8] but upon motion by Advance Shipping,[9] the RTC ruled that Cua was not bound by the arbitration clause in the Charter Party Agreement.[10]

In the meantime, Wallem filed its own motion to dismiss,[11] raising the sole ground of prescription. Section 3(6) of the Carriage of Goods by Sea Act (*COGSA*) provides that "the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought **within one year after delivery of the goods**." Wallem alleged that the goods were delivered to Cua on August 16, 1989, but the damages suit was instituted only on November 12, 1990 – more than one year than the period allotted under the COGSA. Since the action was filed beyond the one year prescriptive period, Wallem argued that Cua's action has been barred.

Cua filed an opposition to Wallem's motion to dismiss, denying the latter's claim of prescription.[12] Cua referred to the **August 10, 1990 telex** message sent by Mr. A.R. Filder of Thomas Miller,[13]

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[7] *Id.* at 45-55.

[8] RTC order dated June 17, 1991; *id.* at 58.

[9] *Id.* at 63-69

[10] RTC order dated July 3, 1992; *id.* at 126.

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

[12] *Id.* at 102-104.

[13] Thomas Miller is "a provider of business services to mutuals, specialist insurance sectors, asset management and wealth creation vehicles," and "provide[s] insurance services to the owners of about half of the world's shipping tonnage, as well as to leading container operators, freight forwarders, terminal operators, ship agents and ship brokers"; http://www.thomasmiller.com/who-we-are/, last visited on May 14, 2012.

manager of the UK P&I Club,[14] which stated that Advance Shipping agreed to extend the commencement of suit for 90 days, from August 14, 1990 to November 12, 1990; the extension was made with the concurrence of the insurer of the vessel, the UK P&I Club. A copy of the August 10, 1990 telex was *supposedly* attached to Cua's opposition.

On February 11, 1992, Wallem filed an omnibus motion,[15] withdrawing its motion to dismiss and adopting instead the arguments in Advance Shipping's motion to dismiss. It made an express reservation, however, that it was not waiving "the defense of prescription and will allege as one of its defenses, such defense of prescription and/or laches in its Answer should this be required by the circumstances[.]"[16] Accordingly, in an order dated June 5, 1992,[17] the RTC resolved that "the Court need not act on the Motion to Dismiss filed by the defendant Wallem Philippines Shipping, Inc.[,]"[18] and required the defendants therein to file their Answer.

After trial on the merits, the RTC issued its decision on December 28, 1995,[19] ordering the respondents jointly and severally liable to pay as damages to Cua:

1. the amount of ₱2,030,000.00, plus interests until the same is fully paid;
2. the sum of ₱100,000.00 as attorney's fees; and
3. the costs of [the] suit,

and dismissing the counterclaims of the respondents.

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[14] The UK P&I Club is a mutual insurance association that provides protection and indemnity insurance in respect of third party liabilities and expenses arising from owning ships or operating ships as principals; http://www.ukpandi.com/about-the-club/, last viewed on May 14, 2012.

[15] RTC records, pp. 111-112.

[16] *Id.* at 111.

[17] *Rollo*, p. 24.

[18] *Ibid.*

[19] *Supra* note 4.

The respondents filed an appeal with the CA, insisting that Cua's claim is arbitrable and has been barred by prescription and/or laches.[20] The CA found the respondents' claim of prescription meritorious after finding that the August 10, 1990 telex message, extending the period to file an action, was neither attached to Cua's opposition to Wallem's motion to dismiss, nor presented during trial. The CA ruled that there was no basis for the RTC to conclude that the prescriptive period was extended by the parties' agreement. Hence, it set aside the RTC decision and dismissed Cua's complaint.[21]

Cua filed a motion for reconsideration[22] of the CA decision, which was denied by the CA in a resolution dated January 31, 2006.[23] Cua thus filed the present petition to assail the CA rulings.

THE PARTIES' ARGUMENTS

Cua contends that the extension of the period to file a complaint for damages was a fact that was already admitted by the respondents who may no longer assert the contrary, unless they sufficiently show that it was made through palpable mistake or that no admission was made. Cua points out that Wallem's motion to dismiss raised solely the issue of prescription, which he refuted by referring to the August 10, 1990 telex message extending the prescriptive period. Immediately after, Wallem withdrew its motion to dismiss. Cua thus attributes the withdrawal to an admission by Wallem of the existence of the August 10, 1990 telex message. Cua adds that Wallem's withdrawal of its motion to dismiss dispensed with the need for him to present as evidence the telex message, since the RTC ruled that there is no more need to act on the motion to dismiss. Cua, therefore, prays for the setting aside of the CA rulings and the reinstatement of the RTC decision.

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[20] CA *rollo*, pp. 53-109.

[21] *Supra* note 2.

[22] CA *rollo*, pp. 142-148.

[23] *Supra* note 3.

The respondents, on the other hand, deny that an admission was made with respect to the existence of the August 10, 1990 telex message. The telex message was never attached to Cua's opposition to Wallem's motion to dismiss, hence, there was no need for the respondents to deny its existence. They contend that Wallem's withdrawal of its motion to dismiss does not amount to an admission of the existence of the telex message, nor does it amount to a waiver of the defense for prescription. As stated in the June 5, 1992 Order of the RTC, the "defendant [referring to Wallem] moved for the withdrawal of the Motion to Dismiss *without waiving the defense of prescription*."[24] They thus pray for the denial of the petition.

THE COURT'S RULING

The basic issue presented by the case is *whether Cua's claim for payment of damages against the respondents has prescribed*. After considering the facts and the applicable law, the Court finds that Cua timely filed his claim before the trial court.

Prescription may be considered by the courts motu proprio if the facts supporting the ground are apparent from the pleadings or the evidence on record

Section 1, Rule 16 of the Rules of Court[25] enumerates the grounds on which a motion to dismiss a complaint may be

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[24] *Rollo*, p. 24.

[25] Section 1. *Grounds*.—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;
(b) That the court has no jurisdiction over the subject matter of the claim;
(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;

based, and the prescription of an action is included as one of the grounds under paragraph (f). The defendant may either raise the grounds in a motion to dismiss or plead them as an affirmative defense in his answer.[26] The failure to raise or plead the grounds generally amounts to a waiver, except if the ground pertains to (1) lack of jurisdiction over the subject matter, (2) *litis pendentia*, (3) *res judicata*, or (4) prescription.[27] If the facts supporting any of these four listed grounds are apparent from the pleadings or the evidence on record, the courts may consider these grounds *motu proprio* and accordingly dismiss the complaint. Accordingly, no reversible error may be attributed to the CA in considering prescription as a ground to dismiss Cua's action despite Wallem's supposed waiver of the defense. The Court, therefore, need not resolve the question of whether Wallem actually waived the defense of prescription; an inquiry into this question is useless, as courts are empowered to dismiss actions on the basis of prescription even if it is not raised by the defendant so long as the facts supporting this ground are evident from the records. In the present case, what is decisive is whether the pleadings and the evidence support a finding that Cua's claim has prescribed, and it is on this point that we disagree with the CA's findings. We find that the CA failed to appreciate the admissions made by the respondents in their pleadings that negate a finding of prescription of Cua's claim.

(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by a prior judgment or by the statute of limitations;
(g) That the pleading asserting the claim states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
(j) That a condition precedent for filing the claim has not been complied with.

[26] See RULES OF COURT, Rule 9, Section 1, and Rule 16, Sections 1 and 6.

[27] RULES OF COURT, Rule 9, Section 1.

Respondents admitted the agreement extending the period to file the claim

The COGSA is the applicable law for all contracts for carriage of goods by sea to and from Philippine ports in foreign trade;[28] it is thus the law that the Court shall consider in the present case since the cargo was transported from Brazil to the Philippines.

Under **Section 3(6) of the COGSA**, the carrier is discharged from liability for loss or damage to the cargo "unless the suit is brought within **one year after delivery of the goods** or the date when the goods should have been delivered."[29] Jurisprudence,

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[28] Commonwealth Act No. 65, Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: Provided, That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application. (See also *Insurance Company of North America v. Asian Terminals, Inc*., G.R. No. 180784, February 15, 2012.)

[29] COGSA, Section 3(6) Unless notice or loss or damage and the general nature of such loss or damage [be] given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

however, recognized the validity of an agreement between the carrier and the shipper/consignee extending the one-year period to file a claim.[30]

The vessel MV *Argo Trader* arrived in Manila on July 8, 1989; Cua's complaint for damages was filed before the RTC of Manila on November 12, 1990. Although the complaint was clearly filed beyond the one-year period, Cua additionally alleged in his complaint (under paragraph 11) that **"[t]he defendants x x x agreed to extend the time for filing of the action up to November 12, 1990."**[31]

The allegation of an agreement extending the period to file an action in Cua's complaint is a material averment that, under Section 11, Rule 8 of the Rules of Court, must be specifically denied by the respondents; otherwise, the allegation is deemed admitted.[32]

A specific denial is made by specifying each material allegation of fact, the truth of which the defendant does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial.[33] The purpose of requiring the defendant to make a specific denial is to make

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[30] *Universal Shipping Lines, Inc. v. Intermediate Appellate Court*, G.R. No. 74125, July 31, 1990, 188 SCRA 170, 174; *Tan Liao v. American President Lines, Ltd.*, 98 Phil. 203, 211 (1956); and *Chua Kuy v. Everrett Steamship Corporation*, 93 Phil. 207, 215 (1953).

[31] RTC records, p. 3.

[32] RULES OF COURT, Rule 8, Section 11. *Allegations not specifically denied deemed admitted.* —Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be .deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath.

[33] RULES OF COURT, Rule 8, Section 10. *Specific denial.* — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, *together with the matter which he relied upon to support the denial*.[34]

A review of the pleadings submitted by the respondents discloses that they failed to specifically deny Cua's allegation of an agreement extending the period to file an action to November 12, 1990. Wallem's motion to dismiss simply referred to the fact that Cua's complaint was filed more than one year from the arrival of the vessel, but it did not contain a denial of the extension.[35] Advance Shipping's motion to dismiss, on the other hand, focused solely on its contention that the action was premature for failure to first undergo arbitration.[36] While the joint answer submitted by the respondents denied Cua's allegation of an extension,[37] they made no further statement other than a bare and unsupported contention that Cua's "complaint is barred by prescription and/or laches[.]"[38] The respondents did not provide in their joint answer any factual basis for their belief that the complaint had prescribed.

We cannot consider the respondents' discussion on prescription in their Memorandum filed with the RTC,[39] since their arguments were based on Cua's supposed failure to comply with Article 366 of the Code of Commerce, not Section 3(6) of the COGSA – the relevant and material provision in this case. Article 366 of the Code of Commerce requires that a claim be made with the carrier within 24 hours from the delivery of the cargo; the

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[34] *Philippine National Bank v. Court of Appeals*, 464 Phil. 331, 339 (2004).

[35] RTC records, p. 97.

[36] *Id.* at 11-19.

[37] The defendant's Answer with Counterclaims (*id.* at 139) states:

"6. They deny the allegations of paragraphs 6, 7, 8, 9, 10 and 11 [of Cua's complaint] for the reasons stated in their special and affirmative defenses[.]"

Paragraph 11 of Cua's complaint contains the allegation on an agreement to extend the period to file the action (*id.* at 3).

[38] *Id.* at 141.

[39] *Id.* at 301-333.

respondents alleged that they were informed of the damage and shortage only on September 13, 1989, months after the vessel's arrival in Manila.

Since the COGSA is the applicable law, the respondents' discussion to support their claim of prescription under Article 366 of the Code of Commerce would, therefore, not constitute a refutation of Cua's allegation of extension. Given the respondents' failure to specifically deny the agreement on the extension of the period to file an action, the Court considers the extension of the period as an admitted fact.

This presumed admission is further bolstered by the express admission made by the respondents themselves in their Memorandum:

STATEMENT OF THE CASE

1. This case was filed by [the] plaintiff on 11 November 1990 **within the extended period agreed upon by the parties to file suit**.[40] (emphasis ours)

The above statement is a clear admission by the respondents that there was indeed an agreement to extend the period to file the claim. In light of this admission, it would be unnecessary for Cua to present a copy of the August 10, 1990 telex message to prove the existence of the agreement. Thus, Cua timely filed a claim for the damage to and shortage of the cargo.

WHEREFORE, the decision dated May 16, 2005 and the resolution dated January 31, 2006 of the Court of Appeals in CA-G.R. CV No. 53538 are **SET ASIDE**. The decision dated December 28, 1995 of the Regional Trial Court of Manila, Branch 31, in Civil Case No. 90-55098 is **REINSTATED**. Costs against the respondents.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[40] *Id.* at 301.

SECOND DIVISION

[G.R. No. 173171. July 11, 2012]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), *petitioner, vs.* **NEW DAGUPAN METRO GAS CORPORATION, PURITA E. PERALTA and PATRICIA P. GALANG,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; A MORTGAGE LIABILITY IS USUALLY LIMITED TO THE AMOUNT MENTIONED IN THE CONTRACT EXCEPT IF FROM THE FOUR CORNERS OF THE INSTRUMENT THE INTENT TO SECURE FUTURE AND OTHER INDEBTEDNESS CAN BE GATHERED.— As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered. Alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

2. ID.; ID.; ID.; DRAGNET CLAUSE; REFERS TO STIPULATION EXTENDING THE COVERAGE OF A MORTGAGE TO ADVANCES OR LOANS OTHER THAN THOSE ALREADY OBTAINED OR SPECIFIED IN THE CONTRACT; NATURE AND PURPOSE OF DRAGNET CLAUSE.— The stipulation extending the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract is valid and has been commonly referred to as a "blanket mortgage" or "dragnet" clause. In *Prudential Bank v. Alviar*, this Court elucidated on the nature and purpose of such a clause as follows: A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is

specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*.

3. ID.; ID.; ID.; ID.; A MORTGAGE THAT PROVIDES FOR A DRAGNET CLAUSE IS IN THE NATURE OF A CONTINUING GUARANTY AND IS CONSIDERED VALID; CONTINUING GUARANTY, EXPLAINED.— A mortgage that provides for a dragnet clause is in the nature of a continuing guaranty and constitutes an exception to the rule than an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. Its validity is anchored on Article 2053 of the Civil Code and is not limited to a single transaction, but contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked. It is prospective in its operation and is generally intended to provide security with respect to future transactions within certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable. In other words, a continuing guaranty is one that covers all transactions, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof.

4. ID.; ID.; ID.; ID.; THE EXECUTION OF A DEED OF CANCELLATION IS NOT REQUIRED IN ORDER FOR THE DISCHARGE OF THE MORTGAGE TO BE FULLY EFFECTIVE WHERE THERE IS NO PRIOR REGISTRATION OF THE MORTGAGE LIEN PRIOR TO ITS DISCHARGE.— Section 62 of Presidential Decree (P.D.) No. 1529 appears to require the execution of an instrument in order for a mortgage to be cancelled or discharged. However, this rule presupposes that there has been a prior registration of the mortgage lien prior to its discharge. In this case, the

subject mortgage had already been cancelled or terminated upon Galang's full payment before PCSO availed of registration in 1992. As the subject mortgage was not annotated on TCT No. 52135 at the time it was terminated, there was no need for Peralta to secure a deed of cancellation in order for such discharge to be fully effective and duly reflected on the face of her title. Therefore, since the subject mortgage is not in the nature of a continuing guaranty and given the automatic termination thereof, PCSO cannot claim that Galang's ticket purchases in 1992 are also secured. From the time the amount of ₱450,000.00 was fully settled, the subject mortgage had already been cancelled such that Galang's subsequent ticket purchases are unsecured. Simply put, PCSO had nothing to register, much less, foreclose. Consequently, PCSO's registration of its non-existent mortgage lien and subsequent foreclosure of a mortgage that was no longer extant cannot defeat New Dagupan's title over the subject property.

5. ID.; LAND REGISTRATION; AS TO THIRD PERSONS, A PROPERTY REGISTERED UNDER THE TORRENS SYSTEM IS, FOR ALL LEGAL PURPOSES, UNENCUMBERED OR REMAINS TO BE THE PROPERTY OF THE PERSON IN WHOSE NAME IT IS REGISTERED, NOTWITHSTANDING THE EXECUTION OF ANY CONVEYANCE, MORTGAGE, LEASE, LIEN, ORDER OR JUDGMENT UNLESS THE CORRESPONDING DEED IS REGISTERED.— Construing [S]ections 51 and 53 of P.D. No. 1529 and Article 2125 of the Civil Code], as to third persons, a property registered under the Torrens system is, for all legal purposes, unencumbered or remains to be the property of the person in whose name it is registered, notwithstanding the execution of any conveyance, mortgage, lease, lien, order or judgment unless the corresponding deed is registered. The law does not require a person dealing with the owner of registered land to go beyond the certificate of title as he may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation. Registration affords legal protection such that the claim of an innocent purchaser for value is recognized as valid despite a defect in the title of the vendor.

6. ID.; ID.; ID.; A PURCHASER IN GOOD FAITH AND FOR VALUE IS NOT BOUND BY THE MORTGAGEE'S MORTGAGE LIEN WHICH WAS YET TO BE REGISTERED AT THE TIME IT FILED AND REGISTERED ITS ADVERSE CLAIM; PURCHASER IN GOOD FAITH, ELABORATED.— It is undisputed that it was only on May 20, 1992 that PCSO registered its mortgage lien. By that time, New Dagupan had already purchased the subject property, albeit under a conditional sale. In fact, PCSO's mortgage lien was yet to be registered at the time New Dagupan filed its adverse claim on October 1, 1991 and its complaint against Peralta for the surrender of the owner's duplicate of TCT No. 52135 on February 28, 1992. It was only during the pendency of Civil Case No. D-10160, or sometime in 1993, that New Dagupan was informed of PCSO's mortgage lien. On the other hand, PCSO was already charged with knowledge of New Dagupan's adverse claim at the time of the annotation of the subject mortgage. PCSO's attempt to conceal these damning facts is palpable. However, they are patent from the records such that there is no gainsaying that New Dagupan is a purchaser in good faith and for value and is not bound by PCSO's mortgage lien. A purchaser in good faith and for value is one who buys property of another, **without** notice that some other person has a right to, or interest in, such property, and pays a full and fair price for the same, at the time of such purchase, or **before he has notice** of the claim or interest of some other person in the property. Good faith is the opposite of fraud and of bad faith, and its non-existence must be established by competent proof. *Sans* such proof, a buyer is deemed to be in good faith and his interest in the subject property will not be disturbed. A purchaser of a registered property can rely on the guarantee afforded by pertinent laws on registration that he can take and hold it free from any and all prior liens and claims except those set forth in or preserved against the certificate of title.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; THE EFFECTS OF FORECLOSURE SALE RETROACT TO THE DATE THE MORTGAGE WAS REGISTERED; THE MORTGAGEE WHO HAD NOTICE OF A PARTY'S ADVERSE CLAIM PRIOR TO THE REGISTRATION OF ITS MORTGAGE LIEN, IS BOUND THEREBY AND IS LEGALLY COMPELLED TO RESPECT

THE PROCEEDINGS ON THE VALIDITY OF SUCH ADVERSE CLAIM.— This Court cannot give credence to PCSO's claim to the contrary. PCSO did not present evidence, showing that New Dagupan had knowledge of the mortgage despite its being unregistered at the time the subject sale was entered into. Peralta, in the compromise agreement, even admitted that she did not inform New Dagupan of the subject mortgage. PCSO's only basis for claiming that New Dagupan was a buyer in bad faith was the latter's reliance on a mere photocopy of TCT No. 52135. However, apart from the fact that the facsimile bore no annotation of a lien or encumbrance, PCSO failed to refute the testimony of Cuña that his verification of TCT No. 52135 with the Register of Deeds of Dagupan City confirmed Peralta's claim of a clean title. Since PCSO had notice of New Dagupan's adverse claim prior to the registration of its mortgage lien, it is bound thereby and thus legally compelled to respect the proceedings on the validity of such adverse claim. It is therefore of no moment if PCSO's foreclosure of the subject mortgage and purchase of the subject property at the auction sale took place prior to New Dagupan's acquisition of title as decreed in the Decision dated January 21, 1994 of RTC Branch 43. The effects of a foreclosure sale retroact to the date the mortgage was registered. Hence, while PCSO may be deemed to have acquired title over the subject property on May 20, 1992, such title is rendered inferior by New Dagupan's adverse claim, the validity of which was confirmed per the Decision dated January 21, 1994 of RTC Branch 43.

8. ID.; ID.; ID.; ALLOWING THE MORTGAGEE'S MORTGAGE LIEN TO PREVAIL BY THE MERE EXPEDIENCY OF REGISTRATION OVER AN ADVERSE CLAIM THAT WAS REGISTERED AHEAD OF TIME WILL RENDER NAUGHT THE OBJECT OF AN ADVERSE CLAIM.— [I]f PCSO's mortgage lien is allowed to prevail by the mere expediency of registration over an adverse claim that was registered ahead of time, the object of an adverse claim – to apprise third persons that any transaction regarding the disputed property is subject to the outcome of the dispute – would be rendered naught. A different conclusion would remove the primary motivation for the public to rely on and respect the Torrens system of registration. Such would be inconsistent with the well-settled,

even axiomatic, rule that a person dealing with registered property need not go beyond the title and is not required to explore outside the four (4) corners thereof in search for any hidden defect or inchoate right that may turn out to be superior.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Surdilla and Surdilla Law Office for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review under Rule 45 of the Rules of Court, assailing the Decision[1] dated September 29, 2005 and Resolution[2] dated June 9, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 59590.

In the assailed Decision, the CA affirmed the Decision[3] dated January 28, 1998 of the Regional Trial Court (RTC), Branch 42 of Dagupan City in Civil Case No. 94-00200-D, ordering petitioner Philippine Charity Sweepstakes Office (PCSO) to surrender the owner's duplicate of Transfer Certificate of Title (TCT) No. 52135 to the Register of Deeds of Dagupan City for cancellation and issuance of a new certificate of title in the name of respondent New Dagupan Metro Gas Corporation (New Dagupan).

In its Resolution[4] dated June 9, 2006, the CA denied PCSO's motion for reconsideration.

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Danilo B. Pine and Vicente S.E. Veloso, concurring; *rollo*, pp. 8-22.

[2] *Id.* at 24-25. Associate Justice Danilo B. Pine was replaced by Associate Justice Andres B. Reyes, Jr.

[3] *Id.* at 116-131.

[4] *Supra* note 2.

The Factual Antecedents

Respondent Purita E. Peralta (Peralta) is the registered owner of a parcel of land located at Bonuan Blue Beach Subdivision, Dagupan City under TCT No. 52135. On March 8, 1989, a real estate mortgage was constituted over such property in favor of PCSO to secure the payment of the sweepstakes tickets purchased by one of its provincial distributors, Patricia P. Galang (Galang). The salient provisions of the Deed of Undertaking with First Real Estate Mortgage,[5] where Galang, PCSO and Peralta were respectively designated as "principal," "mortgagee" and "mortgagor," are as follows:

WHEREAS, the PRINCIPAL acknowledges that he/she has an outstanding and unpaid account with the MORTGAGEE in the amount of FOUR HUNDRED FIFTY THOUSAND (₱450,000.00), representing [the] balance of his/her accountabilities for all draws;

WHEREAS, the PRINCIPAL agrees to liquidate or pay said account ten (10) days after each draw with interest at the rate of 14% per annum.

x x x x x x x x x

The PRINCIPAL shall settle or pay his/her account of FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00) PESOS with the MORTGAGEE, provided that the said balance shall bear interest thereon at the rate of 14% per annum;

To secure the faithful compliance and as security to the obligation of the PRINCIPAL stated in the next preceding paragraph hereof, the "MORTGAGOR hereby convey unto and in favor of the MORTGAGEE, its successor and assigns by way of its first real estate mortgage, a parcel/s of land together with all the improvements now or hereafter existing thereon located at BOQUIG, DAGUPAN CITY, covered by TCT No. 52135, of the Register of Deeds of DAGUPAN CITY, and more particularly described as follows:

x x x x x x x x x

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[5] *Rollo*, pp. 79-84.

4. During the lifetime of this mortgage, the MORTGAGOR shall not alienate, sell, or in any manner dispose of or encumber the above-mentioned property, withou[t] the prior written consent of the MORTGAGEE;

x x x x x x x x x

15. Upon payment of the principal amount together with interest and other expenses legally incurred by the MORTGAGEE, the above undertaking is considered terminated.[6]

On July 31, 1990, Peralta sold, under a conditional sale, the subject property to New Dagupan, the conveyance to be absolute upon the latter's full payment of the price of ₱800,000.00. New Dagupan obliged to pay Peralta ₱200,000.00 upon the execution of the corresponding deed and the balance of ₱600,000.00 by monthly instalments of ₱70,000.00, the first instalment falling due on August 31, 1990. Peralta showed to New Dagupan a photocopy of TCT No. 52135, which bore no liens and encumbrances, and undertook to deliver the owner's duplicate within three (3) months from the execution of the contract.[7]

New Dagupan withheld payment of the last instalment, which was intended to cover the payment of the capital gains tax, in view of Peralta's failure to deliver the owner's duplicate of TCT No. 52135 and to execute a deed of absolute sale in its favor. Further, New Dagupan, through its President, Julian Ong Cuña (Cuña), executed an affidavit of adverse claim, "which was annotated on TCT No. 52135 on October 1, 1991 as Entry No. 14826.[8]

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[6] *Id.* at 79-83.

[7] *Id.* at 9.

[8] *Id.* at 277.

In view of Peralta's continued failure to deliver a deed of absolute sale and the owner's duplicate of the title, New Dagupan filed a complaint for specific performance against her with the RTC on February 28, 1992. New Dagupan's complaint was raffled to Branch 43 and docketed as Civil Case No. D-10160.

On May 20, 1992, during the pendency of New Dagupan's complaint against Peralta, PCSO caused the registration of the mortgage.[9]

On February 10, 1993, PCSO filed an application for the extrajudicial foreclosure sale of the subject property in view of Galang's failure to fully pay the sweepstakes she purchased in 1992.[10] A public auction took place on June 15, 1993 where PCSO was the highest bidder. A certificate of sale was correspondingly issued to PCSO.[11]

The certified true copy of TCT No. 52135 that New Dagupan obtained from the Register of Deeds of Dagupan City for its use in Civil Case No. D-10160 reflected PCSO's mortgage lien. New Dagupan, claiming that it is only then that it was informed of the subject mortgage, sent a letter to PCSO on October 28, 1993, notifying the latter of its complaint against Peralta and its claim over the subject property and suggesting that PCSO intervene and participate in the case.

On January 21, 1994, the RTC Branch 43 rendered a Decision, approving the compromise agreement between Peralta and New Dagupan. Some of the stipulations made are as follows:

> 3. For her failure to execute, sign and deliver a Deed of Absolute Sale to plaintiff by way of transferring TCT No. 52135 in the name of the latter, defendant hereby waives and quitclaims the remaining balance of the purchase price in the amount of [₱]60,000.00 in favor of the plaintiff, it being understood that the said amount shall be treated as a penalty for such failure;

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[9] *Id.* at 9.

[10] *Id.* at 11.

[11] *Id.* at 85.

x x x x x x x x x

6. Upon the signing of this compromise agreement, possession and ownership of the above described property, together with all the improvements existing thereon, are hereby vested absolutely upon, and transferred to the plaintiff whom the defendant hereby declares and acknowledges to be the absolute owner thereof, now and hereafter;

7. This compromise agreement shall be without prejudice to whatever rights and remedies, if any, that the Philippine Charity Sweepstakes [O]ffice has against the herein defendant and Patricia P. Galang under the Deed of Undertaking adverted to under par. 2(f) hereof.[12]

As the RTC Branch 43 Decision dated January 21, 1994 became final and executory, New Dagupan once again demanded Peralta's delivery of the owner's duplicate of TCT No. 52135. Also, in a letter dated March 29, 1994, New Dagupan made a similar demand from PCSO, who in response, stated that it had already foreclosed the mortgage on the subject property and it has in its name a certificate of sale for being the highest bidder in the public auction that took place on June 15, 1993.

Thus, on June 1, 1994, New Dagupan filed with the RTC a petition against PCSO for the annulment of TCT No. 52135 or surrender of the owner's duplicate thereof.[13] The petition was docketed as Civil Case No. 94-00200-D and raffled to Branch 43.

In an Answer[14] dated March 7, 1995, PCSO alleged that: (a) New Dagupan was a buyer in bad faith; (b) New Dagupan and Peralta colluded to deprive PCSO of its rights under the subject mortgage; (c) New Dagupan is estopped from questioning the superior right of PCSO to the subject property when it entered into the compromise agreement subject of the RTC Branch 43

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[12] *Id.* at 11-12.

[13] *Id.* at 12 and 90-94.

[14] *Id.* at 95-99.

Decision dated January 21, 1994; and (d) New Dagupan is bound by the foreclosure proceedings where PCSO obtained title to the subject property.

In a Motion for Leave to File Third-Party Complaint[15] dated April 17, 1995, PCSO sought the inclusion of Peralta and Galang who are allegedly indispensable parties. In its Third-Party Complaint,[16] PCSO reiterated its allegations in its Answer dated March 7, 1995 and made the further claim that the sale of the subject property to New Dagupan is void for being expressly prohibited under the Deed of Undertaking with First Real Estate Mortgage.

In their Answer to Third-Party Complaint with Counterclaims[17] dated January 2, 1996, Peralta and Galang claimed that: (a) the provision in the Deed of Undertaking with First Real Estate Mortgage prohibiting the sale of the subject property is void under Article 2130 of the Civil Code; (b) PCSO's failure to intervene in Civil Case No. D-10160 despite notice barred it from questioning the sale of the subject property to New Dagupan and the compromise agreement approved by the RTC Branch 43; (c) it was due to PCSO's very own neglect in registering its mortgage lien that preference is accorded to New Dagupan's rights as a buyer of the subject property; and (d) PCSO no longer has any cause of action against them following its decision to foreclose the subject mortgage.

On March 6, 1996, Civil Case No. 94-00200-D was transferred to Branch 42, after the presiding judge of Branch 43 inhibited himself.

On January 28, 1998, the RTC Branch 42 rendered a Decision[18] in New Dagupan's favor, the dispositive portion of which states:

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[15] *Id.* at 103-104.

[16] *Id.* at 105-111.

[17] *Id.* at 112-115.

[18] *Id.* at 116-131.

WHEREFORE, judgment is hereby rendered in favor of the petitioner and against the defendant, ordering PCSO to deliver the owner's duplicate copy of TCT No. 52135 in its possession to the Registry of Deeds of Dagupan City for the purpose of having the decision in favor of the petitioner annotated at the back thereof. Should said defendant fail to deliver the said title within 30 days from the date this decision becomes final and executory, the said owner's duplicate certificate of title is hereby cancelled and the Register of Deeds can issue a new one carrying all the encumbrances of the original owner's duplicate subject of this case. Further, the defendant is ordered to pay to petitioner the sum of Ten Thousand Pesos (₱10,000.00) as attorney's fees. It is also ordered to pay costs.

SO ORDERED.[19]

The RTC Branch 42 ruled that New Dagupan is a buyer in good faith, ratiocinating that:

In other words, the evidence of the petitioner would show that although the Deed of Undertaking with First Real Estate Mortgage was executed on March 8, 1989 its annotation was made long after the conditional sale in favor of the petitioner was executed and annotated at the back of the title in question. Because of the said exhibits, petitioner contended that it was a buyer in good faith and for value.

Defendant, to controvert the aforementioned evidence of the plaintiff, alleged that Exhibits C, C-1 to C-1-C was contrary to the testimony of Mr. Julian Ong Cuña to the effect that when defendants sold the property to petitioner only the xerox copy of the title was shown and petitioner should have verified the original as it was a buyer in bad faith. Defendant also alleged that the decision in Civil Case D-10160 dated January 21, 1994 would show that there was a collusion between the petitioner and the third-party defendants.

The Court cannot go along with the reasoning of the defendant because what was shown to Mr. Cuña by the third-party defendants was Exhibit "C" which did not carry any encumbrance at the back of the subject title and the annotation made on May 20, 1992 in favor of the PCSO. Mr. Cuña verified the title x x x but the encumbrance on the title was not still there at [that] time. One thing more, there was nothing indicated in the decision in Civil Case No. D-10160

[19] *Id.* at 130-131.

that petitioner already knew that there was already a mortgage in favor of the PCSO. Worst, defendant did not even introduce any oral evidence to show that petitioner was in bad faith except the manifestations of counsel. Unfortunately, manifestations could not be considered evidence.

x x x x x x x x x

Defendant should not be allowed to profit from its negligence of not registering the Deed of Undertaking with First Real Estate Mortgage in its favor.[20]

Also, the RTC Branch 42 ruled that the prohibition on the sale of the subject property is void. Specifically:

Suffice it to say that there is no law prohibiting a mortgagor from encumbering or alienating the property mortgaged. On the contrary, there is a law prohibiting an agreement forbidding the owner from alienating a mortgaged property. We are referring to Article 2130 of the New Civil Code which provides as follows:

> "A stipulation forbidding the owner from alienating the immovable mortgage shall be void."[21]

Moreover, the RTC Branch 42 ruled that PCSO had no right to foreclose the subject mortgage as the land in question had already been disencumbered after Galang's full payment of all the sweepstakes tickets she purchased in 1989 and 1990.

It should be recalled that Amparo Abrigo, OIC Chief of the Credit Accounts Division of the PCSO, admitted not only once but twice that Patricia Galang has no more liability with the PCSO for the years 1989 and 1990 x x x. Another witness, Carlos Castillo who is the OIC of the Sales Department of the PCSO, joined Amparo Abrigo in saying that Patricia Galang has already paid her liability with the PCSO for the years 1989 and 1990 x x x. Thus, the undertaking was already discharged. Both of the said witnesses of the PCSO alleged that the undertaking has been re-used by Patricia Galang for the years 1991 to 1992 yet there is no proof whatsoever showing that Purita Peralta consented to the use of the undertaking

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[20] *Id.* at 125-126.

[21] *Id.* at 126.

by Patricia Galang for 1991 to 1992. Incidentally, it is not far[-]fetched to say that Purita Peralta might have thought that the undertaking was already discharged which was the reason she executed the Deed of Conditional Sale x x x in favor of petitioner in 1990. That being the case, the foreclosure sale in favor of the PCSO has no legal leg to stand as the Deed of Undertaking with First Real Estate Mortgage has already been discharged before the foreclosure sale was conducted.[22]

According to the RTC Branch 42, the intent to use the subject property as security for Galang's purchases for the years after 1989, as PCSO claimed, is not clear from the Deed of Undertaking with First Real Estate Mortgage:

Was it not provided in the deed that the undertaking would be for "all draws." That might be true but the terms of the Contract should be understood to mean only to cover the draws relative to the current liabilities of Patricia Galang at the time of the execution of the undertaking in 1989. It could have not been agreed upon that it should also cover her liability for 1991 up to 1992 because if that was the intention of the parties, the undertaking should have so provided expressly. The term of the undertaking with respect to the period was ambiguous but any ambiguity in the Contract should be resolved against PCSO because the form used was a standard form of the defendant and it appeared that it was its lawyers who prepared it, therefore, it was the latter which caused the ambiguity.[23]

PCSO's appeal from the foregoing adverse decision was dismissed. By way of its assailed decision, the CA did not agree with PCSO's claim that the subject mortgage is in the nature of a continuing guaranty, holding that Peralta's undertaking to secure Galang's liability to PCSO is only for a period of one year and was extinguished when Peralta completed payment on the sweepstakes tickets she purchased in 1989.

The instant appeal must fail. There is nothing in the Deed of Undertaking with First Real Estate Mortgage, expressly or impliedly, that would indicate that Peralta agreed to let her property be burdened

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[22] *Id.* at 128.

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

as long as the contract of undertaking with real [estate] mortgage was not cancelled or revoked. x x x

x x x x x x x x x

A perusal of the deed of undertaking between the PCSO and Peralta would reveal nothing but the undertaking of Peralta to guarantee the payment of the pre-existing obligation of Galang, constituting the unpaid sweepstakes tickets issued to the latter before the deed of undertaking was executed, with the PCSO in the amount of [₱]450,000.00. No words were added therein to show the intention of the parties to regard it as a contract of continuing guaranty. In other jurisdictions, it has been held that the use of the particular words and expressions such as payment of "any debt," "any indebtedness," "any deficiency," or "any sum," or the guaranty of "any transaction" or money to be furnished the principal debtor "at any time," or "on such time" that the principal debtor may require, have been construed to indicate a continuing guaranty. Similar phrases or words of the same import or tenor are not extant in the deed of undertaking. The deed of undertaking states:

> **"WHEREAS, the PRINCIPAL acknowledges that he/she has an outstanding and unpaid account with the MORTGAGEE in the amount of FOUR HUNDRED FIFTY THOUSAND ([₱]450,000.00), representing the balance of his/her ticket accountabilities for all draws."**

x x x x x x x x x

Upon full payment of the principal obligation, which from the testimonies of the officers of the PCSO had been paid as early as 1990, the subsidiary contract of guaranty was automatically terminated. The parties have not executed another contract of guaranty to secure the subsequent obligations of Galang for the tickets issued thereafter. It must be noted that a contract of guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein.

x x x x x x x x x

The arguments of PCSO fail to persuade us. The phrase "for all draws" is limited to the draws covered by the original transaction. In its pleadings, the PCSO asserted that the contract of undertaking was renewed and the collateral was re-used by Galang to obtain again tickets from the PCSO after she had settled her account under the original contract. From such admission, it is thus clear that the

contract is not in the nature of a continuing guaranty. For a contract of continuing guaranty is not renewed as it is understood to be of a continuing nature without the necessity of renewing the same every time a new transaction contemplated under the original contract is entered into. x x x[24] (Citations omitted)

In this petition, PCSO claims that the CA erred in holding that the subject mortgage had been extinguished by Galang's payment of ₱450,000.00, representing the amount of the sweepstakes tickets she purchased in 1989. According to PCSO, the said amount is actually the credit line granted to Galang and the phrase "all draws" refers to her ticket purchases for subsequent years drawn against such credit line. Consequently, PCSO posits, the subject mortgage had not been extinguished by Peralta's payment of her ticket purchases in 1989 and its coverage extends to her purchases after 1989, which she made against the credit line that was granted to her. That when Galang failed to pay her ticket purchases in 1992, PCSO's right to foreclose the subject mortgage arose.

PCSO also maintains that its rights over the subject property are superior to those of New Dagupan. Considering that the contract between New Dagupan is a conditional sale, there was no conveyance of ownership at the time of the execution thereof on July 31, 1989. It was only on January 21, 1994, or when the RTC Branch 43 approved the compromise agreement, that a supposed transfer of title between Peralta and New Dagupan took place. However, since PCSO had earlier foreclosed the subject mortgage and obtained title to the subject property as evidenced by the certificate of sale dated June 15, 1993, Peralta had nothing to cede or assign to New Dagupan.

PCSO likewise attributes bad faith to New Dagupan, claiming that Peralta's presentation of a mere photocopy of TCT No. 52135, albeit without any annotation of a lien or encumbrance, sufficed to raise reasonable suspicions against Peralta's claim of a clean title and should have prompted it to conduct an investigation that went beyond the face of TCT No. 52135.

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[24] *Id.* at 16-19.

PCSO even assails the validity of the subject sale for being against the prohibition contained in the Deed of Undertaking with First Real Estate Mortgage.

New Dagupan, in its Comment,[25] avers that it was a purchaser in good faith and it has a superior right to the subject property, considering that PCSO's mortgage lien was annotated only on May 20, 1992 or long after the execution of the conditional sale on July 31, 1990 and the annotation of New Dagupan's adverse claim on October 1, 1991. While the subject mortgage antedated the subject sale, PCSO was already aware of the latter at the time of its belated registration of its mortgage lien. PCSO's registration was therefore in bad faith, rendering its claim over the subject property defeasible by New Dagupan's adverse claim.

New Dagupan also claims that the subject property had already been discharged from the mortgage, hence, PCSO had nothing to foreclose when it filed its application for extra-judicial foreclosure on February 10, 1993. The subject mortgage was intended to secure Galang's ticket purchases that were outstanding at the time of the execution of the same, the amount of which has been specified to be ₱450,000.00 and does not extend to Galang's future purchases. Thus, upon Galang's full payment of ₱450,000.00, which PCSO admits, the subject mortgage had been automatically terminated as expressly provided under Section 15 of the Deed of Undertaking with First Real Estate Mortgage quoted above.

Issue

The rise and fall of this recourse is dependent on the resolution of the issue who between New Dagupan and PCSO has a better right to the property in question.

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[25] *Id.* at 276-283.

Our Ruling

PCSO is undeterred by the denial of its appeal to the CA and now seeks to convince this Court that it has a superior right over the subject property. However, PCSO's resolve fails to move this Court and the ineluctability of the denial of this petition is owing to the following:

a. At the time of PCSO's registration of its mortgage lien on May 20, 1992, the subject mortgage had already been discharged by Galang's full payment of ₱450,000.00, the amount specified in the Deed of Undertaking with First Real Estate Mortgage;

b. There is nothing in the Deed of Undertaking with First Real Estate Mortgage that would indicate that it is a continuing security or that there is an intent to secure Galang's future debts;

c. Assuming the contrary, New Dagupan is not bound by PCSO's mortgage lien and was a purchaser in good faith and for value; and

d. While the subject mortgage predated the sale of the subject property to New Dagupan, the absence of any evidence that the latter had knowledge of PCSO's mortgage lien at the time of the sale and its prior registration of an adverse claim created a preference in its favor.

I

As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.[26]

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[26] *Spouses Cuyco v. Spouses Cuyco*, 521 Phil. 796, 808 (2006), citing *Union Bank of the Philippines v. Court of Appeals*, 508 Phil. 705 (2005).

Alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.[27]

The stipulation extending the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract is valid and has been commonly referred to as a "blanket mortgage" or "dragnet" clause. In *Prudential Bank v. Alviar*,[28] this Court elucidated on the nature and purpose of such a clause as follows:

> A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*. x x x.[29] (Citations omitted)

A mortgage that provides for a dragnet clause is in the nature of a continuing guaranty and constitutes an exception to the rule than an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. Its validity is anchored on Article 2053 of the Civil Code and is not limited to a single transaction, but contemplates a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked. It is prospective in its operation and is generally intended to provide security with respect to future

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[27] *Traders Royal Bank v. Castañares*, G.R. No. 172020, December 6, 2010, 636 SCRA 519, 529, citing *Spouses Cuyco v. Spouses Cuyco, id.*

[28] 502 Phil. 595 (2005).

[29] *Id.* at 606.

transactions within certain limits, and contemplates a succession of liabilities, for which, as they accrue, the guarantor becomes liable. In other words, a continuing guaranty is one that covers all transactions, including those arising in the future, which are within the description or contemplation of the contract of guaranty, until the expiration or termination thereof.[30]

In this case, PCSO claims the subject mortgage is a continuing guaranty. According to PCSO, the intent was to secure Galang's ticket purchases other than those outstanding at the time of the execution of the Deed of Undertaking with First Real Estate Mortgage on March 8, 1989 such that it can foreclose the subject mortgage for Galang's non-payment of her ticket purchases in 1992. PCSO does not deny and even admits that Galang had already settled the amount of ₱450,000.00. However, PCSO refuses to concede that the subject mortgage had already been discharged, claiming that Galang had unpaid ticket purchases in 1992 and these are likewise secured as evidenced by the following clause in the Deed of Undertaking with First Real Estate Mortgage:

> WHEREAS, the PRINCIPAL agrees to liquidate or pay said account ten (10) days after each draw with interest at the rate of 14% per annum;[31]

This Court has to disagree with PCSO in view of the principles quoted above. A reading of the other pertinent clauses of the subject mortgage, not only of the provision invoked by PCSO, does not show that the security provided in the subject mortgage is continuing in nature. That the subject mortgage shall only secure Galang's liability in the amount of ₱450,000.00 is evident from the following:

> WHEREAS, the PRINCIPAL acknowledges that he/she has an outstanding and unpaid account with the MORTGAGEE in the amount of FOUR HUNDRED FIFTY THOUSAND (₱450,000.00), representing the balance of his/her ticket accountabilities for all draws;

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[30] *Bank of Commerce v. Flores*, G.R. No. 174006, December 8, 2010, 637 SCRA 563, 571-572, citing *Diño v. Court of Appeals*, G.R. No. 89775, November 26, 1992, 216 SCRA 9.

[31] *Rollo*, p. 79.

x x x x x x x x x

The PRINCIPAL shall settle or pay his/her account of FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00) PESOS with the MORTGAGEE, provided that the said balance shall bear interest thereon at the rate of 14% per annum;

To secure the faithful compliance and as security to the obligation of the PRINCIPAL stated in the next preceding paragraph hereof, the MORTGAGOR hereby convey unto and in favor of the MORTGAGEE, its successor and assigns by way of its first real estate mortgage, a parcel/s of land together with all the improvements now or hereafter existing thereon, located at BOQUIG, DAGUPAN CITY, covered by TCT No. 52135, of the Register of Deeds of DAGUPAN CITY, and more particularly described as follows:[32]

As the CA correctly observed, the use of the terms "outstanding" and "unpaid" militates against PCSO's claim that future ticket purchases are likewise secured. That there is a seeming ambiguity between the provision relied upon by PCSO containing the phrase "after each draw" and the other provisions, which mention with particularity the amount of ₱450,000.00 as Galang's unpaid and outstanding account and secured by the subject mortgage, should be construed against PCSO. The subject mortgage is a contract of adhesion as it was prepared solely by PCSO and the only participation of Galang and Peralta was the act of affixing their signatures thereto.

Considering that the debt secured had already been fully paid, the subject mortgage had already been discharged and there is no necessity for any act or document to be executed for the purpose. As provided in the Deed of Undertaking with First Real Estate Mortgage:

15. Upon payment of the principal amount together with interest and other expenses legally incurred by the MORTGAGEE, the above-undertaking is considered terminated.[33]

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

[33] *Id.* at 83.

Section 62[34] of Presidential Decree (P.D.) No. 1529 appears to require the execution of an instrument in order for a mortgage to be cancelled or discharged. However, this rule presupposes that there has been a prior registration of the mortgage lien prior to its discharge. In this case, the subject mortgage had already been cancelled or terminated upon Galang's full payment before PCSO availed of registration in 1992. As the subject mortgage was not annotated on TCT No. 52135 at the time it was terminated, there was no need for Peralta to secure a deed of cancellation in order for such discharge to be fully effective and duly reflected on the face of her title.

Therefore, since the subject mortgage is not in the nature of a continuing guaranty and given the automatic termination thereof, PCSO cannot claim that Galang's ticket purchases in 1992 are also secured. From the time the amount of ₱450,000.00 was fully settled, the subject mortgage had already been cancelled such that Galang's subsequent ticket purchases are unsecured. Simply put, PCSO had nothing to register, much less, foreclose.

Consequently, PCSO's registration of its non-existent mortgage lien and subsequent foreclosure of a mortgage that was no longer extant cannot defeat New Dagupan's title over the subject property.

