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OF THE

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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. MTJ-11-1779. July 16, 2012]
(Formerly A.M. OCA IPI No. 09-2191-MTJ)

MURPHY CHU/ATGAS TRADERS and MARINELLE P. CHU, *complainants, vs.* **HON. MARIO B. CAPELLAN, Assisting Judge, Metropolitan Trial Court (MeTC), Branch 40, Quezon City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; PRELIMINARY CONFERENCE; NO NEED TO ISSUE NOTICE FOR THE PRELIMINARY CONFERENCE SINCE THE COURT ORDER CONSTITUTED SUFFICIENT NOTICE TO THE PARTIES; CASE AT BAR.—** We find no violation committed by the respondent in not issuing a notice for the November 25, 2008 preliminary conference because his order dated October 7, 2008 already constituted sufficient notice to the parties of the holding of such preliminary conference. In the dispositive portion of said order, the respondent clearly set the case for preliminary conference at exactly one o'clock in the afternoon of November 25, 2008. And both parties in the subject unlawful detainer case received copies of the respondent's order. Therefore, the complainants have no reason to argue that they were denied their rights to due process in this instance.

2. **ID.; ID.; ID.; SUPREME COURT A.M. NO. 1-2-04 CANNOT BE SUPPLETORILY APPLIED; RATIONALE.—**Section 2, Rule 11 of Supreme Court A.M. No. 01-2-04 cannot be suppletorily applied to the subject unlawful detainer case. The cited administrative memorandum specifically refers to the rules governing intra-corporate controversies under R.A. No. 8799 and applies only to the cases defined under Section 1, Rule 1 thereof, which does not include ejectment cases. Also, there is nothing in Supreme Court A.M. No. 01-2-04 that permits its suppletory application to ejectment cases.

3. **ID.; MEDIATION PROCEEDINGS; PERSONAL NON-APPEARANCE OF A PARTY MAY BE EXCUSED WHEN REPRESENTATIVE HAS BEEN DULY AUTHORIZED.—** Regarding the complainants' other assertion, we find that the failure of the spouses Angangco to personally appear at the mediation proceedings was not a ground to dismiss the subject unlawful detainer complaint. In *Senarlo v. Paderanga,* we held that the personal non-appearance of a party at mediation may be excused when the representative, such as the party's counsel, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution. In the present case, the spouses Angangco were fully represented by their lawyer during the mediation proceedings.

4. **ID.; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING AN OPINION; JUDGE SHOULD ALWAYS BE MINDFUL OF THEIR DUTY TO RENDER JUSTICE WITHIN THE PERIOD PRESCRIBED BY LAW; VIOLATION IN CASE AT BAR.—** Under Section 7 of the 1991 Revised Rules on Summary Procedure, a preliminary conference should be held not later than thirty (30) days after the last answer is filed. The respondent set the case for preliminary conference only on June 24, 2008, *i.e.*, at a time way beyond the required thirty (30)-day period. Another of the respondent's procedural lapses relates to the frequent resetting of the date of the preliminary conference. The preliminary conference scheduled for June 24, 2008 was reset, for various reasons, to August 26, 2008, November 25, 2008 and December 9, 2008, and was finally conducted on February 3, 2009, or almost two (2) years after the complainants filed their answer. Clearly, the respondent failed to exert his authority

in expediting the proceedings of the unlawful detainer case. Sound practice requires a judge to remain, at all times, in full control of the proceedings in his court and to adopt a firm policy against unnecessary postponements. In numerous occasions, we admonished judges to be prompt in the performance of their solemn duty as dispensers of justice because undue delay in the administration of justice erodes the people's faith in the judicial system. Delay not only reinforces the belief of the people that the wheels of justice in this country grind slowly; it also invites suspicion, however unfair, of ulterior motives on the part of the judge. Judges should always be mindful of their duty to render justice within the periods prescribed by law.

5. **ID.; ID.; ID.; LESS SERIOUS CHARGE; PENALTY.—** Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge sanctioned by either (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or (b) a fine of more than Ten Thousand Pesos (₱10,000.00) but not to exceed Twenty Thousand Pesos (₱20,000.00). Considering that the respondent had been previously adjudged guilty of the same offense, we impose upon him a maximum fine of Twenty Thousand Pesos (₱20,000.00). Again, we remind him that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

APPEARANCES OF COUNSEL

Leovillo C. Agustin Law Office for complainants.

D E C I S I O N

BRION, *J.*:

In a verified complaint dated September 14, 2009 filed before the Office of the Court Administrator (*OCA*), the spouses Murphy, and Marinelle P. Chu and ATGAS Traders (*complainants*) charged Judge Mario B. Capellan (*respondent*), Assisting Judge

of the Metropolitan Trial Court (*MeTC*), Branch 40, Quezon City, with Gross Ignorance of the Law, Partiality and Grave Abuse of Discretion.[1]

BACKGROUND FACTS

On March 22, 2007, Ofelia and Rafael Angangco filed before the MeTC, Branch 40, Quezon City, an unlawful detainer complaint, with application for the issuance of a writ of preliminary mandatory injunction (*PMI*) against the complainants.[2] The complainants filed their answer with compulsory counterclaim on March 30, 2007.[3]

The respondent heard the application for the issuance of a writ of PMI on April 11, 2007,[4] November 20, 2007,[5] December 11, 2007,[6] February 12, 2008,[7] and April 22, 2008.[8] He later set the unlawful detainer case for preliminary conference on June 24, 2008, but rescheduled it to August 26, 2008 due to the still pending application for a writ of PMI.[9]

In an order dated October 7, 2008,[10] the respondent denied the application for a writ of PMI and set the case for preliminary conference on November 25, 2008. On this date, the respondent referred the case for mediation,[11] so the preliminary conference was again reset to December 9, 2008.[12]

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[1] *Rollo,* pp. 1-16.

[2] Civil Case No. 07-37177, entitled "*Ofelia R. Angangco and Rafael R. Angangco v. Murphy Chu and ATGAS Traders*"; *id.* at 17-33.

[3] *Id.* at 55-69.

[4] *Id.* at 84.

[5] *Id.* at 111.

[6] *Ibid.*

[7] *Id.* at 112.

[8] *Id.* at 113.

[9] *Id.* at 114.

[10] *Id.* at 115-118.

[11] *Id.* at 119.

[12] *Id.* at 120.

On November 21, 2008, Angangco filed their pre-trial brief.[13] The complainants, on the other hand, did not file their pre-trial brief.

During the December 9, 2008 preliminary conference, the complainants moved for the consignation of several checks as payment for the amounts they owed to the spouses Angangco, for which the respondent set clarificatory hearings on January 23 and 30, 2009.[14] The preliminary conference finally took place on February 3, 2009.[15]

During the February 3, 2009 preliminary conference, the complainants moved to dismiss the unlawful detainer complaint on the grounds that: (1) the spouses Angangco failed to comply with the required *barangay* conciliation and to implead the other co-owners of the property subject of the unlawful detainer case; and (2) the MeTC had no jurisdiction to issue a writ of PMI. On the other hand, the spouses Angangco orally moved to declare the complainants in default for their failure to file a pre-trial brief.[16]

On February 26, 2009, the respondent issued the assailed joint order[17] which submitted the unlawful detainer case for decision based on the facts alleged in the unlawful detainer complaint.

The complainants moved for reconsideration, but the respondent denied their motion.[18] The complainants thereupon filed the present administrative complaint against the respondent. They also filed a motion asking for the respondent's inhibition from the unlawful detainer case.[19] The respondent eventually

[13] *Id.* at 123-133.

[14] *Id.* at 366.

[15] *Ibid.*

[16] *Id.* at 134.

[17] *Id.* at 134-135.

[18] In an order dated June 30, 2009; *id.* at 143-144.

[19] *Id.* at 145-150.

inhibited himself from the case in an order dated September 8, 2009.[20]

COMPLAINT AGAINST THE RESPONDENT

The complainants allege that the respondent had no basis to declare them in default because no notice of preliminary conference was issued to them.[21] They argue that the issuance of a notice of preliminary conference is mandatory and its non-issuance may be punishable under Section 2, Rule 11 of Supreme Court Administrative Memorandum (*A.M.*) No. 01-2-04, which provides:

> SEC. 2. *Disciplinary sanctions on the judge*. – The presiding judge may, upon a verified complaint filed with the Office of the Court Administrator, be subject to disciplinary action under any of the following cases:
>
> xxx xxx xxx
>
> (2) Failure to issue a pre-trial order in the form prescribed in these Rules.

Also, the complainants allege that the respondent erred in entertaining the oral motion to declare the defendants in default; in incurring delay in setting the unlawful detainer case for preliminary conference; and in not dismissing the unlawful detainer complaint for the spouses Angangco's failure to personally appear during the mediation proceedings. The complainants also allege that these acts of the respondent clearly showed the latter's bias and partiality towards the plaintiffs.

THE RESPONDENT'S ANSWER

In his answer with counter-charge,[22] the respondent argues that he did not commit any violation for failing to issue a notice

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[20] *Id.* at 343-344.

[21] To prove their allegation, the complainants presented a certification from Atty. Lucia S. Garcia-Kapunan, Clerk of Court of the MeTC, Branch 40, Quezon City, showing that no notice and order of preliminary conference was ever issued by the respondent in the subject unlawful detainer case (*id.* at 136).

[22] Dated November 6, 2009; *id.* at 197-220.

of preliminary conference because there is nothing in the 1991 Revised Rules on Summary Procedure or the Rules of Court, particularly in Section 6, Rule 18, that requires him to issue a notice of preliminary conference, in addition to his order setting the case for preliminary conference. He claims that, despite the lack of notice, both parties were duly informed of the preliminary conference on November 25, 2008 through his order dated October 7, 2008; thus, to issue a notice at that time would only be superfluous.

The respondent adds that the complainants' citation of Supreme Court A.M. No. 01-2-04 was misplaced; that the said memorandum applies exclusively to cases involving intra-corporate controversies, not to ejectment cases, and subjects a judge to disciplinary action for his failure to issue a pre-trial order, not for failure to issue a notice of preliminary conference.

On the complainants' other allegations, the respondent argues that he could not be faulted for not dismissing the unlawful detainer complaint due to the alleged failure of Angangco to *personally* appear at the mediation proceedings because he could not have known of their non-appearance during that time, as he was informed of what happened during the mediation proceedings only after their conclusion. He also states that it would be unfair to allow the complainants, who actively participated in the mediation proceedings, to now impugn their dealings with and the authority of the lawyer who attended the mediation in behalf of Angangco.

Ultimately, the respondent prayed for the dismissal of the administrative complaint, as it is nothing but an insidious attempt by the complainants to harass him and to conceal their negligence in not filing a pre-trial brief.

THE OCA'S RECOMMENDATION

In a report dated November 11, 2010,[23] **the OCA finds no merit in some of the complainants' allegations.**

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[23] *Id.* at 365-376.

First, the OCA remains unconvinced that the complainants' rights to due process were violated because of the lack of notice of preliminary conference; that the complainants could not feign ignorance of the scheduled date of preliminary conference and their need to file a pre-trial brief since they received copies of the respondent's order dated October 7, 2008 and of the other party's pre-trial brief before the scheduled preliminary conference on November 25, 2008; and that the complainants were also present in court during the times the preliminary conference was repeatedly reset to later dates. Considering these circumstances, the OCA opines that the complainants were merely finding an excuse to justify their negligence as they were afforded enough opportunity to submit their pre-trial brief, but they still failed to do so.

Second, the OCA agrees with the respondent that Supreme Court A.M. No. 01-2-04 is inapplicable to the subject unlawful detainer case as it pertains to the Proposed Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act (*R.A.*) No. 8799.[24]

Third, the OCA belies the complainants' allegation that the respondent entertained Angangco's oral motion to declare defendants in default. While the complainants were correct that a motion to declare defendants in default is a prohibited pleading under the 1991 Revised Rules on Summary Procedure; the respondent, in issuing the assailed joint order dated February 26, 2009, did not rule on the basis of the oral motion but relied on Section 8, Rule 70, in relation to Section 6, Rule 18 of the Rules of Court, which provides:

> Sec. 8. *Preliminary conference; appearance of parties.* – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The provisions of Rule 18 on pre-trial shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.
>
> The failure of the plaintiff to appear in the preliminary conference shall be cause for the dismissal of the complaint. The defendant

[24] Also known as "The Securities Regulation Code."

who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with the next preceding section. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall likewise be entitled to judgment in accordance with the next preceding section. This procedure shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

Sec. 6. *Pre-trial brief.* - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

xxx xxx xxx

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

And even assuming that the respondent erred in issuing the assailed joint order, the OCA opines that errors committed in the exercise of adjudicative functions cannot be corrected through administrative proceedings where judicial remedies are available; that there must be a final declaration by the appellate court that the assailed order is manifestly erroneous or impelled by ill-will, malice or other similar motive.

The OCA, however, finds merit in the complainants' allegation that the respondent incurred delay in setting the case for preliminary conference. The OCA finds that the respondent violated Section 7 of the 1991 Revised Rules on Summary Procedure, which provides that a preliminary conference shall be held not later than thirty (30) days after the last answer is filed, and Rule 1.02, Canon 1 of the Code of Judicial Conduct, which mandates that judges should administer justice without delay. It opines that the respondent should have facilitated the prompt disposition of the subject case and refrained from postponing and resetting the case for preliminary conference several times.

The OCA, then, recommends that the present administrative complaint be redocketed as a regular administrative case and that the respondent be reprimanded, considering that this was his first offense, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In a Resolution dated January 19, 2011,[25] we ordered the administrative complaint against the respondent redocketed as a regular administrative case and required the parties to manifest, within ten (10) days from notice, whether they were willing to submit the case for decision on the basis of the pleadings or records filed and submitted.

Both the complainants and the respondent expressed their willingness to submit the case for decision in their Manifestations dated March 22, 2011[26] and August 29, 2011,[27] respectively.

THE COURT'S RULING

We find the OCA's findings to be well taken.

As the OCA recommends, we find no merit in the complainants' allegations that the respondent committed gross ignorance of the law, partiality and grave abuse of discretion in not issuing a notice for the holding of the November 25, 2008 preliminary conference, and in entertaining the spouses Angangco's oral motion to declare the defendants in default.

We find no violation committed by the respondent in not issuing a notice for the November 25, 2008 preliminary conference because his order dated October 7, 2008 already constituted sufficient notice to the parties of the holding of such preliminary conference. In the dispositive portion of said order, the respondent clearly set the case for preliminary conference at exactly one o'clock in the afternoon of November 25, 2008. And both parties in the subject unlawful detainer case received copies of the respondent's order. Therefore, the complainants have no reason to argue that

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[25] *Rollo,* pp. 377-378.

[26] *Id.* at 403-405.

[27] *Id.* at 444-445.

they were denied their rights to due process in this instance.

On the complainants' other contention, a close reading of the assailed joint order dated February 26, 2009 would show that the respondent did not actually entertain the oral motion to declare the defendants in default filed by Angangco, to wit:

> On the plaintiffs' motion to declare defendants as in default, record reveals that defendants have not filed any pre-trial brief with this Court despite the directive setting the case for preliminary conference and as mandated in the Notice of Pre-Trial Conference. **While a motion to declare defendants in default is prohibited in unlawful detainer cases, (Section 3, Rule 70) the failure of the defendants to file a pre-trial brief within the 3-day period before the preliminary conference necessitates a judgment based on the facts alleged in the Complaint.** (Section 7, Rule 70[,] in relation to Section 8, Rule 70 and Section 6, Rule 18 of the Rules of Court) Thus, this Court resolves and treats the oral motion of the plaintiffs to declare defendants as in default as a Motion to render judgment and that the instant case is now submitted for decision on the basis of the facts alleged in the Complaint.[28] (emphasis supplied)

As the OCA correctly observed, the respondent's order in submitting the unlawful detainer case for decision was not based on the spouses Angangco's oral motion, but was the inevitable result of the complainants' failure to file their pre-trial brief. Thus, contrary to the complainants' allegation, the respondent did not commit the mistake of entertaining in the unlawful detainer case a motion to declare the defendants in default, which is a prohibited pleading in ejectment cases under Section 19, Rule IV of the 1991 Revised Rules on Summary Procedure.[29]

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[28] *Id.* at 135.

[29] Sec. 19. Prohibited pleadings and motions. — The following pleadings, motions or petitions shall not be allowed in the cases covered by this Rule:

(a) Motion to dismiss the complaint or to quash the complaint or information except on the ground of lack of jurisdiction over the subject matter, or failure to comply with the preceding section;

(b) Motion for a bill of particulars;

(c) Motion for new trial, or for reconsideration of a judgment, or for opening of trial;

We, likewise, dispel the complainants' assertions that Supreme Court A.M. No. 01-2-04 may be suppletorily applied to the subject unlawful detainer case and that the failure of the spouses Angangco to personally appear during the mediation proceedings should have caused the dismissal of the unlawful detainer complaint.

Section 2, Rule 11 of Supreme Court A.M. No. 01-2-04[30] cannot be suppletorily applied to the subject unlawful detainer case. The cited administrative memorandum specifically refers to the rules governing intra-corporate controversies under R.A. No. 8799 and applies only to the cases defined under Section 1, Rule 1[31] thereof, which does not include ejectment cases. Also,

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(d) Petition for relief from judgment;

(e) Motion for extension of time to file pleadings, affidavits or any other paper;

(f) Memoranda;

(g) Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court;

(h) Motion to declare the defendant in default;

(i) Dilatory motions for postponement;

(j) Reply;

(k) Third party complaints;

(l) Interventions.

[30] Effective April 1, 2001, also known as the "Proposed Interim Rules of Procedure Governing Intra-Corporate Controversies Under R.A. No. 8799."

[31] SECTION 1. (a) *Cases covered.* - These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

there is nothing in Supreme Court A.M. No. 01-2-04 that permits its suppletory application to ejectment cases.

Regarding the complainants' other assertion, we find that the failure of the spouses Angangco to personally appear at the mediation proceedings was not a ground to dismiss the subject unlawful detainer complaint. In *Senarlo v. Paderanga,*[32] we held that the personal non-appearance of a party at mediation may be excused when the representative, such as the party's counsel, has been duly authorized to enter into possible amicable settlement or to submit to alternative modes of dispute resolution.[33] In the present case, the spouses Angangco were fully represented by their lawyer during the mediation proceedings.

We now proceed to the administrative liability of the respondent.

The Revised Rules on Summary Procedure was promulgated to achieve an expeditious and inexpensive determination of the cases that it covers.[34] In the present case, the respondent failed to abide by this purpose in the way that he handled and acted on the subject unlawful detainer case.

A review of the relevant background facts shows that the unlawful detainer case against the complainants was filed on

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(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

[32] A.M. No. RTJ-06-2025, April 5, 2010, 617 SCRA 247.

[33] Rule 9 of A.M. No. 01-10-5-SC-PHILJA, otherwise known as the "Second Revised Guidelines for the Implementation of Mediation Proceedings," provides:

9. Personal appearance/Proper authorizations. Individual parties are encouraged to personally appear for mediation. In the event they cannot attend, their representatives must be fully authorized to appear, negotiate and enter into a compromise by a Special Power of Attorney. A corporation shall, by board resolution, fully authorize its representative to appear, negotiate and enter into a compromise agreement.

[34] *Bongato v. Sps. Malvar*, 436 Phil. 109, 123 (2002).

March 22, 2007 and the complainants filed their answer thereto on March 30, 2007. Under Section 7 of the 1991 Revised Rules on Summary Procedure, a preliminary conference should be held not later than thirty (30) days after the last answer is filed. The respondent set the case for preliminary conference only on June 24, 2008, *i.e.*, at a time way beyond the required thirty (30)-day period.

Another of the respondent's procedural lapses relates to the frequent resetting of the date of the preliminary conference. The preliminary conference scheduled for June 24, 2008 was reset, for various reasons, to August 26, 2008, November 25, 2008 and December 9, 2008, and was finally conducted on February 3, 2009, or almost two (2) years after the complainants filed their answer. Clearly, the respondent failed to exert his authority in expediting the proceedings of the unlawful detainer case. Sound practice requires a judge to remain, at all times, in full control of the proceedings in his court and to adopt a firm policy against unnecessary postponements.[35]

In numerous occasions, we admonished judges to be prompt in the performance of their solemn duty as dispensers of justice because undue delay in the administration of justice erodes the people's faith in the judicial system.[36] Delay not only reinforces the belief of the people that the wheels of justice in this country grind slowly; it also invites suspicion, however unfair, of ulterior motives on the part of the judge.[37] Judges should always be mindful of their duty to render justice within the periods prescribed by law.

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[35] *Sevilla v. Quintin*, 510 Phil. 487, 495 (2005).

[36] *Antonio Y. Cabasares v. Judge Filemon A. Tandinco, Jr., etc.,* A.M. No. MTJ-11-1793, October 19, 2011; *Angelia v. Grageda,* A.M. No. RTJ-10-2220, February 7, 2011, 641 SCRA 554, 557; *Salvador v. Limsiaco, Jr.,* A.M. No. MTJ-08-1695, April 16, 2008, 551 SCRA 373, 376-377; *Villa v. Ayco,* A.M. No. RTJ-11-2284, July 13, 2011, 653 SCRA 701, 709; *Atty. Montes v. Judge Bugtas*, 408 Phil. 662, 667 (2001).

[37] *Concillo v. Judge Gil*, 438 Phil. 245, 250 (2002).

Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[38] classifies undue delay in rendering a decision or order as a less serious charge sanctioned by either (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or (b) a fine of more than Ten Thousand Pesos (₱10,000.00) but not to exceed Twenty Thousand Pesos (₱20,000.00).

Considering that the respondent had been previously adjudged guilty of the same offense,[39] we impose upon him a maximum fine of Twenty Thousand Pesos (₱20,000.00). Again, we remind him that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

WHEREFORE, we find Judge Mario B. Capellan, Assisting Judge, Metropolitan Trial Court, Branch 40, Quezon City, **GUILTY** of undue delay in rendering a decision or order and hereby impose upon him a **FINE** of Twenty Thousand Pesos (₱20,000.00).

SO ORDERED.

Perez, Mendoza,[*] *Sereno,* and *Reyes, JJ.,* concur.

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[38] Promulgated on September 11, 2001 and became effective on October 1, 2001.

[39] *Naguiat v. Capellan,* A.M. No. MTJ-11-1782, March 23, 2011, 646 SCRA 122.

[*] Justice Jose C. Mendoza was designated as additional member in lieu of Senior Associate Justice Antonio T. Carpio per Raffle dated July 16, 2012.

THIRD DIVISION

[G.R. No. 154952. July 16, 2012]

HILARION F. DIMAGIBA, IRMA MENDOZA, and ELLEN RASCO, *petitioners, vs.* **JULITA ESPARTERO, MA. BERNARDITA L. CARREON and MELINA SAN PEDRO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; DISMISSAL OF APPEALS ON PURELY TECHNICAL GROUNDS IS FROWNED UPON ESPECIALLY IF IT WILL RESULT TO UNFAIRNESS; JUSTIFICATIONS TO RESIST THE STRICT ADHERENCE TO PROCEDURE, ENUMERATED; PRESENT IN CASE AT BAR.—** Dismissal of appeals on purely technical ground is frowned upon especially if it will result to unfairness as in this case. In *Baylon v. Fact-Finding Intelligence Bureau,* we cited reasons or justifications to resist the strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby. Here, the Ombudsman found respondents guilty of the charges filed against them and imposed upon them the penalty of dismissal from the service. The penalty of dismissal is a severe punishment, because it blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family. If only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure, the dismissal on technicality of respondents' petition, which is aimed at establishing not just their innocence but the truth, cannot stand.

2. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; ADDITIONAL, DOUBLE AND INDIRECT COMPENSATION, PROHIBITED; EXCEPTION; NOT PRESENT IN CASE AT BAR.—** The additional grant of gratuity pay to petitioners amounted to additional compensation prohibited by the Constitution. Clearly, the only exception for an employee to receive additional, double and indirect compensation is where the law allows him to receive extra compensation for services rendered in another position which is an extension or is connected with his basic work. The prohibition against additional or double compensation, except when specifically authorized by law, is considered a "constitutional curb" on the spending power of the government. x x x The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration or compensation. It bears stressing that when petitioners were separated from LIVECOR, they were given separation pay which also included gratuity pay for all the years they worked thereat and concurrently in HSDC/SIDCOR. Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work which is prohibited. This can only be allowed if there is a law which specifically authorizes them to receive an additional payment of gratuity. The HSDC Board Resolution No. 05-19-A granting petitioners' gratuity pay is not a law which would exempt them from the Constitutional proscription against additional, double or indirect compensation. Neither does the HSDC law under P.D. 1396 contain a provision allowing the grant of such gratuity pay to petitioners.

APPEARANCES OF COUNSEL

Jimeno Jalandoni & Cope Law Offices for petitioners.

DECISION

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated May 30, 2002 and the Resolution[2] dated August 28, 2002 of the Court of Appeals issued in CA-G.R. SP No. 61261.

Petitioners Hilarion Dimagiba (Dimagiba), Irma Mendoza (Mendoza), and Ellen Rasco (Rasco) were employees of The Livelihood Corporation (LIVECOR), a government-owned and controlled corporation created under Executive Order No. 866. Petitioner Dimagiba was the Group Manager, Asset Development and Management Group; petitioner Mendoza was the Division Chief III, Asset Development and Management Group; and petitioner Rasco was the Project Evaluation Officer IV, Asset Development and Management Group.

On March 8, 1990, LIVECOR and the Human Settlement Development Corporation (HSDC), now known as Strategic Investment and Development Corporation (SIDCOR), also a government-owned and controlled corporation, created under Presidential Decree (P.D.) 1396, entered into a Trust Agreement[3] whereby the former would undertake the task of managing, administering, disposing and liquidating the corporate assets, projects and accounts of HSDC. In HSDC Board Resolution No. 3-26-A[4] dated March 26, 1990, it was provided that in order to carry out the trust agreement, LIVECOR personnel must be designated concurrently to operate certain basic HSDC/SIDCOR functions, thus, LIVECOR personnel, namely,

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Eubulo G. Verzola and Bernardo P. Abesamis, concurring; *rollo*, pp. 46-68.

[2] *Id.* at 70-72.

[3] *Rollo,* pp. 89-96; The trust agreement was extended for another five years; *rollo,* pp. 97-99.

[4] CA *rollo*, p. 136.

petitioners Dimagiba and Mendoza were designated as Assistant General Manager for Operations and Head, Inter-Agency Committee on Assets Disposal and as Treasurer and Controller, respectively. The same resolution provided for the designees' monthly honoraria and commutable reimbursable representation allowances (CRRA). Petitioner Rasco was designated as Technical Assistant to the Officer-in-Charge (OIC), also with CRRA, under HSDC Board Resolution No. 05-19-B[5] dated May 19, 1993.

In a letter[6] dated November 14, 1997, the Department of Budget and Management informed LIVECOR of the approval of its organization/staffing pattern modifications which resulted in the abolition of petitioners' positions. As a result, petitioners were separated from the service effective June 30, 1998 and were each given a separation package[7] as follows:

	Dimagiba	Mendoza	Rasco
1. Separation Pay	₱ 608,580.00	₱ 815,021.91	₱ 519,125.16
2. Gratuity Pay	165,600.00	132,150.00	112,555.00
3. Terminal Pay	352,075.48	58,398.18	22,633.25
4. Last Month Gross Salary	17,410.00	15,815.00	13,555.50
5. Service Award	10,000.00	10,000.00	10,000.00
TOTAL	₱1,153,665.48	₱1,031,385.00	₱ 678,169.91

The HSDC resolved to terminate petitioners' services because the latter's separation from LIVECOR would no longer allow them to perform their functions at the HSDC. However, the HSDC, through its OIC, Jose Rufino, wrote the Office of the Government Corporate Counsel (OGCC) and sought its opinion on the legality of HSDC's granting gratuity pay to petitioners.

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[5] *Id.* at 137.

[6] *Rollo*, pp. 100-101.

[7] CA Decision, *id.* at 49.

On April 8, 1998, the OGCC rendered Opinion No. 078,[8] series of 1998, which resolved among others the grant of gratuity pay to petitioners. The OGCC found that it is within the power of the Board to grant reasonable Gratuity Pay/Package to petitioners subject to the usual rules of the Commission on Audit (COA) pertaining to allowances/benefits and disbursements of funds.

On May 19, 1998, the HSDC Board passed Resolution No. 05-19-A[9] terminating petitioners' services but resolved to grant petitioners their Gratuity Package/Pay, as follows:

> 1. MR. HILARION DIMAGIBA is hereby granted a Gratuity Package as follows:
>
> > 1.1 Gratuity Pay in the amount of SEVEN HUNDRED THOUSAND PESOS (₱700,000.00);
> >
> > 1.2 Termination of LBP Lease Agreement No. 282-C/ Lease Schedule I (Nissan Sentra UDC 919) effective 15 July 1998 in favor of Mr. Dimagiba, with Mr. Dimagiba paying LBP Leasing Corporation all charges, fees penalties, *etc*., including pre-termination charges;
>
> 2. MS. IRMA MENDOZA is hereby granted a Gratuity Pay in the amount of ONE HUNDRED EIGHTY THOUSAND (₱180,000.00) PESOS;
>
> 3. MS. ELLEN RASCO is hereby granted a Gratuity Pay in the amount of SIXTY THOUSAND PESOS (₱60,000.00).
>
> RESOLVED FURTHER, That the total budgetary requirement and disbursement of the above Gratuity Pay is hereby approved and allocated from Corporate Funds;
>
> RESOLVED FINALLY, That the Officer-in-Charge and the Trustee of corporate funds are hereby directed and authorized to disburse funds and execute the necessary documentation, acts and deeds relative to the immediate and full implementation of this resolution.[10]

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[8] *Rollo,* pp. 105-108.

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

[10] *Id.* at 110.

In a Memorandum dated July 17, 1998 issued by LIVECOR Administrator Manuel Portes (Portes), it was stated that any payment of gratuities by the HSDC/SIDCOR to LIVECOR officers concurrently performing HSDC functions shall not be processed without prior clearance from him as the same shall be first cleared with the COA and OGCC to avoid any legal problem. Portes then sought the opinion of LIVECOR's Resident COA Auditor, Alejandro Fumar, regarding petitioners' claim for additional gratuity, who opined that such gratuity payment would amount to double compensation.

Subsequently, petitioners wrote a letter[11] dated July 29, 1998 addressed to Portes requesting for the processing of their HSDC gratuity pay. Attached in their letter were OGCC Opinion No. 078 and a letter[12] from the Presidential Management Staff (PMS), dated June 29, 1998, concurring with the OGCC's opinion.

Portes then instructed respondent Atty. Ma. Bernardita L. Carreon (Carreon), Attorney IV of LIVECOR's Legal Services Department and a designated member of Special Task Force for HSDC, to draft a letter seeking clarification on OGCC Opinion No. 078. He likewise requested the LIVECOR Legal Services Department to issue an opinion on the matter of petitioners' HSDC/SIDCOR gratuity pay.

In a Memorandum[13] dated August 25, 1998 addressed to Portes, respondent Atty. Julita A. Espartero (Espartero), then LIVECOR'S Chief Legal Counsel, wrote that petitioners' designation as HSDC officers would not entitle them to receive any gratuity pay because:

> First, the purpose for which Mr. Dimagiba, Ms. Mendoza and Ms. Rasco were elected or designated as SIDCOR officers is already made clear in the subject Resolution which provides as follows, *viz*: WHEREAS, in order to carry out the trust, LIVECOR personnel must be designated/elected concurrently to operate certain basic SIDCOR corporate offices/positions.

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[11] *Id.* at 115.

[12] *Id.* at 114.

[13] CA *rollo*, pp. 195-197.

The election or designation of Mr. Dimagiba, Ms. Mendoza and Ms. Rasco as SIDCOR officers were not intended to be independent of or separate from their employment with LIVECOR but was made precisely because of their being LIVECOR personnel tasked to carry out the Trust Agreement between SIDCOR and LIVECOR.

Second, Mr. Dimagiba, Ms. Mendoza and Ms. Rasco do not receive salaries or wages from SIDCOR but CRREs. This clearly shows that they are not organic SIDCOR employees but, as heretofore indicated, LIVECOR officers merely holding concurrent positions in SIDCOR.

The reason for the above-mentioned arrangement (grant of CRREs and not salaries or wages) is that: "While dual appointments in two government-owned corporations are permissible, dual compensation is not."

To allow Mr. Dimagiba, Ms. Mendoza and Ms. Rasco, therefore, to receive gratuity pay/package apart from what they are entitled to receive or have already received from LIVECOR will be to subvert or indirectly circumvent the above-stated legal principle.

Third, not being organic SIDCOR employees but LIVECOR officers merely holding concurrent positions in SIDCOR, Mr. Dimagiba, Ms. Mendoza and Ms. Rasco cannot be said to have been "separated" from SIDCOR.[14]

In the meantime, petitioners had requested respondent Melina San Pedro (San Pedro), LIVECOR's Financial Analyst, to sign and process the disbursement vouchers for the payment of their gratuity pay but the latter refused to do so because of the adverse opinion of the LIVECOR Legal Department and based on the memorandum issued by Portes.

In October 1998, Portes was replaced by Atty. Salvador C. Medialdea (Atty. Medialdea) to whom petitioners subsequently referred the matter of their gratuity payment. In a letter[15] dated June 14, 1999, Atty. Medialdea sought clarification from the OGCC regarding its Opinion No. 078. The OGCC responded

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[14] *Id.* at 195-196.

[15] *Rollo*, pp. 469-476.

with the issuance of its Opinion No. 019,[16] s. 2000 on January 31, 2000, where it declared that HSDC Resolution No. 05-19-A, granting gratuities in favor of petitioners, could not be implemented as the intended beneficiaries were prohibited by law from receiving the same, citing Section 8 of Article IX-B of the Constitution, *i.e.*, proscription on double compensation.

On October 27, 1998, petitioners filed with the Office of the Ombudsman a Complaint-Affidavit charging Administrator Portes, Atty. Christine Tomas-Espinosa, Chief of Staff of the Office of the Administrator, respondents Espartero, Carreon, and San Pedro, with grave misconduct, conduct prejudicial to the best interest of the service, inefficiency and incompetence in the performance of official functions, and violation of Section 5 (a), Republic Act (RA) No. 6713.

In their complaint-affidavit, petitioners alleged that respondents conspired in refusing to release their gratuity pay and that such refusal for an unreasonable length of time despite repeated demands constituted the offenses charged.

Respondents filed their respective Counter-Affidavits denying the charges against them. Respondent Espartero contended that her actions relative to the processing of gratuity pay merely consisted of rendering an opinion that such gratuity would amount to double compensation, while respondent Carreon alleged that her only participation with regard to petitioners' claims for additional gratuity was to draft a letter addressed to the OGCC. On the other hand, respondent San Pedro claimed that her refusal to affix her signature on petitioners' disbursement vouchers for the release of said gratuity pay was based on the memorandum of Administrator Portes preventing LIVECOR officers and employees from acting on any claims for gratuity without the latter's prior approval.

On June 2, 2000, the Ombudsman rendered its Decision,[17] the dispositive portion of which reads:

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[16] CA *rollo*, pp. 206-213

[17] *Rollo*, pp. 488-520.

WHEREFORE, foregoing premises considered, respondents JULITA ESPARTERO, BERNARDITA CARREON and MELINA SAN PEDRO are hereby found guilty of Gross Neglect of Duty, Oppression, Conduct Prejudicial to the Best Interest of Service, Inefficiency and Incompetence, and Violation of Section 5 (a), Republic Act No. 6713, and are hereby meted out the penalty of DISMISSAL from the service coupled with the accessory penalties of cancellation of their eligibilities, forfeiture of leave credits and retirement benefits as well as disqualification of reemployment in the government service pursuant to Sections 9, 17 and 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

On the contrary, the instant complaint against respondents MANUEL PORTES and CHRISTINE TOMAS-ESPINOSA is DISMISSED for being moot and academic, they being already out of the government service without prejudice to any civil or criminal actions filed against them.

Furthermore, pursuant to Section 15 (2), Republic Act No. 6770, the incumbent Administrator of the Livelihood Corporation and other public officers concerned are hereby directed to facilitate the processing and payment of complainants' gratuity in accordance with HSDC Board Resolution No. 05-19-A, s. 1998.

The Honorable Administrator, Livelihood Corporation (LIVECOR), 7/F Hanston Building, Emerald Avenue, Pasig City, is hereby tasked to implement this Decision in accordance with law informing this Office of the action taken thereon within ten (10) days upon receipt hereof.

Let copies of this Decision be furnished the Civil Service Commission for their guidance and reference.

SO ORDERED.[18]

In so ruling, the Ombudsman stated that the prohibition on double compensation would not apply to pensions or gratuities because they are gifts or bounty given in recognition of the employees' past services. It found that the HSDC Board had the discretion and authority to decide on matters which were within its competence and jurisdiction, such as granting of benefits

[18] *Id.* at 518-519.

and retirement gratuities to its officers and employees. It concluded that payment of petitioners' gratuities did not involve judgment or discretion on LIVECOR's part, hence, a ministerial act; and that Resolution No. 05-19-A which granted the gratuity pay to petitioners directed LIVECOR as HSDC's trustee to disburse funds and execute the necessary documentation for the full implementation of the same.

Respondents filed their motions for reconsideration, which the Ombudsman disposed in an Order[19] dated August 8, 2000 in this wise:

> WHEREFORE, except as to the finding of guilt on respondent ESPARTERO's alleged violation of Section 5 (a), Republic Act No. 6713, the assailed June 23, 2000 DECISION is affirmed with finality.[20]
>
> SO ORDERED.

On September 7, 2000, the Ombudsman issued an Order[21] directing the implementation of its decision; thus, LIVECOR's Final Notice of Dismissal from Service were subsequently served on respondents. Petitioners' gratuity pay were then released.

Respondents filed with the CA a petition for review under Rule 43 with application for a writ of preliminary mandatory injunction and/or temporary restraining order (TRO) and/or writ of preliminary prohibitory injunction. The CA issued a TRO[22] and later granted the writ of preliminary injunction.[23]

On May 30, 2002, the CA rendered its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is hereby GRANTED and the assailed decision of the Office of the Ombudsman, dated June 2,

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[19] *Id.* at 601-616.

[20] *Id.* at 615.

[21] CA *rollo*, pp. 379-380.

[22] Resolution dated September 25, 2000, *id.* at 506-507.

[23] Resolution dated December 26, 2000, *id.* at 689-690.

2000, and the Order dated August 8, 2000, are REVERSED and SET ASIDE and judgment is hereby rendered:

1. Reinstating petitioners to their positions held prior to their dismissal from office with full backwages and benefits;
2. Ordering private respondents to return the gratuity packages received from HSDC; and
3. Granting a permanent and final injunction enjoining the Office of the Ombudsman from executing the assailed decision and Order.[24]

The CA found that the gratuity packages received by petitioners from HSDC constituted the prohibited additional or double compensation under the Constitution. It found no evidence to support the Ombudsman decision finding respondents guilty of the administrative charges as they acted accordingly as public officers. Anent the issue of the timeliness of the filing of the petition, the CA ruled that petitioners filed their appeal within the 15-day period prescribed under Section 4 of Rule 43 of the Rules of Court, relying on the case of *Fabian v. Desierto*.[25] However, since there was no clear pronouncement that appeals of Ombudsman decision in administrative cases cannot be made under Section 4 of Rule 43, the dismissal of the petition on the ground that it was filed beyond the 10-day period provided under Section 27 of RA 6770, or the Ombudsman Act of 1989, would result to glaring injustice to respondents; and that dismissal of appeals purely on technical grounds is frowned upon especially if it will result to injustice.

Petitioners' motion for reconsideration was denied by the CA in a Resolution dated August 28, 2002.

Hence, this petition for review. Petitioners raise the following issues:

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[24] *Rollo*, p. 67.

[25] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT GAVE DUE COURSE TO RESPONDENTS' PETITION FOR REVIEW DESPITE BEING FILED BEYOND THE REGLEMENTARY PERIOD OF TEN (10) DAYS SET BY SECTION 27 OF REPUBLIC ACT 6770.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE GRATUITIES GRANTED TO PETITIONERS DIMAGIBA, MENDOZA AND RASCO BY HSDC CONSTITUTE DOUBLE COMPENSATION PROHIBITED UNDER ARTICLE IX (B), SECTION 8 OF THE 1987 CONSTITUTION DESPITE THE FACT THAT SAID GRATUITIES CLEARLY FALL UNDER THE EXCEPTION UNDER THE SAME PROVISION.[26]

Anent the first issue, petitioners contend that the CA erred in acting on the petition which was filed beyond the 10-day reglementary period for filing the same as provided under Section 27 of RA 6770. They claim that respondents received the Ombudsman order denying their motion for reconsideration on August 25, 2000 and filed a motion for extension of time with the CA on September 11, 2000, which was the 15th day from receipt of the order, relying on our ruling in *Fabian v. Desierto*[27] and Rule 43 of the Rules of Court. Petitioners cite the cases of *Lapid v. CA*[28] and *Barata v. Abalos, Jr.*[29] to support the application of the 10-day period for filing the petition in the CA from receipt of the Ombudsman order.

We are not persuaded.

Section 27 of RA 6770 provides as follows:

Section 27. *Effectivity and Finality of Decisions*. - All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

xxx xxx xxx

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[26] *Rollo,* p. 30.

[27] *Supra* note 25.

[28] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

[29] G.R. No. 142888, June 6, 2001, 358 SCRA 575.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The then Rules of Procedure of the Office of the Ombudsman likewise contain a similar provision. Section 7, Rule III of Administrative Order (A.O.) No. 07[30] provides as follows:

Sec. 7. *Finality and Execution of Decision* - Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in Section 27 of R.A. 6770.

In *Fabian v. Desierto,*[31] we declared unconstitutional Section 27 of RA 6770 and Section 7, Rule III of A.O. No. 7 and any other provision of law implementing the aforesaid Act and insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. We held that such provision was violative of Section 30, Article VI of the Constitution as it expanded our appellate jurisdiction without our advice and concurrence; and that it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court

[30] Dated April 10, 1990.

[31] *Supra* note 25, at 489.

of Tax Appeals, the Regional Trial Court, or other courts authorized by law. We then said:

> As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.[32]

Subsequently, in *Lapid v. CA*[33] which involved the issue of whether or not the decision of the Ombudsman finding then Governor Manuel Lapid administratively liable for misconduct and imposing on him a penalty of one year suspension without pay is immediately executory. We then ruled:

> x x x The only provision affected by the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the Rules of Court as the proper mode of appeal. All other matters included in said Section 27, including the finality or non-finality of decisions, are not affected and still stand.[34]

Thus, we said that since the penalty imposed on Lapid which was one year suspension was not among those enumerated under Section 27 as final and unappealable, an appeal timely filed by Lapid will stay the immediate implementation of the decision of the Ombudsman appealed from.

Later came the case of *Barata v. Abalos, Jr.*[35] which was decided in 2001. The issue brought to us then was whether the CA committed grave abuse of discretion in ruling that the Ombudsman decision exonerating respondent Mayor Abalos, Jr. of an administrative charge is not appealable, which we answered in the negative. We also said that even on the assumption that appeal is allowed, the same can no longer prosper, thus:

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[32] *Id.* at 491.

[33] *Supra* note 28.

[34] *Id.* at 750.

[35] *Supra* note 29.

This notwithstanding, even on the assumption that appeal is allowed, the same can no longer prosper. As correctly pointed out by private respondent, since the Order dated September 10, 1999 of the Ombudsman denying the motion for reconsideration was received by petitioner on October 15, 1999, petitioner had until October 25, 1999 to appeal in accordance with Section 27, R.A. 6770 or at the most, until November 24, 1999, if he availed of the 30-day extension provided under Section 2, Rule 43 of the 1997 Rules on Civil Procedure. However, the petition was filed with the Court of Appeals only on February 1, 2000, way beyond the reglementary period.[36]

Thus, it appeared that the period provided under Section 27 of RA 6770 which is ten days must be observed in filing a petition with the CA assailing the Ombudsman decision in administrative case.

In this case, respondents filed with the CA their motion for extension of time to file petition for review under Rule 43 on September 11, 2000, *i.e*., on the 15th day from receipt of the Ombudsman order denying their motion for reconsideration, and filed the petition on September 19, 2000. At the time the petition was filed, the matter of which reglementary period must apply, whether 10 days under Section 27 of RA 6770 or 15 days under Section 4, Rule 43 of the Rules of Court, had not been established with definiteness until the *Barata case* was decided later. Considering that the *Fabian* ruling stated that Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for 15 days from receipt of the order appealed from, the motion for extension to file petition which was filed on the 15th day from receipt of the Ombudsman order is considered timely filed.

Moreover, as correctly stated by the CA, dismissal of appeals on purely technical ground is frowned upon especially if it will result to unfairness as in this case. In *Baylon v. Fact-Finding Intelligence Bureau,*[37] we cited reasons or justifications to resist

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[36] *Id.* at 582.

[37] G.R. No. 150870, December 11, 2002, 394 SCRA 21.

the strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

Here, the Ombudsman found respondents guilty of the charges filed against them and imposed upon them the penalty of dismissal from the service. The penalty of dismissal is a severe punishment, because it blemishes a person's record in government service.[38] It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family.[39] If only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure, the dismissal on technicality of respondents' petition, which is aimed at establishing not just their innocence but the truth, cannot stand.[40]

As to the second issue, petitioners contend that the gratuity given to them by the HSDC Board cannot be considered as additional or double compensation which is prohibited by the Constitution.

We find no merit in this argument.

The additional grant of gratuity pay to petitioners amounted to additional compensation prohibited by the Constitution.

As provided under Section 8 of Article IX-B of the 1987 Constitution:

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[38] *Miel v. Malindog*, G.R. No. 143538, February 13, 2009, 579 SCRA 119, 130.

[39] *Id.* at 130-131.

[40] *Baylon v. Fact-Finding Intelligence Bureau, supra* note 37, at 32-33.

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Clearly, the only exception for an employee to receive additional, double and indirect compensation is where the law allows him to receive extra compensation for services rendered in another position which is an extension or is connected with his basic work. The prohibition against additional or double compensation, except when specifically authorized by law, is considered a "constitutional curb" on the spending power of the government. In *Peralta v. Mathay*,[41] we stated the purpose of the prohibition, to wit:

x x x This is to manifest a commitment to the fundamental principle that a public office is a public trust. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is of course entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That at least is the ideal. There is then to be awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position.[42] x x x

The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration

[41] G.R. No. L-26608, March 31, 1971, 38 SCRA 256.

[42] *Id.* at 258.

or compensation.[43] It bears stressing that when petitioners were separated from LIVECOR, they were given separation pay which also included gratuity pay for all the years they worked thereat and concurrently in HSDC/SIDCOR. Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work which is prohibited. This can only be allowed if there is a law which specifically authorizes them to receive an additional payment of gratuity. The HSDC Board Resolution No. 05-19-A granting petitioners' gratuity pay is not a law which would exempt them from the Constitutional proscription against additional, double or indirect compensation.

Neither does the HSDC law under P.D. 1396 contain a provision allowing the grant of such gratuity pay to petitioners. Section 9 of P.D. 1396 provides:

> **Section 9.** *Appointment, Control and Discipline of Personnel.*– The Board, upon recommendation of the General Manager of the Corporation, shall appoint the officers, and employees of the Corporation and its subsidiaries; fix their compensation, allowances and benefits, their working hours and such other conditions of employment as it may deem proper; grant them leaves of absence under such regulations as it may promulgate; discipline and/or remove them for cause; and establish and maintain a recruitment and merit system for the Corporation and its affiliates and subsidiaries.

The above-quoted provision applies to the persons appointed as employees of the HSDC and does not extend to petitioners who were LIVECOR employees merely designated in HSDC under a trust agreement. The fact that they were not HSDC employees was emphatically stated in Resolution No. 3-26-A passed by the HSDC Board of Directors on March 26, 1990, where it was provided that "in order to carry out the trust agreement, LIVECOR personnel must be designated/elected concurrently to operate certain basic SIDCOR corporate offices and positions."

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[43] *Id.* at 262.

Petitioners claim that the proscription against double compensation does not include pensions and gratuity.

We are not persuaded. We quote with approval what the CA said, thus:

> The second paragraph of Section 8, Article IX specifically adds that "pensions and gratuities shall not be considered as additional, double or indirect compensation." This has reference to compensation already earned, for instance by a retiree. A retiree receiving pensions or gratuities after retirement can continue to receive such pension or gratuity even if he accepts another government position to which another compensation is attached.
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> The grant to designees Dimagiba *et al*. of another gratuity from HSDC would not fall under the exception in the second paragraph as the same had not been primarily earned, but rather being granted for service simultaneously rendered to LIVECOR and HSDC. Hence, to allow the release of the second gratuity from HSDC would run afoul over the well-settled rule that "in the absence of an express legal exception, pension or gratuity laws should be construed as to preclude any person from receiving double compensation.[44]

We thus find no reversible error committed by the CA in granting the petition filed by respondents and reversing the Ombudsman decision finding them guilty of the administrative charges.

WHEREFORE, the petition for review is **DENIED**. The Decision dated May 30, 2002 and the Resolution dated August 28, 2002 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

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

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[44] *Rollo,* p. 62. (Citations omitted.)

SPECIAL FIRST DIVISION

[G.R. No. 170071. July 16, 2012]

HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA, *petitioners, vs.* **G & S TRANSPORT CORPORATION,** *respondent.*

[G.R. No. 170125. July 16, 2012]

G & S TRANSPORT CORPORATION, *petitioner, vs.* **HEIRS OF JOSE MARCIAL K. OCHOA namely: RUBY B. OCHOA, MICAELA B. OCHOA and JOMAR B. OCHOA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; REQUIREMENT FOR PROOF OF DUE EXECUTION AND AUTHENTICITY APPLIES ONLY TO PRIVATE DOCUMENTS; RATIONALE.—** It is true that before a private document offered as authentic be received in evidence, its due execution and authenticity must first be proved. However, it must be remembered that this requirement of authentication only pertains to private documents and "does not apply to public documents, these being admissible without further proof of their due execution or genuineness. Two reasons may be advanced in support of this rule, namely: said documents have been executed in the proper registry and are presumed to be valid and genuine until the contrary is shown by clear and convincing proof; and, second, because public documents are authenticated by the official signature and seals which they bear and of which seals, courts may take judicial notice." Hence, in a case, the Court held that in the presentation of public documents as evidence, due execution and authenticity thereof are already presumed.
2. **ID.; ID.; ID.; USAID CERTIFICATION IS A PUBLIC DOCUMENT PURSUANT TO PAR. A, SEC. 19, RULE 132 OF THE RULES OF COURT; SUSTAINED IN CASE**

AT BAR.— Sec. 19, Rule 132 of the Rules of Court classifies documents as either public or private, *viz*: x x x Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents. As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States. A further research on said agency shows that it was created through Executive Order 10973 by President John F. Kennedy on November 3, 1961 pursuant to the Foreign Assistance Act of 1961. It is headed by an Administrator and Deputy Administrator, both appointed by the President of the Unites States and confirmed by its Senate. From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is *prima facie* evidence of the facts stated therein. And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs.