II

Sections 51 and 53 of P.D. No. 1529 provide:

Section 51. *Conveyance and other dealings by registered owner.* An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instrument, except a will purporting to convey or affect registered land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

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[34] Sec. 62. *Discharge or cancellation.* – A mortgage or lease on registered land may be discharged or cancelled by means of an instrument executed by the mortgage or lessee in the form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Section 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

On the other hand, Article 2125 of the Civil Code states:

Article 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

Construing the foregoing conjunctively, as to third persons, a property registered under the Torrens system is, for all legal purposes, unencumbered or remains to be the property of the person in whose name it is registered, notwithstanding the execution of any conveyance, mortgage, lease, lien, order or judgment unless the corresponding deed is registered.

The law does not require a person dealing with the owner of registered land to go beyond the certificate of title as he may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation.[35] Registration affords legal protection such that the claim of an innocent purchaser for value is recognized as valid despite a defect in the title of the vendor.[36]

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[35] *Ching v. Lee Enrile*, G.R. No. 156076, September 17, 2008, 565 SCRA 402, 415.

[36] *Republic v. Ravelo*, G.R. No. 165114, August 6, 2008, 561 SCRA 204, 216, citing *Cruz v. Court of Appeals*, 346 Phil. 506 (1997).

In *Cruz v. Bancom Finance Corporation*,[37] the foregoing principle was applied as follows:

> *Second*, respondent was already aware that there was an adverse claim and notice of *lis pendens* annotated on the Certificate of Title when it registered the mortgage on March 14, 1980. Unless duly registered, a mortgage does not affect third parties like herein petitioners, as provided under Section 51 of PD NO. 1529, which we reproduce hereunder:
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> x x x x x x x x x
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> True, registration is not the operative act for a mortgage to be binding between the parties. But to third persons, it is indispensible. In the present case, the adverse claim and the notice of *lis pendens* were annotated on the title on October 30, 1979 and December 10, 1979, respectively; the real estate mortgage over the subject property was registered by respondent only on March 14, 1980. Settled in this jurisdiction is the doctrine that a prior registration of a lien creates a preference. Even a subsequent registration of the prior mortgage will not diminish this preference, which retroacts to the date of the annotation of the notice of *lis pendens* and the adverse claim. Thus, respondent's failure to register the real estate mortgage prior to these annotations, resulted in the mortgage being binding only between it and the mortgagor, Sulit. Petitioners, being third parties to the mortgage, were not bound by it. Contrary to respondent's claim that petitioners were in bad faith because they already had knowledge of the existence of the mortgage in favor of respondent when they caused the aforesaid annotations, petitioner Edilberto Cruz said that they only knew of this mortgage when respondent intervened in the RTC proceedings.[38] (Citations omitted)

It is undisputed that it was only on May 20, 1992 that PCSO registered its mortgage lien. By that time, New Dagupan had already purchased the subject property, albeit under a conditional sale. In fact, PCSO's mortgage lien was yet to be registered at the time New Dagupan filed its adverse claim on October 1, 1991 and its complaint against Peralta for the surrender of the

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[37] 429 Phil. 225 (2002).

[38] *Id.* at 241-243.

owner's duplicate of TCT No. 52135 on February 28, 1992. It was only during the pendency of Civil Case No. D-10160, or sometime in 1993, that New Dagupan was informed of PCSO's mortgage lien. On the other hand, PCSO was already charged with knowledge of New Dagupan's adverse claim at the time of the annotation of the subject mortgage. PCSO's attempt to conceal these damning facts is palpable. However, they are patent from the records such that there is no gainsaying that New Dagupan is a purchaser in good faith and for value and is not bound by PCSO's mortgage lien.

A purchaser in good faith and for value is one who buys property of another, **without** notice that some other person has a right to, or interest in, such property, and pays a full and fair price for the same, at the time of such purchase, or **before he has notice** of the claim or interest of some other person in the property.[39] Good faith is the opposite of fraud and of bad faith, and its non-existence must be established by competent proof.[40] *Sans* such proof, a buyer is deemed to be in good faith and his interest in the subject property will not be disturbed. A purchaser of a registered property can rely on the guarantee afforded by pertinent laws on registration that he can take and hold it free from any and all prior liens and claims except those set forth in or preserved against the certificate of title.[41]

This Court cannot give credence to PCSO's claim to the contrary. PCSO did not present evidence, showing that New Dagupan had knowledge of the mortgage despite its being unregistered at the time the subject sale was entered into. Peralta, in the compromise agreement, even admitted that she did not inform New Dagupan of the subject mortgage.[42] PCSO's only

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[39] *Aggabao v. Parulan, Jr.,* G.R. No. 165803, September 1, 2010, 629 SCRA 562, 574-575.

[40] *Bautista v. Court of Appeals*, G.R. No. 106042, February 28, 1994, 230 SCRA 446, 455, citing *Cui and Joven v. Henson,* 51 Phil. 606, 612 (1928).

[41] *Sajonas v. CA*, 327 Phil. 689 (1996).

[42] *Rollo,* p. 88.

basis for claiming that New Dagupan was a buyer in bad faith was the latter's reliance on a mere photocopy of TCT No. 52135. However, apart from the fact that the facsimile bore no annotation of a lien or encumbrance, PCSO failed to refute the testimony of Cuña that his verification of TCT No. 52135 with the Register of Deeds of Dagupan City confirmed Peralta's claim of a clean title.

Since PCSO had notice of New Dagupan's adverse claim prior to the registration of its mortgage lien, it is bound thereby and thus legally compelled to respect the proceedings on the validity of such adverse claim. It is therefore of no moment if PCSO's foreclosure of the subject mortgage and purchase of the subject property at the auction sale took place prior to New Dagupan's acquisition of title as decreed in the Decision dated January 21, 1994 of RTC Branch 43. The effects of a foreclosure sale retroact to the date the mortgage was registered.[43] Hence, while PCSO may be deemed to have acquired title over the subject property on May 20, 1992, such title is rendered inferior by New Dagupan's adverse claim, the validity of which was confirmed per the Decision dated January 21, 1994 of RTC Branch 43.

Otherwise, if PCSO's mortgage lien is allowed to prevail by the mere expediency of registration over an adverse claim that was registered ahead of time, the object of an adverse claim – to apprise third persons that any transaction regarding the disputed property is subject to the outcome of the dispute – would be rendered naught. A different conclusion would remove the primary motivation for the public to rely on and respect the Torrens system of registration. Such would be inconsistent with the well-settled, even axiomatic, rule that a person dealing with registered property need not go beyond the title and is not required to explore outside the four (4) corners thereof in search for any hidden defect or inchoate right that may turn out to be superior.

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[43] *Pineda v. Court of Appeals*, 456 Phil. 732, 751 (2003), citing *Dr. Caviles, Jr. v. Bautista*, 377 Phil. 25 (1999).

Worthy of extrapolation is the fact that there is no conflict between the disposition of this case and *Garbin v. CA*[44] where this Court decided the controversy between a buyer with an earlier registered adverse claim and a subsequent buyer, who is charged with notice of such adverse claim at the time of the registration of her title, in favor of the latter. As to why the adverse claim cannot prevail against the rights of the later buyer notwithstanding its prior registration was discussed by this Court in this wise:

> It is undisputed that the adverse claim of private respondents was registered pursuant to Sec. 110 of Act No. 496, the same having been accomplished by the filing of a sworn statement with the Register of Deeds of the province where the property was located. However, what was registered was merely the adverse claim and *not* the Deed of Sale, which supposedly conveyed the northern half portion of the subject property. Therefore, there is still need to resolve the validity of the adverse claim in separate proceedings, as there is an absence of registration of the actual conveyance of the portion of land herein claimed by private respondents.
>
> From the provisions of the law, it is clear that mere registration of an adverse claim does not make such claim valid, nor is it permanent in character. More importantly, such registration does not confer instant title of ownership since judicial determination on the issue of the ownership is still necessary.[45] (Citation omitted)

Apart from the foregoing, the more important consideration was the improper resort to an adverse claim. In *L.P. Leviste & Co. v. Noblejas*, [46] this Court emphasized that the availability of the special remedy of an adverse claim is subject to the absence of any other statutory provision for the registration of the claimant's alleged right or interest in the property. That

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[44] 323 Phil. 228 (1996).

[45] *Id.* at 237.

[46] 178 Phil. 422 (1979).

if the claimant's interest is based on a perfected contract of sale or any voluntary instrument executed by the registered owner of the land, the procedure that should be followed is that prescribed under Section 51 in relation to Section 52 of P.D. No. 1529. Specifically, the owner's duplicate certificate must be presented to the Register of Deeds for the inscription of the corresponding memorandum thereon and in the entry day book. It is only when the owner refuses or fails to surrender the duplicate certificate for annotation that a statement setting forth an adverse claim may be filed with the Register of Deeds. Otherwise, the adverse claim filed will not have the effect of a conveyance of any right or interest on the disputed property that could prejudice the rights that have been subsequently acquired by third persons.

What transpired in *Gabin* is similar to that in *Leviste*. In *Gabin*, the basis of the claim on the property is a deed of absolute sale. In *Leviste*, what is involved is a contract to sell. Both are voluntary instruments that should have been registered in accordance with Sections 51 and 52 of P.D. No. 1529 as there was no showing of an inability to present the owner's duplicate of title.

It is patent that the contrary appears in this case. Indeed, New Dagupan's claim over the subject property is based on a conditional sale, which is likewise a voluntary instrument. However, New Dagupan's use of the adverse claim to protect its rights is far from being incongruent in view of the undisputed fact that Peralta failed to surrender the owner's duplicate of TCT No. 52135 despite demands.

Moreover, while the validity of the adverse claim in *Gabin* is not established as there was no separate proceeding instituted that would determine the existence and due execution of the deed of sale upon which it is founded, the same does not obtain in this case. The existence and due execution of the conditional sale and Peralta's absolute and complete cession

of her title over the subject property to New Dagupan are undisputed. These are matters covered by the Decision dated January 21, 1994 of RTC Branch 43, which had long become final and executory.

At any rate, in *Sajonas v. CA*,[47] this Court clarified that there is no necessity for a prior judicial determination of the validity of an adverse claim for it to be considered a flaw in the vendor's title as that would be repugnant to the very purpose thereof.[48]

WHEREFORE, premises considered, the petition is **DISMISSED** and the Decision dated September 29, 2005 and Resolution dated June 9, 2006 of the Court of Appeals in CA-G.R. CV No. 59590 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[47] *Supra* note 41.

[48] "Then again, in *Gardner v. Court of Appeals*, we said that "the statement of respondent court in its resolution of reversal that 'until the validity of an adverse claim is determined judicially, it cannot be considered a flaw in the vendor's title' contradicts the very object of adverse claims. As stated earlier, the annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or has a better right than the registered owner thereof. A subsequent sale cannot prevail over the adverse claim which was previously annotated in the certificate of title over the property." (*Id.* at 706).

FIRST DIVISION

[G.R. No. 174893. July 11, 2012]

FLORDELIZA MARIA REYES-RAYEL, *petitioner, vs.* **PHILIPPINE LUEN THAI HOLDINGS, CORPORATION/ L&T INTERNATIONAL GROUP PHILIPPINES, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE, AS GROUND; FOR MANAGERIAL PERSONNEL, THE MERE EXISTENCE OF BASIS FOR THE BREACH OF TRUST JUSTIFIES DISMISSAL; CASE AT BAR.— Jurisprudence provides that an employer has a distinct prerogative and wider latitude of discretion in dismissing a managerial personnel who performs functions which by their nature require the employer's full trust and confidence. As distinguished from a rank and file personnel, mere existence of a basis for believing that a managerial employee has breached the trust of the employer justifies dismissal. "[L]oss of confidence as a ground for dismissal does not require proof beyond reasonable doubt as the law requires only that there be at least some basis to justify it." Petitioner, in the present case, was L & T's CHR Director for Manufacturing. As such, she was directly responsible for managing her own departmental staff. It is therefore without question that the CHR Director for Manufacturing is a managerial position saddled with great responsibility. Because of this, petitioner must enjoy the full trust and confidence of her superiors. Not only that, she ought to know that she is "bound more exacting work ethics" and should live up to his high standard of responsibility. However, petitioner delivered dismal performance and displayed poor work attitude which constitute sufficient reasons for an employer to terminate an employee on the ground of loss of trust and confidence. Respondents also impute upon petitioner gross negligence and incompetence which are likewise justifiable grounds for

dismissal. The burden of proving that the termination was for a valid cause lies on the employer. Here, respondents were able to overcome this burden as the evidence presented clearly support the validity of petitioner's dismissal. x x x An employer "has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers." "[S]o long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements," the exercise of this management prerogative must be upheld.

2. ID.; ID.; ID.; IMPUTATION OF BAD FAITH ON EMPLOYER MUST BE SUBSTANTIATED BY PROOF; APPLICATION IN CASE AT BAR.— Anent petitioner's imputation of bad faith upon respondents, the same deserves no credence. That she was publicly embarrassed when she was coerced by Sauceda and Edles to vacate her office, return the company car and take all her personal belongings on the day she was dismissed, are all mere allegations not substantiated by proof. And since it is hornbook rule that he who alleges must prove, we could not therefore conclude that her termination was tainted with any malice or bad faith without any sufficient basis to substantiate this bare allegation. Moreover, we are more inclined to believe that respondents' offer of settlement immediately after petitioner's termination was more of a generous offer of financial assistance rather than an indication of ill-motive on respondents' part.

3. ID.; ID.; ID.; DUE PROCESS REQUIREMENT IS MET WHEN THERE IS SIMPLY AN OPPORTUNITY TO BE HEARD AND TO EXPLAIN ONE'S SIDE EVEN IF NO HEARING IS CONDUCTED; PRESENT IN CASE AT BAR.— We have examined the Prerequisite Notice and contrary to petitioner's assertion, find the same to be free from any ambiguity. The said notice properly advised petitioner to explain through a written response her failure to perform in accordance with management directives, which deficiency resulted in the company's loss of confidence in her capability to promote its

interest. As correctly explained by the CA, the notice cited specific incidents from various instances which showed petitioner's "repeated failure to comply with work directives, her inclination to make negative remarks about company goals and her difficult personality," that have collectively contributed to the company's loss of trust and confidence in her. Indeed, these specified acts, in addition to her low performance rating, demonstrated petitioner's neglect of duty and incompetence which support the termination for loss of trust and confidence. Neither can there be any denial of due process due to the absence of a hearing or investigation at the company level. It has been held in a plethora of cases that due process requirement is met when there is simply an opportunity to be heard and to explain one's side even if no hearing is conducted. In the case of *Perez v. Philippine Telegraph and Telephone Company*, this Court pronounced that an employee may be afforded ample opportunity to be heard by means of any method, verbal or written, whether in a hearing, conference or some other fair, just and reasonable way, in that: x x x In this case, petitioner's written response to the Prerequisite Notice provided her with an avenue to explain and defend her side and thus served the purpose of due process. x x x There was also no request for a formal hearing on the part of petitioner. As she was served with a notice apprising her of the charges against her, and also a subsequent notice informing her of the management's decision to terminate her services after respondents found her written response to the first notice unsatisfactory, petitioner was clearly afforded her right to due process.

APPEARANCES OF COUNSEL

Policarpio Pañgulayan & Azura Law Office for petitioner.
Tan Acut & Lopez for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The law is fair and just to both labor and management. Thus, while the Constitution accords an employee security of tenure, it abhors oppression to an employer who cannot be compelled to retain an employee whose continued employment would be patently inimical to its interest.

This Petition for Review on *Certiorari*[1] assails the July 18, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 86937, which (1) reversed the National Labor Relations Commission (NLRC) March 23, 2004 Resolution[3] and in effect, its July 21, 2004[4] Resolution as well, (2) declared petitioner Flordeliza Maria Reyes-Rayel's (petitioner) dismissal from employment valid, and (3) ordered respondents Philippine Luen Thai Holdings, Corp. (PLTHC)/L&T International Group Phils., Inc. (L&T) (respondents) to pay petitioner an amount equivalent to three months salary pursuant to the termination provision of the employment contract.

Factual Antecedents

In February 2000, PLTHC hired petitioner as Corporate Human Resources (CHR) Director for Manufacturing for its subsidiary/affiliate company, L&T. In the employment contract,[5] petitioner was tasked to perform functions in relation to administration, recruitment, benefits, audit/compliance, policy development/

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[1] *Rollo,* pp. 9-51.

[2] CA *rollo,* Vol. II, pp. 1508-1523; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Renato C. Dacudao and Monina Arevalo-Zenarosa.

[3] CA *rollo,* Vol. I, pp. 87-95; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[4] *Id.* at 97-98.

[5] *Id.* at 322-326.

structure, project plan, and such other works as may be assigned by her immediate superior, Frank Sauceda (Sauceda), PLTHC's Corporate Director for Human Resources.

On September 6, 2001, petitioner received a Prerequisite Notice[6] from Sauceda and the Corporate Legal Counsel of PLTHC, Ma. Lorelie T. Edles (Edles), which reads:

This has reference to your failure to perform in accordance with management directives in various instances, which collectively have resulted in loss of confidence in your capability to promote the interests of the Company.

The most deleterious to the Company has been your pronouncements against the Human Resource Information System (HRIS) or HR2 Program, a corporate initiative that is at the core and is crucial to the enhancement of personnel management for the global operations of the Company. On numerous occasions, in the presence of colleagues and subordinates, you made statements that serve to undermine the Company's efforts at pursuing the HR2 Program. You ought to have realized that when leveled by an officer of your rank, no less than a Director of the Corporate Human Resources Division, such remarks are highly inflammatory and their negative impact is magnified.

Just as flagrant is your inability to incite collaboration and harmony within the Corporate Human Resources Division. Instead, colleagues and subordinates complain of your negative attitude towards the Company, its officers and people. You have established notoriety for your temper and have alienated most members of your division. You ought to have realized that when exhibited by an officer of your rank, no less than a Director of the Corporate Human Resources Division, poor interpersonal skills and the lack of moral suasion are extremely damaging.

The foregoing have, in fact, manifested in your own unsatisfactory performance rating, and in the departure of promising employees who could not work with you.

In view of the above, we afford you the opportunity to submit your written reply to this memorandum within forty-eight (48) hours from

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[6] *Id.* at 399.

its receipt. Failure to so submit shall be construed as waiver of your right to be heard. Consequently, the Company shall immediately decide on this matter.

x x x x x x x x x[7]

In petitioner's written response[8] dated September 10, 2001, she explained that her alleged failure to perform management directives could be attributed to the lack of effective communication with her superiors due to malfunctioning email system. This caused her to miss certain directives coming from her superiors and likewise, for her superiors to overlook the reports she was submitting. She denied uttering negative comments about the HR2 Program and instead claimed to have intimated her support for it. She further denied causing disharmony in her division. Petitioner emphasized that in June 2001, she received a relatively good rating of 80.2% in her overall performance appraisal[9] which meant that she displayed dependable work level performance as well as good corporate relationship with her superiors and subordinates.

In a Termination Notice[10] dated September 12, 2001, respondents, through Sauceda and Edles, dismissed petitioner from the service for loss of confidence on her ability to promote the interests of the company. This led petitioner to file a Complaint[11] for illegal dismissal, payment of separation pay, 13th month pay, moral and exemplary damages, attorney's fees, and other unpaid company benefits against respondents and its officers, namely, Sauceda, Edles and Willie Tan (Tan), the Executive Vice-President of PLTHC.

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[7] *Id.*

[8] *Id.* at 419-420.

[9] *Id.* at 385-392.

[10] *Id.* at 421.

[11] *Id.* at 435-436.

Proceedings before the Labor Arbiter

In her Position Paper,[12] petitioner argued that her dismissal was without valid or just cause and was effected without due process. According to her, the causes for her dismissal as stated in the Prerequisite Notice and Notice of Termination are not proper grounds for termination under the Labor Code and the same do not even pertain to any willful violation of the company's code of discipline or any other company policy. Even the alleged loss of confidence was not supported by any evidence of wrongdoing on her part. She likewise claimed that due process was not observed since she was not afforded a hearing, investigation and right to appeal as per company procedure for disciplining employees. Furthermore, respondents were guilty of violating the termination provision under the employment contract which stipulated that employment after probationary period shall be terminated by giving the employee a three-month notice in writing or by paying three months salary in lieu of notice. Petitioner also accused respondents of having acted in bad faith by subjecting her to public humiliation and embarrassment when she was ordered to immediately turn over the company car, vacate her office and remove all her belongings on the same day she received the termination notice, in full view of all the other employees.

Respondents, on the other hand, claimed that they have a wide discretion in dismissing petitioner as she was occupying a managerial position. They claimed in their Position Paper[13] that petitioner's inefficiency and lackadaisical attitude in performing her work were just and valid grounds for termination. In the same token, her gross and habitual neglect of duties were enough bases for respondents to lose all their confidence in petitioner's ability to perform her job satisfactorily. Also, petitioner was accorded due process as she was furnished with two notices – the first requiring her to explain why she should

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[12] *Id.* at 367-378.

[13] *Id.* at 327-344.

not be terminated, and the second apprising her of the management's decision to terminate her from employment.

Further in their Reply[14] to petitioner's position paper, respondents enumerated the various instances which manifested petitioner's poor work attitude and dismal performance, to wit: 1) her failure to perform in accordance with management directives such as when she unreasonably delayed the hiring of a Human Rights and Compliance Manager; failed to establish communication with superiors and co-workers; failed to regularly update Sauceda of the progress of her work; requested for reimbursement of unauthorized expenditures; and, gave orders contrary to policy on the computation of legal and holiday pay; 2) her negative pronouncements against the company's program in the presence of colleagues and subordinates; 3) her inability to incite collaboration and harmony within her department; 4) her negative attitude towards the company, its officers and employees; and 5) her low performance appraisal rating which is unacceptable for a top level personnel like herself. Exchange of emails, affidavits and other documents were presented to provide proof of incidents which gave rise to these allegations. Respondents also asserted that the procedure laid down in the company's code of discipline, which provided for the mandatory requirements of notice, hearing/investigation and right to appeal, only applies to rank and file, supervisory, junior managerial and department managerial employees and not to petitioner, a CHR Director, who plays a key role in these termination proceedings. Further, the three-month notice for termination, as written in the employment contract, is only necessary when there is no just cause for the employee's dismissal and, therefore, not applicable to petitioner. Respondents then disputed petitioner's money claims and also sought the dropping of Sauceda, Edles and Tan from the complaint for not being real parties in interest.

In her rejoinder,[15] petitioner stood firm on her conviction that she was dismissed without valid cause by presenting

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[14] *Id.* at 437-476.

[15] *Id.* at 613-626.

documentary evidence of her good performance. Further, she insisted that she was dismissed for reasons different from those mentioned in the Prerequisite Notice and Notice of Termination, both of which did not state gross and habitual neglect of duties as a ground. She also construed respondents' act of offering her a settlement or compensation right after her termination as their acknowledgement of the illegal act they committed against her. Moreover, petitioner argued that the company policies on procedural due process apply to all its employees, whether rank and file or managerial.

In a Decision[16] dated October 21, 2002, the Labor Arbiter declared petitioner to have been illegally dismissed. It was held that petitioner cannot be charged with undermining the HR2 Program of the company since evidence was presented to show that she was already divested of duties relative to this program. Also, respondents' accusation that petitioner caused disharmony among colleagues and subordinates has no merit as there was ample proof that petitioner was in constant communication with her co-workers through official channels and email. Further, the Labor Arbiter theorized that petitioner's performance rating demonstrated a passing or satisfactory grade and therefore could not be a sufficient and legitimate basis to terminate her for loss of trust and confidence. Moreover, petitioner cannot be dismissed based merely on these vague offenses but only for specific offenses which, under the company's code of conduct, merit the penalty of outright dismissal. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was illegally dismissed by respondent corporation, and the latter is hereby directed to reinstate complainant to her former position and pay her full backwages and benefits computed below, as follows:
>
> A. Backwages September 12, 2001 to October 21, 2002
>
> 1. Salaries and Wages
> ₱80,000 x 13.30 months = ₱1,064,000.00

[16] *Id.* at 712-724; penned by Labor Arbiter Edgardo M. Madriaga.

2. 13th month pay		
₱1,064,000.00 / 12	=	88,666.67
3. VL		
₱80,000 / 26 x 10 days	=	34,102.56
		₱1,186,769.23
B. Attorney's Fees (10%)		118,676.92
		₱1,305,446.15

SO ORDERED.[17]

Proceedings before the National Labor Relations Commission

Respondents appealed to the NLRC.[18] For her part, petitioner filed before the Labor Arbiter a Motion for Recomputation[19] of the awards. This motion was, however, denied in an Order[20] dated March 17, 2003 on the ground that petitioner could challenge any disposition made only by way of an appeal within the reglementary period and not through a motion.

In a Decision[21] dated August 20, 2003, the NLRC found merit in respondents' appeal. To the NLRC, respondents have sufficiently established the validity of petitioner's dismissal on the ground of loss of trust and confidence through the various emails, affidavits and other documents attached to the records. Specifically, respondents have proven that petitioner failed to recruit a Human Rights and Compliance Manager, ignored company policies, failed to effectively communicate with her superiors and subordinates, and displayed ineptitude in her work as a director and in her relationship with her co-workers. These showed that there exist enough bases for respondents to lose the trust they had reposed on petitioner, who, as a managerial employee, was expected to possess exemplary work attitude.

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[17] *Id.* at 723-724.

[18] See respondents' Memorandum on Partial Appeal, *id.* at 725-785.

[19] *Id.* at 887-892.

[20] CA *rollo*, Vol. II, pp. 944-947.

[21] *Id.* at 1066-1074; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

The NLRC, however, noted that the employment contract specifically provided for payment of three months salary in lieu of the stipulated three-month notice in case of termination, thus:

> IN LIGHT OF THE FOREGOING PREMISES, the decision appealed from is hereby MODIFIED, to declare the dismissal of complainant legal but to order respondent[s] to pay complainant the sum of ₱240,000.00 representing three months salary as expressed in complainant's contract of employment. All other claims are DISMISSED for lack of merit.
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> SO ORDERED.[22]

Petitioner filed a Motion for Reconsideration[23] which was granted by the NLRC. In a Resolution[24] dated March 23, 2004, the NLRC concluded that petitioner was not afforded due process as she was not given the opportunity to refute the charges against her through an investigation and an appeal at the company level. Thus, respondents failed to establish the truthfulness of the allegations against her as to support the validity of the dismissal. The NLRC also agreed with petitioner's claim that she was subjected to humiliation on the day of her termination. Consequently, the NLRC declared petitioner's dismissal as illegal and thus reinstated the Labor Arbiter's Decision with modification that respondents be ordered to pay petitioner separation pay in lieu of reinstatement due to the strained relation between the parties.

In a Resolution[25] dated July 21, 2004, the NLRC resolved to dismiss respondents' motion for reconsideration.

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[22] *Id.* at 1073-1074.

[23] *Id.* at 1075-1093.

[24] CA *rollo*, Vol. I, pp. 87-95.

[25] *Id.* at 97-98. In the said Resolution, the NLRC dismissed both the motions for reconsideration of respondents and petitioner although it was only the respondents who moved to reconsider the March 23, 2004 Resolution, as clarified by petitioner in a Manifestation and Motion for Clarification; CA *rollo*, Vol. II, pp. 1231-1232.

Proceedings before the Court of Appeals

Respondents thus filed with the CA a Petition for *Certiorari* with Urgent Motion for Issuance of Temporary Restraining Order (TRO) or Writ of Preliminary Injunction.[26] Petitioner then filed her Comment[27] thereto. Subsequently, the CA denied respondents' prayer for TRO in a Resolution[28] dated February 15, 2005.

On July 18, 2006, the CA rendered a Decision[29] finding merit in the petition. The CA found sufficient evidence to support the dismissal of petitioner on the ground of loss of trust and confidence. It regarded petitioner's 80.2% performance rating as below par and hence, declared that she cannot merely rely on the same in holding on to her position as CHR Director, a highly sensitive and demanding post. Also, despite the opportunity to improve, petitioner continued to display poor work attitude, dismal performance and rancorous and abusive behavior towards co-workers as gleaned from the various emails and affidavits of her superiors and other employees. These circumstances, taken together, constitute sufficient cause for respondents to lose confidence in petitioner's ability to continue in her job and to promote the interest of the company.

Moreover, the CA did not subscribe to petitioner's allegation that she was denied due process. On the contrary, said court found that she was adequately notified of the charges against her through the show cause notice which clearly stated the instances that served as sufficient bases for the loss of trust and confidence, to wit: her failure to perform in accordance with management directives and her actions of undermining company goals and causing disharmony among her co-workers. After finding her written response to be unsatisfactory, petitioner was likewise properly notified of the company's decision to

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[26] CA *rollo,* Vol. I, pp. 2-85.

[27] CA *rollo,* Vol. II, pp. 1249-1277.

[28] *Id.* at 1356-1357.

[29] *Id.* at 1508-1523.

terminate her services. Clearly, respondents observed the requirements of procedural due process. Nevertheless, respondents, in effecting the dismissal, should have paid petitioner her salary for three months as provided for in the employment contract. For its failure to do so, the CA ordered respondents to pay petitioner three months salary in accordance with their contractual undertaking. The dispositive portion of the CA Decision states:

> WHEREFORE, the Resolution of the National Labor Relations Commission dated March 23, 2004 is **REVERSED**. [Respondents] are hereby ordered to pay [petitioner] the amount corresponding to three [months] salary pursuant to the termination provision of the employment contract.
>
> SO ORDERED.[30]

Petitioner's Motion for Reconsideration[31] was denied in the CA Resolution[32] dated October 4, 2006.

Issues

Hence, the present petition raising the following issues:

I. WHETHER X X X THE COURT OF APPEALS COMMITTED AN ERROR WHEN IT REVERSED THE DECISION OF THE NLRC ON *CERTIORARI* DESPITE THE FACT THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE FACTUAL FINDINGS OF THE LABOR ARBITER – THAT PETITIONER WAS ILLEGALLY DISMISSED FROM HER EMPLOYMENT BY RESPONDENTS.

II. WHETHER X X X THE ALLEGED VALID OR JUST CAUSE FOR TERMINATION OF PETITIONER FROM HER EMPLOYMENT WAS PROVEN AND ESTABLISHED BY SUBSTANTIAL EVIDENCE ON RECORD.

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[30] CA *rollo*, Vol. II, p. 1522.

[31] *Id.* at 1530-1557.

[32] *Id.* at 1585-1586.

III. WHETHER X X X RESPONDENTS DEPRIVED PETITIONER OF HER RIGHT TO DUE PROCESS WHEN RESPONDENTS DISMISSED PETITIONER WITHOUT CONDUCTING ANY INVESTIGATION TO DETERMINE THE VERACITY AND TRUTHFULNESS OF THE ALLEGATIONS AGAINST PETITIONER IN VIOLATION OF RESPONDENTS' OWN COMPANY POLICIES.[33]

Petitioner posits that there is no substantial evidence to establish valid grounds for her dismissal since various emails from her superiors illustrating her accomplishments and commendations, as well as her "good" overall performance rating negate loss of trust and confidence. She also insists that she was not afforded due process at the company level. She claims that she was not properly informed of the offenses charged against her due to the vagueness of the terms written in the termination notices and that no investigation and hearing was conducted as required by company policy.

Our Ruling

The petition is devoid of merit. The Court finds no cogent reason to depart from the ruling of the CA that petitioner was validly dismissed.

There exists a valid ground for petitioner's termination from employment.

Jurisprudence provides that an employer has a distinct prerogative and wider latitude of discretion in dismissing a managerial personnel who performs functions which by their nature require the employer's full trust and confidence.[34] As distinguished from a rank and file personnel, mere existence of a basis for believing that a managerial employee has breached the trust of the employer justifies dismissal.[35] "[L]oss of

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[33] *Rollo*, p. 23.

[34] *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 123294, October 20, 2010, 634 SCRA 18, 36.

[35] *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 406 (1998).

confidence as a ground for dismissal does not require proof beyond reasonable doubt as the law requires only that there be at least some basis to justify it."[36]

Petitioner, in the present case, was L&T's CHR Director for Manufacturing. As such, she was directly responsible for managing her own departmental staff. It is therefore without question that the CHR Director for Manufacturing is a managerial position saddled with great responsibility. Because of this, petitioner must enjoy the full trust and confidence of her superiors. Not only that, she ought to know that she is "bound by more exacting work ethics"[37] and should live up to this high standard of responsibility. However, petitioner delivered dismal performance and displayed poor work attitude which constitute sufficient reasons for an employer to terminate an employee on the ground of loss of trust and confidence. Respondents also impute upon petitioner gross negligence and incompetence which are likewise justifiable grounds for dismissal.[38] The burden of proving that the termination was for a valid cause lies on the employer.[39] Here, respondents were able to overcome this burden as the evidence presented clearly support the validity of petitioner's dismissal.

First, records show that petitioner indeed unreasonably failed to effectively communicate with her immediate superior. There was an apparent neglect in her obligation to maintain constant communication with Sauceda in order to ensure that her work is up to par. This is evident from the various emails[40] showing that she failed to update Sauceda on the progress of her important

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[36] *Filipinas Manufacturers Bank v. National Labor Relations Commission,* 261 Phil. 1009, 1015 (1990).

[37] *Community Rural Bank of San Isidro (N.E.), Inc. v. Paez,* G.R. No. 158707, November 27, 2006, 508 SCRA 245, 260.

[38] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 498 (2005).

[39] *Century Canning Corporation v. Court of Appeals,* G.R. No. 152894, August 17, 2007, 530 SCRA 501, 518.

[40] See Annexes "12","15", and "19" of Edles's Affidavit, CA *rollo*, Vol. I., pp. 196, 199-201 and 218, respectively.

assignments on several occasions. While petitioner explained in her written reply to the Prerequisite Notice that such failure to communicate was due to the company's computer system breakdown, respondents however were able to negate this as they have shown that the computer virus which affected the company's system only damaged some email addresses of certain employees which did not include that of Sauceda's. On the other hand, petitioner failed to present any concrete proof that the said computer virus also damaged Sauceda's email account as to effectively disrupt their regular communication. Moreover, we agree with respondents' stance that petitioner could still reach Sauceda through other means of communication and should not completely rely on the web.

Second, the affidavits of petitioner's co-workers revealed her negative attitude and unprofessional behavior towards them and the company. In her affidavit,[41] Agnes Suzette Pasustento, L&T's Manager for the Corporate Communications Department, attested to petitioner's "badmouthing" of Sauceda in one of their meetings abroad and of discussing with her about filing a labor case against the company. Also, in the affidavits of Rizza S. Esplana[42] (Sauceda's Executive Assistant), Cynthia Yñiguez[43] (Corporate Human Resources Manager of an affiliate of L&T), and Ana Wilma Arreza[44] (Human Resources and Administration Division Manager of an affiliate of L&T), they narrated several instances which demonstrated petitioner's notoriously bad temper. They all described her to have an "irrational" behavior and "superior and condescending" attitude in the workplace. Unfortunately for petitioner, these sworn statements which notably remain uncontroverted and unrefuted, militate against her innocence and strengthen the adverse averments against her.[45]

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[41] Annex "20" of Edles's Affidavit, *id.* at 219-220.

[42] Annex "22" of Edles's Affidavit, *id.* at 227.

[43] Annex "24" of Edles's Affidavit, *id.* at 233.

[44] Annex "25" of Edles's Affidavit, *id.* at 234.

[45] *House of Sara Lee v. Rey,* G.R. No. 149013, August 31, 2006, 500 SCRA 419, 437.

It is well to state that as a CHR Director tasked to efficiently manage the company's human resource team and practically being considered the "face" of the Human Resource, petitioner should exhibit utmost concern for her employer's interest. She should likewise establish not only credibility but also respect from co-workers which can only be attained if she demonstrates maturity and professionalism in the discharge of her duties. She is also expected to act as a role model who displays uprightness both in her own behavior and in her dealings with others.

The third and most important is petitioner's display of inefficiency and ineptitude in her job as a CHR Director. In the affidavit[46] of Ornida B. Calma, Chief Accountant of L&T's affiliate company, petitioner, on two occasions, gave wrong information regarding issues on leave and holiday pay which generated confusion among employees in the computation of salaries and wages. Due to the nature of her functions, petitioner is expected to have strong working knowledge of labor laws and regulations to help shed light on issues and questions regarding the same instead of complicating them. Petitioner obviously failed in this respect. No wonder she received a less than par performance in her performance evaluation conducted in June 2001, contrary to her assertion that an 80.2% rating illustrates good and dependable work performance. As can be gleaned in the performance appraisal form, petitioner received deficient marks and low ratings on areas of problem solving and decision making, interpersonal relationships, planning and organization, project management and integrity notwithstanding an overall passing grade. As aptly remarked by the CA, these low marks revealed the "degree of [petitioner's] work handicap" and should have served as a notice for her to improve on her job. However, she appeared complacent and remained lax in her duties and this naturally resulted to respondents' loss of confidence in her managerial abilities.

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[46] Annex "2" of respondents' Sur-Rejoinder filed before the Labor Arbiter, CA *rollo*, Vol. I, p. 700.

Taking all these circumstances collectively, the Court is convinced that respondents have sufficient and valid reasons in terminating the services of petitioner as her continued employment would be patently inimical to respondents' interest. An employer "has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers."[47] "[S]o long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements,"[48] the exercise of this management prerogative must be upheld.

Anent petitioner's imputation of bad faith upon respondents, the same deserves no credence. That she was publicly embarrassed when she was coerced by Sauceda and Edles to vacate her office, return the company car and take all her personal belongings on the day she was dismissed, are all mere allegations not substantiated by proof. And since it is hornbook rule that he who alleges must prove, we could not therefore conclude that her termination was tainted with any malice or bad faith without any sufficient basis to substantiate this bare allegation. Moreover, we are more inclined to believe that respondents' offer of settlement immediately after petitioner's termination was more of a generous offer of financial assistance rather than an indication of ill-motive on respondents' part.

Petitioner was accorded due process.

Petitioner insists that she was not properly apprised of the specific grounds for her termination as to give her a reasonable opportunity to explain. This is because the Prerequisite Notice

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[47] *Jumuad v. Hi-Flyer Food, Inc.*, G.R. No. 187887, September 7, 2011, 657 SCRA 288, 304.

[48] *Bank of the Philippine Islands v. Uy*, 505 Phil. 704, 717 (2005).

and Notice of Termination did not mention any valid or authorized cause for dismissal but rather merely contained general allegations and vague terms.

We have examined the Prerequisite Notice and contrary to petitioner's assertion, find the same to be free from any ambiguity. The said notice properly advised petitioner to explain through a written response her failure to perform in accordance with management directives, which deficiency resulted in the company's loss of confidence in her capability to promote its interest. As correctly explained by the CA, the notice cited specific incidents from various instances which showed petitioner's "repeated failure to comply with work directives, her inclination to make negative remarks about company goals and her difficult personality," that have collectively contributed to the company's loss of trust and confidence in her. Indeed, these specified acts, in addition to her low performance rating, demonstrated petitioner's neglect of duty and incompetence which support the termination for loss of trust and confidence.

Neither can there be any denial of due process due to the absence of a hearing or investigation at the company level. It has been held in a plethora of cases that due process requirement is met when there is simply an opportunity to be heard and to explain one's side even if no hearing is conducted.[49] In the case of *Perez v. Philippine Telegraph and Telephone Company*,[50] this Court pronounced that an employee may be afforded ample opportunity to be heard by means of any method, verbal or written, whether in a hearing, conference or some other fair, just and reasonable way, in that:

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[49] *Allied Banking Corp. v. Court of Appeals*, 461 Phil. 517, 539 (2003); *Adiong v. Court of Appeals*, 422 Phil. 713, 721 (2001); *Canete Jr. v. National Labor Relations Commission*, 374 Phil. 272, 281 (1999).

[50] G.R. No. 152048, April 7, 2009, 584 SCRA 110.

x x x x x x x x x

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation (which may be in the form of a letter, memorandum, affidavit or position paper) and offer evidence in support thereof, like relevant company records (such as his 201 file and daily time records) and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure. To this extent, we refine the decisions we have rendered so far on this point of law.

x x x x x x x x x

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

(a) 'ample opportunity to be heard' means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c) the 'ample opportunity to be heard' standard in the Labor Code prevails over the 'hearing or conference' requirement in the implementing rules and regulations.[51]

In this case, petitioner's written response to the Prerequisite Notice provided her with an avenue to explain and defend her side and thus served the purpose of due process. That there

[51] *Id.* at 126-127.

was no hearing, investigation or right to appeal, which petitioner opined to be a violation of company policies, is of no moment since the records is bereft of any showing that there is an existing company policy that requires these procedures with respect to the termination of a CHR Director like petitioner or that company practice calls for the same. There was also no request for a formal hearing on the part of petitioner.

As she was served with a notice apprising her of the charges against her, and also a subsequent notice informing her of the management's decision to terminate her services after respondents found her written response to the first notice unsatisfactory, petitioner was clearly afforded her right to due process.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated July 18, 2006 of the Court of Appeals in CA-G.R. SP No. 86937 is **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Brion,*[**] *Villarama, Jr.,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

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

[**] Per Special Order No. 1247 dated June 29, 2012.

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

SECOND DIVISION

[G.R. No. 179545. July 11, 2012]

ENGR. EMELYNE P. CAYETANO-ABAÑO, OPERATING UNDER THE NAME AND STYLE JACOB JOSEPH BUILDERS & PLANNERS, and ENGR. DARIO C. ABAÑO, *petitioners, vs.* **COLEGIO DE SAN JUAN DE LETRAN-CALAMBA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; APPEALS; RULE 45 PETITION; CASES FACTUAL IN NATURE ARE NOT SUBJECT TO REVIEW BY THE COURT; EXCEPTION IS WHEN THERE IS CONFLICT BETWEEN FINDINGS OF FACT OF THE LOWER COURT AND THE COURT OF APPEALS; CASE AT BAR.— At the outset, it must be pointed out that the issues presented in this case are factual in nature and, therefore, generally not subject to review by this Court. As a rule, in the exercise of its power of review, the Supreme Court is not a trier of facts and does not normally undertake the reexamination of the evidence presented by the contending parties during the trial of the case. Nevertheless, there are recognized exceptions to this rule, one of which is when the findings of fact of the lower court and the Court of Appeals are conflicting, as in the case at bar. Here, a glaring contradiction exists between the factual findings of the CIAC and the CA. While the CIAC granted most of petitioners' claims and none of respondent's, the CA, on the other hand, completely reversed the award of the CIAC in favor of petitioners and granted respondent's claims. In view of the diametrically opposed findings and conclusions of the CIAC and the CA, a review of the respective factual determinations of the two tribunals is in order, if only to fully and finally settle the conflicting claims of the parties.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TERM OF CONTRACT ON PAYMENT PERIOD OF DOWNPAYMENT; IN THE CASE AT BAR, THE PERIOD OF SEVEN DAYS UPON SIGNING OF THE CONTRACT WITHIN WHICH

TO PAY THE DOWNPAYMENT WAS VIOLATED BY RESPONDENT LETRAN-CALAMBA AS IT PAID THE SAME WITHIN THREE (3) MONTHS AFTER THE CONTRACT WAS SIGNED.— Paragraph 6(a) of the Contract provides that "the OWNER [respondent] shall pay the CONTRACTOR [petitioners] x x x 25% down payment payable within seven days upon signing of this Contract." This provision is clear and unqualified: thus, the full amount of ₱13,079,981.80, representing 25% of the contract price of ₱52,319,927.20, should have been paid by respondent not later than 24 November 2003, the seventh day after the signing of the Contract. Instead, respondent paid the down payment in installments beginning 9 December 2003, finally settling the amount in full on 27 February 2004 or three (3) months after the Contract was signed. Respondent is, therefore, indisputably guilty of violating the terms of the Contract on the payment of the down payment.

3. ID.; ID.; TERM OF CONTRACT ON COMPLETION PERIOD OF BUILDING; IN THE CASE AT BAR, PETITIONER ABAÑO VIOLATED SAID TERM AS THE BUILDING WAS NOT YET COMPLETED AS OF MARCH 27, 2005, OR FOURTEEN (14) MONTHS UPON THE SIGNING OF THE CONTRACT AND ISSUANCE OF NECESSARY PERMITS.— Paragraph 1 of the Contract states that "the CONTRACTOR shall complete the project for the period of fourteen (14) months effective upon the signing of this contract and issuance of necessary permits." The Contract was signed on 17 November 2003 and the corresponding building permit was issued on 27 January 2004. Hence, petitioners should have completed the building on 27 March 2005. However, contrary to petitioners' claim and the findings of the CIAC, the records of this case clearly reveal that as of the latter date, the building had not been turned-over to respondent because the same had not been finished. Thus: 1. Respondent's Second Progress Billing Report dated 8 February 2005 indicated April 2005 as the move-out date; 2. The Final Billing, stating that project completion is 100%, covered the period 9 February 2005 to 30 April 2005 – proof that by 27 March 2005, the date the project should have been completed, construction was still ongoing; and 3. The series of communication between

petitioners and respondent after the 16-17 May 2005 joint inspection of the building, … all demonstrate that as of that period, the project still had not been completed.

4. ID.; ID.; TERM OF CONTRACT ON OBLIGATION TO DELIVER A COMPLETE BUILDING; IN THE CASE AT BAR, PETITIONER ABAÑO VIOLATED SAID TERM, AS THE REPORT OF DLSPI INDICATES A 94.12% WORK COMPLETION ONLY.— The report of DLSPI, the quantity surveyor engaged by respondent to ascertain the extent of work accomplished by petitioners on the project, indicates a 94.12% work completion, valued at ₱49,244,814.09. The ocular inspection conducted by the CIAC, on the other hand, convinced its arbitrators that petitioners' accomplishment on the project is 100%. After a thorough and comprehensive study of the records of this case, particularly the exhibits submitted by the parties, this Court finds and so holds that the DLSPI report is more reliable. In the first place, contrary to the allegation of petitioners and the finding of the CIAC that the report prepared by DLSPI was based on the unrevised plans, the report itself states that the contract cost is ₱52,319,927.20 – a clear indication that DLSPI relied upon the revised plans and not the original ones. It will be recalled that the contract price originally proposed by petitioners was ₱64.2 Million. This was later on reduced to ₱55 Million, and after further negotiations, the contract price of ₱52,319,927.20 was finally agreed upon by the parties. This latter amount was what was reflected in the report of DLSPI. x x x In the second place and, again, contrary to the finding of the CIAC that the DLSPI report did not consider the Detailed Cost Estimates, the report specifically states: "1. In connection with the preparation of the report, the following were used as reference: x x x C. Copy of **cost break down** x x x; and 2. In doing the evaluation, the following were performed by DLSPI to obtain the objective: x x x D. Evaluated the **summary of cost that was provided by the Contractor**, and list [sic] down the works deleted from their cost breakdown." x x x Third, petitioners' allegation that the report of DLSPI cannot be given credence because DLSPI had only the architectural and structural plans but not the electrical, plumbing and sanitary plans, is, once more, contradicted by the records of this case … . x x x Fourth,

with respect to the additives and the deductives, the testimony of Engr. Areola clearly shows that these had also been factored in the report … . x x x Finally, in order to verify the extent of work actually accomplished by petitioners on the project, DLSPI conducted not just one, but two ocular inspections on the site. The first ocular inspection was done on 6 December 2005 – almost two months after the take-over by respondent of the building – and the second one was carried out on 27 March 2006. The second inspection was done in order to confirm the observations made during the first inspection prior to the preparation and submission of the report, which was completed on 17 July 2006.

5. ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONER ABAÑO VIOLATED SAID TERM, AS THE REPORT OF DLSPI INDICATES A 94.12% WORK COMPLETION ONLY; WHILE THE CIAC CONCLUDED THAT COMPLETION OF THE BUILDING WAS 100% AS THE ITEMS INSPECTED WERE ALLEGEDLY MERE PUNCH LIST IN NATURE, THE FACT THAT THESE DEFECTS AND/OR INCOMPLETE WORKS WERE STILL EXISTING AT THE TIME OF THE TAKEOVER OF THE BUILDING LEADS THIS COURT TO THE INEVITABLE CONCLUSION THAT PETITIONERS NEVER DID COMPLETE THE PUNCH LIST.— The CIAC, after ocular inspection of the project, concluded that completion of the building was 100% as the items inspected were allegedly mere punch list in nature. Apparently, the CIAC considered the items included in the punch list as in the character of "finishing touches." x x x Given the many defects and unfinished works on the building subject of this case, the items in the punch list submitted by respondent for petitioners' action are definitely not in the nature of mere "finishing touches." Even assuming that there may be instances when a punch list may contain only items which are in the character of finishing touches, the photographs submitted by respondent documenting the state of the building after it took over the same in October 2005 unmistakably rebut this presumption. x x x The … "Checklist," dated 8 June 2005, … enumerates the works which still need correction/completion by petitioners after the first joint inspection of the building on 16 and 17 May 2005. These

defective and incomplete works were acknowledged by petitioner Emelyne Abaño herself, as evidenced by her signature on the "Checklist" as the person who prepared the same and by the fact that opposite each item to be corrected she indicated "will act on this as soon as possible" as the action to be taken. The fact that these defects and/or incomplete works were still existing at the time of the takeover of the building leads this Court to the inevitable conclusion that PETITIONERS NEVER DID COMPLETE THE PUNCH LIST.

6. ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONER ABAÑO VIOLATED SAID TERM, AS THE REPORT OF DLSPI INDICATES A 94.12% WORK COMPLETION ONLY; WHILE THE CIAC CONCLUDED THAT COMPLETION OF THE BUILDING WAS 100% AS THE ITEMS INSPECTED WERE ALLEGEDLY MERE PUNCH LIST IN NATURE, THE FACT THAT THESE DEFECTS AND/OR INCOMPLETE WORKS WERE STILL EXISTING AT THE TIME OF THE TAKEOVER OF THE BUILDING LEADS THIS COURT TO THE INEVITABLE CONCLUSION THAT PETITIONERS NEVER DID COMPLETE THE PUNCH LIST; GENERALLY, THE PUNCH LIST INCLUDES THOSE ITEMS THAT RESTRICT THE FINAL COMPLETION OF THE PROJECT.— In the case of *Perini Corporation v. Greate Bay Hotel & Casino, Inc.* (129 N.J. 479, 610 A.2d 364 N.J.), the Supreme Court of New Jersey had the occasion to define "punch list" as "a comprehensive list of items to be completed or corrected." Generally, the punch list includes those items that restrict the final completion of the project. Also, in *J.A. Sullivan Corporation v. Commonwealth* (397 Mass. 789, 494 N.E.2d 374), the Supreme Judicial Court of Massachusetts stated that a punch list is an itemized list of finish work, corrections, repairs, and services to be performed in order to complete a construction contract. In the more recent cases of *Weitz Company v. MH Washington, et al.* (631 F.3d 510, C.A.8 [Mo.]) and *Arch Insurance Company, et al. v. Precision Stone, Inc.* (584 F.3d 33, C.A.2 [N.Y.]), the United States Court of Appeals defined "punch list" as "the report of unfinished work identified during an inspection by the owner and contractor

just before completion of a building" and "work called for by the original contract (or subcontract) which the contractor (or subcontractor) has not satisfactorily completed." Clearly, by its very nature, unless and until the items in a punch list are completed and/or corrected, accomplishment on a project can never be considered 100%.

7. ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONER ABAÑO VIOLATED SAID TERM, AS THE REPORT OF DLSPI INDICATES A 94.12% WORK COMPLETION ONLY; WHILE THE CIAC CONCLUDED THAT COMPLETION OF THE BUILDING WAS 100% AS THE ITEMS INSPECTED WERE ALLEGEDLY MERE PUNCH LIST IN NATURE, THE FACT THAT THESE DEFECTS AND/OR INCOMPLETE WORKS WERE STILL EXISTING AT THE TIME OF THE TAKEOVER OF THE BUILDING LEADS THIS COURT TO THE INEVITABLE CONCLUSION THAT PETITIONERS NEVER DID COMPLETE THE PUNCH LIST; THE FACT OF ABANDONMENT OF THE PROJECT HAVING BEEN ESTABLISHED, JUSTIFIABLY, RESPONDENT CANNOT BE EXPECTED TO ACCEPT AN INCOMPLETE BUILDING.— More importantly, the fact that petitioners failed, and even refused, despite several demands from respondent, to correct and finish the defective and deficient works supports the allegation of respondent that petitioners eventually abandoned the project. It may be recalled that prior to its takeover of the building on 19 October 2005, respondent wrote petitioners no less than three letters (dated 26 July 2005, 12 August 2005, and 10 October 2005) demanding that petitioners correct and complete their works on the building, with the last letter containing a warning that should petitioners fail to act on respondent's demands, they would be considered to have abandoned the project. Petitioners, however, ignored the demands of respondent. Thereby, the fact of abandonment of the project was established. Justifiably, respondent cannot be expected to accept an incomplete building. The completion of the punch list was, therefore, essential before respondent could finally accept the building.

8. ID.; ID.; TERM OF CONTRACT ON OBLIGATION TO SUPPORT REQUESTS FOR PAYMENT WITH PROGRESS PHOTOGRAPHS; NOT COMPLIED WITH IN THE CASE AT BAR.— The Technical Specifications Book requires that requests for payment must be supported by progress photographs and that "no partial payment shall be considered for approval without the above mentioned prints accompanying the Request for Payment." It is an admitted fact, however, that on 12 July 2004, petitioners requested payment from respondent in the amount of ₱14,325,196.07 without the requisite photographs, as in fact, petitioners' First Progress Billing Report was submitted only on 2 August 2004. Indeed, even prior to the submission of their First Progress Billing, and after the 12 July 2004 request for payment, petitioners again requested, on 20 July 2004, payment for additional works on the ground floor amounting to ₱1,598,698.00 without the necessary accompanying photographs. Respondent, however, did not pay this amount as the alleged additional works were not previously approved by respondent.

9. ID.; ID.; TERM OF CONTRACT ON OBLIGATION OF PETITIONER TO SECURE RESPONDENT LETRAN-CALAMBA'S APPROVAL IN WRITING FOR ANY VARIATIONS IN AND DEVIATIONS FROM THE CONTRACT; NOT COMPLIED WITH IN THE CASE AT BAR.— Specifically, with respect to change orders, the same document, which forms part of the Contract, provides: "7. CHANGES IN THE WORK: a. CHANGE ORDER BY THE OWNER: The Owner may at anytime without invalidating the Contract and without notice to sureties, order extra work or make changes by altering, adding to or deducting from the work, as covered by the Drawings and Specifications of this Contract and within the general scope thereof. Such changes shall be ordered by the Owner in writing, and **no change** or omission from the Drawings and Specifications **shall be considered to have been authorized without written instructions by the Owner.** " Notwithstanding the afore-quoted provisions, petitioners made variations in and deviations from the Contract without first securing respondent's approval in writing. x x x As the following testimony of petitioner Emelyne Abaño demonstrates,

petitioners were cognizant of the provisions of their Contract requiring all change orders to be approved in writing, yet, they decided to execute these changes without complying with this requirement: "x x x ATTY. R. C. CREENCIA: In your claim for additional works, I noticed that not a single document was attached evidencing that indeed the authorized officer of [respondent] Letran or any other officer for that matter has specifically given a go signal for you to perform all these additional works. ENGR. E. P. CAYETANO-ABAÑO: In writing there is none. Verbally, there is. ATTY. R. C. CREENCIA: Although you agree that the contract says it should be in writing? ENGR. E. P. CAYETANO-ABAÑO: Yes, x x x." It should be emphasized that in a letter dated 24 August 2004, respondent's Rector at that time, Father Rolando De La Rosa, wrote petitioners directing them to defer all construction works which are not part of the contract. Likewise, it is precisely for the reason that the changes carried out by petitioners did not conform to the requirements that they were denied by the CIAC in its Final Award. Hence, even the CIAC acknowledged that petitioners breached the provisions of the Contract on change orders.

10. ID.; DAMAGES; LIQUIDATED DAMAGES; TERM OF CONTRACT ON LIQUIDATED DAMAGES PROVIDES FOR A 20% AMOUNT BASED ON THE CONTRACT COST; IN THE CASE AT BAR, DUE TO PETITIONER'S ABANDONMENT, RESPONDENT IS ENTITLED TO SAID AMOUNT OF LIQUIDATED DAMAGES.— The Contract provides: 3. That a penalty of one tenth of one percent of the unfinished portion of the Contract shall be deducted per day of delay and the maximum penalty of twenty percent (20%) of the project cost for failure of the Contractor to complete the work within the time stipulated above. x x x Considering petitioners' abandonment of the project, respondent is entitled to the maximum amount of liquidated damages which is 20% of the cost of the project. Thus: ₱52,319,927.20 x 20% = ₱10,463,985.44.

11. ID.; ID.; ACTUAL DAMAGES.— *Cost of construction of facilities to house temporary classrooms, library and nursing laboratories;* Respondent claims that as a result of the failure

of petitioners to finish the building on time, it incurred expenses as follows: Cost of construction of temporary classrooms = ₱2,205,000.00; Cost of construction of temporary nursing skills laboratory at L Building = ₱440,000.00; and Cost of Conversion of Humbert Hall as temporary library = ₱29,534.10; (for a) TOTAL = ₱2,674,534.10.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda Agustin Law Offices for petitioners.

Platon Martinez Flores San Pedro & Leaño for respondent.

D E C I S I O N

PEREZ, *J.*:

The Case

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 31 August 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 99315 which set aside the Final Award[2] dated 7 June 2007 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 20-2006 ordering Colegio De San Juan De Letran-Calamba (respondent) to pay herein Engr. Emelyne P. Cayetano-Abaño, operating under the name and style Jacob Joseph Builders & Planners, and Engr. Dario C. Abaño (petitioners) the total sum of ₱13,903,722.94.

The Antecedent Facts

In early 2003, respondent, an educational institution created and existing under Philippine laws, decided to build a central library building on its campus which would likewise house the

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[1] CA *Rollo*, pp. 513-528. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring.

[2] *Id.* at 57-86.

classrooms and laboratory facilities of its Nursing program.[3] Petitioners were commissioned to undertake the project.[4] The corresponding Contract[5] (the Contract) was executed on 17 November 2003 for a total project cost of ₱52,319,927.20.[6] In connection with this, petitioners gave respondent a Technical Specifications Book[7] which formed part of the Contract and which detailed how petitioners would implement the construction project. The parties agreed on a project duration of fourteen (14) months effective upon the signing of the Contract and the issuance of the necessary building permit. The requisite building permit was issued on 27 January 2004;[8] hence, petitioners had until 27 March 2005 to complete the project.

On 16 February 2004, petitioners reminded respondent of the down payment consisting of 25% of the contract price, or a sum equivalent to ₱13,079,981.80. By this date, respondent had already paid a total of ₱6,000,000.00 starting 5 December 2003. The full amount of the down payment was settled on 27 February 2004.[9]

On 16 April 2004, upon petitioners' request and representation that they needed urgent substantial funding, respondent paid ₱10 million although no progress report had been submitted.[10]

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[3] *Rollo*, p. 527, Comment of respondent on the Petition for Review.

[4] CIAC Records, Envelope No. 6, Terms of Reference, pp. 2-3.

[5] CA *rollo*, pp. 320-321.

[6] At the parties' first meeting, petitioners' proposal consisted of a total contract price of ₱64.2M, which was later reduced to ₱55M. Further negotiations resulted in the final contract price of ₱52.319M, *Rollo*, p. 542, Comment of respondent on the Petition for Review.

[7] CIAC Records, Envelope No. 1, Annex "E" of Complaint with Request for Arbitration.

[8] CA *rollo*, p. 322.

[9] *Id.* at 323, Progress Billing Chart.

[10] *Rollo*, p. 529, Comment of respondent on the Petition for Review; CA *rollo*, p. 60, Final Award of the CIAC.

Petitioners again requested payment on 12 July 2004 in the amount of ₱14,325,196.07 for work accomplishment equivalent to 27.38%. This time respondent required a progress report to substantiate the request for payment.[11] Accordingly, on 2 August 2004, petitioners submitted their First Progress Billing Report covering the period 1 December 2003 to 30 June 2004. Respondent paid the billed amount in installments beginning 28 July 2004 until 26 October 2004.[12]

In their First Progress Billing Report, petitioners indicated "28 February 2005" as the completion date of the project.[13] As a result, respondent sent a Memorandum[14] to petitioners, dated 21 January 2005, requesting documents necessary for the procurement of a Certificate of Occupancy. Instead of delivering the requested documents, petitioners submitted its Second Progress Billing Report on 8 February 2005, demanding payment of ₱9,586,057.06 and indicating a new move-out date: April 2005 – a date fixed without prior consultation with and approval from respondent.[15]

Subsequently, in a meeting held on 28 February 2005, petitioners undertook to turn over on 15 March 2005 the first two floors of the building and to make a partial turn over on 15 April 2005 of the third floor. For its part, respondent committed to pay ₱4,994,927.20 out of the ₱14,994,927.20 balance from the contract price. While respondent complied with its undertaking, petitioners failed to make even one partial turn over. Thus, 14 months after the construction permits were secured, or by 27 March 2005, the building had not been completed.[16]

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[11] CA *rollo*, p. 60.

[12] *Id.* at 323, Progress Billing Chart.

[13] *Id.* at 90, Condensed Physical Report.

[14] CIAC Records, Envelope No. 1, Annex "H".

[15] *Rollo*, p. 531, Comment of respondent on the Petition for Review; CA *rollo*, p. 61 Final Award of the CIAC.

[16] *Id.*

On 30 April 2005, petitioners submitted to respondent its Final Billing: (1) indicating a 100% completion of the project; (2) informing respondent that its unpaid balance was ₱10 million; and (3) requesting a final inspection of the building.[17] The joint inspection was carried out on 16 and 17 May 2005. During the two-day inspection, serious problems regarding workmanship and the materials used were discovered and documented by respondents. The parties agreed that all the necessary corrective and completion works on the project would be done in accordance with the inspection results.[18]

Petitioners resumed repair, rehabilitation and cleaning works on the building on 13 June 2005 only. At the same time, petitioners wrote respondent two letters: first, expressing readiness to comply with their undertaking to accomplish the incomplete works, but denying that they conformed to the punch list resulting from the joint inspection and second, demanding arbitration for respondent's unpaid amounts.[19] Respondent replied through counsel, asserting that petitioners cannot deny having expressed conformity to the punch list report after accepting the obligation to correct and complete the project based on the same report. Respondent also rejected the demand for arbitration for being premature.[20]

On 8 July 2005, petitioners' counsel wrote respondent to convey that petitioners had fully accomplished the project under the Contract, including the agreements reached on 6 June 2005, and requested a joint inspection anew. The second joint inspection was conducted on 25 July 2005. The following day, 26 July 2005, respondent wrote petitioners a letter detailing the various defects and deficiencies in the building that need to be corrected and completed before respondent finally accepts the project

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[17] CIAC Records, Envelope No. 6, Terms of Reference, p. 5, No. 21.

[18] *Rollo*, p. 532, Comment of respondent on the Petition for Review; CA *rollo*, p. 62, Final Award of the CIAC.

[19] CIAC Records, Envelope No. 1, Annexes "Q" and "R" of the Complaint.

[20] *Id.*, Annex "S".

and pay the final billing. The defects highlighted were: (1) the brand of electrical wirings used were not "Phelps Dodge" or its accepted equivalent, as specified in the Contract; (2) absence of any waterproofing in the gutters; (3) uneven floor patterns; and (4) absence of a number of electrical materials required to be installed. Respondent reiterated its demand for corrective and other rehabilitative works on the project in a letter dated 12 August 2005.[21]

In another meeting held on 26 August 2005, petitioners demanded full payment of its billings. No payment from respondent apparently forthcoming, petitioners, on 26 September 2005, gave respondent a second notice and demand for arbitration to press settlement of their unpaid claims. Petitioners named their arbitrator and gave respondent fifteen days within which to respond.[22]

In a letter[23] dated 10 October 2005, counsel for respondent denied the request for arbitration and insisted that petitioners enter the construction site within seven days from notice to complete and correct all the unfinished and defective works consistent with respondent's letter of 26 July 2005. Respondent warned petitioners that should they ignore the matter, they would be considered to have abandoned the project, giving respondent the right to take full possession of the building and allow other contractors to complete the unfinished works, with a right to collect the costs of completion from petitioners.

Petitioners did not respond to respondent's ultimatum within the given period; neither did they undertake remedial measures to correct and finish the deficiencies in the project. With no word either from petitioners or their counsel, respondent was compelled to take-over the building on 19 October 2005 in the presence of *barangay* and police officials from Calamba City. Upon take-over of the building, respondent re-confirmed and

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[21] *Id.*, Annex "W".

[22] *Id.*, Annex "Y".

[23] *Id.*, Annex "Z".

re-documented the various defects and deficiencies earlier noted and determined.[24]

In order to ascertain the extent of petitioners' accomplishment on the project and its corresponding value, respondent engaged the services of Davis Langdon and Seah Philippines, Inc. (DLSPI), a specialized quantity surveyor firm. Contrary to petitioners' claim of 100% project completion, the cost analysis and evaluation performed by DLSPI revealed that the building was only 94.12% complete and that the actual cost of work performed was worth only ₱49,244,814.09. Aggrieved, respondent filed an arbitration complaint before the CIAC pursuant to the arbitration clause contained in the Technical Specifications Book.[25]

Respondent claimed that it is entitled to payment in the total amount of ₱18,923,519.54 representing expenses incurred in the construction of temporary facilities, hiring of consultants for the detailed inspection of the building, damages, attorney's fees and arbitration expenses.[26]

The Decision of the CIAC

After hearing, the CIAC issued a Final Award in favor of petitioners, ordering respondent to pay the following amounts:

Unpaid balance of Progress Billing No. 2 dated 10 February 2005	₱4,581,129.86
Final Billing	5,418,870.14
Monthly surcharge of 2% on unpaid claims	799,999.99
Moral damages	1,500,000.00
Exemplary damages	500,000.00
Attorney's fees and litigation expenses	800,000.00

[24] *Rollo*, p. 535, Comment of respondent on the Petition for Review; CA *rollo*, p. 63, Final Award of the CIAC.

[25] *Id.* at 536.

[26] CA *rollo*, p. 73.

Arbitration cost	303,722.94
TOTAL:	₱13,903,722.94[27]

The award of the CIAC is basically anchored on the fact that respondent did not pay the down payment and progress billings within the time and manner provided for in the Contract and Technical Specifications.

According to the CIAC, respondent's legal basis for its claims was petitioners' failure to deliver on schedule a complete building pursuant to their Contract. The CIAC noted, however, that respondent did not pay the 25% down payment and progress billings in accordance with the Contract and Technical Specifications. Under the Contract, the down payment should be paid within seven (7) days from the signing of the Contract, or on 24 November 2003, since the Contract was signed on 17 November 2003. However, respondent paid the full amount of the down payment only on 27 February 2004 or three (3) months after the Contract was signed and on a staggered basis starting 9 December 2003. Also, by 12 July 2004, petitioners had accomplished works on the project equivalent to ₱14,325,196.07 but respondent paid the amount over a period of more than three (3) months starting 28 July 2004 up to 26 October 2004. Then, on 8 February 2005, petitioners submitted their second progress billing for the sum of ₱9,586,057.06 but respondent paid only ₱4,994,927.20, likewise on a staggered basis from March to April 2005. Under the Technical Specifications Book, approved requests for payment should be paid within five (5) days from date of approval of the request or the issuance of a certificate of payment by the Architect.[28]

Considering that respondent did not pay the down payment and progress billings on time, the CIAC declared that it cannot demand that petitioners deliver on time a 100% completed building. The CIAC held that the Contract between petitioners and respondent created reciprocal obligations between them so

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[27] *Id.* at 85.

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

that respondent, who did not comply faithfully with its terms, cannot demand performance by petitioners of their obligations thereunder, nor recover damages by reason of its own breach.[29]

The CIAC justified its grant of the amounts claimed by petitioners in the following manner:

1. Petitioners are entitled to their claim for the unpaid balance of Progress Billing No. 2 because respondent refused to pay the amount, not because there was no accomplishment, but because it allegedly represented only 18.32% performance over a 6-month period compared to an 80% accomplishment earlier over the same period of time.[30]

2. Petitioners should be paid their Final Billing covering accomplished works from 9 February to 30 April 2005 because the works performed resulted in the completion of the project as evidenced by the fact that respondent took over the building and had it blessed in the presence of officials from the Commission on Higher Education (CHED) and other guests and since then respondent has been using it for its purpose as a college of nursing and central library. The CIAC considered as "wrong" the Cost Evaluation Report of DLSPI engineer Mary Joyce C. Areola (Engr. Areola) stating that the percentage of completion of the building was only 94.12% because she did not consider the revised plans, Bill of Quantities (BOQ) and detailed cost estimates. The CIAC believed that the opinion of petitioners' expert witness, Engr. Eustaquio T. Coronel (Engr. Coronel), that completion was 100% based on the joint inspection, review of construction plan, as-built plan, BOQ, and comparative table of costs, had more weight. The ocular inspection conducted by the Arbitration Tribunal on 12 February 2007 also gave it strong basis to support the conclusion that completion was 100% as the items inspected were observed to be punch list in nature.[31]

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[29] *Id.* at 78.

[30] *Id.* at 80.

[31] *Id.* at 81.

3. Considering respondent's failure to pay the amounts demanded by petitioners, the latter are entitled to their claim for a monthly surcharge of 2% on the total of their claims from the time they were due until fully paid. The CIAC held that the reckoning date of the 2% surcharge on the unpaid Second and Final Billings totaling ₱9,999,999.99 is 30 April 2006, the date of expiration of the one (1) year retention period. Thus: from 30 April 2006 to 17 August 2006 (date of filing of the arbitration case), there are four (4) months. Hence, the total amount of the surcharge is ₱799,999.99 (₱9,999,999.99 x 4 months = ₱39,999,999.96 x 2%).[32]

4. Petitioners are entitled to moral damages for respondent's gross violation of their contract amounting to bad faith or malicious breach thereof. Respondent did not only fail to pay the down payment within seven (7) days from the signing of the Contract, it also paid the amount on a staggered basis. When respondent paid the sum of ₱4,994,927.20 for the Second Progress Billing, the same was paid in installments but the remaining balance of ₱4,581,129.86 was not paid. Lastly, respondent refused to pay the final billing of ₱5,418,870.14 even if the building had been completed. These circumstances drained the petitioners financially and emotionally. They had to apply for additional loans to finish the project. Their reputation and credit standing were adversely affected. They could not participate in biddings for other projects because of their financial problems.

Considering that petitioners are entitled to moral damages, the CIAC ruled that they are also entitled to recover exemplary damages by way of example or correction for the public good.[33]

5. Petitioners are entitled to recover attorney's fees inasmuch as they retained the services of counsel to protect their rights and interests under the contract.[34]

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[32] *Id.* at 81-82.

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

[34] *Id.* at 83.

6. Respondent should pay for the entire cost of arbitration having unnecessarily filed the Request for Arbitration. The CIAC administrative staff reported that respondent's share in the cost of arbitration was 45.34%, or the amount of ₱251,935.57 whereas petitioners' share was 54.66%, or the amount of ₱303,722.95. Hence, respondent should pay petitioners the sum of ₱303,722.95.[35]

The Ruling of the Court of Appeals

On appeal by respondent, the CA completely reversed and set aside the ruling of the CIAC. The challenged Decision held:

> x x x CIAC opined that **"[respondent] cannot demand fulfillment of [petitioners'] obligation to deliver a 100% completed project on time because [respondent] failed to pay the 25% down payment and the progress billings as provided in the contract."** CIAC construed the argued "25% down payment" as a suspensive condition to [petitioners'] obligation to deliver a 100% completed building.
>
> When a contract is subject to a suspensive condition, its birth or efficacy can take place only if and when the event which constitutes the condition, happens or is fulfilled. If the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. Pertinently, the parties' x x x **Contract** provides:
>
> > "1. That the CONTRACTOR **shall complete** the project for the period of fourteen (14) months **effective upon signing of this contract** and **issuance of necessary permits**." x x x
>
> Concededly, the argued suspensive condition of prior payment of "25% down payment" **does not exist**. Neither does said paragraph mandate that completion of the project is dependent **on [respondent's] payment of "progress billings."** Clearly, the CIAC gravely erred when it read into the contract a suspensive condition that did not exist. x x x.
>
> If the parties' contract was subjected to any suspensive condition, the same was limited to: (1) the **parties' signing of the contract**; and (2) the issuance of necessary permits, particularly, **the issuance of a building permit**. It is undisputed that the parties' contract was

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[35] *Id.*

signed on "**17 November 2003**," and "**the building permit was secured on January 27, 2004**." When, therefore, the CIAC conceded that:

> "Considering that **the building permit was secured on January 27, 2004, the project should be completed** on **March 27, 2005** and [petitioners] **admitted that the building was completed in April, 2005** x x x."

it became jurisdictionally obliged to **deny [petitioners'] claims** and instead, **grant [respondent] its claims** which, after all, were admittedly raised for determination by the CIAC. x x x.[36] (Emphases in the original).

Thus, the CA concluded, the CIAC had no basis in granting the monetary awards contained in its challenged decision. According to the CA, respondent and not petitioners deserved the awarded moral damages, exemplary damages, and attorney's fees, in addition to actual and liquidated damages. Thus:

> Resolving now the question of how much each of the parties here owe each other, [petitioners] contends that the agreed project cost was "**₱52,319,927.20**." Since per "DLSPI's report" the project was only "94.12% finished at the time [respondent] took over the project, [petitioners'] billable cost would therefore amount to only "**₱49,244,814.99**." And considering that the **total payments made by [respondent]** to [petitioners] amounted to **₱42,319,927.20**, it then follows that [petitioners'] collectible amounts would only be "**₱6,924,887.79**." Deducting from it the **actual expenses** incurred by [respondent] in finishing the **work on overtime basis**, which as conceded by CIAC in its final award, amounted to "**₱2,959,534.10**," petitioners' reconciled collectible would only amount to "**₱3,965,353.69**."
>
> Applying [petitioners'] aforesaid collectible to what it owes respondent as liquidated damages in the sum of **₱10,463,985.44**, [petitioners] would now owe [respondent] **₱6,498,631.75**." Adding thereto the moral damages of **₱1,500,000.00**, exemplary damages of ₱500,000.00, and attorney's fees of ₱800,000.00 which the **CIAC held to be due to the aggrieved party**, [petitioners are] consequently obligated to pay [respondent] **₱9,298,631.75.**

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[36] *Id.* at 523-525.

Finally, it being clear here that the **erring party** [are the petitioners] (and not [respondent]), it is duty bound to pay CIAC the **Arbitration cost of ₱303,722.95**.[37] (Emphases in the original).

As a result of the foregoing disquisition of the CA, petitioners are now before us praying for, among others, the setting aside of the Decision of the CA and the reinstatement of the Final Award of the CIAC.

The Issues

The issues for resolution in this case are:

1. Whether or not petitioners were able to complete the project on time; and
2. Whether or not petitioners were able to deliver a 100% complete building.

Our Ruling

At the outset, it must be pointed out that the issues presented in this case are factual in nature and, therefore, generally not subject to review by this Court. As a rule, in the exercise of its power of review, the Supreme Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[38] Nevertheless, there are recognized exceptions to this rule, one of which is when the findings of fact of the lower court and the Court of Appeals are conflicting,[39] as in the case at bar.

Here, a glaring contradiction exists between the factual findings of the CIAC and the CA. While the CIAC granted most of petitioners' claims and none of respondent's, the CA, on the other hand, completely reversed the award of the CIAC in favor of petitioners and granted respondent's claims.

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[37] *Id.* at 527-528.

[38] *Ong v. Bogñabal*, G.R. No. 149140, 12 September 2006, 501 SCRA 490, 501.

[39] *Ek Lee Steel Works Corporation v. Manila Castor Oil Corporation*, G.R. No. 119033, 9 July 2008, 557 SCRA 339, 348, citing *Ong v. Bogñabal*, *supra*; *Yao v. Matela*, G.R. No. 167767, 29 August 2006, 500 SCRA 136.

In view of the diametrically opposed findings and conclusions of the CIAC and the CA, a review of the respective factual determinations of the two tribunals is in order, if only to fully and finally settle the conflicting claims of the parties.

From the narrated facts of this case, it is apparent that both parties failed to strictly comply with the provisions of their contract. The CIAC and the CA affirm this in their respective decisions. Thus, respondent failed to pay the down payment on the contract on time; whereas petitioners, on the other hand, failed to deliver a completed building within the period stipulated in the contract, did not follow the procedure for requesting payments as specified in the Contract, and made changes in the execution of the terms of the Contract without respondent's approval.

Respondent Letran's Breach

Paragraph 6(a) of the Contract provides that "the OWNER [respondent] shall pay the CONTRACTOR [petitioners] x x x 25% down payment payable within seven days upon signing of this Contract." This provision is clear and unqualified: thus, the full amount of ₱13,079,981.80, representing 25% of the contract price of ₱52,319,927.20, should have been paid by respondent not later than 24 November 2003, the seventh day after the signing of the Contract. Instead, respondent paid the down payment in installments beginning 9 December 2003, finally settling the amount in full on 27 February 2004 or three (3) months after the Contract was signed.

Respondent is, therefore, indisputably guilty of violating the terms of the Contract on the payment of the down payment.

Petitioner Contractor's Breach

1. Failure to finish the project on time

Paragraph 1 of the Contract states that "the CONTRACTOR shall complete the project for the period of fourteen (14) months effective upon the signing of this contract and issuance of necessary permits." The Contract was signed on 17 November

2003 and the corresponding building permit was issued on 27 January 2004. Hence, petitioners should have completed the building on 27 March 2005. However, contrary to petitioners' claim and the findings of the CIAC, the records of this case clearly reveal that as of the latter date, the building had not been turned-over to respondent because the same had not been finished. Thus:

1. Respondent's Second Progress Billing Report dated 8 February 2005 indicated April 2005 as the move-out date;[40]
2. The Final Billing,[41] stating that project completion is 100%, covered the period 9 February 2005 to 30 April 2005 – proof that by 27 March 2005, the date the project should have been completed, construction was still ongoing;
3. The series of communication between petitioners and respondent after the 16-17 May 2005 joint inspection of the building, such as:
    a.) the letter of respondent dated 3 June 2005 inviting petitioners to a meeting to discuss matters in connection with the project;[42]
    b.) the letter of respondent dated 8 June 2005 giving petitioners notice to proceed with the repair and rework of the project;[43]
    c.) the letter of petitioners dated 8 July 2005 informing respondent of their full accomplishment of the project;[44]

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[40] *Rollo*, p. 179.

[41] CIAC Records, Envelope No. 4, Exhibit "75" of "Submission of List of Exhibits including Additional Exhibits."

[42] *Id.*, Envelope No. 2, Annex "K" of the Affidavit of Rodolfo Ondevilla.

[43] *Id.*, Envelope No. 1, Annex "P" of respondent's Complaint before the CIAC.

[44] *Id.*, Annex "T".

d.) the letter of respondent dated 26 July 2005 detailing the various items which petitioners need to complete and correct before final acceptance of the project and payment of the final billing;[45]

e.) the letter of respondent to petitioner dated 12 August 2005 demanding prompt completion of works as detailed in its 26 July 2005 letter;[46]

f.) the letter of counsel for petitioners dated 16 August 2005 requesting a final meeting between the parties;[47] and

g.) the letter of respondent dated 10 October 2005 demanding that petitioners re-enter the construction site within seven (7) days from notice to complete and repair all unfinished and defective works, failing which, petitioners would have confirmed abandonment of the project,[48]

all demonstrate that as of that period, the project still had not been completed;

4.) The following documents, prepared during the days following the two-day joint inspection of the building, also confirm the non-completion of the project within the period specified in the Contract:

a.) Checklist and Construction Schedule dated 23 May 2005 specifying the areas of the building needing completion and/or correction and the corresponding action to be taken by petitioners thereon;[49]

b.) Checklist and Construction Schedule dated 8 June 2005 likewise enumerating the items to be completed/

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[45] *Id.*, Annex "V".

[46] *Id.*, Annex "W".

[47] *Id.*, Annex "X".

[48] *Id.*, Annex "Z".

[49] *Id.*, Annexes "12-I" to "12-L" of petitioners' Answer with Counterclaims.

corrected by petitioners pursuant to the joint inspection conducted on 16 and 17 May 2005;[50]

c.) Tabulation of completion/corrective works done (used during the second joint inspection of 25 July 2005);[51] and

d.) Field Reports of respondent's Project Evaluating Committee (PEC) dated 13-17 June 2005, 22-23 June 2005, 29-30 2005, and 8 July 2005, respectively, documenting the monitoring done by the PEC of the completion/corrective works carried out by petitioners;[52]

5.) The building was not ready for use by the time classes opened in June 2005, as in fact, its blessing took place only in October[53] of that year, after respondent was forced to take over the building. As declared by respondent: When the school year opened in June 2005, the classrooms in the new building were still unavailable.[54] In fact, the second and third floors were still under construction; as a result of which, the municipal building officials did not allow the use of the building;[55]

6.) Even petitioner Emelyne Abaño, in her Affidavit dated 17 January 2007, admitted her and her co-petitioners' failure to complete the building on time. Thus:

Q: Despite the faults and broken promises of the claimant Letran, when did you complete the construction of the building?

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[50] *Id.*, Annexes "12-D" to "12-G".

[51] *Id.*, Annexes "19-D" to "19-I".

[52] *Id.*, Envelope No. 2, Annexes "N" to "N-7" of the Affidavit of Rodolfo Ondevilla.

[53] *Rollo*, p. 254, No. 30 of the admitted facts of the Terms of Reference.

[54] CIAC Records, Envelope No. 5, Memorandum of Claimant (respondent herein), p. 16.

[55] *Id.*, quoting from Envelope No. 7, TSN, 12 February 2007, p. 122.

A: **We completed the construction of the building by month of April 2005**. x x x;[56] (Emphasis supplied)

7.) The CIAC likewise acknowledged petitioners' failure to finish the project on time in its Final Award when it held:

Considering that Claimant has not paid the 25% down payment and the accepted progress billings on time as provided in the Contract and Technical Specifications it is not entitled to demand that Respondent JJBP delivers on time a one hundred (100%) completed building x x x.[57]

Based on the foregoing, there is no doubt that petitioners failed to comply with their undertaking to complete the building on 27 March 2005.

Petitioners and the CIAC fault respondent's failure to pay the down payment and the progress billings in full and on time for the delay in the completion of the project.

It should be noted that, aside from Paragraph 6(a) of the Contract which required respondent to pay a 25% down payment within seven (7) days from the signing of the Contract, the Technical Specifications Book charges respondent with the obligation of paying the progress billings "within five days from the date of approval of a Request for Payment or issuance of a Certificate of Payment by the Architect."[58]

Significantly, the Transcripts of Stenographic Notes (TSNs) of the hearings held before the CIAC reveal that petitioners, through Engr. Emelyne Abaño, agreed to a staggered payment of the First Progress Billing. Hence:

MR. R. C. ONDEVILLA [respondent's comptroller]:
x x x when she [Emelyne] submitted the billing for ₱14 million, Exhibit "H", [1st Progress Billing] she was actually

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[56] *Id.*, Envelope No. 4, Paragraph No. 9 of Engr. Emelyne's Affidavit.

[57] *Rollo*, p. 125.

[58] *Id.* at 575, Par. 6 of the Technical Specifications.

asking already for the payment. So, Father Roland, I, and she had a meeting, **we'll just scheduled [sic] the payment**. x x x.

x x x x x x x x x

ATTY. V. F. ABAÑO [counsel for petitioners]:
Did you make that payment?

MR. R. C. ONDEVILLA:
Yes.

ATTY. V. F. ABAÑO:
How much? You said it was ₱1.3 million or ₱14 million?

MR. R. C. ONDEVILLA:
That was the first payment.

ATTY. V. F. ABAÑO:
And when were the others?

MR. R. C. ONDEVILLA:
And we paid ₱3.5 million every other fifteen days.

x x x x x x x x x

ATTY. V. F. ABAÑO:
So, that amount that you said was promised was paid when, the last, was completed when?

MR. R. C. ONDEVILLA:
That was actually **completed based on schedule.**

ATTY. R. C. CREENCIA [counsel for respondent]:
The schedule, your Honor, **is found in paragraph 12 in the Terms of Reference.**

x x x x x x x x x

MR. R. C. ONDEVILLA:
That was a very informal meeting, your Honor. That is only following up the payment actually. So, this is actually the one we had and **she agreed to this schedule**. x x x.[59] (Emphases supplied).

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[59] CIAC Records, Envelope No. 7, TSN of 29 January 2007, pp. 167-170.

Likewise, with respect to the 2nd Progress Billing, the "Construction Updates and Other Details" submitted by petitioners to respondent on 8 March 2005 provides as follows:

RE: Owner's Compliance

Partial payment of Php4,994,927.20 from the remaining balance of Php14,994,927.20 be paid in *staggered basis* within the month of March 2005.[60]

Considering that petitioners agreed to a staggered payment of the progress billings, respondent cannot be held to have violated the afore-quoted provision of the Technical Specifications, contrary to the allegation of petitioners and the finding of the CIAC. Having agreed to the payment of the progress billings in installments, petitioners cannot now claim that the same caused delays in the project.

In any case, the records confirm that despite respondent's delay in the payment of the down payment and the staggered payment of the progress billings, construction was actually ahead of schedule. Thus:

1. Petitioners' 1st Progress Billing Report indicated a revised completion period of 12 months from the original contract duration of 14 months. Thus, the revised completion date was set to 31 December 2004 and the move-out date to 28 February 2005;[61]

2. Construction of the building began only on 27 January 2004, the date when the building permit was issued. By this time, however, respondent had already paid petitioners a total of ₱6 million;[62]

3. More telling is the testimony of petitioner Emelyne Abaño during the hearings before the CIAC:

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[60] *Id.*, Envelope No. 2, Annex "D-1-B" of the Affidavit of Rodolfo Ondevilla.

[61] *Rollo*, p. 137.

[62] *Id.* at 340, Progress Billing Chart.

ATTY. B. G. FAJARDO (Chairman, Arbitration Panel):
The delay in the payment of the down payment, did it cause delay?

x x x x x x x x x

ENGR. E. P. CAYETANO-ABAÑO:
In one way or another, it really caused the delay, in one way or another. But **it was not really the main point**. There are so many factors contributing to the delay, and **I cannot single out the payment alone**, the rain alone or the weather alone, or the cause of delay by trade and subcontractors hired by the owner. x x x.

x x x x x x x x x

ATTY. R. C. CREENCIA:
Would you agree with me Madame Witness, **that the down payment, the schedule by which the down payment was fully settled, would not have caused the delay**, because as of your August 2 payment certificate no. 1, you in fact reported that the actual physical accomplishment is [sic] already 80%. Would you agree with me Madame Witness?

ENGR. E. P. CAYETANO-ABAÑO:
Yes, I agree.[63]

x x x x x x x x x

ATTY. R. C. CREENCIA:
And in your request for payment, you reported that you are 80% complete?

ENGR. E. P. CAYETANO-ABAÑO:
Yes, **at that time, we are [sic] ahead of schedule**. x x x.[64]
(Emphases supplied.)

Thus, petitioners' claim that the delay in the completion of the project was due to respondent's delayed and staggered payments falls flat in the light of the aforementioned circumstances.

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[63] CIAC Records, Envelope No. 7, TSN, 31 January 2007, pp. 67-68.

[64] *Id.* at 71.

It must be emphasized that the Technical Specifications Book specifically states that "time is an essential feature of this Contract" and since the Technical Specifications Book was prepared by petitioners themselves, they were well aware of the importance of finishing the project on time.

Besides, number 4 of Paragraph 1.03C of the Technical Specifications specifically authorized petitioners to request for an extension of time to complete the project in case of delays, as follows:

> 4. EXTENSION OF TIME: The Contractor will be allowed an extension of time based on the following conditions:
>
> a. Should the Contractor be obstructed or delayed in the prosecution or completion of the work by the act, neglect, delay, or default of the Owner or any other Contractor employed by the Owner on the work; strikes, lockouts, or by Act of God such as fire, flood, lightning, earthquakes, typhoons, by act of the Owner, or by delay authorized by the Architect pending arbitration, then the Contractor shall within ten (10) days from the occurrence of such delay file the necessary request for extension. x x x.[65]

If petitioners truly believed that the delayed and staggered payments of respondent was jeopardizing the early or scheduled completion of the building, they could have filed a written request to extend the due date of the project pursuant to the afore-quoted provision of the Contract. Petitioners, however, chose not to avail of this prerogative. Hence, they cannot now shift the blame to respondent for their own lapse.

2. Failure to deliver a complete building

a.) 94.12% completion as found by DLSPI vs. 100% completion as determined by the CIAC

The report of DLSPI, the quantity surveyor engaged by respondent to ascertain the extent of work accomplished by petitioners on the project, indicate a 94.12% work completion,

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[65] *Rollo,* p. 572.

valued at ₱49,244,814.09. The ocular inspection conducted by the CIAC, on the other hand, convinced its arbitrators that petitioners' accomplishment on the project is 100%.

After a thorough and comprehensive study of the records of this case, particularly the exhibits submitted by the parties, this Court finds and so holds that the DLSPI report is more reliable.

In the first place, contrary to the allegation of petitioners and the finding of the CIAC that the report prepared by DLSPI was based on the unrevised plans, the report itself states that the contract cost is ₱52,319,927.20 – a clear indication that DLSPI relied upon the revised plans and not the original ones. It will be recalled that the contract price originally proposed by petitioners was ₱64.2 Million. This was later on reduced to ₱55 Million, and after further negotiations, the contract price of ₱52,319,927.20 was finally agreed upon by the parties.[66] This latter amount was what was reflected in the report of DLSPI. Notable are the following:

1. Page D / 1 (Summary) of the report states that the contract cost is ₱52,319,927.20;[67]
2. Table 1 of page D / 2 of the report (Cost of the items considered in the report) likewise indicates a contract cost of ₱52,319,927.20;[68]
3. In the computation of liquidated damages to which respondent may be entitled, DLSPI once more based the amount on the "Original Contract Value" of ₱52,319,927.20;[69]

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[66] At the parties' first meeting, petitioners' proposal consisted of a total contract price of ₱64.2M, which was later reduced to ₱55M. Further negotiations resulted in the final contract price of ₱52.319M. *Rollo*, p. 542, Comment of respondent on the Petition for Review.

[67] *Id.* at 672.

[68] *Id.* at 673.

[69] *Id.* at 676.

4. Appendix A–1 (Summary of Cost) of the report states a total contract cost of [₱]52,319,927.20;[70] and

5. Appendix B of the report once more indicates a total contract cost of ₱52,319,927.20.[71]

In fact, nowhere in said report were the amounts of ₱64.2 Million or ₱55 Million even mentioned. Certainly, if the report was based on the unrevised plans, DLSPI would have pegged the amount of the contract at either ₱64.2 Million or ₱55 Million, in which case, the value of work accomplished, which DLSPI assessed at ₱49,244,814.09, would not have amounted to an accomplishment rate of 94.12%.

In the second place and, again, contrary to the finding of the CIAC that the DLSPI report did not consider the Detailed Cost Estimates, the report specifically states:

1. In connection with the preparation of the report, the following were used as reference:

x x x x x x x x x

C. Copy of **cost break down** x x x;[72] and

2. In doing the evaluation, the following were performed by DLSPI to obtain the objective:

x x x x x x x x x

D. Evaluated the **summary of cost that was provided by the Contractor,** and list [sic] down the works deleted from their cost breakdown.[73] (Emphases supplied)

The foregoing considered, it is questionable how the CIAC came to its conclusion that: "the Cost Evaluation Report [of DLSPI stating] that the percentage of completion x x x was 94.12% was wrong because [it] did not consider the revised

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[70] *Id.* at 680.

[71] *Id.* at 705.

[72] *Id.* at 665.

[73] *Id.* at 667.

plans and BOQ and Detailed Cost Estimates." There is no doubt that DLSPI took into consideration the Detailed Cost Estimates in the preparation of its report. In addition, and more significantly, Appendix B[74] (Break Down of Cost) of the report is merely a reproduction of the Detailed Cost Estimates[75] provided by petitioners to respondent. The Detailed Cost Estimates specify the details of the works that petitioners were required to accomplish.

Petitioners and the CIAC likewise lament the failure of the DLSPI report to consider the BOQ. A comparative study of the BOQ[76] and Detailed Cost Estimates[77] reveals, however, that the two documents are actually the same in terms of the items listed therein. Thus, the items enumerated in the BOQ are all also included in the Detailed Cost Estimates, the only difference being that the latter document contains the details as to the quantity (number of units, unit measures, per unit cost, *etc.*) of each item of work and is, therefore, a more comprehensive listing of the scope of work of petitioners than the BOQ.

The foregoing, consequently, also belie petitioners' claim that Engr. Areola of DLSPI was not familiar with petitioners' scope of work.

Third, petitioners' allegation that the report of DLSPI cannot be given credence because DLSPI had only the architectural and structural plans but not the electrical, plumbing and sanitary plans, is, once more, contradicted by the records of this case:

ENGR. P. C. CAL (Member, Arbitration Panel):
I'm confused. I want clarification. Iyong comparison na 94-100 [%], syempre on the basis of plans, di ba?

ENGR. M. J. AREOLA (DLSPI engineer who prepared the report):
Yes.

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[74] *Id.* at 681-705.

[75] *Id.* at 318-334.

[76] *Id.* at 311-316.

[77] *Id.* at 318-334.

ENGR. P. C. CAL:
Kung me mga missing plans, how would you factor in, na-covered ba ito o hindi covered.

ENGR. M. J. AREOLA:
So, iyong mga missing plans which are sanitary, plumbing…

ENGR. P. C. CAL:
Electrical meron?

ENGR. M. J. AREOLA:
I even assumed 100% na eh.

ENGR. P. C. CAL:
Ah, so, sa 94% kasama na iyon?

ENGR. M. J. AREOLA:
Yes.

ENGR. P. C. CAL:
In-assumed mo na 100%.[78] (Emphases supplied).

Thus, the 94.12% accomplishment rate determined by DLSPI already assumed a 100% completion of the electrical, sanitary and plumbing works on the project. Hence, petitioners have no basis in claiming that the report is inaccurate.

Fourth, with respect to the additives and the deductives, the testimony of Engr. Areola clearly shows that these had also been factored in the report:

ENGR. P. C. CAL:
From your standpoint, would you accept iyong sinabi ni Engr. Coronel na dapat talaga hindi included iyong interpretation of finishing? Parang sinasabi mo, x x x, okay tama iyon pero meron ding deduction. So, you are admitting na the cost estimate does not reflect iyong mga finishing works?