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MFV Jose Law Office for G & S Transport Corp.

R E S O L U T I O N

DEL CASTILLO, *J.*:

Before us is the Motion for Reconsideration[1] of our March 9, 2011 Decision filed by G & S Transport Corporation (G & S).

Brief Background

On March 9, 2011, we rendered a Decision[2] in the consolidated petitions of G & S[3] and of the heirs.[4] These petitions stemmed from a Complaint[5] for Damages filed by the heirs against G & S with the Regional Trial Court (RTC), Pasig City, Branch 164 on account of Jose Marcial's death while onboard a taxicab owned and operated by G & S.

The RTC adjudged G & S guilty of breach of contract of carriage and ordered it to pay the heirs the following amounts:

1. ₱50,000 as civil indemnity;
2. ₱6,537,244.96 for loss of earning capacity of the deceased;
3. ₱100,000.00 for attorney's fees; and,
4. costs of litigation.[6]

Acting upon the heirs' Partial Motion for Reconsideration,[7] the RTC also ordered G & S to pay the heirs the following:

1. ₱300,000.00 as moral damages;

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[1] *Rollo* (G.R. No. 170071, pp. 358-397 and G.R. No. 170125, pp. 449-487).

[2] *Id.* at 326-350 and 424-448; 645 SCRA 93.

[3] Docketed as G.R. No. 170125

[4] Docketed as G.R. No. 170071.

[5] Records, pp. 1-8.

[6] See RTC Decision dated December 27, 2001, *id.* at 298-303.

[7] *Id.* at 316-323.

2. ₱50,000.00 as exemplary damages.[8]

On appeal, the Court of Appeals (CA) affirmed the RTC Decision but with the modifications that the awards for loss of income in the amount of ₱6,537,244.96 be deleted and that moral damages be reduced to ₱200,000.00.[9] The deletion was ordered on the ground that the income certificate issued by Jose Marcial's employer, the United States Agency for International Development (USAID), is self-serving, unreliable and biased, and that the same was not supported by competent evidence such as income tax returns or receipts. With respect to moral damages, the CA found the same excessive and disproportionate to the award of ₱50,000.00 exemplary damages. Thus, the same was reduced to ₱200,000.00.[10]

The parties' respective appeals[11] from the CA Decision became the subject of this Court's March 9, 2011 Decision which denied G & S's petition and partly granted that of the heirs. The Court affirmed the assailed CA Decision with the modifications that G & S is ordered to pay the heirs ₱6,611,634.59 for loss of earning capacity of the deceased, as well as moral damages in the reduced amount of ₱100,000.00. The dispositive portion of our March 9, 2011 Decision, reads:

> **WHEREFORE**, the petition for review on *certiorari* in G.R. No. 170071 is **PARTLY GRANTED** while the petition in G.R. No. 170125 is **DENIED**. The assailed Decision and Resolution dated June 29, 2005 and October 12, 2005 of the Court of Appeals in CA-G.R. CV No. 75602 are **AFFIRMED with the MODIFICATIONS** that G & S is ordered to pay the heirs of Jose Marcial K. Ochoa the sum of ₱6,611,634.59 for loss of earning capacity of the deceased and ₱100,000.00 as moral damages.
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> **SO ORDERED**.[12]

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[8] See RTC Order dated March 5, 2002, *id.* at 342-343.

[9] See CA's June 29, 2005 Decision, CA *rollo*, pp. 216-233.

[10] *Id.*

[11] *Supra* notes 3 and 4.

[12] 645 SCRA 120.

G & S's Motion for Reconsideration

G & S filed a Motion for Reconsideration[13] arguing that the USAID Certification used as basis in computing the award for loss of income is inadmissible in evidence because it was not properly authenticated and identified in court by the signatory thereof; that it exercised the diligence of a good father of a family in the selection and supervision of its employees and, hence, was able to overcome the presumption of fault imputed to it; and, that while settled is the rule that this Court is not a trier of facts, G & S can seek a review of facts even if it did not particularly state under which exception to such rule its case falls.

The heirs' Comment to the Motion for Reconsideration

In their Comment,[14] the heirs point out that G & S's arguments have already been squarely passed upon by this Court and by the lower courts. Moreover, these arguments involve questions of fact which cannot be reviewed in a petition for review on *certiorari*. As to the USAID Certification, the heirs aver that the same was properly admitted in evidence. This is because Jose Marcial's widow, witness Ruby Bueno Ochoa, was able to competently testify as to the authenticity and due execution of the said Certification since the signatory thereof, Jonas Cruz (Cruz), personally issued and handed the same to her. In addition, the accuracy of the contents of the Certification was never questioned by G & S as, in fact, it did not present evidence to dispute its contents.

The Court's Ruling

The Motion for Reconsideration is denied.

The requirement of authentication of documentary evidence applies only to a private document.

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[13] *Supra* note 1.

[14] *Id.* at 399-409 and 489-498.

It is true that before a private document offered as authentic be received in evidence, its due execution and authenticity must first be proved.[15] However, it must be remembered that this requirement of authentication only pertains to private documents and "does not apply to public documents, these being admissible without further proof of their due execution or genuineness. Two reasons may be advanced in support of this rule, namely: said documents have been executed in the proper registry and are presumed to be valid and genuine until the contrary is shown by clear and convincing proof; and, second, because public documents are authenticated by the official signature and seals which they bear and of which seals, courts may take judicial notice."[16] Hence, in a case, the Court held that in the presentation of public documents as evidence, due execution and authenticity thereof are already presumed.[17]

The subject USAID Certification is a public document, hence, does not require authentication.

It therefore becomes necessary to first ascertain whether the subject USAID Certification is a private or public document before this Court can rule upon the correctness of its admission and consequent use as basis for the award of loss of income in these cases.

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[15] Sec. 20, Rule 132 of the Rules of Court provides:

Sec. 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

[16] Francisco, Ricardo, J., *Basic Evidence*, 1992 Ed., p. 274.

[17] *Teoco v. Metropolitan Bank and Trust Company,* G.R. No. 162333, December 23, 2008, 575 SCRA 82, 97.

Sec. 19, Rule 132 of the Rules of Court classifies documents as either public or private, *viz*:

Sec. 19. Classes of Documents – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) **The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;**

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied.)

Paragraph (a) of the above-quoted provision classifies the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country, as public documents. As mentioned in our March 9, 2011 Decision, USAID is the principal United States agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms and that it is an independent federal government agency that receives over-all foreign policy guidance from the Secretary of State of the United States.[18] A further research on said agency shows that it was created through Executive Order 10973[19] by President John F. Kennedy on November 3, 1961 pursuant to the Foreign Assistance Act of 1961.[20] It is headed by an Administrator and Deputy

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[18] March 9, 2011 Decision, p. 9. Citations omitted; 645 SCRA 115.

[19] *Administration of Foreign Assistance and Related Functions* <http://www.thecre.com/fedlaw/legal20eo10973.htm> (visited January 16, 2012).

[20] USAID History, USAID Website <http://www.usaid.gov/about_usaid/usaidhist.html> (visited January 16, 2012).

Administrator, both appointed by the President of the Unites States and confirmed by its Senate.[21] From these, there can be no doubt that the USAID is an official government agency of a foreign country, the United States. Hence, Cruz, as USAID's Chief of the Human Resources Division in the Philippines, is actually a public officer. Apparently, Cruz's issuance of the subject USAID Certification was made in the performance of his official functions, he having charge of all employee files and information as such officer. In view of these, it is clear that the USAID Certification is a public document pursuant to paragraph (a), Sec. 19, Rule 132 of the Rules of Court. Hence, and consistent with our above discussion, the authenticity and due execution of said Certification are already presumed. Moreover, as a public document issued in the performance of a duty by a public officer, the subject USAID Certification is *prima facie* evidence of the facts stated therein.[22] And, there being no clear and sufficient evidence presented by G & S to overcome these presumptions, the RTC is correct when it admitted in evidence the said document. The USAID Certification could very well be used as basis for the award for loss of income to the heirs.

G & S failed to overcome the presumption that "the common carrier is at fault or is negligent when a passenger dies or is injured."[23]

G & S insists that it exercised the required diligence of a good father of a family when it hired and continued to employ Bibiano Padilla, Jr. (the driver of the ill-fated Avis taxicab). It

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[21] USAID Organization, USAID Website <http://www.usaid.gov/about usaid/usaidorg.html> (visited January 16, 2012).

[22] RULES OF COURT, Rule 132, Section 23. *Public documents as evidence.* – Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[23] *Diaz v. Court of Appeals*, G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

claims that it was able to prove this through the documentary exhibits it submitted before the trial court and that the same are sufficient to relieve it from liability to the heirs.

The reasons advanced by G & S in support of this argument are mere rehash if not a repetition of those raised in its petition which have already been considered and passed upon in our March 9, 2011 Decision and, hence, do not require reconsideration. The conclusion therefore that G & S failed to overcome the presumption that the common carrier is at fault or is negligent when a passenger dies or is injured stands.

There is no compelling reason to re-examine the factual findings of the lower courts.

G & S questions the portion of our March 9, 2011 Decision which reads:

> In this case, the said three issues boil down to the determination of the following questions: *What is the proximate cause of the death of Jose Marcial? Is the testimony of prosecution witness Clave credible? Did G & S exercise the diligence of a good father of a family in the selection and supervision of its employees?* Suffice it to say that these are all questions of fact which require this Court to inquire into the probative value of the evidence presented before the trial court. As we have consistently held, "[t]his Court is not a trier of facts. It is not a function of this court to analyze or weigh evidence. When we give due course to such situations, it is solely by way of exception. Such exceptions apply only in the presence of extremely meritorious cases." Here, ***we note that although G & S enumerated in its Consolidated Memorandum the exceptions to the rule that a petition for review on certiorari should only raise questions of law, it nevertheless did not point out under what exception its case falls. And, upon review of the records of the case, we are convinced that it does not fall under any.*** Hence, we cannot proceed to resolve said issues and disturb the findings and conclusions of the CA with respect thereto. x x x[24] (Emphasis

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[24] March 9, 2011 Decision, pp. 14-15. Citations omitted; emphasis supplied; 645 SCRA 109-110.

supplied.)

G & S avers that its failure to indicate the specific ground/ exception for this Court to review the facts of the case should not be taken against it. It contends that even if it failed to specify which of the exceptions is applicable here, the Court should have nonetheless determined the existence of any of the said exceptions on its own.

This matter has been properly addressed in our March 9, 2011 Decision. While we indeed mentioned that G & S failed to indicate under which of the exceptions its case falls, the line following that portion states that "*And, upon review of the records of the case, we are convinced that it does not fall under any*." It is plain from this statement that although G & S failed to specify the reason why we should resolve factual questions in these cases, we nevertheless have carefully studied the records to ascertain whether there exists sufficient justification for us to re-examine the factual findings of the lower courts. And convinced that there is none, we adhered to the settled principle that a review of the factual findings of the lower courts is outside the province of a Petition for Review on *Certiorari*.

The award of attorney's fees and cost of litigation should be deleted.

While we are constrained to deny the present Motion for Reconsideration for the reasons above-stated, we cannot, however, end without discussing the awards of attorney's fees and costs of litigation.

In *Mercury Drug Corporation v. Baking,*[25] the Court held, *viz*:

> On the matter of attorney's fees and expenses of litigation, it is settled that the reasons or grounds for the award thereof must be set forth in the decision of the court. Since the trial court's decision did not give the basis of the award, the same must be deleted. In *Vibram Manufacturing Corporation v. Manila Electric Company,* we held:

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[25] G.R. No. 156037, May 25, 2007, 523 SCRA 184, 192.

> Likewise, the award for attorney's fees and litigation expenses should be deleted. Well-enshrined is that 'an award for attorney's fees must be stated in the text of the court's decision and not in the dispositive portion only' (*Consolidated Bank and Trust Corporation (Solidbank) v. Court of Appeals,* 246 SCRA 193 [1995] and *Keng Hua Paper Products, Inc. v. Court of Appeals,* 286 SCRA 257 [1998]). This is also true with the litigation expenses where the body of the decision discusses nothing for its basis.

The text of the court *a quo's* Decision is bereft of any factual or legal justification for the awards of attorney's fees and costs of litigation. It merely declared the grant of said awards to the heirs in the dispositive portion of its decision. Hence, the same should be deleted.

WHEREFORE, the awards of attorney's fees and costs of litigation are **DELETED**. G & S's Motion for Reconsideration is **DENIED** with **FINALITY**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad,[*] *Villarama, Jr.,*[**] and *Perez, JJ.,* concur.

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[*] Vice Associate Justice Teresita J. Leonardo-De Castro, per Special Order No. 1252 dated July 12, 2012.

[**] Vice former Chief Justice Renato C. Corona, per raffle dated June 27, 2012.

FIRST DIVISION

[G.R. No. 178477. July 16, 2012]

HEIRS OF RAMON B. GAYARES, represented by Emelinda Gayares and Rhayan Gayares in their capacity as legal heirs of the late Ramon Gayares, *petitioners, vs.* **PACIFIC ASIA OVERSEAS SHIPPING CORPORATION, and KUWAIT OIL TANKER, CO., S.A.K.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; HEAVY PRESSURE OF WORK IS NOT CONSIDERED AS COMPELLING REASON TO JUSTIFY A REQUEST FOR EXTENSION OF TIME FOR FILING THE PETITION; SUSTAINED. –** It is settled jurisprudence that heavy pressure of work is not considered compelling reason to justify a request for an extension of time to file a petition for *certiorari*. "Heavy workload is relative and often self-serving. Standing alone, it is not a sufficient reason to deviate from the 60-day rule." In *Yutingco v. Court of Appeals,* therein petitioners' counsel cited heavy workload in seeking the court's leniency. However, the same was rebuffed by the Court ratiocinating that such "circumstance alone does not provide the court sufficient reason to merit allowance of an extension of the 60-day period to file the petition for *certiorari*. Heavy workload x x x ought to be coupled with more compelling reasons such as illness of counsel or other emergencies that could be substantiated by affidavits of merit." x x x In *Miwa v. Atty. Medina*, we had occasion to "remind lawyers to handle only as many cases as they can efficiently handle. For it is not enough that a practitioner is qualified to handle a legal matter, he is also required to prepare adequately and give the appropriate attention to his legal work." "[M]embers of the bar must take utmost care of the cases they handle for they owe fidelity to the cause of their clients." Petitioners must also do well to remember that "motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted for the length of time they pray for."

2. **ID.; ID.; ID.; NO NEW ISSUES MAY BE RAISED BY A PARTY IN HIS MEMORANDUM; RATIONALE. –** In the June 23, 2008 Resolution, the Court reminded the parties that "[n]o new issues may be raised by a party in the memorandum." The rationale for this was explained by the Court in *Heirs of Cesar Marasigan,* x x x ***no new issues may be raised by a party in his/its Memorandum and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned***. The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period. The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit these would be offensive to the basic rules of fair play, justice and due process.

APPEARANCES OF COUNSEL

Gepty & Jose Law Offices for petitioners.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

DEL CASTILLO, *J*.:

Heavy workload, standing alone, is not considered a compelling reason to justify a request for extension of time to file a petition for *certiorari* under Rule 65 of the Rules of Court.

Assailed in this Petition for Review on *Certiorari*[1] is the March 13, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98133 which denied petitioners' Motion for

[1] *Rollo*, pp. 11-24.

[2] CA *rollo*, pp. 8-9; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Jose C. Mendoza (now a Member of this Court) and Ramon M. Bato, Jr.

Extension of Time. Also assailed is the June 1, 2007 Resolution[3] denying petitioners' motion for reconsideration for lack of merit.

Factual Antecedents

In February 1998, Ramon B. Gayares (Gayares) was hired by Pacific Asia Overseas Shipping Corporation on behalf of its principal, Kuwait Oil Tanker Co., S.A.K., as an Able Seaman aboard its vessel M/T A1 Awdah. The contract was for a period of nine months with a monthly salary of US$ 499.00.[4] Prior to his embarkation on March 12, 1998,[5] Gayares underwent medical examination and was found "fit to work" by the examining physician.[6] However, on April 22, 1998, he was repatriated to the Philippines for medical reasons.[7]

On December 18, 1998, Gayares filed a complaint for disability/medical benefits, illness allowance, damages and attorney's fees against herein respondents.

Ruling of the Labor Arbiter

On February 24, 2000, the Labor Arbiter rendered a Decision[8] ordering respondents to pay Gayares disability benefits, sickness allowance, and attorney's fees. According to the Labor Arbiter, Gayares' disability of "blephasrospasm with oramandibular dystonia" was contracted during his employment[9] and not pre-existing as contended by the respondents considering that he was diagnosed "fit to work" by the company-physician.[10]

Aggrieved, respondents filed an appeal with the National Labor Relations Commission (NLRC).[11]

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[3] *Id.* at 249-250.

[4] See Contract of Employment, *Id.* at 102.

[5] *Id.* at 105 and 107.

[6] *Id.* at 111.

[7] *Id.* at 101.

[8] *Id.* at 99-100; penned by Labor Arbiter Donato G. Quinto, Jr.

[9] *Id.* at 98.

[10] *Id.*

[11] *Id.* at 162-184.

On June 12, 2004, or during the pendency of the appeal, Gayares died[12] and was substituted by his heirs, herein petitioners.

Ruling of the National Labor Relations Commission

On February 10, 2006, the NLRC rendered its Decision[13] deleting the award of disability benefits but affirming the award of sickness allowance and 10% thereof as attorney's fees.[14] The NLRC held that Gayares is not entitled to disability benefits because he miserably failed to show that: "(a) the cause of his illness was reasonably connected with his work; or (b) the sickness for which he claimed disability benefit is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease."[15] The NLRC also opined that Gayares could not have contracted the illness during the term of his employment contract, it having manifested a mere 22 days after embarkation and considering that the said disease is hereditary.[16] Neither was there any proof that Gayares' employment contributed or even aggravated his illness.[17]

On the other hand, the NLRC opined that Gayares is entitled to receive sickness allowance benefits. The NLRC noted that the company-designated physician failed to assess his degree of disability after his repatriation or to declare him fit to work after subjecting him to medical examinations.[18] Besides, sickness allowance benefit is separate and distinct from disability benefit and is not dependent on whether it is work-connected or not.

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[12] *Id.* at 82.

[13] *Id.* at 78-90; penned by Commissioner Romeo C. Lagman and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[14] *Id.* at 89-90.

[15] *Id.* at 85.

[16] *Id.*

[17] *Id.* at 87.

[18] *Id.* 87-88.

Petitioners' motion for reconsideration was denied in a Resolution[19] dated November 30, 2006.

Petitioners received on January 3, 2007[20] a copy of the November 30, 2006 NLRC Resolution denying their motion for reconsideration. However, instead of filing a Petition for *Certiorari*, petitioners opted to file a Motion for Extension of Time[21] which was received by the CA on March 5, 2007.[22]

Ruling of the Court of Appeals

On March 13, 2007, the CA issued a Resolution[23] which denied petitioners' Motion for Extension of Time and dismissed the case. According to the CA, requests for extension of time under Section 4, Rule 65 of the Rules of Court may only be allowed for "compelling reason."[24] The CA observed that mere pressure and volume of work cannot be considered "compelling reason" to justify a request for extension. Consequently, when petitioners filed their Petition for *Certiorari*, the CA merely noted the same in the Resolution[25] dated March 27, 2007.

Petitioners moved for reconsideration.[26] Finding no justifiable ground to warrant the reversal of its earlier ruling, the CA denied the motion for lack of merit in a Resolution[27] dated June 1, 2007.

Hence, this petition.

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[19] *Id.* at 31-32

[20] *Id.* at 2.

[21] *Id.* at 2-6.

[22] *Id.* at 2.

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

[24] *Id.* at 8.

[25] *Id.* at 222.

[26] *Id.* at 223-228.

[27] *Id.* at 249-250.

Issues

In their Petition for Review on *Certiorari*,[28] petitioners submitted the sole issue of whether:

THE COURT OF APPEALS GRAVELY ERRED IN DENYING PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR *CERTIORARI* DATED MARCH 5, 2007 NOTWITHSTANDING THAT THERE ARE COMPELLING REASONS STATED IN THE SAID MOTION IN ACCORDANCE WITH SECTION 4, RULE 65 OF THE RULES OF COURT, AS AMENDED.[29]

In their Memorandum,[30] however, petitioners presented the following issues of whether:

A. THE COURT OF APPEALS GRAVELY ERRED IN DENYING PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR *CERTIORARI* DATED MARCH 5, 2007 NOTWITHSTANDING THAT THERE ARE COMPELLING REASONS STATED IN THE SAID MOTION IN ACCORDANCE WITH SECTION 4, RULE 65 OF THE RULES OF COURT, AS AMENDED.

B. THE APPEAL OF PETITIONER IS CLEARLY MERITORIOUS [IN] THAT TECHNICALITIES, IF ANY, SHALL GIVE WAY TO SUBSTANTIAL JUSTICE.[31]

Petitioners' Arguments

Petitioners argue that the CA gravely erred in denying their motion for extension of time and, consequently, in dismissing outright their petition for *certiorari* for having been filed late. They insist that their counsel's heavy workload is compelling reason to grant their request for additional time to file their petition.[32] They also claim that since this is a labor

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[28] *Rollo*, pp. 11-24

[29] *Id.* at 17.

[30] *Id.* at 131-146.

[31] *Id.* at 135.

[32] *Id.* at 19 and 137.

case,[33] the worker's welfare should be given preference in "carrying out and interpreting the Labor Code's provisions and its implementing regulations."[34]

Notably, petitioners absolutely failed to discuss in their petition the substantial merits of their case. It is only in their Memorandum that petitioners assert that their appeal is meritorious. They allege that Gayares' illness was acquired during his employment and aggravated by the nature of his work.[35]

Respondents' Arguments

Respondents, on the other hand, maintain that petitioners have no inherent right to expect that their motion for additional time will be granted as the same rests on the discretion of the court. Respondents also stress that no compelling reason was presented by petitioners as basis for such request. Respondents maintain that Gayares is not entitled to disability benefits as he was repatriated just 22 days into his contract and his illness was neither acquired during the period of his employment with respondents nor aggravated by his work.

Our Ruling

The petition lacks merit.

The general rule is to file the petition for certiorari within the 60-day reglementary period. A 15-day extension is the exception to the rule and the request may only be granted for compelling reason.

Section 4,[36] Rule 65 of the Rules of Court provides:

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[33] *Id.* at 18 and 136.

[34] *Id.* at 137.

[35] *Id.* at 140.

[36] Before its amendment by A.M. No. 07-7-12-SC, December 27, 2007. The above version applies at the time petitioners filed their Motion for Extension of Time before the Court of Appeals.

Section 4. *When and where petition filed.* – 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 sixty (60) day period shall be counted from notice of the denial of said motion.

xxx xxx xxx

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

It is thus explicit from the foregoing that as a general rule, the petition shall be filed within the 60-day reglementary period. As an exception, an extension of time may be granted but only for a compelling reason and only for 15 days. More important, the discretion to grant or deny said request lies solely in the court. Hence, the party requesting such extension must not expect that his request will be granted as he has no inherent right to the same.

Petitioners did not cite any compelling reason to justify their request for extension.

In the instant case, petitioners sought a 15-day extension from the CA since they failed to file their petition within the 60-day reglementary period. In their Motion for Extension of Time,[37] they averred thus:

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4. Petitioners intend to elevate the matter to this Honorable Court through a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, thus they have until today, March 5, 2007 within which to file a Petition for *Certiorari* with this Honorable Court.

5. However, due to heavy pressure of work on the part of the undersigned counsel, consisting in the preparation of various pleadings, briefs and memoranda in other equally important cases, aggravated by almost daily court appearances and the fact that he is one of the counsels in the case entitled "*People of the Philippines*

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[37] CA *rollo*, pp. 2-6.

vs. Jose Antonio Leviste," docketed as Crim. Case No. 07-179, pending before the Regional Trial Court of Makati City, Branch 150, wherein he has to prepare various urgent pleadings, he would need an additional period of fifteen (15) days from today, March 5, 2007 or until March 20, 2007 within which to file the said petition with this Honorable Court.[38]

In short, petitioners cite "heavy pressure of work" as the sole reason for their failure to file their petition on time. Unfortunately for them, the CA found the same "not a compelling reason" and thus pronounced in its assailed March 13, 2007 Resolution[39] thus:

Considering that the 15-day extension allowable under Section 4 of the Rule 65 of the 1997 Revised Rules of Civil Procedure is strictly conditioned on "compelling reason" advance[d] by the movant and mere pressure and volume of work has already been held by the Supreme Court as not a compelling reason to justify an extension, the petitioners' Motion for Extension of Time dated March 5, 2007 is hereby DENIED.

Accordingly, this case is ordered OUTRIGHTLY DISMISISED for failure to file the petition for *certiorari* within the 60-day reglementary period which expired on March 3, 2007.

SO ORDERED.

We agree with the CA.

It is settled jurisprudence that heavy pressure of work is not considered compelling reason to justify a request for an extension of time to file a petition for *certiorari*. "Heavy workload is relative and often self-serving. Standing alone, it is not a sufficient reason to deviate from the 60-day rule."[40] In *Yutingco v. Court of Appeals,*[41] therein petitioners' counsel cited heavy workload

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[38] *Id.* at 2-3.

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

[40] *Laguna Metts Corporation v. Court of Appeals*, G.R. No. 185220, July 27, 2009, 594 SCRA 139, 146.

[41] 435 Phil. 83 (2002).

in seeking the court's leniency. However, the same was rebuffed by the Court ratiocinating that such "circumstance alone does not provide the court sufficient reason to merit allowance of an extension of the 60-day period to file the petition for *certiorari*. Heavy workload x x x ought to be coupled with more compelling reasons such as illness of counsel or other emergencies that could be substantiated by affidavits of merit."[42]

In the instant case, petitioners' counsel merely referred to "heavy pressure of work", nothing more, in asking for additional time. Incidentally, he also mentioned that he is one of the counsels of the accused in *People v. Jose Antonio Leviste* then pending before the Makati Regional Trial Court. However, we note that he is merely "one of the counsels" in the said criminal case. As such, any task must have been distributed among the counsels. Besides, counsel should bear in mind that in accepting new cases, he should not deprive his "older" cases of the same competence and efficiency he devotes on these new cases, or cause prejudice to them in one way or another. In *Miwa v. Atty. Medina*,[43] we had occasion to "remind lawyers to handle only as many cases as they can efficiently handle. For it is not enough that a practitioner is qualified to handle a legal matter, he is also required to prepare adequately and give the appropriate attention to his legal work."[44] "[M]embers of the bar must take utmost care of the cases they handle for they owe fidelity to the cause of their clients."[45] Petitioners must also do well to remember that "motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted for the length of time they pray for."[46]

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[42] *Id.* at 91-92.

[43] 458 Phil. 920 (2003).

[44] *Id.* at 928.

[45] *Degamo v. Avantgarde Shipping Corp. and/or Levy Rabamontan*, 512 Phil. 317, 323-324 (2005).

[46] *Ramos v. Atty. Dajoyag, Jr.*, 428 Phil. 267, 278 (2002).

Petitioners belatedly raised the issue on the substantial merits of their case.

It is worthy of note that in their Petition for Review on *Certiorari* filed before this Court, the only issue raised by the petitioners was the alleged error of the CA in denying their motion for extension of time. They focused and limited their discussion on the fact that their counsel's heavy workload should have compelled the CA to be lenient towards their cause. Thus, when respondents were required by this Court to file their comment, they aptly observed that "[t]he sole issue raised by the petitioners in their present petition concerns the denial by the Honorable Court of Appeals of their Motion for Extension of Time to file their Petition for *Certiorari* x x x."[47] As a necessary consequence, respondents likewise limited their discussion on debunking the claim of petitioners that 'heavy workload' constitutes compelling reason to grant a request for extension.

We likewise reviewed petitioners' Reply[48] and we note that the discussion therein referred only to the denial of the motion for extension. No discussion whatsoever was made as regards the substantial merits of the case. In fact, as we have mentioned before, it was only in petitioners' Memorandum where they raised for the first time the issue that their appeal is meritorious.

This is not only unfair to the respondents who were deprived of the opportunity to propound their arguments on the issue. It is likewise not allowed by the rules. In the June 23, 2008 Resolution,[49] the Court reminded the parties that "[n]o new issues may be raised by a party in the memorandum."[50] The rationale for this was explained by the Court in *Heirs of Cesar Marasigan v. Marasigan*,[51] thus:

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[47] *Rollo*, p. 61.

[48] *Id.* at 77-81.

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

[50] *Id.* at 84.

[51] G.R. No. 156078, March 14, 2008, 548 SCRA 409.

This Court significantly notes that the first three issues, alleging lack of jurisdiction and cause of action, are raised by petitioners for the first time in their Memorandum. No amount of interpretation or argumentation can place them within the scope of the assignment of errors they raised in their Petition.

The parties were duly informed by the Court in its Resolution dated September 17, 2003 that ***no new issues may be raised by a party in his/its Memorandum and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned***. The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period. The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit these would be offensive to the basic rules of fair play, justice and due process.

Petitioners failed to heed the Court's prohibition on the raising of new issues in the Memorandum.[52]

Based on the foregoing, we find no necessity to discuss the second issue which was raised by the petitioners for the first time only in their Memorandum.

WHEREFORE, based on the foregoing, the Petition for Review on *Certiorari* is **DENIED**. The Resolution of the Court of Appeals in CA-G.R. SP No. 98133 dated March 13, 2007 denying petitioners' Motion for Extension of Time and the Resolution dated June 1, 2007 denying reconsideration thereof are **AFFIRMED**.

SO ORDERED.

Bersamin (Acting Chairperson),[*] *Abad,*[**] *Villarama, Jr.,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[52] *Id.* at 431-432.

[*] Per Special Order No. 1251 dated July 12, 2012.

[**] Per Special Order No. 1252 dated July 12, 2012.

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

SECOND DIVISION

[G.R. No. 181995. July 16, 2012]

BIBIANO C. ELEGIR, *petitioner, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETIREMENT; TWO RETIREMENT SCHEMES; THE DETERMINING FACTOR IN CHOOSING WHICH RETIREMENT SCHEME TO APPLY IS STILL SUPERIORITY IN TERMS OF BENEFITS PROVIDED; APPLICATION IN CASE AT BAR. –** It bears reiterating that there are only two retirement schemes at point in this case: (1) Article 287 of the Labor Code, *and;* (2) the PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan. The two retirement schemes are alternative in nature such that the retired pilot can only be entitled to that which provides for superior benefits. x x x The determining factor in choosing which retirement scheme to apply is still *superiority* in terms of benefits provided. Thus, even if there is an existing CBA but the same does not provide for retirement benefits *equal or superior* to that which is provided under Article 287 of the Labor Code, the latter will apply. In this manner, the employee can be assured of a reasonable amount of retirement pay for his sustenance. Consistent with the purpose of the law, the CA correctly ruled for the computation of the petitioner's retirement benefits based on the two (2) PAL retirement plans because it is under the same that he will reap the most benefits. x x x Comparing the benefits under the two (2) retirement schemes, it can readily be perceived that the 22.5 days worth of salary for every year of service provided under Article 287 of the Labor Code cannot match the 240% of salary or almost two and a half worth of monthly salary per year of service provided under the PAL Pilots' Retirement Benefit Plan, which will be further added to the ₱125,000.00 to which the petitioner is entitled under the PAL-ALPAP Retirement Plan. Clearly

then, it is to the petitioner's advantage that PAL's retirement plans were applied in the computation of his retirement benefits.

2. **CIVIL LAW; PRINCIPLE OF UNJUST ENRICHMENT; CONDITIONS; THE MAIN OBJECTIVE OF THE PRINCIPLE IS TO PREVENT ONE FROM ENRICHING ONESELF AT THE EXPENSE OF ANOTHER; CONSTRUED. –** There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. Two conditions must concur: (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. The enrichment may consist of a patrimonial, physical, or moral advantage, so long as it is appreciable in money. It must have a correlative prejudice, disadvantage or injury to the plaintiff which may consist, not only of the loss of the property or the deprivation of its enjoyment, but also of the non-payment of compensation for a prestation or service rendered to the defendant without intent to donate on the part of the plaintiff, or the failure to acquire something what the latter would have obtained.

3. **ID.; ID.; APPLICATION IN CASE AT BAR. –** [T]o allow the petitioner to leave the company before it has fulfilled the reasonable expectation of service on his part will amount to unjust enrichment. x x x As can be gathered from the facts, PAL invested a considerable amount of money in sending the petitioner abroad to undergo training to prepare him for his new appointment as B747-400 Captain. In the process, the petitioner acquired new knowledge and skills which effectively enriched his technical know-how. As all other investors, PAL expects a return on investment in the form of service by the petitioner for a period of 3 years, which is the estimated length of time within which the costs of the latter's training can be fully recovered. The petitioner is, thus, expected to work for PAL and utilize whatever knowledge he had learned from the training for the benefit of the company. However, after only

one (1) year of service, the petitioner opted to retire from service, leaving PAL stripped of a necessary manpower. Undeniably, the petitioner was enriched at the expense of PAL. After undergoing the training fully shouldered by PAL, he acquired a higher level of technical competence which, in the professional realm, translates to a higher compensation. x x x To allow the petitioner to simply leave the company without reimbursing it for the proportionate amount of the expenses it incurred for his training will only magnify the financial disadvantage sustained by PAL. Reason and fairness dictate that he must return to the company a proportionate amount of the costs of his training.

4. **ID.; DAMAGES; INTEREST; IMPOSITION OF INTEREST REQUIRES BREACH OF OBLIGATION; NOT PRESENT IN CASE AT BAR. –** The jurisprudential guideline clearly referred to breach of an obligation consisting of a *forbearance of money, goods or credit* before the imposition of a legal interest of 12% can be warranted. Such essential element is nowhere to be found in the facts of this case. Even granting that an interest of 6% may be imposed in cases of breached obligations *not* constituting loan or forbearance of money, loan or credit, such depends upon the discretion of the court. If at all, the monetary award in favor of the petitioner will earn legal interest from the time the judgment becomes final and executory until the same is fully satisfied, regardless of the nature of the breached obligation. The imposition is justified considering that the interim period from the finality of judgment, awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Salonga Hernandez & Mendoza for petitioner.

Alex B. Carpela, Jr. for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated August 6, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 79111, which reversed and set aside the Decision[2] dated March 18, 2002 and Order[3] dated June 30, 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-06135-97 and NLRC NCR CA No. 015030-98.

Factual Antecedents

As culled from the records, the instant case stemmed from the following factual antecedents:

Petitioner Bibiano C. Elegir (petitioner) was hired by Philippine Airlines, Inc. (PAL) as a commercial pilot, specifically designated as HS748 Limited First Officer, on March 16, 1971.[4]

In 1995, PAL embarked on a refleeting program and acquired new and highly sophisticated aircrafts. Subsequently, it sent an invitation to bid to all its flight deck crew, announcing the opening of eight (8) B747-400 Captain positions that were created by the refleeting program. The petitioner, who was then holding the position of A-300 Captain, submitted his bid and was fortunately awarded the same.[5] The petitioner, together with

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *rollo*, pp. 29-37.

[2] Penned by Presiding Commissioner Roy V. Señeres, with Commissioners Vicente S.E. Veloso (inhibited) and Alberto R. Quimpo, concurring; *id.* at 111-125.

[3] Penned by Presiding Commissioner Roy V. Señeres, with Commissioners Romeo L. Go and Vicente S.E. Veloso (inhibited), concurring; *id.* at 137.

[4] *Id.* at 70.

[5] *Id.* at 50-51.

seven (7) other pilots, was sent for training at Boeing in Seattle, Washington, United States of America on May 8, 1995, to acquire the necessary skills and knowledge in handling the new aircraft. He completed his training on September 19, 1995.[6]

On November 5, 1996, after rendering twenty-five (25) years, eight (8) months and twenty (20) days of continuous service, the petitioner applied for optional retirement authorized under the Collective Bargaining Agreement (CBA) between PAL and the Airline Pilots Association of the Philippines (ALPAP), in which he was a member of good standing. In response, PAL asked him to reconsider his decision, asseverating that the company has yet to recover the full value of the costs of his training. It warned him that if he leaves PAL before he has rendered service for at least three (3) years, it shall be constrained to deduct the costs of his training from his retirement pay.[7]

On November 6, 1996, the petitioner went on terminal leave for thirty (30) days and thereafter made effective his retirement from service. Upon securing his clearance, however, he was informed that the costs of his training will be deducted from his retirement pay, which will be computed at the rate of ₱5,000.00 per year of service. The petitioner, through his counsel, sent PAL a correspondence, asserting that his retirement benefits should be based on the computation stated in Article 287 of the Labor Code, as amended by Republic Act (R.A.) No. 7641, and that the costs of his training should not be deducted therefrom. In its Reply dated August 4, 1997, PAL refused to yield to the petitioner's demand and maintained that his retirement pay should be based on PAL-ALPAP Retirement Plan of 1967 (PAL-ALPAP Retirement Plan) and that he should reimburse the company with the proportionate costs of his training. Thus, on August 27, 1997, the petitioner filed a complaint for non-payment of retirement pay, moral damages, exemplary damages and attorney's fees against PAL.[8]

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[6] *Id.*

[7] *Id.* at 71.

[8] *Id.* at 41-42.

On February 6, 1998, the Labor Arbiter (LA) rendered a Decision,[9] the pertinent portions of which read:

From the foregoing, it is manifestly clear that an employee's retirement benefits under any collective bargaining agreement shall not be less than those provided under the New Retirement Pay Law and if such benefits are less, the employee shall pay the difference between the amount due the employee and that provided under the CBA or individual agreement or retirement plan (Par. 3.2, Sec. 3, rules Implementing the New Retirement Pay Law).

Thus, applying the pertinent CBA provision in correlation with the New Retirement Pay Law, complainant should receive the following amount, to wit:

22.5 x 26 yrs. x [₱]138,447.00= [₱]2,700,301.50

If we were to follow the [PAL's] computation of [petitioner's] retirement pay, the latter's retirement benefits in the amount of [₱]125,000.00 based on Section 2, Article VII of the Retirement Plan of the CBA at [₱]5,000.00 per every year of service would be much less than his monthly salary of [₱]138,477.00 at the time of his retirement. This was never envisioned by the law. Instead, it is the clear intention of our law makers to provide a bigger and better retirement pay or benefits under existing laws and/or existing CBA or other agreements.

xxx xxx xxx

WHEREFORE, in view of the foregoing, we find [PAL] liable to the [petitioner] for the payment of his retirement benefits as follows:

Retirement Benefits (22.5 x 26 years x [₱]138,477.00)	[₱]2,700,301.50
Accrued Trip Leave	760,299.37
Accrued Vacation Leave	386,546.44
1996 Unutilized days off	105,089.46
Nov. '96 Prod. Allow. (net)	1,726.92
Unpaid Salary 12/1/-5/96	22,416.65
1996 w/tax refund	2,464.42
13th month backpay for the year 1988-1991	171,262.50
TOTAL	[₱]4,150,106.20

[9] *Id.* at 70-77.

plus legal interest of 12% per annum from November 06, 1996.

Finally, ten percent (10%) of all sums owing to [petitioner] is hereby adjudged as attorney's fees.

SO ORDERED.[10]

The LA ratiocinated that PAL had no right to withhold the payment of the petitioner's retirement benefits simply because he retired from service before the lapse of three (3) years. To begin with, there was no document evidencing the fact that the petitioner was required to stay with PAL for three (3) years from the completion of his training or that he was bound to reimburse the company of the costs of his training should he retire from service before the completion of the period. The LA likewise dismissed the theory espoused by PAL that the petitioner's submission of his bid for the new position which necessarily requires training created an innominate contract of *du ut facias* between him and the company since their relationship is governed by the CBA between the management and the ALPAP.[11]

On appeal, the NLRC took a different stance and modified the decision of the LA in its Decision dated March 18, 2002, which pertinently states:

Considering that [petitioner] was only fifty-two (52) years when he opted to retire on November 6, 1996, he was, strictly, not yet qualified to receive the benefits provided under said Article 287 of the Labor Code, as amended by R.A. 7641. However, [petitioner] is eligible for retirement under the CBA between respondent PAL and ALPAP, as he had already served for more than 25 years with said respondent. This is covered by the provision in the first paragraph of Article 287 of the Labor Code which states that an employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract, inasmuch as the CBA in question does not provide for any retirement age, but limited itself to the number of years of service or flying hours of the employee concerned. Consequently, anytime

[10] *Id.* at 74-77.

[11] *Id.* at 75-76.

that an employee of respondent PAL reaches twenty (20) years of service or 20,000 (flying) hours as a pilot of PAL, then his age at that precise time would be considered as the retirement age, as far as he is concerned.

The retirement benefits of [petitioner] should, therefore, be computed in accordance with both Article 287 of the Labor Code and the Retirement Plan in the CBA of PAL and ALPAP.

On the second issue, we rule that [petitioner] is under obligation to reimburse a portion of the expenses incurred for his training as B747-400 Captain.

It would be grossly unfair and unjust to [PAL] if the [petitioner] would be allowed to reap the fruits of this training, which upgraded his knowledge and skills that would enable him to demand higher pay, if he would not be made to return said benefits in the form of service for a reasonable period of time, say three (3) years as [PAL's] company policy demands. x x x

xxx xxx xxx

Thus, with the adjudged reimbursement for training expenses of [₱]921,281.71 (sic), the awards due to [petitioner] shall be, as follows:

Retirement Pay ([₱]138,477.00 divided by 2 times 26)	-	[₱]1,800,201.00
Service Incentive Leave ([₱]138,477.00 divided by 30 x 5)	-	23,074.50
Accrued Trip Leave	-	386,546.44
13th Month Pay	-	138,477.00
1996 Unutilized days off	-	105,089.48
Nov. 1996 Productive Allowance (net)	-	1,726.92
Unpaid salary 12/1-5/96	-	22,416.63
1996 w/ tax refund	-	2,464.42
TOTAL	-	[₱]2,479.996.39

LESS:

Reimbursement of training expenses	981,281.71	
1996 13th month pay overpayment	19,837.16	
1996 Christmas bonus overpayment	11,539.75	
PESALA	567.93	
TOTAL		1,013,226.55
RETIREMENT PAY STILL PAYABLE		[₱]1,466,769.81

IN VIEW OF THE FOREGOING, the decision of the Labor Arbiter should be MODIFIED by increasing the awards to the [petitioner] to ONE MILLION FOUR HUNDRED SIXTY SIX THOUSAND SEVEN HUNDRED SIXTY-NINE and 84/100 ([₱]1,466,769.84) PESOS as computed above.

SO ORDERED.[12]

Both PAL and petitioner filed their respective motions for partial reconsideration from the decision of the NLRC. In its Motion for Partial Reconsideration,[13] PAL asseverated that the decision of the NLRC, directing the computation of the petitioner's retirement benefits based on Article 287 of the Labor Code, instead of the CBA, was inconsistent with the disposition of this Court in *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines*.[14] It emphasized that in said case, this Court sustained PAL's position and directed the payment of retirement benefits of the complainant pilot in accordance with the PAL-ALPAP Retirement Plan. However, in an Order[15] dated June 30, 2003, the NLRC denied PAL's motion for reconsideration.

Unyielding, PAL filed a petition for *certiorari* with the CA. In said petition, PAL emphasized that the petitioner's case should be decided in light of the ruling in *Philippine Airlines, Inc.*, where this Court held that the computation of the retirement pay of a PAL pilot who retired before reaching the retirement age of sixty (60) should be based on the PAL-ALPAP Retirement Plan or at the rate of ₱5,000.00 for every year of service.[16]

In its Decision dated August 6, 2007, the CA ruled that the petitioner's retirement pay should be computed in accordance with PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan as was held in *Philippine Airlines, Inc*. It held, thus:

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[12] *Id.* at 121-124.

[13] *Id.* at 126-131.

[14] 424 Phil. 356 (2002).

[15] *Rollo*, pp. 137-138.

[16] *Id.* at 149.

The present case squarely falls within the state of facts upon which the ruling in *Philippine Airlines, Inc., vs[.] Airline Pilots Association of the Philippines* was enunciated. [Petitioner] herein applies for retirement at an age below 60. A distinction was made between a pilot who retires at the age of sixty and another who retires earlier. The Supreme Court was explicit when it declared:

> "A pilot who retires after twenty years of service or after flying 20,000 hours would still be in the prime of his life and at the peak of his career, compared to one who retires at the age of 60 years old."

Furthermore, [petitioner] would not be getting less if his retirement pay is computed on the PAL-ALPAP retirement plan rather than the formula provided by the Labor Code. [Petitioner] did not refute that he already got retirement benefits from another retirement plan – the PAL Pilots Retirement Plan. It appearing that the retirement benefits amounting to [₱]1,800,201.00 being the main bone of contention herein, this Court proceeds to compute the balance of Capt. Elegir's retirement benefits as follows:

Retirement Pay (₱5,000 x 25 years)		₱125,000.00
Trip Leave Pay		757,564.04
Vacation Leave Pay		385,155.76
1996 Unutilized Day-Off		104,711.38
Productivity Allowance for 1996		1,726.92
Unpaid Salary for December 1-5, 1996		22,335.00
1996 Withholding Tax Refund		2,464.42
		₱1,398,957.52
Less Accountabilities:		
Training Cost	₱981,281.71	
1996 13th Month Pay Overpayment	19,837.16	
1996 Christmas Bonus	11,539.75	
PESALA	567.93	1,013,226.55
BALANCE		₱385,730.97

pursuant to the ruling in G.R. No. 143686.

xxx xxx xxx

WHEREFORE, the petition is **GRANTED**. The Decision of public respondent dated March 18, 2002 and its Order of June 30, 2003

are REVERSED and SET ASIDE. **The retirement benefits of [petitioner] Capt. Bibiano Elegir shall be based on the 1967 PAL-ALPAP Retirement Plan and the PAL Pilots Retirement Benefit Plan** and the balance still due him, pegged at ₱385,730.97.

SO ORDERED.[17] (Citation omitted and emphasis supplied)

The petitioner filed a motion for reconsideration but the same was denied in a Resolution[18] dated February 21, 2008. Aggrieved, the petitioner appealed to this Court.

Essentially, we are called upon to rule on the following issues:

1. Whether the petitioner's retirement benefits should be computed based on Article 287 of the Labor Code or on PAL's retirement plans;
2. Whether the petitioner should reimburse PAL with the proportionate costs of his training; and
3. Whether interest should be imposed on the monetary award in favor of the petitioner.

The Ruling of this Court

The petitioner's retirement pay should be computed based on PAL's retirement plans.

The petitioner maintains that it is Article 287 of the Labor Code which should be applied in the computation of his retirement pay since the same provides for higher benefits. He contends that the CA erroneously resorted to the ruling in *Philippine Airlines, Inc.* since the circumstances in the said case, which led this Court to rule in favor of the applicability of PAL's retirement plans in computing retirement benefits, are unavailing in the present case. Specifically, he pointed out that the pilot in *Philippine Airlines, Inc.* retired at the age of forty-five (45),

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[17] *Id.* at 35-37.

[18] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring; *id.* at 39.

while he opted to retire at fifty-two (52). He further emphasized that the ruling was anchored on a finding that the retirement benefits that the pilot would get under Article 287 of the Labor Code are less than those he would get under PAL's retirement plans.[19]

Apparently, the petitioner failed to appreciate the heart behind the ruling in *Philippine Airlines, Inc.* To recapitulate, the case stemmed from PAL's unilateral act of retiring airline pilot Captain Albino Collantes (Collantes) under the authority of Section 2, Article VII of the PAL-ALPAP Retirement Plan. Thereafter, ALPAP filed a Notice of Strike with the Department of Labor and Employment (DOLE), asseverating that the retirement of Collantes constituted illegal dismissal and union busting. The Secretary of Labor assumed jurisdiction and eventually upheld PAL's action of retiring Collantes as a valid exercise of its option under Section 2, Article VII of the PAL-ALPAP Retirement Plan. It further directed for the computation of Collantes' retirement benefits on the basis of Article 287 of the Labor Code.[20] Acting on Collantes' petition for *certiorari*, the CA held that the pilot's retirement benefits should be based on Article 287 of the Labor Code and not on the PAL-ALPAP Retirement Plan. On appeal to this Court, we reversed the CA and ruled that Collantes' retirement benefits should be computed based on the PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan and not on Article 287 of the Labor Code since the benefits under the two (2) plans are substantially higher than the latter. The dispositive portion of the decision reads:

> **WHEREFORE**, in view of all the foregoing, the petition is *GRANTED*. The March 2, 2000 Decision and the June 19, 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 54403 are *REVERSED* and *SET ASIDE*. The Order of the Secretary of Labor in NCMB-NCR-N.S. 12-514-97 dated June 13, 1998, is *MODIFIED* as follows: **The retirement benefits to be awarded to Captain Albino Collantes shall be based on the 1967 PAL-ALPAP**

[19] *Id.* at 16-17.

[20] *Supra* note 14, at 359.

Retirement Plan and the PAL Pilots' Retirement Benefit Plan. The directive contained in subparagraph (2) of the dispositive portion thereof, which required petitioner to consult the pilot involved before exercising its option to retire him, is *DELETED*. The said Order is *AFFIRMED* in all other respects.

SO ORDERED.[21] (Emphasis supplied)

It bears reiterating that there are only two retirement schemes at point in this case: (1) Article 287 of the Labor Code, *and;* (2) the PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan. The two retirement schemes are alternative in nature such that the retired pilot can only be entitled to that which provides for superior benefits.

Article 287 of the Labor Code states:

Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement plan providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared as the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (½) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. x x x (Emphasis supplied)

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[21] *Id.* at 365.

It can be clearly inferred from the language of the foregoing provision that it is applicable only to a situation where (1) there is no CBA or other applicable employment contract providing for retirement benefits for an employee, or (2) there is a CBA or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law. The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. On the other hand, the second situation aims to prevent private contracts from derogating from the public law.[22]

The primary application of existing CBA in computing retirement benefits is implied in the title of R.A. No. 7641 which amended Article 287 of the Labor Code. The complete title of R.A. No. 7641 reads: "An Act Amending Article 287 of Presidential Decree No. 442, As Amended, otherwise known as the Labor Code of the Philippines, By Providing for Retirement Pay to Qualified Private Sector in the Absence of Any Retirement Plan in the Establishment."[23]

Emphasis must be placed on the fact that the purpose of the amendment is not merely to establish precedence in application or accord blanket priority to existing CBAs in computing retirement benefits. The determining factor in choosing which retirement scheme to apply is still *superiority* in terms of benefits provided. Thus, even if there is an existing CBA but the same does not provide for retirement benefits *equal or superior* to that which is provided under Article 287 of the Labor Code, the latter will apply. In this manner, the employee can be assured of a reasonable amount of retirement pay for his sustenance.

Consistent with the purpose of the law, the CA correctly ruled for the computation of the petitioner's retirement benefits based

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[22] *Obusan v. Philippine National Bank*, G.R. No. 181178, July 26, 2010, 625 SCRA 542, citing *Oxales v. United Laboratories, Inc.*, G.R. No. 152991, July 21, 2008, 559 SCRA 26, 42.