ENGR. M. J. AREOLA:
Sir, very clear naman sa breakdown ng contractor na there are ***works not really included in their work****, which* ***also we did not include****.*

[78] CIAC Records, Envelope No. 7, TSN, 31 January 2007, pp. 160-161.

x x x x x x x x x

ENGR. P. C. CAL:

In the same manner na meron din silang ginawa na hindi dapat. You are admitting that?

ENGR. M. J. AREOLA:

Yes. And ***we consider that also in our report. Iyong works done by them na naki-credit pa rin namin sa kanila****. Iyon hong talagang wala, wala naman,* x x x.[79]

x x x x x x x x x

ATTY. V. F. ABAÑO (RESPONDENT):

Then perhaps Ms. Areola can mention whether she considered those additives and the deductive also or just the deficiencies.

ENGR. M. J. AREOLA (CLAIMANT):

I don't know the list of the additive and deductive when we made that [report] but even in my report **I consider some items that I saw on the site and still consider them already**. In the absence of any as built so at least in the ocular inspection **we added them consider them already in the report**.[80] (Emphases supplied.)

Finally, in order to verify the extent of work actually accomplished by petitioners on the project, DLSPI conducted not just one, but two ocular inspections on the site. The first ocular inspection was done on 6 December 2005 – almost two months after the take-over by respondent of the building – and the second one was carried out on 27 March 2006.[81] The second inspection was done in order to confirm the observations made during the first inspection prior to the preparation and submission of the report,[82] which was completed on 17 July 2006.

In contrast, petitioners' expert witness, Engr. Coronel, whose "well-considered opinion x x x that completion was 100%" was

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[79] *Id.* at 162-163.

[80] *Id.*, TSN, 12 February 2007, p. 20.

[81] *Rollo*, p. 665.

[82] CIAC Records, Envelope No. 7, TSN, 29 January 2007, pp. 33-34.

given more weight by the CIAC because the same was based on an ocular inspection and a review of the construction and as-built plans, as well as the BOQ and comparative table of costs, did not even bother returning to the site in order to verify and validate the correctness of the findings and evaluation of DLSPI.[83] As pointed out by respondent: "[i]f he did not go back to inspect the building, what was his basis for concluding that the building was fully completed?" Such inspection would have been proper considering his many comments to the report prepared by DLSPI.[84]

b.) Finding of the CIAC that "items inspected were observed to be punchlists in nature"

The CIAC, after ocular inspection of the project, concluded that completion of the building was 100% as the items inspected were allegedly mere punch list in nature. Apparently, the CIAC considered the items included in the punch list as in the character of "finishing touches."[85]

In the case of *Perini Corporation v. Greate Bay Hotel & Casino, Inc.*,[86] the Supreme Court of New Jersey had the occasion to define "punch list" as "a comprehensive list of items to be completed or corrected."[87] Generally, the punch list includes those items that restrict the final completion of the project.[88]

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[83] *Id.*, TSN, 31 January 2007, p. 135.

[84] *Id.*, Envelope No. 5, Memorandum of Claimant Letran (respondent herein), p. 44.

[85] CA *rollo*, p. 81.

[86] 129 N.J. 479, 610 A.2d 364 N.J. (1992). https://web2.westlaw.com/find/default.wl?cite=129+N.J.+479&rs=WLW12.04&vr=2.0&rp=%2ffind%2fdefault.wl&utid=1&fn=_top&mt=WLIGeneralSubscription&sv=Split (27 June 2012).

[87] *Id.* citing Justin Sweet, Sweet on Construction Industry Contracts: Major AIA Documents § 1.1 (1987)

[88] *Perini Corp. vs. Greate Bay Hotel & Casino, supra* note 86, citing 2 Steven G.M. Stein, *Construction Law* ¶ 7.09 at 7-78 (1991).

Also, in *J.A. Sullivan Corporation v. Commonwealth*,[89] the Supreme Judicial Court of Massachusetts stated that a punch list is an itemized list of finish work, corrections, repairs, and services to be performed in order to complete a construction contract. In the more recent cases of *Weitz Company v. MH Washington, et al.*[90] and *Arch Insurance Company, et al. v. Precision Stone, Inc.*,[91] the United States Court of Appeals defined "punch list" as "the report of unfinished work identified during an inspection by the owner and contractor just before completion of a building" and "work called for by the original contract (or subcontract) which the contractor (or subcontractor) has not satisfactorily completed." Clearly, by its very nature, unless and until the items in a punch list are completed and/or corrected, accomplishment on a project can never be considered 100%.

Given the many defects and unfinished works on the building subject of this case, the items in the punch list submitted by respondent for petitioners' action are definitely not in the nature of mere "finishing touches." Even assuming that there may be instances when a punch list may contain only items which are in the character of finishing touches, the photographs[92] submitted by respondent documenting the state of the building after it took over the same in October 2005 unmistakably rebut this presumption. Thus:

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[89] 397 Mass. 789, 494 N.E.2d 374 (1986). https://web2.westlaw.com/find/default.wl?cite=397+Mass.+789&rs=WLW12.04&vr=2.0&rp=%2ffind%2fdefault.wl&utid=1&fn=_top&mt=WLIGeneralSubscription&sv=Split (27 June 2012).

[90] 631 F.3d 510, C.A.8 (Mo.) (2011). https://web2.westlaw.com/find/default.wl?cite=631+F.3d+510&rs=WLW12.04&vr=2.0&rp=%2ffind%2fdefault.wl&utid=1&fn=_top&mt=WLIGeneralSubscription&sv=Split (27 June 2012).

[91] 584 F.3d 33, C.A.2 (N.Y.) (2009). https://web2.westlaw.com/find/default.wl?cite=584+F.3d++33&rs=WLW12.04&vr=2.0&rp=%2ffind%2fdefault.wl&utid=1&fn=_top&mt=WLIGeneralSubscription&sv=Split (27 June 2012).

[92] CIAC Records, Envelope No. 2, Annex "S".

1. Photograph 49 shows a very thin layer of paint coating on the steel railings of the stairs going to the upper floors of the building, such that the primer coat can actually be seen;

2. Photographs 50-52 and 55 show cracks on the interior walls of the building – understandably a serious cause of concern for respondent considering that this affects the stability of the structure and considering further that the building is only a few months old. The video recording accompanying the photographs shows longer cracks along the interior walls;

3. Photograph 58 shows improper installation of the building's insulation. The video recording shows further instances of improper insulation, such as insulation sheets not properly laid out and some sheets falling off the ceiling;

4. Photographs 61 & 62, 163, 195 and 196 show various leaks on the interior walls and floors of the building, confirming respondent's claim of lack of proper waterproofing. The video recording likewise shows other occasions of leaks on the building's floors;

5. Photograph 72 shows a mirror in the male comfort room which had not been properly installed;

6. Photograph 73 shows that the floor of the ladies' comfort room had been installed with chipped or broken tiles;

7. Photograph 74 shows a rusted floor drain in the ladies' comfort room;

8. Photograph 70 shows a sink in the male comfort room with missing fixtures. The missing fixtures are the result of petitioners' act of installing a single-hole faucet to a sink requiring a center-set faucet; thus, leaving two holes where the hot and cold taps should have been;

9. Photographs 69, 193, and 202 show the surface of the building's interior walls with uneven portions – an indication of poor or improper wall plastering;

10. Photograph 79 shows a hole on the roof of the building big enough to cause a possible flooding within the building in case of rains;

11. Photograph 85 shows the absence of a down spout for the drainage in the outer walls of the building in order to prevent the adherence of moss or algae on the walls of the building;

12. Photographs 86, 95, 96, 99, and 100 seek to demonstrate that the ramp for the disabled is not wide enough so as to provide ease of access to wheelchairs;

13. Photographs 92-94 show an exposed electrical outlet on the exterior wall of the building – an electric shock hazard;

14. Photograph 175 shows improper grouting of floor tiles;

15. Photographs 188-189 show the interior walls of the building with peeled or peeling paint;

16. Photographs 190-191 show that the tiles used on the floor of the building are of different shades, resulting in an uneven floor pattern/appearance;

17. Photograph 196 shows a rain gutter with the spout aimed/directed at the roof of the building so that when it rains (as was the case when the photograph was taken), rainwater floods the roof of the building;

18. Photograph 200 shows electrical conduits clamped with galvanized iron wires only instead of proper electrical hangers or clamps. As pointed out by Engr. Reynaldo Natividad, one of respondent's consultant, during the ocular inspection of the building with the CIAC:

If you will see the layout of the PVC it is not properly provided with bracket and some of the connections has [sic] no fitting specially some of dummies just hanging on the cross angular of the structural. So it is not so acceptable that the layout of the electric is improper.

x x x x x x x x x

x x x whatever it is, if you will install or lay out a[n electric] pipe it must be proper not with galvanize [sic] wire. Just you provide a bracket where you hang it there in the structure. It should be properly fixed and it must be aligned, as standard of the Philippine Electrical Code x x x.[93]

Even petitioner Emelyne Abaño herself admitted during the 6 June 2005 technical meeting between petitioners and respondent, held after the 16-17 May 2005 joint inspection, that they committed errors with respect to the materials actually used in the building as compared to those specified in the Contract.[94]

The foregoing items were included in the "Checklist,"[95] dated 8 June 2005, which enumerates the works which still need correction/completion by petitioners after the first joint inspection of the building on 16 and 17 May 2005. These defective and incomplete works were acknowledged by petitioner Emelyne Abaño herself, as evidenced by her signature on the "Checklist" as the person who prepared the same and by the fact that opposite each item to be corrected she indicated "will act on this as soon as possible" as the action to be taken. The fact that these defects and/or incomplete works were still existing at the time of the takeover of the building leads this Court to the inevitable conclusion that PETITIONERS NEVER DID COMPLETE THE PUNCH LIST.

To all these must be added the missing and other corrective works not included in the documentation which, pursuant to the letter,[96] dated 26 July 2005, of respondent to petitioners, are as follows:

1. Construction and finishing of Floor Podium 13.14 sq. m. around the Building

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[93] *Id.*, Envelope No. 7, TSN, 12 February 2007, pp. 92-93.

[94] *Id.*, Envelope No. 3, Exhibit "PP-1", with sub-markings, minutes of the 6 June 2005 technical meeting.

[95] *Id.*, Envelope No. 2, Annexes "M-1" to "M-3".

[96] *Id.*, Envelope No. 1, Annex "V".

2. Correction works – Floor Pattern, re-tiling (Class "A" Tiles)

x x x x x x x x x

3. Construction and finishing of 16 sq. m. of canopy with polycarbonate (2 pcs.) (16 sq. m.)
Left side elevation and right side elevation.
4. Construction and finishing of concrete square mouldings 0.60 x 0.60 parapet area (20 pcs.)
5. Construction and finishing of decorative moldings columns area 0.855 sq. m. (40 pcs)
6. Construction and finishing of pre-cast concrete baluster 138 sets at Parapet wall line
7. Finishing and water proofing of wall at front elevation approximately 219.90 sq. m.
8. Finishing and water proofing of wall at rear elevation approximately 358.03 sq. m.
9. Finishing and water proofing of wall at right-side elevation approximately 157.9775 sq. m.
10. Finishing and water proofing of wall at left-side elevation approximately 202.02 sq. m.
11. Construction of Polycarbonate roofing (arched) at roof deck area 7.40 x 8.36 m. = 61.86 sq. m.
12. Stainless steel handrail approximately 81.50 meters
13. Stainless steel "Letran Logo" 48 pcs.
14. Construction of handicapped toilet 2.50 x 3.50 meters with complete toilet fixtures incl. Water closet and stainless hand grab rail for handicapped person. (6 pcs.)
15. 1.50 2.10 door for handicapped toilet at Nursing skills laboratory.
16. Male toilet with water closet at Nursing skills laboratory
17. 2.10 x 6.30 meter with folded door at nursing skills laboratory
2.10 x 7.00 meter with folded door at nursing skills laboratory
19. 1.50 x 7.50 ramp for handicapped person

20. Seating area at main entry 0.60 meter x 5.60 meter
21. Correction of installation of Whiteboard (8 pcs.)
22. Ceiling lay out of third floor
23. Steel Truss approximately 1,152.00 sq. m.
24. Re-works, water proofing Roof deck area approximately 8.00 x 12.00 = 96 sq. m.
25. Finishing and water proofing of mechanical and electrical room 2.5 x 2.5 = 6.25 sq. m.
26. Hardwares – "door knob" Yale brand
    Ground Floor – 32 pcs.
    Second Floor – 9 pcs.
    Third Floor – 10 pcs.
27. Main Stair from 3rd floor to Roof Deck approximately 18 steps with the area of 34.50 sq. m.
28. Railing at Front Elevation 2 inches diameter B.I. Pipe railing 35.00 meters
29. 111 pcs. 1/8 inches thk. – 2 inches wide banisters x 0.90 height
30. Construction and fabrication of wall partition at third floor
31. Installation of weight lifter
32. Construction and finishing, waterproofing Parapet wall

x x x x x x x x x

Subject Electrical Materials breakdown not installed but included in construction Plan

ITEM DESCRIPTION	QTY
A. Ground Floor	
1. Industrial Lighting Fixtures Complete Set 2x40W	32
2. –ditto- Except 1x40w	10
3. Pin light fixture complete set	44
4. Spot light fixture complete set Par38	13
5. Chandilier [sic]	4
6. Wash room mirror light fixture Complete Set 1x20W	6

7. Exhaust Fan and Outlet	4
8. ACU outlet	3
9. Orbit Fan and Outlet	24
10. Telephone Outlet	2
11. Computer Outlet	2

B. Second Floor

1. Industrial Lighting Fixture Complete Set 2x40W	45
2. Wash room mirror light fixture Complete Set 1x20W	6
3. Orbit Fan and Outlet	10
4. ACU Outlet	12
5. Telephone Outlet	12
6. Computer Outlet	12

C. Third Floor

Industrial Lighting Fixtures Complete Set 2x40W	149
Wash room mirror light fixture Complete Set 1x20W	6
Pin light fixture complete set	10
Orbit Fan and Outlet	21
ACU outlet	13
Telephone Outlet	5
Computer Outlet	5

Considering the foregoing, the CIAC clearly erred in finding that the building was 100% complete. The afore-enumerated defective and incomplete works strongly militate against a finding of 100% completion of the project. The above findings likewise lend credence to the report of DLSPI that the completion rate is only 94.12%.

More importantly, the fact that petitioners failed, and even refused, despite several demands from respondent, to correct and finish the defective and deficient works supports the allegation of respondent that petitioners eventually abandoned the project. It may be recalled that prior to its takeover of the building on 19 October 2005, respondent wrote petitioners no less than

three letters (dated 26 July 2005,[97] 12 August 2005,[98] and 10 October 2005[99]) demanding that petitioners correct and complete their works on the building, with the last letter containing a warning that should petitioners fail to act on respondent's demands, they would be considered to have abandoned the project. Petitioners, however, ignored the demands of respondent. Thereby, the fact of abandonment of the project was established.

Justifiably, respondent cannot be expected to accept an incomplete building. The completion of the punch list was, therefore, essential before respondent could finally accept the building.

3. Requests for payment without accompanying photographs

The Technical Specifications Book requires that requests for payment must be supported by progress photographs and that "no partial payment shall be considered for approval without the above mentioned prints accompanying the Request for Payment."[100] It is an admitted fact,[101] however, that on 12 July 2004, petitioners requested payment from respondent in the amount of ₱14,325,196.07 without the requisite photographs, as in fact, petitioners' First Progress Billing Report was submitted only on 2 August 2004.

Indeed, even prior to the submission of their First Progress Billing, and after the 12 July 2004 request for payment, petitioners again requested, on 20 July 2004, payment for additional works on the ground floor amounting to ₱1,598,698.00[102] without the necessary accompanying photographs. Respondent, however, did not pay this amount as the alleged additional works were not previously approved by respondent.

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[97] *Id.*

[98] *Id.*, Annex "W".

[99] *Id.*, Annex "Z".

[100] *Rollo*, pp. 575-576.

[101] CIAC Records, Envelope No. 6, Terms of Reference, p. 3, No. 12.

[102] *Id.* at 4, No. 13.

4. Unapproved changes in the project

Paragraph 1.01, No. 4 of the Technical Specifications states:

> 4. CONFORMITY TO CONTRACT DOCUMENTS: All work shall conform to Contract Documents. No change there from shall be made without the Contractor having first received permission from the Architect, in writing, to make such changes. x x x[103]

Specifically, with respect to change orders, the same document, which forms part of the Contract, provides:

> 7. CHANGES IN THE WORK:
>
> a. CHANGE ORDER BY THE OWNER: The Owner may at anytime without invalidating the Contract and without notice to sureties, order extra work or make changes by altering, adding to or deducting from the work, as covered by the Drawings and Specifications of this Contract and within the general scope thereof. Such changes shall be ordered by the Owner in writing, and **no change** or omission from the Drawings and Specifications **shall be considered to have been authorized without written instructions by the Owner**.[104] (Emphasis and underlined supplied.)

Notwithstanding the afore-quoted provisions, petitioners made variations in and deviations from the Contract without first securing respondent's approval in writing. These include:

1. The reduction of the number of toilets on the ground floor from three to one;[105]
2. Construction of additional comfort rooms;[106]

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[103] *Rollo*, p. 562.

[104] *Id.* at 569.

[105] CIAC Records, Envelope No. 7, TSN, 29 January 2007, p. 92.

[106] *Id.*, TSN, 31 January 2007, pp. 153.

3. Increase in the number of toilet cubicles from two to four plus an additional cubicle for the faculty;[107]
4. Changes in the alignment of the trusses;[108]
5. The plan specifies eight steps for the main stair section of the building but petitioners placed only five steps;[109]
6. The seating areas for the students on the left and the right side of the podium were not constructed;[110]
7. Changes in the number of columns of the building;[111]
8. The balustrades were supposed to be placed on the roofs but were transferred to the lower floors;[112] and
9. The interconnection of the main water tank was transferred from the annex building to another building.[113]

Even Engr. Coronel, petitioners' consultant, admitted in his affidavit[114] that petitioners carried out changes in the implementation of the contract:

> The joint inspection was in the morning of 25 July 2005 conducted by [petitioners] JJBP and the [respondent] Letran, with their representatives including myself x x x. Among others, I found out that **there were variations and changes in classroom layout, the toilets were transferred**, x x x. (Emphasis supplied.)

In all the foregoing, the records distinctly demonstrate that they were all unapproved changes. In fact, petitioners themselves admitted that they never secured the written consent of respondent before they executed the changes. Thus:

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[107] *Id.* at 154.

[108] *Id.*, TSN, 29 January 2007, pp. 212-213.

[109] *Id.*, TSN, 12 February 2007, p. 28.

[110] *Id.*

[111] *Id.* at 28-30.

[112] *Id.* at 46.

[113] *Id.* at 47.

[114] *Id.*, Envelope No. 4, Exhibit 48, p. 2, No. 11.

1. With respect to the toilets:

ENGR. E. I. EVANGELISTA [CIAC Arbitrator]:
So, you have not seen any change orders?

ARCH. J. R. L. MARTINEZ [Consultant for respondent]:
Wala.

ENGR. E. I. EVANGELISTA:
Specifically like the toilet in the ground floor?

ARCH. J. R. L. MARTINEZ:
Wala.

x x x x x x x x x

ENGR. E. I. EVANGELISTA:
Sa ground floor, sa kabilang side, wala kang nakitang dalawang toilet?

ARCH. J. R. L. MARTINEZ:
Pero based pa rin sa plans nila.

ENGR. E. I. EVANGELISTA:
Me plano no. Sa plano nakalagay three toilets here. Oh ngayon pag tingin mo ngayon ng toilet, isa lang ito di ba? x x x

x x x x x x x x x

ENGR. E. I. EVANGELISTA:
Kasi ang (unintelligible) *niya iyong tatlong toilet isa rito inilipat iyong dalawa sa dulo. Iba naman iyong tatlong toilet naging isa, iba iyon.*

ARCH. J. R. L. MARTINEZ:
I'm talking about kung merong nilipat, ***kung nilipat nila iyong dalawang toilet doon sa specific area, dapat meron silang shop drawings na attachment na inilipat namin iyong dalawang CR dito sa area na ito***. x x x

x x x x x x x x x

ARCH. J. R. L. MARTINEZ:
Ngayon ang sinasabi nilang dinagdag nilang CR, eto nilabas daw nila ang handicapped dito, parang ganoon ang explanation nila during the punchlisting.

x x x x x x x x x

ARCH. R. A. KING [for petitioners]:

Dalawa po ang naalis na CR doon. Dito tatlo ang original ito no? Naging apat po iyan. Naging tig-apat. Nadagdagan ng dalawa plus faculty. x x x.

ENGR. E. I. EVANGELISTA:

Pero okay na sa iyo talaga na walang papeles na inililipat iyon doon? Wala?

ARCH. R. A. KING:

Wala *kasi po…*

x x x x x x x x x

ATTY. B. G. FAJARDO:

Pero part ng plano iyong faculty diyan*? Part ng plano ang faculty?*

ARCH. R. A. KING:

Hindi po part*. Pinadagdag po iyon dahil ang gusto ng faculty ayaw nilang maki-share ng CR sa estudyante, gusto nila hiwalay ang CR nila.* (Emphases supplied).[115]

Emphasizing the importance of a written consent for any changes in the implementation of the project, one of the members of the arbitral panel repeatedly confirmed the absence of a written agreement documenting the transfer of the location of the comfort rooms:

ENGR. E. I. EVANGELISTA:

Kaya nga ang tanong ko ngayon eh iyong ***walang dokumento na inililipat.*** (Emphasis supplied.)

x x x x x x x x x

ENGR. E. I. EVANGELISTA:

Gusto ko rin linawin na walang dokumentong ililipat doon *kaya nako-confuse iyong nag-ano…* (Emphasis supplied.)

x x x x x x x x x

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[115] *Id.*, Envelope No. 7, TSN, 31 January 2007, pp. 150-154.

ENGR. E. I. EVANGELISTA:

*Kasi alam mo kaya ko itinatanong iyon**, without the proper documentation of all of these**, talagang malilito iyong…* (Emphasis supplied);[116]

2. In connection with the trusses:

ENGR. E. I. EVANGELISTA:

One last question to the architect. When you say misaligned, it is not that the trusses are like that? So, it is based on the plan, it is not on top of the beam as in the plan, something like that?

ARCH. J. R. L. MARTINEZ:

Yes. **They have a conflict with the plans based on the actual implementation.**

ENGR. E. I. EVANGELISTA:

Yes. You mean the alignment of the trusses not the distorted like that?

ARCH. J. R. L. MARTINEZ:

Based on the plans that I see and the actual implementation, it's not aligned, your Honor. x x x.

ARCH. J. R. L. MARTINEZ:

Any change order or any documentation to see to give evaluation that iyong trusses na iyon matibay di ba? Kasi iyon ang practice talaga sa construction. If you are design and build, you need to submit a request for information na alam ng owner na eto po iyan, eto po ang nabago, eto po dapat, ganito po nangyari, me conflict po sa beam kaya po namin nilihis ang trusses.[117]

3. Anent the change in the number of steps of the main stairs leading to the building:

ARCH. J. R. L. MARTINEZ:

So the design intend is for the 8 steps x x x. Can you give **any shaft drawings for owner approval that the stairs changed**, that the sitting area not constructed disappear and

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[116] *Id.* at 154-156.

[117] *Id.*, TSN, 29 January 2007, pp. 212-213.

the planter box and saw in the ramp while that… **to make the transparency between the contractors and the owner** agreement. **Do we have any change order form** or something that… *Sa side naman ng owner at least bakit nabago.*

x x x x x x x x x

ENGR. M. J. AREOLA (CLAIMANT):

Base [sic] on the drawing if it's a higher floor and they find out that the existing ground level is higher **they should have raised it to the client** base [sic] on usual process acceptable. And if the client did not agree they should have filled the existing floor just to meet the desired number of steps. x x x. But here probably it was reduce [sic] to just 5 floors [should be "steps"] and just you know put it on a lower level on the usual process. **There should be approval request x x x from the client before anything is made on the major ground floor entrance.**

x x x x x x x x x

DR. P. C. CAL (ARBITRATOR):

x x x but the other point is have you called the attention of the…

ENGR. E. C. ABAÑO (RESPONDENT):

Yes they know it.

DR. P. C. CAL (ARBITRATOR):

Discovered by an agreement or what or verbal.

ENGR. E. C. ABAÑO (RESPONDENT):

Actually, **it was all verbal instructions**…[118] (Emphases supplied.)

On the attempt of petitioners to justify the reduction of the number of steps on the ground that the contour and elevation of the area called for it, Engr. Areola countered this by pointing out that:

Before they submitted their quotation x x x. **You know the existing conditions**. You know the requirements of the client's. You were the ones that filled it. And when you made the construction

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[118] *Id.*, TSN, 12 February 2007, pp. 35-37.

plan, it should have reflected what you foresaw could have been a problem but this is what the client approved. For me kasi as a quantity surveyor also I will quantify what was approve [sic]. But let [sic] say **in the course of construction you find some problems** x x x **it should be properly notified iyong client** "meron tayong problema sa elevation, x x x."[119] (Emphasis supplied).

Indeed, the Technical Specifications mandates:

> 2. **SITE CONDITIONS**: Before submission of proposal and the awarding of the contract, **the Contractor is expected to have visited the locality of the work and made his own estimates of the facilities and difficulties attending to the execution of the proposed contract, including local conditions and all other contingencies**. x x x
>
> a. **The Contractor shall verify all grades, lines, levels and dimensions as indicated on the Drawings. He shall report any error or inconsistency to the Architect before commencing work.**[120] (Emphasis supplied.)

On the explanation of petitioners that some of the changes were pursuant to respondent's verbal instructions, two of the members of the arbitral panel had this to say:

> ENGR. P. C. CAL:
>
> But normally the contract also provides **while it's done verbally, the contractor follows up in writing to be confirmed by the client. *Kasi mahirap ngang later on sasabihin mo verbal. Talagang iyon ang procedure.* While you respond positively to the request by the client, it is to your interest that few days later you translate it into writing,** *di ba? Ang tanong ko, ginawa ba iyon para in the end we will now reconcile between the plan and As-built covered iyang ganyang changes in writing.*
>
> ATTY. B. G. FAJARDO:
>
> **We know that change plans in order to be valid, in order to be allowed, must comply with certain requirements. It must be in writing, approved by both parties, and**

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[119] *Id.* at 43.

[120] *Rollo*, p. 565.

the amount must be specified. Me Supreme Court decision na about that.[121] (Emphases supplied).

As the following testimony of petitioner Emelyne Abaño demonstrates, petitioners were cognizant of the provisions of their Contract requiring all change orders to be approved in writing, yet, they decided to execute these changes without complying with this requirement:

ATTY. R. C. CREENCIA:
x x x. Are you aware of the provision in your contract relative to additional works?

ENGR. E. P. CAYETANO-ABAÑO:
Yes, sir.

ATTY. R. C. CREENCIA:
You are aware that any changes in the work should be approved by both parties in writing?

ENGR. E. P. CAYETANO-ABAÑO:
According to the contract, yes.

ATTY. R. C. CREENCIA:
And you are aware of that?

ENGR. E. P. CAYETANO-ABAÑO:
Yes.

ATTY. R. C. CREENCIA:
In your claim for additional works, I noticed that not a single document was attached evidencing that indeed the authorized officer of [respondent] Letran or any other officer for that matter has specifically given a go signal for you to perform all these additional works.

ENGR. E. P. CAYETANO-ABAÑO:
In writing there is none. Verbally, there is.

ATTY. R. C. CREENCIA:
Although you agree that the contract says it should be in writing?

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[121] CIAC Records, Envelope No. 7, TSN, 29 January 2007, p. 103.

ENGR. E. P. CAYETANO-ABAÑO:
Yes, x x x.[122]

It should be emphasized that in a letter[123] dated 24 August 2004, respondent's Rector at that time, Father Rolando De La Rosa, wrote petitioners directing them to defer all construction works which are not part of the contract.

Likewise, it is precisely for the reason that the changes carried out by petitioners did not conform to the requirements that they were denied by the CIAC in its Final Award. Hence, even the CIAC acknowledged that petitioners breached the provisions of the Contract on change orders.

Based on the foregoing findings of this Court, We will now proceed to evaluate the respective monetary claims of each party.

Respondent's monetary claims

1. Liquidated Damages

The Contract provides:

3. That a penalty of one tenth of one percent of the unfinished portion of the Contract shall be deducted per day of delay and the maximum penalty of twenty percent (20%) of the project cost for failure of the Contractor to complete the work within the time stipulated above.[124]

The provision of the Contract on liquidated damages is amplified by the Technical Specifications in the following manner:

5. LIQUIDATED DAMAGES: It is understood that time is an essential feature of this Contract, and that upon failure to complete the said Contract within the time stipulated, the Contractor shall be required to pay the Owner the liquidated damages in the amount stipulated in the Contract Agreement, and not by way of penalty.

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[122] *Id.*, TSN, 31 January 2007, pp. 90-91.

[123] *Id.*, Envelope No. 1, Annex "G".

[124] *Rollo*, p. 335.

> The Owner may deduct from any sum x x x to become due the Contractor any sum accruing for liquidated damages as herein stated.[125]

Considering petitioners' abandonment of the project, respondent is entitled to the maximum amount of liquidated damages which is 20% of the cost of the project. Thus:

₱52,319,927.20 x 20% = ₱10,463,985.44

2. Actual Damages (Cost of construction of facilities to house temporary classrooms, library and nursing laboratories)

Respondent claims that as a result of the failure of petitioners to finish the building on time, it incurred expenses as follows:

a.) Cost of construction of temporary classrooms	₱2,205,000.00
b.) Cost of construction of temporary nursing skills laboratory at L Building	440,000.00
c.) Cost of Conversion of Humbert Hall as temporary library	29,534.10
TOTAL :	₱2,674,534.10

In support of its claims, respondent submitted, as Annexes "U" to "U-30",[126] the vouchers and corresponding official receipts evidencing payment of the aforesaid expenses. After a studious examination of the documents, the Court is disposed to grant only the following claims of respondent:

	ITEM	Amount
a.)	Construction of dry wall partition, white boards, bulletin boards and feederline for 5 air-conditioning units – 50% down payment (Annex "U-1")	₱315,000.00
b.)	Construction of dry wall partition, white boards, bulletin boards and feederline for 5 air-conditioning units (Annex "U-2")	315,000.00

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[125] *Id.* at 573-574.

[126] CIAC Records, Envelope No. 2, Affidavit of Rodolfo C. Ondevilla.

c.)	Installation of floor tiles (2nd floor new canteen) and 2 glass doors (Annex "U-3")	225,000.00
d.)	Building improvement – Nursing Skills Laboratory furbishing (Annex "U-4")	410,000.00
e.)	Additional works for Nursing Lab and installation of glass partition (Annex "U-5")	62,000.00
f.)	Payment for janitorial services for the period 16-31 July 2005 (Annexes "U-6" to "U-7")	69,329.45
g.)	Janitorial services for the period 1-15 September 2005 (Annex "U-8")	72,531.52
h.)	Janitorial Services for the period 16-30 November 2005 (Annexes "U-9 to "U-12")	110,375.06
	TOTAL:	₱1,579,056.03

The CIAC rejected all of the foregoing claims on the ground that the expenses were the result of a mere conversion of already existing facilities. It cannot be denied, however, that the expenses were indeed incurred and were the direct result of petitioners' failure to finish the building on time. If the project had been completed as planned, there would not have been any need for the afore-enumerated expenses. As testified to by Mr. Rodolfo Ondevilla (Mr. Ondevilla) during the hearings before the CIAC:

> ATTY. V. F. ABAÑO:
>
> And you had these temporary classrooms constructed when, Mr. Witness?
>
> MR. R. C. ONDEVILLA:
>
> Actually, that was constructed June already, x x x, **we have nowhere to go but to make these classrooms**.[127]
>
> x x x x x x x x x
>
> ATTY. B. G. FAJARDO:
>
> But these were constructed by other contractors, and these were constructed before the takeover of the project by the [respondent].

---

[127] *Id.*, Envelope No. 7, TSN, 29 January 2007, p. 117.

MR. R. C. ONDEVILLA:
Yes, your Honor.

x x x x x x x x x

MR. R. C. ONDEVILLA:
And the reason for that is because we are already short of classrooms, because the classrooms supposed to be delivered were not actually delivered.[128] (Emphases supplied.)

More instructive is the following portion of his testimony:

MR. R. C. ONDEVILLA:
x x x, your Honor, we have [sic] the punch listing in May, we are about ready to transfer in time for the opening of the school year, because at that time, we knew that they will be doing the reworks. However, in June 2006 [should be 2005], when Father [unintelligible] said we could [transfer] already, x x x they said they will do the rework in twenty seven days. It is impossible for us to open classes without [a] library. So, what we did is those shelves and chairs which were already transferred to that building were again pulled out to be brought to the Humbert Hall, the temporary library. That is the reason why there was overtime at that time, because we have to do it at night. We cannot do it in the morning when there are a lot of students in the school. So, that is the reason why we have to transfer some of those chairs, because then at that time, we are about ready, because they were saying it is finished. x x x. But because the academic departments are complaining and they were saying that we cannot open the school year without a library, we have to make a temporary library. So, that is the reason why we have to pull out again those bookshelves which were already transferred there to the temporary library. Your Honor, on the retiling, the second floor of the canteen building is not actually tiled, it is unfinished. So, the center part was actually made the temporary office of the Nursing Dean, because the office which was occupied by the Nursing Dean was converted into a temporary laboratory. Because those temporary rooms will be occupied by the nursing students,

[128] *Id.* at 121.

> it is but right that the dean should be located in that area. So, that is why, also because there is no other room that can be converted into a temporary library. That is why that one room being occupied by the dean and other faculty was transferred to that canteen where the temporary classrooms were made. x x x. And the other classrooms, your Honor, opposite the temporary laboratory, because this Nursing faculty cannot be accommodated in that room, the other classrooms were also made a temporary faculty room, x x x.[129]

Nevertheless, the Court is disinclined to grant the following claims of respondent:

1. Construction of Jacob Joseph Student Center offices in the amount of ₱1,350,000.00 (Annex "U")[130]

Respondent wants the cost of this building charged against petitioners because, allegedly, it had to be demolished to make way for the temporary classrooms.[131]

A careful scrutiny of the records reveals, however, that the building was not actually demolished, but its rooms were merely converted into classrooms. Thus:

ATTY. B. G. FAJARDO:

> In the site, how were these eight classrooms distributed in the different floors?

MR. R. C. ONDEVILLA:

> We actually **converted** the ground floor, (unintelligible) as the former library into classrooms, your Honor. So, we make four there. And again on the canteen of the second floor where the supposed student center were also **converted** into classrooms.[132] (Emphasis supplied).

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[129] *Id.*, TSN, 31 January 2007, pp. 10-11.

[130] CIAC Records, Envelope No. 2, Affidavit of Rodolfo C. Ondevilla.

[131] *Id.*, Envelope No. 7, TSN, 29 January 2007, pp. 117 and 122.

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

It would, therefore, be unfair to charge petitioners with the cost of the building when no demolition actually took place. Petitioners should only be liable for the cost of converting areas of the building into temporary classrooms, the total cost of which, based on the testimony of Mr. Ondevilla, is ₱855,000.[133] This amount is already covered by Annexes "U-1" to "U-3", under the list[134] of respondent's claims to which this Court believes respondent to be entitled.

2. Honorarium of Performance Evaluation Committee (PEC) members (Annexes "U-17" – "U-23")[135]

The PEC, made up of five members, was constituted by respondent in order to monitor and ensure that the project was being executed in accordance with the approved plans and specifications.[136] The Committee was created to oversee the construction of the building. It was not constituted as a result of the delays in the project. Hence, the payment of their allowance is an expense ordinarily associated with any construction project and has no connection with petitioners' delay in completing the building, which delay necessitated the construction of temporary facilities to accommodate respondent's students. Consequently, the expenses incurred by respondent in the payment of the honorarium of the PEC members should not be charged to petitioners.

With respect to the charges for the investigation and rectification of the nursing building comfort rooms (Annexes "U-24" and "U-25"), waterproofing (Annex "U-26" and "U-27") and taxes (Annexes "U-28" to "U-30"), these items were not included in the Terms of Reference, hence, were not considered during the hearings and were deemed excluded from the claims of respondent.[137]

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

[134] Item No. 2 (Actual Damages) of Respondent's Monetary Claims.

[135] CIAC Records, Envelope No. 2, Affidavit of Rodolfo C. Ondevilla.

[136] *Id.* at 4, numbers 22 and 23.

[137] *Id.*, Envelope No. 7, TSN, 29 January 2007, pp. 112-114.

3. Actual Damages (Professional Fees of DLSPI)

Based on the evidence[138] presented by respondent, it incurred expenses in the amount of ₱200,000.00 as professional fees in the hiring of DLSPI, a specialized quantity surveyor firm, to conduct a cost analysis and evaluation of the total works done on the project.

Considering petitioners' failure to complete the building and their eventual abandonment of the project, respondent was compelled to engage the services of DLSPI to ascertain the extent of petitioners' accomplishment on the building. Had petitioners finished the project, there would not have been any need for respondent to resort to this measure. Petitioners should, consequently, be held answerable for this expense.

Petitioners' monetary claims

1.) Unpaid balance of Progress Billing No. 2

In connection with the payment of progress billings, the Technical Specifications require approval of the request for payment and progress photographs to accompany the request. It is significant to note that, as evidenced by the progress billings themselves, respondent never signed the certificate of payments to signify its approval thereof. Nevertheless, respondent paid petitioners' 1st Progress Billing in full and part of the 2nd Progress Billing without such approval. Considering respondent's act of paying part of the 2nd Progress Billing, it may be reasonably concluded that it has impliedly approved payment thereof. Therefore, respondent is under obligation to pay its balance in the amount of ₱4,581,129.86.

Besides, the foregoing amount is part of the unpaid value of the work accomplished by petitioners on the building equivalent to 94.12%.

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[138] *Id.*, Envelope No. 2, Affidavit of Mr. Rodolfo C. Ondevilla, Annexes "U-15" and "U-16".

2. Final Billing

Petitioners are not entitled to the payment of their final billing because they failed to finish the project. The Contract between petitioners and respondent stipulates that "the final payment shall be released only after the acceptance of the project." Since petitioners did not finish the building, there was never any occasion for respondent to accept the same. Hence, the obligation of respondent to make the final payment did not arise.

Nevertheless, even assuming, for the sake of argument, that petitioners were able to deliver a 100% complete building, their failure to comply with the provisions of the Contract on the documentary requirements prior to final payment effectively hinders settlement of the final billing:

> That the final payment shall be released only after the acceptance of the project and **submission of As-Built Plans, Affidavit, and other documents as may be required by the OWNER**.[139] (Emphasis supplied.)

The Technical Specifications contains the following additional requisites which were likewise not complied with by petitioners:

> 8. CORRECTION OF WORK BEFORE FINAL PAYMENT: The Contractor shall promptly remove from the premises all work condemned by the Architect as failing [to] conform to the Contract, [w]hether incorporated or [not], and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expenses of making good all work of other Contractors destroyed or damaged by such removal or replacement. x x x.
>
> 9. OTHER REQUIREMENTS BEFORE FINAL PAYMENT: The Contractor shall submit (aside from those provided in the Contract Document) the following before final payment is made:
>
> a. Certificate of Final Building Occupancy.

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[139] *Rollo*, p. 336.

b. Certificate of Final Inspection of electrical, telephone, sanitary, mechanical, water, gas, safety and other utilities.

c. Original and three (3) sets of prints of "As-built Drawings" of Electrical, Sanitary, Gas, Telephone and Mechanical Works. x x x.

x x x x x x x x x

g. Guarantee bond equivalent to ten percent (10%) of the Contract Price covering a period of one year after the final Acceptance of the Contract work and materials installed. x x x.

10. ACCEPTANCE AND FINAL PAYMENT: x x x. PROVIDED THAT FINAL PAYMENT ON THE CONTRACT SHALL NOT BE MADE UNTIL THE CONTRATOR HAS SUBMITTED A STATEMENT SWORN TO BEFORE AN OFFICER DULY AUTHORIZED TO ADMINISTER OATH, SHOWING THAT ALL TAXES DUE FROM HIM, AND ALL OBLIGATIONS FOR MATERIALS USED AND LABOR EMPLOYED IN CONNECTION WITH THIS CONTRACT HAVE BEEN DULY PAID, x x x.[140] (Emphasis in the original).

With respect to the requirement of a guarantee bond to insure the building's workmanship and materials (Paragraph [g] of number 9 above), while petitioners submitted a surety bond from Commonwealth Insurance Company,[141] the document, nevertheless, cannot satisfy the requirement of the Contract as the same is "valid for government projects only."[142]

In connection with the allegation of petitioners that respondent has been using the building since October 2005 when they took over the building, suffice it to say that the Technical Specifications Book states that:

11. USE OF COMPLETED PORTIONS OF WORK: The Owner shall have the right to take possession of and use any completed

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[140] *Id.* at 576-577.

[141] CIAC Records, Envelope No. 2, Annex "Q-1" of the Affidavit of Rodolfo Ondevilla.

[142] *Id.*, Annex "Q-1-A".

> or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but **such taking [or] possession and use shall not x x x be deemed an acceptance of any work not completed in accordance with the Contract Documents.** Neither shall it be deemed a waiver by the Owner of the rights to claim for damages due to delays in the completion of the work. x x x.[143] (Emphasis supplied.)
>
> x x x x x x x x x
>
> 5. CONDITIONS RELATIVE TO CERTIFICATES OF PAYMENT:
>
> x x x x x x x x x
>
> b. No certificate issued nor payment to the Contractor nor partial or entire use or occupancy of the work by the Owner, shall constitute an acceptance of any work or materials not in accordance with the Contract x x x.[144]

One of the grounds relied upon by the CIAC in granting the claim of petitioners for the final billing is that as early as June 2004, the first floor of the building was already being used by respondent's nursing students.[145] This finding of the CIAC, which is based on the allegation of petitioners,[146] is evidently not supported by the evidence on record as demonstrated by the above discussions of this Court. It failed to take into consideration Our foregoing determinations that as of that period, works on the building were still ongoing. Such finding also disregarded the clear testimony of respondent's comptroller, Mr. Ondevilla, that the building cannot be used at that time, or even in November of that same year, since the building officials of Calamba City did not permit its use because of safety concerns. Thus:

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[143] *Rollo*, p. 571.

[144] *Id.* at 575.

[145] CIAC Records, Envelope No. 6, Internal Files, Final Award, p. 25 (4.e.).

[146] *Id.*, Envelope No. 4, Affidavit of Architect Richard A. King, p. 3, No. 16.

ATTY. V. F. ABAÑO:
And isn't it a fact Mr. Witness that the ground floor of this subject building was used starting in June 2004?

MR. R. C. ONDEVILLA:
June 2004? **I don't remember the building being used in June 2004**. In fact, I remember that time that when (unintelligible) was actually (unintelligible) at the second and third floor (unintelligible), **since it is very dangerous for us to, x x x, let our students use that room.**

ATTY. V. F. ABAÑO:
Are you very sure of that?

MR. R. C. ONDEVILLA:
Yes.

ATTY. V. F. ABAÑO:
You're under oath.

MR. R. C. ONDEVILLA:
Yes.

ATTY. V. F. ABAÑO:
That the ground floor was not used by the nursing students?

MR. R. C. ONDEVILLA:
Yes. As far as I know, it was used actually, **it was attempted to be used in November**, your Honor, because that is the start of the. . .

ATTY. V. F. ABAÑO:
November of?

MR. R. C. ONDEVILLA:
Of 2004. Because then they were promising to deliver the building December 31, 2004. So, we said that the ground floor could already be ready in November. **But then again that was stopped, your Honor, because the Building Officials were on the school** and then we have to stop (unintelligible) the building.[147]

x x x x x x x x x

[147] *Id.*, Envelope No. 7, TSN, 29 January 2007, pp. 117-118.

MR. R. C. ONDEVILLA:

> Again, your Honor, on the testimonies we had, I already mentioned that we said that **that building cannot be used because the second and third floor[s] are still under construction. So the Municipal building officials did not allow [us] to use that building**.[148] (Emphases supplied).

In fact, the Certificate of Occupancy was issued by the City Government of Calamba on 13 January 2006 only.[149]

Based on all the foregoing, We hold that respondent was justified in refusing to pay petitioners' final billing.

3. 2% surcharge on unpaid claims

The Contract between petitioners and respondent provides that "all outstanding accounts not paid after the retention period shall bear a surcharge of 2% per month with a fraction of a month considered a full month." In view of petitioners' failure to finish the project, it is not entitled to the 2% surcharge.

Besides, based on the Contract, the surcharge was to start after the one-year period of retention. The retention period, on the other hand, was to be reckoned from the date of final turnover and acceptance of the project.[150] Since petitioners did not finish the building, there was no formal turn-over and acceptance of the project. Hence, the retention period, from which the surcharge must be computed, did not start to run.

4. Amount of work accomplished equivalent to 94.12%

As per report of DLSPI, the 94.12% work accomplishment of petitioners on the project amounts to ₱49,244,814.99. Since respondent has made payments in the total amount of ₱42,319,927.20, there remains a balance of ₱6,924,887.79. This amount includes the ₱4,581,129.86 unpaid balance of the 2nd Progress Billing to which, as We already declared above,

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[148] *Id.*, TSN, 12 February 2007, p. 122.

[149] CA *rollo*, p. 467, Annex 33.

[150] *Rollo*, p. 320, No. 6(e) of The Contract, p. 335.

petitioners are entitled. Thus, of the total work accomplished by petitioners, respondent still has a balance of ₱2,343,757.93, in addition to the ₱4,581,129.86 unpaid balance of the 2nd Progress Billing (₱4,581,129.86 + ₱2,343,757.93 = ₱6,924,887.79).

Other monetary claims

1. Moral and exemplary damages

Both petitioners and respondent demand moral and exemplary damages, claiming gross violation of the Contract amounting to bad faith or wanton or malicious breach thereof.[151]

Petitioners allege that respondent's failure to make payments on time and in full drained them financially and emotionally, compelling them to apply for additional loans for the project, as a result of which, their reputation and credit standing were adversely affected.[152]

Respondent, on the other hand, contends that petitioners' malicious breach embarrassed it in the eyes of its community when it had to make do with makeshift classrooms, laboratories, and library facilities for its students.[153]

A breach of contract may give rise to an award of moral damages only if the party guilty of the breach acted fraudulently or in bad faith. Likewise, a breach of contract may give rise to exemplary damages if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[154]

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[151] Petition for Review, *id.* at 26-27 and Comment to the Petition, *id.* at 556-558.

[152] *Id.* at 26.

[153] Comment to the Petition, *id.* at 557.

[154] *Salvador v. Court of Appeals*, G.R. No. 124899, 30 March 2004, 426 SCRA 433, 453-455, citing Articles 2220 and 2232 of the Civil Code.

The CIAC awarded moral and exemplary damages in favor of petitioners on the basis of respondent's failure to make payments on time and in full. The CIAC gave merit to the allegations of petitioners that the delayed and staggered payments drained them financially and emotionally, compelled them to apply for additional loans, affected their reputation and credit standing adversely, made them suffer mental anguish, serious anxiety and sleepless nights, and prevented them from participating in the bidding of other projects because of their financial problems. However, as already explained above, with the exception of the down payment, petitioners agreed to a staggered payment of the progress billings; hence, they cannot now claim that they were adversely affected by respondent's payments in installment. Also, with respect to the down payment, there was no showing that respondent's failure to pay the same on time and in full was attended by fraud or bad faith or was in wanton or oppressive disregard of petitioners' rights.

More importantly, an award of moral damages must be anchored on a **clear showing** that the party entitled thereto **actually experienced** mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. Here, while petitioners alleged that their finances were adversely affected, they did not present any evidence thereof, such as documents evidencing the loans they were supposedly compelled to obtain.

In the same manner, respondent also failed to present sufficient evidence of their entitlement to moral and exemplary damages. The alleged besmirched reputation it allegedly suffered as a result of the building not having been finished on time was not supported by any evidence other than respondent's bare allegation.

Absent any showing that the parties are entitled to moral and exemplary damages, their respective claims therefor must be disallowed.

2. Attorney's Fees

Again, on the ground that petitioners and respondent committed a mutual breach of their contract, each must bear his own damage with respect to the payment of the professional fees of their respective lawyers.

3. Costs of Arbitration

Based on the Final Award of the CIAC, the total cost of arbitration is ₱555,658.52.[155]

Consistent with the finding that both parties breached their contract, the costs of arbitration must be equally divided between petitioners and respondent. Each party must, consequently, pay ₱277,829.26.

SUMMARY OF MONETARY AWARDS

For petitioners:

1. Unpaid balance of 2nd Progress Billing	₱4,581,129.86
2. Unpaid balance on total work accomplished	2,343,757.93
3. Cost of Arbitration	277,829.26
TOTAL:	₱7,202,717.05

For respondent:

1. Liquidated damages	₱10,463,985.44
2. Cost of construction of temporary facilities	1,579,056.03
3. Professional fees of DLSPI	200,000.00
4. Cost of Arbitration	277,829.26
TOTAL:	₱12,520,870.73

In sum, petitioners owe respondent the amount of ₱5,318,153.68.

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

WHEREFORE, the petition is **PARTIALLY GRANTED** and the Decision dated 31 August 2007 of the Court of Appeals in CA-G.R. SP No. 99315 is hereby **MODIFIED** as follows:

1. The award of moral and exemplary damages and attorney's fees in favor of respondent are **DELETED**;
2. The amount of actual damages awarded to respondent is **REDUCED** to ₱1,779,056.03 (₱1,579,056.03 cost of construction of temporary facilities plus ₱200,000.00 professional fees of Davis Langdon and Seah Philippines, Inc.);
3. Payment of the costs of arbitration in the amount of ₱555,658.52 shall be equally divided by petitioners and respondent;
4. Petitioners are awarded actual damages in the sum of ₱6,924,887.79 representing the aggregate amount of their unpaid accomplished work on the project. This amount shall be deducted from the ₱12,394,902.95 due respondent; and
5. The total award in favor of respondent is ₱5,318,153.68.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

SECOND DIVISION

[G.R. No. 184300. July 11, 2012]

MALAYAN INSURANCE CO., INC., *petitioner, vs.* **PHILIPPINES FIRST INSURANCE CO., INC. and REPUTABLE FORWARDER SERVICES, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; TRANSPORTATION; COMMON CARRIER DISTINGUISHED FROM PRIVATE CARRIER.— Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. On the other hand, a private carrier is one wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public. **A common carrier becomes a private carrier when it undertakes to carry a special cargo or chartered to a special person only**. For all intents and purposes, therefore, Reputable operated as a private/special carrier with regard to its contract of carriage with Wyeth.

2. ID.; CONTRACT OF CARRIAGE; THE EXTENT OF A PRIVATE CARRIER'S OBLIGATION IS DICTATED BY THE STIPULATIONS OF THE CONTRACT; CASE AT BAR.— The extent of a private carrier's obligation is dictated by the stipulations of a contract it entered into, provided its stipulations, clauses, terms and conditions are not contrary to law, morals, good customs, public order, or public policy. "The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. Public policy governing common carriers has no force where the public at large is not involved." Thus, being a private carrier, the extent of Reputable's liability is fully governed by the stipulations of the contract of carriage, one of which is that it shall be liable to Wyeth for the loss of the goods/products due to any and all causes whatsoever, including theft, robbery

and other *force majeure* while the goods/products are in transit and until actual delivery to Wyeth's customers, salesmen and dealers.

3. COMMERCIAL LAW; INSURANCE CODE; DOUBLE INSURANCE; REQUISITES; NOT PRESENT IN CASE AT BAR.— By the express provision of Section 93 of the Insurance Code, double insurance exists where the same person is insured by several insurers separately in respect to the same subject, interest and risk. The requisites in order for double insurance to arise are as follows: 1. The person insured is the same; 2. Two or more insurers insuring separately; 3. There is identity of subject matter; 4. There is identity of interest insured; and 5. There is identity of the risk or peril insured against. In the present case, while it is true that the Marine Policy and the SR Policy were both issued over the same subject matter, *i.e.* goods belonging to Wyeth, and both covered the same peril insured against, it is, however, beyond cavil that the said policies were issued to two different persons or entities. It is undisputed that Wyeth is the recognized insured of Philippines First under its Marine Policy, while Reputable is the recognized insured of Malayan under the SR Policy. The fact that Reputable procured Malayan's SR Policy over the goods of Wyeth pursuant merely to the stipulated requirement under its contract of carriage with the latter does not make Reputable a mere agent of Wyeth in obtaining the said SR Policy. The interest of Wyeth over the property subject matter of both insurance contracts is also different and distinct from that of Reputable's. The policy issued by Philippines First was in consideration of the legal and/or equitable interest of Wyeth over its own goods. On the other hand, what was issued by Malayan to Reputable was over the latter's insurable interest over the safety of the goods, which may become the basis of the latter's liability in case of loss or damage to the property and falls within the contemplation of Section 15 of the Insurance Code. Therefore, even though the two concerned insurance policies were issued over the same goods and cover the same risk, there arises no double insurance since they were issued to two different persons/entities having distinct insurable interests.

4. CIVIL LAW; OBLIGATIONS; SOLIDARY LIABILITY; WHEN PROPER; NOT APPLICABLE IN CASE AT BAR.— There

> is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires. In *Heirs of George Y. Poe v. Malayan Insurance Company, Inc.*, the Court ruled that: x x x **The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code; while that of the insurer arises from contract, particularly, the insurance policy**. x x x Suffice it to say that Malayan's and Reputable's respective liabilities arose from different obligations – Malayan's is based on the SR Policy while Reputable's is based on the contract of carriage.

APPEARANCES OF COUNSEL

Francisco Farolan for petitioner.
Esteban Nancho for Reputable Forwarder Services, Inc.
Conrado R. Mangahas & Associates for Philippines First Insurance Co., Inc.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari* filed by petitioner Malayan Insurance Co., Inc. (Malayan) assailing the Decision[1] dated February 29, 2008 and Resolution[2] dated August 28, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 71204 which affirmed with modification the decision of the Regional Trial Court (RTC), Branch 38 of Manila.

Antecedent Facts

Since 1989, Wyeth Philippines, Inc. (Wyeth) and respondent Reputable Forwarder Services, Inc. (Reputable) had been annually executing a contract of carriage, whereby the latter undertook

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring; *rollo*, pp. 12-25.

[2] *Id.* at 27.

to transport and deliver the former's products to its customers, dealers or salesmen.[3]

On November 18, 1993, Wyeth procured Marine Policy No. MAR 13797 (Marine Policy) from respondent Philippines First Insurance Co., Inc. (Philippines First) to secure its interest over its own products. Philippines First thereby insured Wyeth's nutritional, pharmaceutical and other products usual or incidental to the insured's business while the same were being transported or shipped in the Philippines. The policy covers all risks of direct physical loss or damage from any external cause, if by land, and provides a limit of ₱6,000,000.00 per any one land vehicle.

On December 1, 1993, Wyeth executed its annual contract of carriage with Reputable. It turned out, however, that the contract was not signed by Wyeth's representative/s.[4] Nevertheless, it was admittedly signed by Reputable's representatives, the terms thereof faithfully observed by the parties and, as previously stated, the same contract of carriage had been annually executed by the parties every year since 1989.[5]

Under the contract, Reputable undertook to answer for "all risks with respect to the goods and shall be liable to the COMPANY (Wyeth), for the loss, destruction, or damage of the goods/products due to any and all causes whatsoever, including theft, robbery, flood, storm, earthquakes, lightning, and other *force majeure* while the goods/products are in transit and until actual delivery to the customers, salesmen, and dealers of the COMPANY."[6] The contract also required Reputable to secure an insurance policy on Wyeth's goods.[7] Thus, on February 11,

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

[4] *Id.*

[5] *Id.*

[6] Records, p. 266.

[7] *Id.* at 267.

1994, Reputable signed a Special Risk Insurance Policy (SR Policy) with petitioner Malayan for the amount of ₱1,000,000.00.

On October 6, 1994, during the effectivity of the Marine Policy and SR Policy, Reputable received from Wyeth 1,000 boxes of Promil infant formula worth ₱2,357,582.70 to be delivered by Reputable to Mercury Drug Corporation in Libis, Quezon City. Unfortunately, on the same date, the truck carrying Wyeth's products was hijacked by about 10 armed men. They threatened to kill the truck driver and two of his helpers should they refuse to turn over the truck and its contents to the said highway robbers. The hijacked truck was recovered two weeks later without its cargo.

On March 8, 1995, Philippines First, after due investigation and adjustment, and pursuant to the Marine Policy, paid Wyeth ₱2,133,257.00 as indemnity. Philippines First then demanded reimbursement from Reputable, having been subrogated to the rights of Wyeth by virtue of the payment. The latter, however, ignored the demand.

Consequently, Philippines First instituted an action for sum of money against Reputable on August 12, 1996.[8] In its complaint, Philippines First stated that Reputable is a "private corporation engaged in the business of a common carrier." In its answer,[9] Reputable claimed that it is a private carrier. It also claimed that it cannot be made liable under the contract of carriage with Wyeth since the contract was not signed by Wyeth's representative and that the cause of the loss was *force majeure*, *i.e.*, the hijacking incident.

Subsequently, Reputable impleaded Malayan as third-party defendant in an effort to collect the amount covered in the SR Policy. According to Reputable, "it was validly insured with [Malayan] for ₱1,000,000.00 with respect to the lost products under the latter's Insurance Policy No. SR-0001-02577 effective

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[8] Docketed as Civil Case No. 96-79498; *id.* at 1-4.

[9] *Id.* at 15-22.

February 1, 1994 to February 1, 1995" and that the SR Policy covered the risk of robbery or hijacking.[10]

Disclaiming any liability, Malayan argued, among others, that under Section 5 of the SR Policy, the insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by any marine policy and that the SR Policy expressly excluded third-party liability.

After trial, the RTC rendered its Decision[11] finding Reputable liable to Philippines First for the amount of indemnity it paid to Wyeth, among others. In turn, Malayan was found by the RTC to be liable to Reputable to the extent of the policy coverage. The dispositive portion of the RTC decision provides:

> WHEREFORE, on the main Complaint, judgment is hereby rendered finding [Reputable] liable for the loss of the Wyeth products and orders it to pay [Philippines First] the following:
>
> 1. the amount of ₱2,133,257.00 representing the amount paid by [Philippines First] to Wyeth for the loss of the products in question;
> 2. the amount of ₱15,650.00 representing the adjustment fees paid by [Philippines First] to hired adjusters/surveyors;
> 3. the amount of ₱50,000.00 as attorney's fees; and
> 4. the costs of suit.
>
> On the third-party Complaint, judgment is hereby rendered finding [Malayan] liable to indemnify [Reputable] the following:
>
> 1. the amount of ₱1,000,000.00 representing the proceeds of the insurance policy;
> 2. the amount of ₱50,000.00 as attorney's fees; and
> 3. the costs of suit.
>
> SO ORDERED.[12]

Dissatisfied, both Reputable and Malayan filed their respective appeals from the RTC decision.

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[10] *Id.* at 31.

[11] *Rollo*, pp. 35-45.

[12] *Id.* at 44-45.

Reputable asserted that the RTC erred in holding that its contract of carriage with Wyeth was binding despite Wyeth's failure to sign the same. Reputable further contended that the provisions of the contract are unreasonable, unjust, and contrary to law and public policy.

For its part, Malayan invoked Section 5 of its SR Policy, which provides:

> Section 5. INSURANCE WITH OTHER COMPANIES. The insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by or would but for the existence of this policy, be insured by any Fire or Marine policy or policies except in respect of any excess beyond the amount which would have been payable under the Fire or Marine policy or policies had this insurance not been effected.

Malayan argued that inasmuch as there was already a marine policy issued by Philippines First securing the same subject matter against loss and that since the monetary coverage/value of the Marine Policy is more than enough to indemnify the hijacked cargo, Philippines First alone must bear the loss.

Malayan sought the dismissal of the third-party complaint against it. In the alternative, it prayed that it be held liable for no more than ₱468,766.70, its alleged pro-rata share of the loss based on the amount covered by the policy, subject to the provision of Section 12 of the SR Policy, which states:

> 12. OTHER INSURANCE CLAUSE. If at the time of any loss or damage happening to any property hereby insured, there be any other subsisting insurance or insurances, whether effected by the insured or by any other person or persons, covering the same property, the company shall not be liable to pay or contribute more than its ratable proportion of such loss or damage.

On February 29, 2008, the CA rendered the assailed decision sustaining the ruling of the RTC, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the assailed Decision dated 29 September 2000, as modified in the Order dated 21 July 2001, is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees in favor of Reputable is **DELETED**.

SO ORDERED.[13]

The CA ruled, among others, that: (1) Reputable is estopped from assailing the validity of the contract of carriage on the ground of lack of signature of Wyeth's representative/s; (2) Reputable is liable under the contract for the value of the goods even if the same was lost due to fortuitous event; and (3) Section 12 of the SR Policy prevails over Section 5, it being the latter provision; however, since the ratable proportion provision of Section 12 applies only in case of double insurance, which is not present, then it should not be applied and Malayan should be held liable for the full amount of the policy coverage, that is, ₱1,000,000.00.[14]

On March 14, 2008, Malayan moved for reconsideration of the assailed decision but it was denied by the CA in its Resolution dated August 28, 2008.[15]

Hence, this petition.

Malayan insists that the CA failed to properly resolve the issue on the "statutory limitations on the liability of common carriers" and the "difference between an 'other insurance clause' and an 'over insurance clause'."

Malayan also contends that the CA erred when it held that Reputable is a private carrier and should be bound by the contractual stipulations in the contract of carriage. This argument is based on its assertion that Philippines First judicially admitted in its complaint that Reputable is a common carrier and as such, Reputable should not be held liable pursuant to Article

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[13] *Id.* at 25.

[14] *Id.* at 20-24.

[15] *Id.* at 27.

1745(6) of the Civil Code.[16] Necessarily, if Reputable is not liable for the loss, then there is no reason to hold Malayan liable to Reputable.

Further, Malayan posits that there resulted in an impairment of contract when the CA failed to apply the express provisions of Section 5 (referred to by Malayan as over insurance clause) and Section 12 (referred to by Malayan as other insurance clause) of its SR Policy as these provisions could have been read together there being no actual conflict between them.

Reputable, meanwhile, contends that it is exempt from liability for acts committed by thieves/robbers who act with grave or irresistible threat whether it is a common carrier or a private/ special carrier. It, however, maintains the correctness of the CA ruling that Malayan is liable to Philippines First for the full amount of its policy coverage and not merely a ratable portion thereof under Section 12 of the SR Policy.

Finally, Philippines First contends that the factual finding that Reputable is a private carrier should be accorded the highest degree of respect and must be considered conclusive between the parties, and that a review of such finding by the Court is not warranted under the circumstances. As to its alleged judicial admission that Reputable is a common carrier, Philippines First proffered the declaration made by Reputable that it is a private carrier. Said declaration was allegedly reiterated by Reputable in its third party complaint, which in turn was duly admitted by Malayan in its answer to the said third-party complaint. In addition, Reputable even presented evidence to prove that it is a private carrier.

As to the applicability of Sections 5 and 12 in the SR Policy, Philippines First reiterated the ruling of the CA. Philippines

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[16] Article 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

x x x x x x x x x

(6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished; x x x.

First, however, prayed for a slight modification of the assailed decision, praying that Reputable and Malayan be rendered solidarily liable to it in the amount of ₱998,000.00, which represents the balance from the ₱1,000.000.00 coverage of the SR Policy after deducting ₱2,000.00 under Section 10 of the said SR Policy.[17]

Issues

The liability of Malayan under the SR Policy hinges on the following issues for resolution:

1) Whether Reputable is a private carrier;

2) Whether Reputable is strictly bound by the stipulations in its contract of carriage with Wyeth, such that it should be liable for any risk of loss or damage, for any cause whatsoever, including that due to theft or robbery and other *force majeure*;

3) Whether the RTC and CA erred in rendering "nugatory" Section 5 and Section 12 of the SR Policy; and

4) Whether Reputable should be held solidarily liable with Malayan for the amount of ₱998,000.00 due to Philippines First.

The Court's Ruling

On the first issue – Reputable is a private carrier.

The Court agrees with the RTC and CA that Reputable is a private carrier. The issue of whether a carrier is private or common on the basis of the facts found by a trial court and/or the appellate court can be a valid and reviewable question of law.[18] In this case, the conclusion derived by both the RTC and the CA that Reputable is a private carrier finds sufficient

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[17] Records, p. 310.

[18] *Philippine American General Insurance Company v. PKS Shipping Company*, G.R. No. 149038, April 9, 2003, 401 SCRA 222, 227.

basis, not only from the facts on record, but also from prevailing law and jurisprudence.

Malayan relies on the alleged judicial admission of Philippines First in its complaint that Reputable is a common carrier.[19] Invoking Section 4, Rule 129 of the Rules on Evidence that "an admission verbal or written, made by a party in the course of the proceeding in the same case, does not require proof," it is Malayan's position that the RTC and CA should have ruled that Reputable is a common carrier. Consequently, pursuant to Article 1745(6) of the Civil Code, the liability of Reputable for the loss of Wyeth's goods should be dispensed with, or at least diminished.

It is true that judicial admissions, such as matters alleged in the pleadings do not require proof, and need not be offered to be considered by the court. "The court, for the proper decision of the case, may and should consider, without the introduction of evidence, the facts admitted by the parties."[20] The rule on judicial admission, however, also states that **such allegation, statement, or admission is conclusive as against the pleader,**[21] and that **the facts alleged in the complaint are deemed admissions of the plaintiff and binding upon him**.[22] In this case, the pleader or the plaintiff who alleged that Reputable is a common carrier was Philippines First. It cannot, by any stretch of imagination, be made conclusive as against Reputable whose nature of business is in question.

It should be stressed that Philippines First is not privy to the SR Policy between Wyeth and Reputable; rather, it is a mere subrogee to the right of Wyeth to collect from Reputable under

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[19] *Rollo,* p. 29.

[20] *Asia Banking Corporation v. Walter E. Olsen & Co.*, 48 Phil. 529, 532 (1925).

[21] *Del Rosario v. Gerry Roxas Foundation, Inc.*, G.R. No. 170575, June 8, 2011, 651 SCRA 414, 424-425, citing *Alfelor v. Halasan*, 520 Phil. 982, 991 (2006); see also *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 366 (2006).

[22] *Del Rosario v. Gerry Roxas Foundation, Inc., id.*

the terms of the contract of carriage. Philippines First is not in any position to make any admission, much more a definitive pronouncement, as to the nature of Reputable's business and there appears no other connection between Philippines First and Reputable which suggests mutual familiarity between them.

Moreover, records show that the alleged judicial admission of Philippines First was essentially disputed by Reputable when it stated in paragraphs 2, 4, and 11 of its answer that it is actually a private or special carrier.[23] In addition, Reputable stated in paragraph 2 of its third-party complaint that it is "a private carrier engaged in the carriage of goods."[24] Such allegation was, in turn, admitted by Malayan in paragraph 2 of its answer to the third-party complaint.[25] There is also nothing in the records which show that Philippines First persistently maintained its stance that Reputable is a common carrier or that it even contested or proved otherwise Reputable's position that it is a private or special carrier.

Hence, in the face of Reputable's contrary admission as to the nature of its own business, what was stated by Philippines First in its complaint is reduced to nothing more than mere allegation, which must be proved for it to be given any weight or value. The settled rule is that mere allegation is not proof.[26]

More importantly, the finding of the RTC and CA that Reputable is a special or private carrier is warranted by the evidence on record, primarily, the unrebutted testimony of Reputable's Vice President and General Manager, Mr. William Ang Lian Suan, who expressly stated in open court that Reputable serves only one customer, Wyeth.[27]

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[23] Records, pp. 15-25.

[24] *Id.* at 30.

[25] *Id.* at 43-46.

[26] *Lee v. Dela Paz*, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 536.

[27] TSN dated September 26, 1997, p. 4.

Under Article 1732 of the Civil Code, common carriers are persons, corporations, firms, or associations engaged in the business of carrying or transporting passenger or goods, or both by land, water or air for compensation, offering their services to the public. On the other hand, a private carrier is one wherein the carriage is generally undertaken by special agreement and it does not hold itself out to carry goods for the general public.[28] **A common carrier becomes a private carrier when it undertakes to carry a special cargo or chartered to a special person only**.[29] For all intents and purposes, therefore, Reputable operated as a private/special carrier with regard to its contract of carriage with Wyeth.

On the second issue – Reputable is bound by the terms of the contract of carriage.

The extent of a private carrier's obligation is dictated by the stipulations of a contract it entered into, provided its stipulations, clauses, terms and conditions are not contrary to law, morals, good customs, public order, or public policy. "The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. Public policy governing common carriers has no force where the public at large is not involved."[30]

Thus, being a private carrier, the extent of Reputable's liability is fully governed by the stipulations of the contract of carriage, one of which is that it shall be liable to Wyeth for the loss of the goods/products due to any and all causes whatsoever, including theft, robbery and other *force majeure* while the goods/

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[28] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation and R&B Insurance Corporation*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 80.

[29] *Valenzuela Hardwood and Industrial Supply, Inc. v. CA*, 340 Phil. 745, 755 (1997).

[30] *Home Insurance Co. v. American Steamship Agencies, Inc., et al.*, 131 Phil. 552, 555-556 (1968).

products are in transit and until actual delivery to Wyeth's customers, salesmen and dealers.[31]

On the third issue – other insurance *vis-à-vis* over insurance.

Malayan refers to Section 5 of its SR Policy as an "over insurance clause" and to Section 12 as a "modified 'other insurance' clause."[32] In rendering inapplicable said provisions in the SR Policy, the CA ruled in this wise:

> Since Sec. 5 calls for [Malayan's] complete absolution in case the other insurance would be sufficient to cover the entire amount of the loss, it is in direct conflict with Sec. 12 which provides only for a pro[-]rated contribution between the two insurers. Being the later provision, and pursuant to the rules on interpretation of contracts, Sec. 12 should therefore prevail.
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> x x x x x x x x x
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> x x x [T]he intention of both Reputable and [Malayan] should be given effect as against the wordings of Sec. 12 of their contract, as it was intended by the parties to operate only in case of double insurance, or where the benefits of the policies of both plaintiff-appellee and [Malayan] should pertain to Reputable alone. But since the court *a quo* correctly ruled that there is no double insurance in this case inasmuch as Reputable was not privy thereto, and therefore did not stand to benefit from the policy issued by plaintiff-appellee in favor of Wyeth, then [Malayan's] stand should be rejected.
>
> To rule that Sec. 12 operates even in the absence of double insurance would work injustice to Reputable which, despite paying premiums for a [₱]1,000,000.00 insurance coverage, would not be entitled to recover said amount for the simple reason that the same property is covered by another insurance policy, a policy to which it was not a party to and much less, from which it did not stand to benefit. Plainly, this unfair situation could not have been the intention of both Reputable and [Malayan] in signing the insurance contract in question.[33]

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[31] Records, p. 266.

[32] *Rollo,* p. 6.

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

In questioning said ruling, Malayan posits that Sections 5 and 12 are separate provisions applicable under distinct circumstances. Malayan argues that "it will not be completely absolved under Section 5 of its policy if it were the assured itself who obtained additional insurance coverage on the same property and the loss incurred by [Wyeth's] cargo was more than that insured by [Philippines First's] marine policy. On the other hand, Section 12 will not completely absolve Malayan if additional insurance coverage on the same cargo were obtained by someone besides [Reputable], in which case [Malayan's] SR policy will contribute or share ratable proportion of a covered cargo loss."[34]

Malayan's position cannot be countenanced.

Section 5 is actually the ***other insurance clause*** (also called "additional insurance" and "double insurance"), one akin to Condition No. 3 in issue in *Geagonia v. CA*,[35] which validity was upheld by the Court as a warranty that no other insurance exists. The Court ruled that Condition No. 3[36] is a condition which is not proscribed by law as its incorporation in the "policy is allowed by Section 75 of the Insurance Code. It was also the Court's finding that unlike the other insurance clauses, Condition No. 3 does not absolutely declare void any violation thereof but expressly provides that the condition "shall not apply when the total insurance or insurances in force at the time of the loss or damage is not more than ₱200,000.00."

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[34] *Id.* at 6.

[35] 311 Phil. 152 (1995).

[36] Condition No. 3 states: The insured shall give notice to the Company of any insurance or insurances already affected, or which may subsequently be effected, covering any of the property or properties consisting of stocks in trade, goods in process and/or inventories only hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated therein or endorsed in this policy pursuant to Section 50 of the Insurance Code, by or on behalf of the Company before the occurrence of any loss or damage, all benefits under this policy shall be deemed forfeited, *provided however*, that this condition shall not apply when the total insurance or insurances in force at the time of the loss or damage is not more than ₱200,000.00.

In this case, similar to Condition No. 3 in *Geagonia*, Section 5 does not provide for the nullity of the SR Policy but simply limits the liability of Malayan only up to the excess of the amount that was not covered by the other insurance policy. In interpreting the "other insurance clause" in *Geagonia*, the Court ruled that **the prohibition applies only in case of double insurance**. The Court ruled that in order to constitute a violation of the clause, **the other insurance must be upon the same subject matter, the same interest therein, and the same risk**. Thus, even though the multiple insurance policies involved were all issued in the name of the same assured, over the same subject matter and covering the same risk, it was ruled that there was no violation of the "other insurance clause" since there was no double insurance.

Section 12 of the SR Policy, on the other hand, is the ***over insurance clause***. More particularly, it covers the situation where there is over insurance due to double insurance. In such case, Section 15 provides that Malayan shall "not be liable to pay or contribute more than its ratable proportion of such loss or damage." This is in accord with the *principle of contribution* provided under Section 94(e) of the Insurance Code,[37] which states that "where the insured is over insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract."

Clearly, both Sections 5 and 12 presuppose the existence of a double insurance. The pivotal question that now arises is whether there is double insurance in this case such that either Section 5 or Section 12 of the SR Policy may be applied.

By the express provision of Section 93 of the Insurance Code, double insurance exists where the same person is insured by several insurers separately in respect to the same subject, interest and risk. The requisites in order for double insurance to arise are as follows:[38]

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[37] *See* De Leon, H. and De Leon, Jr., *THE INSURANCE CODE OF THE PHILIPPINES, Annotated* (2010).

[38] *Id.* at 298.

1. The person insured is the same;
2. Two or more insurers insuring separately;
3. There is identity of subject matter;
4. There is identity of interest insured; and
5. There is identity of the risk or peril insured against.

In the present case, while it is true that the Marine Policy and the SR Policy were both issued over the same subject matter, *i.e.*, goods belonging to Wyeth, and both covered the same peril insured against, it is, however, beyond cavil that the said policies were issued to two different persons or entities. It is undisputed that Wyeth is the recognized insured of Philippines First under its Marine Policy, while Reputable is the recognized insured of Malayan under the SR Policy. The fact that Reputable procured Malayan's SR Policy over the goods of Wyeth pursuant merely to the stipulated requirement under its contract of carriage with the latter does not make Reputable a mere agent of Wyeth in obtaining the said SR Policy.

The interest of Wyeth over the property subject matter of both insurance contracts is also different and distinct from that of Reputable's. The policy issued by Philippines First was in consideration of the legal and/or equitable interest of Wyeth over its own goods. On the other hand, what was issued by Malayan to Reputable was over the latter's insurable interest over the safety of the goods, which may become the basis of the latter's liability in case of loss or damage to the property and falls within the contemplation of Section 15 of the Insurance Code.[39]

Therefore, even though the two concerned insurance policies were issued over the same goods and cover the same risk, there arises no double insurance since they were issued to two different persons/entities having distinct insurable interests. Necessarily,

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[39] Section 15. A carrier or depository of any kind has an insurable interest in a thing held by him as such, to the extent of his liability but not to exceed the value thereof.

over insurance by double insurance cannot likewise exist. Hence, as correctly ruled by the RTC and CA, neither Section 5 nor Section 12 of the SR Policy can be applied.

Apart from the foregoing, the Court is also wont to strictly construe the controversial provisions of the SR Policy against Malayan. This is in keeping with the rule that:

> "Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy is prepared by the insurer. **A contract of insurance, being a contract of adhesion, *par excellence*, any ambiguity therein should be resolved against the insurer**; in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations."[40] (Emphasis supplied)

Moreover, the CA correctly ruled that:

> To rule that Sec. 12 operates even in the absence of double insurance would work injustice to Reputable which, despite paying premiums for a [₱]1,000,000.00 insurance coverage, would not be entitled to recover said amount for the simple reason that the same property is covered by another insurance policy, a policy to which it was not a party to and much less, from which it did not stand to benefit. x x x[41]

On the fourth issue – Reputable is not solidarily liable with Malayan.

There is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires. In *Heirs of George Y. Poe v. Malayan Insurance Company., Inc.*,[42] the Court ruled that:

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[40] *Eternal Gardens Memorial Park Corporation v. Philippine American Life Insurance Company*, G.R. No. 166245, April 9, 2008, 551 SCRA 1, 13, citing *Malayan Insurance Corp. v. Hon. CA*, 336 Phil. 977, 989 (1997).

[41] *Rollo*, p. 24.

[42] G.R. No. 156302, April 7, 2009, 584 SCRA 152.

[W]here the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party[-]liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. **The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code; while that of the insurer arises from contract, particularly, the insurance policy**.[43] (Citation omitted and emphasis supplied)

Suffice it to say that Malayan's and Reputable's respective liabilities arose from different obligations – Malayan's is based on the SR Policy while Reputable's is based on the contract of carriage.

All told, the Court finds no reversible error in the judgment sought to be reviewed.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated February 29, 2008 and Resolution dated August 28, 2008 of the Court of Appeals in CA-G.R. CV No. 71204 are hereby **AFFIRMED**.

Cost against petitioner Malayan Insurance Co., Inc.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[43] *Id.* at 172-173.

SECOND DIVISION

[G.R. No. 185491. July 11, 2012]

JULIETA E. BERNARDO, *petitioner, vs.* **ANDREW (CHONG BUAN) L. TAN, KATHERINE L. TAN, GERARDO C. GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSKI, ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN, and RICHMOND TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; GRAVE ABUSE OF DISCRETION; GRANT OF MOTION TO WITHDRAW INFORMATIONS AGAINST RESPONDENT BY THE TRIAL COURT BASED ON GROSSLY ERRONEOUS INTERPRETATION AND APPLICATION OF THE LAW, A CASE OF.— We find reversible error in the CA Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC insofar as the first (violation of Section 5) and the third (violation of Section 20) Informations are concerned. The trial court committed grave abuse of discretion when it granted the motion to withdraw the first and the third Informations against respondents on the basis of a grossly erroneous interpretation and application of law.

2. ID.; CRIMINAL PROCEDURE; FILING OF INFORMATION; PROBABLE CAUSE; "SUCH FACTS AS ARE SUFFICIENT TO ENGENDER A WELL FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED AND THE RESPONDENT IS PROBABLY GUILTY THEREOF, AND SHOULD BE HELD FOR TRIAL."— Probable cause for purposes of filing a criminal information is described as "such

facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." In *Alejandro v. Bernas*, we further elaborated thus: [Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a **finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.** Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

3. CIVIL LAW; PRESIDENTIAL DECREE NO. 957 (THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE OF 1976) THERE IS PROBABLE CAUSE TO INDICT RESPONDENTS FOR VIOLATION OF SEC. 5 IN RELATION TO SEC. 39 OF P.D. NO. 957 BASED ON THE ALLEGATIONS IN THE FIRST INFORMATION; CASE AT BAR.— We find that there is probable cause to indict respondents for violating Section 5 on the basis of the allegations in the first Information. x x x In support of the first Information, it was claimed that the condominium project comprised two phases/towers, and that each phase/tower was given a separate Certification of Registration and License to Sell by the HLURB. Allegedly, respondents sold petitioner a unit located in Tower II of the condominium project at the time when Megaworld had yet to receive the registration certificate and its license to sell. The CA upheld the grant of the Motion to Withdraw the Information, allegedly because the law only proscribed transactions involving a contract of sale. A review of the pertinent provisions of P.D. 957 plainly shows that the execution of a contract of sale between the parties is not an essential ingredient before there could be a violation of Section 5.

4. ID.; ID.; EXTENDED DEFINITION OF "SALE", WHICH FORBIDS ALL ACTIVITIES THAT DISPOSE OR ATTEMPT TO DISPOSE OF SUBDIVISION LOTS OR CONDOMINIUM UNITS WITHOUT A PRIOR ISSUANCE OF AN HLURB LICENSE TO SELL; REASON THEREFOR. — Read in conjunction with Section 2 of P.D. 957, Section 5 has an extended definition of "sale," which forbids all activities that dispose or attempt to dispose of subdivision lots or condominium units absent a *prior* issuance of an HLURB license to sell. The prohibition includes all agreements that are in the nature of a "contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell." Thus, the statement in the first Information that reads "sold to complainant" must be interpreted in the light of this extended definition. One of the reasons behind the expanded meaning of the term "sale" was to deter the rising cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators against unknowing buyers. Thus, for the state to be able to closely supervise and regulate real estate subdivision and condominium businesses, owners or dealers thereof must have a license to sell before they engage in any type of "sale" within the meaning of the law.

5. ID.; ID.; SUBSEQUENT ISSUANCE OF A LICENSE TO SELL AND INVOCATION OF GOOD FAITH CANNOT EXTINGUISH CRIMINAL LIABILITY OF THE SUBDIVISION OR CONDOMINIUM OWNER OR DEALER WHO ENGAGED IN ANY TYPE OF "SALE" WITHIN THE MEANING OF THE LAW; CASE AT BAR.— A perusal of the Reservation Agreement would show that the transaction between petitioner Bernardo and Megaworld is covered by the extended definition of "sale" under P.D. 957. x x x It also appears from the letters of Megaworld to petitioner Bernardo that she made subsequent monthly amortization payments after her initial reservation deposit. She alleged that her total payment as of October 2003, inclusive of the reservation deposit, amounted to ₱921,300.30. We emphasize that the owner or dealer of subdivision lots or condominium units must have already obtained a license to sell at the time it disposes or attempts to dispose of the property. The subsequent issuance of a license to sell and the invocation of good faith "cannot

reach back to erase the offense and extinguish [an accused's] criminal liability." This is because engaging in such activities is regarded as a crime that is *malum prohibitum*, one to which criminal intent is immaterial. The perpetrators are punished, because the law forbids the mere commission of an act regardless of whether the conduct is inherently immoral or not.

6. ID.; ID.; THERE IS PROBABLE CAUSE TO INDICT RESPONDENTS FOR VIOLATION OF SEC. 20 OF P.D. NO. 957 ON THE BASIS OF THE ALLEGATIONS IN THE THIRD INFORMATION; CASE AT BAR.— Anent the violation of Section 20, we rule that probable cause is also present, warranting the filing of criminal complaint against respondents [on the basis of the allegations in the third Information x x x. In deciding the matter at hand, we again cite the pertinent provisions under P.D. 957 and the Revised Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree (HLURB Resolution No. 699, Series of 2001) x x x. The law is unambiguous when it states that it shall be the National Housing Authority (now the HLURB) that would fix or extend the date of completion of the subdivision or condominium projects if justified. The RTC thus committed grave abuse of discretion when it decreed that the time of completion as mandated by Section 20 should not be applied "mechanically against respondents"; and when it relied on the completion time as indicated in the Contract to Buy and Sell. Moreover, nowhere can it be found that the law requires a contract of sale before an offense can be committed under Section 20.

7. ID.; SELLER IS DUTY-BOUND TO REGISTER THE INSTRUMENTS RELATIVE TO THE SALE OR CONVEYANCE OF SUBDIVISION LOTS AND CONDOMINIUM UNITS WITH THE OFFICE OF THE REGISTER OF DEEDS; CASE AT BAR.— We however found no reversible error when the CA affirmed the RTC's grant of the withdrawal of the second Information filed against respondents with respect to the violation of Section 17. x x x According to the trial court, respondents were justified in failing to register the documents pursuant to Section 17, because the Reservation Agreement was still in the hands of petitioner.

The CA added that a violation under Section 17 also requires the existence of a contract of sale between the parties. For reference, we quote the applicable provision of the law as follows: SECTION 17. *Registration*. – **All contracts** to sell, **deeds** of sale **and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units**, whether or not the purchase price is paid in full, **shall be registered by the seller in the Office of the Register of Deeds** of the province or city where the property is situated. x x x. Indeed, failure to register the agreement or the instrument dealing with the disposition or the attempt to dispose of subdivision lots or condominium units constitutes a violation of P.D. 957. Thus, as soon as the agreement is struck, the seller is duty-bound to register the instrument with the Register of Deeds.

8. ID.; ID.; OPTION CONTRACT, NOT REQUIRED TO BE REGISTERED UNDER P.D. NO. 957; RESERVATION AGREEMENT BETWEEN PARTIES, DEEMED AN OPTION CONTRACT IN CASE AT BAR.— Nevertheless, the phrase "other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units" is not broad enough to include an option contract. An option contract refers to an agreement by which a person acquires the privilege of buying from or selling to another a particular property within a given time and at a named price, in consideration of the payment of a certain sum. It is neither a sale nor an agreement to sell, for the person does not sell or agree to sell the property. Rather, one sells the right or privilege to call for and receive the property at the election or option of another. Here, the owner parts with his or her right to sell the property, except to the other party, for a limited period. As can be surmised from the allegations in the petition of Bernardo, her purpose for signing the Reservation Agreement and paying the reservation deposit was merely to reserve the right to purchase Unit 23 E of Paseo Parkview Tower II. According to her, Megaworld proposed to enter into a Contract to Buy and Sell – "a distinct contract from the Reservation Agreement" – but the contract was never signed by the parties. Thus, the Reservation Agreement entered into by petitioner and Megaworld must be deemed merely as an option contract, which is not required to be registered under P.D. 957.

APPEARANCES OF COUNSEL

Racquel T. Ruiz for petitioner.

Manlangit Maquinto Salomon & De Guzman Law Offices for respondents.

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, assailing the 24 November 2008 Decision of the Court of Appeals (CA).[1] The present controversy stems from the 29 June 2006 and 8 September 2006 Orders of the Regional Trial Court (RTC)[2] granting the withdrawal of the Informations filed against respondents for violation of Sections 5 (first Information), 17 (second Information), and 20 (third Information) in relation to Section 39 of Presidential Decree No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree of 1976" (P.D. 957).

FACTS

We reproduce the narration of facts by the CA[3] as follows:

On October 26, 2000, the petitioner Julieta Bernardo (Ms. Bernardo), offered to purchase a condominium unit described as Unit E with an area of 37 square meters of the Paseo Parkview Suites Tower II project of the developer Megaworld Corporation (Megaworld) located at Sedeño corner Valero Streets, Salcedo Village, Makati City. The said project was to be constructed on the lots covered by Transfer Certificates of Title Nos. 160210, 160211 and 160212, which are located at Makati City. The purchase price of the unit is ₱2,935,785.00 and Ms. Bernardo paid ₱19,571.90 as her reservation

[1] The Decision in CA-G.R. SP No. 97247 was penned by CA Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[2] The 29 June 2006 and 8 September 2006 Orders in Criminal Case No. 05-1733-35 was penned by Judge Elmo M. Alameda.

[3] *Rollo*, pp. 53-57; CA Decision, pp. 2-6.

deposit, thus, a Request for Reservation [and Offer to Purchase] was completed by Ms. Bernardo and the same was assented to by Megaworld. Subsequently, a Contract to Buy and Sell dated November 22, 2000 was furnished to Ms. Bernardo. The said contract stipulated therein that the condominium unit would be delivered not later than July 31, 2003 with an additional grace period of six (6) months. As of October 22, 2003, Ms. Bernardo was able to pay the amount of ₱901,728.40. On April 15, 2004, Megaworld sent a letter to Ms. Bernardo regarding the transmittal of the Deed of Absolute Sale for her to affix her signatures thereto and for her to pay taxes and other fees so that Megaworld could start with the processing of her bank loan. Attached with the letter is a schedule of expenses needed in the transfer of the certificate of title in favor of Ms. Bernardo. The taxes and other fees to be paid by Ms. Bernardo amounted to ₱93,318.13. The conflict arose when Megaworld sent a letter dated August 9, 2004 to Ms. Bernardo as a final notice of cancellation or rescission of the Request for Reservation because of the latter's alleged failure to make the necessary payments.

Consequently, Ms. Bernardo inquired with the Housing and Land Use Regulatory Board (HLURB) on the records of the project and she learned that the Certificate of Registration and the License to Sell for the project Paseo Parkview Tower 2 were only issued by HLURB on June 7, 2001. Hence, Ms. Bernardo, represented by Romeo Ruiz, filed a complaint on August 12, 2004 before the City Prosecutor of Makati City against the respondents for violations of Sections 5, 17 and 20 of Presidential Decree No. 957, otherwise known as "Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof" and the Revised Implementing Rules and Regulations of P.D. 957 and Estafa through False Pretenses and Fraudulent Acts before the Office of the City Prosecutor. Ms. Bernardo alleged that, since the Reservation Agreement (or Request for Reservation) was executed between her and Megaworld on October 26, 2000, the respondents should have caused the annotation of the same within 180 [days] therefrom or until April 24, 2001, that no annotation on the certificates of title was done when she verified the same, that Megaworld was never able to deliver the condominium unit on the stipulated deadline, which was [] on December 2003 and that, by such acts and omissions, Megaworld and the project owner, Sedeño Manor, violated the provisions of P.D. 957 to her prejudice.

In a Joint Counter-Affidavit filed by some of the respondents herein, they averred that Megaworld applied for a Certificate of Registration and License to Sell for the project as early as July 1, 1998, that subsequently, a License to Sell was issued by the HLURB but only for the Paseo Parkview Suites Phase 1 due to the modifications in the Paseo Parkview Suites Tower 2, that there was no intent on the part of Megaworld to defraud Ms. Bernardo because, when the latter requested for reservation, it has applied for the registration of the project and to have license to sell the units on the said project, that when HLURB issued the corresponding certificate and license for the Phase 1, it is understood that Megaworld is a dealer of good refute [sic] and is financially stable, that the subsequent issuance of the certificate of registration and license to sell on June 7, 2001 for the Tower 2 proved that Megaworld had good standing in pursuing the project, that subsequent certifications for the Tower 2 were issued before its completion, that Ms. Bernardo was not in good faith in filing the complaint against the respondents as she had defaulted in the payment of her obligations and also failed to settle the balance of ₱2,016,145.71 with interest and penalty charges amounting to ₱181,453.11 and that no damage was incurred by Ms. Bernardo since the Contract to Buy and Sell was never executed.

In a Resolution dated December 29, 2004, the City Prosecutor dismissed the complaint of Ms. Bernardo. Consequently, she filed a petition for review with the Secretary of Justice. Her petition was granted by the Secretary of Justice, hence, it ordered the filing of the corresponding Informations for violations of Sections 5, 17 and 20 of P.D. No. 957. The said Informations were filed in RTC, Branch 62 in Makati City. Due to the voluntary inhibition of the presiding judge of the said court, the case was re-assigned to RTC, Branch 150.

Aggrieved, the respondents moved for the reconsideration of the filing of the Informations against them. This time, the Secretary of Justice ruled in their favor and granted their motion in a Resolution dated November 17, 2005. Hence, pursuant to the Resolution, the Secretary of Justice ordered the City Prosecutor to move for the withdrawal of the Informations filed before the [trial] court. Acting on the motion of the City Prosecutor, the public respondent court issued the assailed Order dated June 29, 2006. The pertinent portion of the said order is quoted as follows:

> "As correctly ruled by the Secretary of Justice, it is overly simplistic to consider respondents as having violated Section 5 of P.D. 957 requiring licenses to be secured for each phase of the project. Under Title I of P.D. 957 a condominium project shall mean the entire parcel of real property divided or to be divided primarily for residential purposes into condominium units including all structures thereon. Clearly, the requirement of securing a license for each phase refers to a subdivision project not a condominium project. There is therefore doubt as to whether or not Section 5 of P.D. 957 can be a basis for prosecuting the respondents. x x x."
>
> "Respondents cannot also be indicted for violation of Section 17 of P.D. 957 for failure to register the Contract to Buy and Sell with the Registry of Deeds of Makati City because they did not have in their possession said document. Their inability to register the same was justified. x x x."
>
> "Section 20 of P.D. 957 should not also [be] applied mechanically against the respondents. Under the Contract to Buy and Sell, Megaworld is mandated to complete the project by July 23, 2003 with a grace period of six (6) months barring delays due to manmade or natural causes. Upon its completion, Megaworld shall notify the complainant of such fact, which shall constitute constructive delivery of subject condominium unit. Under the facts obtaining, respondents had no obligation to notify the complainant of the completion and availability of the unit for occupancy due to complainant's failure to pay in full the purchase price of the unit. In fact, Megaworld prepared a notice to cancel/rescind and forfeit the Contract to Buy and Sell due to complainant's default. Following this theory, the non-completion of Phase II of the condominium project cannot be made the basis of criminal prosecution under the aforecited section of P.D. 957."

Consequently, Ms. Bernardo filed a motion for reconsideration but the same was denied by the [trial] court in [an Order] dated September 8, 2006. (Citations omitted)

On 24 November 2008, the CA issued its questioned Decision upholding the 29 June 2006 and 8 September 2006 Orders of

the RTC. The appellate court ruled[4] that the RTC did not commit grave abuse of discretion when it allowed the withdrawal of the Informations filed against respondents for their alleged violation of P.D. 957. According to the CA, the trial court made an assessment and evaluation of the merits of the Motion to Withdraw the Informations independent from those of the respective findings of the Secretary of Justice and the City Prosecutor.

The CA, however, set aside the finding of the trial court with regard to the applicability of Section 5 of P. D. 957. According to the appellate court, the provision governs both subdivision and condominium projects. It then made a distinction between a contract to sell and a contract of sale. The CA explained that what P.D. 957 prohibits is the act of selling condominium units, not the act of approving the request of a client to reserve a unit for future sale, without license. It thereafter pointed out that the Request for Reservation and Offer to Purchase (Reservation Agreement) only acknowledged petitioner's interest to buy the unit and her payment of the reservation deposit, which did not constitute a contract of sale. Consequently, the appellate court concluded that, since a violation of the provisions under P.D. 957 requires the execution of a contract of sale, the RTC's grant of the withdrawal of Informations was done in accordance with law and did not constitute grave abuse of discretion.