[23] *Oxales v. United Laboratories, Inc.*, G.R. No. 152991, July 21, 2008, 559 SCRA 26, 45.

on the two (2) PAL retirement plans because it is under the same that he will reap the most benefits. Under the PAL-ALPAP Retirement Plan, the petitioner, who qualified for late retirement after rendering more than twenty (20) years of service as a pilot, is entitled to a lump sum payment of ₱125,000.00 for his twenty-five (25) years of service to PAL. Section 2, Article VII of the PAL-ALPAP Retirement Plan provides:

> *Section 2. Late Retirement*. Any member who remains in the service of the company after his normal retirement date may retire either at his option [or] at the option of the Company, and when so retired he shall be entitled either[:] (a) to a lump sum payment of [₱]5,000.00 for each completed year of service rendered as a pilot, or (b) to such termination pay benefits to which [he] may be entitled under existing laws, whichever is the greater amount.[24]

Apart from the abovementioned benefit, the petitioner is also entitled to the equity of the retirement fund under PAL Pilots' Retirement Benefit Plan, which pertains to the retirement fund raised from contributions exclusively from PAL of amounts equivalent to 20% of each pilot's gross monthly pay. Each pilot stands to receive the full amount of the contribution upon his retirement which is equivalent to 240% of his gross monthly income for every year of service he rendered to PAL. This is in addition to the amount of not less than ₱100,000.00 that he shall receive under the PAL-ALPAP Retirement Plan.[25]

In sum, therefore, the petitioner will receive the following retirement benefits:

(1) *₱125,000.00 (25 years x ₱5,000.00)* for his 25 years of service to PAL under the PAL-ALPAP Retirement Plan, and;

(2) *240% of his gross monthly salary* for every year of his employment or, more specifically, the *summation of PAL's monthly contribution of an amount equivalent*

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[24] *Rollo*, p. 119.

[25] *Supra* note 14, at 363.

> *to 20% of his actual monthly salary*, under the PAL Pilots' Retirement Benefit Plan.

As stated in the records, the petitioner already received the amount due to him under the PAL Pilots' Retirement Benefit Plan.[26] As much as we would like to demonstrate with specificity the amount of the petitioner's entitlement under said plan, we are precluded from doing so because there is no record of the petitioner's salary, including increments thereto, attached to the records of this case. To reiterate, the benefit under the PAL Pilots' Retirement Benefit Plan pertains to the totality of PAL's monthly contribution for every pilot, which amounts to 20% of the actual monthly salary. Necessarily, the computation of this benefit requires a record of the petitioner's salary, which was unfortunately not submitted by either of the parties. At any rate, the petitioner did not dispute the fact that he already received his entitlement under the PAL Pilots' Retirement Benefit Plan nor did he question the propriety of the amount tendered. Thus, we can reasonably assume that he received the rightful amount of his entitlement under the plan.

On the other hand, under Article 287 of the Labor Code, the petitioner would only be receiving a retirement pay equivalent to at least one-half (½) of his monthly salary for every year of service, a fraction of at least six (6) months being considered as one whole year. To stress, *one-half (½) month salary* means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave.[27]

Comparing the benefits under the two (2) retirement schemes, it can readily be perceived that the 22.5 days worth of salary for every year of service provided under Article 287 of the Labor Code cannot match the 240% of salary or almost two and a half worth of monthly salary per year of service provided under the PAL Pilots' Retirement Benefit Plan, which will be further

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[26] *Rollo*, p. 36.

[27] *Capitol Wireless, Inc. v. Confesor*, 332 Phil. 78, 89 (1996).

added to the ₱125,000.00 to which the petitioner is entitled under the PAL-ALPAP Retirement Plan. Clearly then, it is to the petitioner's advantage that PAL's retirement plans were applied in the computation of his retirement benefits.

The petitioner should reimburse PAL with the costs of his training.

As regards the issue of whether the petitioner should be obliged to reimburse PAL with the costs of his training, the ruling in *Almario v. Philippine Airlines, Inc.*[28] is controlling. Essentially, in the mentioned case, this Court recognized the right of PAL to recoup the costs of a pilot's training in the form of service for a period of at least three (3) years. This right emanated from the CBA between PAL and ALPAP, which must be complied with good faith by the parties. Thus:

"The CBA is the law between the contracting parties – the collective bargaining representative and the employer-company. Compliance with a CBA is mandated by the expressed policy to give protection to labor. In the same vein, *CBA provisions should be "construed liberally rather than narrowly and technically, and the courts must* ***place a practical and realistic construction upon it****, giving due consideration to the* ***context in which it is negotiated and purpose which it is intended to serve***." This is founded on the dictum that a CBA is not an ordinary contract but one impressed with public interest. It goes without saying, however, that ***only provisions embodied in the CBA should be so interpreted and complied with***. Where a proposal raised by a contracting party does not find print in the CBA, it is not a part thereof and the proponent has no claim whatsoever to its implementation."

In N.S. Case No. 11-506-87, "*In re Labor Dispute at the Philippine Airlines, Inc.*," the Secretary of the Department of Labor and Employment (DOLE), passing on the failure of PAL and ALPAP to agree on the terms and conditions for the renewal of their CBA which expired on December 31, 1987 and construing Section 1 of Article XXIII of the 1985-1987 CBA, held:

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[28] G.R. No. 170928, September 11, 2007, 532 SCRA 614.

Section 1, Article XXIII of the 1985-1987 CBA provides:

Pilots fifty-five (55) years of age or over who have not previously qualified in any Company turbo-jet aircraft shall not be permitted to bid into the Company's turbo-jet operations. Pilots fifty-five (55) years of age or over who have previously qualified in the company's turbo-jet operations may be by-passed at Company option, however, any such pilot shall be paid the by-pass pay effective upon the date a junior pilot starts to occupy the bidded position.

x x x PAL x x x proposed to amend the provision in this wise:

The compulsory retirement age for all pilots is sixty (60) years. Pilots who reach the age of fifty-five (55) years and over without having previously qualified in any Company turbo-jet aircraft shall not be permitted to occupy any position in the Company's turbo-jet fleet. Pilots fifty-four (54) years of age and over are ineligible for promotion to any position in Group I. Pilots reaching the age of fifty-five (55) shall be frozen in the position they currently occupy at that time and shall be ineligible for any further movement to any other positions.

PAL's contention is basically ***premised on prohibitive training costs. The return on this investment in the form of the pilot promoted is allegedly five (5) years***. Considering the pilot's age, the chances of full recovery [are] asserted to be quite slim.

ALPAP opposed the proposal and argued that the training cost is offset by the pilot's maturity, expertise and experience.

By way of compromise, we rule that a pilot should remain in the position where he is upon reaching age fifty-seven (57), irrespective of whether or not he has previously qualified in the Company's turbo-jet operations. The rationale behind this is that a pilot who will be compulsorily retired at age sixty (60) should no longer be burdened with training for a new position. But if a pilot is only at age fifty-five (55), and promotional positions are available, he should still be considered and promoted if qualified, provided he has previously qualified in any company turbo-jet aircraft. In the latter case, the prohibitive training costs are more than offset by the maturity, expertise, and experience of the pilot.

Thus, the provision on age limit should now read:

> Pilots fifty-seven (57) years of age shall be frozen in their positions. Pilots fifty-five (55) [*sic*] years of age provided they have previously qualified in any company turbo-jet aircraft shall be permitted to occupy any position in the company's turbo-jet fleet.[29] (Citations omitted and emphasis supplied)

Further, we considered PAL's act of sending its crew for training as an investment which expects an equitable return in the form of service within a reasonable period of time such that a pilot who decides to leave the company before it is able to regain the full value of the investment must proportionately reimburse the latter for the costs of his training. We ratiocinated:

It bears noting that when Almario took the training course, he was about 39 years old, 21 years away from the retirement age of 60. Hence, with the maturity, expertise, and experience he gained from the training course, he was expected to serve PAL for at least three years to offset "the prohibitive costs" thereof.

The pertinent provision of the CBA and its rationale aside, contrary to Almario's claim, Article 22 of the Civil Code which reads:

> "Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him,"

applies.

This provision on unjust enrichment recognizes the principle that one may not enrich himself at the expense of another. An authority on Civil Law writes on the subject, *viz*:

> "Enrichment of the defendant consists in every patrimonial, physical, or moral advantage, so long as it is appreciable in money. It may consist of some positive pecuniary value incorporated into the patrimony of the defendant, such as: (1) the enjoyment of a thing belonging to the plaintiff; (2) the

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[29] *Id.* at 623-625, citing *Samahang Manggagawa sa Top Form Mfg. v. NLRC*, 356 Phil. 480, 490-491 (1998).

benefits from service rendered by the plaintiff to the defendant; (3) the acquisition of a right, whether real or personal; (4) the increase of value of property of the defendant; (5) the improvement of a right of the defendant, such as the acquisition of a right of preference; (6) the recognition of the existence of a right in the defendant; and (7) the improvement of the conditions of life of the defendant.

xxx xxx xxx"

Admittedly, PAL invested for the training of Almario to enable him to acquire a higher level of skill, proficiency, or technical competence so that he could efficiently discharge the position of A-300 First Officer. Given that, PAL expected to recover the training costs by availing of Almario's services for at least three years. The expectation of PAL was not fully realized, however, due to Almario's resignation after only eight months of service following the completion of his training course. He cannot, therefore, refuse to reimburse the costs of training without violating the principle of unjust enrichment.[30] (Citation omitted and emphasis supplied)

After perusing the records of this case, we fail to find any significant fact or circumstance that could warrant a departure from the established jurisprudence. The petitioner admitted that as in *Almario*, the prevailing CBA between PAL and ALPAP at the time of his retirement incorporated the same stipulation in Section 1, Article XXIII of the 1985-1987 CBA[31] which provides:

Pilots fifty-seven (57) years of age shall be frozen in their positions. Pilots fifty-five (55) [*sic*] years of age provided they have previously qualified in any company turbo-jet aircraft shall be permitted to occupy any position in the company's turbo-jet fleet.[32]

As discussed in *Almario*, the above provision initially set the age of fifty-five (55) years as the reckoning point when a

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[30] *Id.* at 627-628, citing Tolentino, COMMENTARIES AND JURISPRUDENCE, Vol. I, pp. 80-81, 83, 2nd Ed.

[31] *Id.* at 625.

[32] *Id.* at 624.

pilot becomes disqualified to bid for a higher position. The age of disqualification was set at 55 years old to enable PAL to fully recover the costs of the pilot's training within a period of five (5) years before the pilot reaches the compulsory retirement age of sixty (60). The DOLE Secretary however lowered the age to fifty-seven (57), thereby cutting the supposed period of recovery of investment to three (3) years. The DOLE Secretary justified the amendment in that the "prohibitive training costs are more than offset by the maturity, expertise and the experience of the pilot."[33]

By carrying over the same stipulation in the present CBA, both PAL and ALPAP recognized that the company's effort in sending pilots for training abroad is an investment which necessarily expects a reasonable return in the form of service for a period of at least three (3) years. This stipulation had been repeatedly adopted by the parties in the succeeding renewals of their CBA, thus validating the impression that it is a reasonable and acceptable term to both PAL and ALPAP. Consequently, the petitioner cannot conveniently disregard this stipulation by simply raising the absence of a contract expressly requiring the pilot to remain within PAL's employ within a period of 3 years after he has been sent on training. The supposed absence of contract being raised by the petitioner cannot stand as the CBA clearly covered the petitioner's obligation to render service to PAL within 3 years to enable it to recoup the costs of its investment.

Further, to allow the petitioner to leave the company before it has fulfilled the reasonable expectation of service on his part will amount to unjust enrichment. Pertinently, Article 22 of the New Civil Code states:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

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[33] *Id.*

There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains the money or property of another against the fundamental principles of justice, equity and good conscience. Two conditions must concur: (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense.[34] The enrichment may consist of a patrimonial, physical, or moral advantage, so long as it is appreciable in money.[35] It must have a correlative prejudice, disadvantage or injury to the plaintiff which may consist, not only of the loss of the property or the deprivation of its enjoyment, but also of the non-payment of compensation for a prestation or service rendered to the defendant without intent to donate on the part of the plaintiff, or the failure to acquire something what the latter would have obtained.[36]

As can be gathered from the facts, PAL invested a considerable amount of money in sending the petitioner abroad to undergo training to prepare him for his new appointment as B747-400 Captain. In the process, the petitioner acquired new knowledge and skills which effectively enriched his technical know-how. As all other investors, PAL expects a return on investment in the form of service by the petitioner for a period of 3 years, which is the estimated length of time within which the costs of the latter's training can be fully recovered. The petitioner is, thus, expected to work for PAL and utilize whatever knowledge he had learned from the training for the benefit of the company.

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[34] *Grandteq Industrial Steel Products, Inc. v. Margallo*, G.R. No. 181393, July 28, 2009, 594 SCRA 223, 238, citing *Hulst v. PR Builders, Inc.*, G.R. No. 156364, September 3, 2007, 532 SCRA 74, 96.

[35] Tolentino, *Civil Code of the Philippines, Commentaries and Jurisprudence*, Vol. I, p. 78.

[36] *Id.* at 80.

However, after only one (1) year of service, the petitioner opted to retire from service, leaving PAL stripped of a necessary manpower.

Undeniably, the petitioner was enriched at the expense of PAL. After undergoing the training fully shouldered by PAL, he acquired a higher level of technical competence which, in the professional realm, translates to a higher compensation. To prove this point, his monthly salary of ₱125,692.00 was increased to ₱131,703.00 while he was still undergoing training. After his training, his salary was further increased to ₱137,977.00.[37] Further, his training broadened his opportunities for a better employment as in fact he was able to transfer to another airline company immediately after he left PAL.[38] To allow the petitioner to simply leave the company without reimbursing it for the proportionate amount of the expenses it incurred for his training will only magnify the financial disadvantage sustained by PAL. Reason and fairness dictate that he must return to the company a proportionate amount of the costs of his training.

Award of interest not warranted under the circumstances.

The petitioner claims that the CA should have imposed interest on the monetary award in his favor. To support his claim, he cited the case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[39] where this Court summarized the rules in the imposition of the proper interest rates:

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

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[37] *Rollo*, p. 91.

[38] *Id.* at 93.

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

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

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

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

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit**.[40] (Citations omitted and emphasis supplied)

The petitioner, however, took the foregoing guidelines out of context and entertained a misplaced supposition that all judgments which include a monetary award must be imposed

[40] *Id.* at 95-97.

with interest. The jurisprudential guideline clearly referred to breach of an obligation consisting of a *forbearance of money, goods or credit* before the imposition of a legal interest of 12% can be warranted. Such essential element is nowhere to be found in the facts of this case. Even granting that an interest of 6% may be imposed in cases of breached obligations *not* constituting loan or forbearance of money, loan or credit, such depends upon the discretion of the court. If at all, the monetary award in favor of the petitioner will earn legal interest from the time the judgment becomes final and executory until the same is fully satisfied, regardless of the nature of the breached obligation. The imposition is justified considering that the interim period from the finality of judgment, awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit.[41]

WHEREFORE, in view of the foregoing disquisitions, the petition is **DENIED**. The Decision dated August 6, 2007 of the Court of Appeals in CA-G.R. SP No. 79111 is **AFFIRMED**. The Labor Arbiter is hereby **DIRECTED** to compute Bibiano C. Elegir's retirement pay based on the 1967 PAL-ALPAP Retirement Plan and the PAL Pilots' Retirement Benefit Plan, crediting Philippine Airlines, Inc. for the amount it had already paid the petitioner under the mentioned plans.

SO ORDERED.

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

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[41] *Suatengco v. Reyes*, G.R. No. 162729, December 17, 2008, 574 SCRA 187.

SECOND DIVISION

[G.R. No. 187316. July 16, 2012]

WONDER BOOK CORPORATION, *petitioner, vs.* **PHILIPPINE BANK OF COMMUNICATIONS,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION CODE; CORPORATION; REHABILITATION PROCEEDINGS; PURPOSE THEREOF.—** Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.

2. **ID.; ID.; ID.; REHABILITATION PLAN; WHEN OBJECTIONS TO THE APPROVAL THEREOF MAY BE CONSIDERED; ENUMERATION.—** Under Section 23, Rule 4 of the Interim Rules, a rehabilitation plan may be approved if there is a showing that rehabilitation is feasible and the opposition entered by the creditors holding a majority of the total liabilities is unreasonable. In determining whether the objections to the approval of a rehabilitation plan are reasonable or otherwise, the court has the following to consider: (a) that the opposing creditors would receive greater compensation under the plan than if the corporate assets would be sold; (b) that the shareholders would lose their controlling interest as a result of the plan; and (c) that the receiver has recommended approval.

3. **ID.; ID.; ID.; ID.; WHEN DENIAL THEREOF IS DEEMED PROPER; APPLICATION IN CASE AT BAR.—** Rehabilitation is therefore available to a corporation who, while illiquid, has assets that can generate more cash if used in its daily operations than sold. Its liquidity issues can be addressed

by a practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals. This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated. x x x It is imperative for a distressed corporation seeking rehabilitation to present "material financial commitments" as this is critical in determining its resolve, determination, earnestness and good faith in financing its proposed rehabilitation plan. As discussed above, Wonder Book's "material financial commitments" are limited to converting all deposits for future subscriptions to common stock and treating all its payables to its officers and stockholders as trade payables. These, unfortunately, do not qualify as sincere commitment and even betray Wonder Book's intent to fund the implementation of its rehabilitation plan using whatever cash it will generate during the reprieve provided by the stay order and the moratorium on the principal and interest payments. This scheme is certainly unfair as PBCOM or any of Wonder Book's creditors cannot be compelled to finance Wonder Book's rehabilitation by a delay in the payment of their claims or a considerable reduction in the amounts thereof.

APPEARANCES OF COUNSEL

Yulo Aliling Pascua & Zuñiga for petitioner.
Ibarra Segundera and Rodriguez-Lastimosa for respondent.

DECISION

REYES, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision[1] dated March 25, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 102860, which reversed and set aside the Order[2] dated February 15, 2008 of Branch 21 of the Regional Trial Court (RTC) of Imus, Cavite in SEC Case No. 058-06 upon a petition for review filed by respondent Philippine Bank of Communications (PBCOM).

Factual Antecedents

The facts are undisputed.

Petitioner Wonder Book Corporation (Wonder Book) is a corporation duly organized and existing under Philippine laws engaged in the business of retailing books, school and office supplies, greeting cards and other related items. It operates the chain of stores known as the Diplomat Book Center.

On February 27, 2004, Wonder Book and eight (8) other corporations,[3] collectively known as the Limtong Group of Companies (LGC), filed a joint petition for rehabilitation with the RTC. The petition was docketed as SEC Case No. 031-04 and raffled to Branch 21.

On March 2, 2004, a Stay Order[4] was issued.

On April 30, 2004, Equitable PCI Bank (EPCI Bank), one of the creditors of LGC, filed an opposition raising, among

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Remedios A. Salazar-Fernando and Fernanda Lampas Peralta, concurring; *rollo*, pp. 33-45.

[2] Penned by Executive Judge Norberto J. Quisumbing, Jr.; *id.* at 52-67.

[3] Basic Polyprinters and Packaging Corporation, Cuisine Connection, Inc., Fine Arts International, Gibson HP Corporation, Gibson Mega Corporation, Harry U. Limtong Corporation, Main Pacific Features, Inc. and T.O.L. Realty & Development Corporation; *id.* at 15.

[4] *Id.* at 233-236.

others, the impropriety of nine (9) corporations with separate and distinct personalities seeking joint rehabilitation under one proceeding.[5]

On February 9, 2005, the RTC issued an Order[6] approving the petition for rehabilitation, the dispositive portion of which states:

> CONSIDERING THE FOREGOING, the Court hereby approves the Rehabilitation Plan of the [LGC] thereby granting the [LGC] a moratorium of two (2) years from today in the payment of all its obligations, together with the corresponding interests, to its creditor banks, subject to the modification that the interest charges shall be reduced to 5% per annum. After the two-year grace period, the [LGC] shall commence to pay its existing obligations with its creditor banks monthly within a period of fifteen (15) years.
>
> [LGC] are enjoined to comply strictly with the provisions of the Rehabilitation Plan, perform its obligations thereunder and take all actions necessary to carry out the Plan, failing which, the Court shall either, upon motion, *motu proprio* or upon recommendation of the Rehabilitation Receiver, terminate the proceedings pursuant to Section 27, Rule 1 of the Interim Rules of Procedure on Corporate Rehabilitation.
>
> The Rehabilitation Receiver is directed to strictly monitor the implementation of the Plan and submit a quarterly report on the progress thereof.
>
> SO ORDERED.[7]

The foregoing was questioned by EPCI Bank and PBCOM before the CA by way of a petition for review. EPCI Bank's petition[8] was docketed as CA-G.R. SP No. 89461 and raffled to the Third Division. PBCOM's petition[9] was docketed as CA-G.R. SP No. 89507 and raffled to the Eight Division.

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[5] *Id.* at 188.

[6] *Id.* at 273-281.

[7] *Id.* at 280-281.

[8] *Id.* at 184-227.

[9] *Id.* at 238-272.

On October 25, 2005, the CA rendered a Decision[10] granting EPCI Bank's petition. The CA reversed the Order dated February 9, 2005 of the RTC and dismissed LGC's petition for rehabilitation. LGC filed a petition for review on *certiorari* with this Court, which was later withdrawn.

On the other hand, PBCOM's petition was denied by the CA in a Decision[11] dated January 16, 2008. The denial became final as PBCOM did not move for reconsideration or interpose an appeal to this Court.[12]

Meantime, on September 5, 2006, Wonder Book filed a petition for rehabilitation[13] with the RTC, which was docketed as SEC Case No. 058-06 and raffled to Branch 21. Wonder Book cited the following as causes for its inability to pay its debts as they fall due: (a) high interest rates, penalties and charges imposed by its creditors; (b) low demand for gift items and greeting cards due to the widespread use of cellular phones and economic recession; (c) competition posed by other stores; and (d) the fire on July 19, 2002 that destroyed its inventories worth ₱264 Million, which are insured for ₱245 Million but yet to be collected.[14]

Wonder Book's rehabilitation plan put forward a payment program that guaranteed full payment of its loan from PBCOM after fifteen (15) years at a reduced interest rate of five percent (5%) per annum with a waiver of all penalties and moratorium on interest and principal payments for two (2) years and five (5) years, respectively, that will be counted from the court's approval. Wonder Book proposed to pay its trade creditors and

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[10] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Josefina Guevara Salonga and Fernanda Lampas Peralta, concurring; *id.* at 156-168.

[11] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal, concurring; *id.* at 282-295.

[12] *Id.* at 296.

[13] *Id.* at 169-183.

[14] *Id.* at 171.

the interest that will accrue during the two-year moratorium within ten (10) years from the approval of its rehabilitation plan.[15] Further, it committed to: (a) convert all deposits for future subscriptions to common stock; (b) treat all its liabilities to its officers and stockholders as trade payables; (c) infuse an additional capital of ₱10 Million; and (d) use 70% and 30% of its unpaid insurance claim for the payment of its debts and capital infusion, respectively.[16]

The RTC issued a Stay Order[17] on September 5, 2006.

PBCOM filed an Opposition[18] dated October 18, 2006 stating that: (a) Wonder Book's petition cannot be granted on the basis of proposals that are vague and anchored on baseless presumptions; (b) it is clear from Wonder Book's financial statements that it is insolvent and can no longer be rehabilitated; (c) Wonder Book's proposed capital infusion is speculative at best, as there is no reasonable expectation that it will be paid under the insurance covering the inventory that was destroyed by fire on July 19, 2002; (d) Wonder Book failed to present an alternative funding for its capital infusion should its insurance claim fail to materialize; (e) Wonder Book failed to specify how its proposed sales, marketing and production strategies would be carried out; (f) Wonder Book failed to specify its underpinnings for its claim that these strategies would certainly lead to its expected rate of profitability; and (g) Wonder Book's proposed payment program is too onerous.

On September 17, 2007, Wonder Book filed what it described as its detailed rehabilitation plan.[19] Wonder Book maintained its proposed term of fifteen (15) years and reduced interest rate of 5% per annum. However, it shortened the period on the suspension of principal payments from five (5) to three (3) years

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[15] *Id.* at 56.

[16] *Id.* at 58.

[17] *Id.* at 68-70.

[18] *Id.* at 71-81.

[19] *Id.* at 82-115.

and extended the moratorium on interest payment from two (2) to three (3) years. It also lengthened the period for the payment of interest that will accrue during the stay from ten (10) to twelve (12) years and proffered a waiver of penalties and interest from February 2004 up to the court's approval of its rehabilitation plan.[20]

Wonder Book likewise intimated the sale of some real properties owned by TOL Realty and Development Corporation (TOL), an affiliate that is likewise undergoing rehabilitation and similarly indebted to PBCOM. The proceeds of such sale will be used for the payment of TOL's debt to PBCOM and any excess will be used to settle Wonder's Book debt to PBCOM.[21]

Wonder Book limited its commitments to the conversion of deposits for future subscriptions to common stock and treatment of its payables to its officers and stockholders as trade payables.[22]

Wonder Book undertook to implement the following changes in its internal operations by: (a) changing the name "Diplomat Book Center" to one more appropriate for a bookstore and retailer of office and school supplies; (b) closing down non-performing branches and opening new stores in areas with high human traffic; (c) improving product display and variety; (d) investing in technology to properly monitor sales and manage inventory; (e) launching customer loyalty program; (f) allocating three percent (3%) of total sales to advertising and promotions; (g) strengthening its organization by improving its hiring, training and incentive programs; and (h) carrying its own brand of products.[23] Wonder Books expects to accomplish the foregoing on capital from investors and sales during the three-year moratorium.[24]

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

[21] *Id.* at 87.

[22] *Id.*

[23] *Id.* at 86.

[24] *Id.* at 57.

On February 15, 2008, the RTC issued an Order, approving Wonder Book's rehabilitation plan, the dispositive portion of which states:

CONSIDERING THE FOREGOING, the Court hereby approves the Detailed Rehabilitation Plan, together with the receiver's report and recommendation and its clarifications and corrections and enjoins the petitioner to strictly comply with the provisions of the plan, perform its obligations thereunder and take all actions necessary to carry out the plan, failing which, the Court shall either, upon motion, *motu proprio* or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings pursuant to Section 27, Rule 1 of the Interim Rules of Procedure on Corporate Rehabilitation.

The Rehabilitation Receiver is directed to strictly monitor the implementation of the Plan and submit a quarterly report on the progress thereof.

SO ORDERED.[25] (Citation omitted)

PBCOM filed a petition for review[26] of the approval of Wonder Book's rehabilitation plan, which the CA granted in a Decision[27] dated March 25, 2009. According to the CA, Wonder Book's financial statements reveal that it is not merely illiquid but in a state of insolvency:

A perusal of the interim financial statement of [Wonder Book] as of August 2006 will readily show that [Wonder Book] is not merely having liquidity problems, but it is actually in a state of serious insolvency. It should be noted that this fact was never denied by [Wonder Book]. The RTC even mentioned in its order that as of August 2006, the total assets of [Wonder Book] is only [₱]144,922,218.00 whereas its liabilities totaled to [₱]306,141,399.00. In effect, the debt ratio of [Wonder Book] is 2.11 to 1. This means that [Wonder Book] has [₱]2.11 pesos in debt for every peso of asset. Obviously, [Wonder Book] is in terrible financial condition as it does not have enough assets to pay its obligations. For a good

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[25] *Id.* at 126.

[26] *Id.* at 118-144.

[27] *Id.* at 33-45.

financial status, the total debt ratio should be 1 or less.[28] (Citation omitted)

The CA noted that Wonder Book failed to support its petition with reassuring "material financial commitments", which is a requirement under Section 5 of the 2000 Interim Rules on Corporate Rehabilitation (Interim Rules):

> Indeed, page 7 of the assailed order provides the following:
>
> "[Wonder Book] will commit an additional amount of [₱]10 Million as working capital. If the insurance claim in the amount of [₱]245 Million will be collected, 70% or the amount of [₱]171,500,000.00 shall be used to pay existing debts and 30% shall be used as additional working capital. The stockholders agreed that no dividends will be paid within the rehabilitation period.
>
> The directors and shareholders of [Wonder Book] are so fully committed to rehabilitate the corporation that they have committed to convert their deposit for future subscription to common stock.
>
> The company is highly confident that the financing will be made available by its investors once the rehabilitation plan is given green light by the court. Its financial plan does not take into consideration the possibility of sourcing funds outside internally generated cash nor the entry of strategic investors who have expressed interest in the completion of the project and assist in rehabilitating the corporation."

We note, however, that the foregoing statements were mentioned in [Wonder Book's] original rehabilitation plan but were no longer restated in its detailed rehabilitation plan, which was the one approved by the RTC. True enough, the commitment of [Wonder Book] to put up additional [₱]10 Million as working capital was not reflected in the projected balance sheet of [Wonder Book]. There was also no mention about the expected insurance claim in the amount of [₱]245 Million whereby 70% thereof or the amount of [₱]171,500,000.00 should be used to pay existing debts and the remaining 30% shall be used as additional working capital. As a

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[28] *Id.* at 39.

matter of fact, a full-allowance for non-recovery of said insurance claim was already provided by [Wonder Book] because the latter believed that it could no longer be recovered.

It may be observed that the detailed rehabilitation plan merely provided for two management commitments, such as, (1) all deposits for future subscriptions by the officers and directors will be converted to common stock and (2) all liabilities (cash advances made by the stockholders' (sic) to the corporation) of the company from the officers and stockholders shall be treated just like trade payable. But these could hardly be considered as "material financial commitments" that would support [Wonder Book's] rehabilitation plan. The first commitment was not even shown in the projected balance sheet of [Wonder Book]. The subscribed and paid-up capital of [Wonder Book] remained at [₱]4,500,000.00 even at the end of the 15th year from the approval of the rehabilitation plan. Even so, the deposits for future subscription is (sic) only [₱]319,000.00, which is very significant *vis-à-vis* [Wonder Book's] capital deficiency of [₱]161,219,121.00 as of August 2006. x x x[29] (Citations omitted)

The CA also noted that Wonder Book's expected profits during the rehabilitation period are not sufficient to cover its liabilities and reverse its dismal financial state:

A careful examination of the projected balance sheet and income statement of [Wonder Book] for the period of rehabilitation reveals that while [Wonder Book] will be earning, the same will not be sufficient to cover its accumulated losses. At the 15th year, its profit margin will be only 2.9% ([₱]13,785,000.00/[₱]466,277,000.00). This tells us that for every peso in sales, [Wonder Book] will be generating 3 centavos net profit, which is most insubstantial to cover up its ending deficit of [₱]50,960,000.00. Thus, at the end of the rehabilitation period, though [Wonder Book] will be able to fully pay its obligation to [PBCOM], it will remain insolvent. It would still have a capital deficiency of [₱]46,142,000.00. Its total assets will be only [₱]196,515,000.00 whereas its total liabilities will still be [₱]242,657,000.00. Consequently, its debt ratio would remain high, at 1.23 to 1. It would have [₱]1.23 pesos in debt for every peso of asset. Furthermore, liquidity problems would still exist because on the 15th year, its current ratio would be 0.9353 to 1

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

([₱]83,339,000.00/[₱]89,104,000.00), meaning [Wonder Book] would only have 0.9353 cents to meet every peso of its current liabilities. x x x[30] (Citations omitted)

Wonder Book instituted the present petition claiming that the CA erred in dismissing its petition for rehabilitation. The CA allegedly has no basis in concluding that Wonder Book is insolvent, hence, incapable of being rehabilitated considering that: (a) ₱162,286,966.00 of its total liabilities in the amount of ₱286,944,120.00 represents advances or loans extended by affiliates that are not due and demandable during the period of rehabilitation; (b) the prevailing rules do not preclude a corporation who is insolvent from seeking rehabilitation; (c) there is nothing in the rules that specify a parameter for classifying a debt as sustainable or not, hence, its apparent insolvency should not be a determinant of the feasibility of its rehabilitation; (d) one of its shareholders paid a supplier the amount of ₱13,600,000.00, thus, ensuring the continuous supply of products for sale, and was willing to postpone collection until Wonder Book is successfully rehabilitated;[31] (e) its suppliers have agreed to supply products on credit and this indicates their faith in the feasibility of the proposed rehabilitation plan;[32] and (f) the payment posted by one of its stockholders was more than enough to cover the promised capital infusion of ₱10,000,000.00.

Our Ruling

The sole issue is whether Wonder Book's petition for rehabilitation is impressed with merit and this Court rules in the negative.

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Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The

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[30] *Id.* at 41-42.

[31] *Id.* at 24.

[32] *Id.* at 24-25.

purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.[33]

Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The rationale of Presidential Decree No. 902-A, as amended, is to "effect a feasible and viable rehabilitation," by preserving a floundering business as going concern, because the assets of a business are often more valuable when so maintained than they would be when liquidated.[34]

Under Section 23, Rule 4 of the Interim Rules, a rehabilitation plan may be approved if there is a showing that rehabilitation is feasible and the opposition entered by the creditors holding a majority of the total liabilities is unreasonable. In determining whether the objections to the approval of a rehabilitation plan are reasonable or otherwise, the court has the following to consider: (a) that the opposing creditors would receive greater compensation under the plan than if the corporate assets would be sold; (b) that the shareholders would lose their controlling interest as a result of the plan; and (c) that the receiver has recommended approval.

Rehabilitation is therefore available to a corporation who, while illiquid, has assets that can generate more cash if used in its daily operations than sold. Its liquidity issues can be addressed

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[33] *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.,* G.R. No. 178768, November 25, 2009, 605 SCRA 503, 514-515.

[34] *Bank of the Philippine Islands v. Securities and Exchange Commission*, G.R. No. 164641, December 20, 2007, 541 SCRA 294, 301.

by a practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals. This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated.

In *China Banking Corporation v. Cebu Printing and Packaging Corporation*,[35] this Court declared that Cebu Printing and Packaging Corporation can no longer be rehabilitated given its patent insolvency that appeared irremediable because of the unfounded projections on profitability:

> The RTC found CEPRI to be in the state of insolvency which precludes it from being entitled to rehabilitation. The findings of fact of the RTC must be given respect as it is clear and categorical in ruling that CEPRI is not merely in the state of illiquidity, but in an apparent state of insolvency. There is nothing more detailed than the contents of the said Order, which reads, in part:
>
> > "After the aforesaid initial hearing, this Court made a careful and judicious scrutiny and evaluation as to whether the petition for rehabilitation filed by the petitioner is impressed with merit or not. Up to this time, this Court is not satisfied that there is merit in the said petition.
> >
> > *Foremost* of all, it appears that the petitioner does not really have enough assets, net worth and earning to meet and settle its outstanding liabilities. As stated by it in paragraph 7.8 of the petition, it has outstanding liabilities in the aggregate sum of ₱69,539,903.57 to the Bank of Philippine Islands and China Banking Corporation. These major liabilities are broken down as follows: ₱20,230,000.00 to BPI and ₱49,309,903.57 to China

[35] G.R. No. 172880, August 11, 2010, 628 SCRA 154.

Banking Corporation as of December 31, 2001. There is a strong probability that these may still increase substantially after December 31, 2001. However, the petitioner has relatively less assets to answer for these liabilities. As historically shown by its audited financial statements, the petitioner's assets from 1990 to 2000 were only worth as follows: ₱352,222.40 in 1990 (Exhibit K), ₱452,723.33 in 1991 (Exhibit K), ₱569,948.19 in 1992 (Exhibit L), ₱787,300.65 in 1993 (Exhibit M), ₱761,310.69 in 1994 (Exhibit N), ₱3,042,411.81 in 1995 (Exhibit O), ₱5,608,866.70 in 1996 (Exhibit P), ₱8,100,022.81 in 1997 (Exhibit Q), ₱10,007,490.26 in 1998 (Exhibit R), ₱10,905,649.83 in 1999 (Exhibit S) and ₱11,615,251.75 in 2000 (Exhibit T). x x x For all intents and purposes, it can thus be said that the petitioner was not actually better off in terms of its assets and equity in 2001 than in 2000. **In view thereof, this Court concurs with the oppositor, China Banking Corporation, that the petitioner is actually now in a state of insolvency, not illiquidity**. In other words, it cannot be the proper subject of rehabilitation.

Secondly, this Court is not really prepared to give full faith to the financial projections of the petitioner (Annex H-1 of the petition). The assumption that petitioner's gross sales will increase by 25% to 30% within the next five years is without adequate basis. It is too speculative and unrealistic. It is not borne by petitioner's historical operations. Neither is it borne by an objective industry forecast. It is even belied by the Packaging Industry Profile prepared by the DTI Cebu Provincial Office which the petitioner submitted to this Court (Exhibit U). In said Packaging Industry Profile, it is categorically and explicitly stated that "packaging demand is projected by the Strategic Industry Research and Analysis (SIRA) to increase only by around 4.7% compound per annum over the period 1997-2003." And so, there is actually no faithful and adequate showing by the petitioner that it has ample capacity to pay its outstanding and overdue loans to its major creditors such as the BPI and China Banking Corporation, even if it be given a breathing spell.

x x x."[36] (Citation omitted)

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[36] *Id.* at 170-172.

This Court finds no reason to accord a different treatment to Wonder Book. The figures appearing on Wonder Book's financial documents and the nature and value of its assets are indeed discouraging. *First*, as of August 2006, Wonder Book's total assets are worth ₱144,922,218.00 and its total liabilities amount to ₱306,141,399.00 and this is a clear evidence of its actual insolvency, not mere illiquidity, and dispossession of financial leverage. *Second*, bulk or approximately seventy-two percent (72%) of its current assets consists of inventories[37] and the average turn-over rate is seventy-three (73) days, hence, cannot be relied on for a quick cash flow. *Third*, a majority or seventy-seven percent (77%) of its non-current assets is comprised of deferred tax assets[38] or taxes that have been paid on income that have not yet been reported, hence, may only be used to decrease future tax liability but not for the increase of capital, the finance of operations or the purchase of an asset. *Fourth*, its property and equipment comprise only two percent (2%) of its non-current assets. Apart from the fact that these consist largely of personal properties – computers and store equipment – that are certain to depreciate over time, there is no evidence that the valuation assigned to them by Wonder Book is attributable to an independent third-party appraiser. There is likewise no mention of their actual market values as, more often than not, they will be sold for less than their book value.

In other words, rehabilitation is not the proper remedy for Wonder Book's dire financial condition. Given that it is actually insolvent and not just suffering from temporary liquidity problems, rehabilitation is not a viable option.

II

Another reason for this Court's denial of Wonder Book's petition is its failure to comply with Section 5 of the Interim Rules, which enumerates the minimum requirements of an acceptable rehabilitation plan:

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[37] *Rollo*, p. 88.

[38] *Id.*

Sec. 5. Rehabilitation Plan. — The rehabilitation plan shall include: (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

It is imperative for a distressed corporation seeking rehabilitation to present "material financial commitments" as this is critical in determining its resolve, determination, earnestness and good faith in financing its proposed rehabilitation plan. As discussed above, Wonder Book's "material financial commitments" are limited to converting all deposits for future subscriptions to common stock and treating all its payables to its officers and stockholders as trade payables. These, unfortunately, do not qualify as sincere commitment and even betray Wonder Book's intent to fund the implementation of its rehabilitation plan using whatever cash it will generate during the reprieve provided by the stay order and the moratorium on the principal and interest payments. This scheme is certainly unfair as PBCOM or any of Wonder Book's creditors cannot be compelled to finance Wonder Book's rehabilitation by a delay in the payment of their claims or a considerable reduction in the amounts thereof.

Apart from the fact that the deposits for future subscriptions in the amount of ₱319,000.00[39] is insignificant as compared to Wonder Book's capital deficiency of ₱161,219,121.00,[40] its projected balance sheet reveals that Wonder Book has no intention

[39] *Id.* at 88-89.

[40] *Id.* at 41.

to carry out this commitment. No adjustment in its paid-up capital is reflected in the balance sheet attached to Wonder Book's rehabilitation plan as the amount thereof is consistently pegged at ₱4,500,000.00 until the end of the rehabilitation period. Indeed, this commitment is far from being "material" as it will not even create a dent on Wonder Book's capital deficit. Furthermore, it will not qualify as a "commitment" and is, in fact, a mere artifice, as Wonder Book's balance sheet unequivocally demonstrates.

On the other hand, treating its debts to its stockholders and officers as trade payables only signifies that no priority in payment will be accorded to them but this does not provide Wonder Book with the means to finance the activities supposedly ensuring its successful rehabilitation.

While Wonder Book mentioned that there are individuals who have expressed their interest in investing and financing its business plans, their identities were not disclosed nor were the evidence of the existence of these funds proved. It was alleged before this Court that one of its stockholders paid the amount of ₱13,600,000.00 to one of Wonder Book's suppliers and this constitutes sufficient compliance with the commitment of substantial capital infusion. However, apart from being belated, uncorroborated and unreflected in Wonder Book's rehabilitation plan and balance sheet, this supposed payment will not do wonders to change the undisputed fact that Wonder Book will still be saddled with a deficit of ₱50,960,000.00 by the end of the fifteen-year period.

The foregoing only goes to show that rehabilitation is a vain waste of effort and resources and a mere exercise in futility. Worse, that Wonder Book will still post a negative net worth after its rehabilitation plan is fully implemented suggests that the remedy of rehabilitation is availed without a reasonable expectation that Wonder Book will regain its prior status of viability and profitability but with a mere crapshoot that the value of its present pool of assets will increase during the rehabilitation period. Given Wonder Book's admission that

fifteen (15) years do not suffice for it to register a positive net worth, it is logical to assume that the only thing the stockholders are gunning for is the recovery of their investments or a portion thereof after the corporate debts are satisfied from the liquidation of the corporate assets. This Court cannot sanction such a selfish venture. While there is no absolute certainty in rehabilitation, the sacrifice that the creditors are compelled to make can only be considered justified if the restoration of the corporation's former state of solvency is feasible due to a sound business plan with an assured funding. Such cannot be said in this case, hence, PBCOM's skepticism is not unfounded.

The RTC's approval of the subject rehabilitation plan is heavily premised on the collection of Wonder Book's insurance claim and the conversion of the deposit for future subscription to common stocks. However, Wonder Book has already admitted the impossibility of being paid by reducing its two (2) commitments discussed above and by writing-off this receivable from its balance sheet. A cursory examination of Wonder Book's balance sheet reveals its lack of sincerity insofar as these two (2) commitments are concerned and this should have been enough for the RTC to dismiss Wonder Book's attempt at rehabilitation.

Wonder Book's undertaking to fully pay its debts through sales, which it expected to increase by ten percent (10%) annually during the period it is under rehabilitation, hardly inspires belief. No basis was provided for this presumptive figure such as forecasts of independent industry analysts. In fact, even Wonder Book's performance in previous years does not indicate that its sales grow annually at such rate. Wonder Book also failed to explain its favorable assumptions relative to its future market share and ability to contend with large-scale corporations when it cited the competition posed by the latter as one of the reasons for its monumental losses. Notably, the proposed changes in Wonder Book's internal operations are far from being innovative and merely imitate the business plans of its successful competitors. Wonder Book did not explain why it assumed that the consumers would shift their loyalties in its favor.

Wonder Book alleged that it posted pre-tax income of ₱1,167,765.00 and ₱826,714.00 in 2007 and 2008. In its rehabilitation plan, which it submitted for approval in 2007 and approved in 2008, Wonder Book projected that it will earn the following pre-tax income during the first five (5) years of rehabilitation:

1st	2nd	3rd	4th	5th
₱4,958,000.00	₱5,804,000.00	₱5,934,000.00	₱6,367,000.00	₱6,616,000.00

Apart from the fact that Wonder Book's actual income does not even approximate its projected income, there was even a plunge in its earnings for two (2) successive years belying its anticipated annual growth rate of ten percent (10%). Wonder Book is therefore mistaken in interpreting its actual income for 2007 and 2008 as a positive indicator of its viability and fitness for rehabilitation. On the contrary, it validates the doubtful stance taken by PBCOM and the CA that Wonder Book can no longer rise from its financial debacles even if granted a lengthy respite.

WHEREFORE, premises considered, the petition is **DENIED** and the Decision dated March 25, 2009 of the Court of Appeals in CA-G.R. SP No. 102860 is **AFFIRMED**.

SO ORDERED.

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

EN BANC

[A.M. No. P-09-2647. July 17, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LUNALINDA M. PERADILLA, Clerk of Court II, Municipal Circuit Trial Court, El Nido-Linapacan, Palawan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; LAW ON PUBLIC OFFICERS; THE DEMAND FOR MORAL UPRIGHTNESS IS MORE PRONOUNCED FOR THE MEMBERS AND PERSONNEL OF THE JUDICIARY WHO ARE INVOLVED IN THE DISPENSATION OF JUSTICE.—** Section 1, Article XI of the Constitution declares that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. The demand for moral uprightness is more pronounced for the members and personnel of the judiciary who are involved in the dispensation of justice. The conduct of court members and personnel must not only be characterized with propriety and decorum but must also be above suspicion, for any act of impropriety can seriously erode or diminish the people's confidence in the judiciary. As frontliners in the administration of justice, they should live up to the strictest standards of honesty and integrity in the public service.

2. **ID.; ID.; CLERK OF COURT; DUTY AS CUSTODIAN OF COURT'S FUNDS, EXPLAINED.—** Clerks of Court act as custodians of the court's funds, revenues, records, property and premises and are thus, liable for any loss, shortage, destruction or impairment of such funds and property. Supreme Court Circular No. 50-95 directs that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of

the Philippines." In cases where there are no branches of the Land Bank of the Philippines in the locality concerned, the Circular states that the fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

3. **ID.; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; WHEN GUILTY OF DISHONESTY, GROSS NEGLECT OF DUTY, AND GRAVE MISCONDUCT; IMPOSABLE PENALTY.—** In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte*, the Court held that the failure of the Clerk of Court to remit the court funds constitutes gross neglect of duty, dishonesty, and grave misconduct prejudicial to the best interest of the service. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty, gross neglect of duty, and grave misconduct are classified as grave offenses with the corresponding penalty of dismissal for the first offense. In this case, Peradilla is guilty of dishonesty, gross neglect of duty, and grave misconduct for her: (1) non-remittance of collections of judiciary funds; (2) non-issuance of official receipts and non-reporting in the Monthly Reports and Collections and Deposits of some of the collections; and (3) erroneous reporting in the Monthly Reports and Collections and Deposits of some of the collections. **WHEREFORE**, the Court finds respondent Lunalinda M. Peradilla, Clerk of Court II, Municipal Circuit Trial Court, El Nido-Linapacan, Palawan, **GUILTY** of **DISHONESTY, GROSS NEGLECT OF DUTY, and GRAVE MISCONDUCT**, and imposes upon her the penalty of **DISMISSAL** from the service. All her retirement benefits, except accrued leave credits, are forfeited and she is barred from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

DECISION

***PER CURIAM*:**

This administrative case arose from the financial audit conducted by an audit team of the Office of the Court Administrator (OCA) in the Municipal Circuit Trial Court (MCTC) of El Nido-Linapacan, Palawan.

In a letter dated 3 December 2008,[1] Presiding Judge Ma. Theresa P. Mangcucang-Navarro of the MCTC of El Nido-Linapacan, Palawan, requested then Court Administrator Jose P. Perez (now Supreme Court Justice) that a financial audit be conducted on the books of account of the said court. The request was made after Judge Mangcucang-Navarro discovered that Clerk of Court Lunalinda M. Peradilla (Peradilla) had been remiss in remitting the Judiciary Development Funds and the Fiduciary Funds.

On 16 to 22 April 2009, the audit team of OCA (Financial Audit Team) conducted a financial audit of the books of accounts of the MCTC of El Nido-Linapacan, Palawan, covering the accountabilities of the following accountable officers with the corresponding accountability period:

1. Ms. Nora G. Daquer — 1 January 2000 to 31 March 2001
2. Mr. Reynaldo N. Valenzuela — 1 April 2001 to 6 February 2003
3. Ms. Lunalinda M. Peradilla — 7 February 2003 to 16 December 2008
4. Ms. Gracilia D. Abes — 17 December 2008 to 31 March 2009

The Financial Audit Team submitted the following findings:[2]

[1] *Rollo*, p. 10.

[2] Memorandum for Court Administrator Jose P. Perez dated 14 May 2009; *id.* at 3-9.

Examination of the documents presented disclosed the following accountabilities for the different judiciary funds of the accountable officers, to wit:

For the Judiciary Development Fund

Accountable Officer	Accountability Period	Total Collections	Total Remittances	Balance of Accountability
Ms. Daquer	1/1/00-3/31/01	₱ 27,820.10	₱27,770.10	₱50.00*
Mr. Valenzuela	4/1/01-2/6/03	23,834.90	23,831.50	3.40*
Ms. Peradilla	2/7/03-12/16/08	115,050.75	52,203.20	62,847.55
Ms. Abes	12/17/08-3/31/09	7,395.33	7,395.33	0.00
TOTAL		₱174,101.08	₱111,200.13	**₱62,900.95**

****Both restituted per deposit slip dated April 28, 2009 (Annex "6")***

For the Special Allowance for the Judiciary Fund

Accountable Officer	Accountability Period	Total Collections	Total Remittances	Balance of Accountability
Ms. Peradilla	11/11/03-12/16/08	302,046.30	₱88,778.20	₱213,268.10
Ms. Abes	12/17/08-3/31/09	26,618.00	26,618.00	0.00
TOTAL		₱328,664.30	₱115,396.20	**₱213,268.10**

For the General Fund

Accountable Officer	Accountability Period	Total Collections	Total Remittances	Balance of Accountability
Ms. Daquer	1/1/00-3/31/01	₱1,555.90	₱1,555.90	₱ 0.00
Mr. Valenzuela	4/1/01-2/6/03	1,569.10	1,596.10	0.00
Ms. Peradilla	2/7/03-11/10/03	716.80	703.60	13.20
TOTAL		**₱3,841.80**	**₱3,828.60**	**₱ 13.20**

For the Mediation Fund

Accountable Officer	Accountability Period	Total Collections	Total Remittances	Balance of Accountability
Ms. Peradilla	11/1/04-12/16/08	₱18,500.00	₱0.00	₱18,500.00
Ms. Abes	12/17/08-3/31/09	₱ 3,000.00	3,000.00	0.00
TOTAL		**₱21,500.10**	**₱3,000.00**	**₱18,500.00**

For the Fiduciary Fund

Unwithdrawn Fiduciary Fund, as of December 31, 1999		₱ 33,000.00
Add: Collections (January 1, 2000 to March 31, 2009)		1,047,000.00
Total Collections	₱1,080,000.00	
Less:Withdrawals (January 1, 2000 to March 31, 2009)		481,500.00
Unwithdrawn Fiduciary Fund as of March 31, 2009		₱ 598,500.00
Less: Balance Deposited with the Municipal Treasurer's Office of El Nido, Palawan, as of March 31, 2009		289,500.00
Balance of Accountability		**₱ 309,000.00***

** It will increase by ₱46,000.00 if Ms. Peradilla fails to submit the court order of withdrawal and the liquidation report of the ₱22,000.00 which she withdrew in Election Protest No. 2007-01; and confirmation from Mr. Dieter Vogt, accused in Crim. Case Nos. 933 and 810, that he actually received from Ms. Peradilla the bonds he posted in the aforesaid cases totaling ₱24,000.00 (₱12,000.00 each per OR Nos. 15847241 and 15847242)*

In summary, Clerk of Court Lunalinda M. Peradilla incurred a ***total accountability of ₱603,628.85*** for the different judiciary funds as represented hereunder:

Judiciary Development Fund	*₱62,847.55*
Special Allowance for the Judiciary Fund	*213,268.10*
General Fund	*13.20*
Mediation Fund	*18,500.00*
Fiduciary Fund	*309,000.00*
TOTAL	***₱603,628.85***

xxx xxx xxx

The Financial Audit Team found that the bulk of Peradilla's accountability was due to her non-remittance of the judiciary funds, especially the collections for Fiduciary Fund. The Financial Audit Team also uncovered a total of ₱235,000 representing unreceipted and unreported collections. It was also found that Peradilla intentionally made erroneous reports regarding some of the collections, thus:

Further, the team uncovered her [Peradilla] practice of erroneously reporting her collections. This practice enriched her in the amount [of] ₱20,187.50, as presented in the immediately following table:

Date of Collection	OR No.	Amount per OR	Amount Reported	Difference
11/13/06	3610603	₱12,625.00	₱1,262.50	₱11,362.50
11/13/06	3610577	9,250.00	925.00	8,325.00
12/11/06	3610634	600.00	100.00	500
Total		₱ 22,475.00	₱ 2,287.50	₱ 20,187.50

The Court Administrator adopted the findings of the Financial Audit Team in its Memorandum dated 14 May 2009.[3] In a Resolution dated 1 July 2009, the Court docketed the report by the Financial Audit Team as an administrative complaint against Peradilla. The Court resolved:

(1) To *NOTE* the aforesaid report by the Financial Audit Team;

(2) To *DOCKET* the report as an administrative complaint against Clerk of Court Lunalinda M. Peradilla.

(3) To *DIRECT* the Clerk of Court Lunalinda M. Peradilla to:

(3.1) EXPLAIN in writing within ten (10) days from notice:

(3.1.1) her non-remittance of collections for the different judiciary funds;

(3.2.1) her non-issuance of official receipts and non-reporting in the Monthly Reports of Collections and Deposits of the following collections:

Date of Collections	Case No.	Payor	Amount
12/22/05	971	Juanito Nunez	Php15,000.00
02/01/06	943	Edgar Factor	5,000.00
02/01/06	944	Edgar Factor	5,000.00
02/01/06	947	Cerelino Factor	5,000.00
02/01/06	948	Cerelino Factor	5,000.00
05/06/05	901	Rodrigo S. Bautista	Php200,000.00
TOTAL			Php235,000.00

[3] *Id.* at 1-2.

(3.1.3) for refunding only Thirty Thousand (₱30,000.00) Pesos, instead of the whole amount of Two Hundred Thousand (₱200,000.00) Pesos to Mr. Rodrigo S. Bautista, payor/claimant in Crim. Case No. 901, despite the issuance of Court Order dated 08 May 2007 authorizing the release of the whole amount to the payor/ claimant; and

(3.1.4) for erroneous reporting in the Monthly Reports of Collections and Deposits [of] the following collections:

Date of Collection	OR No.	Amount per OR	Amount Reported	Difference
11/13/06	3610603	Php12,625.00	Php1,262.50	Php11,362.50
11/13/06	3610577	9,250.00	925.00	8,325.00
12/11/06	3610634	600.00	100.00	500.00
Total		Php22,475.00	Php2,287.50	Php20,187.50

(3.2) to *SUBMIT* to the Fiscal Monitoring Division, Court Management Office, the Office of the Court Administrator, within thirty (30) days from notice: (1) the court order of withdrawal and the liquidation report of the Twenty Two Thousand (₱22,000.00) Pesos which she withdrew in Election Protest No. 2007-01; and (2) confirmation from Mr. Dieter Vogt, accused in Criminal Case Nos. 933 and 810, that he actually received the bonds he posted in the aforesaid cases totaling to Twenty Four Thousand (₱24,000.00) Pesos [₱12,000.00 each per OR Nos. 15847241 and 15847242); otherwise, *PAY* the same; and

(3.3) to *RESTITUTE* the amounts of Sixty Two Thousand Eight Hundred Forty Seven (₱62,847.55) Pesos and 55/100, Two Hundred Thirteen Thousand Two Hundred Sixty Eight (₱213,268.10) Pesos and 10/100, Thirteen (₱13.20) Pesos and 20/100, Eighteen Thousand Five Hundred (₱18,500.00) Pesos and Three Hundred Nine Thousand (₱309,000.00) Pesos, representing her shortages for Judiciary Development Fund, Special Allowance for the Judiciary Fund, General Fund, Mediation Fund, and Fiduciary Fund, respectively, and FURNISH the Fiscal Monitoring Division, Court Management Office, the Office of the Court Administrator, copies of machine validated deposit slips as proof of compliance;

4. to *DIRECT* Officer-in-Charge Gracilia D. Abes to *STRICTLY ENFORCE* the compliance with the circulars and issuances of the Court particularly in the handling of Judiciary Funds.[4]

In her one-page letter dated 19 April 2010,[5] Peradilla did not refute the findings of the Financial Audit Team. In fact, Peradilla requested that the monetary equivalent of her earned vacation and sick leave for her 16 years of service in the Judiciary be used to restitute the shortages she incurred. Peradilla stated in her letter:

This has reference to A.M. No. 09-5-90-MCTC (A.M. No. P-09-2647, Re: Report on the Financial Audit conducted in the MCTC of El Nido-Linapacan)

The financial audit conducted last April 2009 on my collection discloses that I have a shortage of Php62,847.55 for Judiciary Fund; Php213,263.00 for Special Allowance for Judiciary; Php13.20 for General Fund; and Php18,500.00 for Mediation Fund. For these, and with all humility, I am respectfully requesting your good Office that my earned leaves for my 16 years in the Judiciary be computed and be credited to restitute the above-mentioned amounts. My records from the Leave Division show that I have earned 46 vacation leave and 162 sick leave as of May 31, 2009.

Likewise, I humbly pray that if the amount equivalent to my earned leave is not sufficient to cover these shortages, may I request that my salaries withheld since March 2008 be released and be credited to said shortages.[6]

In another signed letter dated 8 April 2011,[7] Peradilla again admitted misappropriating the court funds. Peradilla alleged that she only intended to "borrow" the funds but unfortunately, she failed to replace the "borrowed" funds. Peradilla explained:

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[4] *Id.* at 19-21.

[5] *Id.* at 48.

[6] Although Peradilla inadvertently omitted the shortage of ₱309,000.00 for Fiduciary Fund, she never denied or refuted such finding by the Financial Audit Team.

[7] *Rollo*, pp. 54-57.

Before 2005, the users of the Postal Money Order (PMO) forms are the Court and the Jehova's witnesses only. When the Philippine Ports Authority started its operation in El Nido, it also purchases PMO to facilitate its remittances. Hence, many times, there was non-availability of PMO forms to facilitate my remittances to the Supreme Court. At that time, I have three children studying in college. The school fees and the students' allowances increased, more projects and contributions were needed, and the costly educational tours became part of college life. Besides, there were electric bills, loans to be paid, budget for food, clothing and other expenses. My salary can no longer meet these needs. My husband works as a butcher only in the nearby slaughterhouse, and there were many competitors. There were younger, faster, and stronger butchers than him. Since I kept the court's funds, and since there was no available PMO yet, and instead of borrowing money from loan sharks, I started granting loan to myself with a promise in mind that I will replace the same whenever my salary comes [sic].

Our very limited income, the non-availability of PMO forms, aggravated by my children's financial needs for their schooling resulted to my JDF accountabilities of Php62,847.55; from SAJ, my accountabilities reached Php213,268.10; my Mediation amounts to Php18,500.00; and my Fiduciary amounts to Php163,000.00. My total accountabilities amounted to Php457,615.65. Likewise, I have an unliquidated amount of Php22,000 in Election Protest No. 2007-01.[8]

In its Memorandum dated 13 October 2011,[9] the COA recommended that:

1) The Fiscal Management Office, OCA be DIRECTED to PROCESS the money value of the terminal leave pay of Ms. Peradilla and DEDUCT therefrom the total shortages of ₱603,628.85:

Judiciary Development Fund (JDF)	₱62,847.55
Special Allowance for the Judiciary Fund (SAJF)	213,268.10
General Fund (GF)	13.20
Mediation Fund (MF)	18,500.00
Fiduciary Fund (FF)	₱309,000.00
Total	₱603,628.85

[8] *Id.* at 54-55.

[9] *Id.* at 69-72.

2) The Cash Division, FMO, OCA be DIRECTED to:

a. DEPOSIT the amount of ₱62,847.55, ₱213,268.10, ₱13.20 and ₱18,500.00 to the Judiciary Development Fund, Special Allowance for the Judiciary Fund, General Fund and Mediation Fund accounts, respectively, within two (2) days from receipt of the checks from the Checks Disbursement Division, FMO, OCA; and

b. FURNISH immediately the Fiscal Monitoring Division, Court Management Office, OCA and Ms. Gracilia D. Abes, Officer-in-Charge, MCTC, El Nido-Linapacan, Palawan, with copies of machine validated deposit slips as proof that the amount deducted from the money value of the earned leave credits of Ms. Peradilla was deposited to the respective accounts, as payment of the shortages in said account;

3) Ms. Gracilia D. Abes, Officer-in-Charge, MCTC, El Nido-Linapacan, Palawan be DIRECTED to DEPOSIT the amount of ₱309,000.00 to the Municipal Treasurer's Office (MTO) of El Nido, Palawan, within five (5) days from receipt of the check from the Checks Disbursement Division, FMO, OCA and FURNISH immediately the FMD, CMO, OCA with [a] certified true copy of the Original Receipt, as proof that the amount of ₱309,000.00 was deposited to MTO;

4) The Office of Administrative Services, OCA be DIRECTED to furnish the Fiscal Management Office, OCA with the Official Service Record, Certification of Leave Credits and Notice of Salary Adjustments (NOSA) of Clerk of Court Peradilla so that the latter Office can process/comply with the directives in item #1 above;

5) Ms. Lunalinda M. Peradilla, Clerk of Court, MCTC, El Nido, Palawan be DISMISSED from the service for gross dishonesty resulting to malversation of public funds, with forfeiture of all retirement benefits excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and controlled corporations; and

6) Hon. Judge Ma. Theresa P. Mangcucang-Navarro, MCTC, El Nido, Palawan, be DIRECTED to STRICTLY MONITOR Ms. Gracilia D. Abes, Officer-in-Charge, MCTC, El Nido-Linapacan, Palawan, to ensure strict compliance with the circulars and issuance of the Court, particularly in the handling of judiciary funds, otherwise,

she shall be held equally liable for the infractions committed by the employee/s under her command/supervision.

We agree with the findings and recommendations of the Court Administrator. However, Peradilla's accountability for the Fiduciary Fund shortage should be increased by ₱46,000.00.

Section 1, Article XI of the Constitution declares that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. The demand for moral uprightness is more pronounced for the members and personnel of the judiciary who are involved in the dispensation of justice. The conduct of court members and personnel must not only be characterized with propriety and decorum but must also be above suspicion,[10] for any act of impropriety can seriously erode or diminish the people's confidence in the judiciary.[11] As frontliners in the administration of justice, they should live up to the strictest standards of honesty and integrity in the public service.[12]

Clerks of Court act as custodians of the court's funds, revenues, records, property and premises and are thus, liable for any loss, shortage, destruction or impairment of such funds and property.[13]

Supreme Court Circular No. 50-95 directs that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines." In cases where there are no branches of the

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[10] *Office of the Court Administrator v. Besa*, 437 Phil. 372 (2002).

[11] *Office of the Court Administrator v. Lometillo*, A.M. No. P-09-2637, 29 March 2011, 646 SCRA 542.

[12] *Re: Report on the Financial Audit in the MTC, Sta. Cruz, Davao del Sur*, 508 Phil. 143 (2005).

[13] *Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar*, A.M. No. P-07-2364 and A.M. No. P-11-2902, 25 January 2011, 640 SCRA 376.

Land Bank of the Philippines in the locality concerned, the Circular states that the fiduciary collections should be deposited by the Clerk of Court with the Provincial, City or Municipal Treasurer.

As regards Judiciary Development Fund, Administrative Circular No. 5-93 provides that:

> 3. *Duty of the Clerks of Court, Officers-in-Charge or accountable officers*. — The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representative designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR JUDICIARY DEVELOPMENT FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections for said Fund.
>
> 4. *Depository bank for the Fund*. — The amounts accruing to the Fund shall be deposited for the account of the Judiciary Development Fund, Supreme Court, Manila by the Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court in authorized government depository bank or private bank owned or controlled by the Government to be specified by the Chief Justice. The income or interest earned shall likewise form part of the Fund. For this purpose, depository bank for the Fund shall be the *Land Bank of the Philippines (LBP).*

As custodian of court funds and revenues, Peradilla is mandated to immediately deposit the court funds or collections in the Land Bank of the Philippines; she is not supposed to keep the funds in her custody.[14] Peradilla admitted that she failed to remit court funds which she used for her family's expenses. In her letter dated 19 April 2010, Peradilla requested that the monetary value of her earned leave credits be used to restitute the shortage of ₱62,847.55 for Judiciary Fund; ₱213,263.00 for Special Allowance for Judiciary; ₱13.20 for General Fund; and ₱18,500.00 for Mediation Fund.

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[14] *Rebong v. Tengco*, A.M. No. P-07-2338, 7 April 2010, 617 SCRA 460.

Although Peradilla inadvertently omitted the shortage of ₱309,000.00 for Fiduciary Fund, she never denied or refuted such finding by the Financial Audit Team. It should be noted that in the Memorandum dated 14 May 2009, the Financial Audit Team reported that Peradilla's accountability for Fiduciary Fund in the amount of ₱309,000.00 "will increase by ₱46,000.00 if Ms. Peradilla fails to submit the court order of withdrawal and the liquidation report of the ₱22,000.00 which she withdrew in Election Protest No. 2007-01; and the confirmation from Mr. Dieter Vogt, accused in Crim. Case Nos. 933 and 810, that he actually received from Ms. Peradilla the bonds he posted in the aforesaid cases totaling ₱24,000.00 (₱12,000.00 each per OR Nos. 15847241 and 15847242)."[15] In her letter dated 8 April 2011, Peradilla admitted that she has an unliquidated amount of ₱22,000.00 in Election Protest No. 2007-01. Peradilla also failed to secure confirmation from Mr. Vogt that he actually received the ₱24,000.00 representing the bonds which he posted in Criminal Case Nos. 933 and 810. Thus, with the additional shortage of ₱46,000.00, the ₱309,000.00 Fiduciary Fund accountability of Peradilla is increased to ₱355,000.00.

Peradilla also failed to issue official receipts and did not report some of the collections in the Monthly Reports of Collections and Deposits. Furthermore, the Financial Audit Team found that Peradilla made erroneous entries in her collections by reporting lesser amounts than the actual amounts collected as indicated in the official receipts.

In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte*,[16] the Court held that the failure of the Clerk of Court to remit the court funds constitutes gross neglect of duty, dishonesty, and grave misconduct prejudicial to the best interest of the service. Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[17] dishonesty, gross neglect of duty, and grave misconduct

[15] *Rollo*, p. 5.

[16] 351 Phil. 1 (1998).

[17] Civil Service Commission Resolution No. 99-1936, dated 31 August 1999, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

are classified as grave offenses with the corresponding penalty of dismissal for the first offense.[18]

In this case, Peradilla is guilty of dishonesty, gross neglect of duty, and grave misconduct for her: (1) non-remittance of collections of judiciary funds; (2) non-issuance of official receipts and non-reporting in the Monthly Reports and Collections and Deposits of some of the collections; and (3) erroneous reporting in the Monthly Reports and Collections and Deposits of some of the collections.

WHEREFORE, the Court finds respondent Lunalinda M. Peradilla, Clerk of Court II, Municipal Circuit Trial Court, El Nido-Linapacan, Palawan, **GUILTY** of **DISHONESTY, GROSS NEGLECT OF DUTY**, **and GRAVE MISCONDUCT**, and imposes upon her the penalty of **DISMISSAL** from the service. All her retirement benefits, except accrued leave credits, are forfeited and she is barred from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Financial Management Office, Office of the Court Administrator, is directed to process the monetary value of the terminal leave pay of Lunalinda M. Peradilla, as well as other benefits or withheld salary she may be entitled to, and deduct the total shortage of ₱649,628.85.

The Cash Division, Financial Management Office, Office of the Court Administrator is directed to deposit the amount of ₱62,847.55, P213,268.10, ₱13.20 and ₱18,500 to the Judiciary Development Fund, Special Allowance for the Judiciary Fund,

[18] Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service reads:

Section 52. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

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

1. Dishonesty — 1st Offense — Dismissal
2. Gross Neglect of Duty — 1st Offense — Dismissal
3. Grave Misconduct — 1st Offense — Dismissal

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General Fund and Mediation Fund accounts, respectively, within two (2) days from receipt of the checks from the Checks Disbursement Division, Financial Management Office, Office of the Court Administrator. The Cash Division, Financial Management Office, Office of the Court Administrator is further directed to furnish immediately the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, and Ms. Gracilia D. Abes, Officer-in-Charge, MCTC, El Nido-Linapacan, Palawan, with copies of machine validated deposit slips as proof that the amount deducted from the monetary value of the earned leave credits of Ms. Peradilla was deposited to the respective accounts, as payment of the shortages in said accounts.

Ms. Gracilia D. Abes, Officer-in-Charge, MCTC, El Nido-Linapacan, Palawan, is directed to deposit the amount of ₱355,000.00 to the Municipal Treasurer's Office of El Nido, Palawan, within five (5) days from receipt of the check from the Checks Disbursement Division, Financial Management Office, Office of the Court Administrator and furnish immediately the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator with a certified true copy of the Original Receipt, as proof that the amount of ₱355,000.00 was deposited to the Municipal Treasurer's Office.

The Office of the Court Administrator is ordered to take appropriate steps to file criminal charges against Lunalinda M. Peradilla for malversation of public funds as may be warranted from the facts.

SO ORDERED.

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

Perez, J., no part. Acted on matter as Court Administrator.

Brion, J., on leave.

EN BANC

[A.M. No. P-11-3024. July 17, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MA. IRISSA G. MUSNGI, Court Legal Researcher II, Regional Trial Court, Judicial Region III, Branch 36, Gapan City, Nueva Ecija,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT LEGAL RESEARCHER; WHEN GUILTY OF DISHONESTY AND GRAVE MISCONDUCT; PRESENT IN CASE AT BAR.—** The Court finds Musngi guilty of dishonesty and grave misconduct. x x x Both Judge Luyun and the OCA found that Musngi stole the ₱45,000 which was part of the evidence in Criminal Case Nos. 8674, 9096, 9151 and 9152. x x x The Court finds no reason to disturb the factual finding of Judge Luyun and the OCA that Musngi stole the ₱45,000. Musngi failed to present any evidence to prove that, indeed, she spent the ₱45,000 for the repair of the ceiling and toilet of the trial court. She did not present any receipt for the materials used or for the services engaged for the alleged repairs. She also did not present any affidavit from Judge Bernardo or from other court employees to vouch for the truthfulness of the alleged repairs. Even assuming that Musngi indeed spent the ₱45,000 for court repairs, she would still be liable because she is not authorized to appropriate or spend monetary evidence for whatever purpose. Musngi's excuse that she spent the ₱45,000 for the repair of the ceiling and toilet of the trial court is unconvincing. x x x Taking monetary evidence without proper authority constitutes theft. In *Judge San Jose, Jr. v. Camurongan*, the Court held that, "The act of taking monetary exhibits without authority from their custodian constitutes theft. Thievery, no matter how petty, has no place in the judiciary. This unlawful act of taking cannot be justified by an alleged intention to safeguard the money from damage that might be caused by the flood." Musngi's acts of stealing the ₱45,000

and saying that she used the amount for the alleged repair of the ceiling and toilet of the trial court constitute grave misconduct and dishonesty.

2. **ID.; ID.; ID.; ID.; ID.; PUNISHABLE BY DISMISSAL FROM THE SERVICE FOR THE FIRST OFFENSE.—** Section 52(A)(1) and (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service classify dishonesty and grave misconduct, respectively, as grave offenses punishable by dismissal for the first offense. Section 58(a) states that the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

D E C I S I O N

***PER CURIAM*:**

In January 2011, Judge Cielitolindo A. Luyun (Judge Luyun) assumed office as Presiding Judge of the Regional Trial Court (RTC), Judicial Region III, Branch 36, Gapan City, Nueva Ecija. Upon assumption of office, he conducted an inventory of pending cases and evidence submitted to the trial court. During the inventory, he found a handwritten receipt[1] for ₱45,000. The amount, which was missing, was part of the evidence in Criminal Case Nos. 8674, 9096, 9151 and 9152. The recipient of the amount was Ma. Irissa G. Musngi (Musngi), Court Legal Researcher II of the RTC.

In a memorandum[2] dated 2 February 2011, Judge Luyun directed Musngi to explain why no administrative case should be filed against her for tampering with evidence submitted to the trial court. Judge Luyun also directed Musngi to restitute the ₱45,000.

In a letter[3] dated 21 February 2011, Musngi explained that (1) the ₱45,000 was part of the evidence seized by the

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[1] *Rollo*, p. 17.

[2] *Id.* at 18.

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

apprehending officers in Criminal Case Nos. 8674, 9096, 9151 and 9152; (2) retired Judge Arturo M. Bernardo (Judge Bernardo) directed Musngi to deposit the amount with the Office of the Clerk of Court; (3) the cashier at the Office of the Clerk of Court accepted then returned the amount to Musngi; and (4) Judge Bernardo directed Musngi to use the amount for the repair of the ceiling and toilet of the trial court. After several demands, Musngi restituted the ₱45,000 on 4 March 2011.

In a memorandum[4] dated 18 March 2011, Executive Judge Celso O. Baguio (Judge Baguio), RTC, Judicial Region III, Branch 34, Gapan City, Nueva Ecija, asked Judge Luyun to submit a report on any action he has taken regarding Musngi's 21 February 2011 letter. Judge Baguio furnished the Office of the Court Administrator (OCA) a copy of the memorandum.

In a letter[5] dated 30 June 2011, the OCA required Judge Luyun to submit a report, together with supporting documents, on any action he has taken regarding Judge Baguio's 18 March 2011 memorandum.

In a report[6] dated 8 August 2011 and submitted to Judge Baguio and the OCA, Judge Luyun stated that:

> The evidence shows the amount of Php45,000.00 was part of the evidence seized by the enforcers in Criminal Cases [sic] Nos. 8674, 9151, 9096, and 9152 which are [sic] part of the accountabilities of Ms. Gutierrez as the then evidence custodian of this court and which she turned over to Ms. Musngi on July 19, 2005, in view of the former's transfer to another court. The same amount was in turn turned over by Ms. Musngi to Ms. Pangilinan for safekeeping only in the Office of the Clerk of Court upon verbal instruction of the then Executive/Presding [sic] Judge Arturo m. [sic] Bernardo. Since there is no account with which to credit the amount of Php45,000.00, Ms. Pangilinan issued an acknowledgment receipt instead of the customary official receipt. Later or on February 6, 2006, Ms. Musngi withdrew the said amount from Ms. Pangilinan. By her own admission,

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[4] *Id.* at 6.

[5] *Id.* Signed by Court Administrator Jose Midas P. Marquez.

[6] *Id.* at 13-15.

Ms. Musngi spent the money for the alleged repair of the previous court's courtroom, chamber room, an [sic] restroom. However, Ms. Musngi failed to submit receipts in support thereof. Inquiries made with court employees disclosed that the *sala* of Branch 36, RTC was housed at the old City Hall and all repairs made therein were shouldered by the city government. The old City Hall had undergone renovation to be used as a hospital and we cannot confirm as to whether or not the previous *sala* had actually undertaken any repairs.[7]

In a report[8] dated 28 November 2011, the OCA found Musngi liable for grave misconduct and serious dishonesty, and recommended that Judge Luyun's 8 August 2011 report be re-docketed as a regular administrative matter and that Musngi be dismissed from the service. The OCA held that:

EVALUATION: There is sufficient basis to hold Ms. Ma. Irissa G. Musngi liable for Grave misconduct and serious dishonesty. Although it is within her right, as Officer-in-Charge, to place in custody and safe keep the money from the Office of the Clerk of Court-Regional Trial Court representing the cash evidence in several criminal case [sic] raffled to Branch 36, RTC, Gapan, Nueva Ecija, she took the money for the wrong reason. There is no law or rule giving her the authority to utilize the cash evidence of Php45,000.00 for her personal interest or for the alleged repairs of the dilapidated rooms and restroom of RTC, Branch, 36, Gapan. The allegation that then Judge Arturo Bernardo of Branch 36 directed her to undertake repairs of dilapidated court rooms and restroom of the branch are not supported by affidavits of witnesses and receipts of expenses.

The act undertaken by Ms. Musngi in using her authority to get the cash money for her personal use is a clear case of Grave Misconduct, which, by legal definition, is a "transgression of some established and definite rule of action, more particularly, unlawful behavior as well as gross negligence by a public officer. It is this kind of gross and flaunting misconduct on the part of those who are charged with the responsibility of administering the law and rendering justice that so quickly and surely corrodes the respect for law and the courts without which the government cannot continue and that tears apart the very bonds of our polity[.]" To constitute an

[7] *Id.* at 15.

[8] *Id.* at 1-4.

administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer, a condition which was clearly applicable in this case when Ms. Musngi, exercising her position as OIC of RTC, Branch 36, retrieved the Php45,000.00 cash evidence from the OCC-RTC only to spend it for her personal interest.

A clear case of serious dishonesty was likewise committed when Ms. Musngi made claims that the cash evidence taken was used for court room repairs when she could not substantiate the same. Being a law graduate, she also ought to know that it is not appropriate to utilize case evidence for court room repairs. Repairs in the Halls of Justice are within the ambit of the Halls of Justice-Office of the Court Administrator, with assistance of the Local Government Unit concerned.

Though Ms. Musngi restituted the amount of Php45,000.00 after repeated demands by the Branch Clerk of Court, such restitution does not exculpate her from administrative liability, more so when the amount taken was cash evidence in a criminal case. Restitution, full or otherwise, of the missing amount and obviously misappropriated by her does not absolve her from the offense of Dishonesty, which she admitted to have committed.

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

1) the complaint be RE-DOCKETED as a regular administrative matter; and,

2) Ma. Irissa G. Musngi, Court Legal Researcher II, Regional Trial Court (RTC), Branch 36, Gapan City, Nueva Ecija, be held guilty of Grave Misconduct and Serious Dishonesty, and be DISMISSED from the service with forfeiture of all her benefits, except accrued leave credits, and disqualified from reemployment in any government agency, including government-owned or controlled corporations.[9]

In its 14 December 2011 Resolution,[10] the Court re-docketed the case as a regular administrative matter.

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[9] *Id.* at 3-4.

[10] *Id.* at 29.

The Court finds Musngi guilty of dishonesty and grave misconduct. In *Alenio v. Cunting*, [11] the Court defined dishonesty and grave misconduct:

Dishonesty is the "disposition to lie, cheat, deceive, defraud or betray; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness."

Misconduct, on the other hand, is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.[12]

Both Judge Luyun and the OCA found that Musngi stole the ₱45,000 which was part of the evidence in Criminal Case Nos. 8674, 9096, 9151 and 9152. In his 8 August 2011 report, Judge Luyun stated that:

. . . [O]n February 6, 2006, Ms. Musngi withdrew the said amount from Ms. Pangilinan. By her own admission, Ms. Musngi spent the money for the alleged repair of the previous court's courtroom, chamber room, an [sic] restroom. However, Ms. Musngi failed to submit receipts in support thereof. Inquiries made with court employees disclosed that the *sala* of Branch 36, RTC was housed at the old City Hall and all repairs made therein were shouldered by the city government.

In its 28 November 2011 report, the OCA stated that:

xxx [S]he took the money for the wrong reason. There is no law or rule giving her the authority to utilize the cash evidence of Php45,000.00 for her personal interest or for the alleged repairs of the dilapidated rooms and restroom of RTC, Branch 36, Gapan. The allegation that then Judge Arturo Bernardo of Branch 36 directed

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[11] A.M. No. P-05-1975, 26 July 2007, 528 SCRA 159.

[12] *Id.* at 169.

her to undertake repairs of dilapidated court rooms and restroom of the branch are not supported by affidavits of witnesses and receipts of expenses.

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A clear case of serious dishonesty was likewise committed when Ms. Musngi made claims that the cash evidence taken was used for court room repairs when she could not substantiate the same. Being a law graduate, she also ought to know that it is not appropriate to utilize case evidence for court room repairs. Repairs in the Halls of Justice are within the ambit of the Halls of Justice-Office of the Court Administrator, with assistance of the Local Government Unit concerned.

Though Ms. Musngi restituted the amount of Php45,000.00 after repeated demands by the Branch Clerk of Court, such restitution does not exculpate her from administrative liability, more so when the amount taken was cash evidence in a criminal case. Restitution, full or otherwise, of the missing amount and obviously misappropriated by her does not absolve her from the offense of Dishonesty, which she admitted to have committed.

The Court finds no reason to disturb the factual finding of Judge Luyun and the OCA that Musngi stole the ₱45,000. Musngi failed to present any evidence to prove that, indeed, she spent the ₱45,000 for the repair of the ceiling and toilet of the trial court. She did not present any receipt for the materials used or for the services engaged for the alleged repairs. She also did not present any affidavit from Judge Bernardo or from other court employees to vouch for the truthfulness of the alleged repairs. Even assuming that Musngi indeed spent the ₱45,000 for court repairs, she would still be liable because she is not authorized to appropriate or spend monetary evidence for whatever purpose.

Musngi's excuse that she spent the ₱45,000 for the repair of the ceiling and toilet of the trial court is unconvincing. In *Office of the Court Administrator v. Pacheco*,[13] the Court found unconvincing the unsubstantiated explanation that money was spent for alleged court renovations. The Court held that:

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[13] A.M. No. P-02-1625, 4 August 2010, 626 SCRA 686.

Respondent's unsubstantiated explanation that she spent the money derived from the tampered receipts for renovations in the court, is unconvincing. x x x

If her allegations were indeed true, she should have submitted the corresponding disbursement vouchers for labor and purchase receipts of materials utilized in the court's renovation instead of the supposedly corrected receipts. As aptly stated by the OCA, her justification was a lame and desperate attempt to disguise the fact of malversation of the court's collections.[14]

Taking monetary evidence without proper authority constitutes theft. In *Judge San Jose, Jr. v. Camurongan*, [15] the Court held that, "The act of taking monetary exhibits without authority from their custodian constitutes theft. Thievery, no matter how petty, has no place in the judiciary. This unlawful act of taking cannot be justified by an alleged intention to safeguard the money from damage that might be caused by the flood."[16]

Musngi's acts of stealing the ₱45,000 and saying that she used the amount for the alleged repair of the ceiling and toilet of the trial court constitute grave misconduct and dishonesty. In *Re: Loss of Extraordinary Allowance of Judge Jovellanos*,[17] the Court held that:

While respondent denies the charge, her unsubstantiated disavowal cannot stand against the positive and detailed account of Chua regarding her (Santos) participation in the encashment of check no. 1106739. x x x

xxx xxx xxx

By stealing and encashing the check of Judge Jovellanos without the latter's knowledge and consent, respondent has shown herself unfit for the confidence and trust demanded by her work as check-processor. Her acts amounted to gross misconduct and dishonesty,

[14] *Id.* at 696.

[15] 522 Phil. 80 (2006).

[16] *Id.* at 84.

[17] 441 Phil. 261 (2002).

and violated the time-honored constitutional principle that a public office is a public trust. Her actuation is a disgrace to the judiciary and erodes the people's faith in the judicial system.[18]

Section 52 (A) (1) and (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service[19] classify dishonesty and grave misconduct, respectively, as grave offenses punishable by dismissal for the first offense. Section 58 (a) states that the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

WHEREFORE, the Court finds respondent Ma. Irissa G. Musngi, Court Legal Researcher II, Regional Trial Court, Judicial Region III, Branch 36, Gapan City, Nueva Ecija, **GUILTY** of **DISHONESTY** and **GRAVE MISCONDUCT**. Respondent Ma. Irissa G. Musngi is **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Brion, J., on leave.

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[18] *Id.* at 266-269.

[19] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

EN BANC

[A.M. No. RTJ-10-2257. July 17, 2012]

CRISELDA C. GACAD, *complainant, vs.* **JUDGE HILARION P. CLAPIS, JR., Regional Trial Court, Branch 3, Nabunturan, Compostela Valley,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; GROSS MISCONDUCT; THE ACTS OF RESPONDENT JUDGE IN MEETING A LITIGANT IN A CASE PENDING BEFORE HIS *SALA* CONSTITUTES GROSS MISCONDUCT.—** We find Judge Clapis liable for gross misconduct. In *Kaw v. Osorio*, the Court held that while the respondent judge, in that case, may not be held liable for extortion and corruption as it was not substantially proven, he should be made accountable for gross misconduct. In the present case, the Investigating Justice found Gacad's narration, that she met and talked with Judge Clapis in the Golden Palace Hotel, as credible. Gacad categorically and unwaveringly narrated her conversation with Judge Clapis and Arafol. On the other hand, Judge Clapis merely denied Gacad's allegation during the hearing conducted by the Investigating Justice, but not in his Comment, and without presenting any evidence to support his denial. It is a settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified. The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases applies *a fortiori* to administrative cases. Thus, the acts of Judge Clapis in meeting Gacad, a litigant in a case pending before his *sala*, and telling her, *"Sige, kay ako na bahala gamuson nato ni sila"* (Okay, leave it all to me, we shall crush them.), both favoring Gacad, constitute gross misconduct.

2. **ID.; ID.; ID.; MISCONDUCT; DEFINED.—** In *Sevilla v. Lindo,* where the respondent judge tolerated the unreasonable postponements made in a case, the Court held that such conduct

proceeded from bias towards the accused, rendering such acts and omissions as gross misconduct. Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties. For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law, or a persistent disregard of well-known rules. The misconduct must imply wrongful intention and not a mere error of judgment.

3. **ID.; ID.; ID.; RESPONDENT JUDGE CANNOT ESCAPE LIABILITY BY SHIFTING THE BLAME TO HIS COURT PERSONNEL; JUDGES ARE ULTIMATELY RESPONSIBLE FOR ORDER AND EFFICIENCY IN THEIR COURTS, AND THE SUBORDINATES ARE NOT THE GUARDIANS OF THE JUDGE'S RESPONSIBILITY.—** Judge Clapis' wrongful intention and lack of judicial reasoning are made overt by the circumstances on record. *First*, the Notices of Hearings were mailed to Gacad only after the hearing. *Second*, Judge Clapis started conducting the bail hearings without an application for bail and granted bail without affording the prosecution the opportunity to prove that the guilt of the accused is strong. *Third*, Judge Clapis set a preliminary conference seven months from the date it was set, patently contrary to his declaration of speedy trial for the case. Judge Clapis cannot escape liability by shifting the blame to his court personnel. He ought to know that judges are ultimately responsible for order and efficiency in their courts, and the subordinates are not the guardians of the judge's responsibility.

4. **ID.; ID.; ID.; THE ARBITRARY ACTIONS OF RESPONDENT JUDGE, TAKEN TOGETHER, GIVE DOUBT AS TO HIS IMPARTIALITY, INTEGRITY AND PROPRIETY.—** The arbitrary actions of respondent judge, taken together, give doubt as to his impartiality, integrity and propriety. His acts amount to gross misconduct constituting violations of the New Code of Judicial Conduct, particularly x x x. It is an ironclad principle that a judge must not only be impartial; he must also *appear* to be impartial at *all* times. Being in constant scrutiny by the public, his language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.

Needless to state, any gross misconduct seriously undermines the faith and confidence of the people in the judiciary.

5. **ID.; ID.; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE CONDUCTED BAIL HEARINGS WITHOUT A PETITION FOR BAIL BEING FILED BY THE ACCUSED AND WITHOUT AFFORDING THE PROSECUTION AN OPPORTUNITY TO PROVE THAT THE GUILT OF THE ACCUSED IS STRONG.—** We also find Judge Clapis liable for gross ignorance of the law for conducting bail hearings without a petition for bail being filed by the accused and without affording the prosecution an opportunity to prove that the guilt of the accused is strong. x x x Here, the act of Judge Clapis is not a mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law. If judges are allowed to wantonly misuse the powers vested in them by the law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.

6. **ID.; ID.; ID.; RESPONDENT JUDGE'S PREVIOUS INFRACTIONS, CONSIDERED.—** Judge Clapis had already been administratively sanctioned in *Humol v. Clapis Jr.*, where he was fined ₱30,000 for gross ignorance of the law. In this previous case, the Court sanctioned Judge Clapis for his failure to hear and consider the evidence of the prosecution in granting bail to the accused. His order relied solely on the arguments of counsel for the accused. In *Humol*, the Court reminded Judge Clapis of the duties of a trial judge when an application for bail is filed, but in the present case, he ignored the same. Therefore, we now impose upon him the extreme administrative penalty of dismissal from the service. In *Mangandingan v. Adiong*, the Court dismissed Judge Santos Adiong from service upon a finding of guilt for gross ignorance of the law as well as gross misconduct constituting violation of the Code of Judicial Conduct.

7. **ID.; ID.; JUDGES ARE REMINDED THAT HAVING ACCEPTED THE EXALTED POSITION OF A JUDGE, THEY OWE IT TO THE PUBLIC TO UPHOLD THE EXACTING STANDARD OF CONDUCT DEMANDED**

FROM THEM.— Again, judges are reminded that having accepted the exalted position of a judge, they owe it to the public to uphold the exacting standard of conduct demanded from them. As the Court repeatedly stressed: The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary because the people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. When the judge himself becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself. It is therefore paramount that a judge's personal behavior both in the performance of his duties and his daily life, be free from any appearance of impropriety as to be beyond reproach.

D E C I S I O N

***PER CURIAM*:**

Criselda C. Gacad (Gacad) filed a Verified Complaint[1] dated 9 June 2010 against Judge Hilarion P. Clapis, Jr. (Judge Clapis), Presiding Judge of the Regional Trial Court (RTC), Branch 3, Nabunturan, Compostela Valley, for Grave Misconduct and Corrupt Practices, Grave Abuse of Discretion, Gross Ignorance of the Law, and violations of Canon 1 (Rule 1.01, 1.02), Canon 2 (Rule 2.01), and Canon 3 (Rule 3.05) of the Code of Judicial Conduct relative to Criminal Case No. 6898 entitled "*People of the Philippines v. Rodolfo Comania.*"

According to Gacad, on 3 November 2009, she went, together with her father Jovenciano Cardenas and sister-in-law Agriculita *Vda. De* Cardenas, to the Office of the Provincial Prosecutor in Nabunturan, Compostela Valley, to file criminal charges against the suspect who gunned down her brother Gregorio Cardenas.

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[1] *Rollo,* pp. 1-10.

They met provincial prosecutor Graciano Arafol, Jr. (Arafol), who advised them not to hire a private counsel.

The following day, Arafol informed Gacad that he filed a complaint for murder against the suspect but the Provincial Governor kept on pressuring him about her brother's case. Arafol suggested that they see Judge Clapis so he would deny the Motion for Reinvestigation to be filed by the accused Rodolfo Comania (accused). Arafol, further, told Gacad to prepare an amount of ₱50,000 for Judge Clapis.

On 23 November 2009, Arafol told Gacad that they would meet Judge Clapis at the Golden Palace Hotel in Tagum City. Thus, Gacad, together with her husband Rene Gacad and their family driver Jojo Baylosis (Baylosis), proceeded to the Golden Palace Hotel. Inside the hotel, Gacad joined Arafol and his wife at their table. After a while, Judge Clapis joined them. Arafol told Judge Clapis, "*Judge sya yong sinasabi kong kapitbahay ko may problema.*" Judge Clapis replied, *"So, what do you want me to do?"* Afarol answered, "*Kailangang madeny ang reinvestigation ni Atty. Gonzaga and we proceed to trial kasi palaging tumatawag si Governor.*" Arafol paused, and continued, "*Wag kang mag-alala judge, mayron syang inihanda para sa iyo.*" Gacad felt terrified because she had not yet agreed to Arafol's demands. Hence, when Arafol asked her, *"Day, kanus a nimo mahatag ang kwarta?"* (When can you give the money?), Gacad could only mumble, *"Paningkamutan na ko makakita ko ug kwarta... basin makakita ko sir."* (I will try to look for money, maybe I can find, sir.) Judge Clapis excitedly nodded and said, *"Sige, kay ako na bahala, gamuson nato ni sila."* (Okay, leave it all to me, we shall crush them.)

The following day, Arafol instructed his nephew Baldomero Arafol (Baldomero) to go to Gacad's house to accompany Baylosis. In Gacad's house, Gacad gave ₱50,000 to Baylosis in the presence of Baldomero. Baylosis then drove with Baldomero to Jollibee in Tagum City. Upon their arrival, Baldomero alighted and Arafol got into the passenger seat. Arafol directed Baylosis to drive to Mikos Coffee Bar. Along the way, Arafol took the money from Baylosis. At Mikos Coffee Bar, Arafol alighted,

telling Baylosis to wait for him. Then, Arafol went inside Mikos Coffee Bar to join Judge Clapis.

In his Sworn Affidavit dated 8 April 2010, Baylosis stated that he went out of the vehicle and saw, through the full window glass of the Mikos Coffee Bar, Arafol sitting at a table together with Judge Clapis. After Arafol left Mikos Coffee Bar, he told Baylosis to bring him back to Jollibee in Tagum City.

On the second week of January 2010, Arafol showed to Gacad a copy of Judge Clapis' Order dated 4 January 2010 denying the Motion for Reinvestigation filed by the accused. Subsequently, Arafol told Gacad that Judge Clapis was borrowing ₱50,000 from her for his mother's hospitalization. Arafol handed to Gacad a postdated BPI check allegedly issued by Judge Clapis as assurance of payment. However, Gacad failed to produce the ₱50,000.

Gacad alleged that, from then on, Arafol and Judge Clapis began to "play different hideous schemes" to prejudice their case.[2] Judge Clapis set hearings on 4 February 2010, 8 February 2010, and 1 March 2010. However, the Notices for Hearings were mailed only on 1 March 2010 and were received by Gacad only on 3 March 2010.

Thereafter, Judge Clapis set a hearing for a petition for bail on 29 March 2010, which Gacad came to know only inadvertently since she received no notice for the hearing. During the 29 March 2010 hearing, Public Prosecutor Alona Labtic moved that the petition for bail be put in writing. However, the counsel for the accused manifested that he was not prepared for a written petition because it was only right before the hearing that the accused informed him of Arafol's agreement to bail. Thus, Judge Clapis calendared the case for speedy trial. He set a continuous hearing for the petition for bail on 12 April 2010, 13 April 2010, and 14 April 2010.

On 8 April 2010, the accused filed a Petition For Bail while Gacad filed a Motion For Inhibition of Judge Clapis. On 18

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[2] *Id.* at 4.

May 2010, Judge Clapis granted the accused's Petition For Bail. On 24 May 2010, Judge Clapis issued a Notice of Preliminary Conference set on 2 December 2010. On 1 June 2010, Judge Clapis inhibited himself.

To bolster her case of corruption against Judge Clapis, Gacad recounted her previous encounter with Judge Clapis and Arafol in Criminal Case No. 6251 against her brother. According to Gacad, Arafol suggested that they give Judge Clapis the ₱80,000 cash bond posted in the case so that her brother's case could be dismissed. After conceding to Arafol's proposal, Judge Clapis indeed dismissed the case despite the strong evidence against her brother.

In an Indorsement letter dated 21 June 2010, the Office of the Court Administrator (OCA) required Judge Clapis to comment. In his Comment[3] dated 26 July 2010, Judge Clapis narrated the events regarding Criminal Case No. 6898, beginning with the arraignment set on 17 December 2009 up to his inhibition on 1 June 2010. Judge Clapis did not attach any documents to support his narration. Judge Clapis claimed that notices were made verbally because of time constraints. Nevertheless, he stressed that both sides were given the opportunity to be heard since in almost all proceedings, Gacad was in court and the orders were done in open court. He admitted that his personnel inadvertently scheduled the preliminary conference of the case to 2 December 2010. Finally, he denied owning an account in BPI.

In its Resolution[4] dated 15 December 2010, this Court's Second Division noted the recommendation of the OCA dated 3 November 2010 and resolved to: (1) re-docket the instant administrative complaint OCA-IPI No. 10-3440-RTJ as regular administrative matter A.M. No. RTJ-10-2257; and (2) refer the matter to the Executive Justice of the Court of Appeals, Cagayan de Oro City, for raffle among its Justices, and direct the Justice to whom the case is assigned to conduct an investigation on the

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[3] *Id.* at 52.

[4] *Id.* at 130.

matter and to submit a report and recommendation within 60 days from receipt of the records of the case.

Pursuant to the Resolution of 15 December 2010, the records of the case were forwarded to Justice Romulo V. Borja, the Executive Justice of the Court of Appeals, Mindanao Station, and then to the Raffle Committee. On 10 May 2011, the case was raffled to Justice Zenaida T. Galapate-Laguilles (Investigating Justice) for investigation. Thereafter, the Investigating Justice ordered the parties to submit their respective evidence, and set the case for hearing on 14 June 2011, 21 June 2011, and 28 June 2011. The 28 June 2011 hearing was subsequently reset to 28 July 2011.

In its Resolution dated 6 July 2011, this Court's Second Division granted the Investigating Justice an extension of 60 days or until 9 September 2011 to terminate her investigation and submit her recommendation.

In her undated Report and Recommendation, the Investigating Justice ruled that Judge Clapis committed grave misconduct for acting contrary to the prescribed standard of conduct for judges. Although the Investigating Justice was not convinced that Judge Clapis received ₱50,000, and then tried to borrow another ₱50,000, from Gacad, she found Gacad's narration of her meeting with Judge Clapis in Golden Palace Hotel as credible. The Investigating Justice stated:

> x x x In a provincial setting such as the place where the parties come from, it is not difficult to imagine the considerable power that persons of the respondent's calibre could wield in the mind of a litigant such as the complainant herein. The substance and tenor of the complainant's testimony and element of possible motivation on the part of the respondent given his unrefuted closeness with Prosecutor Arafol convince this Justice that the complainant is telling the truth.
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> xxx xxx xxx
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> x x x Respondent judge merely offered a flat denial when he could have presented Prosecutor Arafol to buttress his disavowal of any imputed misconduct on his part. x x x Respondent's reaction,

however, is regrettably lackadaisical, if not abnormal, for one whose integrity was shred to pieces by no less than the Trial Prosecutor who is his partner, in an almost daily basis, in the task of dispensing justice. There is simply no showing indeed that respondent herein took umbrage at Prosecutor Arafol's alleged brazenness and daring to sully his name.[5]

Furthermore, the Investigating Justice found Judge Clapis liable for gross ignorance of the law. Judge Clapis was partial in granting bail to the accused and in failing to set the case for hearing within a reasonable time. Accordingly, the Investigating Justice recommended the penalties of: (1) suspension for one year without salary and other benefits for gross misconduct; (2) a fine of ₱20,000.00 for gross ignorance of the law; and (3) reprimand for neglect of duty.

In a Memorandum dated 11 January 2012, the OCA agreed with the findings of the Investigating Justice but disagreed with the recommended penalties. The OCA found that Judge Clapis violated Canon 1 (Rule 1.01 and Rule 1.02) and Canon 2 (Rule 2.01) of the Code of Judicial Conduct. The OCA also found Judge Clapis liable for gross ignorance of the law for failing to observe the rules in hearing the petition for bail and to accord the prosecution due process. Accordingly, the OCA recommended the penalties of: (1) suspension for six months for gross misconduct; and (2) a fine of ₱40,000 for gross ignorance of the law.

We have ruled that in administrative proceedings, the complainant has the burden to prove his accusations against respondent with substantial evidence or such amount of evidence which a reasonable mind might accept as adequate to support a conclusion.[6] This Court has consistently ruled that charges

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[5] *Id.* at 412-413.

[6] *Monticalbo v. Maraya, Jr.*, A.M. No. RTJ-09-2197, 13 April 2011, 648 SCRA 573 citing *De Jesus v. Guerrero III*, G.R. No. 171491, 4 September 2009, 598 SCRA 341; *Manalabe v. Cabie*, A.M. No. P-05-1984, 6 July 2007, 526 SCRA 582; *Adajar v. Develos*, 512 Phil. 9 (2005); *Ong v. Rosete*, 484 Phil. 102 (2004); *Datuin, Jr. v. Soriano*, 439 Phil. 592 (2002).

based on mere suspicion and speculation cannot be given credence.[7]

In the present case, there is indeed no substantial evidence that Judge Clapis received the ₱50,000 given by Gacad to Arafol, and that Judge Clapis tried to borrow another ₱50,000 from Gacad secured by a check allegedly signed by Judge Clapis himself. The testimony of Gacad, stating that Judge Clapis received ₱50,000 and tried to borrow another ₱50,000 from her, both through Arafol, cannot be given due weight for being hearsay evidence. On the other hand, although Baylosis testified based on his personal knowledge, he did not categorically state that he saw Arafol give the money to Judge Clapis. In addition, the check allegedly issued by Judge Clapis was in the account name of Arafol as attested by the BPI Business Manager's Certification. Hence, Gacad fell short of the required degree of proof needed in an administrative charge of corruption.

We, however, find Judge Clapis liable for gross misconduct. In *Kaw v. Osorio*,[8] the Court held that while the respondent judge, in that case, may not be held liable for extortion and corruption as it was not substantially proven, he should be made accountable for gross misconduct.

In the present case, the Investigating Justice found Gacad's narration, that she met and talked with Judge Clapis in the Golden Palace Hotel, as credible. Gacad categorically and unwaveringly narrated her conversation with Judge Clapis and Arafol. On the other hand, Judge Clapis merely denied Gacad's allegation during the hearing conducted by the Investigating Justice, but not in his Comment, and without presenting any evidence to support his denial. It is a settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.[9] The rule which

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[7] *Id.* citing *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, 18 January 2011, 639 SCRA 633.

[8] 469 Phil. 896 (2004).

[9] *Ocampo v. Arcaya-Chua*, A.M. No. RTJ-07-2093, 23 April 2010, 619 SCRA 60, citing *Vidallon-Magtolis v. Salud*, 506 Phil. 423 (2005).

concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases applies *a fortiori* to administrative cases.[10]

Thus, the acts of Judge Clapis in meeting Gacad, a litigant in a case pending before his *sala*, and telling her, *"Sige, kay ako na bahala gamuson nato ni sila"* (Okay, leave it all to me, we shall crush them.), both favoring Gacad, constitute gross misconduct.