ISSUE

We summarize the legal arguments raised before this Court in one main issue – whether or not there is probable cause to indict respondents for allegedly violating Sections 5, 17, and 20 of P.D. 957.

DISCUSSION

Prosecutors have discretion and control over the criminal prosecution of offenders, as they are the officers tasked to resolve the existence of a *prima facie* case and probable cause that would warrant the filing of an information against the

[4] *Rollo*, pp. 60-62; CA Decision, pp. 9-11.

perpetrator.[5] The process of determining whether there is probable cause is ordinarily done through the conduct of a preliminary investigation.[6] If the prosecutor finds that the evidence he or she relies upon is insufficient for conviction, courts may not compel the former to initiate criminal prosecution or to continue prosecuting a proceeding originally initiated through a criminal complaint.[7] Consequently, a prosecutor who moves for the dismissal of a criminal case or the withdrawal of an information for insufficiency of evidence has authority to do so, and courts that grant the motion commit no error.[8] Furthermore, a prosecutor "may re-investigate a case and subsequently move for the dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt."[9]

However, once a complaint or an information is filed in court giving it jurisdiction over the criminal case, a reinvestigation thereof by the prosecutor requires prior permission from the court.[10] If reinvestigation is allowed, the findings and recommendations of the prosecutor should be submitted to the court for appropriate action.[11] If the prosecutor moves for the withdrawal of the information or the dismissal of the case, the court may grant or deny the motion. It may even order the trial to proceed with the proper determination of the case on the merits, according to its sound discretion.[12] The court "is the

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

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 473.

[10] *Crespo v. Mogul*, *supra* note 5.

[11] *Id.*

[12] *Id.*

best and sole judge on what to do with the case before it."[13] Thus, in *Yambot v. Armovit*,[14] we ruled:

> [The court] **may therefore grant or deny at its option** a motion to dismiss or **to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it**, in the faithful exercise of **judicial discretion and prerogative**, and not out of subservience to the prosecutor. While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. (Emphasis supplied and citations omitted)

This exercise of discretion is not unbridled, however, especially when attended with grave abuse. Grave abuse of discretion denotes "abuse of discretion too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility."[15] It is present when there is capricious, whimsical, and arbitrary exercise of judgment, which in the eyes of the law amounts to lack of jurisdiction.[16]

We find reversible error in the CA Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC insofar as the first (violation of Section 5) and the third (violation of Section 20) Informations are concerned. The trial court committed grave abuse of discretion when it granted the motion to withdraw the first and the third Informations against respondents on the basis of a grossly erroneous interpretation and application of law.

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[13] *Id.* at 476.

[14] G.R. No. 172677, 12 September 2008, 565 SCRA 177, 180.

[15] *Romy's Freight Service v. Castro*, 523 Phil. 540, 546 (2006), (citing *Lim v. Executive Secretary*, 430 Phil. 55 [2002]).

[16] *Gaston v. Court of Appeals*, 390 Phil. 36 (2000); *Palma v. Q. & S. Inc.*, 123 Phil. 958 (1966).

Probable cause for purposes of filing a criminal information is described as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[17] In *Alejandro v. Bernas*,[18] we further elaborated thus:

> [Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a **finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.** Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge. (Emphasis supplied)

We find that there is probable cause to indict respondents for violating Section 5 on the basis of the allegations in the first Information. Below is a reproduction of the criminal complaint:

> The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 5 of P.D. 957**, committed as follows:
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> That on or about the 22nd day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of

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[17] *Alejandro v. Bernas*, G.R. No. 179243, 7 September 2011, 657 SCRA 255, 264-265.

[18] *Id.* at 265.

the business of said corporation **sold to complainant** JULIETA E. BERNARDO a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos (₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to secure a Certification of Registration and License to Sell** from the Housing and Land Use Regulatory Board (HLURB), in violation of the aforecited law. (Emphasis supplied)

In support of the first Information, it was claimed that the condominium project comprised two phases/towers, and that each phase/tower was given a separate Certification of Registration and License to Sell by the HLURB. Allegedly, respondents sold petitioner a unit located in Tower II of the condominium project at the time when Megaworld had yet to receive the registration certificate and its license to sell. The CA upheld the grant of the Motion to Withdraw the Information, allegedly because the law only proscribed transactions involving a contract of sale.

A review of the pertinent provisions of P.D. 957 plainly shows that the execution of a contract of sale between the parties is not an essential ingredient before there could be a violation of Section 5, *viz*:

SECTION 5. *License to sell*. – Such **owner or dealer** to whom has been issued a registration certificate **shall not, however, be authorized to sell any** subdivision lot or **condominium unit in the registered project unless he shall have first obtained a license to sell** the project within two weeks from the registration of such project.

The Authority, upon proper application therefore, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business is financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent.

SECTION 2. *Definition of Terms* – When used in this Decree, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

x x x x x x x x x

b) Sale or sell. – "Sale" or "sell" shall **include every disposition, or attempt to dispose, for a valuable consideration**, of a subdivision lot, including the building and other improvements thereof, if any, in a subdivision project or a condominium unit in a condominium project. "Sale" and "sell" **shall also include a contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell, directly or by an agent, or by a circular, letter, advertisement or otherwise**.

c) Buy and purchase. – The "buy" and "purchase" shall include **any contract to buy, purchase, or otherwise acquire** for a valuable consideration a subdivision lot, including the building and other improvements, if any, in a subdivision project or a condominium unit in a condominium project.

x x x x x x x x x

SECTION 39. *Penalties*. – **Any person who shall violate any of the provisions of this Decree and/or any rule or regulation** that may be issued pursuant to this Decree shall, **upon conviction, be punished by a fine** of not more than twenty thousand (₱20,000.00) pesos **and/or imprisonment** of not more than ten years: Provided, That **in the case of corporations**, partnership, cooperatives, or associations, the **President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto**. (Emphasis supplied)

Read in conjunction with Section 2 of P.D. 957, Section 5 has an extended definition of "sale," which forbids all activities that dispose or attempt to dispose of subdivision lots or condominium units absent a *prior* issuance of an HLURB license

to sell.[19] The prohibition includes all agreements that are in the nature of a "contract to sell, a contract of purchase and sale, an exchange, an attempt to sell, an option of sale or purchase, a solicitation of a sale, or an offer to sell."[20] Thus, the statement in the first Information that reads "sold to complainant" must be interpreted in the light of this extended definition.

One of the reasons behind the expanded meaning of the term "sale" was to deter the rising cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators against unknowing buyers.[21] Thus, for the state to be able to closely supervise and regulate real estate subdivision and condominium businesses,[22] owners or dealers thereof must have a license to sell before they engage in any type of "sale" within the meaning of the law.

A perusal of the Reservation Agreement would show that the transaction between petitioner Bernardo and Megaworld is covered by the extended definition of "sale" under P.D. 957. The agreement provides as follows:[23]

Gentlemen :

I hereby tender my offer to purchase

UNIT NUMBERS	:	23 E (STUDIO), TOWER II
AREA	:	37 sq.m.
CONTRACT PRICE	:	₱ 3,090,300.00
LESS 5%	:	2,935,785.00

under the following terms of payment:

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[19] See *Cabral v. Uy*, G.R. No. 174584, 22 January 2010, 610 SCRA 405; and *Co Chien v. Sta. Lucia Realty and Development, Inc.*, G.R. No. 162090, 31 January 2007, 513 SCRA 570.

[20] *Id.*

[21] *See* P.D. 957, Preamble.

[22] *Id.*

[23] *Rollo*, p. 214; Request for Reservation and Offer to Purchase, Comment to the Petition for Review on *Certiorari* of Respondents, Annex "10".

DOWNPAYMENT : ₱NR-NDP
(30 days from date of Reservation)

MONTHLY
AMORTIZATION : ₱ 19,571.90
in 60 months :
at 0% interest p.a. :

BALANCE UPON
TURN-OVER 50% : ₱ 1,467,892.50

of your proposed PASEO PARKVIEW TOWER II Project to be constructed at the property located at THE CORNER STREETS OF VALERO, SAN AGUSTIN & SEDENO IN SALCEDO VILLAGE, MAKATI

In faith of my interest to purchase said unit/s; please find my reservation deposit, to wit:

Cross Check No. 6291516
dated Nov. 22, 2000
in the amount of ₱ 19,571.90, drawn against the FAR EAST BANK AND TRUST COMPANY ORTIGAS AVE., GREENHILLS Branch,
payable to MEGAWORLD CORPORATION.

This amount shall form part of the downpayment.

I understand that you reserve the right to accept or deny this request for reservation. **In the event of your acceptance hereof, and upon my full downpayment hereinabove-stated together with my delivery of the postdated checks to cover the balance of the purchase price, I agree to execute your standard Contract to Buy and Sell a copy thereof I have read, understood and agree to.**

Should I fail to pay the downpayment and/or perform and execute any of the above conditions within the period stated, for any reason whatsoever, the reservation made will automatically be cancelled and the reservation fee and all my other payments shall be forfeited in your favor.

x x x x x x x x x

RECEIPT

Received the amount NINETEEN THOUSAND FIVE HUNDRED SEVENTY ONE & 90/100 (19,571.90) covered by FAR EAST BANK Check No. 6291516 dated Nov. 22, 2000 representing reservation deposit Unit/s 23 E of PASEO PARKVIEW TOWER 2. (Emphasis supplied)

It also appears from the letters of Megaworld to petitioner Bernardo that she made subsequent monthly amortization payments after her initial reservation deposit.[24] She alleged that her total payment as of October 2003, inclusive of the reservation deposit, amounted to ₱921,300.30.[25]

We emphasize that the owner or dealer of subdivision lots or condominium units must have already obtained a license to sell at the time it disposes or attempts to dispose of the property.[26] The subsequent issuance of a license to sell and the invocation of good faith "cannot reach back to erase the offense and extinguish [an accused's] criminal liability."[27] This is because engaging in such activities is regarded as a crime that is *malum prohibitum*, one to which criminal intent is immaterial.[28] The perpetrators are punished, because the law forbids the mere commission of an act regardless of whether the conduct is inherently immoral or not.[29]

Anent the violation of Section 20, we rule that probable cause is also present, warranting the filing of criminal complaint against respondents. The third Information reads as follows:

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[24] *Rollo*, pp. 217-225; Letters of Megaworld, Comment to the Petition for Review on *Certiorari* of Respondents, Annexes "12" – "20".

[25] *Rollo*, p. 13; Petition for Review on *Certiorari*, p. 5; *Rollo*, p. 99; Summary of PDCs Issued, Petition for Review on *Certiorari*, Annex "I".

[26] *Cabral v. Uy*, *supra* note 19. See also *Mortel v. KASSCO, Inc.*, 401 Phil. 580 (2000).

[27] *Cabral v. Uy*, *supra*, at 411.

[28] *Id.*

[29] *Id.*

The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 20 of P.D. 957**, committed as follows:

That on or about the 22nd day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of the business of said corporation **sold to complainant** JULIETA E. BERNARDO a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos (₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to complete the project by December 2003, the deadline given by the Housing and Land Use Regulatory Board (HLURB)**, in violation of the aforecited law. (Emphasis supplied)

In deciding the matter at hand, we again cite the pertinent provisions under P.D. 957 and the Revised Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree (HLURB Resolution No. 699, Series of 2001):

SECTION 20. *Time of Completion*. – Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, **within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority**.

Section 21. Time for Completion

Every owner or developer shall construct and provide the facilities, infrastructures, other forms of development, including water supply and lighting facilities and as far as practicable improvements, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, **within one (1) year or within such other period of time as may be fixed by the Board from the date of the issuance of license to sell** for the subdivision or condominium project.

Request for extension of time to complete development of a subdivision or condominium project may be granted only in cases where non-completion of project is caused by fortuitous events, legal orders or such other reasons that the board may deem fit/proper with the written notice to lot or unit buyers without prejudice to the exercise of their rights pursuant to Section 23 of the Decree.

The request for extension of time for completion shall be accompanied by a revised work program duly signed and sealed by a licensed engineer or architect with project costing and financing scheme therefor. In appropriate cases, the Board may require the posting of additional performance bond amounting to 20% of development cost of the unfinished portion of the approved development plan, or issue such orders it may deem proper. (Emphasis supplied)

The law is unambiguous when it states that it shall be the National Housing Authority (now the HLURB) that would fix or extend the date of completion of the subdivision or condominium projects if justified. The RTC thus committed grave abuse of discretion when it decreed that the time of completion as mandated by Section 20 should not be applied "mechanically against respondents";[30] and when it relied on the completion time as indicated in the Contract to Buy and Sell. Moreover, nowhere can it be found that the law requires a contract of sale before an offense can be committed under Section 20.

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[30] *Rollo*, pp. 70-71; RTC Order on the 6th and 7th pages (unpaginated).

We however found no reversible error when the CA affirmed the RTC's grant of the withdrawal of the second Information filed against respondents with respect to the violation of Section 17. Below is a reproduction of the pertinent portion of the second Information:

> The undersigned Prosecutor accuses ANDREW L. TAN @ CHONG BUAN, KATHERINE TAN, GERARDO GARCIA, CIRILO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSHI [sic], ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN and RICHMOND TAN of the crime of **Violation of Section 17 of P.D. 957**, committed as follows:
>
> That on or about the 22nd day of November, 2000, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the responsible officers of Megaworld Corporation and Sedeño Manor, Inc. and in charge of the business of said corporation **sold to complainant** JULIETA E. BERNARDO a condominium unit described as 23E Tower II for the amount of Three Million Ninety Thousand and Three Hundred Pesos (₱3,090,300.00), that **while complainant was paying the monthly amortization due on the said condominium**, accused conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously **failed to register the reservation agreement in the Office of the Register of Deeds of Makati City**, in violation of the aforecited law. (Emphasis supplied)

According to the trial court, respondents were justified in failing to register the documents pursuant to Section 17, because the Reservation Agreement was still in the hands of petitioner.[31] The CA added that a violation under Section 17 also requires the existence of a contract of sale between the parties. For reference, we quote the applicable provision of the law as follows:

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[31] *Rollo*, p. 70; RTC Order on the 6th page (unpaginated).

SECTION 17. *Registration*. – **All contracts** to sell, **deeds** of sale **and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units**, whether or not the purchase price is paid in full, **shall be registered by the seller in the Office of the Register of Deeds** of the province or city where the property is situated." x x x. (Emphasis supplied)

Indeed, failure to register the agreement or the instrument dealing with the disposition or the attempt to dispose of subdivision lots or condominium units constitutes a violation of P.D. 957.[32] Thus, as soon as the agreement is struck, the seller is duty-bound to register the instrument with the Register of Deeds.[33]

Nevertheless, the phrase "other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units" is not broad enough to include an option contract. An option contract[34] refers to an agreement by which a person acquires the privilege of buying from or selling to another a particular property within a given time and at a named price, in consideration of the payment of a certain sum. It is neither a sale nor an agreement to sell, for the person does not sell or agree to sell the property. Rather, one sells the right or privilege to call for and receive the property at the election or option of another. Here, the owner parts with his or her right to sell the property, except to the other party, for a limited period.

As can be surmised from the allegations in the petition of Bernardo, her purpose for signing the Reservation Agreement and paying the reservation deposit was merely to reserve the right to purchase Unit 23 E of Paseo Parkview Tower II.[35]

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[32] *Id*.

[33] *Manila Banking Corporation v. Rabina*, G.R. No. 145941, 16 December 2008, 574 SCRA 16; *Sia v. People*, G.R. No. 159659, 12 October 2006, 504 SCRA 507; and *Home Bankers Savings & Trust Co. v. Court of Appeals*, 469 Phil. 637 (2005).

[34] *Tuazon v. Del Rosario-Suarez*, G.R. No. 168325, 13 December 2010, 637 SCRA 728 (citing *Beaumont v. Prieto*, 41 Phil. 670, 686-687 [1916]).

[35] *Rollo*, pp. 12-13; Petition for Review on *Certiorari*, pp. 4-5.

According to her, Megaworld proposed to enter into a Contract to Buy and Sell – "a distinct contract from the Reservation Agreement" – but the contract was never signed by the parties.[36] Thus, the Reservation Agreement entered into by petitioner and Megaworld must be deemed merely as an option contract, which is not required to be registered under P.D. 957.

We reiterate that our findings here are limited to the existence of probable cause to indict respondents based on the Informations filed with the RTC. As to the merits of the criminal complaints, the prosecution and the accused must be given the opportunity to present their arguments in the appropriate adversarial proceedings.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The 24 November 2008 Decision of the CA, which upheld the 29 June 2006 and 8 September 2006 Orders of the RTC in Criminal Case No. 05-1733-35 is **REVERSED** and **SET ASIDE**. This case is hereby **REMANDED** to the Regional Trial Court of Makati, Branch 150, for the appropriate proceedings in accordance with the ruling herein.

SO ORDERED.

Brion (Acting Chairperson), Perez, Reyes, and *Perlas-Bernabe,*[*] *JJ.*, concur.

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[36] *Rollo*, p. 13; Petition for Review on *Certiorari*, p. 5.

[*] Designated as additional member in lieu of Senior Associate Justice Antonio T. Carpio per Raffle dated 11 July 2012.

SECOND DIVISION

[G.R. No. 189082. July 11, 2012]

JOSEPHINE RUIZ, *petitioner, vs.* **WENDEL OSAKA REALTY CORP., D.M. WENCESLAO AND ASSOCIATES, INC. and DELFIN J. WENCESLAO, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TRANSFER OF EMPLOYEES; EMPLOYER'S DECISION TO TRANSFER EMPLOYEE, IF MADE IN GOOD FAITH, IS A VALID EXERCISE OF MANAGEMENT PREROGATIVE; APPLICATION IN CASE AT BAR.— An employer has the inherent right to transfer or assign an employee in pursuance of its legitimate business interest, subject only to the condition that the move be not motivated by bad faith. x x x As the executive assistant of the president, petitioner undeniably occupied a sensitive position that required her employer's utmost trust and confidence. Respondents had the right to reassign her the moment that confidence was breached. It has been shown that such breach proved that she was no longer fit to discharge her assigned tasks. x x x Having lost his trust and confidence in petitioner, respondent Delfin had the right to transfer her to ensure that she would no longer have access to the companies' confidential files. x x x An employer's decision to transfer an employee, if made in good faith, is a valid exercise of a management prerogative, although it may result in personal inconvenience or hardship to the employee. We have already ruled that the transfer of the employment of petitioner to Cavite was not motivated by bad faith. Thus, any resulting inconvenience or hardship on her part is of no moment.

2. ID.; ID.; ID.; ID.; SUBSTANTIAL PROOF IS A SUFFICIENT BASIS FOR THE IMPOSITION OF ANY DISCIPLINARY ACTION UPON THE EMPLOYEE; PRESENT IN CASE AT BAR.— Although it is true that petitioner has yet to be proven guilty, respondents had the authority to reassign her, pending investigation. x x x Substantial proof, and not clear and

convincing evidence or proof beyond reasonable doubt, is a sufficient basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position. When petitioner was assigned to Cavite, there was an ongoing investigation of the charges filed against her. It is undisputed that she refused to fill up, for no justifiable reasons, the questionnaire distributed by her employer to determine who among those who had access to the confidential files was responsible for their taking. Furthermore, a witness had executed an Affidavit claiming that she found the missing files, and that her husband told her that it was petitioner who handed those files to him. Lastly, the person who supposedly received these documents from petitioner did not deny or rebuke the statements made by his wife. We rule that the foregoing reasons and circumstances are sufficient to justify respondents' transfer of petitioner.

3. ID.; ID.; ID.; BAD FAITH OR MALICE, WHEN PRESENT; DIRECTORS AND OFFICERS ARE SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT OF CORPORATE EMPLOYEES; NOT PRESENT IN CASE AT BAR.— In labor cases, directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees if their termination was committed with malice or bad faith. The ruling applies when a corporate officer acts with malice or bad faith in suspending an employee. Such malice or bad faith is not present in this case.

APPEARANCES OF COUNSEL

Joel G. Martinez for petitioner.
Efren C. Carag for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision[1] of the Court of Appeals (CA) dated 29 October 2008 and its subsequent Resolution[2] dated 10 August 2009. The CA reversed the Decision rendered by the National Labor Relations Commission (NLRC) against petitioners Wendel Osaka Realty Corp. (WORC), D.M. Wenceslao and Associates, Inc. (DMWAI), and Delfin Wenceslao (respondents) and reinstated the Decision of the Labor Arbiter, which ruled that petitioner Josephine Ruiz (petitioner) was not illegally dismissed.

Petitioner was hired on 1 February 1982 as secretary to respondent Delfin J. Wenceslao, Jr. (Delfin), the president of DMWAI.[3] After a few years, she expressed her intention to resign, because she could not get along with her co-workers. Instead of allowing her to leave, Delfin decided to transfer her.[4] Thus, on 1 November 1989, she was appointed as executive assistant to the president of respondent WORC, who happens to be respondent Delfin also.[5] She was its only employee.[6]

At that time, and even up to the present, the only undertaking of WORC has been its reclamation project in Cavite City known as the Ciudad Nuevo Project.[7]

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[1] *Rollo*, pp. 7-20; CA-G.R. SP No. 102968, penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican.

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

[3] *Id.* at 85.

[4] *Id.* at 365.

[5] *Id.* at 86.

[6] *Id.* at 365.

[7] *Id.*

Delfin supposedly promoted petitioner to Office Manager of DMWAI effective 1 August 2001.[8] On 21 October 2002, she was assigned to be a member of a task force formed for the implementation of the marketing campaign for the Ciudad Nuevo Project.[9]

Sometime in 2002, the BIR informed Delfin of the tax deficiency allegations against his companies. Its investigators supposedly had information that could only be verified in its business files.[10] He was further informed by the BIR that the bases for its allegations against his companies were the latter's very own records. This information prompted him to check the company files and records. On November 2002, he discovered that "various very important files"[11] of DMWAI were missing.

It must be noted that the foregoing allegations were first raised in the Comment of respondents. In the Position Paper[12] they filed with the Labor Arbiter, they claimed that the chairperson of the board of directors of WORC had ordered a check of the company's files, because a number of them appeared to be missing.[13]

Respondents claim that they received a call from a woman, who later turned out to be the wife of a former employee—one who was close friends with petitioner. The caller supposedly wanted to report that there were records of DMWAI in her bedroom, and that it was her husband who had brought them there. He allegedly told her that these files were handed to him by another woman.[14]

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[8] *Id.* at 87.

[9] *Id.* at 88.

[10] *Id.* at 366.

[11] *Id.* at 90.

[12] *Id.* at 106-114.

[13] *Id.* at 106.

[14] *Id.* at 367.

The aforementioned female informant turned out to be Mrs. Miguela S. Sunico. Her husband was a former DMWAI employee, who is currently a BIR officer. She testified that the missing files were with her husband, who allegedly told her that these documents had been handed to him by petitioner.

In order to determine who was responsible for the unauthorized taking of the files, Delfin required all the employees who had access to the files to fill up a questionnaire he had drawn up. Out of the 15 employees who were asked to submit their answers, 14 complied.[15] Petitioner was the only one who failed to answer the questionnaire.

According to petitioner, she filled up the questionnaire, but wanted to talk to Delfin first before submitting it. She asked him if there was truth to the rumor that she was being suspected of stealing company records. He admitted that he had indeed received this kind of information. Petitioner thus requested that she be allowed to confront her accuser. However, Delfin informed her that all she needed to do was submit the questionnaire. She decided not to submit it.

Delfin claims, on the other hand, that he was the one who called petitioner to ask why she did not answer the questionnaire. She allegedly said that accomplishing it would have been an acknowledgment of wrongdoing, and that it was not lawful for her to be compelled to fill it up.[16]

Thus, on 3 December 2002, Delfin sent a letter[17] to petitioner informing her that she would be placed under a 30-day preventive suspension. He explained therein that he saw no reason why she refused to fill up the questionnaire, and that her refusal was equivalent to an admission that she took the corporate files, to wit:

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[15] *Id.* at 107.

[16] *Id.* at 108.

[17] *Id.* at 90.

x x x. Only you have not filled your copy up and you told me in person that you do not wish to answer the questionnaire.

For me, there is no reason why you do not wish to accomplish the form. Your not doing so only serves to make you acknowledge that you have gotten corporate files for purposes inimical to the interest of the company. This is serious misconduct for which you should be dismissed for cause. You will accordingly face an investigation for the charge and the panel to inquire into the matter shall be convened shortly.

Petitioner refused to accept the letter when a copy was served upon her.

On 9 December 2002, petitioner, through one of the employees of DMWAI, submitted the questionnaire the former had filled up. Thereafter, specifically on 10 December 2002, petitioner filed an illegal suspension case with the Labor Arbiter against respondent corporations.

Meanwhile respondent corporations formed a panel of investigators to look into the matter.

When the 30-day preventive suspension of petitioner ended, there was still an ongoing investigation on the matter. Thus, in a 2 January 2003 letter,[18] she was informed by Andrew M. Taningco, a member of the panel of investigators, that the company had decided to put her on "vacation leave with pay for a period of fifteen (15) days." The letter also mentioned that its contents had been conveyed to petitioner on 26 December 2002, and that she did "not voice any objections."

Petitioner was furnished a copy of the Sworn Statement[19] of Mrs. Sunico and was given three days from her receipt of the statement to submit her written explanation.[20]

Petitioner denied the accusations of Mrs. Sunico through a letter dated 13 January 2003 and addressed to Andrew M.

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[18] *Id.* at 93.

[19] *Id.* at 95-96.

[20] *Id.* at 94.

Taningco.[21] Petitioner insisted that Mr. Sunico had explicitly denied that the documents came from the former.[22] Respondents alleged, however, that "Mr. Francisco Sunico never denied that the files were found in his house. Much less did he deny that Ms. Ruiz gave them to him,"[23] to wit:

> x x x. Petitioner said she wanted to confront her accuse [sic]. x x x the panel decided to accommodate her.
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> x x x x x x x x x
>
> x x x. However, as Mrs. Sunico repeated her written statement that she saw the files in their bedroom and Mr. Sunico told her it was petitioner who gave the files to him, petitioner never, never confronted Mr. Francisco Sunico to ask him if he really gave such information to his wife. Much less did she take him to task for making such a statement to Mrs. Sunico.
>
> And all throughout the session, Mr. Sunico never denied that he made a statement to Mrs. Sunico that it was petitioner who gave the files to him. Neither did he deny that petitioner turned them over to him. (Underscoring in the original)[24]

Thereafter, respondents reported the matter to the National Bureau of Investigation (NBI).[25]

Delfin then informed petitioner that her 15-day vacation leave had ended on 18 January 2003. She was further informed that she should report for work on 20 January 2003, and so she did. On that same day, though, she was given a letter[26] dated 18 January 2003 informing her that she had been assigned to WORC's Ciudad Nuevo Project in Cavite City. She was further informed that the investigation was still ongoing and was expected to be completed within 30-45 working days.

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

[22] *Id.* at 150.

[23] *Id.* at 111.

[24] *Id.* at 369.

[25] *Id.*

[26] *Id.* at 102.

Petitioner, in a letter[27] dated 20 January 2003, wrote to Delfin reiterating her claim that she had no knowledge of how the missing files had ended up in Mr. Sunico's possession. She also requested that Delfin's decision to transfer her to Cavite City be reconsidered, considering that she lived in Bulacan.

Petitioner continued to work in Cavite until 15 April 2003. She claims that she had to quit her job because of "poor health and the humiliation she was subjected to" in her workplace. She further alleged that the transportation allowance given by respondents was simply not sufficient.

Thereafter, petitioner amended her Complaint for illegal suspension to include constructive illegal dismissal; nonpayment of proportionate 13th month pay, confidential allowance, and separation pay; moral and exemplary damages; and attorney's fees.

In a Decision[28] promulgated on 31 March 2004, the Labor Arbiter found that petitioner had not been illegally dismissed, but that she was entitled to her claim for pro-rata 13th month pay, to wit:

> Under the circumstances, complainant was not illegally dismissed.
>
> She was the prime suspect in a case involving the leaking of company files to the BIR, which is still pending investigation before the NBI. If found culpable, complainant may be administratively, civilly, and even criminally liable.
>
> Complainant was preventively suspended and was reassigned to a (sic) ongoing project outside the office to protect company interests.
>
> It was complainant who opted not to work, claiming constructive dismissal, harassments, demotion and non-payment of benefits.
>
> Only her money claims for pro-rata 13th month pay, has factual legal basis.
>
> WHEREFORE, premises considered, instant complaint is hereby dismissed for lack of merit.

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[27] *Id.* at 103.

[28] *Id.* at 147-162, penned by Labor Arbiter Edgardo M. Madriaga.

Respondent corporations, unless they have proof of payment, are directed to pay complainant's pro-rata 13th month pay for year 2003.

SO ORDERED.[29]

Petitioner filed her Appeal[30] with the NLRC on 3 May 2004. Through its 11 July 2007 Decision,[31] it reversed the Labor Arbiter's Decision. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the Decision, dated 31 March 2004, of Labor Arbiter Edgardo M. Madriaga is hereby SET ASIDE, and a new judgment is rendered directing respondents WENDEL OSAKA REALTY CORP., D.M. WENCESLAO AND ASSOCIATES, INC. and DELFIN J. WENCESLAO, JR., to jointly and severally pay complainant separation pay equivalent to one (1) month salary for every year of service, and full backwages, inclusive of allowances, computed from the time her compensation was withheld from her up to the finality of this Decision.

SO ORDERED.[32]

Respondents filed their Motion for Reconsideration (MR),[33] but it was likewise denied through the NLRC's 28 September 2007 Resolution.[34]

Respondents appealed to the CA, which granted their Petition[35] and reinstated the Labor Arbiter's Decision. According to the CA, the suspension of petitioner pending investigation and her transfer to respondents' Cavite office was justified by the gravity of her offense.[36] It held that "letting her [petitioner] stay in

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[29] *Id.* at 161-162.

[30] *Id.* at 163-176.

[31] *Id.* at 179-188.

[32] *Id.* at 187.

[33] *Id.* at 211-221.

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

[35] *Id.* at 226-258.

[36] *Id.* at 14.

Quezon City did not make petitioners [respondents] secure about their files and records."[37]

Petitioner filed an MR,[38] but it was denied through a Resolution.

Hence, the present Petition for Review[39] under Rule 45.

For consideration in the present Petition is the sole issue of whether or not petitioner was constructively dismissed when she was reassigned to respondents' Cavite branch.

The NLRC ruled that petitioner's assignment to Cavite City was not for legitimate business reasons, but it was "simply because respondent believed that she was guilty, [and] that she was undesirable, unreliable, and a security risk."[40] The CA ruled, however, that the transfer of petitioner was justified, considering the gravity of the offense she was being charged with.[41]

We agree with the appellate court.

An employer has the inherent right to transfer or assign an employee in pursuance of its legitimate business interest, subject only to the condition that the move be not motivated by bad faith.[42]

Insisting that there was no valid ground for her transfer,[43] petitioner claims thus:

As it was, there was really no business necessity to transfer petitioner. The only reason behind the transfer, as private respondents admitted, was that they suspected petitioner of taking out company

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[37] *Id.* at 15.

[38] *Id.* at 326-333.

[39] *Id.* at 25-57.

[40] *Id.* at 184.

[41] *Id.* at 65.

[42] *Philippine Telegraph and Telephone Corp. v. Laplana*, 276 Phil. 527 (1991).

[43] *Rollo*, p. 45.

records. Unsubstantiated suspicious and baseless conclusions of the employer do not provide legal justifications for transferring an employee. There was clearly no business urgency that necessitated the transfer. Proof of this was the fact that the complainant was not given any job to perform after her transfer to Cavite City. She was reduced into a mere office décor, the only female among the throng of male project workers.[44]

She also claims that respondents' act of transferring her was motivated by bad faith[45] and thus amounted to constructive dismissal, *viz*:

The underlying purpose behind the transfer was plainly to humiliate petitioner into giving up her job. The disdain and embarrassment she was made to suffer all the more established the fact that she was constructively dismissed.[46]

To further prove that her transfer or reassignment was motivated by bad faith, petitioner avers that what made everything worse was that she was not given a single task for the four months she was working in Cavite.[47] She had no chair to sit on or table to work at—a fact, she claims, that only proves respondents' intention to humiliate her.[48] She concludes: "There was no justifiable reason why private respondent failed to give petitioner any task if her transfer was due to legitimate business reasons."[49]

In answering these allegations, respondents explained that the only undertaking of WORC was its reclamation project in Cavite City. When petitioner was transferred to Cavite, she was supposed to continue with what she was doing in Quezon

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[44] *Id.* at 553-554.

[45] *Id.* at 47.

[46] *Id.* at 51.

[47] *Id.* at 50.

[48] *Id.* at 52.

[49] *Id.*

City. None of her earlier functions was withheld from her. She was further given the task to assist those who were undertaking the reclamation project. Thus, they contend, it is not true that she was never given a job to perform.

Besides, as the appellate court found and as petitioner admitted,[50] the project manager of the Ciudad Nuevo Project had given her job description.[51]

As to the claim of petitioner that her transfer was without valid basis, we disagree.

As the executive assistant of the president, petitioner undeniably occupied a sensitive position that required her employer's utmost trust and confidence. Respondents had the right to reassign her the moment that confidence was breached. It has been shown that such breach proved that she was no longer fit to discharge her assigned tasks, to wit:

> x x x [B]reach of trust and confidence as a ground for *reassignment* must be related to the performance of the duties of the employee such as would show him to be thereby unfit to discharge the same task.[52]

Having lost his trust and confidence in petitioner, respondent Delfin had the right to transfer her to ensure that she would no longer have access to the companies' confidential files.

Although it is true that petitioner has yet to be proven guilty, respondents had the authority to reassign her, pending investigation. As held in *Blue Dairy Corporation and/or Aviguetero and Miguel v. NLRC and Recalde*:

> Re-assignments made by management pending investigation of irregularities allegedly committed by an employee fall within the ambit of management prerogative. The purpose of reassignments is no different from that of preventive suspension which management

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[50] *Id.* at 69.

[51] *Id.* at 104-105.

[52] 373 Phil. 179, 187 (1999).

could validly impose as a disciplinary measure for the protection of the company's property pending investigation of any alleged malfeasance or misfeasance committed by the employee.[53]

Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is a sufficient basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct that renders the latter unworthy of the trust and confidence demanded by his or her position.[54]

When petitioner was assigned to Cavite, there was an ongoing investigation of the charges filed against her. It is undisputed that she refused to fill up, for no justifiable reasons, the questionnaire distributed by her employer to determine who among those who had access to the confidential files was responsible for their taking. Furthermore, a witness had executed an Affidavit claiming that she found the missing files, and that her husband told her that it was petitioner who handed those files to him. Lastly, the person who supposedly received these documents from petitioner did not deny or rebuke the statements made by his wife.

We rule that the foregoing reasons and circumstances are sufficient to justify respondents' transfer of petitioner.

Still, for the transfer to be valid, petitioner asks this Court to rule that respondents should prove that it was not inconvenient or prejudicial to her. She insists that the validity or legality of the transfer of an employee is negated by the demotion or the withdrawal or decrease of the latter's salaries, benefits, and other privileges.[55]

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[53] *Consolidated Food Corporation/President John Gokongwei v. NLRC*, 373 Phil. 751, 762 (1999) citing *Samillano v. NLRC*, 333 Phil. 658 (1996); *Atlas Fertilizer Corporation v. NLRC*, 340 Phil. 85 (1997).

[54] *Falguera v. Linsangan*, 321 Phil. 736 (1995).

[55] *Rollo*, p. 44.

Petitioner claims that the transfer was inconvenient or prejudicial to her, because "her health suffered and she became sickly because of the extended travel she was made to undergo every working day between her home in Bulacan and her assignment in Cavite City."[56]

She also claims that the justification of private respondents that she should have rented a house in Cavite City is adding insult to injury.[57]

An employer's decision to transfer an employee, if made in good faith, is a valid exercise of a management prerogative, although it may result in personal inconvenience or hardship to the employee.[58] We have already ruled that the transfer of the employment of petitioner to Cavite was not motivated by bad faith. Thus, any resulting inconvenience or hardship on her part is of no moment.

Petitioner also claims that her transfer was coupled with a diminution in the benefits previously granted to her, to wit:

> It is an established fact that petitioner has been enjoying a "confidential" allowance of ₱2,000.00 a month for more than a decade. This benefit was suddenly withdrawn when she was transferred.[59]

However, respondents were able to prove that, for her position in Cavite, petitioner received a ₱2,554 per month travelling allowance, which was more than the ₱2,000 she received as monthly allowance prior to her transfer.[60]

Petitioner says that her transfer resulted in her demotion—from a managerial to a clerical position, *viz*:

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[56] *Id.* at 559.

[57] *Id.* at 560.

[58] *Homeowners Savings and Loan Association, Inc. v. NLRC and Cabatbat*, 330 Phil. 979 (1996).

[59] *Rollo*, p. 558.

[60] *Id.* at 371.

The matter is completely factual. It is beyond dispute that petitioner held the position of Office Manager. She was transferred to a position that was merely clerical in nature. Evidence of this fact was also submitted in the proceedings *a quo*.[61]

As proof of her appointment to a managerial position, petitioner attached a 31 July 2001 letter[62] printed on a sheet of paper carrying the DMWAI letterhead. This letter signed by respondent Delfin informed her that she was being appointed as DMWAI's office manager effective 1 August 2001.

In their Reply to Complainant's Position Paper,[63] respondents allege that they cannot recall the circumstances surrounding the writing of the letter, and why it was written on a sheet of paper with the DMWAI letterhead.[64] They deny her allegation that she was promoted to the position of office manager. According to them, such a promotion should have been preceded by the submission of an application for the position and by a document "severing the employer-employee relationship between WORC and the complainant."[65]

Respondents add that that they never saw the need to appoint an office manager. Even on the assumption that the appointment became necessary, that position was usually assigned to companies and not to individuals, to wit:

x x x. It has been his policy to assign companies, not individuals, to act as Office Managers. Besides, there was already somebody — his own son, Carlos Delfin C. Wenceslao — who was already discharging the position in the DMWAI quarterbacked by his two (2) other children, Edwin Michael C. Wenceslao and Paolo Vincent C. Wenceslao. In other words, there was absolutely no need therefor.[66]

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[61] *Id.* at 555.

[62] *Id.* at 87.

[63] *Id.* at 125-133.

[64] *Id.* at 126.

[65] *Id.* at 127.

[66] *Id.* at 126-127.

Petitioner failed to present evidence to prove that she was holding a managerial position. In fact, respondents aver that she was the only employee of WORC.[67] They also aver that she received her salaries from that company—her Social Security System records, withholding tax forms, and income tax returns state that WORC was her employer.[68] Petitioner herself, being its only employee, was the one who executed all the foregoing documents.

It is important to note that petitioner worked for four months in Cavite before giving up on her job.[69] Initially, she accepted the reassignment and had no issues with the fact that her residence was far from her new workplace. She was never dismissed from employment; she simply decided to stop going to work. It is obvious from the facts of this case that she resigned from work. Inevitably, her Complaint for illegal dismissal should be dismissed.

It is clear that the filing of an illegal dismissal case by petitioner was a mere afterthought. It was filed not because she wanted to return to work, but to claim separation pay and back wages.

Lastly, petitioner argues that respondent Delfin should be held jointly and severally liable with respondent corporations because of the "dilution of the identity employer."[70]

In labor cases, directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees if their termination was committed with malice or bad faith. The ruling applies when a corporate officer acts with malice or bad faith in suspending an employee.[71] Such malice or bad faith is not present in this case.

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[67] *Id.* at 379.

[68] *Id.* at 127.

[69] *Id.* at 68.

[70] *Id.* at 53.

[71] *Tan v. Timbal Jr.*, 478 Phil. 497 (2004).

WHEREFORE, the instant Petition is **DENIED**. The 29 October 2008 Decision of the Court of Appeals reversing the 11 July 2007 Decision of the National Labor Relations Commission—which had earlier directed respondents Wendel Osaka Realty Corporation, D.M. Wenceslao and Associates, Inc., and Delfin J. Wenceslao, Jr. to jointly and severally pay petitioner Josephine Ruiz separation pay and full back wages —is hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

SECOND DIVISION

[G.R. No. 190102. July 11, 2012]

ACCENTURE, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; VALUE ADDED TAX; TRANSACTIONS SUBJECT TO ZERO-RATE; RECIPIENT OF THE SERVICE MUST BE DOING BUSINESS OUTSIDE THE PHILIPPINES FOR THE TRANSACTION TO QUALIFY FOR ZERO-RATING; UPHELD.— We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code. This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a verbatim copy of Section 102(b) of the 1977 Tax Code, any interpretation of the latter holds true for the former. Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the

present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister,* this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. x x x In *Amex* we ruled that the place of performance and/or consumption of the service is immaterial. In *Burmeister*, the Court found that, although the place of the consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does. *Amex* does not conflict with *Burmeister*. In fact, to fully understand how Section 102(b)(2) of the 1977 Tax Code—and consequently Section 108(B)(2) of the 1997 Tax Code—was intended to operate, the two aforementioned cases should be taken together. The zero-rating of the services performed by respondent in *Amex* was affirmed by the Court, because although the services rendered were both performed and consumed in the Philippines, the recipient of the service was still an entity doing business outside the Philippines as required in *Burmeister*. That the recipient of the service should be doing business outside the Philippines to qualify for zero-rating is the only logical interpretation of Section 102(b)(2) of the 1977 Tax Code, as we explained in *Burmeister*. x x x Lastly, it is worth mentioning that prior to the promulgation of *Burmeister*, Congress had already clarified the intent behind Sections 102(b)(2) of the 1977 Tax Code and 108(B)(2) of the 1997 Tax Code amending the earlier provision. R.A. 9337 added the following phrase: "rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed."

2. ID.; ID.; ID.; A TAXPAYER CLAIMING TAX CREDIT OR REFUND HAS THE BURDEN OF PROOF TO ESTABLISH THE FACTUAL BASIS OF THAT CLAIM; NOT PRESENT IN CASE AT BAR.— To come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be

proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. x x x The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. x x x A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines. As ruled by the CTA *En Banc*, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.

APPEARANCES OF COUNSEL

Rodrigo Berenguer and Guno for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision of the

Court of Tax Appeals *En Banc* (CTA *En Banc*) dated 22 September 2009 and its subsequent Resolution dated 23 October 2009.[1]

Accenture, Inc. (Accenture) is a corporation engaged in the business of providing management consulting, business strategies development, and selling and/or licensing of software.[2] It is duly registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax (VAT) taxpayer or enterprise in accordance with Section 236 of the National Internal Revenue Code (Tax Code).[3]

On 9 August 2002, Accenture filed its Monthly VAT Return for the period 1 July 2002 to 31 August 2002 (1st period). Its Quarterly VAT Return for the fourth quarter of 2002, which covers the 1st period, was filed on 17 September 2002; and an Amended Quarterly VAT Return, on 21 June 2004.[4] The following are reflected in Accenture's VAT Return for the fourth quarter of 2002:[5]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	12,312,722.00	₱1,231,272.20
Domestic Purchases- Goods other than capital Goods	64,789,507.90	6,478,950.79
Domestic Purchases- Services	16,455,868.10	1,645,586.81
Total Input Tax		**₱9,355,809.80**
Zero-rated Sales		₱316,113,513.34
Total Sales		₱335,640,544.74

[1] *Rollo*, Decision, pp. 35-49; *rollo*, Resolution, pp. 51-31; C.T.A. EB No. 477, penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[2] *Id.* at 11.

[3] *Id.* at 139.

[4] *Id.* at 140-141.

[5] *Id.* at 161.

Accenture filed its Monthly VAT Return for the month of September 2002 on 24 October 2002; and that for October 2002, on 12 November 2002. These returns were amended on 9 January 2003. Accenture's Quarterly VAT Return for the first quarter of 2003, which included the period 1 September 2002 to 30 November 2002 (2nd period), was filed on 17 December 2002; and the Amended Quarterly VAT Return, on 18 June 2004. The latter contains the following information:[6]

Purchases	Amount	Input VAT
Domestic Purchases- Capital Goods	80,765,294.10	₱8,076,529.41
Domestic Purchases- Goods other than capital Goods	132,820,541.70	13,282,054.17
Domestic Purchases-Services	63,238,758.00	6,323,875.80
Total Input Tax		**₱27,682,459.38**
Zero-rated Sales		₱545,686,639.18
Total Sales		₱572,880,982.68

The monthly and quarterly VAT returns of Accenture show that, notwithstanding its application of the input VAT credits earned from its zero-rated transactions against its output VAT liabilities, it still had excess or unutilized input VAT credits. These VAT credits are in the amounts of ₱9,355,809.80 for the 1st period and ₱27,682,459.38 for the 2nd period, or a total of ₱37,038,269.18.[7]

Out of the ₱37,038,269.18, only ₱35,178,844.21 pertained to the allocated input VAT on Accenture's "domestic purchases of taxable goods which cannot be directly attributed to its zero-rated sale of services."[8] This allocated input VAT was broken down to ₱8,811,301.66 for the 1st period and ₱26,367,542.55 for the 2nd period.[9]

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[6] *Id.*

[7] *Rollo,* pp. 140-141.

[8] *Id.* at 140.

[9] *Id.*

The excess input VAT was not applied to any output VAT that Accenture was liable for in the same quarter when the amount was earned—or to any of the succeeding quarters. Instead, it was carried forward to petitioner's 2nd Quarterly VAT Return for 2003.[10]

Thus, on 1 July 2004, Accenture filed with the Department of Finance (DoF) an administrative claim for the refund or the issuance of a Tax Credit Certificate (TCC). The DoF did not act on the claim of Accenture. Hence, on 31 August 2004, the latter filed a Petition for Review with the First Division of the Court of Tax Appeals (Division), praying for the issuance of a TCC in its favor in the amount of ₱35,178,844.21.

The Commissioner of Internal Revenue (CIR), in its Answer,[11] argued thus:

1. The sale by Accenture of goods and services to its clients are not zero-rated transactions.

2. Claims for refund are construed strictly against the claimant, and Accenture has failed to prove that it is entitled to a refund, because its claim has not been fully substantiated or documented.

In a 13 November 2008 Decision,[12] the Division denied the Petition of Accenture for failing to prove that the latter's sale of services to the alleged foreign clients qualified for zero percent VAT.[13]

In resolving the sole issue of whether or not Accenture was entitled to a refund or an issuance of a TCC in the amount of ₱35,178,844.21,[14] the Division ruled that Accenture had failed to

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[10] *Id.* at *Rollo*, pp. 142-143.

[11] *Id.* at 99-100.

[12] *Id.* at 160-171; CTA Case No. 7046, penned by Associate Justice Lovell R. Bautista, and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

[13] *Id.* at 170.

[14] *Id.* at 165.

present evidence to prove that the foreign clients to which the former rendered services did business outside the Philippines.[15] Ruling that Accenture's services would qualify for zero-rating under the 1997 National Internal Revenue Code of the Philippines (Tax Code) only if the recipient of the services was doing business outside of the Philippines,[16] the Division cited *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (*Burmeister*)[17] as basis.