In *Sevilla v. Lindo,*[11] where the respondent judge tolerated the unreasonable postponements made in a case, the Court held that such conduct proceeded from bias towards the accused, rendering such acts and omissions as gross misconduct.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties.[12] For grave or gross misconduct to exist, the judicial act complained of should be corrupt or inspired by the intention to violate the law, or a persistent disregard of well-known rules.[13] The misconduct must imply wrongful intention and not a mere error of judgment.[14]

Judge Clapis' wrongful intention and lack of judicial reasoning are made overt by the circumstances on record. *First*, the Notices of Hearings were mailed to Gacad only after the hearing. *Second*, Judge Clapis started conducting the bail hearings without an application for bail and granted bail without affording the prosecution the opportunity to prove that the guilt of the accused

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[10] *Ferreras v. Eclipse*, A.M. No. P-05-2085, 20 January 2010, 610 SCRA 359.

[11] A.M. No. MTJ-08-1714, 9 February 2011, 642 SCRA 277.

[12] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007, 521 SCRA 449, citing *Civil Service Commission v. Belagan*, 483 Phil. 601 (2004); *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999).

[13] *Id.*

[14] *Almojuela v. Ringor, Jr.*, 479 Phil. 131 (2004), citing *Mercado v. Dysangco*, 434 Phil. 547 (2002).

is strong. *Third*, Judge Clapis set a preliminary conference seven months from the date it was set, patently contrary to his declaration of speedy trial for the case. Judge Clapis cannot escape liability by shifting the blame to his court personnel. He ought to know that judges are ultimately responsible for order and efficiency in their courts, and the subordinates are not the guardians of the judge's responsibility.[15]

The arbitrary actions of respondent judge, taken together, give doubt as to his impartiality, integrity and propriety. His acts amount to gross misconduct constituting violations of the New Code of Judicial Conduct, particularly:

CANON 2. INTEGRITY IS ESSENTIAL NOT ONLY TO THE PROPER DISCHARGE OF THE JUDICIAL OFFICE BUT ALSO TO THE PERSONAL DEMEANOR OF JUDGES.

Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

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CANON 3. IMPARTIALITY IS ESSENTIAL TO THE PROPER DISCHARGE OF THE JUDICIAL OFFICE. IT APPLIES NOT ONLY TO THE DECISION ITSELF BUT ALSO TO THE PROCESS BY WHICH THE DECISION IS TO BE MADE.

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Section 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary.

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Section 4. Judges shall not knowingly, while a proceeding is before, or could come before them, make any comment that might reasonably

[15] *Kara-an v. Lindo*, A.M. No. MTJ-07-1674, 19 April 2007, 521 SCRA 423, citing *Hilario v. Concepcion*, 383 Phil. 843 (2000).

be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

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CANON 4. PROPRIETY AND THE APPEARANCE OF PROPRIETY ARE ESSENTIAL TO THE PERFORMANCE OF ALL THE ACTIVITIES OF A JUDGE.

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

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It is an ironclad principle that a judge must not only be impartial; he must also *appear* to be impartial at *all* times.[16] Being in constant scrutiny by the public, his language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued.[17] Needless to state, any gross misconduct seriously undermines the faith and confidence of the people in the judiciary.

We also find Judge Clapis liable for gross ignorance of the law for conducting bail hearings without a petition for bail being filed by the accused and without affording the prosecution an opportunity to prove that the guilt of the accused is strong.

Section 8 of Rule 114 provides that "at the hearing of an application for bail filed by the person who is in custody for the commission of an offense punishable by death, *reclusion perpetua* or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. x x x." This rule presupposes that: (1) an application for bail was filed, and (2) the judge notified the prosecutor and conducted a bail hearing for the prosecution to adduce evidence to prove the guilt of the accused.

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[16] *De Guzman, Jr. v. Sison*, 407 Phil. 351 (2001).

[17] *Id.*

In the present case, the records show that Judge Clapis set the first bail hearing on 29 March 2010 yet the Petition For Bail was filed only on 8 April 2010. Furthermore, the 12, 13 and 14 April 2010 bail hearings reveal that the prosecution was not given the opportunity to be heard in court. During the 12 April 2010 hearing, Gacad appeared by herself because the private prosecutor, who was to appear in her behalf, filed a Motion to Withdraw as Counsel. Gacad requested for more time to secure a new private counsel. Gacad also manifested that she already filed a motion for Arafol to inhibit from the case. Judge Clapis allowed her to secure a new private counsel but the hearing proceeded with the accused alone being given the opportunity to present his evidence. It was only during the 14 April 2010 hearing, the last day of hearing, that Gacad was represented by another public prosecutor since she could not secure a new private counsel. But immediately after the defense completed presenting its evidence in support of its bail application, the petition for bail was submitted for resolution. The prosecution was not given an opportunity to present evidence to prove that the guilt of the accused is strong. Judge Clapis' Order granting bail indicates that he merely used as basis the affidavit of one prosecution witness that was submitted earlier. Clearly, Judge Clapis failed to observe the proper procedure in granting bail.

As stated in the report of the Investigating Justice:

It is true that proceedings were conducted on April 12, 13 and 14, 2010 but nowhere in these settings was the Prosecution given an ample opportunity to oppose the Petition or to prove that the evidence of guilt of the accused is strong. There was even no inquiry from the respondent as to the character or reputation of the accused and the probability of his flight during the trial. These are important and basic questions to be considered by a conscientious judge whenever a Petition for Bail in a capital offense is laid before him. Jurisprudence clearly instructs that "in cases where (the) grant of bail is discretionary, due process requires that the Prosecution must be given the opportunity to present within a reasonable period all the evidence it may desire to produce before the court should resolve the Motion for Bail."

Sadly for respondent, he seemed unaware that he was duty-bound to require the presentation of proof of guilt of the accused because

without it, he would have no basis for the exercise of his discretion on whether or not bail should be granted. It was precipitate of him to simply consider the affidavit of one prosecution witness and conclude that *"there was no ambush but there was merely a shootout, as to who fired first it cannot be determined because the affidavit of the prosecution witness did not state so x x x and mainly on this basis, the Court is convinced that the prosecution failed to establish that evidence of guilt is strong for the Court to deny the Petition of accused Rodolfo Comania to be admitted to Bail."*[18]

Gacal v. Infante[19] is instructive on this issue. The respondent judge in that case was held guilty of gross ignorance of the law and the rules when he granted bail to the accused charged with murder without conducting a hearing and despite the absence of a petition for bail from the accused. The Court emphasized that bail cannot be allowed to a person charged with a capital offense, or an offense punishable with *reclusion perpetua* or life imprisonment, without a hearing upon notice to the prosecution; otherwise, a violation of due process occurs.

Here, the act of Judge Clapis is not a mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law.[20] If judges are allowed to wantonly misuse the powers vested in them by the law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.[21]

Under Section 8(9), Rule 140 of the Rules of Court, gross misconduct and gross ignorance of the law or procedure are both classified as serious charges, for which the imposable penalties are any of the following:

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[18] *Rollo*, pp. 420-421.

[19] A.M. No. RTJ-04-1845, 5 October 2011, 658 SCRA 535.

[20] *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, 23 April 2010, 619 SCRA 48, citing *Reyes v. Paderanga,* A.M. No. RTJ-06-1973, 14 March 2008, 548 SCRA 244.

[21] *Id.*

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporation: *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[22]

Judge Clapis had already been administratively sanctioned in *Humol v. Clapis Jr.*,[23] where he was fined ₱30,000 for gross ignorance of the law. In this previous case, the Court sanctioned Judge Clapis for his failure to hear and consider the evidence of the prosecution in granting bail to the accused. His order relied solely on the arguments of counsel for the accused. In *Humol*,[24] the Court reminded Judge Clapis of the duties of a trial judge when an application for bail is filed, but in the present case, he ignored the same. Therefore, we now impose upon him the extreme administrative penalty of dismissal from the service. In *Mangandingan v. Adiong*,[25] the Court dismissed Judge Santos Adiong from service upon a finding of guilt for gross ignorance of the law as well as gross misconduct constituting violation of the Code of Judicial Conduct.

Again, judges are reminded that having accepted the exalted position of a judge, they owe it to the public to uphold the exacting standard of conduct demanded from them. As the Court repeatedly stressed:

The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality

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[22] Rules of Court, Rule 140, Section 11.

[23] A.M. No. RTJ-11-2285, 27 July 2011, 654 SCRA 406.

[24] *Id.*

[25] A.M. No. RTJ-04-1826, 6 February 2008, 544 SCRA 43.

of the judiciary because the people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. When the judge himself becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself. It is therefore paramount that a judge's personal behavior both in the performance of his duties and his daily life, be free from any appearance of impropriety as to be beyond reproach.[26]

WHEREFORE, we **DISMISS** Judge Hilarion P. Clapis, Jr. of the Regional Trial Court, Branch 3, Nabunturan, Compostela Valley from the service for Gross Misconduct and Gross Ignorance of the Law, with forfeiture of all benefits due him, except accrued leave credits, and disqualification from appointment to any public office including government-owned or controlled corporations. His position in the Regional Trial Court, Branch 3, Nabunturan, Compostela Valley is declared **VACANT**. This Decision is immediately executory.

Let a copy of this Decision be furnished the Secretary of the Department of Justice for the investigation of Provincial Prosecutor Graciano Arafol, Jr. for possible serious misconduct in handling Criminal Case No. 6898 entitled "*People of the Philippines v. Rodolfo Comania.*"

SO ORDERED.

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

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

Brion, J., on leave.

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[26] *Tan v. Rosete*, 481 Phil. 189 (2004).

EN BANC

[G.R. No. 195770. July 17, 2012]

AQUILINO Q. PIMENTEL, JR., SERGIO TADEO and NELSON ALCANTARA, *petitioners, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA and SECRETARY CORAZON JULIANO-SOLIMAN of the DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; STATE POLICIES; AUTONOMY OF LOCAL GOVERNMENTS; FOUND IN SECTIONS 3 AND 14 OF ARTICLE X OF THE CONSTITUTION.—** The Constitution declares it a policy of the State to ensure the autonomy of local governments and even devotes a full article on the subject of local governance which includes the following pertinent provisions: "Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units. x x x Section. 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region."

2. **ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS WERE VESTED WITH THE DUTIES AND FUNCTIONS PERTAINING TO**

THE DELIVERY OF BASIC SERVICES AND FACILITIES. – In order to fully secure to the LGUs the genuine and meaningful autonomy that would develop them into self-reliant communities and effective partners in the attainment of national goals, Section 17 of the Local Government Code vested upon the LGUs the duties and functions pertaining to the delivery of basic services and facilities, as follows: "Section 17. *Basic Services and Facilities*.- (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein. (b) Such basic services and facilities include, but are not limited to, x x x."

3. **ID.; ID.; ID.; ID.; EXCEPTIONS.—** While the aforementioned provision charges the LGUs to take on the functions and responsibilities that have already been devolved upon them from the national agencies on the aspect of providing for basic services and facilities in their respective jurisdictions, paragraph (c) of the same provision provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services, thus: "(c) Notwithstanding the provisions of subsection (b) hereof, public works and infrastructure projects and <u>other facilities, programs and services funded by the National Government under the annual General Appropriations Act, other special laws, pertinent executive orders, and those wholly or partially funded from foreign sources, are not covered under this Section</u>, except in those cases where the local government unit concerned is duly designated as the implementing agency for such projects, facilities, programs and services."

4. **ID.; ID.; ID.; ID.; ID.; ESSENCE.—** The essence of this express reservation of power by the national government is that, unless an LGU is particularly designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual general

appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.

5. **ID.; CONSTITUTIONAL LAW; LOCAL GOVERNMENT UNITS; LOCAL AUTONOMY; DOES NOT IMPLY THE CONVERSION OF LOCAL GOVERNMENT UNITS INTO "MINI-STATES."—** The Court held in *Ganzon v. Court of Appeals* (200 SCRA 271) that while it is through a system of decentralization that the State shall promote a more responsive and accountable local government structure, the concept of local autonomy does not imply the conversion of local government units into "mini-states." We explained that, with local autonomy, the Constitution did nothing more than "to break up the monopoly of the national government over the affairs of the local government" and, thus, did not intend to sever "the relation of partnership and interdependence between the central administration and local government units."

6. **ID.; ID.; ID.; ID.; ITS PARTNERSHIP WITH THE NATIONAL GOVERNMENT IN THE PURSUIT OF COMMON NATIONAL GOALS.—** In *Pimentel v. Aguirre* (336 SCRA 201, 217), the Court defined the extent of the local government's autonomy in terms of its partnership with the national government in the pursuit of common national goals, referring to such key concepts as integration and coordination. Thus: "Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress."

7. **ID.; ID.; ID.; ID.; TO YIELD UNRESERVED POWER OF GOVERNANCE TO THE LOCAL GOVERNMENT UNIT WOULD AMOUNT TO A DECENTRALIZATION OF POWER BEYOND OUR CONSTITUTIONAL CONCEPT**

OF AUTONOMY.— Certainly, to yield unreserved power of governance to the local government unit as to preclude any and all involvement by the national government in programs implemented in the local level would be to shift the tide of monopolistic power to the other extreme, which would amount to a decentralization of power explicated in *Limbona v. Mangelin* as beyond our constitutional concept of autonomy x x x.

8. **ID.; ID.; ID.; ID.; ID.; DECENTRALIZATION OF ADMINISTRATION *VIS-À-VIS* DECENTRALIZATION OF POWERS OF THE CENTRAL GOVERNMENT TO POLITICAL SUBDIVISIONS.—** In *Limbona v. Mangelin, the Court held*: "There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive and accountable' and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.' At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises 'general supervision' over them, but only to 'ensure that local affairs are administered according to law.' He has no control over their acts in the sense that he can substitute their judgments with his own. Decentralization of power, on the other hand, involves an abdication of political power in the [sic] favor of local governments [sic] units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to 'self-immolation,' since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.

9. **ID.; ID.; LEGISLATURE; LAWS; PRESUMPTION OF CONSTITUTIONALITY; VALIDITY OF PROVISIONS UNDER THE GAA OF 2011, UPHELD IN CASE AT BAR. —** Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and

argumentative one. Petitioners have failed to discharge the burden of proving the invalidity of the provisions under the GAA of 2011. The allocation of a ₱21 billion budget for an intervention program formulated by the national government itself but implemented in partnership with the local government units to achieve the common national goal development and social progress can by no means be an encroachment upon the autonomy of local governments.

APPEARANCES OF COUNSEL

Gana Manlangit & Perez Law Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Case

For the Court's consideration in this Petition for *Certiorari* and Prohibition is the constitutionality of certain provisions of Republic Act No. 10147 or the General Appropriations Act [GAA] of 2011[1] which provides a ₱21 Billion budget allocation for the Conditional Cash Transfer Program (CCTP) headed by the Department of Social Welfare & Development (DSWD). Petitioners seek to enjoin respondents Executive Secretary Paquito N. Ochoa and DSWD Secretary Corazon Juliano-Soliman from implementing the said program on the ground that it amounts to a *"recentralization"* of government functions that have already been devolved from the national government to the local government units.

The Facts

In 2007, the DSWD embarked on a poverty reduction strategy with the poorest of the poor as target beneficiaries.[2] Dubbed

[1] Annex "A", Petition, *rollo*, pp. 30-36.

[2] Annex "4", Comment, *rollo*, p. 107.

"*Ahon Pamilyang Pilipino,*" it was pre-pilot tested in the municipalities of Sibagat and Esperanza in Agusan del Sur; the municipalities of Lopez Jaena and Bonifacio in Misamis Occidental, the Caraga Region; and the cities of Pasay and Caloocan[3] upon the release of the amount of ₱50 Million Pesos under a Special Allotment Release Order (SARO) issued by the Department of Budget and Management.[4]

On July 16, 2008, the DSWD issued Administrative Order No. 16, series of 2008 (A.O. No. 16, s. 2008),[5] setting the implementing guidelines for the project renamed "*Pantawid Pamilyang Pilipino Program*" (4Ps), upon the following stated objectives, to wit:

1. To improve preventive health care of pregnant women and young children
2. To increase enrollment/attendance of children at elementary level
3. To reduce incidence of child labor
4. To raise consumption of poor households on nutrient dense foods
5. To encourage parents to invest in their children's (and their own) future
6. To encourage parent's participation in the growth and development of young children, as well as involvement in the community.[6]

This government intervention scheme, also conveniently referred to as CCTP, "provides cash grant to extreme poor households to allow the members of the families to meet certain human development goals."[7] Eligible households that are selected

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[3] *Id.* at 108.

[4] Annexes "5"and "6", Comment, pp. 114 and 115.

[5] Annex "B", Petition, *rollo*, pp. 37-51.

[6] Item 3, Goal and Objectives, A.O. No. 16, s. 2008, *rollo*, p. 39.

[7] *Id.*

from priority target areas consisting of the poorest provinces classified by the National Statistical Coordination Board (NCSB)[8]are granted a health assistance of ₱500.00/month, or ₱6,000.00/year, and an educational assistance of ₱300.00/month for 10 months, or a total of ₱3,000.00/year, for each child but up to a maximum of three children per family.[9] Thus, after an assessment on the appropriate assistance package, a household beneficiary could receive from the government an annual subsidy for its basic needs up to an amount of ₱15,000.00, under the following conditionalities:

a) Pregnant women must get pre natal care starting from the 1st trimester, child birth is attended by skilled/trained professional, get post natal care thereafter

b) Parents/guardians must attend family planning sessions/ mother's class, Parent Effectiveness Service and others

c) Children 0-5 years of age get regular preventive health check-ups and vaccines

d) Children 3-5 years old must attend day care program/pre-school

e) Children 6-14 years of age are enrolled in schools and attend at least 85% of the time[10]

Under A.O. No. 16, s. 2008, the DSWD also institutionalized a coordinated inter-agency network among the Department of Education (DepEd), Department of Health (DOH), Department of Interior and Local Government (DILG), the National Anti-Poverty Commission (NAPC) and the local government units (LGUs), identifying specific roles and functions in order to ensure effective and efficient implementation of the CCTP. As the DSWD takes on the role of lead implementing agency that must "oversee and coordinate the implementation, monitoring and evaluation of the program," the concerned LGU as partner agency is particularly tasked to –

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[8] Item 4, Implementing Procedures, *id.* at 41.

[9] *Id.* at 44.

[10] *Id.* at 43.

a. Ensure availability of the supply side on health and education in the target areas.

b. Provide necessary technical assistance for Program implementation

c. Coordinate the implementation/operationalization of sectoral activities at the City/Municipal level to better execute Program objectives and functions

d. Coordinate with various concerned government agencies at the local level, sectoral representatives and NGO to ensure effective Program implementation

e. Prepare reports on issues and concerns regarding Program implementation and submit to the Regional Advisory Committee, and

f. Hold monthly committee meetings[11]

A Memorandum of Agreement (MOA)[12] executed by the DSWD with each participating LGU outlines in detail the obligation of both parties during the intended five-year implementation of the CCTP.

Congress, for its part, sought to ensure the success of the CCTP by providing it with funding under the GAA of 2008 in the amount of Two Hundred Ninety-Eight Million Five Hundred Fifty Thousand Pesos (₱298,550,000.00). This budget allocation increased tremendously to ₱5 Billion Pesos in 2009, with the amount doubling to ₱10 Billion Pesos in 2010. But the biggest allotment given to the CCTP was in the GAA of 2011 at Twenty One Billion One Hundred Ninety-Four Million One Hundred Seventeen Thousand Pesos (₱21,194,117,000.00).[13]

Petitioner Aquilino Pimentel, Jr., a former Senator, joined by Sergio Tadeo, incumbent President of the Association of Barangay Captains of Cabanatuan City, Nueva Ecija, and Nelson Alcantara, incumbent Barangay Captain of Barangay Sta. Monica,

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[11] Item V, Institutional Arrangements, *id.* at 50.

[12] Annex "C", Petition, *rollo*, pp. 52-54.

[13] Annex "A", *id.* at 30-36.

Quezon City, challenges before the Court the disbursement of public funds and the implementation of the CCTP which are alleged to have encroached into the local autonomy of the LGUs.

The Issue

THE ₱21 BILLION CCTP BUDGET ALLOCATION UNDER THE DSWD IN THE GAA FY 2011 VIOLATES ART. II, SEC. 25 & ART. X, SEC. 3 OF THE 1987 CONSTITUTION IN RELATION TO SEC. 17 OF THE LOCAL GOVERNMENT CODE OF 1991 BY PROVIDING FOR THE RECENTRALIZATION OF THE NATIONAL GOVERNMENT IN THE DELIVERY OF BASIC SERVICES ALREADY DEVOLVED TO THE LGUS.

Petitioners admit that the wisdom of adopting the CCTP as a poverty reduction strategy for the Philippines is with the legislature. They take exception, however, to the manner by which it is being implemented, that is, primarily through a national agency like DSWD instead of the LGUs to which the responsibility and functions of delivering social welfare, agriculture and health care services have been devolved pursuant to Section 17 of Republic Act No. 7160, also known as the Local Government Code of 1991, in relation to Section 25, Article II & Section 3, Article X of the 1987 Constitution.

Petitioners assert that giving the DSWD full control over the identification of beneficiaries and the manner by which services are to be delivered or conditionalities are to be complied with, instead of allocating the ₱21 Billion CCTP Budget directly to the LGUs that would have enhanced its delivery of basic services, results in the *"recentralization"* of basic government functions, which is contrary to the precepts of local autonomy and the avowed policy of decentralization.

Our Ruling

The Constitution declares it a policy of the State to ensure the autonomy of local governments[14] and even devotes a full

[14] Section 25, Article II, *1987 Philippine Constitution.*

article on the subject of local governance[15] which includes the following pertinent provisions:

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

xxx xxx xxx

Section 14. The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region. (Underscoring supplied)

In order to fully secure to the LGUs the genuine and meaningful autonomy that would develop them into self-reliant communities and effective partners in the attainment of national goals,[16] Section 17 of the Local Government Code vested upon the LGUs the duties and functions pertaining to the delivery of basic services and facilities, as follows:

SECTION 17. Basic Services and Facilities. – (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient

[15] Article X, *id.*

[16] Section 2, *The Local Government Code of 1991.*

and effective provision of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, x x x.

While the aforementioned provision charges the LGUs to take on the functions and responsibilities that have already been devolved upon them from the national agencies on the aspect of providing for basic services and facilities in their respective jurisdictions, paragraph (c) of the same provision provides a categorical exception of cases involving nationally-funded projects, facilities, programs and services, thus:

(c) Notwithstanding the provisions of subsection (b) hereof, public works and infrastructure projects and other facilities, programs and services funded by the National Government under the annual General Appropriations Act, other special laws, pertinent executive orders, and those wholly or partially funded from foreign sources, are not covered under this Section, except in those cases where the local government unit concerned is duly designated as the implementing agency for such projects, facilities, programs and services. (Underscoring supplied)

The essence of this express reservation of power by the national government is that, unless an LGU is particularly designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual general appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.

The Court held in *Ganzon v. Court of Appeals*[17] that while it is through a system of decentralization that the State shall promote a more responsive and accountable local government structure, the concept of local autonomy does not imply the conversion of local government units into "mini-states."[18]We explained that, with local autonomy, the Constitution did nothing

[17] G.R. Nos. 93252 and 95245, August 5, 1991, 200 SCRA 271.

[18] *Id.* at 281.

more than "to break up the monopoly of the national government over the affairs of the local government" and, thus, did not intend to sever "the relation of partnership and interdependence between the central administration and local government units."[19] In *Pimentel v. Aguirre,*[20] the Court defined the extent of the local government's autonomy in terms of its partnership with the national government in the pursuit of common national goals, referring to such key concepts as integration and coordination. Thus:

> Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a common national goal. Thus, policy-setting for the entire country still lies in the President and Congress.

Certainly, to yield unreserved power of governance to the local government unit as to preclude any and all involvement by the national government in programs implemented in the local level would be to shift the tide of monopolistic power to the other extreme, which would amount to a decentralization of power explicated in *Limbona v. Mangelin*[21] as beyond our constitutional concept of autonomy, thus:

> Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive

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[19] *Id.* at 286.

[20] G.R. No. 132988, July 19, 2000, 336 SCRA 201, 217.

[21] G.R. No. 80391, February 28, 1989, 170 SCRA 786.

and accountable' and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.' At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises 'general supervision' over them, but only to 'ensure that local affairs are administered according to law.' He has no control over their acts in the sense that he can substitute their judgments with his own.

Decentralization of power, on the other hand, involves an abdication of political power in the [sic] favor of local governments [sic] units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to 'self-immolation,' since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.[22]

Indeed, a complete relinquishment of central government powers on the matter of providing basic facilities and services cannot be implied as the Local Government Code itself weighs against it. The national government is, thus, not precluded from taking a direct hand in the formulation and implementation of national development programs especially where it is implemented locally in coordination with the LGUs concerned.

Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative one.[23] Petitioners have failed to discharge the burden of proving the invalidity of the provisions under the GAA of 2011. The allocation of a ₱21 billion budget for an intervention program formulated by the national government itself but implemented in partnership with the local government units to achieve the common national goal development and social progress can by

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[22] *Id.* at 794-795.

[23] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298, 311.

no means be an encroachment upon the autonomy of local governments.

WHEREFORE, premises considered, the petition is hereby **DISMISSED**.

SO ORDERED.

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

Brion, J., on sick leave.

EN BANC

[G.R. No. 200242. July 17, 2012]

CHIEF JUSTICE RENATO C. CORONA, *petitioner, vs.* **SENATE OF THE PHILIPPINES sitting as an IMPEACHMENT COURT, BANK OF THE PHILIPPINE ISLANDS, PHILIPPINE SAVINGS BANK, ARLENE "KAKA" BAG-AO, GIORGIDI AGGABAO, MARILYN PRIMICIAS-AGABAS, NIEL TUPAS, RODOLFO FARIÑAS, SHERWIN TUGNA, RAUL DAZA, ELPIDIO BARZAGA, REYNALDO UMALI, NERI COLMENARES (ALSO KNOWN AS THE PROSECUTORS FROM THE HOUSE OF REPRESENTATIVES),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATURE; IMPEACHMENT; THE POWER OF CONGRESS TO REMOVE A PUBLIC OFFICIAL FOR SERIOUS CRIMES

OR MISCONDUCT AS PROVIDED IN THE CONSTITUTION. — Impeachment refers to the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution. A mechanism designed to check abuse of power, impeachment has its roots in Athens and was adopted in the United States (US) through the influence of English common law on the Framers of the US Constitution. Our own Constitution's provisions on impeachment were adopted from the US Constitution.

2. **ID.; ID.; ID.; ID.; ID.; IN THIS JURISDICTION, THE ACTS OF ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT, ARE PROPER SUBJECTS OF JUDICIAL REVIEW IF TAINTED WITH GRAVE ABUSE OR ARBITRARINESS. —** Impeachment, described as "the most formidable weapon in the arsenal of democracy," was foreseen as creating divisions, partialities and enmities, or highlighting pre-existing factions with the greatest danger that "the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt." Given their concededly political character, the precise role of the judiciary in impeachment cases is a matter of utmost importance to ensure the effective functioning of the separate branches while preserving the structure of checks and balance in our government. Moreover, in this jurisdiction, the acts of any branch or instrumentality of the government, including those traditionally entrusted to the political departments, are proper subjects of judicial review if tainted with grave abuse or arbitrariness.

3. **ID.; ID.; ID.; ID.; FIRST IMPEACHMENT DECISION OF THE COURT; POWER OF REVIEW OVER JUSTICIABLE ISSUES IN IMPEACHMENT PROCEEDINGS. —** In the first impeachment case decided by this Court, *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, we ruled that the power of judicial review in this jurisdiction includes the power of review over justiciable issues in impeachment proceedings.

4. **ID.; ID.; ID.; ID.; SECOND IMPEACHMENT DECISION OF THE COURT; POWER OF REVIEW OVER JUSTICIABLE ISSUES IN IMPEACHMENT PROCEEDINGS; VIOLATION OF THE DUE PROCESS CLAUSE AND OF THE ONE-**

YEAR BAR PROVISION. — Subsequently, in *Gutierrez v. House of Representatives Committee on Justice*, the Court resolved the question of the validity of the simultaneous referral of two impeachment complaints against petitioner Ombudsman which was allegedly a violation of the due process clause and of the one-year bar provision.

5. **ID.; ID.; ID.; ID.; WHEN CONSTITUTIONAL ISSUE RAISED BECOMES MOOT AND ACADEMIC. —** An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition.

6. **ID.; ID.; ID.; ID.; ID.; THE CONSTITUTIONAL ISSUE RAISED BY PETITIONER HAD BEEN MOOTED BY SUPERVENING EVENTS AND HIS OWN ACTS. —** In the meantime, the impeachment trial had been concluded with the conviction of petitioner by more than the required majority vote of the Senator-Judges. Petitioner immediately accepted the verdict and without any protest vacated his office. In fact, the Judicial and Bar Council is already in the process of screening applicants and nominees, and the President of the Philippines is expected to appoint a new Chief Justice within the prescribed 90-day period from among those candidates shortlisted by the JBC. Unarguably, the constitutional issue raised by petitioner had been mooted by supervening events and his own acts.

APPEARANCES OF COUNSEL

Justice Serafin Cuevas (Ret.) Jose M. Roy III, Jacinto D. Jimenez, Ramon S. Esguerra, Dennis P. Manalo, Noel B. Lazaro for petitioner.

Benedicto Versoza & Burkley Law Offices for Bank of the Phil. Island.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition for *certiorari* and prohibition with prayer for immediate issuance of temporary restraining order (TRO) and writ of preliminary injunction filed by the former Chief Justice of this Court, Renato C. Corona, assailing the impeachment case initiated by the respondent Members of the House of Representatives (HOR) and trial being conducted by respondent Senate of the Philippines.

On December 12, 2011, a caucus was held by the majority bloc of the HOR during which a verified complaint for impeachment against petitioner was submitted by the leadership of the Committee on Justice. After a brief presentation, on the same day, the complaint was voted in session and 188 Members signed and endorsed it, way above the one-third vote required by the Constitution.

On December 13, 2011, the complaint was transmitted to the Senate which convened as an impeachment court the following day, December 14, 2011.

On December 15, 2011, petitioner received a copy of the complaint charging him with culpable violation of the Constitution, betrayal of public trust and graft and corruption, allegedly committed as follows:

ARTICLE I

RESPONDENT BETRAYED THE PUBLIC TRUST THROUGH HIS TRACK RECORD MARKED BY PARTIALITY AND SUBSERVIENCE IN CASES INVOLVING THE ARROYO ADMINISTRATION FROM THE TIME OF HIS APPOINTMENT AS SUPREME COURT JUSTICE AND UNTIL HIS DUBIOUS APPOINTMENT AS A MIDNIGHT CHIEF JUSTICE TO THE PRESENT.

ARTICLE II

RESPONDENT COMMITTED CULPABLE VIOLATION OF THE CONSTITUTION AND/OR BETRAYED THE PUBLIC TRUST WHEN

HE FAILED TO DISCLOSE TO THE PUBLIC HIS STATEMENT OF ASSETS, LIABILITIES AND NET WORTH AS REQUIRED UNDER SEC. 17, ART. XI OF THE 1987 CONSTITUTION.

2.1. It is provided for in Art. XI, Section 17 of the 1987 Constitution that "a public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law."

2.2. Respondent failed to disclose to the public his statement of assets, liabilities, and net worth as required by the Constitution.

2.3. It is also reported that some of the properties of Respondent are not included in his declaration of his assets, liabilities, and net worth, in violation of the anti-graft and corrupt practices act.

2.4. Respondent is likewise suspected and accused of having accumulated ill-gotten wealth, acquiring assets of high values and keeping bank accounts with huge deposits. It has been reported that Respondent has, among others, a 300-sq. meter apartment in a posh Mega World Property development at the Fort in Taguig. Has he reported this, as he is constitutionally-required under Art. XI, Sec. 17 of the Constitution in his Statement of Assets and Liabilities and Net Worth (SALN)? Is this acquisition sustained and duly supported by his income as a public official? Since his assumption as Associate and subsequently, Chief Justice, has he complied with this duty of public disclosure?

ARTICLE III

RESPONDENT COMMITTED CULPABLE VIOLATIONS OF THE CONSTITUTION AND/OR BETRAYED THE PUBLIC TRUST BY FAILING TO MEET AND OBSERVE THE STRINGENT STANDARDS UNDER ART. VIII, SECTION 7 (3) OF THE CONSTITUTION THAT PROVIDES THAT "[A] MEMBER OF THE JUDICIARY MUST BE A PERSON OF PROVEN COMPETENCE, INTEGRITY, PROBITY, AND INDEPENDENCE" IN ALLOWING THE SUPREME COURT TO ACT ON MERE LETTERS FILED BY A COUNSEL WHICH CAUSED THE ISSUANCE OF FLIP-FLOPPING DECISIONS IN FINAL AND EXECUTORY CASES; IN CREATING AN EXCESSIVE

ENTANGLEMENT WITH MRS. ARROYO THROUGH HER APPOINTMENT OF HIS WIFE TO OFFICE; AND IN DISCUSSING WITH LITIGANTS REGARDING CASES PENDING BEFORE THE SUPREME COURT.

ARTICLE IV

RESPONDENT BETRAYED THE PUBLIC TRUST AND/OR COMMITTED CULPABLE VIOLATION OF THE CONSTITUTION WHEN HE BLATANTLY DISREGARDED THE PRINCIPLE OF SEPARATION OF POWERS BY ISSUING A "STATUS QUO ANTE" ORDER AGAINST THE HOUSE OF REPRESENTATIVES IN THE CASE CONCERNING THE IMPEACHMENT OF THEN OMBUDSMAN MERCEDITAS NAVARRO-GUTIERREZ.

ARTICLE V

RESPONDENT BETRAYED THE PUBLIC TRUST THROUGH WANTON ARBITRARINESS AND PARTIALITY IN CONSISTENTLY DISREGARDING THE PRINCIPLE OF *RES JUDICATA* IN THE CASES INVOLVING THE 16 NEWLY-CREATED CITIES, AND THE PROMOTION OF DINAGAT ISLAND INTO A PROVINCE.

ARTICLE VI

RESPONDENT BETRAYED THE PUBLIC TRUST BY ARROGATING UNTO HIMSELF, AND TO A COMMITTEE HE CREATED, THE AUTHORITY AND JURISDICTION TO IMPROPERLY INVESTIGATE A JUSTICE OF THE SUPREME COURT FOR THE PURPOSE OF EXCULPATING HIM. SUCH AUTHORITY AND JURISDICTION IS PROPERLY REPOSED BY THE CONSTITUTION IN THE HOUSE OF REPRESENTATIVES *VIA* IMPEACHMENT.

ARTICLE VII

RESPONDENT BETRAYED THE PUBLIC TRUST THROUGH HIS PARTIALITY IN GRANTING A TEMPORARY RESTRAINING ORDER (TRO) IN FAVOR OF FORMER PRESIDENT GLORIA MACAPAGAL-ARROYO AND HER HUSBAND JOSE MIGUEL ARROYO IN ORDER TO GIVE THEM AN OPPORTUNITY TO ESCAPE PROSECUTION AND TO FRUSTRATE THE ENDS OF JUSTICE, AND IN DISTORTING THE SUPREME COURT DECISION ON THE EFFECTIVITY OF THE TRO IN VIEW OF A CLEAR FAILURE TO COMPLY WITH THE CONDITIONS OF THE SUPREME COURT'S OWN TRO.

ARTICLE VIII

RESPONDENT BETRAYED THE PUBLIC TRUST AND/OR COMMITTED GRAFT AND CORRUPTION WHEN HE FAILED AND REFUSED TO ACCOUNT FOR THE JUDICIARY DEVELOPMENT FUND (JDF) AND SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ) COLLECTIONS.[1]

On December 26, 2011, petitioner filed his Answer[2] assailing the "blitzkrieg" fashion by which the impeachment complaint was signed by the Members of the HOR and immediately transmitted to the Senate. Citing previous instances when President Aquino openly expressed his rejection of petitioner's appointment as Chief Justice and publicly attacked this Court under the leadership of petitioner for "derailing his administration's mandate," petitioner concluded that the move to impeach him was the handiwork of President Aquino's party mates and supporters, including "hidden forces" who will be benefited by his ouster. As to the charges against him, petitioner denied the same but admitted having once served the Offices of the President and Vice-President during the term of former President Gloria Macapagal-Arroyo and granted the request for courtesy call only to Mr. Dante Jimenez of the Volunteers Against Crime and Corruption (VACC) while Mr. Lauro Vizconde appeared with Mr. Jimenez without prior permission or invitation. Petitioner argued at length that the acts, misdeeds or offenses imputed to him were either false or baseless, and otherwise not illegal nor improper. He prayed for the outright dismissal of the complaint for failing to meet the requirements of the Constitution or that the Impeachment Court enter a judgment of acquittal for all the articles of impeachment.

Meanwhile, the prosecution panel composed of respondent Representatives held a press conference revealing evidence which supposedly support their accusations against petitioner. The following day, newspapers carried front page reports of high-priced condominium units and other real properties in Fort

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[1] *Rollo,* pp. 60-62, 71-72. Sub-Paragraphs of other Articles omitted.

[2] *Id.* at 134-212.

Bonifacio, Taguig and Quezon City allegedly owned by petitioner, as disclosed by prosecutors led by respondent Rep. Niel C. Tupas, Jr. The prosecution told the media that it is possible that these properties were not included by petitioner in his Statement of Assets, Liabilities and Net Worth (SALN) which had not been made available to the public. Reacting to this media campaign, Senators scolded the prosecutors reminding them that under the Senate Rules of Procedure on Impeachment Trials[3] they are not allowed to make any public disclosure or comment regarding the merits of a pending impeachment case.[4] By this time, five petitions have already been filed with this Court by different individuals seeking to enjoin the impeachment trial on grounds of improperly verified complaint and lack of due process.

On January 16, 2012, respondent Senate of the Philippines acting as an Impeachment Court, commenced trial proceedings against the petitioner. Petitioner's motion for a preliminary hearing was denied. On January 18, 2012, Atty. Enriqueta E. Vidal, Clerk of Court of this Court, in compliance with a subpoena issued by the Impeachment Court, took the witness stand and submitted the SALNs of petitioner for the years 2002 to 2010. Other prosecution witnesses also testified regarding petitioner's SALNs for the previous years (Marianito Dimaandal, Records Custodian of Malacañang Palace, Atty. Randy A. Rutaquio, Register of Deeds of Taguig and Atty. Carlo V. Alcantara, Acting Register of Deeds of Quezon City).

In compliance with the directive of the Impeachment Court, the prosecution and defense submitted their respective memoranda on the question of whether the prosecution may present evidence to prove the allegations in paragraphs 2.3 (failure to report some properties in SALN) and 2.4 (acquisition of ill-gotten wealth and failure to disclose in SALN such bank accounts with huge deposits and 300-sq.m. Megaworld property at the Fort in Taguig)

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[3] Rule XVIII.

[4] *Philippine Daily Inquirer,* January 5, 2012, Vol. 27, No. 28.

under Article II (par. 2.2. refers to petitioner's alleged failure to disclose to the public his SALN as required by the Constitution).

On January 27, 2012, the Impeachment Court issued a Resolution[5] which states:

IN SUM, THEREFORE, this Court resolves and accordingly rules:

1. To allow the Prosecution to introduce evidence in support of Paragraphs 2.2 and 2.3 of Article II of the Articles of Impeachment;

2. To disallow the introduction of evidence in support of Par. 2.4 of the Articles of Impeachment, with respect to which, this Court shall be guided by and shall rely upon the legal presumptions on the nature of any property or asset which may be proven to belong to the Respondent Chief Justice as provided under Section 8 of Republic Act No. 3019 and Section 2 of Republic Act No. 1379.

SO ORDERED.[6]

In a subsequent Resolution[7] dated February 6, 2012, the Impeachment Court granted the prosecution's request for subpoena directed to the officers of two private banks where petitioner allegedly deposited millions in peso and dollar currencies, as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, the majority votes to grant the Prosecution's Requests for Subpoenae to the responsible officers of Philippine Savings Bank (PSBank) and Bank of the Philippine Island (BPI), for them to testify and bring and/or produce before the Court documents on the alleged bank accounts of Chief Justice Corona, only for the purpose of the instant impeachment proceedings, as follows:

a) The Branch Manager of the Bank of Philippine Islands, Ayala Avenue Branch, 6th Floor, SGV Building, 6758 Ayala Avenue, Makati City, is commanded to bring before the Senate at

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[5] *Rollo*, pp. 354-360.

[6] *Id.* at 360.

[7] *Id.* at 361-368.

2:00 p.m. on February 8, 2012, the original and certified true copies of the account opening forms/documents for Bank Account no. 1445-8030-61 in the name of Renato C. Corona and the bank statements showing the balances of the said account as of December 31, 2005, December 31, 2006, December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010.

b) The Branch Manager (and/or authorized representative) of Philippine Savings Bank, Katipunan Branch, Katipunan Avenue, Loyola Heights, Quezon City, is commanded to bring before the Senate at 2:00 p.m. on February 8, 2012, the original and certified true copies of the account opening forms/documents for the following bank accounts allegedly in the name of Renato C. Corona, and the documents showing the balances of the said accounts as of December 31, 2007, December 31, 2008, December 31, 2009 and December 31, 2010:

089-19100037-3
089-13100282-6
089-121017358
089-121019593
089-121020122
089-121021681
089-141-00712-9
089-141-00746-9
089-14100814-5
089-121-01195-7

SO ORDERED.[8]

On February 8, 2012, PSBank filed a petition for *certiorari* and prohibition (**G.R. No. 200238**) seeking to enjoin the Impeachment Court and the HOR prosecutors from implementing the aforesaid subpoena requiring PSBank thru its authorized representative to testify and to bring the original and certified true copies of the opening documents for petitioner's alleged foreign currency accounts, and thereafter to render judgment

[8] *Id.* at 366-367.

nullifying the subpoenas including the bank statements showing the year-end balances for the said accounts.

On the same day, the present petition was filed arguing that the Impeachment Court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it: (1) proceeded to trial on the basis of the complaint filed by respondent Representatives which complaint is constitutionally infirm and defective for lack of probable cause; (2) did not strike out the charges discussed in Art. II of the complaint which, aside from being a "hodge-podge" of multiple charges, do not constitute allegations in law, much less ultimate facts, being all premised on suspicion and/or hearsay; assuming *arguendo* that the retention of Par. 2.3 is correct, the ruling of the Impeachment Court to retain Par. 2.3 effectively allows the introduction of evidence under Par. 2.3, as vehicle to prove Par. 2.4 and therefore its earlier resolution was nothing more than a hollow relief, bringing no real protection to petitioner; (3) allowed the presentation of evidence on charges of alleged corruption and unexplained wealth which violates petitioner's right to due process because *first,* Art. II does not mention "graft and corruption" or unlawfully acquired wealth as grounds for impeachment, and *second*, it is clear under Sec. 2, Art. XI of the Constitution that "graft and corruption" is a separate and distinct ground from "culpable violation of the Constitution" and "betrayal of public trust"; and (4) issued the subpoena for the production of petitioner's alleged bank accounts as requested by the prosecution despite the same being the result of an illegal act ("fruit of the poisonous tree") considering that those documents submitted by the prosecution violates the absolute confidentiality of such accounts under Sec. 8 of R.A. No. 6426 (Foreign Currency Deposits Act) which is also penalized under Sec. 10 thereof.

Petitioner thus prayed for the following reliefs:

(a) Immediately upon filing of this Petition, issue a temporary restraining order or a writ of preliminary injunction enjoining: (i) the proceedings before the Impeachment Court; (ii) implementation of Resolution dated 6 February 2012; (iii) the officers or

representatives of BPI and PSBank from testifying and submitting documents on petitioner's or his family's bank accounts; and (iv) the presentation, reception and admission of evidence on paragraphs 2.3 and 2.4 of the Impeachment Complaint;

(b) After giving due course to the Petition, render judgment:

(i) Declaring the Impeachment Complaint null and void *ab initio*;

(ii) Prohibiting the presentation, reception and admission of evidence on paragraphs 2.3 and 2.4 of the Impeachment Complaint;

(iii) Annulling the Impeachment Court's Resolution dated 27 January 2012 and 6 February 2011 *[sic]*, as well as any Subpoenae issued pursuant thereto; and

(iv) Making the TRO and/or writ of preliminary injunction permanent.

Other reliefs, just or equitable, are likewise prayed for.[9]

Petitioner also sought the inhibition of Justices Antonio T. Carpio and Maria Lourdes P. A. Sereno on the ground of partiality, citing their publicly known "animosity" towards petitioner aside from the fact that they have been openly touted as the likely replacements in the event that petitioner is removed from office.[10]

On February 9, 2012, this Court issued a TRO in G.R. No. 200238 enjoining the Senate from implementing the Resolution and *subpoena ad testificandum et duces tecum* issued by the Senate sitting as an Impeachment Court, both dated February 6, 2012. The Court further resolved to deny petitioner's motion for the inhibition of Justices Carpio and Sereno "in the absence of any applicable compulsory ground and of any voluntary inhibition from the Justices concerned."

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[9] *Id.* at 46-47.

[10] *Id.* at 3-6.

On February 13, 2012, petitioner filed a Supplemental Petition[11] claiming that his right to due process is being violated in the ongoing impeachment proceedings because certain Senator-Judges have lost the cold neutrality of impartial judges by acting as prosecutors. Petitioner particularly mentioned Senator-Judge Franklin S. Drilon, whose inhibition he had sought from the Impeachment Court, to no avail. He further called attention to the fact that despite the Impeachment Court's January 27, 2012 Resolution which disallowed the introduction of evidence in support of paragraph 2.4 of Article II, from which no motion for reconsideration would be entertained, "the allies of President Aquino in the Senate abused their authority and continued their presentation of evidence for the prosecution, without fear of objection". In view of the persistent efforts of President Aquino's Senator-allies to overturn the ruling of Presiding Officer Juan Ponce Enrile that the prosecution could not present evidence on paragraph 2.4 of Article II — for which President Aquino even thanked "his senator allies in delivering what the prosecution could not"— petitioner reiterates the reliefs prayed for in his petition before this Court.

In the Comment *Ad Cautelam Ex Superabundanti*[12] filed on behalf of the respondents, the Solicitor General argues that the instant petition raises matters purely political in character which may be decided or resolved only by the Senate and HOR, with the manifestation that the comment is being filed by the respondents "without submitting themselves to the jurisdiction of the Honorable Supreme Court and without conceding the constitutional and exclusive power of the House to initiate all cases of impeachment and of the Senate to try and decide all cases of impeachment." Citing the case of *Nixon v. United States*,[13] respondents contend that to allow a public official being impeached to raise before this Court any and all issues relative to the substance of the impeachment complaint would result in

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[11] *Id.* at 378-425.

[12] *Id.* at 973-1023.

[13] 506 U.S. 224 (1993).

an unnecessarily long and tedious process that may even go beyond the terms of the Senator-Judges hearing the impeachment case. Such scenario is clearly not what the Constitution intended.

Traversing the allegations of the petition, respondents assert that the Impeachment Court did not commit any grave abuse of discretion; it has, in fact, been conducting the proceedings judiciously. Respondents maintain that subjecting the ongoing impeachment trial to judicial review defeats the very essence of impeachment. They contend that the constitutional command of public accountability to petitioner and his obligation to fully disclose his assets, liabilities and net worth prevail over his claim of confidentiality of deposits; hence, the subpoena subject of this case were correctly and judiciously issued. Considering that the ongoing impeachment proceedings, which was initiated and is being conducted in accordance with the Constitution, simply aims to enforce the principle of public accountability and ensure that the transgressions of impeachable public officials are corrected, the injury being claimed by petitioner allegedly resulting from the impeachment trial has no factual and legal basis. It is thus prayed that the present petition, as well as petitioner's prayer for issuance of a TRO/preliminary injunction, be dismissed.

The core issue presented is whether the *certiorari* jurisdiction of this Court may be invoked to assail matters or incidents arising from impeachment proceedings, and to obtain injunctive relief for alleged violations of right to due process of the person being tried by the Senate sitting as Impeachment Court.

Impeachment and Judicial Review

Impeachment, described as "the most formidable weapon in the arsenal of democracy,"[14] was foreseen as creating divisions, partialities and enmities, or highlighting pre-existing factions with the greatest danger that "the decision will be regulated more by

[14] Edward S. Corwin, cited in *Judicial Review of Impeachment: The Judicialization of Philippine Politics* by Franco Aristotle G. Larcina, University of Santo Tomas (UST) Law Review, Vol. L, AY 2005-2006.

the comparative strength of parties, than by the real demonstrations of innocence or guilt."[15] Given their concededly political character, the precise role of the judiciary in impeachment cases is a matter of utmost importance to ensure the effective functioning of the separate branches while preserving the structure of checks and balance in our government. Moreover, in this jurisdiction, the acts of any branch or instrumentality of the government, including those traditionally entrusted to the political departments, are proper subjects of judicial review if tainted with grave abuse or arbitrariness.

Impeachment refers to the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution. A mechanism designed to check abuse of power, impeachment has its roots in Athens and was adopted in the United States (US) through the influence of English common law on the Framers of the US Constitution.

Our own Constitution's provisions on impeachment were adopted from the US Constitution. Petitioner was impeached through the mode provided under Art. XI, par. 4, Sec. 3, in a manner that he claims was accomplished with undue haste and under a complaint which is defective for lack of probable cause. Petitioner likewise assails the Senate in proceeding with the trial under the said complaint, and in the alleged partiality exhibited by some Senator-Judges who were apparently aiding the prosecution during the hearings.

On the other hand, respondents contend that the issues raised in the Supplemental Petition regarding the behavior of certain Senator-Judges in the course of the impeachment trial are issues that do not concern, or allege any violation of, the three express and exclusive constitutional limitations on the Senate's sole power to try and decide impeachment cases. They argue that unless there is a clear transgression of these constitutional limitations, this Court may not exercise its power of expanded judicial review

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[15] THE FEDERALIST PAPERS No. 65, Alexander Hamilton, accessed at *http://usgovinfo.about.com/library/fed/blfed65.htm*.

over the actions of Senator-Judges during the proceedings. By the nature of the functions they discharge when sitting as an Impeachment Court, Senator-Judges are clearly entitled to propound questions on the witnesses, prosecutors and counsel during the trial. Petitioner thus failed to prove any semblance of partiality on the part of any Senator-Judges. But whether the Senate Impeachment Rules were followed or not, is a political question that is not within this Court's power of expanded judicial review.

In the first impeachment case decided by this Court, *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*[16] we ruled that the power of judicial review in this jurisdiction includes the power of review over justiciable issues in impeachment proceedings. Subsequently, in *Gutierrez v. House of Representatives Committee on Justice,*[17] the Court resolved the question of the validity of the simultaneous referral of two impeachment complaints against petitioner Ombudsman which was allegedly a violation of the due process clause and of the one-year bar provision.

On the basis of these precedents, petitioner asks this Court to determine whether respondents committed a violation of the Constitution or gravely abused its discretion in the exercise of their functions and prerogatives that could translate as lack or excess of jurisdiction, which would require corrective measures from the Court.

Mootness

In the meantime, the impeachment trial had been concluded with the conviction of petitioner by more than the required majority vote of the Senator-Judges. Petitioner immediately accepted the verdict and without any protest vacated his office. In fact, the Judicial and Bar Council is already in the process of screening applicants and nominees, and the President of the Philippines is expected to appoint a new Chief Justice within

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[16] G.R. No. 160261, November 10, 2003, 415 SCRA 44.

[17] G.R. No. 193459, February 15, 2011, 643 SCRA 199.

the prescribed 90-day period from among those candidates shortlisted by the JBC. Unarguably, the constitutional issue raised by petitioner had been mooted by supervening events and his own acts.

An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value.[18] In such cases, there is no actual substantial relief to which the petitioner would be entitled to and which would be negated by the dismissal of the petition.[19]

WHEREFORE, the present petition for *certiorari* and prohibition with prayer for injunctive relief/s is **DISMISSED** on the ground of **MOOTNESS**.

No pronouncement as to costs.

SO ORDERED.

Carpio (Senior Associate Justice), Leonardo-de Castro, Peralta, Bersamin, Abad, Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *del Castillo, JJ.,* took no part.

Brion, J., on leave.

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[18] *Philippine Airlines, Inc. v. Pascua,* G.R. No. 143258, August 15, 2003, 409 SCRA 195, 202.

[19] *Vda. de Dabao v. Court of Appeals,* G.R. No. 116526, March 23, 2004, 426 SCRA 91, 97.

EN BANC

[G.R. No. 202242. July 17, 2012]

FRANCISCO I. CHAVEZ, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO and REP. NIEL C. TUPAS, JR.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; AN ACTION FOR DECLARATORY RELIEF IS NOT AMONG THOSE WITHIN THE ORIGINAL JURISDICTION OF THE SUPREME COURT AS PROVIDED IN SECTION 5, ARTICLE VII OF THE CONSTITUTION.—**The Constitution as the subject matter, and the validity and construction of Section 8 (1), Article VIII as the issue raised, the petition should properly be considered as that which would result in the adjudication of rights *sans* the execution process because the only relief to be granted is the very declaration of the rights under the document sought to be granted is the very declaration of the rights under the document sought to be construed. It being so, the original jurisdiction over the petition lies with the appropriate Regional Trial Court (*RTC*). Notwithstanding the fact that only questions of law are raised in the petition, an action for declaratory relief is not among those within the original jurisdiction of this Court as provided in Section 5, Article VIII of the Constitution. At any rate, due to its serious implications, not only to government processes involved but also to the sanctity of the Constitution, the Court deems it more prudent to take cognizance of it. After all, the petition is also for prohibition under Rule 65 seeking to enjoin Congress from sending two (2) representatives with one (1) full vote each to the JBC.

2. **ID.; ID.; ID.; ID.; CONDITIONS *SINE QUA NON* OF THE POWER OF JUDICIAL REVIEW.—**The Court's power of judicial review, like almost all other powers conferred by the Constitution, is subject to several limitations, namely: (1) there must be an actual case or controversy calling for the exercise

of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. Generally, a party will be allowed to litigate only when these conditions *sine qua non* are present, especially when the constitutionality of an act by a co-equal branch of government is put in issue.

3. ID.; ID.; ID.; ID.; *LOCUS STANDI*; TAXPAYER'S SUIT AND PUBLIC SUITS; REQUIREMENTS.—Anent *locus standi,* the question to be answered is this: does the party possess a personal stake in the outcome of the controversy as to assure that there is real, concrete and legal conflict of rights and duties from the issues presented before the Court? In *David v. Macapagal-Arroyo*, the Court summarized the rules on *locus standi* as culled from jurisprudence. There, it was held that taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) cases involve constitutional issues; (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators. In public suits, the plaintiff, representing the general public, asserts a "public right" in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and can be suing as a "stranger," or as a "citizen" or "taxpayer." Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law. Of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.

4. **ID.; ID.; ID.; ID.; THE CLAIM THAT THE COMPOSITION OF THE JUDICIAL AND BAR COUNCIL (JBC) IS ILLEGAL AND UNCONSTITUTIONAL IS AN OBJECT OF CONCERN, NOT JUST FOR A NOMINEE TO A JUDICIAL POST, BUT FOR ALL CITIZENS WHO HAVE THE RIGHT TO SEEK JUDICIAL INTERVENTION FOR RECTIFICATION OF LEGAL BLUNDERS.—** The Court disagree with the respondents' contention that petitioner lost his standing to sue because he is not an official nominee for the post of Chief Justice. While it is true that a "personal stake" on the case is imperative to have *locus standi,* this is not to say that only official nominees for the post of Chief Justice can come to the Court and question the JBC composition for being unconstitutional. The JBC likewise screens and nominates other members of the Judiciary. Albeit heavily publicized in this regard, the JBC's duty is not at all limited to the nominations for the highest magistrate in the land. A vast number of aspirants to judicial posts all over the country may be affected by the Court's ruling. More importantly, the legality of the very process of nominations to the positions in the Judiciary is the nucleus of the controversy. The Court considers this a constitutional issue that must be passed upon, lest a constitutional process be plagued by misgivings, doubts and worse, mistrust. Hence, a citizen has a right to bring this question to the Court, clothed with legal standing and at the same time, armed with issues of transcendental importance to society. The claim that the composition of the JBC is illegal and unconstitutional is an object of concern, not just for a nominee to a judicial post, but for all citizens who have the right to seek judicial intervention for rectification of legal blunders.

5. **ID.; ID.; ID.; ID.; QUESTION OF TRANSCENDENTAL IMPORTANCE.—** With respect to the question of transcendental importance, it is not difficult to perceive from the opposing arguments of the parties that the determinants established in jurisprudence are attendant in this case: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. The allegations of constitutional

violations in this case are not empty attacks on the wisdom of the other branches of the government. The allegations are substantiated by facts and, therefore, deserve an evaluation from the Court. The Court need not elaborate on the legal and societal ramifications of the issues raised. It cannot be gainsaid that the JBC is a constitutional innovation crucial in the selection of the magistrate in our judicial system.

6. **STATUTORY CONSTRUCTION; PRINCIPLES OF CONSTITUTIONAL CONSTRUCTION; *VERBA LEGIS NON EST RECEDENDUM* – FROM THE WORDS OF A STATUTE THERE SHOULD BE NO DEPARTURE; TWO-FOLD *RAISON D' ETRE* FOR THE RULE.—** One of the primary and basic rules in statutory construction is that 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. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, absed on the postulate that the framers and the people mean what they say. *Verbal Legis non est recedendum* – from the words of a statute there should be no departure. The *raison d' être* for the rule is essentially two-fold: *First,* because it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and *second,* because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail.

7. **ID.; INTERPRETATION OF STATUTES; MAXIM *NOSCITUR A SOCIIS*; WHERE A PARTICULAR WORD OR PHRASE IS AMBIGUOUS IN ITSELF OR IS EQUALLY SUSCEPTIBLE OF VARIOUS MEANINGS, ITS CORRECT CONSTRUCTION MAY BE MADE CLEAR AND SPECIFIC BY CONSIDERING THE COMPANY OF WORDS IN WHICH IT IS FOUNDED OR WITH WHICH IT IS ASSOCIATED.—**Under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous

in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.

8. ID.; ID.; ID.; ID.; APPLYING THE MAXIM IN CASE AT BAR, IT BECOMES APPARENT THAT THE WORD "CONGRESS" USED IN ARTICLE VIII, SECTION 8 (1) OF THE CONSTITUTION IS USED IN ITS GENERIC SENSE; NO PARTICULAR ALLUSION WHATSOEVER IS MADE ON WHETHER THE SENATE OR HOUSE OF REPRESENTATIVES IS BEING REFERRED TO, BUT THAT, IN EITHER CASE, ONLY A SINGULAR REPRESENTATIVE MAY BE ALLOWED TO SIT IN THE JBC.— Applying the foregoing principle to this case, it becomes apparent that the word "*Congress*" used in Article VIII, Section 8(1) of the Constitution is used in its generic sense. No particular allusion whatsoever is made on whether the Senate or the House of Representatives is being referred to, but that, in either case, only a singular representative may be allowed to sit in the JBC. The foregoing declaration is but sensible, since, as pointed out by an esteemed former member of the Court and consultant of the JBC in his memorandum, "from the enumeration of the membership of the JBC, it is patent that each category of members pertained to a single individual only."

9. ID.; ID.; ID.; ID.; CONSIDERING THAT THE LANGUAGE OF THE SUBJECT CONSTITUTIONAL PROVISION IS PLAIN UNAMBIGUOUS, THERE IS NO NEED TO RESORT TO EXTRINSIC AIDS SUCH AS RECORDS OF

THE CONSTITUTIONAL COMMISSION.— Indeed, the spirit and reason of the statute may be passed upon where a literal meaning would lead to absurdity, contradiction, injustice, or defeat the clear purpose of the lawmakers. Not any of these instances, however, is present in the case at bench. *Considering that the language of the subject constitutional provision is plain and unambiguous, there is no need to resort extrinsic aids such as records of the Constitutional Commission.*

10. ID.; ID.; ID.; ID.; THE SEVEN-MEMBER COMPOSITION OF THE JBC SERVES A PRACTICAL PURPOSE, THAT IS, TO PROVIDE A SOLUTION SHOULD THERE BE A STALEMATE IN VOTING.— Even if the Court should proceed to look into the minds of the members of the Constitutional Commission, it is undeniable from the records thereof that it was intended that the JBC be composed of **seven (7) members** only. x x x At this juncture, it is worthy to note that the seven-member composition of the JBC serve a practical purpose, that is, to provide a solution should there be a stalemate in voting. This underlying reason leads the Court to conclude that a single vote may not be divided into half (1/2), between two representatives of Congress, or among any of the sitting members of the JBC for that matter. This unsanctioned practice can possibly cause disorder and eventually muddle the JBC's voting process, especially in the event a tie is reached. The aforesaid purpose would then be rendered illusory, defeating the precise mechanism which the Constitution itself created. While it would be unreasonable to expect that the Framers provide for every possible scenario, it is sensible to presume that they knew that an odd composition is the best means to break a voting deadlock.

11. ID.; ID.; ID.; ID.; THE TERM "CONGRESS" MUST BE TAKEN TO MEAN THE ENTIRE LEGISLATIVE DEPARTMENT.— More than the reasoning provided in the discussed rules of constitutional construction, the Court finds the above thesis as the paramount justification of the Court's conclusion that "Congress," in the context of JBC representation, should be considered as one body. It is evident that the definition of "Congress" as a bicameral body refers to its primary function in government – to legislate. In the passage of laws, the

Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress' non-legislative powers such as, *inter alia*, the power of appropriation, the declaration of an existence of a state of war, canvassing of electoral returns for the President and Vice-President, and impeachment. In the exercise of these powers, the Constitution employs precise language in laying down the roles which a particular house plays, regardless of whether the two houses consummate an official act by voting jointly or separately. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. Verily, each house is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, to the other branches of government. This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Hence, the term "Congress" must be taken to mean the *entire* legislative department. *A fortiori,* a pretext of oversight cannot prevail over the more pragmatic scheme which the Constitution laid with firmness, that is, that the JBC has a seat for a single representative of Congress, as one of the co-equal branches of government.

12. **ID.; ID.; ID.; ID.; TO ALLOW THE LEGISLATURE TO HAVE MORE QUANTITATIVE INFLUENCE IN THE JBC BY HAVING MORE THAN ONE VOICE SPEAK, WHETHER WITH ONE FULL VOTE OR ONE-HALF (½) A VOTE EACH WOULD NEGATE THE PRINCIPLE OF EQUALITY AMONG THE THREE BRANCHES OF GOVERNMENT ENSHRINED IN THE CONSTITUTION.—** Doubtless, the Framers of our Constitution intended to create a JBC as an innovative solution in response to the public clamor in favor of eliminating politics in the appointment of members of the Judiciary. To ensure judicial independence, they adopted a holistic approach and hoped that, in creating a JBC, the private sector and the three branches of government would have an active role and equal voice in the selection of the members of the Judiciary. Therefore, to allow the Legislature

to have more quantitative influence in the JBC by having more than one voice speak, whether with one full vote or one-half (½) a vote each, would, as one former congressman and member of the JBC put it, "negate the principle of equality among the three branches of government which is enshrined in the Constitution."

13. ID.; ID.; ID.; ID.; IT IS CLEAR THAT THE CONSTITUTION MANDATES THAT THE JBC BE COMPOSED OF SEVEN (7) MEMBERS ONLY AND ANY INCLUSION OF ANOTHER MEMBER, WHETHER WITH ONE VOTE OR HALF (½) OF IT, GOES AGAINST THAT MANDATE.— It is clear, therefore, that the Constitution mandates that the JBC be composed of seven (7) members only. Thus, any inclusion (½) of it, goes against that mandate. Section 8(1), Article VIII of the Constitution, providing Congress with an equal voice with other members of the JBC in recommending appointees to the Judiciary is explicit. Any circumvention of the constitutional mandate should not be countenanced for the Constitution is the supreme law of the land. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of the government and the people who run it. Hence, any act of the government or of a public official or employee which is contrary to the Constitution is illegal, null and void.

14. ID.; ID.; ID.; ID.; EFFECT OF DECLARATION OF UNCONSTITUTIONALITY; DOCTRINE OF OPERATIVE FACTS; APPLICABLE IN CASE AT BAR.— As to the effect of the Court's finding that the current composition of the JBC is unconstitutional, it bears mentioning that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. This rule, however, is not absolute. In the interest of fair play under the *doctrine of operative facts*, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. In *Planters Products, Inc. v. Fertiphil Corporation,*

the Court explained: The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it. Considering the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

15. ID.; ID.; ID.; ID.; THE COURT IS NOT IN A POSITION TO DETERMINE AS TO WHO SHOULD REMAIN AS THE SOLE REPRESENTATIVE OF CONGRESS IN THE JBC; THE SOLEMN POWER AND DUTY OF THE COURT IS TO INTERPRET AND APPLY THE LAW AND DOES NOT INCLUDE THE POWER TO CORRECT, BY READING INTO LAW WHAT IS NOT WRITTEN THEREIN.— At this point, the Court takes the initiative to clarify that it is not in a position to determine as to who should remain as the sole representative of Congress in the JBC. This is a matter beyond the province of the Court and is best left to the determination of Congress. Finally, while the Court finds wisdom in respondents' contention that both the Senate and the House of Representatives should be equally represented in the JBC, the Court is not in a position to stamp its *imprimatur* on such a construction at the risk of expanding the meaning of the Constitution as currently worded. Needless to state, the remedy lies in the amendment of this constitutional provision. The courts merely give effect to the lawgiver's intent. The Solemn power and duty of the Court to interpret and apply the law does not include the power to correct, by reading into the law what is not written therein.

ABAD, *J.*, *dissenting opinion*:

1. **POLITICAL LAW; 1987 CONSTITUTION; STATUTORY CONSTRUCTION; PRINCIPLES OF CONSTITUTIONAL CONSTRUCTION; APPLYING A *VERBA LEGIS* OR STRINCTLY LITERAL INTERPRETATION OF THE CONSTITUTION MAY RENDER ITS PROVISIONS MEANINGLESS AND LEAD TO INCONVENIENCE, AN ABSURB SITUATION OR AN INJUSTICE.—** There are three well-settled principles of constitutional construction: first, *verba legis*, that is, wherever possible, the words used in the Constitution should be given their ordinary meaning except where technical terms are employed; second, where there is ambiguity, *ratio legis est anima*, meaning that the words of the Constitution should be interpreted in accordance with the intent of its framers; and third, *ut magis valeat quam pereat*, meaning that the Constitution is to be interpreted as a whole. There is no question that when the Constitutional Commission (ConCom) deliberated on the provisions regarding the composition of the JBC, the members of the commission thought, as the original draft of those provisions indicates, that the country would have a unicameral legislative body, like a parliament. For this reason, they allocated the three "*ex officio*" membership in the council to the Chief Justice, the Secretary of Justice, and a representative from the National Assembly, evidently to give representation in the JBC to the three great branches of government. Subsequently, however, the ConCom decided, after a very close vote of 23 against 22, to adopt a bicameral legislative body, with a Senate and a House of Representatives. Unfortunately, as Fr. Joaquin Bernas, a member of the ConCom, admits, the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of the changed character of the legislature on the inclusion of "a representative of the Congress" in the membership of the JBC. Still, it is a basic principle in statutory construction that the law must be given a reasonable interpretation at all times. The Court may, in some instances, consider the spirit and reason of a statute, where a literal meaning would lead to absurdity, contradiction, or injustice, or would defeat the clear purpose of the law makers. Applying a *verba legis* or strictly literal interpretation of the

constitution may render its provisions meaningless and lead to inconvenience, an absurd situation, or an injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be made to the rule that the spirit of the law controls its letter.

2. **ID.; ID.; ID.; ID.; TO INSIST THAT ONLY MEMBERS OF CONGRESS FROM EITHER THE SENATE OR THE HOUSE OF REPRESENTATIVES SHOULD SIT AT ANY TIME IN THE JBC, IS TO IGNORE THE FACT THAT WHILE THESE TWO HOUSES OF CONGRESS ARE INVOLVED IN THE COMMON TASK OF MAKING LAWS, THEY ARE SEPARATE AND DISTINCT; NEITHER THE SENATE NOR THE HOUSE OF REPRESENTATIVES CAN BY ITSELF CLAIM TO REPRESENT CONGRESS.—** To insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that while these two houses of Congress are involved in the common task of making laws, they are separate and distinct. Senators are elected by the people at large, while the Members of the House of Representatives, by their respective districts or sectors. They have detached administrative organizations and deliberate on laws separately, indeed, often coming up with dissimilar drafts of those laws. Clearly, neither the Senate nor the House of Representatives can by itself claim to represent the Congress. Those who drafted Section 8(1) did not intend to limit the term "Congress" to just either of the two Houses.

3. **ID.; ID.; ID.; ID.; THE DOCTRINE THAT A PROPER INTERPRETATION MAY BE HAD BY CONSIDERING THE WORDS THAT ACCOMPANY THE TERM OR PHRASE IN QUESTION SHOULD APPLY TO THE PRESENT CASE.—** The doctrine that a proper interpretation may be had by considering the words that accompany the term or phrase in question should apply to this case. While it is true that Section 8(1) provides for just "a representative of the Congress," it also provides that such representation is "*ex officio*." "*Ex officio*" is a Latin term, meaning "by virtue of one's office, or position." This is not too different from the idea that a man, by virtue of being a husband to his wife, is also a father to their children. So in Section 8(1), whoever

occupies the designated office or position becomes an "*ex officio*" JBC member. For instance, if the President appoints Mr. X as Chief Justice, Mr. X automatically becomes the chairman of the JBC, an attached function, by virtue of his being the Chief Justice. He replaces the former Chief Justice without need for another appointment or the taking of a separate oath of office. In the same way, if the President appoints Mr. Y as Secretary of Justice. Mr. Y also automatically becomes a member of the JBC, also an attached function, by virtue of his being the Secretary of Justice.

4. **ID.; ID.; ID.; ID.; IF THE COURT WERE TO STICK TO THE LITERAL READING OF SECTION 8 (1), ARTICLE VIII OF THE 1987 CONSTITUTION, WHICH RESTRICTS JBC REPRESENTATION TO JUST ONE PERSON HOLDING OFFICE IN CONGRESS AND WORKING UNDER BOTH HOUSES, NO ONE WILL QUALIFY AS "*EX OFFICIO*" MEMBER OF JBC.—** Under the rules of the Senate, the Chairman of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the rules of the House of Representatives, the Chairman of its Justice Committee is the House representative to the JBC. Thus, there are two persons in Congress, not just one, who hold separate offices or positions with the attached function of sitting in the JBC. Section 8(1) cannot be literally applied simply because there is no office, serving both the Senate and the House of Representatives, with the attached function of sitting as member in the JBC. Inevitably, if the Court were to stick to the literal reading of section 8(1), which restricts JBC representation to just one person holding office in Congress and working under both houses, no one will qualify as "*ex officio*" member of JBC. No such individual exists. Congress would consequently be denied the representation that those who drafted the Constitution intended it to have.

5. **ID.; ID.; ID.; ID.; ALLOWING A SENATOR AND A CONGRESSMAN TO SIT ALTERNATELY AT ANY ONE TIME CANNOT BE A SOLUTION SINCE EACH OF THEM WOULD ACTUALLY BE REPRESENTATING ONLY HIS HALF OF CONGRESS; ALLOWING BOTH, ON THE OTHER HAND, WITH HALF A VOTE EACH IS ALSO ABSURD SINCE THAT WOULD DIMINISH**

THEIR STANDING AND MAKE THEM SECOND CLASS MEMBERS OF JBC; WHEN A LITERAL TRANSLATION WOULD RESULT TO ABSURDITY, THE SAME SHOULD BE UTTERLY REJECTED.— Allowing a Senator and a Congressman to sit alternately at any one time cannot be a solution since each of them would actually be representing only his half of Congress when he takes part in JBC deliberations. Allowing both, on the other hand, to sit in those deliberations at the same time with half a vote each is absurd since that would diminish their standing and make them second class members of JBC, something that the Constitution clearly does not contemplate. It is presumed when drafting laws that the legislature does not intend to produce undesirable consequences. Thus, when a literal translation would result to such consequences, the same is to be utterly rejected. Indeed, the JBC abandoned the half-a-vote practice on January 12, 2000 and recognized the right of the Senator and the Congressman attending their deliberations to cast one vote each. Only by recognizing this right can the true spirit and intent of Section 8(1) be attained.

6. **ID.; ID.; ID.; ID.; IF THE IDEA WAS TO ABSOLUTELY ELIMINATE POLITICS FROM THE JBC SELECTION PROCESS, THE FRAMERS OF THE CONSTITUTION COULD SIMPLY HAVE BARRED ALL POLITICIANS FROM IT.—** It is not partisan politics *per se* that Section 8(1) intends to remove from the appointment process in the judiciary, but partisan domination of the same. Indeed, politicians have distinct roles in the process. For instance, it is the President, a politicians, who appoints the six regular members of the JBC. And these appointees have to be confirmed by the Commission on Appointment, composed of politicians. What is more, although it is the JBC that screens for positions in the judiciary, it is the President who eventually appoints them. Further, if the idea was to absolutely eliminate politics from the JBC selection process, the framers of the Constitution could simply have barred all politicians from it. But the Constitution as enacted allows the Secretary of Justice, an alter-ego of the President, as well as representatives from the Congress to sit as members of JBC. Evidently, the Constitution wants certain representatives of the people to have a hand in the selection of the members of the judiciary.

7. **ID.; ID.; ID.; ID.; THE PRESENCE OF AN ELECTED SENATOR AND AN ELECTED MEMBER OF THE HOUSE OF REPRESENTATIVES IN THE JBC IS MORE CONSISTENT WITH THE REPUBLICAN NATURE OF OUR GOVERNMENT WHERE ALL GOVERNMENT AUTHORITY EMANATES FROM THE PEOPLE AND IS EXERCISED BY REPRESENTATIVES CHOSEN BY THEM.—** The majority also holds the view that allowing two members of the Congress to sit in the JBC would undermine the Constitution's intent to maintain the balance of power in that body and give the legislature greater and unwarranted influence in the appointment of members of the Judiciary. But this fear is unwarranted. The lawmakers hold only two positions in that eight-man body. This will not give them greater power than the other six members have. Besides, historically, the representatives from the Senate and the lower house have frequently disagreed in their votes. Their outlooks differ. Actually, if the Court would go by numbers, it is the President who appoints six of the members of the JBC (the Chief Justice, the Secretary of Justice, and the four regular members), thus establishing an edge in favor of presidential appointees. Placing one representative each from the Senate and the House of Representatives rather than just one congressional representative somewhat blunts that edge. As the OSG correctly points out, the current practice contributes two elective officials in the JBC whose membership is totally independent from the Office of the President. Lastly, the presence of an elected Senator and an elected member of the House of Representatives in the JBC is more consistent with the republican nature of our government where all government authority emanates from the people and is exercised by representatives chosen by them.

APPEARANCES OF COUNSEL

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The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J*.:

The issue at hand has been in hibernation until the unexpected departure of Chief Justice Renato C. Corona on May 29, 2012, and the nomination of former Solicitor General Francisco I. Chavez *(petitioner),* as his potential successor, triggered the filing of this case. The issue has constantly been nagging legal minds, yet remained dormant for lack of constitutional challenge.

As the matter is of extreme urgency considering the constitutional deadline in the process of selecting the nominees for the vacant seat of the Chief Justice, the Court cannot delay the resolution of the issue a day longer. Relegating it in the meantime to the back burner is not an option.

Does the first paragraph of Section 8, Article VIII of the 1987 Constitution allow more than one (1) member of Congress to sit in the JBC? Is the practice of having two (2) representatives from each house of Congress with one (1) vote each sanctioned by the Constitution? These are the pivotal questions to be resolved in this original action for prohibition and injunction.

Long before the naissance of the present Constitution, the annals of history bear witness to the fact that the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution[1] and the 1935 Constitution[2] had vested the power to appoint the members of the Judiciary in the President,

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[1] Article 80 Title X of the Malolos Constitution provides: "The Chief Justice of the Supreme Court and the Solicitor-General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers."

[2] Section 5 Article VIII of the 1935 Constitution provides: "The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments."

subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.[3]

Then, with the fusion of executive and legislative power under the 1973 Constitution,[4] the appointment of judges and justices was no longer subject to the scrutiny of another body. It was absolute, except that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary from political pressure and partisan activities,[5] the members of the Constitutional Commission saw the need to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body representative of all the stakeholders in the judicial appointment process and called it the Judicial and Bar Council *(JBC)*. Its composition, term and functions are provided under Section 8, Article VIII of the Constitution, *viz*:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the

[3] 1 Records of the Constitutional Commission Proceedings and Debates, 437.

[4] Section 4 Article X of the 1973 Constitution provides: "The Members of the Supreme Court and judges of inferior courts shall be appointed by the President."

[5] 1 Records, Constitutional Commission, Proceedings and Debates, p. 487.

professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary *ex officio* of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

In compliance therewith, Congress, from the moment of the creation of the JBC, designated one representative to sit in the JBC to act as one of the *ex officio* members.[6] Perhaps in order to give equal opportunity to both houses to sit in the exclusive body, the House of Representatives and the Senate would send alternate representatives to the JBC. In other words, Congress had only one (1) representative.

In 1994, the composition of the JBC was substantially altered. Instead of having only seven (7) members, an eighth (8th) member was added to the JBC as two (2) representatives from Congress began sitting in the JBC - one from the House of Representatives and one from the Senate, with each having one-half (½) of a vote.[7] Then, curiously, the JBC *En Banc*, in separate meetings held in 2000 and 2001, decided to allow the representatives from the Senate and the House of Representatives one full vote each.[8] At present, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. (*respondents*) simultaneously sit in the JBC as representatives of the legislature.

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[6] List of JBC Chairpersons, *Ex-Officio* and Regular Members, *Ex Officio* Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council, *rollo*, pp. 62-63.

[7] *Id.*

[8] Comment of the JBC, p. 80, citing Minutes of the 1st *En Banc* Executive Meeting, January 12, 2000 and Minutes of the 12th *En Banc* Meeting, May 30, 2001.

It is this practice that petitioner has questioned in this petition,[9] setting forth the following

GROUNDS FOR ALLOWANCE OF THE PETITION

I

Article VIII, Section 8, Paragraph 1 is clear, definite and needs no interpretation in that the JBC shall have only one representative from Congress.

II

The framers of the Constitution clearly envisioned, contemplated and decided on a JBC composed of only seven (7) members.

III

Had the framers of the Constitution intended that the JBC composed of the one member from the Senate and one member from the House of Representatives, they could have easily said so as they did in the other provisions of the Constitution.

IV

The composition of the JBC providing for three *ex-officio* members is purposely designed for a balanced representation of each of the three branches of the government.

V

One of the two (2) members of the JBC from Congress has no right (not even ½ right) to sit in the said constitutional body and perform the duties and functions of a member thereof.

VI

The JBC cannot conduct valid proceedings as its composition is illegal and unconstitutional.[10]

On July 9, 2012, the JBC filed its Comment.[11] It, however, abstained from recommending on how this constitutional issue

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[9] *Rollo*, pp. 3-69.

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

[11] *Id.* at 76-106.

should be disposed in gracious deference to the wisdom of the Court. Nonetheless, the JBC was more than generous enough to offer the insights of various personalities previously connected with it.[12]

Through the Office of the Solicitor General *(OSG)*, respondents defended their position as members of the JBC in their Comment[13] filed on July 12, 2012. According to them, the crux of the controversy is the phrase "a representative of Congress."[14] Reverting to the basics, they cite Section 1, Article VI of the Constitution[15] to determine the meaning of the term "Congress." It is their theory that the two houses, the Senate and the House of Representatives, are permanent and mandatory components of "Congress," such that the absence of either divests the term of its substantive meaning as expressed under the Constitution. In simplistic terms, the House of Representatives, without the Senate and vice-versa, is not Congress.[16] Bicameralism, as the system of choice by the Framers, requires that both houses exercise their respective powers in the performance of its mandated duty which is to legislate. Thus, when Section 8(1), Article VIII of the Constitution speaks of "a representative from Congress," it should mean one representative each from both Houses which comprise the entire Congress.[17]

Tracing the subject provision's history, the respondents claim that when the JBC was established, the Framers originally envisioned a unicameral legislative body, thereby allocating "a representative of the National Assembly" to the JBC. The phrase, however, was not modified to aptly jive with the change to

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[12] *Id.* at 80.

[13] *Id.* at 117-163.

[14] *Id.* at 142.

[15] "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum."

[16] *Id.*

[17] *Rollo*, p. 143.

bicameralism, the legislative system finally adopted by the Constitutional Commission on July 21, 1986. According to respondents, if the Commissioners were made aware of the consequence of having a bicameral legislature instead of a unicameral one, they would have made the corresponding adjustment in the representation of Congress in the JBC.[18]

The ambiguity having resulted from a plain case of inadvertence, the respondents urge the Court to look beyond the letter of the disputed provision because the literal adherence to its language would produce absurdity and incongruity to the bicameral nature of Congress.[19] In other words, placing either of the respondents in the JBC will effectively deprive a house of Congress of its representation. In the same vein, the electorate represented by Members of Congress will lose their only opportunity to participate in the nomination process for the members of the Judiciary, effectively diminishing the republican nature of the government.[20]

The respondents further argue that the allowance of two (2) representatives of Congress to be members of the JBC does not render the latter's purpose nugatory. While they admit that the purpose in creating the JBC was to insulate appointments to the Judiciary from political influence, they likewise cautioned the Court that this constitutional vision did not intend to entirely preclude political factor in said appointments. Therefore, no evil should be perceived in the current set-up of the JBC because two (2) members coming from Congress, whose membership to certain political parties is irrelevant, does not necessarily amplify political partisanship in the JBC. In fact, the presence of two (2) members from Congress will most likely provide balance as against the other six (6) members who are undeniably presidential appointees.[21]

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[18] *Id.* at 148.

[19] *Id.*

[20] *Id.*

[21] *Id.* at 150-153.

The Issues

In resolving the procedural and substantive issues arising from the petition, as well as the myriad of counter-arguments proffered by the respondents, the Court synthesized them into two:

(1) Whether or not the conditions *sine qua non* for the exercise of the power of judicial review have been met in this case; and

(2) Whether or not the current practice of the JBC to perform its functions with eight (8) members, two (2) of whom are members of Congress, runs counter to the letter and spirit of the 1987 Constitution.

The Power of Judicial Review

In its Comment, the JBC submits that petitioner is clothed with *locus standi* to file the petition, as a citizen and taxpayer, who has been nominated to the position of Chief Justice.[22]

For the respondents, however, petitioner has no "real interest" in questioning the constitutionality of the JBC's current composition.[23] As outlined in jurisprudence, it is well-settled that for *locus standi* to lie, petitioner must exhibit that he has been denied, or is about to be denied, of a personal right or privilege to which he is entitled. Here, petitioner failed to manifest his acceptance of his recommendation to the position of Chief Justice, thereby divesting him of a substantial interest in the controversy. Without his name in the official list of applicants for the post, the respondents claim that there is no personal stake on the part of petitioner that would justify his outcry of unconstitutionality. Moreover, the mere allegation that this case is of transcendental importance does not excuse the waiver of the rule on *locus standi*, because, in the first place, the case lacks the requisites therefor. The respondents also question petitioner's belated filing of the petition.[24] Being aware that the current composition of the JBC has been in practice since 1994, petitioner's silence for eighteen (18) years show that the

[22] *Id.* at 78.

[23] *Id.* at 131.

[24] *Id.* at 131-133.

constitutional issue being raised before the Court does not comply with the "earliest possible opportunity" requirement.

Before addressing the above issues *in seriatim*, the Court deems it proper to first ascertain the nature of the petition. Pursuant to the rule that the nature of an action is determined by the allegations therein and the character of the relief sought, the Court views the petition as essentially an action for declaratory relief under Rule 63 of the 1997 Rules of Civil Procedure.[25]

The Constitution as the subject matter, and the validity and construction of Section 8 (1), Article VIII as the issue raised, the petition should properly be considered as that which would result in the adjudication of rights *sans* the execution process because the only relief to be granted is the very declaration of the rights under the document sought to be construed. It being so, the original jurisdiction over the petition lies with the appropriate Regional Trial Court *(RTC)*. Notwithstanding the fact that only questions of law are raised in the petition, an action for declaratory relief is not among those within the original jurisdiction of this Court as provided in Section 5, Article VIII of the Constitution.[26]

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[25] Section 1. *Who may file petition.—*Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

xxx xxx xxx

[26] 1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus.*

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts.

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

At any rate, due to its serious implications, not only to government processes involved but also to the sanctity of the Constitution, the Court deems it more prudent to take cognizance of it. After all, the petition is also for prohibition under Rule 65 seeking to enjoin Congress from sending two (2) representatives with one (1) full vote each to the JBC.

The Courts' power of judicial review, like almost all other powers conferred by the Constitution, is subject to several limitations, namely: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[27] Generally, a party will be allowed to litigate only when these conditions *sine qua non* are present, especially when the constitutionality of an act by a co-equal branch of government is put in issue.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

[27] *Senate of the Philippines v. Ermita*, 522 Phil. 1, 27 (2006).

Anent *locus standi*, the question to be answered is this: does the party possess a personal stake in the outcome of the controversy as to assure that there is real, concrete and legal conflict of rights and duties from the issues presented before the Court? In *David v. Macapagal-Arroyo*,[28] the Court summarized the rules on *locus standi* as culled from jurisprudence. There, it was held that taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) cases involve constitutional issues; (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

In public suits, the plaintiff, representing the general public, asserts a "public right" in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and can be suing as a "stranger," or as a "citizen" or "taxpayer." Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law. Of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.[29]

In this case, petitioner seeks judicial intervention as a taxpayer, a concerned citizen and a nominee to the position of Chief Justice of the Supreme Court. As a taxpayer, petitioner invokes his

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[28] 522 Phil. 705 (2006).

[29] *LAMP v. The Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012.

right to demand that the taxes he and the rest of the citizenry have been paying to the government are spent for lawful purposes. According to petitioner, "since the JBC derives financial support for its functions, operation and proceedings from taxes paid, petitioner possesses as taxpayer both right and legal standing to demand that the JBC's proceedings are not tainted with illegality and that its composition and actions do not violate the Constitution."[30]

Notably, petitioner takes pains in enumerating past actions that he had brought before the Court where his legal standing was sustained. Although this inventory is unnecessary to establish *locus standi* because obviously, not every case before the Court exhibits similar issues and facts, the Court recognizes the petitioner's right to sue in this case. Clearly, petitioner has the legal standing to bring the present action because he has a personal stake in the outcome of this controversy.

The Court disagrees with the respondents' contention that petitioner lost his standing to sue because he is not an official nominee for the post of Chief Justice. While it is true that a "personal stake" on the case is imperative to have *locus standi*, this is not to say that only official nominees for the post of Chief Justice can come to the Court and question the JBC composition for being unconstitutional. The JBC likewise screens and nominates other members of the Judiciary. Albeit heavily publicized in this regard, the JBC's duty is not at all limited to the nominations for the highest magistrate in the land. A vast number of aspirants to judicial posts all over the country may be affected by the Court's ruling. More importantly, the legality of the very process of nominations to the positions in the Judiciary is the nucleus of the controversy. The Court considers this a constitutional issue that must be passed upon, lest a constitutional process be plagued by misgivings, doubts and worse, mistrust. Hence, a citizen has a right to bring this question to the Court, clothed with legal standing and at the same time, armed with issues of transcendental importance to society. The claim that the composition of the JBC is illegal and unconstitutional is an

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[30] *Rollo*, p. 6.

object of concern, not just for a nominee to a judicial post, but for all citizens who have the right to seek judicial intervention for rectification of legal blunders.

With respect to the question of transcendental importance, it is not difficult to perceive from the opposing arguments of the parties that the determinants established in jurisprudence are attendant in this case: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[31] The allegations of constitutional violations in this case are not empty attacks on the wisdom of the other branches of the government. The allegations are substantiated by facts and, therefore, deserve an evaluation from the Court. The Court need not elaborate on the legal and societal ramifications of the issues raised. It cannot be gainsaid that the JBC is a constitutional innovation crucial in the selection of the magistrates in our judicial system.

The Composition of the JBC

Central to the resolution of the foregoing petition is an understanding of the composition of the JBC as stated in the first paragraph of Section 8, Article VIII of the Constitution. It reads:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and a representative of the Congress as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

From a simple reading of the above-quoted provision, it can readily be discerned that the provision is clear and unambiguous.

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[31] *Francisco, Jr. v. House of Representatives,* 460 Phil. 830, 899 (2003), *citing Kilosbayan v. Guingona,* G.R. No. 113375, May 5, 1994, 232 SCRA 110, 155-157.

The first paragraph calls for the creation of a JBC and places the same under the supervision of the Court. Then it goes to its composition where the *regular* members are enumerated: a representative of the Integrated Bar, a professor of law, a retired member of the Court and a representative from the private sector. On the second part lies the crux of the present controversy. It enumerates the *ex officio* or special members of the JBC composed of the Chief Justice, who shall be its Chairman, the Secretary of Justice and "a representative of Congress."

As petitioner correctly posits, the use of the singular letter "*a*" preceding "*representative of Congress*" is unequivocal and leaves no room for any other construction. It is indicative of what the members of the Constitutional Commission had in mind, that is, Congress may designate only one (1) representative to the JBC. Had it been the intention that more than one (1) representative from the legislature would sit in the JBC, the Framers could have, in no uncertain terms, so provided.

One of the primary and basic rules in statutory construction is that 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.[32] It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.[33] *Verba legis*

[32] *National Food Authority (NFA) v. Masada Security Agency, Inc.,* 493 Phil. 241, 250 (2005); *Philippine National Bank v. Garcia, Jr.,* 437 Phil. 289 (2002).

[33] *Francisco, Jr. v. House of Representatives, supra* note 31 at 885, citing *J.M. Tuason & Co., Inc. v. Land Tenure Administration*, L-21064, February 18, 1970, 31 SCRA 413.

non est recedendum – from the words of a statute there should be no departure.[34]

The *raison d' être* for the rule is essentially two-fold: *First,* because it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained;[35] and *second*, because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail. [36]

Moreover, under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated.[37] This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter.[38] The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[39] In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Coca-Cola Bottlers, Phils., Inc. (CCBPI), Naga Plant v. Gomez*, G.R. No. 154491, November 14, 2008, 571 SCRA 18, 37; *People v. Delantar*, G.R. No. 169143, February 2, 2007, 514 SCRA 115, 139; and *Republic v. Sandiganbayan*, 255 Phil. 71 (1989), citing *Co Kim Chan v. Valdez Tan Keh and Dizon*, 75 Phil. 371 (1945).

[38] *People v. Delantar*, G.R. No. 169143, February 2, 2007, 514 SCRA 115, 139; *Republic v. Sandiganbayan*, 255 Phil. 71 (1989), citing *Co Kim Chan v. Valdez*, 75 Phil. 371 (1945).

[39] *Uy v. Sandiganbayan*, 407 Phil. 154, 180 (2001).

used in association with other words or phrases and its meaning may be modified or restricted by the latter.

Applying the foregoing principle to this case, it becomes apparent that the word *"Congress"* used in Article VIII, Section 8(1) of the Constitution is used in its generic sense. No particular allusion whatsoever is made on whether the Senate or the House of Representatives is being referred to, but that, in either case, only a singular representative may be allowed to sit in the JBC. The foregoing declaration is but sensible, since, as pointed out by an esteemed former member of the Court and consultant of the JBC in his memorandum,[40] "from the enumeration of the membership of the JBC, it is patent that each category of members pertained to a single individual only."[41]

Indeed, the spirit and reason of the statute may be passed upon where a literal meaning would lead to absurdity, contradiction, injustice, or defeat the clear purpose of the lawmakers.[42] Not any of these instances, however, is present in the case at bench. *Considering that the language of the subject constitutional provision is plain and unambiguous, there is no need to resort extrinsic aids such as records of the Constitutional Commission.*

Nevertheless, even if the Court should proceed to look into the minds of the members of the Constitutional Commission, it is undeniable from the records thereof that it was intended that the JBC be composed of **seven (7) members** only. Thus:

MR. RODRIGO: Let me go to another point then.

On page 2, Section 5, there is a novel provision about the appointments of members of the Supreme Court and judges of the lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointment. In this

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[40] Memorandum of Associate Justice Leonardo A. Quisimbing, dated March 14, 2007; *rollo*, p. 95-103.

[41] *Id.* at 103.

[42] *Ursua v. Court of Appeals*, 326 Phil. 157, 163 (1996).

proposal, we would like to establish a new office, a sort of a board ***composed of seven members*** called the Judicial and Bar Council. And while the President will still appoint the member of the judiciary, he will be limited to the recommendees of this Council.

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MR. RODRIGO. Of ***the seven members of the Judicial and Bar Council***, the President appoints four of them who are regular members.

xxx xxx xxx

MR. CONCEPCION. The only purpose of the Committee is to eliminate partisan politics.[43]

xxx xxx xxx

MR. RODRIGO. If my amendment is approved, then the provision will be exactly the same as the provision in the 1935 Constitution, Article VIII, Section 5.

xxx xxx xxx

If we do not remove the proposed amendment on the creation of the Judicial and Bar Council, this will be a diminution of the appointing power of the highest magistrate of the land, of the President of the Philippines elected by all the Filipino people. The appointing power will be limited ***by a group of seven people*** who are not elected by the people but only appointed.

Mr. Presiding Officer, if this Council is created, there will be no uniformity in our constitutional provisions on appointments. The members of the Judiciary will be segregated from the rest of the government. Even a municipal judge cannot be appointed by the President except upon recommendation or nomination of the three names by this ***Committee of seven people***, commissioners of the Commission on Elections, the COA and the Commission on Civil Service…even ambassadors, generals of the Army will not come under this restriction. Why are we going to segregate the Judiciary from the rest of our government in the appointment of high-ranking officials?

[43] 1 Records of the Constitutional Commission Proceedings and Debates, p. 445.

Another reason is that this Council will be ineffective. It will just besmirch the honor of our President without being effective at all because this Council will be under the influence of the President. ***Four out of seven*** are appointees of the President and they can be reappointed when their term ends. Therefore, they would be kowtow the President. A fifth member is the Minister of Justice, an alter ego of the President. ***Another member represents the Legislature***. In all probability, the controlling part in the legislature belongs to the President and, therefore, this representative form the National Assembly is also under the influence of the President. And may I say, Mr. Presiding Officer, that event the Chief Justice of the Supreme Court is an appointee of the President. So it is futile he will be influence anyway by the President.[44] [Emphases supplied]

At this juncture, it is worthy to note that the seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting. This underlying reason leads the Court to conclude that a single vote may not be divided into half (½), between two representatives of Congress, or among any of the sitting members of the JBC for that matter. This unsanctioned practice can possibly cause disorder and eventually muddle the JBC's voting process, especially in the event a tie is reached. The aforesaid purpose would then be rendered illusory, defeating the precise mechanism which the Constitution itself created. While it would be unreasonable to expect that the Framers provide for every possible scenario, it is sensible to presume that they knew that an odd composition is the best means to break a voting deadlock.

The respondents insist that owing to the bicameral nature of Congress, the word "Congress" in Section 8(1), Article VIII of the Constitution should be read as including both the Senate and the House of Representatives. They theorize that it was so worded because at the time the said provision was being drafted, the Framers initially intended a unicameral form of Congress. Then, when the Constitutional Commission eventually adopted

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[44] 1 Records of the Constitutional Commission Proceedings and Debates, pp. 486-487.

a bicameral form of Congress, the Framers, through *oversight,* failed to amend Article VIII, Section 8 of the Constitution.[45] On this score, the Court cites the insightful analysis of another member of the Court and JBC consultant, retired Justice Consuelo Ynares-Santiago.[46] Thus:

> A perusal of the records of the Constitutional Commission reveals that the composition of the JBC reflects the Commission's desire "to have in the Council a representation for the major elements of the community." *xxx* The *ex-officio* members of the Council consist of representatives from the three main branches of government while the regular members are composed of various stakeholders in the judiciary. **The unmistakeable tenor of Article VIII, Section 8(1) was to treat each *ex-officio* member as representing one co-equal branch of government**. *xxx* Thus, the JBC was designed to have **seven voting members** with the three *ex-officio* members having equal say in the choice of judicial nominees.
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> xxx xxx xxx
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> **No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution.** Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch of in the matter of its representative in the JBC. On the other hand, the exercise of legislative and constituent powers requires the Senate and House of Representatives to coordinate and act as distinct bodies in furtherance of Congress' role under our constitutional scheme. **While the latter justifies and, in fact, necessitates the separateness of the two houses of Congress as they relate *inter se*, no such dichotomy need be made when Congress interacts with the other two co-equal branches of government.**
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> **It is more in keeping with the co-equal nature of the three governmental branches to assign the same weight to considerations that any of its representatives may have regarding aspiring nominees to the judiciary. The representatives of the Senate and the House of Representatives act as such for one branch and**

[45] Comment of Respondents, *rollo*, pp. 142-146.

[46] Comment of JBC; *id.* at 91-93.

should not have any more quantitative influence as the other branches in the exercise of prerogatives evenly bestowed upon the three. Sound reason and principle of equality among the three branches support this conclusion. [Emphases and underscoring supplied]

More than the reasoning provided in the above discussed rules of constitutional construction, the Court finds the above thesis as the paramount justification of the Court's conclusion that "Congress," in the context of JBC representation, should be considered as one body. It is evident that the definition of "Congress" as a bicameral body refers to its primary function in government - to legislate.[47] In the passage of laws, the Constitution is explicit in the distinction of the role of each house in the process. The same holds true in Congress' non-legislative powers such as, *inter alia*, the power of appropriation,[48] the declaration of an existence of a state of war,[49] canvassing of electoral returns for the President and Vice-President,[50] and

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[47] 1987 Constitution, Article 6 Section 27(1) - Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

[48] 1987 Constitution, Article 6 Section 24 - All appropriation, revenue or tariff bills, bills authorizing increase of public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

[49] 1987 Constitution, Article 6 Section 23 (1) - The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

[50] 1987 Constitution, Article 7 Section 4 - The returns of every election for President and Vice-President, duly certified by the board of canvassers

impeachment.[51] In the exercise of these powers, the Constitution employs precise language in laying down the roles which a particular house plays, regardless of whether the two houses consummate an official act by voting jointly or separately. An inter-play between the two houses is necessary in the realization of these powers causing a vivid dichotomy that the Court cannot simply discount. Verily, each house is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, to the other branches of government.

This, however, cannot be said in the case of JBC representation because no liaison between the two houses exists in the workings of the JBC. No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Hence, the term "Congress" must be taken to mean the *entire* legislative department. *A fortiori,* a pretext of oversight cannot prevail over the more pragmatic scheme

of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes. The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

[51] 1987 Constitution, Article 11 Section 3 (1) - The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

xxx xxx xxx

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

which the Constitution laid with firmness, that is, that the JBC has a seat for a single representative of Congress, as one of the co-equal branches of government.

Doubtless, the Framers of our Constitution intended to create a JBC as an innovative solution in response to the public clamor in favor of eliminating politics in the appointment of members of the Judiciary.[52] To ensure judicial independence, they adopted a holistic approach and hoped that, in creating a JBC, the private sector and the three branches of government would have an active role and equal voice in the selection of the members of the Judiciary.

Therefore, to allow the Legislature to have more quantitative influence in the JBC by having more than one voice speak, whether with one full vote or one-half (½) a vote each, would, as one former congressman and member of the JBC put it, "negate the principle of equality among the three branches of government which is enshrined in the Constitution."[53]

To quote one former Secretary of Justice:

> The present imbalance in voting power between the Legislative and the other sectors represented in the JBC must be corrected especially when considered *vis-à-vis* the avowed purpose for its creation, *i.e.*, to insulate the appointments in the Judiciary against political influence. **By allowing both houses of Congress to have a representative in the JBC and by giving each representative one (1) vote in the Council, Congress, as compared to the other members of the JBC, is accorded greater and unwarranted influence in the appointment of judges.**[54] [Emphasis supplied]

It is clear, therefore, that the Constitution mandates that the JBC be composed of seven (7) members only. Thus, any inclusion of another member, whether with one whole vote or half (½) of

[52] 1 Records of the Constitutional Commission Proceedings and Debates Records of the Constitutional Convention, p. 487.

[53] Comment of the JBC, *rollo*, p. 104.

[54] Memorandum of Justice Secretary Agnes VST Devanadera, Comment of the JBC, *id.* at 105-106.

it, goes against that mandate. Section 8(1), Article VIII of the Constitution, providing Congress with an equal voice with other members of the JBC in recommending appointees to the Judiciary is explicit. Any circumvention of the constitutional mandate should not be countenanced for the Constitution is the supreme law of the land. The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of the government and the people who run it.[55] Hence, any act of the government or of a public official or employee which is contrary to the Constitution is illegal, null and void.

As to the effect of the Court's finding that the current composition of the JBC is unconstitutional, it bears mentioning that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all.[56] This rule, however, is not absolute. In the interest of fair play under the *doctrine of operative facts*, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. In *Planters Products, Inc. v. Fertiphil Corporation*,[57] the Court explained:

> The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be

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[55] *Louis "Barok" C. Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78, 137-138, citing Cruz, Philippine Political law, 2002 ed. p. 12.

[56] *Claudio S. Yap v. Thennamaris Ship's Management and Intermare Maritime Agencies Inc.*, G.R. No. 179532, May 30, 2011, 649 SCRA 369, 380.

[57] G.R. No. 166006, March 14, 2008, 548 SCRA 485, 516-517.

ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.

Considering the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

At this point, the Court takes the initiative to clarify that it is not in a position to determine as to who should remain as the sole representative of Congress in the JBC. This is a matter beyond the province of the Court and is best left to the determination of Congress.

Finally, while the Court finds wisdom in respondents' contention that both the Senate and the House of Representatives should be equally represented in the JBC, the Court is not in a position to stamp its *imprimatur* on such a construction at the risk of expanding the meaning of the Constitution as currently worded. Needless to state, the remedy lies in the amendment of this constitutional provision. The courts merely give effect to the lawgiver's intent. The solemn power and duty of the Court to interpret and apply the law does not include the power to correct, by reading into the law what is not written therein.