Accenture appealed the Division's Decision through a Motion for Reconsideration (MR).[18] In its MR, it argued that the reliance of the Division on *Burmeister* was misplaced[19] for the following reasons:

1. The issue involved in *Burmeister* was the entitlement of the applicant to a refund, given that the recipient of its service was doing business in the Philippines; it was not an issue of failure of the applicant to present evidence to prove the fact that the recipient of its services was a foreign corporation doing business outside the Philippines.[20]
2. *Burmeister* emphasized that, to qualify for zero-rating, the recipient of the services should be doing business outside the Philippines, and Accenture had successfully established that.[21]
3. Having been promulgated on 22 January 2007 or after Accenture filed its Petition with the Division, *Burmeister* cannot be made to apply to this case.[22]

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[15] *Id.* at 168.

[16] *Id.* at 167.

[17] G.R. No. 153205, 22 January 2007, 515 SCRA 124.

[18] *Rollo*, pp. 172-179.

[19] *Id.* at 173.

[20] *Id.*

[21] *Rollo*, pp. 173-174.

[22] *Id.* at 21.

Accenture also cited *Commissioner of Internal Revenue v. American Express (Amex)*[23] in support of its position. The MR was denied by the Division in its 12 March 2009 Resolution.[24]

Accenture appealed to the CTA *En Banc*. There it argued that prior to the amendment introduced by Republic Act No. (R.A.) 9337,[25] there was no requirement that the services must be rendered to a person engaged in business conducted outside the Philippines to qualify for zero-rating. The CTA *En Banc* agreed that because the case pertained to the third and the fourth quarters of taxable year 2002, the applicable law was the 1997 Tax Code, and not R.A. 9337.[26] Still, it ruled that even though the provision used in *Burmeister* was Section 102(b)(2) of the earlier 1977 Tax Code, the pronouncement therein requiring recipients of services to be engaged in business outside the Philippines to qualify for zero-rating was applicable to the case at bar, because Section 108(B)(2) of the 1997 Tax Code was a mere reenactment of Section 102(b)(2) of the 1977 Tax Code.

The CTA *En Banc* concluded that Accenture failed to discharge the burden of proving the latter's allegation that its clients were foreign-based.[27]

Resolute, Accenture filed a Petition for Review with the CTA *En Banc*, but the latter affirmed the Division's Decision and Resolution.[28] A subsequent MR was also denied in a Resolution dated 23 October 2009.

Hence, the present Petition for Review[29] under Rule 45.

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[23] 500 Phil. 586 (2005).

[24] *Rollo*, pp. 181-183.

[25] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

[26] *Rollo*, p. 41.

[27] *Id.* at 48.

[28] *Id.*

[29] *Id.* at 9-33.

In a Joint Stipulation of Facts and Issues, the parties and the Division have agreed to submit the following issues for resolution:

1. Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 Tax Code.

2. Whether or not petitioner's claim for refund/tax credit in the amount of ₱35,178,884.21 represents unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002.

3. Whether or not Petitioner has carried over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, and applied the same fully to its output VAT liability for the said period.

4. Whether or not Petitioner is entitled to the refund of the amount of ₱35,178,884.21, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, from its sales of services to various foreign clients.

5. Whether or not Petitioner's claim for refund/tax credit in the amount of ₱35,178,884.21, as alleged unutilized input VAT on domestic purchases of goods and services for the period covering 1 July 2002 until 30 November 2002 are duly substantiated by proper documents.[30]

For consideration in the present Petition are the following issues:

1. Should the recipient of the services be "doing business outside the Philippines" for the transaction to be zero-rated under Section 108(B)(2) of the 1997 Tax Code?

2. Has Accenture successfully proven that its clients are entities doing business outside the Philippines?

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[30] *Id.* at 164.

Recipient of services must be doing business outside the Philippines for the transactions to qualify as zero-rated.

Accenture anchors its refund claim on Section 112(A) of the 1997 Tax Code, which allows the refund of unutilized input VAT earned from zero-rated or effectively zero-rated sales. The provision reads:

SEC. 112. ***Refunds or Tax Credits of Input Tax.*** **–**

(A) ***Zero-Rated or Effectively Zero-Rated Sales.*** – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Section 108(B) referred to in the foregoing provision was first seen when Presidential Decree No. (P.D.) 1994[31] amended Title IV of P.D. 1158,[32] which is also known as the National Internal Revenue Code of 1977. Several Decisions have referred to this as the 1986 Tax Code, even though it merely amended Title IV of the 1977 Tax Code.

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[31] FURTHER AMENDING CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE.

[32] A DECREE TO CONSOLIDATE AND CODIFY ALL THE INTERNAL REVENUE LAWS OF THE PHILIPPINES.

Two years thereafter, or on 1 January 1988, Executive Order No. (E.O.) 273[33] further amended provisions of Title IV. E.O. 273 by transferring the old Title IV provisions to Title VI and filling in the former title with new provisions that imposed a VAT.

The VAT system introduced in E.O. 273 was restructured through Republic Act No. (R.A.) 7716.[34] This law, which was approved on 5 May 1994, widened the tax base. Section 3 thereof reads:

SECTION 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"SEC. 102. *Value-added tax on sale of services and use or lease of properties*. x x x

x x x x x x x x x

"(b) *Transactions subject to zero-rate*. — The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:

"(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).

"(2) Services other than those mentioned in the preceding sub-paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP)."

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[33] ADOPTING A VALUE-ADDED TAX, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AND FOR OTHER PURPOSES.

[34] AN ACT RESTRUCTURING THE VALUE-ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENHANCING ITS ADMINISTRATION, AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PORTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

Essentially, Section 102(b) of the 1977 Tax Code—as amended by P.D. 1994, E.O. 273, and R.A. 7716—provides that if the consideration for the services provided by a VAT-registered person is in a foreign currency, then this transaction shall be subjected to zero percent rate.

The 1997 Tax Code reproduced Section 102(b) of the 1977 Tax Code in its Section 108(B), to wit:

(B) ***Transactions Subject to Zero Percent (0%) Rate.*** – The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x.

On 1 November 2005, Section 6 of R.A. 9337, which amended the foregoing provision, became effective. It reads:

SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(B) *Transactions Subject to Zero Percent (0%) Rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

> "(2) Services other than those mentioned in the preceding **paragraph rendered to a person engaged in business conducted outside the Philippines** or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); x x x." (Emphasis supplied)

The meat of Accenture's argument is that nowhere does Section 108(B) of the 1997 Tax Code state that services, to be zero-rated, should be rendered to clients doing business outside the Philippines, the requirement introduced by R.A. 9337.[35] Required by Section 108(B), prior to the amendment, is that the consideration for the services rendered be in foreign currency and in accordance with the rules of the *Bangko Sentral ng Pilipinas* (BSP). Since Accenture has complied with all the conditions imposed in Section 108(B), it is entitled to the refund prayed for.

In support of its claim, Accenture cites *Amex*, in which this Court supposedly ruled that Section 108(B) reveals a clear intent on the part of the legislators not to impose the condition of being "consumed abroad" in order for the services performed in the Philippines to be zero-rated.[36]

The Division ruled that this Court, in *Amex* and *Burmeister*, did not declare that the requirement—that the client must be doing business outside the Philippines—can be disregarded, because this requirement is expressly provided in Article 108(2) of the Tax Code.[37]

Accenture questions the Division's application to this case of the pronouncements made in *Burmeister*. According to petitioner, the provision applied to the present case was Section

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[35] *Rollo*, p. 194.

[36] *Id.* at 192-193.

[37] *Id.* at 182.

102(b) of the 1977 Tax Code, and not Section 108(B) of the 1997 Tax Code, which was the law effective when the subject transactions were entered into and a refund was applied for.

In refuting Accenture's theory, the CTA *En Banc* ruled that since Section 108(B) of the 1997 Tax Code was a mere reproduction of Section 102(b) of the 1977 Tax Code, this Court's interpretation of the latter may be used in interpreting the former, *viz*:

> In the Burmeister case, the Supreme Court harmonized both Sections 102(b)(1) and 102(b)(2) of the 1977 Tax Code, as amended, pertaining to zero-rated transactions. A parallel approach should be accorded to the renumbered provisions of Sections 108(B)(2) and 108(B)(1) of the 1997 NIRC. This means that Section 108(B)(2) must be read in conjunction with Section 108(B)(1). Section 108(B)(2) requires as follows: a) services other than processing, manufacturing or repacking rendered by VAT registered persons in the Philippines; and b) the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations. The same provision made reference to Section 108(B)(1) further imposing the requisite c) that the recipient of services must be performing business outside of Philippines. Otherwise, if both the provider and recipient of service are doing business in the Philippines, the sale transaction is subject to regular VAT as explained in the *Burmeister* case x x x.
>
> x x x x x x x x x
>
> Clearly, the Supreme Court's pronouncements in the Burmeister case requiring that the recipient of the services must be doing business outside the Philippines as mandated by law govern the instant case.[38]

Assuming that the foregoing is true, Accenture still argues that the tax appeals courts cannot be allowed to apply to *Burmeister* this Court's interpretation of Section 102(b) of the 1977 Tax Code, because the Petition of Accenture had already been filed before the case was even promulgated on 22 January 2007,[39] to wit:

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[38] *Id.* at 43-45.

[39] *Id.* at 196.

x x x. While the Burmeister case forms part of the legal system and assumes the same authority as the statute itself, however, the same cannot be applied retroactively against the Petitioner because to do so will be prejudicial to the latter.[40]

The CTA *en banc* is of the opinion that Accenture cannot invoke the non-retroactivity of the rulings of the Supreme Court, whose interpretation of the law is part of that law as of the date of its enactment.[41]

We rule that the recipient of the service must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code.

This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a verbatim copy of Section 102(b) of the 1977 Tax Code, any interpretation of the latter holds true for the former.

Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one.[42] When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[43]

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[40] *Id.* at 21.

[41] *Id.* at 46, citing *National Amnesty Commission v. Commission on Audit*, 481 Phil. 279 (2004).

[42] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 907-908 (1996).

[43] *Senarillos v. Hermosisima*, 100 Phil. 501 (1956).

Accenture questions the CTA's application of *Burmeister*, because the provision interpreted therein was Section 102(b) of the 1977 Tax Code. In support of its position that Section 108 of the 1997 Tax Code does not require that the services be rendered to an entity doing business outside the Philippines, Accenture invokes this Court's pronouncements in *Amex*. However, a reading of that case will readily reveal that the provision applied was Section 102(b) of the 1977 Tax Code, and not Section 108 of the 1997 Tax Code. As previously mentioned, an interpretation of Section 102(b) of the 1977 Tax Code is an interpretation of Section 108 of the 1997 Tax Code, the latter being a mere reproduction of the former.

This Court further finds that Accenture's reliance on *Amex* is misplaced.

We ruled in *Amex* that Section 102 of the 1977 Tax Code does not require that the services be consumed abroad to be zero-rated. However, nowhere in that case did this Court discuss the necessary qualification of the recipient of the service, as this matter was never put in question. In fact, the recipient of the service in *Amex* is a nonresident foreign client.

The aforementioned case explains how the credit card system works. The issuance of a credit card allows the holder thereof to obtain, on credit, goods and services from certain establishments. As proof that this credit is extended by the establishment, a credit card draft is issued. Thereafter, the company issuing the credit card will pay for the purchases of the credit card holders by redeeming the drafts. The obligation to collect from the card holders and to bear the loss—in case they do not pay—rests on the issuer of the credit card.

The service provided by respondent in *Amex* consisted of gathering the bills and credit card drafts from establishments located in the Philippines and forwarding them to its parent company's regional operating centers outside the country. It facilitated in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client.

The Court explained how the services rendered in *Amex* were considered to have been performed and consumed in the Philippines, to wit:

> Consumption is "the use of a thing in a way that thereby exhausts it." Applied to services, the term means the performance or "successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability x x x." The services rendered by respondent are performed or successfully completed upon its sending to its foreign client the drafts and bills it has gathered from service establishments here. Its services, having been performed in the Philippines, are therefore also consumed in the Philippines.[44]

The effect of the place of consumption on the zero-rating of the transaction was not the issue in *Burmeister*. Instead, this Court addressed the squarely raised issue of whether the recipient of services should be doing business outside the Philippines for the transaction to qualify for zero-rating. We ruled that it should. Thus, another essential condition for qualification for zero-rating under Section 102(b)(2) of the 1977 Tax Code is that the recipient of the business be doing that business outside the Philippines. In clarifying that there is no conflict between this pronouncement and that laid down in *Amex*, we ruled thus:

> x x x. As the Court held in *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, the place of payment is immaterial, much less is the place where the output of the service is ultimately used. An essential condition for entitlement to 0% VAT under Section 102 (b) (1) and (2) is that the recipient of the services is a person doing business outside the Philippines. **In this case, the recipient of the services is the Consortium, which is doing business not outside, but within the Philippines because it has a 15-year contract to operate and maintain NAPOCOR's two 100-megawatt power barges in Mindanao**. (Emphasis in the original)[45]

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[44] *Supra* note 23, at 605, citing Garner (ed. in chief).

[45] *Supra* note 17, at 139.

In *Amex* we ruled that the place of performance and/or consumption of the service is immaterial. In *Burmeister*, the Court found that, although the place of the consumption of the service does not affect the entitlement of a transaction to zero-rating, the place where the recipient conducts its business does.

Amex does not conflict with *Burmeister*. In fact, to fully understand how Section 102(b)(2) of the 1977 Tax Code—and consequently Section 108(B)(2) of the 1997 Tax Code—was intended to operate, the two aforementioned cases should be taken together. The zero-rating of the services performed by respondent in *Amex* was affirmed by the Court, because although the services rendered were both performed and consumed in the Philippines, the recipient of the service was still an entity doing business outside the Philippines as required in *Burmeister*.

That the recipient of the service should be doing business outside the Philippines to qualify for zero-rating is the only logical interpretation of Section 102(b)(2) of the 1977 Tax Code, as we explained in *Burmeister*:

> This can only be the logical interpretation of Section 102 (b) (2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102 (a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102 (b) (2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102 (a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102 (a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.
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> x x x x x x x x x
>
> Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 102 (a) governing **domestic** sale or exchange of services.

Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102 (b).

Thus, when Section 102 (b) (2) speaks of "**[s]ervices other than those mentioned in the preceding subparagraph**," the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs. (Emphasis in the original)[46]

Lastly, it is worth mentioning that prior to the promulgation of *Burmeister*, Congress had already clarified the intent behind Sections 102(b)(2) of the 1977 Tax Code and 108(B)(2) of the 1997 Tax Code amending the earlier provision. R.A. 9337 added the following phrase: "rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed."

Accenture has failed to establish that the recipients of its services do business outside the Philippines.

Accenture argues that based on the documentary evidence it presented,[47] it was able to establish the following circumstances:

1. The records of the Securities and Exchange Commission (SEC) show that Accenture's clients have not established any branch office in which to do business in the Philippines.

2. For these services, Accenture bills another corporation, Accenture Participations B.V. (APB), which is likewise a foreign corporation with no "presence in the Philippines."

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[46] *Rollo*, pp. 136-137.

[47] Official Receipts, Intercompany Payment Request, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements.

3. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable currency for their purchase of goods and services from the Philippines. Thus, in a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.[48]

Accenture claims that these documentary pieces of evidence are supported by the Report of Emmanuel Mendoza, the Court-commissioned Independent Certified Public Accountant. He ascertained that Accenture's gross billings pertaining to zero-rated sales were all supported by zero-rated Official Receipts and Billing Statements. These documents show that these zero-rated sales were paid in foreign exchange currency and duly accounted for in the rules and regulations of the BSP.[49]

In the CTA's opinion, however, the documents presented by Accenture merely substantiate the existence of the sales, receipt of foreign currency payments, and inward remittance of the proceeds of these sales duly accounted for in accordance with BSP rules. Petitioner presented no evidence whatsoever that these clients were doing business outside the Philippines.[50]

Accenture insists, however, that it was able to establish that it had rendered services to foreign corporations doing business outside the Philippines, unlike in *Burmeister*, which allegedly involved a foreign corporation doing business in the Philippines.[51]

We deny Accenture's Petition for a tax refund.

The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for

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[48] *Rollo*, pp. 23-24.

[49] *Id.* at 25.

[50] *Id.* at 47.

[51] *Id.* at 138.

a foreign corporation engaged in business within the Philippines and vice versa, to wit:

SEC. 22. *Definitions* – When used in this Title:

x x x x x x x x x

(H) The term "*resident foreign corporation*" applies to a foreign corporation engaged in trade or business within the Philippines.

(I) The term '*nonresident foreign corporation*' applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)

Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:[52]

x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. "In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character."[53]

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[52] 233 Phil. 406 (1987).

[53] *Id.* at 420 citing *The Mentholatum Co., Inc. vs. Anacleto Mangaliman,* 72 Phil. 524 (1941); Section 1, R.A. No. 5455; and *Pacific Micronesian Line, Inc. v. Del Rosario and Pelingon*, 96 Phil. 23, 30 (1954), which in turn cited Thompson on Corporations, Vol. 8, 844-847 (3rd ed.); and Fisher, *PHILIPPINE LAW OF STOCK CORPORATION*, 415.

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[54]

Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.

As ruled by the CTA *En Banc*, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[55]

WHEREFORE, the instant Petition is **DENIED**. The 22 September 2009 Decision and the 23 October 2009 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 477, dismissing the Petition for the refund of the excess or unutilized input VAT credits of Accenture, Inc., are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

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

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[54] *Paseo Realty & Development Corporation v. Court of Tax Appeals, et al.*, 483 Phil. 254 (2004).

[55] *Rollo*, p. 47.

THIRD DIVISION

[G.R. No. 192250. July 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMOGENES DE GUZMAN @ Mong,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; TWO-FOLD TASK OF THE PROSECUTION, SPECIFIED.— In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; EVIDENCE TO BE BELIEVED MUST PROCEED NOT ONLY FROM THE MOUTH OF A CREDIBLE WITNESS BUT MUST BE CREDIBLE IN ITSELF; NOT PRESENT IN CASE AT BAR.— In *People v. Faustino,* the Court stated that the identification of an accused by an eyewitness is a vital piece of evidence and most decisive of the success or failure of the case for the prosecution. In the case at bench, however, the inconclusive and unreliable identification by Flores of De Guzman as the culprit failed to break the barrier of proof beyond reasonable doubt. x x x Furthermore, the reaction of Flores, in hurriedly going home and leaving Urieta alone to die, was unnatural and contrary to common human experience. The seemingly apathetic behavior displayed by Flores in leaving Urieta without even checking his condition to see if he was still breathing and his failure to report the matter to the police or at least inform the victim's family about what happened on the same night were highly inconsistent with the natural/common reaction of one who had just witnessed the stabbing of his childhood friend. The Court cannot accept a story that defies reason and leaves much to the imagination. The failure of Flores

to lend a touch of realism to his tale leads to the conclusion that he was either withholding an incriminating information or was not telling the truth. The time-honored test in determining the value of the testimony of a witness is its compatibility with human knowledge, observation and common experience of man. Thus, whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance. Consistently, the Court has ruled that evidence to be believed must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind. In the case at bench, the testimony of Flores, the lone eyewitness of the prosecution does not bear the earmarks of truth and, hence, not credible.

3. CRIMINAL LAW; MURDER; MOTIVE; PROOF OF MOTIVE BECOMES RELEVANT AND ESSENTIAL WHEN THE IDENTITY OF THE ASSAILANT IS IN QUESTION; CASE AT BAR.— The brutal and gruesome attack on Urieta, who sustained two stab wounds on the chest, a stab wound along the waist area which hit the liver, and a stab wound on the elbow, clearly manifested the intention of the perpetrator to purposely bring death upon the victim. There was no evidence, however, that De Guzman carried a grudge or had an axe to grind against the victim or his family, or even knew the victim at all. Prosecution witnesses Flores and Gina even attested that they did not know of any reason why De Guzman killed Urieta. Generally, the motive of the accused in a criminal case is immaterial and does not have to be proven. Proof of the same, however, becomes relevant and essential when, as in this case, the identity of the assailant is in question.

4. ID.; ID.; CONVICTION; FINDING OF GUILT MUST REST ON THE EVIDENCE OF THE PROSECUTION NOT ON THE WEAKNESS OR EVEN ABSENCE OF EVIDENCE FOR THE DEFENSE; CASE AT BAR.— While alibi is a weak defense and the rule is that it must be proved to the satisfaction of the court, the said rule has never been intended to change the burden of proof in criminal cases. Otherwise, an absurd situation will arise wherein the accused is put in a more difficult position where the prosecution evidence is vague and weak as in the present case. The burden of proof still lies in the prosecution to establish that De Guzman was responsible

for the killing. It is oft-repeated that a finding of guilt must rest on the evidence of the prosecution not on the weakness or even absence of evidence for the defense. Thus, it is required that every circumstance favoring the innocence of the accused must be duly taken into account. The proof against him must survive the test of reason and the strongest suspicion must not be permitted to sway judgment. In the case at bench, the evidence for the prosecution was unable to pass the exacting test of moral certainty that the law demands.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the February 9, 2010 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 03458, which affirmed the May 2, 2008 Decision[2] of the Regional Trial Court, Branch 45, San Jose, Occidental Mindoro *(RTC)*, in Criminal Case No. R-5285, finding accused Hermogenes De Guzman @ Mong *(De Guzman)* guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua*.

THE FACTS

De Guzman was charged with the crime of Murder in the Information,[3] dated November 12, 2002, the accusatory portion of which reads:

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justice Ricardo R. Rosario and Associate Justice Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 2-11.

[2] Penned by Judge Jose S. Jacinto, Jr.; records, pp. 148-153.

[3] *Id.* at 1.

That on or about the 20th day of April, 2002 at around 11:00 o'clock in the evening, in Brgy. San Francisco, Municipality of Sablayan, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a sharp bladed instrument, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said weapon one Noriel Rosales Urieta, thereby inflicting upon the latter serious wounds which caused his untimely death.

CONTRARY TO LAW.

When arraigned, De Guzman entered a plea of "Not Guilty"[4] to the offense charged. After pre-trial was terminated, trial on the merits ensued. The prosecution presented the testimonies of Ignacio Flores *(Flores)*, the childhood friend of victim Noriel Urieta *(Urieta)* and the purported eyewitness to the stabbing incident; Dr. Ma. Socorro Ragos *(Ragos)*, who conducted a *post-mortem* examination on the cadaver of the victim; and Gina Urieta *(Gina)*, the wife of the victim. The defense, on the other hand, presented the lone testimony of De Guzman.

The Version of the Prosecution

The version of the prosecution is succinctly summarized by the Office of the Solicitor General *(OSG)* in its Brief[5] as follows:

On April 20, 2002 at around 11:00 o'clock in the evening, Noriel Urieta was in Brgy. Francisco, Sablayan, Occidental Mindoro along with Ignacio Flores. They were drinking in the amusement area.

When they were about to leave the premises, appellant suddenly approached them and without any provocation, suddenly stabbed Noriel Urieta with a knife on his left chest.

After the first blow, the victim was already kneeling down and appellant proceeded to stab him three (3) more times.

Appellant thereafter ran away.

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[4] *Id.* at 26.

[5] CA *rollo*, pp. 55-72.

Ignacio Flores called out for help and one Elmer Honato arrived to give them aid and bring the victim to a secure place and thereafter proceeded to call for help.

He waited for Elmer Honato to arrive but he did not return anymore. With the condition of the victim uncertain and as he was afraid, he decided to leave the victim and go home.

Two days later, Police Officer Gamba, together with the father of Noriel Urieta and Gina Urieta, the wife of Noriel Urieta, went to the house of Ignacio Flores in order to get the sworn statement as to the facts that happened in this case. They were able to do so.

Subsequently, an arrest on the person of Hermogenes de Guzman was made.

The Office of the Provincial Prosecutor then filed the appropriate charges thereafter.[6]

The Version of the Defense

In his Brief,[7] De Guzman denied the charge against him and presented his version of the events:

On the evening of April 21, 2002, Hermogenes De Guzman joined a drinking spree at the house of a relative at barangay San Francisco. He was there from 8:00 o'clock in the morning until 12:00 o'clock midnight, when he went home with his wife.

The following day, he was drying palay when his wife informed him that police officers were looking for him. He approached and inquired from the officers what was the reason. He was told to go with them to the municipal hall for questioning. Thereat, he was incarcerated because of his alleged involvement in a stabbing incident.

De Guzman does not personally know the victim, his wife, nor the supposed eyewitness, Ignacio Flores. He (De Guzman) was not with Urieta when the former had a drinking spree. He denied having stabbed and killed Urieta.[8]

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[6] *Id.* at 60-62.

[7] *Id.* at 25-41.

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

The RTC Ruling

On May 2, 2008, the RTC rendered judgment finding that the prosecution was able to establish with certitude, through the credible testimony of prosecution witness Flores, that De Guzman stabbed and killed Urieta on that fateful night of April 20, 2002. The RTC rejected the unsubstantiated defense of alibi proffered by De Guzman in the face of the positive identification of Flores pointing him as the perpetrator of the crime. It held that treachery attended the commission of the crime which qualified the killing to murder. The RTC adjudged:

> WHEREFORE, this Court finds the accused HERMOGENES DE GUZMAN *alias* "Mong" GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and with neither aggravating nor mitigating circumstance and in line with the mandate of Republic Act No. 9346, hereby imposes the penalty of *Reclusion Perpetua*.
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> Also, this Court hereby orders the said accused to PAY the surviving heirs of the victim the following:
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> 1) The sum of ₱50,000.00 as civil indemnity *ex-delicto;*
> 2) The sum of ₱38,000.00 as actual damages;
> 3) The sum of ₱50,000.00 as moral damages; and
> 4) The costs of this suit.
>
> The said accused is hereby credited of his total duration of preventive imprisonment in the service of his imposed imprisonment.
>
> SO ORDERED.[9]

The CA Decision

On appeal, the CA affirmed the judgment of conviction of De Guzman holding that his guilt for the crime of murder was proven beyond reasonable doubt by the prosecution's evidence. The CA added that the facts established by the unwavering testimony of eyewitness Flores could not be displaced by the empty denials and self-serving alibi of De Guzman. It sustained

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[9] Records p. 153.

the RTC in appreciating the presence of the qualifying circumstance of treachery which elevated the killing to Murder. The dispositive portion of the February 9, 2010 Decision reads:

> WHEREFORE, premises considered, the appeal is hereby DISMISSED. The decision of Branch 45, Regional Trial Court of San Jose, Occidental, Mindoro in Criminal Case No. R-5285 is hereby AFFIRMED.
>
> SO ORDERED.[10]

On February 18, 2010, De Guzman filed a Notice of Appeal,[11] which was given due course by the CA in its March 3, 2010 Minute Resolution.[12]

On July 2, 2010, this Court issued a resolution[13] notifying the parties that they could file their respective supplemental briefs, if they so desire, within thirty days from notice. Both parties manifested that they would no longer file supplemental briefs.

THE ISSUES

Insisting his innocence, De Guzman imputes to the RTC the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE INCONSISTENT AND DOUBTFUL TESTIMONY OF THE PROSECUTION'S EYEWITNESS.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF MURDER DESPITE THE EYEWITNESS' FAILURE TO POSITIVELY IDENTIFY THE FORMER.

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[10] CA *rollo* p. 87.

[11] *Id.* at 88-89.

[12] *Id.* at 91.

[13] *Rollo*, pp. 17-18.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY ATTENDED THE SUBJECT KILLING.[14]

De Guzman argues that the evidence for the prosecution did not meet that quantum of proof necessary to convict him of the crime charged. The testimony of Flores was riddled with inconsistencies and contradictions which tend to erode his credibility and raise doubt on the veracity of the prosecution evidence. It was highly improbable for Flores to clearly identify the assailant considering that the stabbing incident took place suddenly and quickly at 11:00 o'clock in the evening in a remote *barangay* with no good source of illumination. The prosecution miserably failed to show any ill motive on his part that could have possibly impelled him to commit the crime. Since the prosecution's case is weak, his defense of alibi assumes importance and can effectively negate his criminal liability. Finally, De Guzman asserts that even granting *arguendo,* that he indeed stabbed Urieta, he cannot be convicted of murder because the prosecution failed to establish the presence of the qualifying circumstance of treachery.

For the prosecution, the OSG urges this Court to affirm *in toto* the challenged decision for failure of De Guzman to show that the RTC committed any error in rendering a judgment of conviction. It contends that the narration of Flores regarding the bloody assault on Urieta had clearly established the *corpus delicti* of the crime which rendered inconsequential the alleged inconsistencies in his testimony. It is of the position that eyewitness Flores testified in clear and unequivocal terms as to the identity of the author of the crime. Lastly, it posits that treachery was alleged and duly proved by the prosecution during the trial and, hence, the conviction of De Guzman for murder was correct.

THE COURT'S RULING

The crucial issue in this case is the sufficiency of evidence to convict De Guzman. More particularly, the Court has to

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

inquire whether there had been sufficient identification of De Guzman as the perpetrator of the crime.

In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.[15]

Although it is entrenched in this jurisdiction that findings of the trial court on the credibility of the witnesses are accorded great weight and respect because it had ample opportunity to observe the demeanor of the declarants at the witness stand, this rule admits exceptions. The saving instance is said to be when a fact or circumstance of weight and influence has been overlooked, or its significance misconstrued by the trial court sufficient to harbor serious misgivings on its conclusions.[16]

After a painstaking review of the records and the transcripts of stenographic notes of the testimonies of the witnesses, the Court is not convinced with moral certainty that De Guzman committed the crime charged. Reasonable doubt bothers the conscience. With a cloud of doubt continuously hovering, the mind cannot rest easy.

The case for the prosecution was woven basically on the testimony of Flores, who claimed to be a childhood friend of Urieta.[17] This alleged eyewitness recounted that on April 20, 2002, at around 11:00 o'clock in the evening, he and Urieta were drinking beer at a store near a "*peryahan*" in Barangay Francisco, Sablayan, Occidental Mindoro; that after they had finished their third bottle of beer, they decided to leave their table; that when Urieta was about to stand up, De Guzman suddenly appeared from nowhere and stabbed Urieta using a

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[15] *People v. Bacalso,* 395 Phil. 192, 199 (2000).

[16] *Id.*

[17] CA *rollo,* pp. 44 and 79.

knife with a red handle, without any reason or provocation; that the stab blow landed on the left breast of Urieta and caused him to fall down; that while in a kneeling position, De Guzman stabbed him three more times; that Flores cried for help but no one came to their aid; and that thereafter, De Guzman ran away.

Flores claimed that a certain Elmer Honato *(Honato)* came and brought Urieta to the corner of the street; that Honato then went to the *barangay* hall allegedly to look for a physician who would attend to the seriously injured Urieta; that he waited for Honato but sensing that the latter would no longer return, he hurriedly went home leaving Urieta alone on the ground; and that he did not know whether Urieta was still alive when he left him.

Flores testified that he was just a meter (an arm's length) away from Urieta when the latter was stabbed by De Guzman; that the light of the "*moron*" coming from the "*peryahan*" illuminated the table where they were drinking, enabling him to see the face of the perpetrator whom he identified to be De Guzman; that two (2) days after the stabbing incident, Police Officer Gamba, Gina and Urieta's father came to his house; that he then executed a sworn statement before a police officer narrating his accounts of the stabbing incident which led to the death of Urieta; that he did not know De Guzman and it was on the night of the stabbing incident that he first saw him; and that he came to know of the name of De Guzman from the policemen.

A nexus of logically related circumstances, however, rendered the testimony of Flores as highly suspect. His testimony is laden with improbabilities that detract from his credibility. The totality of the evidence for the prosecution leaves much to be desired. Somehow, the Court cannot help but entertain serious doubts on the veracity of the malefactor's identity. It is almost as if it was merely contrived to pin criminal culpability upon De Guzman.

First, the condition of visibility at the time of the stabbing incident did not favor the witness Flores, as it did not lend credence to his testimony. The incident took place during

nighttime at 11:00 o'clock in a remote *barangay* with no electric lighting in the surroundings and the only source of light then was the illumination of a "*moron*" coming from a "*peryahan*." Apart from the testimony of Flores, no other competent and corroborative evidence was adduced to settle this question of visibility and lighting condition as well as to confirm that indeed the light of the "*moron*" was existent and adequate for purposes of identification on the night of the incident. The Court observes that in his Sinumpaang Salaysay,[18] Flores stated that the "*moron* (*de gas*)" was just on the *table* where they were drinking which was contrary to what he had testified in court.

The distance of the "*moron*" in the "*peryahan*" from the site of the stabbing incident was not disclosed either. It could have helped determine if the place was well illuminated. It is important to note that illumination or brightness diffuses as the distance from the source increases. Moreover, it is clear from the records that the stabbing incident was so swift for ample observation and Flores, who had three bottles of beer, was admittedly very afraid so much so that all he did was to cry for help. Under these circumstances, the Court finds the positive identification of De Guzman by Flores hazy.

In *People v. Faustino*,[19] the Court stated that the identification of an accused by an eyewitness is a vital piece of evidence and most decisive of the success or failure of the case for the prosecution. In the case at bench, however, the inconclusive and unreliable identification by Flores of De Guzman as the culprit failed to break the barrier of proof beyond reasonable doubt.

Second, Flores' story, that a certain Honato came to their aid and brought the seriously wounded Urieta to the corner of the street but left thereafter supposedly to seek a physician at the *barangay* hall, simply does not make sense. It appears strange that Honato should proceed to the *barangay* hall to look for a

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[18] Records, pp. 11-12.

[19] 394 Phil. 236, 259 (2000).

doctor when natural instinct and reason would dictate that he and Flores should have brought Urieta straight to the hospital for the immediate medical treatment of his wounds. It appears even stranger that this Honato was not presented in court to corroborate the testimony of Flores. Besides, can one really find a physician at the *barangay* hall at that late hour of the night?

His story about Honato being nebulous, the Court doubts if Flores ever shouted for help at all. If he really did, many people in the "*peryahan*" would have surely come to their aid. Indeed, if he was a childhood friend, he would not have second thoughts in bringing Urieta to the hospital himself. As he merely abandoned his dying friend, one cannot help but harbor a suspicion.

Furthermore, the reaction of Flores, in hurriedly going home and leaving Urieta alone to die, was unnatural and contrary to common human experience. The seemingly apathetic behavior displayed by Flores in leaving Urieta without even checking his condition to see if he was still breathing and his failure to report the matter to the police or at least inform the victim's family about what happened on the same night were highly inconsistent with the natural/common reaction of one who had just witnessed the stabbing of his childhood friend. The Court cannot accept a story that defies reason and leaves much to the imagination. The failure of Flores to lend a touch of realism to his tale leads to the conclusion that he was either withholding an incriminating information or was not telling the truth.

The time-honored test in determining the value of the testimony of a witness is its compatibility with human knowledge, observation and common experience of man.[20] Thus, whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance. Consistently, the Court has ruled that evidence to be believed must proceed not only from the mouth of a

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[20] *Ocampo v. People*, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 560.

credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[21] In the case at bench, the testimony of Flores, the lone eyewitness of the prosecution does not bear the earmarks of truth and, hence, not credible.

Third, the Court finds disturbing how the police officers were able to identify De Guzman as the killer of Urieta. It is undisputed that on the day following the stabbing incident, De Guzman was invited by the police officers to the municipal hall, was informed by them that he was a suspect in the commission of a crime and then placed behind bars. De Guzman testified, to wit:

> Atty. Jennifer Garcia
> (On Direct Examination)
>
> Q: The following day, what did you do?
> A: I was drying our palay, sir.
>
> Q: While drying your palay, do you know if there was anything that happened?
> A: My wife arrived, sir.
>
> Q: When your wife arrived what happened?
> A: According to her I was being looked by some policemen, sir.
>
> Q: Why are these policemen were looking at you?
> A: Because according to them they are going to ask something from me, sir.
>
> Q: After knowing that some policemen are looking for you, what did you do then?
> A: I was the one who approached them, sir.
>
> Q: Where did you approach them?
> A: I asked them why they are looking for me, sir.
>
> Q: Did they told you why they are looking for you?
> A: They are inviting me to go with them in the Municipal Hall, sir.

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[21] *Zapatos v. People*, 457 Phil. 969, 985 (2003).

Q: For what purpose they are asking you to come with them in the Municipal Hall?
A: According to them they are going to ask something from me, sir.

Q: Did you reach the Municipal Hall?
A: Yes, sir.

Q: While in the Municipal Hall, what happened?
A: I was incarcerated, sir.

Q: Did you come to know from them why you are incarcerated?
A: They said that I was involved in a stabbing incident, sir.[22]

Also, on April 21, 2002, Gina, the wife of the victim, executed her Sinumpaang Salaysay[23] wherein she declared, among others, that she came to know the identity and the name of the assailant from the police officers. Thus:

T: Kung ikaw ay nasa inyong bahay sa bukid naroroon kagabi ng maganap ang pananaksak ni HERMOGENES DE GUZMAN alias "Mong" sa iyong asawa, papaano mong nalaman na itong si HERMOGENES DE GUZMAN nga ang may kagagawan ng pananaksak sa iyong asawa, gayong wala ka naman kagabi sa lugar ng pinangyarihan?

S: Napag-alaman ko po sa mga Pulis na sumurender na ang sumaksak sa aking asawa kaya't ako nga ay pumunta dito at ipinagtanong ko ang kanyang pangalan sa mga Pulis kaya ko siya nakilala at napag-alamang siya nga ang sumaksak sa aking asawang si Noriel.

During the trial, Gina stated the same thing as she testified, to wit:

Asst. Pros. Dante V. Ramirez
(On Direct Examination)

Q: Who was the person who killed your husband?
A: Hermogenes de Guzman, sir.[24]

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[22] TSN, dated July 17, 2007, pp. 3-4.

[23] Records, p. 10.

[24] TSN, dated October 12, 2005, p. 8.

COURT

Q: You mentioned a while ago that when you were asked who killed your husband, you answered Hermogenes de Guzman, how did you come to know the killer of your husband?
A: I came to know from the Police Officer, Your Honor.

Q: Have you known Hermogenes de Guzman before the death of your husband?
A: No, Your Honor.

Q: You came to know him only upon the death of your husband?
A: Yes, Your Honor.

Q: Do you know any reason why Hermogenes de Guzman killed your husband?
A: I do not know any reason, Your Honor.[25]

Two days after the incident in question or on April 22, 2002, Flores executed his Sinumpaang Salaysay and gave his account of the stabbing incident only because Police Officer Gamba together with the father and the wife of Urieta came to his house.[26] Even so, nowhere in the record does it show that Flores gave the police officers a description of the physical features and attributes of the assailant. During the trial, he admitted that he did not know De Guzman or his name at the time of the stabbing incident. Thus:

Atty. Jennifer Garcia
(On Cross-Examination)

Q: How about accused, did you know him personally?
A: I only saw him on that night when he stabbed Noriel Urieta and I only learned his name from the Police Officer.[27]

The foregoing sequence of events clearly reveals that the police officers had already a suspect, De Guzman, in the killing of Urieta, even before Flores could give his statement and despite the absence of any description from Flores himself as to how

[25] *Id.* at 12-13.

[26] TSN, dated August 25, 2004, p. 10.

[27] *Id.* at 14.

the culprit looked like. Curiously, no police officer was called to the witness stand to shed light on the matter. This gray area in the case of the prosecution is fatal to its cause and casts serious doubt on the veracity and credibility of its evidence.

The Court is likewise puzzled as to how the prosecution came into possession of the alleged murder weapon marked as Exhibit "B". During the trial, a knife with a red handle was shown to Flores who specifically identified it to be the same bladed weapon used by De Guzman in stabbing Urieta. The information, however, as to who recovered that knife, and from whom it was seized remained a mystery. At any rate, considering the visibility condition and other attending circumstances on the night of the stabbing incident, the Court indeed doubts how Flores could have positively identified the murder weapon.

Lastly, it has not been shown that De Guzman had any motive for killing Urieta. The brutal and gruesome attack on Urieta, who sustained two stab wounds on the chest, a stab wound along the waist area which hit the liver, and a stab wound on the elbow, clearly manifested the intention of the perpetrator to purposely bring death upon the victim. There was no evidence, however, that De Guzman carried a grudge or had an axe to grind against the victim or his family, or even knew the victim at all. Prosecution witnesses Flores and Gina even attested that they did not know of any reason why De Guzman killed Urieta.

Generally, the motive of the accused in a criminal case is immaterial and does not have to be proven. Proof of the same, however, becomes relevant and essential when, as in this case, the identity of the assailant is in question.[28] In *People v. Vidad*,[29] the Court said:

> It is true that it is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established at the trial, and that in general when the commission of a crime is clearly proven, conviction may and should follow even

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[28] *People v. Garcia*, 390 Phil. 519, 528 (2000).

[29] 369 Phil. 954, 965 (1999), citing *US v. Carlos*, 15 Phil. 47 (1910).

where the reason for its commission is unknown; but in many criminal cases, one of the most important aids in completing the proof of the commission of the crime by the accused is the introduction of evidence disclosing the motive which tempted the mind to indulge in the criminal act. (Underscoring ours)

In light of the weakness in the prosecution's case, the alibi of De Guzman assumes credence and importance. While alibi is a weak defense and the rule is that it must be proved to the satisfaction of the court, the said rule has never been intended to change the burden of proof in criminal cases. Otherwise, an absurd situation will arise wherein the accused is put in a more difficult position where the prosecution evidence is vague and weak as in the present case.[30] The burden of proof still lies in the prosecution to establish that De Guzman was responsible for the killing.

It is oft-repeated that a finding of guilt must rest on the evidence of the prosecution not on the weakness or even absence of evidence for the defense. Thus, it is required that every circumstance favoring the innocence of the accused must be duly taken into account. The proof against him must survive the test of reason and the strongest suspicion must not be permitted to sway judgment.[31] In the case at bench, the evidence for the prosecution was unable to pass the exacting test of moral certainty that the law demands. In *People v. Fernandez*,[32] this Court has aptly said:

> It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proved by the required quantum of evidence. Hence, despite the Court's support of ardent crusaders waging all-out war against felons on the loose, when the People's evidence fails to prove indubitably the accused's authorship of the crime of which they stand accused, it is the Court's duty — and the accused's right — to proclaim their innocence. Acquittal , therefore, is in order.

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[30] *People v. Caverte*, 385 Phil. 849, 873 (2000).

[31] *People v. Mejia*, 341 Phil. 118, 145 (2002).

[32] 434 Phil. 435, 455 (2002).

WHEREFORE, the appeal is **GRANTED**. The February 9, 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03458 is hereby **REVERSED** and **SET ASIDE**. Accused Hermogenes De Guzman is hereby **ACQUITTED** of the crime charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to forthwith implement this decision and to **INFORM** this Court, within five (5) days from receipt hereof, of the date when De Guzman was actually released from confinement.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194785. July 11, 2012]

VIRGILIO S. DAVID, *petitioner, vs.* **MISAMIS OCCIDENTAL II ELECTRIC COOPERATIVE, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS.— In a petition for review on *certiorari* under Rule 45 of the Rules of Court, the issues

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[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

to be threshed out are generally questions of law only, and not of fact. x x x It has always been stressed that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion: (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) **When the findings are contrary to those of the trial court;** (8) When the findings of fact are without citation of specific evidence on which the conclusions 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 respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; ELEMENTS.— The elements of a contract of sale are, to wit: a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b) Determinate subject matter; and c) Price certain in money or its equivalent. It is the absence of the first element which distinguishes a contract of sale from that of a contract to sell.

3. ID.; ID.; ID.; CONTRACT TO SELL DISTINGUISHED FROM CONTRACT OF SALE.— In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, such as, in most cases, the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell

from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer. In a contract of sale, on the other hand, the title to the property passes to the vendee upon the delivery of the thing sold. Unlike in a contract to sell, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller. The vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded.

4. ID.; ID.; LOAN; INTEREST RATES WHENEVER UNCONSCIONABLE MAY STILL BE REDUCED TO A REASONABLE AND FAIR LEVEL; SUSTAINED.— While there is no question that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be reduced to a reasonable and fair level. There is nothing in the said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. Accordingly, the excessive interest of 24% per annum stipulated in the sales invoice should be reduced to 12% per annum.

5. ID.; DAMAGES; ATTORNEY'S FEES; NATURE THEREOF, EXPLAINED.— It is settled that the award of attorney's fees is the exception rather than the rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they

may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code which demands factual, legal, and equitable justification. Its basis cannot be left to speculation or conjecture.

APPEARANCES OF COUNSEL

Duran Narvaez & Associates for petitioner.
Jose Allan N. Maglasang for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review under Rule 45 of the Rules of Court assailing the July 8, 2010 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR No. 91839, which affirmed the July 17, 2008 Decision[2] of the Regional Trial Court, Branch VIII, Manila *(RTC)* in Civil Case No. 94-69402, an action for specific performance and damages.

The Facts:

Petitioner Virgilio S. David *(David)* was the owner or proprietor of VSD Electric Sales, a company engaged in the business of supplying electrical hardware including transformers for rural electric cooperatives like respondent Misamis Occidental II Electric Cooperative, Inc. *(MOELCI)*, with principal office located in Ozamis City.

To solve its problem of power shortage affecting some areas within its coverage, MOELCI expressed its intention to purchase a 10 MVA power transformer from David. For this reason, its

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[1] *Rollo*, pp. 94-101. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Rodil V. Zalameda.

[2] *Id.* at 65-77. Penned by Judge Felixberto T. Olalia, Jr.

General Manager, Engr. Reynaldo Rada *(Engr. Rada)*, went to meet David in the latter's office in Quezon City. David agreed to supply the power transformer provided that MOELCI would secure a board resolution because the item would still have to be imported.

On June 8, 1992, Engr. Rada and Director Jose Jimenez *(Jimenez)*, who was in-charge of procurement, returned to Manila and presented to David the requested board resolution which authorized the purchase of one 10 MVA power transformer. In turn, David presented his proposal for the acquisition of said transformer. This proposal was the same proposal that he would usually give to his clients.

After the reading of the proposal and the discussion of terms, David instructed his then secretary and bookkeeper, Ellen M. Wong, to type the names of Engr. Rada and Jimenez at the end of the proposal. Both signed the document under the word "conforme." The board resolution was thereafter attached to the proposal.

As stated in the proposal, the subject transformer, together with the basic accessories, was valued at ₱5,200,000.00. It was also stipulated therein that 50% of the purchase price should be paid as downpayment and the remaining balance to be paid upon delivery. Freight handling, insurance, customs duties, and incidental expenses were for the account of the buyer.

The Board Resolution, on the other hand, stated that the purchase of the said transformer was to be financed through a loan from the National Electrification Administration *(NEA)*. As there was no immediate action on the loan application, Engr. Rada returned to Manila in early December 1992 and requested David to deliver the transformer to them even without the required downpayment. David granted the request provided that MOELCI would pay interest at 24% per annum. Engr. Rada acquiesced to the condition. On December 17, 1992, the goods were shipped to Ozamiz City via William Lines. In the Bill of Lading, a sales invoice was included which stated the agreed interest rate of 24% per annum.

When nothing was heard from MOELCI for sometime after the shipment, Emanuel Medina *(Medina)*, David's Marketing Manager, went to Ozamiz City to check on the shipment. Medina was able to confer with Engr. Rada who told him that the loan was not yet released and asked if it was possible to withdraw the shipped items. Medina agreed.

When no payment was made after several months, Medina was constrained to send a demand letter, dated September 15, 1993, which MOELCI duly received. Engr. Rada replied in writing that the goods were still in the warehouse of William Lines again reiterating that the loan had not been approved by NEA. This prompted Medina to head back to Ozamiz City where he found out that the goods had already been released to MOELCI evidenced by the shipping company's copy of the Bill of Lading which was stamped *"Released,"* and with the notation that the arrastre charges in the amount of ₱5,095.60 had been paid. This was supported by a receipt of payment with the corresponding cargo delivery receipt issued by the Integrated Port Services of Ozamiz, Inc.

Subsequently, demand letters were sent to MOELCI demanding the payment of the whole amount plus the balance of previous purchases of other electrical hardware. Aside from the formal demand letters, David added that several statements of accounts were regularly sent through the mails by the company and these were never disputed by MOELCI.

On February 17, 1994, David filed a complaint for specific performance with damages with the RTC. In response, MOELCI moved for its dismissal on the ground that there was lack of cause of action as there was no contract of sale, to begin with, or in the alternative, the said contract was unenforceable under the Statute of Frauds. MOELCI argued that the quotation letter could not be considered a binding contract because there was nothing in the said document from which consent, on its part, to the terms and conditions proposed by David could be inferred. David knew that MOELCI's assent could only be obtained upon the issuance of a purchase order in favor of the bidder chosen by the Canvass and Awards Committee.

Eventually, pursuant to Rule 16, Section 5 of the Rules of Court, MOELCI filed its Motion for Preliminary Hearing of Affirmative Defenses and Deferment of the Pre-Trial Conference which was denied by the RTC to abbreviate proceedings and for the parties to proceed to trial and avoid piecemeal resolution of issues. The order denying its motion was raised with the CA, and then with this Court. Both courts sustained the RTC ruling.

Trial ensued. By reason of MOELCI's continued failure to appear despite notice, David was allowed to present his testimonial and documentary evidence *ex parte*, pursuant to Rule 18, Section 5 of the Rules. A Very Urgent Motion to Allow Defendant to Present Evidence was filed by MOELCI, but was denied.

In its July 17, 2008 Decision, the RTC dismissed the complaint. It found that although a contract of sale was perfected, it was not consummated because David failed to prove that there was indeed a delivery of the subject item and that MOELCI received it.[3]

Aggrieved, David appealed his case to the *CA*.

On July 8, 2010, the CA affirmed the ruling of the RTC. In the assailed decision, the CA reasoned out that although David was correct in saying that MOELCI was deemed to have admitted the genuineness and due execution of the "quotation letter" (Exhibit A), wherein the signatures of the Chairman and the General Manager of MOELCI appeared, he failed to offer any textual support to his stand that it was a contract of sale instead of a mere price quotation agreed to by MOELCI representatives. On this score, the RTC erred in stating that a contract of sale was perfected between the parties despite the irregularities that tainted their transaction. Further, the fact that MOELCI's representatives agreed to the terms embodied in the agreement would not preclude the finding that said contract was at best a mere contract to sell.

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[3] *Id.* at 74.

A motion for reconsideration was filed by David but it was denied.[4]

Hence, this petition.

Before this Court, David presents the following issues for consideration:

I.

WHETHER OR NOT THERE WAS A PERFECTED CONTRACT OF SALE.

II.

WHETHER OR NOT THERE WAS A DELIVERY THAT CONSUMMATED THE CONTRACT.

The Court finds merit in the petition.

I.

On the issue as to whether or not there was a perfected contract of sale, this Court is required to delve into the evidence of the case. In a petition for review on *certiorari* under Rule 45 of the Rules of Court, the issues to be threshed out are generally questions of law only, and not of fact. This was reiterated in the case of *Buenaventura v. Pascual*,[5] where it was written:

> Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court.

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[4] *Id.* at 125.

[5] G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.

That being said, the Court is not unmindful, however, of the recognized exceptions well-entrenched in jurisprudence. It has always been stressed that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion:

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) **When the findings are contrary to those of the trial court;**

(8) When the findings of fact are without citation of specific evidence on which the conclusions 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 respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[6] [Emphasis supplied]

In this case, the CA and the RTC reached different conclusions on the question of whether or not there was a perfected contract of sale. The RTC ruled that a contract of sale was perfected although the same was not consummated because David failed

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[6] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 06, 2011, 650 SCRA 656, 660.

to show proof of delivery.[7] The CA was of the opposite view. The CA wrote:

> Be that as it may, it must be emphasized that the appellant failed to offer any textual support to his insistence that Exhibit "A" is a contract of sale instead of a mere price quotation conformed to by MOELCI representatives. To that extent, the trial court erred in laying down the premise that "indeed a contract of sale is perfected between the parties despite the irregularities attending the transaction." x x x
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> That representatives of MOELCI conformed to the terms embodied in the agreement does not preclude the finding that such contract is, at best, a mere contract to sell with stipulated costs quoted should it ultimately ripen into one of sale. The conditions upon which that development may occur may even be obvious from statements in the agreement itself, that go beyond just "captions." Thus, the appellant opens with, "WE are pleased to submit our quotation xxx." The purported contract also ends with. "Thank you for giving us the opportunity to quote on your requirements and we hope to receive your order soon" apparently referring to a purchase order which MOELCI contends to be a formal requirement for the entire transaction.[8]

In other words, the CA was of the position that Exhibit A was at best a contract to sell.

A perusal of the records persuades the Court to hold otherwise.

The elements of a contract of sale are, to wit: a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; b) Determinate subject matter; and c) Price certain in money or its equivalent.[9] It is the absence of the first element which distinguishes a contract of sale from that of a contract to sell.

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[7] *Rollo,* p. 74.

[8] *Id.* at 98-99.

[9] *Reyes v. Turapan*, G.R. No. 188064, June 01, 2011, 650 SCRA 283, 297, citing *Nabus v. Joaquin & Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 348-353.

In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, such as, in most cases, the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and, thus, ownership is retained by the prospective seller without further remedies by the prospective buyer.[10]

In a contract of sale, on the other hand, the title to the property passes to the vendee upon the delivery of the thing sold. Unlike in a contract to sell, the first element of consent is present, although it is conditioned upon the happening of a contingent event which may or may not occur. If the suspensive condition is not fulfilled, the perfection of the contract of sale is completely abated. However, if the suspensive condition is fulfilled, the contract of sale is thereby perfected, such that if there had already been previous delivery of the property subject of the sale to the buyer, ownership thereto automatically transfers to the buyer by operation of law without any further act having to be performed by the seller. The vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded.[11]

An examination of the alleged contract to sell, "Exhibit A", despite its unconventional form, would show that said document, with all the stipulations therein and with the attendant circumstances surrounding it, was actually a Contract of Sale. The rule is that it is not the title of the contract, but its express terms or stipulations that determine the kind of contract

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[10] *Id.*

[11] *Id.*

entered into by the parties.[12] ***First,*** **there was meeting of minds as to the transfer of ownership of the subject matter**. The letter (Exhibit A), though appearing to be a mere price quotation/proposal, was not what it seemed. It contained terms and conditions, so that, by the fact that Jimenez, Chairman of the Committee on Management, and Engr. Rada, General Manager of MOELCI, had signed their names under the word "CONFORME," they, in effect, agreed with the terms and conditions with respect to the purchase of the subject 10 MVA Power Transformer. As correctly argued by David, if their purpose was merely to acknowledge the receipt of the proposal, they would not have signed their name under the word "CONFORME."

Besides, the uncontroverted attending circumstances bolster the fact that there was consent or meeting of minds in the transfer of ownership. To begin with, a board resolution was issued authorizing the purchase of the subject power transformer. Next, armed with the said resolution, top officials of MOELCI visited David's office in Quezon City three times to discuss the terms of the purchase. Then, when the loan that MOELCI was relying upon to finance the purchase was not forthcoming, MOELCI, through Engr. Rada, convinced David to do away with the 50% downpayment and deliver the unit so that it could already address its acute power shortage predicament, to which David acceded when it made the delivery, through the carrier William Lines, as evidenced by a bill of lading.

Second, **the document specified a determinate subject matter** which was one (1) Unit of 10 MVA Power Transformer with corresponding KV Line Accessories. **And *third,* the document stated categorically the price certain in money** which was ₱5,200,000.00 for one (1) unit of 10 MVA Power Transformer and ₱2,169,500.00 for the KV Line Accessories.

In sum, since there was a meeting of the minds, there was consent on the part of David to transfer ownership of the power transformer to MOELCI in exchange for the price, thereby

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[12] *Id.*

complying with the first element. Thus, the said document cannot just be considered a contract to sell but rather a perfected contract of sale.

II.

Now, the next question is, was there a delivery?

MOELCI, in denying that the power transformer was delivered to it, argued that the Bill of Lading which David was relying upon was not conclusive. It argued that although the bill of lading was stamped "Released," there was nothing in it that indicated that said power transformer was indeed released to it or delivered to its possession. For this reason, it is its position that it is not liable to pay the purchase price of the 10 MVA power transformer.

This Court is unable to agree with the CA that there was no delivery of the items. On the contrary, there was delivery and release.

To begin with, among the terms and conditions of the proposal to which MOELCI agreed stated:

2. Delivery – Ninety (90) working days upon receipt of your purchase order and downpayment.

C&F Manila, freight, handling, insurance, custom duties and incidental expenses shall be for the account of MOELCI II.[13] (Emphasis supplied)

On this score, it is clear that MOELCI agreed that the power transformer would be delivered and that the freight, handling, insurance, custom duties, and incidental expenses shall be shouldered by it.

On the basis of this express agreement, Article 1523 of the Civil Code becomes applicable. It provides:

Where, in pursuance of a contract of sale, **the seller is authorized or required to send the goods to the buyer delivery of the goods**

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[13] Records, p. 4.

to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in Article 1503, first, second and third paragraphs, or unless a contrary intent appears. (Emphasis supplied)

Thus, the delivery made by David to William Lines, Inc., as evidenced by the Bill of Lading, was deemed to be a delivery to MOELCI. David was authorized to send the power transformer to the buyer pursuant to their agreement. When David sent the item through the carrier, it amounted to a delivery to MOELCI.

Furthermore, in the case of *Behn, Meyer & Co. (Ltd.) v. Yangco,*[14] it was pointed out that a specification in a contract relative to the payment of freight can be taken to indicate the intention of the parties with regard to the place of delivery. So that, if the buyer is to pay the freight, as in this case, it is reasonable to suppose that the subject of the sale is transferred to the buyer at the point of shipment. In other words, the title to the goods transfers to the buyer upon shipment or delivery to the carrier.

Of course, Article 1523 provides a mere presumption and in order to overcome said presumption, MOELCI should have presented evidence to the contrary. The burden of proof was shifted to MOELCI, who had to show that the rule under Article 1523 was not applicable. In this regard, however, MOELCI failed.

There being delivery and release, said fact constitutes partial performance which takes the case out of the protection of the Statute of Frauds. It is elementary that the partial execution of a contract of sale takes the transaction out of the provisions of the Statute of Frauds so long as the essential requisites of consent of the contracting parties, object and cause of the obligation concur and are clearly established to be present.[15]

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[14] 38 Phil. 602, 605 (1918).

[15] *Dao Heng Bank, Inc. v. Spouses Laigo*, G.R. No. 173856, November 20, 2008, 571 SCRA 434, 443.

That being said, the Court now comes to David's prayer that MOELCI be made to pay the total sum of ₱5,472,722.27 plus the stipulated interest at 24% per annum from the filing of the complaint. Although the Court agrees that MOELCI should pay interest, the stipulated rate is, however, unconscionable and should be equitably reduced. While there is no question that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be reduced to a reasonable and fair level. There is nothing in the said circular which grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[16] Accordingly, the excessive interest of 24% per annum stipulated in the sales invoice should be reduced to 12% per annum.

Indeed, David was compelled to file an action against MOELCI but this reason alone will not warrant an award of attorney's fees. It is settled that the award of attorney's fees is the exception rather than the rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code[17] which demands factual, legal, and equitable

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[16] *Castro v. Tan*, G.R. No. 168940, November 24, 2009, 605 SCRA 231, 237-238.

[17] *Id.* at 455.

justification. Its basis cannot be left to speculation or conjecture. In this regard, none was proven.

Moreover, in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[18] MOELCI's case cannot be similarly classified.

Also, David's claim for the balance of ₱73,059.76 plus the stipulated interest is denied for being unsubstantiated.

WHEREFORE, the petition is **GRANTED**. The July 8, 2010 Decision of the Court of Appeals is **REVERSED** and **SET ASIDE**. Respondent Misamis Occidental II Electric Cooperative, Inc. is ordered to pay petitioner Virgilio S. David the total sum of ₱5,472,722.27 with interest at the rate of 12% per annum reckoned from the filing of the complaint until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes,[*] and *Perlas-Bernabe, JJ.,* concur.

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[18] *Benedicto v. Villaflores*, G.R. No. 185020, October 6, 2010, 632 SCRA 446, 456.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1244 dated June 26, 2012.

SECOND DIVISION

[G.R. No. 198588. July 11, 2012]

UNITED MERCHANTS CORPORATION, *petitioner, vs.* **COUNTRY BANKERS INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED.— A petition for review under Rule 45 of the Rules of Court specifically provides that only questions of law may be raised. The findings of fact of the CA are final and conclusive and this Court will not review them on appeal, subject to exceptions as when the findings of the appellate court conflict with the findings of the trial court. Clearly, the present case falls under the exception. Since UMC properly raised the conflicting findings of the lower courts, it is proper for this Court to resolve such contradiction.

2. CRIMINAL LAW; ARSON; ELEMENTS.— In prosecutions for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire caused by a criminal act; and (2) the identity of the defendants as the one responsible for the crime. *Corpus delicti* means the substance of the crime, the fact that a crime has actually been committed. This is satisfied by proof of the bare occurrence of the fire and of its having been intentionally caused.

3. COMMERCIAL LAW; INSURANCE; AN INSURED WHO SEEKS TO DEFEAT A CLAIM BECAUSE OF A LIMITATION IN THE POLICY HAS THE BURDEN OF ESTABLISHING THAT THE LOSS COMES WITHIN THE PURVIEW OF THE LIMITATION; CASE AT BAR.— Burden of proof is the duty of *any* party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. Particularly, in insurance cases, once

an insured makes out a *prima facie* case in its favor, the burden of evidence shifts to the insurer to controvert the insured's *prima facie* case. In the present case, UMC established a *prima facie* case against CBIC. CBIC does not dispute that UMC's stocks in trade were insured against fire under the Insurance Policy and that the warehouse, where UMC's stocks in trade were stored, was gutted by fire on 3 July 1996, within the duration of the fire insurance. However, since CBIC alleged an excepted risk, then the burden of evidence shifted to CBIC to prove such exception. An insurer who seeks to defeat a claim because of an exception or limitation in the policy has the burden of establishing that the loss comes within the purview of the exception or limitation. If loss is proved apparently within a contract of insurance, the burden is upon the insurer to establish that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability. In the present case, CBIC failed to discharge its primordial burden of establishing that the damage or loss was caused by arson, a limitation in the policy.

4. ID.; ID.; FALSE AND MATERIAL STATEMENT WITH INTENT TO DECEIVE OR DEFRAUD VOIDS AN INSURANCE POLICY; EFFECT THEREOF; APPLICATION IN CASE AT BAR.— Contrary to UMC's allegation, CBIC's failure to prove arson does not mean that it also failed to prove fraud. x x x It has long been settled that a false and material statement made with an intent to deceive or defraud voids an insurance policy. In *Yu Cua v. South British Insurance Co.*, the claim was fourteen times bigger than the real loss; in *Go Lu v. Yorkshire Insurance Co,* eight times; and in *Tuason v. North China Insurance Co.*, six times. In the present case, the claim is *twenty-five times* the actual claim proved. The most liberal human judgment cannot attribute such difference to mere innocent error in estimating or counting but to a deliberate intent to demand from insurance companies payment for indemnity of goods not existing at the time of the fire. This constitutes the so-called "fraudulent claim" which, by express agreement between the insurers and the insured, is a ground for the exemption of insurers from civil liability. x x x Considering that all the circumstances point to the inevitable conclusion that UMC padded its claim and was guilty of fraud,

UMC violated Condition No. 15 of the Insurance Policy. Thus, UMC forfeited whatever benefits it may be entitled under the Insurance Policy, including its insurance claim.

5. ID.; ID.; CONTRACTS OF INSURANCE ARE TO BE CONSTRUED ACCORDING TO THE SENSE AND MEANING OF THE TERMS WHICH THE PARTIES THEMSELVES HAVE USED; CASE AT BAR.— While it is a cardinal principle of insurance law that a contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer company, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense. Courts are not permitted to make contracts for the parties; the function and duty of the courts is simply to enforce and carry out the contracts actually made.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Nelson H. Manalili for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse the Court of Appeals' Decision[2] dated 16 June 2011 and its Resolution[3] dated 8 September 2011 in CA-G.R. CV No. 85777. The Court of Appeals reversed the Decision[4] of the Regional Trial Court

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 37-62. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza, concurring.

[3] *Id.* at 65-66.

[4] *Id.* at 207-210. Penned by Judge Antonio I. De Castro.

(RTC) of Manila, Branch 3, and ruled that the claim on the Insurance Policy is void.

The Facts

The facts, as culled from the records, are as follows:

Petitioner United Merchants Corporation (UMC) is engaged in the business of buying, selling, and manufacturing Christmas lights. UMC leased a warehouse at 19-B Dagot Street, San Jose Subdivision, Barrio Manresa, Quezon City, where UMC assembled and stored its products.

On 6 September 1995, UMC's General Manager Alfredo Tan insured UMC's stocks in trade of Christmas lights against fire with defendant Country Bankers Insurance Corporation (CBIC) for ₱15,000,000.00. The Fire Insurance Policy No. F-HO/95-576 (Insurance Policy) and Fire Invoice No. 12959A, valid until 6 September 1996, states:

AMOUNT OF INSURANCE:	FIFTEEN MILLION PESOS PHILIPPINE CURRENCY

x x x x x x x x x

PROPERTY INSURED: On stocks in trade only, consisting of Christmas Lights, the properties of the Assured or held by them in trust, on commissions, or on joint account with others and/or for which they are responsible in the event of loss and/or damage during the currency of this policy, whilst contained in the building of one lofty storey in height, constructed of concrete and/or hollow blocks with portion of galvanized iron sheets, under galvanized iron rood, occupied as Christmas lights storage.[5]

On 7 May 1996, UMC and CBIC executed Endorsement F/96-154 and Fire Invoice No. 16583A to form part of the Insurance Policy. Endorsement F/96-154 provides that UMC's stocks in trade were insured against additional perils, to wit: "typhoon, flood, ext. cover, and full earthquake." The sum insured was

[5] *Id.* at 14.

also increased to ₱50,000,000.00 effective 7 May 1996 to 10 January 1997. On 9 May 1996, CBIC issued Endorsement F/ 96-157 where the name of the assured was changed from Alfredo Tan to UMC.

On 3 July 1996, a fire gutted the warehouse rented by UMC. CBIC designated CRM Adjustment Corporation (CRM) to investigate and evaluate UMC's loss by reason of the fire. CBIC's reinsurer, Central Surety, likewise requested the National Bureau of Investigation (NBI) to conduct a parallel investigation. On 6 July 1996, UMC, through CRM, submitted to CBIC its Sworn Statement of Formal Claim, with proofs of its loss.

On 20 November 1996, UMC demanded for at least fifty percent (50%) payment of its claim from CBIC. On 25 February 1997, UMC received CBIC's letter, dated 10 January 1997, rejecting UMC's claim due to breach of Condition No. 15 of the Insurance Policy. Condition No. 15 states:

> If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting in his behalf to obtain any benefit under this Policy; or if the loss or damage be occasioned by the willful act, or with the connivance of the Insured, all the benefits under this Policy shall be forfeited.[6]

On 19 February 1998, UMC filed a Complaint[7] against CBIC with the RTC of Manila. UMC anchored its insurance claim on the Insurance Policy, the Sworn Statement of Formal Claim earlier submitted, and the Certification dated 24 July 1996 made by Deputy Fire Chief/Senior Superintendent Bonifacio J. Garcia of the Bureau of Fire Protection. The Certification dated 24 July 1996 provides that:

> This is to certify that according to available records of this office, on or about 6:10 P.M. of July 3, 1996, a fire broke out at United Merchants Corporation located at 19-B Dag[o]t Street, Brgy. Manresa, Quezon City incurring an estimated damage of Fifty-Five Million

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[6] *Id.* at 83.

[7] *Id.* at 74-80.

Pesos (₱55,000,000.00) to the building and contents, while the reported insurance coverage amounted to Fifty Million Pesos (₱50,000,000.00) with Country Bankers Insurance Corporation.

The Bureau further certifies that no evidence was gathered to prove that the establishment was willfully, feloniously and intentionally set on fire.

That the investigation of the fire incident is already closed being ACCIDENTAL in nature.[8]

In its Answer with Compulsory Counterclaim[9] dated 4 March 1998, CBIC admitted the issuance of the Insurance Policy to UMC but raised the following defenses: (1) that the Complaint states no cause of action; (2) that UMC's claim has already prescribed; and (3) that UMC's fire claim is tainted with fraud. CBIC alleged that UMC's claim was fraudulent because UMC's Statement of Inventory showed that it had no stocks in trade as of 31 December 1995, and that UMC's suspicious purchases for the year 1996 did not even amount to ₱25,000,000.00. UMC's GIS and Financial Reports further revealed that it had insufficient capital, which meant UMC could not afford the alleged ₱50,000,000.00 worth of stocks in trade.

In its Reply[10] dated 20 March 1998, UMC denied violation of Condition No. 15 of the Insurance Policy. UMC claimed that it did not make any false declaration because the invoices were genuine and the Statement of Inventory was for internal revenue purposes only, not for its insurance claim.

During trial, UMC presented five witnesses. The first witness was Josie Ebora (Ebora), UMC's disbursing officer. Ebora testified that UMC's stocks in trade, at the time of the fire, consisted of: (1) raw materials for its Christmas lights; (2) Christmas lights already assembled; and (3) Christmas lights purchased from local suppliers. These stocks in trade were delivered from August 1995 to May 1996. She stated that

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[8] *Id.* at 92.

[9] *Id.* at 123-128.

[10] *Id.* at 130-132.

Straight Cargo Commercial Forwarders delivered the imported materials to the warehouse, evidenced by delivery receipts. However, for the year 1996, UMC had no importations and only bought from its local suppliers. Ebora identified the suppliers as Fiber Technology Corporation from which UMC bought stocks worth ₱1,800,000.00 on 20 May 1996; Fuze Industries Manufacturer Philippines from which UMC bought stocks worth ₱19,500,000.00 from 20 January 1996 to 23 February 1996; and Tomco Commercial Press from which UMC bought several Christmas boxes. Ebora testified that all these deliveries were not yet paid. Ebora also presented UMC's Balance Sheet, Income Statement and Statement of Cash Flow. Per her testimony, UMC's purchases amounted to ₱608,986.00 in 1994; ₱827,670.00 in 1995; and ₱20,000,000.00 in 1996. Ebora also claimed that UMC had sales only from its fruits business but no sales from its Christmas lights for the year 1995.

The next witness, Annie Pabustan (Pabustan), testified that her company provided about 25 workers to assemble and pack Christmas lights for UMC from 28 March 1996 to 3 July 1996. The third witness, Metropolitan Bank and Trust Company (MBTC) Officer Cesar Martinez, stated that UMC opened letters of credit with MBTC for the year 1995 only. The fourth witness presented was Ernesto Luna (Luna), the delivery checker of Straight Commercial Cargo Forwarders. Luna affirmed the delivery of UMC's goods to its warehouse on 13 August 1995, 6 September 1995, 8 September 1995, 24 October 1995, 27 October 1995, 9 November 1995, and 19 December 1995. Lastly, CRM's adjuster Dominador Victorio testified that he inspected UMC's warehouse and prepared preliminary reports in this connection.

On the other hand, CBIC presented the claims manager Edgar Caguindagan (Caguindagan), a Securities and Exchange Commission (SEC) representative, Atty. Ernesto Cabrera (Cabrera), and NBI Investigator Arnold Lazaro (Lazaro). Caguindagan testified that he inspected the burned warehouse on 5 July 1996, took pictures of it and referred the claim to an independent adjuster. The SEC representative's testimony was

dispensed with, since the parties stipulated on the existence of certain documents, to wit: (1) UMC's GIS for 1994-1997; (2) UMC's Financial Report as of 31 December 1996; (3) SEC Certificate that UMC did not file GIS or Financial Reports for certain years; and (4) UMC's Statement of Inventory as of 31 December 1995 filed with the BIR.

Cabrera and Lazaro testified that they were hired by Central Surety to investigate UMC's claim. On 19 November 1996, they concluded that arson was committed based from their interview with *barangay* officials and the pictures showing that blackened surfaces were present at different parts of the warehouse. On cross-examination, Lazaro admitted that they did not conduct a forensic investigation of the warehouse, nor did they file a case for arson.

For rebuttal, UMC presented Rosalinda Batallones (Batallones), keeper of the documents of UCPB General Insurance, the insurer of Perfect Investment Company, Inc., the warehouse owner. When asked to bring documents related to the insurance of Perfect Investment Company, Inc., Batallones brought the papers of Perpetual Investment, Inc.

The Ruling of the Regional Trial Court

On 16 June 2005, the RTC of Manila, Branch 3, rendered a Decision in favor of UMC, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and ordering defendant to pay plaintiff:
>
> a) the sum of ₱43,930,230.00 as indemnity with interest thereon at 6% *per annum* from November 2003 until fully paid;
> b) the sum of ₱100,000.00 for exemplary damages;
> c) the sum of ₱100,000.00 for attorney's fees; and
> d) the costs of suit.
>
> Defendant's counterclaim is denied for lack of merit.
>
> SO ORDERED.[11]

[11] *Id.* at 210.

The RTC found no dispute as to UMC's fire insurance contract with CBIC. Thus, the RTC ruled for UMC's entitlement to the insurance proceeds, as follows:

> Fraud is never presumed but must be proved by clear and convincing evidence. (see *Alonso v. Cebu Country Club*, 417 SCRA 115 [2003]) Defendant failed to establish by clear and convincing evidence that the documents submitted to the SEC and BIR were true. It is common business practice for corporations to have 2 sets of reports/statements for tax purposes. The stipulated documents of plaintiff (Exhs. 2 – 8) may not have been accurate.
>
> The conflicting findings of defendant's adjuster, CRM Adjustment [with stress] and that made by Atty. Cabrera & Mr. Lazaro for Central Surety shall be resolved in favor of the former. Definitely the former's finding is more credible as it was made soon after the fire while that of the latter was done 4 months later. Certainly it would be a different situation as the site was no longer the same after the clearing up operation which is normal after a fire incident. The Christmas lights and parts could have been swept away. Hence the finding of the latter appears to be speculative to benefit the reinsurer and which defendant wants to adopt to avoid liability.
>
> The CRM Adjustment report found no arson and confirmed substantial stocks in the burned warehouse (Exhs. QQQ) [underscoring supplied]. This is bolstered by the BFP certification that there was no proof of arson and the fire was accidental (Exhs. PPP). The certification by a government agency like BFP is presumed to be a regular performance of official duty. "Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld." (*People vs. Lapira*, 255 SCRA 85) The report of UCPB General Insurance's adjuster also found no arson so that the burned warehouse owner PIC was indemnified.[12]

Hence, CBIC filed an appeal with the Court of Appeals (CA).

The Ruling of the Court of Appeals

On 16 June 2011, the CA promulgated its Decision in favor of CBIC. The dispositive portion of the Decision reads:

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[12] *Id.* at 209.

WHEREFORE, in view of the foregoing premises, the instant appeal is GRANTED and the Decision of the Regional Trial Court, of the National Judicial Capital Region, Branch 3 of the City of Manila dated June 16, 2005 in Civil Case No. 98-87370 is REVERSED and SET ASIDE. The plaintiff-appellee's claim upon its insurance policy is deemed avoided.

SO ORDERED.[13]

The CA ruled that UMC's claim under the Insurance Policy is void. The CA found that the fire was intentional in origin, considering the array of evidence submitted by CBIC, particularly the pictures taken and the reports of Cabrera and Lazaro, as opposed to UMC's failure to explain the details of the alleged fire accident. In addition, it found that UMC's claim was overvalued through fraudulent transactions. The CA ruled:

We have meticulously gone over the entirety of the evidence submitted by the parties and have come up with a conclusion that the claim of the plaintiff-appellee was indeed overvalued by transactions which were fraudulently concocted so that the full coverage of the insurance policy will have to be fully awarded to the plaintiff-appellee.

First, We turn to the backdrop of the plaintiff-appellee's case, thus, [o]n September 6, 1995 its stocks-in-trade were insured for Fifteen Million Pesos and on May 7, 1996 the same was increased to 50 Million Pesos. Two months thereafter, a fire gutted the plaintiff-appellee's warehouse.

Second, We consider the reported purchases of the plaintiff-appellee as shown in its financial report dated December 31, 1996 *vis-à-vis* the testimony of Ms. Ebora thus:

1994- ₱608,986.00
1995- ₱827,670.00
1996- ₱20,000,000.00 (more or less) which were purchased for a period of one month.

Third, We shall also direct our attention to the alleged true and complete purchases of the plaintiff-appellee as well as the value of all stock-in-trade it had at the time that the fire occurred. Thus:

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[13] *Id.* at 61-62.

Exhibit	Source	Amount (pesos)	Dates Covered
Exhs. "P"-"DD", inclusive	Fuze Industries Manufacturer Phils.	19,550,400.00	January 20, 1996 January 31, 1996 February 12, 1996 February 20, 1996 February 23, 1996
Exhs. "EE"-"HH", inclusive	Tomco Commercial Press	1,712,000.00	December 19, 1995 January 24, 1996 February 21, 1996 November 24, 1995
Exhs. "II"-"QQ", inclusive	Precious Belen Trading	2,720,400.00	January 13, 1996 January 19, 1996 January 26, 1996 February 3, 1996 February 13, 1996 February 20, 1996 February 27, 1996
Exhs. "RR"-"EEE", inclusive	Wisdom Manpower Services	361,966.00	April 3, 1996 April 12, 1996 April 19, 1996 April 26, 1996 May 3, 1996 May 10, 1996 May 17, 1996 May 24, 1996 June 7, 1996 June 14, 1996 June 21, 1996 June 28, 1996 July 5, 1996
Exhs. "GGG" -"NNN", inclusive	Costs of Letters of Credit for imported raw materials	15,159,144.71	May 29, 1995 June 15, 1995 July 5, 1995 September 4, 1995 October 2, 1995

			October 27, 1995 January 8, 1996 March 19, 1996
Exhs. "GGG-11" - "GGG-24", "HHH-12", "HHH-22", "III-11", "III-14", "JJJ-13", "KKK-11", "LLL-5"	SCCFI statements of account	384,794.38	June 15, 1995 June 28, 1995 August 1, 1995 September 4, 1995 September 8, 1995 September 11, 1995 October 30, 199[5] November 10, 1995 December 21, 1995
	TOTAL	44,315,024.31	

Fourth, We turn to the allegation of fraud by the defendant-appellant by thoroughly looking through the pieces of evidence that it adduced during the trial. The latter alleged that fraud is present in the case at bar as shown by the discrepancy of the alleged purchases from that of the reported purchases made by plaintiff-appellee. It had also averred that fraud is present when upon verification of the address of Fuze Industries, its office is nowhere to be found. Also, the defendant-appellant expressed grave doubts as to the purchases of the plaintiff-appellee sometime in 1996 when such purchases escalated to a high 19.5 Million Pesos without any contract to back it up.[14]

On 7 July 2011, UMC filed a Motion for Reconsideration,[15] which the CA denied in its Resolution dated 8 September 2011. Hence, this petition.

The Issues

UMC seeks a reversal and raises the following issues for resolution:

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

[15] *Id.* at 344-355.

I.

WHETHER THE COURT OF APPEALS MADE A RULING INCO[N]SISTENT WITH LAW, APPLICABLE JURISPRUDENCE AND EVIDENCE AS TO THE EXISTENCE OF ARSON AND FRAUD IN THE ABSENCE OF "MATERIALLY CONVINCING EVIDENCE."

II.

WHETHER THE COURT OF APPEALS MADE A RULING INCONSISTENT WITH LAW, APPLICABLE JURISPRUDENCE AND EVIDENCE WHEN IT FOUND THAT PETITIONER BREACHED ITS WARRANTY.[16]

The Ruling of the Court

At the outset, CBIC assails this petition as defective since what UMC ultimately wants this Court to review are questions of fact. However, UMC argues that where the findings of the CA are in conflict with those of the trial court, a review of the facts may be made. On this procedural issue, we find UMC's claim meritorious.

A petition for review under Rule 45 of the Rules of Court specifically provides that only questions of law may be raised. The findings of fact of the CA are final and conclusive and this Court will not review them on appeal,[17] subject to exceptions as when the findings of the appellate court conflict with the findings of the trial court.[18] Clearly, the present case falls under the exception. Since UMC properly raised the conflicting findings of the lower courts, it is proper for this Court to resolve such contradiction.

Having settled the procedural issue, we proceed to the primordial issue which boils down to *whether UMC is entitled to claim from CBIC the full coverage of its fire insurance policy*.

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[16] *Id.* at 16-17.

[17] *Microsoft Corp. v. Maxicorp. Inc.*, 481 Phil. 550 (2004) *citing Amigo v. Teves,* 96 Phil. 252 (1954).

[18] *Id. citing Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al.,* 125 Phil. 701 (1967).

UMC contends that because it had already established a *prima facie* case against CBIC which failed to prove its defense, UMC is entitled to claim the full coverage under the Insurance Policy. On the other hand, CBIC contends that because arson and fraud attended the claim, UMC is not entitled to recover under Condition No. 15 of the Insurance Policy.

Burden of proof is the duty of *any* party to present evidence to establish his claim or defense by the amount of evidence required by law,[19] which is preponderance of evidence in civil cases.[20] The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment.[21] Particularly, in insurance cases, once an insured makes out a *prima facie* case in its favor, the burden of evidence shifts to the insurer to controvert the insured's *prima facie* case.[22] In the present case, UMC established a *prima facie* case against CBIC. CBIC does not dispute that UMC's stocks in trade were insured against fire under the Insurance Policy and that the warehouse, where UMC's stocks in trade were stored, was gutted by fire on 3 July 1996, within the duration of the fire insurance. However, since CBIC alleged an excepted risk, then the burden of evidence shifted to CBIC to prove such exception.

An insurer who seeks to defeat a claim because of an exception or limitation in the policy has the burden of establishing that the loss comes within the purview of the exception or limitation.[23] If loss is proved apparently within a contract of insurance, the burden is upon the insurer to establish that the loss arose from a cause of loss which is excepted or for which it is not liable,

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[19] Rules of Court, Rule 131, Sec.1.

[20] Rules of Court, Rule 133, Sec.1.

[21] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, 516 Phil. 110 (2006).

[22] *Id. citing Jison v. Court of Appeals,* 350 Phil. 138 (1998).

[23] *Id.*

or from a cause which limits its liability.[24] In the present case, CBIC failed to discharge its primordial burden of establishing that the damage or loss was caused by arson, a limitation in the policy.

In prosecutions for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire caused by a criminal act; and (2) the identity of the defendants as the one responsible for the crime.[25] *Corpus delicti* means the substance of the crime, the fact that a crime has actually been committed.[26] This is satisfied by proof of the bare occurrence of the fire and of its having been intentionally caused.[27]

In the present case, CBIC's evidence did not prove that the fire was intentionally caused by the insured. *First,* the findings of CBIC's witnesses, Cabrera and Lazaro, were based on an investigation conducted more than four months after the fire. The testimonies of Cabrera and Lazaro, as to the boxes doused with kerosene as told to them by *barangay* officials, are hearsay because the *barangay* officials were not presented in court. Cabrera and Lazaro even admitted that they did not conduct a forensic investigation of the warehouse nor did they file a case for arson.[28] *Second,* the Sworn Statement of Formal Claim submitted by UMC, through CRM, states that the cause of the fire was *"faulty electrical wiring/accidental in nature."* CBIC is bound by this evidence because in its Answer, it admitted that it designated CRM to evaluate UMC's loss. *Third,* the Certification by the Bureau of Fire Protection states that the fire was accidental in origin. This Certification enjoys the presumption of regularity, which CBIC failed to rebut.

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[24] *Id.*; *Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511 (2002).

[25] *Gonzales, Jr. v. People*, G.R. No. 159950, 12 February 2007, 515 SCRA 480.

[26] *People v. De Leon*, G.R. No. 180762, 4 March 2009, 580 SCRA 617.

[27] *People v. Oliva*, 395 Phil. 265 (2000).

[28] *Rollo*, p. 171.

Contrary to UMC's allegation, CBIC's failure to prove arson does not mean that it also failed to prove fraud. *Qua Chee Gan v. Law Union*[29] does not apply in the present case. In *Qua Chee Gan*,[30] the Court dismissed the allegation of fraud based on the dismissal of the arson case against the insured, because the evidence was identical in both cases, thus:

> While the acquittal of the insured in the arson case is not *res judicata* on the present civil action, the insurer's evidence, to judge from the decision in the criminal case, is practically identical in both cases and must lead to the same result, since the proof to establish the defense of connivance at the fire in order to defraud the insurer "cannot be materially less convincing than that required in order to convict the insured of the crime of arson" (*Bachrach vs. British American Assurance Co.*, 17 Phil. 536).[31]

In the present case, arson and fraud are two separate grounds based on two different sets of evidence, either of which can void the insurance claim of UMC. The absence of one does not necessarily result in the absence of the other. Thus, on the allegation of fraud, we affirm the findings of the Court of Appeals.

Condition No. 15 of the Insurance Policy provides that all the benefits under the policy shall be forfeited, if the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, to wit:

> 15. If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting in his behalf to obtain any benefit under this Policy; or if the loss or damage be occasioned by the willful act, or with the connivance of the Insured, all the benefits under this Policy shall be forfeited.

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[29] 98 Phil. 85 (1955).

[30] *Id.*

[31] *Id.* at 98-99.

In *Uy Hu & Co. v. The Prudential Assurance Co., Ltd.*,[32] the Court held that where a fire insurance policy provides that "if the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy," and the evidence is conclusive that the proof of claim which the insured submitted was false and fraudulent both as to the kind, quality and amount of the goods and their value destroyed by the fire, such a proof of claim is a bar against the insured from recovering on the policy even for the amount of his actual loss.

In the present case, as proof of its loss of stocks in trade amounting to ₱50,000,000.00, UMC submitted its Sworn Statement of Formal Claim together with the following documents: (1) letters of credit and invoices for raw materials, Christmas lights and cartons purchased; (2) charges for assembling the Christmas lights; and (3) delivery receipts of the raw materials. However, the charges for assembling the Christmas lights and delivery receipts could not support its insurance claim. The Insurance Policy provides that CBIC agreed to insure UMC's stocks in trade. UMC defined stock in trade as *tangible personal property kept for sale or traffic*.[33] Applying UMC's definition, only the letters of credit and invoices for raw materials, Christmas lights and cartons may be considered.

The invoices, however, cannot be taken as genuine. The invoices reveal that the stocks in trade purchased for 1996 amounts to ₱20,000,000.00 which were purchased in one month. Thus, UMC needs to prove purchases amounting to ₱30,000,000.00 worth of stocks in trade for 1995 and prior years. However, in the Statement of Inventory it submitted to the BIR, which is considered an entry in official records,[34] UMC

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[32] 51 Phil. 231 (1927).

[33] *Rollo,* p. 60.

[34] Governed by Rule 130 of the Rules of Court. Section 44, Rule 130 of the Rules of Court states:

stated that it had no stocks in trade as of 31 December 1995. In its defense, UMC alleged that it did not include as stocks in trade the raw materials to be assembled as Christmas lights, which it had on 31 December 1995. However, as proof of its loss, UMC submitted invoices for raw materials, knowing that the insurance covers only stocks in trade.

Equally important, the invoices (Exhibits "P"-"DD") from Fuze Industries Manufacturer Phils. were suspicious. The purchases, based on the invoices and without any supporting contract, amounted to ₱19,550,400.00 worth of Christmas lights from 20 January 1996 to 23 February 1996. The uncontroverted testimony of Cabrera revealed that there was no Fuze Industries Manufacturer Phils. located at "55 Mahinhin St., Teacher's Village, Quezon City," the business address appearing in the invoices and the records of the Department of Trade & Industry. Cabrera testified that:

A: Then we went personally to the address as I stated a while ago appearing in the record furnished by the United Merchants Corporation to the adjuster, and the adjuster in turn now, gave us our basis in conducting investigation, so we went to this place which according to the records, the address of this company but there was no office of this company.

Q: You mentioned Atty. Cabrera that you went to Diliman, Quezon City and discover the address indicated by the United Merchants as the place of business of Fuze Industries Manufacturer, Phils. was a residential place, what then did you do after determining that it was a residential place?

A: We went to the owner of the alleged company as appearing in the Department of Trade & Industry record, and as appearing a certain Chinese name Mr. Huang, and the address as appearing there is somewhere in Binondo. We went personally there together with the NBI Agent and I am with them when the subpoena was served to them, but a male

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Sec. 44. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

person approached us and according to him, there was no Fuze Industries Manufacturer, Phils., company in that building sir.[35]

In *Yu Ban Chuan v. Fieldmen's Insurance, Co., Inc.*,[36] the Court ruled that the submission of false invoices to the adjusters establishes a clear case of fraud and misrepresentation which voids the insurer's liability as per condition of the policy. Their falsity is the best evidence of the fraudulent character of plaintiff's claim.[37] In *Verendia v. Court of Appeals*,[38] where the insured presented a fraudulent lease contract to support his claim for insurance benefits, the Court held that by its false declaration, the insured forfeited all benefits under the policy provision similar to Condition No. 15 of the Insurance Policy in this case.

Furthermore, UMC's Income Statement indicated that the purchases or costs of sales are ₱827,670.00 for 1995 and ₱1,109,190.00 for 1996 or a total of ₱1,936,860.00.[39] To corroborate this fact, Ebora testified that:

Q: Based on your 1995 purchases, how much were the purchases made in 1995?
A: ***The purchases made by United Merchants Corporation for the last year 1995 is ₱827,670.[00] sir***

Q: And how about in 1994?
A: In 1994, it's ₱608,986.00 sir.

Q: These purchases were made for the entire year of 1995 and 1994 respectively, am I correct?
A: Yes sir, for the year 1994 and 1995.[40] (Emphasis supplied)

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[35] *Rollo,* p. 189.

[36] 121 Phil. 1275 (1965).

[37] *Id.*

[38] G.R. No. 75605, 22 January 1993, 217 SCRA 417.

[39] *Rollo,* p. 186.

[40] *Id.*

In its 1996 Financial Report, which UMC admitted as existing, authentic and duly executed during the 4 December 2002 hearing, it had ₱1,050,862.71 as total assets and ₱167,058.47 as total liabilities.[41]

Thus, either amount in UMC's Income Statement or Financial Reports is *twenty-five times* the claim UMC seeks to enforce. The RTC itself recognized that UMC padded its claim when it only allowed ₱43,930,230.00 as insurance claim. UMC supported its claim of ₱50,000,000.00 with the Certification from the Bureau of Fire Protection stating that "x x x a fire broke out at United Merchants Corporation located at 19-B Dag[o]t Street, Brgy. Manresa, Quezon City incurring an estimated damage of Fifty-Five Million Pesos (₱55,000,000.00) *to the building and contents* x x x." However, this Certification only proved that the estimated damage of ₱55,000,000.00 is shared by both the building and the stocks in trade.

It has long been settled that a false and material statement made with an intent to deceive or defraud voids an insurance policy.[42] In *Yu Cua v. South British Insurance Co.*,[43] the claim was fourteen times bigger than the real loss; in *Go Lu v. Yorkshire Insurance Co.*,[44] eight times; and in *Tuason v. North China Insurance Co.*,[45] six times. In the present case, the claim is *twenty-five times* the actual claim proved.

The most liberal human judgment cannot attribute such difference to mere innocent error in estimating or counting but to a deliberate intent to demand from insurance companies payment for indemnity of goods not existing at the time of the

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[41] *Id.* at 191.

[42] *Tan It v. Sun Insurance Office*, 51 Phil. 212 (1927), *citing Yu Cua v. South British Insurance Co.*, 41 Phil. 134 (1920); *Go Lu v. Yorkshire Insurance Co.*, 43 Phil. 633 (1922); *Tuason v. North China Insurance Co.*, 47 Phil. 14 (1924).

[43] 41 Phil. 134 (1920).

[44] 43 Phil. 633 (1922).

[45] 47 Phil. 14 (1924).

fire.[46] This constitutes the so-called "fraudulent claim" which, by express agreement between the insurers and the insured, is a ground for the exemption of insurers from civil liability.[47]

In its Reply, UMC admitted the discrepancies when it stated that "discrepancies in its statements were not covered by the warranty such that any discrepancy in the declaration in other instruments or documents as to matters that may have some relation to the insurance coverage voids the policy."[48]

On UMC's allegation that it did not breach any warranty, it may be argued that the discrepancies do not, by themselves, amount to a breach of warranty. However, the Insurance Code provides that "a policy may declare that a violation of specified provisions thereof shall avoid it."[49] Thus, in fire insurance policies, which contain provisions such as Condition No. 15 of the Insurance Policy, a fraudulent discrepancy between the actual loss and that claimed in the proof of loss voids the insurance policy. Mere filing of such a claim will exonerate the insurer.[50]

Considering that all the circumstances point to the inevitable conclusion that UMC padded its claim and was guilty of fraud, UMC violated Condition No. 15 of the Insurance Policy. Thus, UMC forfeited whatever benefits it may be entitled under the Insurance Policy, including its insurance claim.

While it is a cardinal principle of insurance law that a contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer company,[51] contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have

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[46] *Sharruf & Co. v. Baloise Fire Insurance, Co.*, 64 Phil. 258 (1937).

[47] *Id.*

[48] *Rollo*, p. 385.

[49] The Insurance Code, Sec. 75.

[50] *Yu Cua v. South British Insurance Co., supra* note 43.

[51] *Pacific Banking Corporation v. Court of Appeals*, 250 Phil. 1 (1988).

used.[52] If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense. Courts are not permitted to make contracts for the parties; the function and duty of the courts is simply to enforce and carry out the contracts actually made.[53]

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 16 June 2011 Decision and the 8 September 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 85777.

SO ORDERED.

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

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[52] *Id.*

[53] *Id.*

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— The rule is settled that, as a special civil action, certiorari is available only if the following essential requisites concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and, (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. (Team Pacific Corp. *vs*. Daza, G.R. No. 167732, July 11, 2012) p. 427

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Illegal sale of dangerous drugs — The requisites for illegal sale of shabu are: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; (b) the delivery of the thing sold and the payment for the thing; and (c) the presentation in court of the *corpus delicti* as evidence. (People of the Phils. *vs*. Nicart, G.R. No. 182059, July 04, 2012) p. 263

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