WHEREFORE, the petition is **GRANTED.** The current numerical composition of the Judicial and Bar Council is declared **UNCONSTITUTIONAL.** The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.

This disposition is immediately executory.

SO ORDERED.

Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Abad, J., see dissenting opinion.

Del Castillo, J., joins the dissent of *J*. Abad.

Carpio, J., no part. He is a nominee to the *CJ* position.

Velasco, Jr., J., no part. He is being considered for nomination by the JBC.

Leonardo-de Castro, J., no part. She is one of the incumbent Justices being considered by the JBC for nomination to *CJ* position.

Sereno, J., no part — a nominee for *CJ*.

Brion, J., no part, on leave.

DISSENTING OPINION

ABAD, *J*.:

Some of my colleagues who have been nominated to the position of Chief Justice like me have inhibited themselves from this case at the outset. I respect their judgments. I, on the other hand, chose not to inhibit myself from the case since I have found no compelling reason for doing so.

I take no issue with the majority of the Court on the threshold question of whether or not the requisite conditions for the exercise of its power of judicial review have been met in this case. I am satisfied that those conditions are present.

It is the main question that concerns me: whether or not each of the Senate and the House of Representatives is entitled to one representative in the Judicial and Bar Council (JBC), both with the right to vote independently like its other members.

The problem has arisen because currently one representative each from the Senate and the House of Representatives take part as members of the JBC with each casting one vote in its deliberations. Petitioner Francisco I. Chavez challenges this

arrangement, however, citing Section 8(1) of Article VIII of the 1987 Constitution which literally gives Congress just one representative in the JBC. Thus:

"Article VIII, Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and **a representative of the Congress** as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector."[1] (Emphasis ours)

The majority heavily relies on the wordings of Section 8(1) above. According to them, the framers of the 1987 Constitution used plain, unambiguous, and certain terms in crafting that section and, therefore, it calls for no further interpretation. The provision uses the indefinite article "a" signifying "one" before the word "representative" which in itself is in singular form. Consequently, says the majority, Congress should have but just one representative in the JBC. Section 8(1) uses the term "Congress" in its generic sense, without any special and specific mention of the two houses that compose it, namely the Senate and the House of Representatives.

The majority also invokes the doctrine of *noscitur a sociis* which states that a proper interpretation may be had by considering the words that accompany the term or phrase in question.[2] By looking at the enumeration in Section 8(1) of who the JBC members are, one can readily discern that every category of membership in that body refers just to a single individual.

There are three well-settled principles of constitutional construction: first, *verba legis*, that is, wherever possible, the words used in the Constitution should be given their ordinary meaning except where technical terms are employed; second, where there is ambiguity, *ratio legis est anima*, meaning that the words of the Constitution should be interpreted in accordance

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[1] The 1987 Constitution of the Republic of the Philippines.

[2] *Government Service Insurance System v. Commission on Audit*, G.R. No. 162372, October 19, 2011.

with the intent of its framers; and third, *ut magis valeat quam pereat,* meaning that the Constitution is to be interpreted as a whole.[3]

There is no question that when the Constitutional Commission (ConCom) deliberated on the provisions regarding the composition of the JBC, the members of the commission thought, as the original draft of those provisions indicates, that the country would have a unicameral legislative body, like a parliament. For this reason, they allocated the three "*ex officio*" membership in the council to the Chief Justice, the Secretary of Justice, and a representative from the National Assembly, evidently to give representation in the JBC to the three great branches of government.

Subsequently, however, the ConCom decided, after a very close vote of 23 against 22, to adopt a bicameral legislative body, with a Senate and a House of Representatives. Unfortunately, as Fr. Joaquin Bernas, a member of the ConCom, admits, the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of the changed character of the legislature on the inclusion of "a representative of the Congress" in the membership of the JBC.[4]

Still, it is a basic principle in statutory construction that the law must be given a reasonable interpretation at all times.[5] The Court may, in some instances, consider the spirit and reason of a statute, where a literal meaning would lead to absurdity, contradiction, or injustice, or would defeat the clear purpose of the law makers.[6] Applying a *verba legis* or strictly literal interpretation of the constitution may render its provisions

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[3] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003.

[4] http://opinion.inquirer.net/31813/jbc-odds-and-ends (last accessed 18 July 2012).

[5] *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002.

[6] *People v. Manantan*, G.R. No. 14129, July 31, 1962, citing Crawford, Interpretation of Laws, Sec. 78, p. 294.

meaningless and lead to inconvenience, an absurd situation, or an injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be made to the rule that the spirit of the law controls its letter.[7]

To insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that while these two houses of Congress are involved in the common task of making laws, they are separate and distinct.[8] Senators are elected by the people at large, while the Members of the House of Representatives, by their respective districts or sectors. They have detached administrative organizations and deliberate on laws separately, indeed, often coming up with dissimilar drafts of those laws. Clearly, neither the Senate nor the House of Representatives can by itself claim to represent the Congress. Those who drafted Section 8(1) did not intend to limit the term "Congress" to just either of the two Houses.

Notably, the doctrine that a proper interpretation may be had by considering the words that accompany the term or phrase in question should apply to this case. While it is true that Section 8(1) provides for just "a representative of the Congress," it also provides that such representation is "*ex officio*." "*Ex officio*" is a Latin term, meaning "by virtue of one's office, or position."[9] This is not too different from the idea that a man, by virtue of being a husband to his wife, is also a father to their children. So in Section 8(1), whoever occupies the designated office or position becomes an "*ex officio*" JBC member. For instance, if the President appoints Mr. X as Chief Justice, Mr. X automatically becomes the chairman of the JBC, an attached function, by virtue of his being the Chief Justice. He replaces the former Chief Justice without need for another appointment

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[7] *Navarro v. Executive Secretary*, G.R. No. 180050, February 10, 2010, dissenting opinion of *J*. Perez.

[8] *Supra* note 1, Article VI, Section 1.

[9] *Webster's New World College Dictionary*, 3rd Edition, p. 477.

or the taking of a separate oath of office. In the same way, if the President appoints Mr. Y as Secretary of Justice, Mr. Y also automatically becomes a member of the JBC, also an attached function, by virtue of his being the Secretary of Justice.

Now, under the rules of the Senate, the Chairman of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the rules of the House of Representatives, the Chairman of its Justice Committee is the House representative to the JBC. Thus, there are two persons in Congress, not just one, who hold separate offices or positions with the attached function of sitting in the JBC. Section 8(1) cannot be literally applied simply because there is no office, serving both the Senate and the House of Representatives, with the attached function of sitting as member in the JBC.

Inevitably, if the Court were to stick to the literal reading of Section 8(1), which restricts JBC representation to just one person holding office in Congress and working under both houses, no one will qualify as "*ex officio*" member of JBC. No such individual exists. Congress would consequently be denied the representation that those who drafted the Constitution intended it to have.

Allowing a Senator and a Congressman to sit alternately at any one time cannot be a solution since each of them would actually be representing only his half of Congress when he takes part in JBC deliberations. Allowing both, on the other hand, to sit in those deliberations at the same time with half a vote each is absurd since that would diminish their standing and make them second class members of JBC, something that the Constitution clearly does not contemplate. It is presumed when drafting laws that the legislature does not intend to produce undesirable consequences. Thus, when a literal translation would result to such consequences, the same is to be utterly rejected.[10]

Indeed, the JBC abandoned the half-a-vote practice on January 12, 2000 and recognized the right of the Senator and

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[10] *Supra* note 5.

the Congressman attending their deliberations to cast one vote each. Only by recognizing this right can the true spirit and intent of Section 8(1) be attained.

With respect to the seven-man membership of the JBC, the majority assumes that by providing for an odd-numbered composition those who drafted the Constitution sought to prevent the possibility of a stalemate in voting and that, consequently, an eight-man membership is out of the question. But a tie vote does not pose a problem. The JBC's main function is to choose at least three nominees for each judicial position from which the President will select the one he would want to appoint. Any tie in the voting is immaterial since this is not a yes or no proposition. Very often, those in the shortlist submitted to the President get even votes. On the other hand, when a yes or no proposition is voted upon and there is a tie, it merely means that the proposition is lost for failure to get the plurality of votes.

The majority points out that the framers of the 1987 Constitution created the JBC as a response to a public clamor for removing partisan politics from the selection process for judges and justices of the courts. It thus results that the private sector and the three branches of government have been given active roles and equal voices in their selection. The majority contends that, if it were to allow two representatives from the Congress in the JBC, the balance of power within that body will tilt in favor of Congress.

But, it is not partisan politics *per se* that Section 8(1) intends to remove from the appointment process in the judiciary, but partisan domination of the same. Indeed, politicians have distinct roles in that process. For instance, it is the President, a politician, who appoints the six regular members of the JBC. And these appointees have to be confirmed by the Commission on Appointment, composed of politicians. What is more, although it is the JBC that screens candidates for positions in the judiciary, it is the President who eventually appoints them.

Further, if the idea was to absolutely eliminate politics from the JBC selection process, the framers of the Constitution could

simply have barred all politicians from it. But the Constitution as enacted allows the Secretary of Justice, an alter-ego of the President, as well as representatives from the Congress to sit as members of JBC. Evidently, the Constitution wants certain representatives of the people to have a hand in the selection of the members of the judiciary.

The majority also holds the view that allowing two members of the Congress to sit in the JBC would undermine the Constitution's intent to maintain the balance of power in that body and give the legislature greater and unwarranted influence in the appointment of members of the Judiciary. But this fear is unwarranted. The lawmakers hold only two positions in that eight-man body. This will not give them greater power than the other six members have. Besides, historically, the representatives from the Senate and the lower house have frequently disagreed in their votes. Their outlooks differ.

Actually, if the Court would go by numbers, it is the President who appoints six of the members of the JBC (the Chief Justice, the Secretary of Justice, and the four regular members), thus establishing an edge in favor of presidential appointees. Placing one representative each from the Senate and the House of Representatives rather than just one congressional representative somewhat blunts that edge. As the OSG correctly points out, the current practice contributes two elective officials in the JBC whose membership is totally independent from the Office of the President.

Lastly, the presence of an elected Senator and an elected member of the House of Representatives in the JBC is more consistent with the republican nature of our government where all government authority emanates from the people and is exercised by representatives chosen by them.

For the above reasons, I vote to **DISMISS** the petition.

SECOND DIVISION

[A.M. No. MTJ-10-1770. July 18, 2012]
(Formerly A.M. OCA IPI No. 10-2255-MTJ)

OFFICE OF ADMINISTRATIVE SERVICES-OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE IGNACIO B. MACARINE, Municipal Circuit Trial Court, Gen. Luna, Surigao del Norte,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES AND COURT PERSONNEL; OCA CIRCULAR NO. 49-2003; DOES NOT RESTRICT THE RIGHT TO TRAVEL BUT MERELY REGULATES BY PROVIDING GUIDELINES TO BE COMPLIED BY JUDGES AND COURT PERSONNEL BEFORE THEY COULD GO ON LEAVE TO TRAVEL ABROAD.—** True, the right to travel is guaranteed by the Constitution. However, the exercise of such right is not absolute. Section 6, Article III of the 1987 Constitution allows restrictions on one's right to travel provided that such restriction is in the interest of national security, public safety or public health as may be provided by law. This, however, should by no means be construed as limiting the Court's inherent power of administrative supervision over lower courts. OCA Circular No. 49-2003 does not restrict but merely regulates, by providing guidelines to be complied by judges and court personnel, before they can go on leave to travel abroad. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule.

2. **ID.; ID.; ID.; ID.; THE CIRCULAR WILL ENSURE MANAGEMENT OF COURT DOCKETS AND TO AVOID DISRUPTION OF IN THE ADMINISTRATION OF JUSTICE; REQUIREMENTS.—** To ensure management of court dockets and to avoid disruption in the administration of justice, OCA Circular No. 49-2003 requires a judge who wishes to travel abroad to submit, together with his application for leave of absence duly recommended for approval by his Executive

Judge, a certification from the Statistics Division, Court Management Office of the OCA, as to the condition of his docket, based on his Certificate of Service for the month immediately preceding the date of his intended travel, that he has decided and resolved all cases or incidents within three (3) months from date of submission, pursuant to Section 15(1) and (2), Article VIII of the 1987 Constitution.

3. **ID.; ID.; ID.; ID.; PENALTY FOR VIOLATION THEREOF.—** For traveling abroad without having been officially allowed by the Court, the respondent is guilty of violation of OCA Circular No. 49-2003. Under Section 9(4), Rule 140 of the Revised Rules of Court, violation of Supreme Court directives and circular is considered a less serious charge and, therefore, punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

4. **ID.; ID.; ID.; ID.; THE COURT CONSIDERED MITIGATING CIRCUMSTANCES IN CASE AT BAR IN IMPOSING THE APPROPRIATE PENALTY.—** Section 53, Rule IV of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The Court had in several instances refrained from imposing the actual penalties in the presence of mitigating facts, such as the employee's length of service, acknowledgement of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations. In the present case, the respondent, after learning that his daughter had already booked him and his family in a hotel in Hongkong, immediately went to Manila to secure his travel authority from the Court. However, with the short period of time from their arrival in Manila on September 9, 2009 up to the time of their booking in Hongkong from September 13 to 15, 2009, he was pressed for time and opted not to complete the required travel authority, with the intention of securing one after his travel. The respondent regretted his failure to comply with the requirements of OCA Circular No. 49-2003. He acknowledged his mistake and promised not to commit the same infraction in the future. We consider the outlined

circumstances as mitigating. Following judicial precedents, the respondent deserves some degree of leniency in imposing upon him the appropriate penalty.

SERENO, *J.*, *dissenting and concurring opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES AND COURT PERSONNEL; OCA CIRCULAR NO. 49-2003; REQUIRING JUDGES AND COURT PERSONNEL PRIOR SUBMISSION OF REQUEST FOR TRAVEL AUTHORITY IMPAIRS TEIR RIGHT TO TRAVEL, A CONSTITUTIONAL RIGHT THAT CANNOT BE UNDULY CURTAILED.— Requiring judges and court personnel prior submission of a request for travel authority impairs their right to travel, a constitutional right that cannot be unduly curtailed. During the approved leave of absence of a judge or court personnel, he or she should be accorded the liberty to travel within the country or abroad, as any other citizen, without this Court imposing a requirement to secure prior permission therefor. Moreover, the Court cannot inquire into the purpose of the intended travel of a judge or court personnel, as doing so would be an unwarranted interference into his or her private affairs. Thus, Judge Macarine should not be held administratively liable for his failure to secure a permit to travel prior to his intended departure, as such action would amount to an unjustified restriction to his constitutional right to travel. However, on account of his failure to file (a) an application for leave and (b) a report on his caseload prior to his travel abroad, I agree that he should be admonished.

D E C I S I O N

BRION, *J.*:

The Office of the Court Administrator (*OCA*) filed the present administrative case against Judge Ignacio B. Macarine

(respondent) for violation of OCA Circular No. 49-2003[1] dated May 20, 2003.

OCA Circular No. 49-2003 requires that all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Court. A travel authority must be secured from the OCA. Judges must submit the following requirements:

[1.] application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad[;]

[2.] application for leave covering the period of the travel abroad, favorably recommended by the Executive Judge[; and]

[3.] certification from the Statistics Division, Court Management Office, OCA as to the condition of the docket[.][2]

The complete requirements should be submitted to and received by the OCA at least two weeks before the intended time of travel. No action shall be taken on requests for travel authority with incomplete requirements.[3] Judges and personnel who shall leave the country without travel authority issued by [the OCA] shall be subject to disciplinary action.[4]

On August 13, 2009, the respondent wrote then Court Administrator, now Associate Justice Jose Portugal Perez, requesting for authority to travel to Hongkong with his family for the period of September 10 - 14, 2009 where he would celebrate his 65th birthday. The respondent stated that his travel abroad shall be charged to his annual forced leave. However, he did not submit the corresponding application for leave. For his failure to submit the complete requirements, his request for authority to travel remained unacted upon. The respondent proceeded with

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[1] Guidelines on Requests for Travel Abroad and Extensions for Travel/ Stay Abroad.

[2] *Id.*, paragraph B1.

[3] *Id.,* paragraph B2.

[4] *Id.,* paragraph B4.

his travel abroad without the required travel authority from the OCA.

On January 28, 2010,[5] the respondent was informed by the OCA that his leave of absence for the period of September 9-15, 2009 had been disapproved and his travel considered unauthorized by the Court. His absences shall not be deducted from his leave credits but from his salary corresponding to the seven (7) days that he was absent, pursuant to Section 50 of the Omnibus Rules on Leave.[6] The respondent was also required to submit his explanation on his failure to comply with OCA Circular No. 49-2003.

In his letter-explanation dated February 25, 2010, the respondent narrated that his daughter, a nurse working in New Jersey, USA, gave him a trip to Hongkong as a gift for his 65th birthday. In the first week of September 2009, he received a call from his daughter that she had already booked him, together with his wife and two sons, in a hotel in Hongkong from September 13 to 15, 2009. They flew in to Manila from Surigao City on September 9, 2009, intending to prepare the necessary papers for his authority to travel at the Supreme Court the following day. However, sensing time constraint and thinking of the futility of completing the requirements before their scheduled flight, he opted not to immediately complete the requirements and simply went ahead with their travel abroad. He thought of submitting his compliance upon his return to Manila. He acknowledged his mistake and regretted his failure to comply with OCA Circular No. 49-2003. He promised not to commit the same infraction again. He further requested for reconsideration of the OCA's intended action to deduct his salary corresponding to the seven (7) days that he was absent, instead of charging his absences to his leave credits.

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[5] Letter of Court Administrator Jose Midas P. Marquez.

[6] *Effect of unauthorized leave*. - An official/employee who is absent without approved leave shall not be entitled to receive his salary corresponding to the period of his unauthorized leave of absence. It is understood however, that his absence shall no longer be deducted from his accumulated leave credits, if there are any.

In an Evaluation Report dated September 6, 2010, the OCA found the respondent guilty of violation of OCA Circular No. 49-2003 for traveling out of the country without filing the necessary application for leave and without first securing a travel authority from the Court. The OCA recommended:

> a) this matter be **RE-DOCKETED** as a regular administrative matter;
>
> b) Judge Ignacio B. Macarine, MCTC, Gen. Luna, Surigao del Norte, be **FINED** in the amount of ₱5,000.00 for Violation for Circular No. 49-2003 dated May 20, 2003; and
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> c) the Financial Management Office, Finance Division, OCA, be **DIRECTED** to **DEDUCT** the amount equivalent to the seven (7) days salary of Judge Ignacio Macarine as a result of his disapproved and unauthorized leave of absence pursuant to Section 50, Omnibus Rules on Leave, without deducting his leave credits thereof. [emphases supplied]

True, the right to travel is guaranteed by the Constitution. However, the exercise of such right is not absolute. Section 6, Article III of the 1987 Constitution allows restrictions on one's right to travel provided that such restriction is in the interest of national security, public safety or public health as may be provided by law. This, however, should by no means be construed as limiting the Court's inherent power of administrative supervision over lower courts. OCA Circular No. 49-2003 does not restrict but merely regulates, by providing guidelines to be complied by judges and court personnel, before they can go on leave to travel abroad. To "restrict" is to restrain or prohibit a person from doing something; to "regulate" is to govern or direct according to rule.

To ensure management of court dockets and to avoid disruption in the administration of justice, OCA Circular No. 49-2003 requires a judge who wishes to travel abroad to submit, together with his application for leave of absence duly recommended for approval by his Executive Judge, a certification from the Statistics Division, Court Management Office of the OCA, as

to the condition of his docket, based on his Certificate of Service for the month immediately preceding the date of his intended travel, that he has decided and resolved all cases or incidents within three (3) months from date of submission, pursuant to Section 15(1) and (2), Article VIII of the 1987 Constitution.[7]

For traveling abroad without having been officially allowed by the Court, the respondent is guilty of violation of OCA Circular No. 49-2003. Under Section 9(4), Rule 140 of the Revised Rules of Court, violation of Supreme Court directives and circular is considered a less serious charge and, therefore, punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[8]

Section 53, Rule IV of the Revised Rules on Administrative Cases in the Civil Service grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. The Court had in several instances refrained from imposing the actual penalties in the presence of mitigating facts, such as the employee's length of service, acknowledgement of his or her infractions and feelings of remorse for the same, advanced age, family circumstances, and other humanitarian and equitable considerations.

In the present case, the respondent, after learning that his daughter had already booked him and his family in a hotel in Hongkong, immediately went to Manila to secure his travel authority from the Court. However, with the short period of time from their arrival in Manila on September 9, 2009 up to

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[7] Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

[8] Section 11(B1 & 2), Revised Rules of Court.

the time of their booking in Hongkong from September 13 to 15, 2009, he was pressed for time and opted not to complete the required travel authority, with the intention of securing one after his travel. The respondent regretted his failure to comply with the requirements of OCA Circular No. 49-2003. He acknowledged his mistake and promised not to commit the same infraction in the future.

We consider the outlined circumstances as mitigating. Following judicial precedents, the respondent deserves some degree of leniency in imposing upon him the appropriate penalty.

WHEREFORE, respondent Judge Ignacio B. Macarine, Municipal Circuit Trial Court, Gen. Luna, Surigao del Norte, is hereby given the **ADMONITION** that he acted irresponsibly when he opted not to immediately secure a travel authority and is saved only from the full force that his violation carries by the attendant mitigating circumstances. He is also **WARNED** that the commission of a similar violation in the future will merit a more severe penalty. The recommendation of the Office of the Court Administration that his absences, which were unauthorized, shall not be deducted from his leave credits but from his salary is hereby **APPROVED.**

SO ORDERED.

Abad,[*] and *Reyes, JJ.,* concur.

Carpio (Senior Associates Justice, Chairperson), joins the concurring & dissenting opinion of *J*. Sereno.

Sereno, J., see concurring & dissenting opinion.

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[*] Justice Roberto A. Abad was designated as additional member in lieu of Justice Jose P. Perez per Raffle dated July 16, 2012.

DISSENTING AND CONCURRING OPINION

SERENO, *J*.:

The *ponencia* holds respondent Judge Ignacio B. Macarine (Judge Macarine) administratively liable for violating Office of the Court Administrator (OCA) Circular No. 49-2003, which directs judges and court personnel to submit the complete requirements for foreign travel two weeks before their intended departure. I agree with the imposition of a penalty on Judge Macarine for his failure to (a) file an application for leave and (b) submit a report on the conditions of the docket pending in his *sala* prior to his travel abroad. However, I do not agree that he should be penalized for his failure to request a travel authority from the OCA.

The policy of the Court requiring judges and court personnel to secure a travel authority must be re-examined. As stated in the Dissenting Opinion of Senior Associate Justice Antonio T. Carpio, the Guidelines on Request for Travel Abroad of all Members and Personnel of the Appellate Courts and Trial Courts, and Officials and Personnel of the Supreme Court and the Office of the Court Administrator[1] call for a "wholistic review of the guidelines for travels abroad of all members and personnel of the Judiciary."

Requiring judges and court personnel prior submission of a request for travel authority impairs their right to travel, a constitutional right that cannot be unduly curtailed. During the approved leave of absence of a judge or court personnel, he or she should be accorded the liberty to travel within the country or abroad, as any other citizen, without this Court imposing a requirement to secure prior permission therefor.[2] Moreover, the Court cannot inquire into the purpose of the intended travel

[1] A.M. No. 12-6-13-SC, 13 June 2012.

[2] See Dissenting Opinion of Senior Associate Justice Antonio T. Carpio in *Leave Division, Office of Administrative Services-OCA v. Heusdens*, A.M. No. P-11-2927, 13 December 2011.

of a judge or court personnel, as doing so would be an unwarranted interference into his or her private affairs.[3]

Thus, Judge Macarine should not be held administratively liable for his failure to secure a permit to travel prior to his intended departure, as such action would amount to an unjustified restriction to his constitutional right to travel. However, on account of his failure to file (a) an application for leave and (b) a report on his caseload prior to his travel abroad, I agree that he should be admonished.

FIRST DIVISION

[G.R. No. 153511. July 18, 2012.]

LEGEND HOTEL (MANILA), owned by TITANIUM CORPORATION, and/or, NELSON NAPUD, in his capacity as the President of Petitioner Corporation, *petitioner, vs.* **HERNANI S. REALUYO, also known as JOEY ROA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER RECOURSE IN CASE AT BAR.—** Petitioner contends that respondent's petition for *certiorari* was improper as a remedy against the NLRC due to its raising mainly questions of fact and because it did not demonstrate that the NLRC was guilty of grave abuse of discretion. The contention is unwarranted. There is no longer any doubt that a petition for *certiorari* brought to assail the decision of the NLRC may

[3] *Id.*

raise factual issues, and the CA may then review the decision of the NLRC and pass upon such factual issues in the process. The power of the CA to review factual issues in the exercise of its original jurisdiction to issue writs of *certiorari* is based on Section 9 of *Batas Pambansa Blg.* 129, which pertinently provides that the CA "*shall have the power to try cases and* pertinently provides that the CA "*shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings*."

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ANY COMPETENT AND RELEVANT EVIDENCE TO PROVE THE RELATIONSHIP MAYBE ADMITTED; A FINDING THAT THE RELATIONSHIP EXISTS MUST NONETHELESS REST ON SUBSTANTIAL EVIDENCE, WHICH IS THE AMOUNT OR RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.—** The issue of whether or not an employer-employee relationship existed between petitioner and respondent is essentially a question of fact. The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.

3. **ID.; ID.; ID.; EMPLOYER'S POWER OF SELECTION WAS ADEQUATELY ESTABLISHED.—** A review of the circumstances reveals that respondent was, indeed, petitioner's employee. He was undeniably employed as a pianist in petitioner's Madison Coffee Shop/Tanglaw Restaurant from September 1992 until his services were terminated on July 9,

1999. First of all, petitioner actually wielded the power of selection at the time it entered into the service contract dated September 1, 1992 with respondent. This is true, notwithstanding petitioner's insistence that respondent had only offered his services to provide live music at petitioner's Tanglaw Restaurant, and despite petitioner's position that what had really transpired was a negotiation of his rate and time of availability. The power of selection was firmly evidenced by, among others, the express written recommendation dated January 12, 1998 by Christine Velazco, petitioner's restaurant manager, for the increase of his remuneration.

4. **ID.; ID.; ID.; PETITIONER EMPLOYER COULD NOT SEEK REFUGE BEHIND THE SERVICE CONTRACT ENTERED INTO WITH RESPONDENT; IT IS THE LAW THAT DEFINES AND GOVERNS AN EMPLOYMENT RELATIONSHIP.—** Petitioner could not seek refuge behind the service contract entered into with respondent. It is the law that defines and governs an employment relationship, whose terms are not restricted to those fixed in the written contract, for other factors, like the nature of the work the employee has been called upon to perform, are also considered. The law affords protection to an employee, and does not countenance any attempt to subvert its spirit and intent. Any stipulation in writing can be ignored when the employer utilizes the stipulation to deprive the employee of his security of tenure. The inequality that characterizes employer-employee relations generally tips the scales in favor of the employer, such that the employee is often scarcely provided real and better options.

5. **ID.; ID.; ID.; EMPLOYER'S POWER OF CONTROL; PETITIONER'S CONTROL OF BOTH THE END ACHIEVED AND THE MANNER AND MEANS USED TO ACHIEVE THAT END IS EVIDENT IN CASE AT BAR.—** The power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test, and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end. x x x A review of the records shows, however, that respondent performed his work as a pianist under petitioner's

supervision and control. Specifically, petitioner's control of both the end achieved and the manner and means used to achieve that end was demonstrated by the following, to wit: *a*. He could not choose the time of his performance, which petitioners had fixed from 7:00 pm to 10:00 pm, three to six times a week; *b*. He could not choose the place of his performance; *c*. The restaurant's manager required him at certain times to perform only Tagalog songs or music, or to wear *barong* Tagalog to conform to the Filipiniana motif; and *d*. He was subjected to the rules on employees' representation check and chits, a privilege granted to other employees. Relevantly, it is worth remembering that the employer need not actually supervise the performance of duties by the employee, for it sufficed that the employer has the right to wield that power.

6. **ID.; ID.; WAGES; RESPONDENT'S REMUNERATION, EVEN THOUGH DENOMINATED AS TALENT FEES, IS STILL CONSIDERED AS INCLUDED IN THE TERM WAGE IN THE SENSE AND CONTEXT OF THE LABOR CODE, REGARDLESS OF HOW PETITIONER CHOSE TO DESIGNATE THE REMUNERATION.—** Respondent was paid ₱400.00 per three hours of performance from 7:00 pm to 10:00 pm, three to six nights a week. Such rate of remuneration was later increased to ₱750.00 upon restaurant manager Velazco's recommendation. There is no denying that the remuneration denominated as talent fees was fixed on the basis of his talent and skill and the quality of the music he played during the hours of performance each night, taking into account the prevailing rate for similar talents in the entertainment industry. Respondent's remuneration, albeit denominated as talent fees, was still considered as included in the term *wage* in the sense and context of the *Labor Code*, regardless of how petitioner chose to designate the remuneration. Anent this, Article 97(*f*) of the *Labor Code*. x x x Clearly, respondent received compensation for the services he rendered as a pianist in petitioner's hotel. Petitioner cannot use the service contract to rid itself of the consequences of its employment of respondent. There is no denying that whatever amounts he received for his performance, howsoever designated by petitioner, were his wages.

7. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT; AUTHORIZES CAUSES; STANDARDS THAT AN EMPLOYER SHOULD MEET TO JUSTIFY RETRENCHMENT; NOT ESTABLISHED IN CASE AT BAR.— Retrenchment is one of the authorized causes for the dismissal of employees recognized by the *Labor Code*. It is a management prerogative resorted to by employers to avoid or to minimize business losses. x x x The Court has laid down the following standards that an employer should meet to justify retrenchment and to foil abuse, namely: (*a*) The expected losses should be substantial and not merely *de minimis* in extent; (*b*) The substantial losses apprehended must be reasonably imminent; (*c*) The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and (*d*) The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled must be proved by sufficient and convincing evidence. Anent the last standard of sufficient and convincing evidence, it ought to be pointed out that a less exacting standard of proof would render too easy the abuse of retrenchment as a ground for termination of services of employees. Was the retrenchment of respondent valid? In termination cases, the burden of proving that the dismissal was for a valid or authorized cause rests upon the employer. Here, petitioner did not submit evidence of the losses to its business operations and the economic havoc it would thereby imminently sustain. It only claimed that respondent's termination was due to its "present business/financial condition." This bare statement fell short of the norm to show a valid retrenchment. Hence, we hold that there was no valid cause for the retrenchment of respondent. Indeed, not every loss incurred or expected to be incurred by an employer can justify retrenchment. The employer must prove, among others, that the losses are substantial and that the retrenchment is reasonably necessary to avert such losses. Thus, by its failure to present sufficient and convincing evidence to prove that retrenchment was necessary, respondent's termination due to retrenchment is not allowed.

8. ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; RESPONDENT IS ENTITLED TO SEPARATION PAY IN LIEU OF REINSTATEMENT AND FULL BACKWAGES FROM THE TIME HIS

COMPENSATION WAS WITHHELD UNTIL THE FINALITY OF THE DECISION.— The Court realizes that the lapse of time since the retrenchment might have rendered respondent's reinstatement to his former job no longer feasible. If that should be true, then petitioner should instead pay to him separation pay at the rate of one month pay for every year of service computed from September 1992 (when he commenced to work for the petitioners) until the finality of this decision, and full backwages from the time his compensation was withheld until the finality of this decision.

APPEARANCES OF COUNSEL

R. Lambino & Partners Law Firm for petitioner.

Y.F. Bustamante & Associates Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This labor case for illegal dismissal involves a pianist employed to perform in the restaurant of a hotel.

On August 9, 1999, respondent, whose stage name was Joey R. Roa, filed a complaint for alleged unfair labor practice, constructive illegal dismissal, and the underpayment/nonpayment of his premium pay for holidays, separation pay, service incentive leave pay, and 13th month pay. He prayed for attorney's fees, moral damages of ₱100,000.00 and exemplary damages for ₱100,000.00.[1]

Respondent averred that he had worked as a pianist at the Legend Hotel's Tanglaw Restaurant from September 1992 with an initial rate of ₱400.00/night that was given to him after each night's performance; that his rate had increased to ₱750.00/night; and that during his employment, he could not choose the time of performance, which had been fixed from 7:00 pm to 10:00 pm for three to six times/week. He added that the Legend

[1] *Rollo,* p. 45.

Hotel's restaurant manager had required him to conform with the venue's motif; that he had been subjected to the rules on employees' representation checks and chits, a privilege granted to other employees; that on July 9, 1999, the management had notified him that as a cost-cutting measure his services as a pianist would no longer be required effective July 30, 1999; that he disputed the excuse, insisting that Legend Hotel had been lucratively operating as of the filing of his complaint; and that the loss of his employment made him bring his complaint.[2]

In its defense, petitioner denied the existence of an employer-employee relationship with respondent, insisting that he had been only a talent engaged to provide live music at Legend Hotel's Madison Coffee Shop for three hours/day on two days each week; and stated that the economic crisis that had hit the country constrained management to dispense with his services.

On December 29, 1999, the Labor Arbiter (LA) dismissed the complaint for lack of merit upon finding that the parties had no employer-employee relationship.[3] The LA explained thusly:

xxx xxx xxx

On the pivotal issue of whether or not there existed an employer-employee relationship between the parties, our finding is in the negative. The finding finds support in the service contract dated September 1, 1992 xxx.

xxx xxx xxx

Even if we grant the initial non-existence of the service contract, as complainant suggests in his reply (third paragraph, page 4), the picture would not change because of the admission by complainant in his letter dated October 8, 1996 (Annex "C") that what he was receiving was talent fee and not salary.

This is reinforced by the undisputed fact that complainant received his talent fee nightly, unlike the regular employees of the hotel who are paid by monthly xxx.

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

[3] *Id.* at 53-58.

xxx xxx xxx

And thus, absent the power to control with respect to the means and methods by which his work was to be accomplished, there is no employer-employee relationship between the parties xxx.

xxx xxx xxx

WHEREFORE, this case must be, as it is hereby, DISMISSED for lack of merit.

SO ORDERED.[4]

Respondent appealed, but the National Labor Relations Commission (NLRC) affirmed the LA on May 31, 2001.[5]

Respondent assailed the decision of the NLRC in the Court of Appeals (CA) on *certiorari*.

On February 11, 2002, the CA set aside the decision of the NLRC,[6] holding:

xxx xxx xxx

Applying the above-enumerated elements of the employee-employer relationship in this case, the question to be asked is, are those elements present in this case?

The answer to this question is in the affirmative.

xxx xxx xxx

Well settled is the rule that of the four (4) elements of employer-employee relationship, it is the power of control that is more decisive.

In this regard, public respondent failed to take into consideration that in petitioner's line of work, he was supervised and controlled by respondent's restaurant manager who at certain times would require him to perform only tagalog songs or music, or wear barong tagalog to conform with Filipiniana motif of the place and the time of his

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[4] *Id.* at 55-58.

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

[6] *Id.* at 67-77; penned by Associate Justice Mercedes Gozo-Dadole (retired), with Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Juan Q. Enriquez, Jr. (retired), concurring.

performance is fixed by the respondents from 7:00 pm to 10:00 pm, three to six times a week. Petitioner could not choose the time of his performance. xxx.

As to the status of petitioner, he is considered a regular employee of private respondents since the job of the petitioner was in furtherance of the restaurant business of respondent hotel. Granting that petitioner was initially a contractual employee, by the sheer length of service he had rendered for private respondents, he had been converted into a regular employee xxx.

xxx xxx xxx

xxx In other words, the dismissal was due to retrenchment in order to avoid or minimize business losses, which is recognized by law under Article 283 of the Labor Code, xxx.

xxx xxx xxx

WHEREFORE, foregoing premises considered, this petition is GRANTED. xxx.[7]

Issues

In this appeal, petitioner contends that the CA erred:

I. XXX WHEN IT RULED THAT THERE IS THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER HOTEL AND RESPONDENT ROA.

II. XXX IN FINDING THAT ROA IS A REGULAR EMPLOYEE AND THAT THE TERMINATION OF HIS SERVICES WAS ILLEGAL. THE CA LIKEWISE ERRED WHEN IT DECLARED THE REINSTATEMENT OF ROA TO HIS FORMER POSITION OR BE GIVEN A SEPARATION PAY EQUIVALENT TO ONE MONTH FOR EVERY YEAR OF SERVICE FROM SEPTEMBER 1999 UNTIL JULY 30, 1999 CONSIDERING THE ABSENCE OF AN EMPLOYMENT RELATIONSHIP BETWEEN THE PARTIES.

III. XXX WHEN IT DECLARED THAT ROA IS ENTITLED TO BACKWAGES, SERVICE INCENTIVE LEAVE AND

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[7] *Id.* at 71-76.

OTHER BENEFITS CONSIDERING THAT THERE IS NO EMPLOYER EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES.

IV. XXX WHEN IT NULLIFIED THE DECISION DATED MAY 31, 2001 IN NLRC NCR CA NO. 023404-2000 OF THE NLRC AS WELL AS ITS RESOLUTION DATED JUNE 29, 2001 IN FAVOR OF HEREIN PETITIONER HOTEL WHEN HEREIN RESPONDENT ROA FAILED TO SHOW PROOF THAT THE NLRC AND THE LABOR ARBITER HAVE COMMITTED GRAVE ABUSE OF DISCRETION OR LACK OF JURISDICTION IN THEIR RESPECTIVE DECISIONS.

V. XXX WHEN IT OVERLOOKED THE FACT THAT THE PETITION WHICH ROA FILED IS IMPROPER SINCE IT RAISED QUESTIONS OF FACT.

VI. XXX WHEN IT GAVE DUE COURSE TO THE PETITION FILED BY ROA WHEN IT IS CLEARLY IMPROPER AND SHOULD HAVE BEEN DISMISSED OUTRIGHT CONSIDERING THAT A PETITION FOR *CERTIORARI* UNDER RULE 65 IS LIMITED ONLY TO QUESTIONS OR ISSUES OF GRAVE ABUSE OF DISCRETION OR LACK OF JURISDICTION COMMITTED BY THE NLRC OR THE LABOR ARBITER, WHICH ISSUES ARE NOT PRESENT IN THE CASE AT BAR.

The assigned errors are divided into the procedural issue of whether or not the petition for *certiorari* filed in the CA was the proper recourse; and into two substantive issues, namely: (*a*) whether or not respondent was an employee of petitioner; and (*b*) if respondent was petitioner's employee, whether he was validly terminated.

Ruling

The appeal fails.

Procedural Issue:
***Certiorari* was a proper recourse**

Petitioner contends that respondent's petition for *certiorari* was improper as a remedy against the NLRC due to its raising

mainly questions of fact and because it did not demonstrate that the NLRC was guilty of grave abuse of discretion.

The contention is unwarranted. There is no longer any doubt that a petition for *certiorari* brought to assail the decision of the NLRC may raise factual issues, and the CA may then review the decision of the NLRC and pass upon such factual issues in the process.[8] The power of the CA to review factual issues in the exercise of its original jurisdiction to issue writs of *certiorari* is based on Section 9 of *Batas Pambansa Blg.* 129, which pertinently provides that the CA "*shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings*."

Substantive Issue No. 1:
Employer-employee relationship
existed between the parties

We next ascertain if the CA correctly found that an employer-employee relationship existed between the parties.

The issue of whether or not an employer-employee relationship existed between petitioner and respondent is essentially a question of fact.[9] The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished.[10] Although no particular form of evidence is required to prove the existence of the relationship,

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[8] *Leonardo v. Court of Appeals,* G.R. No. 152459, June 15, 2006, 490 SCRA 691, 697; *St. Martin Funeral Homes v. NLRC*, G.R. No. 130866, September 16, 1998, 295 SCRA 494, 502.

[9] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64; *Manila Water Company, Inc. v. Peña*, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58.

[10] *Leonardo v. Court of Appeals, supra*, note 8, p. 700.

and any competent and relevant evidence to prove the relationship may be admitted,[11] a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[12]

Generally, the Court does not review factual questions, primarily because the Court is not a trier of facts. However, where, like here, there is a conflict between the factual findings of the Labor Arbiter and the NLRC, on the one hand, and those of the CA, on the other hand, it becomes proper for the Court, in the exercise of its equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.[13]

A review of the circumstances reveals that respondent was, indeed, petitioner's employee. He was undeniably employed as a pianist in petitioner's Madison Coffee Shop/Tanglaw Restaurant from September 1992 until his services were terminated on July 9, 1999.

First of all, petitioner actually wielded the power of selection at the time it entered into the service contract dated September 1, 1992 with respondent. This is true, notwithstanding petitioner's insistence that respondent had only offered his services to provide live music at petitioner's Tanglaw Restaurant, and despite petitioner's position that what had really transpired was a negotiation of his rate and time of availability. The power of selection was firmly evidenced by, among others, the express written recommendation dated January 12, 1998 by Christine

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[11] *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

[12] Section 5, Rule 133, *Rules of Court*; *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment,* G.R. No. 179652, May 8, 2009, 587 SCRA 724, 753.

[13] *Lopez v. Bodega City*, *supra*, p. 64; *Manila Water Company, Inc. v. Pena, supra*, pp. 58-59; *Tiu v. Pasaol, Sr.*, G.R. No. 139876, April 30, 2003, 402 SCRA 312, 319.

Velazco, petitioner's restaurant manager, for the increase of his remuneration.[14]

Petitioner could not seek refuge behind the service contract entered into with respondent. It is the law that defines and governs an employment relationship, whose terms are not restricted to those fixed in the written contract, for other factors, like the nature of the work the employee has been called upon to perform, are also considered. The law affords protection to an employee, and does not countenance any attempt to subvert its spirit and intent. Any stipulation in writing can be ignored when the employer utilizes the stipulation to deprive the employee of his security of tenure. The inequality that characterizes employer-employee relations generally tips the scales in favor of the employer, such that the employee is often scarcely provided real and better options.[15]

Secondly, petitioner argues that whatever remuneration was given to respondent were only his *talent fees* that were not included in the definition of *wage* under the *Labor Code*; and that such *talent fees* were but the consideration for the service contract entered into between them.

The argument is baseless.

Respondent was paid ₱400.00 per three hours of performance from 7:00 pm to 10:00 pm, three to six nights a week. Such rate of remuneration was later increased to ₱750.00 upon restaurant manager Velazco's recommendation. There is no denying that the remuneration denominated as talent fees was fixed on the basis of his talent and skill and the quality of the music he played during the hours of performance each night, taking into account the prevailing rate for similar talents in the entertainment industry.[16]

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[14] *Rollo*, p. 47.

[15] *Paguio v. National Labor Relations Commission*, G.R. No. 147816, May 9, 2003, 403 SCRA 190, 198.

[16] *Rollo*, p. 14.

Respondent's remuneration, albeit denominated as talent fees, was still considered as included in the term *wage* in the sense and context of the *Labor Code*, regardless of how petitioner chose to designate the remuneration. Anent this, Article 97(*f*) of the *Labor Code* clearly states:

> xxx *wage* paid to any employee shall mean the remuneration or earnings, **however designated**, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, **which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered,** and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee.

Clearly, respondent received compensation for the services he rendered as a pianist in petitioner's hotel. Petitioner cannot use the service contract to rid itself of the consequences of its employment of respondent. There is no denying that whatever amounts he received for his performance, howsoever designated by petitioner, were his wages.

It is notable that under the *Rules Implementing the Labor Code* and as held in *Tan v. Lagrama,*[17] every employer is required to pay his employees by means of a payroll, which should show in each case, among others, the employee's rate of pay, deductions made from such pay, and the amounts actually paid to the employee. Yet, petitioner did not present the payroll of its employees to bolster its insistence of respondent not being its employee.

That respondent worked for less than eight hours/day was of no consequence and did not detract from the CA's finding on the existence of the employer-employee relationship. In providing that the "normal hours of work of any employee shall not exceed eight (8) hours a day," Article 83 of the *Labor Code* only set

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[17] G.R. No. 151228, August 15, 2002, 387 SCRA 393.

a maximum of number of hours as "normal hours of work" but did not prohibit work of less than eight hours.

Thirdly, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship.[18] This is the so-called control test, and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.[19]

Petitioner submits that it did not exercise the power of control over respondent and cites the following to buttress its submission, namely: (*a*) respondent could beg off from his nightly performances in the restaurant for other engagements; (*b*) he had the sole prerogative to play and perform any musical arrangements that he wished; (*c*) although petitioner, through its manager, required him to play at certain times a particular music or song, the music, songs, or arrangements, including the beat or tempo, were under his discretion, control and direction; (*d*) the requirement for him to wear *barong* Tagalog to conform with the Filipiniana motif of the venue whenever he performed was by no means evidence of control; (*e*) petitioner could not require him to do any other work in the restaurant or to play the piano in any other places, areas, or establishments, whether or not owned or operated by petitioner, during the three hour period from 7:00 pm to 10:00 pm, three to six times a week; and (*f*) respondent could not be required to sing, dance or play another musical instrument.

A review of the records shows, however, that respondent performed his work as a pianist under petitioner's supervision and control. Specifically, petitioner's control of both the end achieved and the manner and means used to achieve that end was demonstrated by the following, to wit:

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[18] *Coca Cola Bottlers Phils., Inc. v. NLRC*, G.R. No. 120466, May 17, 1999, 307 SCRA 131, 139.

[19] *Leonardo v. Court of Appeals, supra,* note 8, p. 700.

a. He could not choose the time of his performance, which petitioners had fixed from 7:00 pm to 10:00 pm, three to six times a week;

b. He could not choose the place of his performance;

c. The restaurant's manager required him at certain times to perform only Tagalog songs or music, or to wear *barong* Tagalog to conform to the Filipiniana motif; and

d. He was subjected to the rules on employees' representation check and chits, a privilege granted to other employees.

Relevantly, it is worth remembering that the employer need not actually supervise the performance of duties by the employee, for it sufficed that the employer has the right to wield that power.

Lastly, petitioner claims that it had no power to dismiss respondent due to his not being even subject to its Code of Discipline, and that the power to terminate the working relationship was mutually vested in the parties, in that either party might terminate at will, with or without cause.

The claim is contrary to the records. Indeed, the memorandum informing respondent of the discontinuance of his service because of the present business or financial condition of petitioner[20] showed that the latter had the power to dismiss him from employment.[21]

Substantive Issue No. 2:
Validity of the Termination

Having established that respondent was an employee whom petitioner terminated to prevent losses, the conclusion that his termination was by reason of retrenchment due to an authorized cause under the *Labor Code* is inevitable.

Retrenchment is one of the authorized causes for the dismissal of employees recognized by the *Labor Code*. It is a management

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[20] *Rollo*, p. 46.

[21] *Television and Production Exponents, Inc. v. Servaña,* G.R. No. 167648, January 28, 2008, 542 SCRA 578, 587.

prerogative resorted to by employers to avoid or to minimize business losses. On this matter, Article 283 of the *Labor Code* states:

> Article 283. *Closure of establishment and reduction of personnel.* – **The employer may also terminate the employment of any employee** due to the installation of labor-saving devices, redundancy, **retrenchment to prevent losses** or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. xxx. **In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.**

The Court has laid down the following standards that an employer should meet to justify retrenchment and to foil abuse, namely:

> (*a*) The expected losses should be substantial and not merely *de minimis* in extent;
>
> (*b*) The substantial losses apprehended must be reasonably imminent;
>
> (*c*) The retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and
>
> (*d*) The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled must be proved by sufficient and convincing evidence.[22]

Anent the last standard of sufficient and convincing evidence, it ought to be pointed out that a less exacting standard of proof

[22] *Oriental Petroleum and Minerals Corporation v. Fuentes*, G.R. No. 151818, October 14, 2005, 473 SCRA 106, 115; *Anino v. National Labor Relations Commission,* G.R. No. 123226, May 21, 1998, 290 SCRA 489, 502.

would render too easy the abuse of retrenchment as a ground for termination of services of employees.[23]

Was the retrenchment of respondent valid?

In termination cases, the burden of proving that the dismissal was for a valid or authorized cause rests upon the employer. Here, petitioner did not submit evidence of the losses to its business operations and the economic havoc it would thereby imminently sustain. It only claimed that respondent's termination was due to its "present business/financial condition." This bare statement fell short of the norm to show a valid retrenchment. Hence, we hold that there was no valid cause for the retrenchment of respondent.

Indeed, not every loss incurred or expected to be incurred by an employer can justify retrenchment. The employer must prove, among others, that the losses are substantial and that the retrenchment is reasonably necessary to avert such losses. Thus, by its failure to present sufficient and convincing evidence to prove that retrenchment was necessary, respondent's termination due to retrenchment is not allowed.

The Court realizes that the lapse of time since the retrenchment might have rendered respondent's reinstatement to his former job no longer feasible. If that should be true, then petitioner should instead pay to him separation pay at the rate of one month pay for every year of service computed from September 1992 (when he commenced to work for the petitioners) until the finality of this decision, and full backwages from the time his compensation was withheld until the finality of this decision.

WHEREFORE, we **DENY** the petition for review on *certiorari*, and **AFFIRM** the decision of the Court of Appeals promulgated on February 11, 2002, subject to the modification that should reinstatement be no longer feasible, petitioner shall pay to respondent separation pay of one month for every year of service computed from September 1992 until the finality of

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[23] *Oriental Petroleum and Minerals Corporation v. Fuentes*, *supra*, pp. 115-116.

this decision, and full backwages from the time his compensation was withheld until the finality of this decision.

Costs of suit to be paid by the petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159746. July 18, 2012]

SPOUSES RAMON MENDIOLA and ARACELI N. MENDIOLA, *petitioners, vs.* **THE HON. COURT OF APPEALS, PILIPINAS SHELL PETROLEUM CORPORATION, and TABANGAO REALTY, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE APPEAL OF RESPONDENTS OF THE DENIAL OF THEIR MOTION FOR RECONSIDERATION IS IN ORDER IN ACCORDANCE WITH A.M. NO. 07-7-12-SC.—** The Court issued its resolution in A.M. No. 07-7-12-SC to approve certain amendments to Rules 41, 45, 58 and 65 of the *Rules of Court* effective on December 27, 2007. Among the amendments was the delisting of an order denying a motion for new trial or motion for reconsideration from the enumeration found in Section 1, Rule 41 of the 1997 *Rules of Civil Procedure* of

[*] Vice Justice Teresita J. Leonardo-De Castro, who is on wellness leave, per Special Order No. 1252 issued on July 12, 2012.

what are not appealable. The amended rule now reads: Section 1. *Subject of appeal.*— An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No appeal may be taken from: (a) An order denying a petition for relief or any similar motion seeking relief from judgment; (b) An interlocutory order; (c) An order disallowing or dismissing an appeal; (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (e) An order of execution; (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and (g) An order dismissing an action without prejudice. In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. Based on the foregoing developments, Shell and Tabangao's appeal, albeit seemingly directed only at the October 5, 1999 denial of their motion for reconsideration, was proper. Thus, we sustain the CA's denial for being in accord with the rules and pertinent precedents. We further point out that for petitioners to insist that the appeal was limited only to the assailed resolution of October 5, 1999 was objectively erroneous, because Shell and Tabangao expressly indicated in their appellant's brief that their appeal was directed at both the February 3, 1998 decision and the October 5, 1999 resolution.

2. **ID.; JUDGMENTS; *RES JUDICATA*; THE MAKATI CASE SHOULD HAVE BEEN EARLIER DISALLOWED TO PROCEED ON THE GROUND OF *LITIS PENDENTIA*, OR, ONCE THE DECISION IN THE MANILA CASE BECAME FINAL, SHOULD HAVE BEEN DISMISSED ON THE GROUND OF BEING BARRED BY *RES JUDICATA*.—** The Makati case should have been earlier disallowed to proceed on the ground of *litis pendentia*, or, once the decision in the Manila case became final, should have been dismissed on the ground of being barred by *res judicata*. In the Manila case, Ramon averred a compulsory counterclaim asserting that the extrajudicial foreclosure of the mortgage had been devoid of basis in fact and in law; and that the

foreclosure and the filing of the action had been made in bad faith, with malice, fraudulently and in gross and wanton violation of his rights. His pleading thereby showed that the cause of action he later pleaded in the Makati case - that of annulment of the foreclosure sale - was identical to the compulsory counterclaim he had set up in the Manila case.

3. **ID.; ID.; ID.; THE IDENTITY OF CAUSES OF ACTION DOES NOT MEAN ABSOLUTE IDENTITY, OTHERWISE, A PARTY MAY EASILY ESCAPE THE OPERATION OF *RES JUDICATA* BY CHANGING THE FORM OF THE ACTION OR RELIEF SOUGHT.—** The Manila RTC had jurisdiction to hear and decide on the merits Shell's complaint to recover the deficiency, and its decision rendered on May 31, 1990 on the merits already became final and executory. Hence, the first, second and third elements were present. Anent the fourth element, the Makati RTC concluded that the Manila case and the Makati case had no identity as to their causes of action, explaining that the former was a personal action involving the collection of a sum of money, but the latter was a real action affecting the validity of the foreclosure sale, stating in its order of October 5, 1999 denying Shell's motion for reconsideration. x x x The conclusion of the Makati RTC on lack of identity between the causes of action was patently unsound. The identity of causes of action does not mean absolute identity; otherwise, a party may easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain the actions, or whether there is an identity in the facts essential to the maintenance of the actions. If the same facts or evidence will sustain the actions, then they are considered identical, and a judgment in the first case is a bar to the subsequent action. Petitioners' Makati case and Shell's Manila case undeniably required the production of the same evidence. In fact, Shell's counsel faced a dilemma upon being required by the Makati RTC to present the original copies of certain documents because the documents had been made part of the records of the Manila case elevated to the CA in connection with the appeal of the Manila RTC's judgment. Also, both cases arose from the same transaction (*i.e.*, the foreclosure of

the mortgage), such that the success of Ramon in invalidating the extrajudicial foreclosure would have necessarily negated Shell's right to recover the deficiency.

4. **ID.; CIVIL PROCEDURE; PLEADINGS; COUNTERCLAIM; WHEN CONSIDERED COMPULSORY.—** A counterclaim is compulsory if: (*a*) it arises out of or is necessarily connected with the transaction or occurrence which is the subject matter of the opposing party's claim; (*b*) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (*c*) the court has jurisdiction to entertain the claim both as to its amount and nature, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount. A compulsory counterclaim that a defending party has at the time he files his answer shall be contained therein. Pursuant to Section 2, Rule 9 of the 1997 *Rules of Civil Procedure*, a compulsory counterclaim not set up shall be barred.

5. **ID.; ID.; ID.; DEFENSES AND OBJECTIONS NOT PLEADED; BY VIRTUE OF THE CONCURRENCE OF THE ELEMENTS OF *RES JUDICATA*, THE IMMEDIATE DISMISSAL OF THE MAKATI CASE WOULD HAVE BEEN AUTHORIZED UNDER SECTION 1, RULE 9 OF THE 1997 RULES OF CIVIL PROCEDURE.—** By virtue of the concurrence of the elements of *res judicata*, the immediate dismissal of the Makati case would have been authorized under Section 1, Rule 9 of the 1997 *Rules of Civil Procedure*. xxx The rule expressly mandated the Makati RTC to dismiss the case *motu proprio* once the pleadings or the evidence on record indicated the pendency of the Manila case, or, later on, disclosed that the judgment in the Manila case had meanwhile become final and executory.

6. **ID.; ID.; ID.; ID.; FOUR TESTS TO DETERMINE WHETHER A COUNTERCLAIM IS COMPULSORY OR NOT; AFFIRMATIVE IN CASE AT BAR AS FAR AS THE MAKATI CASE IS CONCERNED; SAME CASE IS ALSO BARRED BY *RES JUDICATA*.—** The four tests to determine whether a counterclaim is compulsory or not are the following, to wit: (*a*) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (*b*) Would *res judicata*

bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (*c*) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (*d*) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court? Of the four, the one compelling test of compulsoriness is the logical relation between the claim alleged in the complaint and that in the counterclaim. Such relationship exists when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties. If these tests result in affirmative answers, the counterclaim is compulsory. The four tests are affirmatively met as far as the Makati case was concerned. The Makati case had the logical relation to the Manila case because both arose out of the extrajudicial foreclosure of the real estate mortgage constituted to secure the payment of petitioners' credit purchases under the distributorship agreement with Shell. Specifically, the right of Shell to demand the deficiency was predicated on the validity of the extrajudicial foreclosure, such that there would not have been a deficiency to be claimed in the Manila case had Shell not validly foreclosed the mortgage. As earlier shown, Ramon's cause of action for annulment of the extrajudicial foreclosure was a true compulsory counterclaim in the Manila case. Thus, the Makati RTC could not have missed the logical relation between the two actions. We hold, therefore, that the Makati case was already barred by *res judicata*. Hence, its immediate dismissal is warranted. Bar by *res judicata* avails if the following elements are present, to wit: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (*d*) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.

7. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROHIBITION AND *MANDAMUS*; WILL NOT PROSPER IN THE ABSENCE OF GRAVE ABUSE OF**

DISCRETION.— The petition cannot prosper if the CA acted in accordance with law and jurisprudence. *Certiorari*, prohibition and *mandamus* are extraordinary remedies intended to correct errors of jurisdiction and to check grave abuse of discretion. The term *grave abuse of discretion* connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction. The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. Yet, here, petitioners utterly failed to establish that the CA abused its discretion, least of all gravely.

APPEARANCES OF COUNSEL

Jaime S. Linsangan for petitioners.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Through their petition for *certiorari*, *mandamus* and prohibition, petitioners assail the resolutions promulgated on November 22, 2002[1] and July 31, 2002,[2] whereby the Court of Appeals (CA) respectively denied petitioners' motion to dismiss the appeal and motion for reconsideration. They allege that the CA thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] *Rollo,* 45-46; penned by Associate Justice Juan Q. Enriquez, Jr. (retired), with Associate Justice Bernardo P. Abesamis (retired) and Associate Justice Edgardo F. Sundiam (deceased), concurring.

[2] *Id.* at 66; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Mariano C. Del Castillo (now a Member of the Court), concurring.

Antecedents

On July 31, 1985, Pilipinas Shell Petroleum Corporation (Shell) entered into an agreement for the distribution of Shell petroleum products (such as fuels, lubricants and allied items) by Pacific Management & Development (Pacific), a single proprietorship belonging to petitioner Ramon G. Mendiola (Ramon). To secure Pacific's performance of its obligations under the agreement, petitioners executed on August 1, 1985 a real estate mortgage in favor of Shell[3] covering their real estate and its improvements, located in the then Municipality of Parañaque, Rizal, and registered under Transfer Certificate of Title No. S-59807 of the Registry of Deeds of Rizal (in the name of "Ramon Mendiola, married to Araceli Mendoza").[4]

Pacific ultimately defaulted on its obligations, impelling Shell to commence extrajudicial foreclosure proceedings in April 1987. Having received a notice of the extrajudicial foreclosure scheduled to be held at the main entrance of the Parañaque Municipal Hall on May 14, 1987,[5] petitioners proceeded to the announced venue on the scheduled date and time but did not witness any auction being conducted and did not meet the sheriff supposed to conduct the auction despite their being at the lobby from 9:00 am until 11:30 am of May 14, 1987.[6] They later learned that the auction had been held as scheduled by Deputy Sheriff Bernardo San Juan of the Regional Trial Court (RTC) in Makati, and that their mortgaged realty had been sold to Tabangao Realty, Inc. (Tabangao), as the corresponding certificate of sale bears out.[7] They further learned that Tabangao's winning bidder bid of ₱670,000.00 had topped Shell's bid of ₱660,000.00.[8]

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[3] Records, pp. 80-86.

[4] *Id.* at 400-401.

[5] *Id.* at 3.

[6] TSN dated April 16, 1991, pp. 17-29.

[7] Records, p. 71.

[8] TSN dated December 12, 1991, pp. 4-14.

After application of the proceeds of the sale to the obligation of Pacific, a deficiency of ₱170,228.00 (representing the foreclosure expenses equivalent of 25% of the amount claimed plus interest) remained. The deficiency was not paid by Ramon. Thus, on September 2, 1987, Shell sued in the RTC in Manila to recover the deficiency, docketed as Civil Case No. 87-41852 entitled *Pilipinas Shell Petroleum Corporation v. Ramon G. Mendiola, doing business under the name and style Pacific Management & Development* (Manila case).[9]

In his answer with counterclaim filed on October 28, 1987, Ramon asserted that the extra-judicial foreclosure of the mortgage had been devoid of basis in fact and in law; and that the foreclosure and the filing of the action were made in bad faith, with malice, fraudulently and in gross and wanton violation of his rights.

On March 22, 1988, petitioners commenced in the RTC in Makati an action to annul the extrajudicial foreclosure docketed as Civil Case No. 88-398 entitled *Ramon G. Mendiola and Araceli N. Mendiola v. Pilipinas Shell Petroleum Corporation, Tabangao Realty, Inc., and Maximo C. Contreras, as Clerk of Court and Ex Oficio Sheriff of Rizal*,[10] which was assigned to Branch 134 (Makati case).

As defendants in the Makati case, Shell and Tabangao separately moved for dismissal,[11] stating similar grounds, namely: (*a*) that the Makati RTC had no jurisdiction due to the pendency of the Manila case; (*b*) that the complaint stated no cause of action, the Makati case having been filed more than a year after the registration of the certificate of sale; (*c*) that another action (Manila case) involving the same subject matter was pending; (*d*) that the venue was improperly laid; and (*e*) that the Makati case was already barred by petitioners' failure to raise its cause of action as a compulsory counterclaim in the Manila case.

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[9] Records, pp. 199-204.

[10] *Id.* at 1-7.

[11] *Id.* at 24-37 (urgent omnibus motion filed by Shell); *id.* at 115-128 (motion to dismiss filed by Tabangao).

After the Makati RTC denied both motions on September 23, 1988,[12] Shell filed its answer *ad cautelam,*[13] whereby it denied petitioners' allegation that no auction had been held; insisted that there had been proper accounting of the deliveries made to Pacific and its clients; and averred that petitioners' failure to file their compulsory counterclaim in the Manila case already barred the action.

Pending the trial of the Makati case, the Manila RTC rendered its judgment in favor of Shell on May 31, 1990, *viz*:

> WHEREFORE, IN VIEW OF THE FOREGOING, defendants (*sic*) is ordered to pay plaintiffs as follows:
>
> 1. On the First Cause of Action –
>
>   a) ₱167,585.50 representing the deficiency as of the date of the foreclosure sale;
>
>   b) ₱2,643.26 representing the interest due on the unpaid principal as of 30 June 1987; and
>
>   c) The sum corresponding to the interest due on the unpaid principal from 30 June 1987 to date.
>
> 2. On the Second Cause of Action – attorney's fees and expenses of litigation to (*sic*) the amount of ₱15,000.00; and finally,
>
> 3. Costs of suit.
>
> SO ORDERED.[14]

As sole defendant in the Manila case, Ramon appealed (C.A.-G.R. No. CV-28056), but his appeal was decided adversely to him on July 22, 1994,[15] with the CA affirming the Manila RTC's decision and finding that he was guilty of forum shopping for instituting the Makati case.

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[12] *Id.* at 164.

[13] *Id.* at 169-184.

[14] *Id.* at 546-557.

[15] *Id.* at 535-545.

Undaunted, he next appealed to the Court (G.R. No. 122795), which denied his petition for review on February 26, 1996,[16] and upheld the foreclosure of the mortgage. The decision of the Court became final and executory, as borne out by the entry of judgment issued on June 10, 1996.[17]

Nonetheless, on February 3, 1998, the Makati RTC resolved the Makati case,[18] finding that there had been no auction actually conducted on the scheduled date; that had such auction taken place, petitioners could have actively participated and enabled to raise their objections against the amount of their supposed obligation; and that they had been consequently deprived of notice and hearing as to their liability. The Makati RTC disposed as follows:

WHEREFORE, premises considered, plaintiffs having duly established their case that the SHERIFF's Certificate of Sale of May 14, 1987, is void for lack of actual auction sale and lack of valid consideration as the amount utilized by the SHERIFF was based on an invalid amount as a basis of an Extra-Judicial Foreclosure of Mortgage where the amount of the mortgage is based on a future obligation unilaterally adjudicated by SHELL alone in violation of MENDIOLA's right of due process, and judgment is hereby rendered as follows:

1. Declaring as NULL and VOID the Extra-Judicial Foreclosure of Mortgage of plaintiff's house and lot under TCT No. T-59807 issued by the Register of Deeds of Rizal;

2. Declaring as NULL and VOID the Certificate of Sale issued by Maximo C. Contreras on May 14, 1987 in favor of TABANGAO REALTY, INC.;

3. Ordering defendant PILIPINAS SHELL PETROLEUM CORPORATION to make a full accounting of the extent of the future obligation of plaintiff MENDIOLA in the Mortgage Contract before any foreclosure proceedings are initiated;

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[16] *Rollo,* p. 92.

[17] *Id.* at 93.

[18] Records, pp. 575-578.

4. Ordering defendants PILIPINAS SHELL PETROLEUM CORPORATION and TABANGAO REALTY INC. to pay the amount of ₱20,000.00 as and by way of attorney's fees; and

5. To pay the costs.

SO ORDERED.

Shell sought the reconsideration of the decision,[19] maintaining that the issues raised on the validity of the foreclosure sale and on the amount of the outstanding obligation of Pacific had been settled in the Manila case; and that the Makati RTC became bereft of jurisdiction to render judgment on the same issues pursuant to the principle of *res judicata*.

Tabangao adopted Shell's motion for reconsideration.

On October 5, 1999, however, the Makati RTC denied Shell's motion for reconsideration,[20] to wit:

WHEREFORE, premises considered, there is NO *RES JUDICATA* to speak of in this case. Consequently, the "Motion for Reconsideration" filed by defendant Pilipinas Shell Petroleum Corporation, which was later adopted by defendant Tabangao Realty, Inc., is hereby DENIED. Plaintiff's "Motion for Execution" is likewise DENIED for reasons as stated above.

SO ORDERED.[21]

Aggrieved by the decision of the Makati RTC, Shell and Tabangao filed a joint notice of appeal.[22] The appeal was docketed in the CA as C.A.-G.R. No. 65764.

In their appellants' brief filed in C.A.-G.R. No. 65764,[23] Shell and Tabangao assigned the following errors, namely:

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[19] *Id.* at 579-594.

[20] *Id.* at 644-650.

[21] *Id.* at 650.

[22] *Id.* at 651.

[23] CA *rollo*, pp. 49-89.

I

THE COURT *A QUO* COMMITTED GRAVE ERROR IN NOT DISMISSING THE CASE ON THE GROUND OF *LITIS PENDENTIA* AND, SUBSEQUENTLY, ON THE GROUND OF *RES JUDICATA*.

II

THE COURT *A QUO* COMMITTED MANIFEST ERROR IN DISREGARDING THAT THE LEGAL REQUIREMENTS FOR A VALID EXTRAJUDICIAL FORECLOSURE WERE SATISFIED.

III

THE COURT *A QUO* COMMITTED SERIOUS ERROR IN RENDERING THE ASSAILED DECISION AND ASSAILED RESOLUTION IN CONTRAVENTION OF THE RULINGS OF A CO-EQUAL COURT AND SUPERIOR COURTS.

Instead of filing their appellees' brief, petitioners submitted a motion to dismiss appeal,[24] mainly positing that Section 1, Rule 41 of the *Rules of Court* prohibited an appeal of the order denying a motion for reconsideration.

On November 22, 2002, the CA denied petitioners' motion to dismiss appeal through the first assailed resolution, stating:[25]

For consideration is the Motion to Dismiss Appeal dated August 6, 2002 filed by counsel for plaintiffs-appellees praying for the dismissal of the appeal on the grounds that the Notice of Appeal filed by defendants-appellants was specifically interposed solely against the Resolution of the trial court dated October 20, 1999 which merely denied defendant-appellants' Motion for Reconsideration of the trial court's decision, dated February 3, 1998.

Upon perusal of the records of the case, it seems apparent that herein defendants-appellants intended to appeal not only the Resolution dated October 2, 1999 but also the Decision dated February 3, 1998. Assuming *arguendo* that defendants-appellants indeed committed a technical error, it is best that the parties be given every chance to fight their case fairly and in the open without

[24] *Id.* at 147-150.

[25] *Supra,* note no. 1.

resort to technicality to afford petitioners their day in court (*Zenith Insurance vs. Purisima*, 114 SCRA 62).

The Motion to Dismiss Appeal must not be granted if only to stress that the rules of procedure may not be misused as instruments for the denial of substantial justice. We must not forget the plain injunction of Section 2 of (now Sec. 6 of Rule 1, 1997 Revised Rules of Civil Procedure) Rule 1 that the "rules shall be liberally construed in order to promote their object and to assist the parties in obtaining not only speedy, but more imperatively just and inexpensive determination of justice in every action and proceeding" (Lim Tanhu vs. Ramolete 66 SCRA 425).

WHEREFORE, in view of the foregoing, the Motion to Dismiss Appeal is hereby DENIED.

SO ORDERED.

On July 31, 2002, the CA denied petitioners' motion for reconsideration through the second assailed resolution.[26]

Hence, petitioners brought these special civil actions for *certiorari*, *mandamus* and prohibition, insisting that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying their motion to dismiss appeal and their motion for reconsideration.

Issue

Petitioners contend that the CA committed grave abuse of discretion in entertaining the appeal of Shell and Tabangao in contravention of Section 1, Rule 41 of the *Rules of Court*, which proscribes an appeal of the denial of a motion for reconsideration.

Shell and Tabangao counter that their appeal was not proscribed because the action could be said to be completely disposed of only upon the rendition on October 5, 1999 of the assailed resolution denying their motion for reconsideration; that, as such, the decision of February 3, 1998 and the denial of their motion for reconsideration formed one integrated disposition of the merits of the action; and that the CA justifiably

[26] *Supra,* note no. 2.

applied the rules of procedure liberally.

Two issues have to be determined. The first is whether or not an appeal may be taken from the denial of a motion for reconsideration of the decision of February 3, 1998. The determination of this issue necessarily decides whether the petitions for *certiorari*, prohibition and *mandamus* were warranted. The second is whether the Makati case could prosper independently of the Manila case. The Court has to pass upon and resolve the second issue without waiting for the CA to decide the appeal on its merits in view of the urging by Shell and Tabangao that the Makati case was barred due to *litis pendentia* or *res judicata*.

Ruling

The petition for *certiorari*, *mandamus* and prohibition lacks merit.

1.
Appeal by Shell and Tabangao of the denial of their motion for reconsideration was not proscribed

Petitioners' contention that the appeal by Shell and Tabangao should be rejected on the ground that an appeal of the denial of their motion for reconsideration was prohibited cannot be sustained.

It is true that the original text of Section 1, Rule 41 of the 1997 *Rules of Civil Procedure* expressly limited an appeal to a judgment or final order, and proscribed the taking of an appeal from an order denying a motion for new trial or reconsideration, among others, *viz*:

> Section 1. S*ubject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from:**
>
> **(a) An order denying a motion for new trial or reconsideration;**

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n)

The inclusion of the order denying a motion for new trial or a motion for reconsideration in the list of issuances of a trial court *not subject to appeal* was by reason of such order not being the final order terminating the proceedings in the trial court. This nature of the order is reflected in Section 9 of Rule 37 of the 1997 *Rules of Civil Procedure*, which declares that such order denying a motion for new trial or reconsideration is not appealable, "the remedy being an appeal from the judgment or final order."

In *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*,[27] the Court further expounded:

The restriction against an appeal of a denial of a *motion for reconsideration* independently of a judgment or final order is logical and reasonable. A *motion for reconsideration* is not putting forward a new issue, or presenting new evidence, or changing the theory of

[27] G.R. No. 159941, August 17, 2011, 655 SCRA 580, 592.

the case, but is only seeking a reconsideration of the judgment or final order based on the same issues, contentions, and evidence either because: (*a*) the damages awarded are excessive; or (*b*) the evidence is insufficient to justify the decision or final order; or (*c*) the decision or final order is contrary to law. By denying a *motion for reconsideration*, or by granting it only partially, therefore, a trial court finds no reason either to reverse or to modify its judgment or final order, and leaves the judgment or final order to stand. The remedy from the denial is to assail the denial in the course of an appeal of the judgment or final order itself.

In *Quelnan v. VHF Philippines, Inc.*,[28] however, the Court has interpreted the proscription against appealing the order denying a motion for reconsideration to refer only to a motion for reconsideration filed against an interlocutory order, not to a motion for reconsideration filed against a judgment or final order, to wit:

[T]his Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in Republic, in which this Court held that an order denying a motion to dismiss an action is interlocutory, hence, not appealable.

The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.

The denial of the motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.

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[28] G.R. No. 145911, July 7, 2004, 433 SCRA 631, 639.

Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.

The reference by petitioner, in his notice of appeal, to the March 12, 1999 Order denying his Omnibus Motion—Motion for Reconsideration should thus be deemed to refer to the January 17, 1999 Order which declared him non-suited and accordingly dismissed his complaint.

If the proscription against appealing an order denying a motion for reconsideration is applied to any order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject of appeal. In other words, from the entire provisions of Rule 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order.[29]

In *Apuyan v. Haldeman,*[30] too, the Court categorized an order denying the motion for reconsideration as the final resolution of the issues a trial court earlier passed upon and decided, and accordingly held that the notice of appeal filed against the order of denial was deemed to refer to the decision subject of the motion for reconsideration.[31]

Subsequently, in *Neypes v. Court of Appeals*,[32] where the decisive issue was whether or not the appeal was taken within the reglementary period, with petitioners contending that they had timely filed their notice of appeal based on their submission that the period of appeal should be reckoned from July 22, 1998, the day they had received the final order of the trial court denying their motion for reconsideration (of the order dismissing their complaint), instead of on March 3, 1998, the day they had received the February 12, 1998 order dismissing their complaint, the Court, citing *Quelnan v. VHF Philippines, Inc.* and *Apuyan v.*

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[29] Bold emphasis supplied.

[30] G.R. No. 129980, September 20, 2004, 438 SCRA 402.

[31] *Id.* at 419.

[32] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

Haldeman, ruled that the receipt by petitioners of the denial of their motion for reconsideration filed against the dismissal of their complaint, which was a final order, started the reckoning point for the filing of their appeal, to wit:

> Rule 41, Section 3 of the 1997 Rules of Civil Procedure states:
>
> > SEC. 3. *Period of ordinary appeal.* - **The appeal shall be taken within fifteen (15) days from the 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 the notice of judgment or final order.
> >
> > The period to 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. (emphasis supplied)
>
> Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.
>
> As already mentioned, petitioners argue that the order of July 1, 1998 denying their motion for reconsideration should be construed as the "final order," not the February 12, 1998 order which dismissed their complaint. Since they received their copy of the denial of their motion for reconsideration only on July 22, 1998, the 15-day reglementary period to appeal had not yet lapsed when they filed their notice of appeal on July 27, 1998.
>
> What therefore should be deemed as the "final order," receipt of which triggers the start of the 15-day reglementary period to appeal – the February 12, 1998 order dismissing the complaint or the July 1, 1998 order dismissing the MR?
>
> In the recent case of *Quelnan v. VHF Philippines, Inc.*, the trial court declared petitioner Quelnan non-suited and accordingly dismissed his complaint. Upon receipt of the order of dismissal, he

filed an omnibus motion to set it aside. When the omnibus motion was filed, 12 days of the 15-day period to appeal the order had lapsed. He later on received another order, this time dismissing his omnibus motion. He then filed his notice of appeal. But this was likewise dismissed— for having been filed out of time.

The court *a quo* ruled that petitioner should have appealed within 15 days after the dismissal of his complaint since this was the final order that was appealable under the Rules. We reversed the trial court and declared that it was the *denial of the motion for reconsideration* of an order of dismissal of a complaint which constituted the *final order* as it was what ended the issues raised there.

This pronouncement was reiterated in the more recent case of *Apuyan v. Haldeman et al.* where we again considered the order denying petitioner Apuyan's motion for reconsideration as the final order which finally disposed of the issues involved in the case.

Based on the aforementioned cases, we sustain petitioners' view that *the order dated July 1, 1998 denying their motion for reconsideration* was the *final order* contemplated in the Rules.[33]

As the aftermath of these rulings, the Court issued its resolution in A.M. No. 07-7-12-SC to approve certain amendments to Rules 41, 45, 58 and 65 of the *Rules of Court* effective on December 27, 2007. Among the amendments was the delisting of an order denying a motion for new trial or motion for reconsideration from the enumeration found in Section 1, Rule 41 of the 1997 *Rules of Civil Procedure* of what are not appealable. The amended rule now reads:

Section 1. *Subject of appeal.*— An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a petition for relief or any similar motion seeking relief from judgment;

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[33] Bold emphasis and italics are in the original text.

(b) An interlocutory order;

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

Based on the foregoing developments, Shell and Tabangao's appeal, albeit seemingly directed only at the October 5, 1999 denial of their motion for reconsideration, was proper. Thus, we sustain the CA's denial for being in accord with the rules and pertinent precedents. We further point out that for petitioners to insist that the appeal was limited only to the assailed resolution of October 5, 1999 was objectively erroneous, because Shell and Tabangao expressly indicated in their appellant's brief that their appeal was directed at both the February 3, 1998 decision and the October 5, 1999 resolution.[34]

The petition cannot prosper if the CA acted in accordance with law and jurisprudence. *Certiorari*, prohibition and *mandamus* are extraordinary remedies intended to correct errors of jurisdiction and to check grave abuse of discretion. The term *grave abuse of discretion* connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction.[35] The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform

[34] CA *rollo,* pp. 52-53.

[35] *Litton Mills, Inc. v. Galleon Trader, Inc.*, No. L-40867, July 26, 1988, 163 SCRA 489, 494.

a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[36] Yet, here, petitioners utterly failed to establish that the CA abused its discretion, least of all gravely.

2.
Makati case is barred and should be dismissed on ground of *res judicata* and waiver

The dismissal of the petition should ordinarily permit the CA to resume its proceedings in order to enable it to resolve the appeal of Shell and Tabangao. But the Court deems itself bound to first determine whether the Makati case could still proceed by virtue of their insistence that the cause of action for annulment of the foreclosure sale in the Makati case, which was intimately intertwined with the cause of action for collection of the deficiency amount in the Manila case, could not proceed independently of the Manila case.

Shell and Tabangao's insistence has merit. The Makati case should have been earlier disallowed to proceed on the ground of *litis pendentia*, or, once the decision in the Manila case became final, should have been dismissed on the ground of being barred by *res judicata*.

In the Manila case, Ramon averred a compulsory counterclaim asserting that the extrajudicial foreclosure of the mortgage had been devoid of basis in fact and in law; and that the foreclosure and the filing of the action had been made in bad faith, with malice, fraudulently and in gross and wanton violation of his rights. His pleading thereby showed that the cause of action he later pleaded in the Makati case - that of annulment of the foreclosure sale - was identical to the compulsory counterclaim he had set up in the Manila case.

Rule 6 of the 1997 *Rules of Civil Procedure* defines a compulsory counterclaim as follows:

[36] *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17.

Section 7. *Compulsory counterclaim.* — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. (n)

Accordingly, a counterclaim is compulsory if: (*a*) it arises out of or is necessarily connected with the transaction or occurrence which is the subject matter of the opposing party's claim; (*b*) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (*c*) the court has jurisdiction to entertain the claim both as to its amount and nature, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount.

A compulsory counterclaim that a defending party has at the time he files his answer shall be contained therein.[37] Pursuant to Section 2, Rule 9 of the 1997 *Rules of Civil Procedure*, a compulsory counterclaim not set up shall be barred.

The four tests to determine whether a counterclaim is compulsory or not are the following, to wit: (*a*) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (*b*) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (*c*) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (*d*) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?[38] Of

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[37] Section 8, Rule 11, 1997 *Rules of Civil Procedure*.

[38] *Bungcayao, Sr. v. Fort Ilocandia Property Holdings and Development Corporation*, G.R. No. 170483, April 19, 2010, 618 SCRA 381, 389; *Sandejas*

the four, the one compelling test of compulsoriness is the logical relation between the claim alleged in the complaint and that in the counterclaim. Such relationship exists when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.[39] If these tests result in affirmative answers, the counterclaim is compulsory.

The four tests are affirmatively met as far as the Makati case was concerned. The Makati case had the logical relation to the Manila case because both arose out of the extrajudicial foreclosure of the real estate mortgage constituted to secure the payment of petitioners' credit purchases under the distributorship agreement with Shell. Specifically, the right of Shell to demand the deficiency was predicated on the validity of the extrajudicial foreclosure, such that there would not have been a deficiency to be claimed in the Manila case had Shell not validly foreclosed the mortgage. As earlier shown, Ramon's cause of action for annulment of the extrajudicial foreclosure was a true compulsory counterclaim in the Manila case. Thus, the Makati RTC could not have missed the logical relation between the two actions.

We hold, therefore, that the Makati case was already barred by *res judicata*. Hence, its immediate dismissal is warranted.

Bar by *res judicata* avails if the following elements are present, to wit: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been

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v. Ignacio, Jr., G.R. No. 155033, December 19, 2007, 541 SCRA 61, 77; *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, G.R. No. 155173, November 23, 2004, 443 SCRA 522, 534; *Tan v. Kaakbay Finance Corporation*, G.R. No. 146595, June 20, 2003, 404 SCRA 518, 525.

[39] *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, *supra*, at 534; *Tan v. Kaakbay Finance Corporation*, *supra*, at 525-526; *Alday v. FGU Insurance Corporation*, G.R. No. 138822, January 23, 2001, 350 SCRA 113, 121.

rendered by a court having jurisdiction over the subject matter and the parties; (*d*) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.[40]

The Manila RTC had jurisdiction to hear and decide on the merits Shell's complaint to recover the deficiency, and its decision rendered on May 31, 1990 on the merits already became final and executory. Hence, the first, second and third elements were present.

Anent the fourth element, the Makati RTC concluded that the Manila case and the Makati case had no identity as to their causes of action, explaining that the former was a personal action involving the collection of a sum of money, but the latter was a real action affecting the validity of the foreclosure sale, stating in its order of October 5, 1999 denying Shell's motion for reconsideration as follows:

> Finally, as to whether there is identity of causes of action between the two (2) cases, this Court finds in negative.
>
> xxx xxx xxx
>
> True, the test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. It has been held that a party cannot by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties and their privies. (*Sangalang vs. Caparas,* 151 SCRA 53; *Gutierrez vs. Court of Appeals*, 193 SCRA 437. This ruling however does not fall squarely on the present controversy.
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> Civil Case No. 42852 is for collection of sum of money, a personal action where what is at issue is whether spouses Mendiola have

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[40] *Development Bank of the Philippines v. La Campana Development Corporation*, G.R. No. 137694, January 17, 2005, 448 SCRA 384, 392-393; *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 242.

indebtedness to Pilipinas Shell. There is no concrete findings on questions regarding the validity of sale affecting the mortgaged property, otherwise, there would be a determination of transferring of title over the property which is already a real action. In the latter action, Manila courts has no jurisdiction considering that the property is located in Paranaque, then sitting under Makati RTC. At any rate, this Court is not unmindful of series of cases which state that from an otherwise rigid rule outlining jurisdiction of courts being limited in character, deviations have been sanctioned where the (1) parties agreed or have acquiesced in submitting the issues for determination by the court; (2) the parties were accorded full opportunity in presenting their respective arguments of the issues litigated and of the evidence in support thereof; and (3) the court has already considered the evidence on record and is convinced that the same is sufficient and adequate for rendering a decision upon the issues controverted. xxx. While there is a semblance of substantial compliance with the aforesaid criteria, primarily because the issue of validity of foreclosure proceedings was submitted for determination of RTC Manila when this was stated as an affirmative defense by spouses Mendiola in their Answer to the complaint in Civil Case No. 42852, however it appears from the Decision rendered in said case that the issue on validity of foreclosure sale was not fully ventilated before the RTC Manila because spouses Mendiola's right to present evidence in its behalf was declared waived. Naturally, where this issue was not fully litigated upon, no resolution or declaration could be made therein.

On the other hand, Civil Case No. 88-398 is an action for declaration of nullity or annulment of foreclosure sale, a real action where the location of property controls the venue where it should properly be filed. This Court undoubtedly has jurisdiction to adjudicate this case. Plaintiff spouses Mendiola merely claimed that no actual foreclosure sale was conducted, and if there was, the same was premature for lack of notice and hearing. Take note that plaintiffs do not deny their indebtedness to Pilipinas Shell although the amount being claimed is disputed. They are simply asserting their rights as owners of the mortgaged property, contending that they were not afforded due process in the course of foreclosure proceedings. And based mainly on the testimonial and documentary evidence presented, as well as the postulations, expositions and arguments raised by all parties in this case, it is the Court's considered view that spouses

Mendiola have established the material allegations in their complaint and have convincingly shown to the satisfaction of the Court that they are entitled to the reliefs prayed for. With these findings and adjudications, the Court does not find inconsistency with those held in Civil Case No. 42852. As to whether spouses Mendiola is still indebted to Pilipinas Shell is not in issue here, and not even a single discussion touched that matter as this would tantamount to encroaching upon the subject matter litigated in Civil Case No. 42852.[41]

The foregoing conclusion of the Makati RTC on lack of identity between the causes of action was patently unsound. The identity of causes of action does not mean absolute identity; otherwise, a party may easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain the actions, or whether there is an identity in the facts essential to the maintenance of the actions. If the same facts or evidence will sustain the actions, then they are considered identical, and a judgment in the first case is a bar to the subsequent action.[42] Petitioners' Makati case and Shell's Manila case undeniably required the production of the same evidence. In fact, Shell's counsel faced a dilemma upon being required by the Makati RTC to present the original copies of certain documents because the documents had been made part of the records of the Manila case elevated to the CA in connection with the appeal of the Manila RTC's judgment.[43] Also, both cases arose from the same transaction (*i.e.*, the foreclosure of the mortgage), such that the success of Ramon in invalidating the extrajudicial foreclosure would have necessarily negated Shell's right to recover the deficiency.

Apparently, the Makati RTC had the erroneous impression that the Manila RTC did not have jurisdiction over the complaint of petitioners because the property involved was situated within

[41] Records, pp. 648-650.

[42] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 557.

[43] See TSN dated December 16, 1993, pp. 1-16.

the jurisdiction of the Makati RTC. Thereby, the Makati RTC confused venue of a real action with jurisdiction. Its confusion was puzzling, considering that it was well aware of the distinction between venue and jurisdiction, and certainly knew that venue in civil actions was not jurisdictional and might even be waived by the parties.[44] To be clear, venue related only to the place of trial or the geographical location in which an action or proceeding should be brought and does not equate to the jurisdiction of the court. It is intended to accord convenience to the parties, as it relates to the place of trial, and does not restrict their access to the courts.[45] In contrast, jurisdiction refers to the power to hear and determine a cause,[46] and is conferred by law and not by the parties.[47]

By virtue of the concurrence of the elements of *res judicata*, the immediate dismissal of the Makati case would have been authorized under Section 1, Rule 9 of the 1997 *Rules of Civil Procedure*, which provides:

> Section 1. *Defenses and objections not pleaded*. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, **that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment** or by statute of limitations, **the court shall dismiss the claim**. (2a)

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[44] *Philippine Bank of Communications v. Lim*, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 720; *Rudolf Lietz Holdings, Inc. v. The Registry of Deeds of Parañaque City*, G.R. No. 133240, November 15, 2000, 344 SCRA 680, 685.

[45] *Nocum v. Tan*, G.R. No. 145022, September 23, 2005, 470 SCRA 639, 648.

[46] *Platinum Tours and Travel, Inc. v. Panlilio*, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146.

[47] *Guinhawa v. People*, G.R. No. 162822, August 25, 2005, 468 SCRA 278, 299.

The rule expressly mandated the Makati RTC to dismiss the case *motu proprio* once the pleadings or the evidence on record indicated the pendency of the Manila case, or, later on, disclosed that the judgment in the Manila case had meanwhile become final and executory.

Yet, we are appalled by the Makati RTC's flagrant disregard of the mandate. Its reason for the disregard was not well-founded. We stress that its disregard cannot be easily ignored because it needlessly contributed to the clogging of the dockets of the Judiciary. Thus, we deem it to be imperative to again remind all judges to consciously heed any clear mandate under the *Rules of Court* designed to expedite the disposition of cases as well as to declog the court dockets.

WHEREFORE, we **DISMISS** the petition for *certiorari*, prohibition and *mandamus* for lack of merit; **CONSIDER** Civil Case No. 88-398 dismissed with prejudice on the ground of *res judicata*; and **ORDER** petitioners to pay the costs of suit to respondents.

The Office of the Court Administrator is **DIRECTED** to disseminate this decision to all trial courts for their guidance.

SO ORDERED.

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

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[*] Vice Justice Teresita J. Leonardo-De Castro, who is on wellness leave, per Special Order No. 1252 issued on July 12, 2012.

[**] Vice Justice Mariano C. Del Castillo, who took part in the case in the Court of Appeals, per raffle on July 16, 2012.

FIRST DIVISION

[G.R. No. 171359. July 18, 2012]

BENJAMIN A. UMIPIG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 171755. July 18, 2012]

RENATO B. PALOMO and MARGIE C. MABITAD, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 171776. July 18, 2012]

CARMENCITA FONTANILLA-PAYABYAB, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); ESSENTIAL ELEMENTS OF SECTION 3 (e) OF R.A. NO. 3019, AS AMENDED.—** The essential elements of Section 3(e) of R.A.No. 3019, as amended, are as follows: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

2. **ID.; ID.; ID.; PETITIONERS ACTED WITH EVIDENT BAD FAITH AND GROSS INEXCUSABLE NEGLIGENCE IN THE PERFORMANCE OF THEIR DUTIES.—** The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.

"Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. These three modes are distinct and different from each other. Proof of the existence of any of these modes would suffice.

3. **ID.; ID.; ID.; THERE BEING NO PERFECTED CONTRACT OF SALE, PETITIONER HAD NO AUTHORITY TO EFFECT SUBSTANTIAL PAYMENTS FOR THE SECOND PURCHASE.—** There being no perfected contract of sale, Palomo had no authority to effect substantial payments for the second purchase. That partial payments on the first purchase was similarly made upon a mere contract to sell, is of no moment; it must be noted that such contract to sell (first purchase) eventually ripened into a consummated sale and titles over Lots 1730-C and 1730-D have been actually transferred in the name of NMP. The second purchase transaction, however, was not consummated despite the unauthorized down payment of ₱6,910,260.00. Even worse, funds were disbursed to pay for the balance despite non-receipt of the specified transfer documents. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. Mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable. Negligence consists in the disregard of some duty imposed by law; a failure to comply with some duty of care owed by one to another. Negligence is want of care required by the circumstances. It is a relative or comparative, not an absolute term and its application depends upon the situation of the parties, and the degree of care and vigilance which the circumstances reasonably impose. Palomo's bad faith was evident not only in the disbursement of substantial payment

upon a mere contract to sell — whereas the NMP Board granted him express authority only to start negotiations and pay earnest money if needed — but also in the disbursement of ₱1,000,000.00 partial balance despite non-submission by Solis of the specified transfer documents.

4. **ID.; ID.; ID.; PETITIONER ALSO COMMITTED GROSS INEXCUSABLE NEGLIGENCE IN FAILING TO PROTECT THE INTEREST OF THE GOVERNMENT IN CAUSING THE RELEASE OF SUBSTANTIAL SUMS TO THE BROKER DESPITE LEGAL INFIRMITIES IN THE DOCUMENTS PRESENTED.—** Palomo also committed gross inexcusable negligence in failing to protect the interest of the government in causing the release of substantial sums to Solis despite legal infirmities in the documents presented by the said broker. He cannot seek exoneration by arguing that he merely followed the stipulated terms of payment in the contract to sell. Applicable provisions of existing laws are deemed written and incorporated in every government contract, hence it is the contractual stipulations which must conform to and not contravene the law and not the other way around. By entering into a contract that does not guarantee the transfer of ownership to the Government, petitioner violated Sec. 449 of the Government Accounting and Auditing Manual (GAAM).

5. **ID.; ID.; ID.; THE NATIONAL MARITIME POLYTECHNIC'S (NMP) ADMINISTRATIVE OFFICER AND CHIEF ACCOUNTANT ARE ALSO GUILTY OF GROSS INEXCUSABLE NEGLIGENCE IN THEIR FAILURE TO SCRUTINIZE THE DOCUMENTS PRESENTED BY THE REAL ESTATE BROKER IN VIOLATION OF ACCOUNTING RULES.—** We also concur with the Sandiganbayan's finding that Umipig and Mabitad are guilty of gross inexcusable negligence in the performance of their duties. The GAAM provides for the basic requirements applicable to all classes of disbursements that shall be complied with, to wit: x x x **Documents to establish validity of claim. – Submission of documents and other evidences to establish the validity and correctness of the claim for payment.** xxx Pursuant to COA Circular No. 92-389 dated November 3, 1992, Box A shall be signed by "the responsible Officer having direct supervision and knowledge of the facts of the transaction."

Umipig, as signatory to Box A of Disbursement Voucher Nos. 101-9608-787 and 101-9612-1524 caused the release of ₱8,910,260 to Solis, certifying that "Expenses, Cash Advance necessary, lawful and incurred under [his] direct supervision." By making such certification, Umipig attests to the transactions' legality and regularity, which signifies that he had checked all the supporting documents before affixing his signature. If he had indeed exercised reasonable diligence, he should have known that Palomo exceeded the authority granted to him by the Board, and that the SPAs presented by Solis needed further verification as to its authenticity since his authority to sell was given not by the registered owners themselves but by another person (Jimenez-Trinidad) claiming to be the attorney-in-fact of the owners. Had Umipig made the proper inquiries, NMP would have discovered earlier that the SPA in favor of Jimenez-Trinidad was fake and the unlawful disbursement of the ₱8,910,260 would have been prevented. Such nonchalant stance of Umipig who admitted to have simply presumed everything to be in order in the second purchase and failed to scrutinize the documents presented by Solis in violation of the accounting rules including Sec. 449 of the GAAM, constitutes gross negligence.

6. **ID.; ID.; ID.; THE NMP'S BUDGET OFFICER IS NOT LIABLE UNDER SECTION 3 (e) OF R.A. NO. 3019; THE PROSECUTION FAILED TO ESTABLISH THAT HER RESPONSIBILITIES INCLUDE REVIEWING HER SUBORDINATE'S CERTIFICATIONS IN DISBURSEMENT VOUCHERS, AND HER SIGNATURE WAS A MERE SUPERFLUITY.—** As to Fontanilla-Payabyab, her signature appears on the questioned vouchers above her name which was stamped on the vouchers together with the statement "FUND AVAILABILITY," and not in Boxes A, B or C. Such signature, however, neither validates nor invalidates the vouchers and this was not disputed by Mabitad who testified that Fontanilla-Payabyab's signature as budget officer on the disbursement vouchers is not considered part of standard operating procedure. Although Fontanilla-Payabyab was the Head of Finance with Mabitad as one of her subordinates, the prosecution failed to establish that her responsibilities include reviewing her subordinate's certifications in disbursement vouchers. As Fontanilla-Payabyab's signature on the voucher was a mere

superfluity, it is unnecessary for this Court to make a determination of negligence on her part. Her purpose in doing so, *i.e.,* to monitor the budget allocated and utilized/disbursed, is likewise immaterial considering that her act of signing the voucher did not directly cause the damage or injury. Consequently, there is no basis to hold her liable under Section 3 (e) of R.A. No. 3019.

7. **ID.; CIVIL LIABILITY; HAVING CAUSED INJURY OR LOSS TO THE GOVERNMENT BY THEIR INEXCUSABLE NEGLIGENCE AND EVIDENT BAD FAITH, PETITIONERS ARE LIABLE TO RESTITUTE THE AMOUNT OF ₱8,910,260 THAT WAS PAID TO THE BROKER.—** An offense as a general rule causes two classes of injuries: the first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated through indemnity, which is civil in nature. Having caused injury or loss to the Government by their gross inexcusable negligence and evident bad faith, petitioners Palomo, Mabitad and Umipig are thus liable to restitute the amount of ₱8,910,260 that was paid to Solis.

8. **ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; ESTABLISHED; THE FRAUDULENT TRANSACTION WOULD NOT HAVE SUCCEEDED WITHOUT THE COOPERATION OF ALL THE PETITIONERS WHOSE SIGNATURES ON THE CORRESPONDING VOUCHERS MADE POSSIBLE THE RELEASE OF PAYMENTS TO THE BROKER DESPITE LEGAL INFIRMITIES IN THE SUPPORTING DOCUMENTS HE SUBMITTED.—** Although a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, it must, like the crime itself, be proven beyond reasonable doubt. Mere knowledge, acquiescence or approval is not enough without a showing that the participation was intentional and with a view of furthering a common criminal design or purpose. In this case, the evidence on record clearly supports the finding of conspiracy among petitioners Umipig, Mabitad and Palomo who all authorized the payments on the second purchase in utter disregard of the requirement in Section

449 of the GAAM, and with gross negligence in failing to ascertain the authority of Solis to sell the same. The damage or injury to the government would have been prevented, had Umipig, Mabitad and Palomo exercised reasonable diligence in transacting with Solis and examining the supporting documents before approving the disbursements in payment of the purchase price of Lots 1731 and 1732. Indeed, the fraudulent transaction would not have succeeded without the cooperation of all the petitioners whose signatures on the corresponding vouchers made possible the release of payments to Solis despite legal infirmities in the supporting documents he submitted.

9. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT ACCOUNTING AND AUDITING MANUAL (GAAM); SECTION 449 THEREOF REQUIRES PUBLIC OFFICERS AUTHORIZED TO TRANSACT WITH PRIVATE LANDOWNERS NOT ONLY TO ENSURE THAT LANDS TO BE PURCHASED BY GOVERNMENT ARE COVERED BY A TORRENS TITLE BUT ALSO THAT THE SELLERS ARE THE REGISTERED OWNERS OR THEIR DULY AUTHORIZED REPRESENTATIVES.—** Section 449 of the Government Accounting and Auditing Manual requires public officers authorized to transact with private landowners not only to ensure that lands to be purchased by Government are covered by a Torrens title, but also that the sellers are the registered owners or their *duly authorized representatives*. For otherwise, there can be no assurance that title would be vested in the Government by virtue of the purchase. Thus, while the provision does not require a title already issued in the name of the Government at the time of the actual purchase, accountable officers should, at the very least, exercise such reasonable diligence so that the titles and documents accompanying the vouchers are genuine and authentic, and the private parties to the contract had the legal right to transmit ownership of the land being bought by the Government. In accordance with sound accounting rules and practice therefore, it is mandatory for such purchase of land by the government agency or instrumentality to be evidenced by a Torrens title in the name of the Government, or such other document that is satisfactory to the President of the Philippines, to show that the title is vested in the Government.

10. **ID.; ID.; GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445); BEING ACCOUNTABLE OFFICERS, THE ADMINISTRATIVE OFFICER AND CHIEF ACCOUNTANT OF NMP ARE PERSONALLY LIABLE FOR THE LOSS INCURRED BY THE GOVERNMENT IN THE FAILED TRANSACTION, IN ACCORDANCE WITH SECTION 105 OF P.D. No. 1445.—** Umipig and Mabitad nevertheless tried to seek refuge in Sec. 106 of P.D. No. 1445 or the Government Auditing Code of the Philippines. x x x But as already explained, the written reservations made by Umipig and Mabitad were done only for the first purchase and not the second purchase subject of this case. There was clearly no written notice to Palomo regarding their questions on the legality of payments for the second purchase, either in the voucher itself or in a separate letter/ memorandum. Umipig's defense that he had treated the first and second purchases as a single transaction and thus his previous written objections still stand, deserves scant consideration. His certification as the accountable officer having knowledge of facts of the subject transaction is required each time a disbursement voucher is processed. The reason is that an accountable officer is charged with due diligence to ensure that every expenditure is justified and followed the proper procedure. The negligent acts of Palomo, Umipig and Mabitad thus rendered them personally liable for the loss incurred by the Government in the failed transaction, in accordance with Section 105 of P.D. No. 1445 which provides that "[e]very officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds."

11. **ID.; ID.; ID.; ID.; PETITIONER'S ACT OF DISBURSING FUNDS IN THE ABSENCE OF DOCUMENTS SUFFICIENT TO VEST TITLE IN NATIONAL MARITIME POLYTECHNIC (NMP), THE INSTRUMENTALITY BUYING THE SUBJECT LOTS, FAILED TO COMPLY WITH SECTION 449 OF THE GOVERNMENT ACCOUNTING AND AUDITING MANUAL (GAAM).—** Petitioners' act of disbursing funds in the absence of documents sufficient to vest title in NMP, the government instrumentality buying the subject lots, failed

to comply with the above statutory requirement. The authenticity of the SPAs supposedly showing the authority of the alleged attorney-in-fact, Jimenez-Trinidad, and the latter's sub-agent, Solis, had not been properly verified. The purchase by NMP, which already made substantial or almost full payment of the price, was evidenced only by a contract to sell executed by Solis who was later discovered lacking authority to do so, the SPA in favor of Jimenez-Trinidad being a fake document.

APPEARANCES OF COUNSEL

Herrera Batacan & Associates Law Firm for petitioner in G.R. No. 171776.
De La Cuesta De Las Alas & Tantuico for petitioners in G.R. No. 171359 and G.R. No. 171755.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are consolidated appeals by *certiorari* under Rule 45 of the 1997 Rules on Civil Procedure, as amended, assailing the January 4, 2006 Decision[1] and January 30, 2006 and March 1, 2006 Resolutions[2] of the Sandiganbayan, Fourth Division finding petitioners Benjamin A. Umipig, Renato B. Palomo, Margie C. Mabitad and Carmencita Fontanilla-Payabyab guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, as amended.

Factual Background

The National Maritime Polytechnic (NMP) is an attached agency of the Department of Labor and Employment tasked to

[1] *Rollo* (G.R. No. 171359), pp. 7-28. Penned by Associate Justice Jose R. Hernandez with Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada, concurring. The assailed decision was rendered in Criminal Case No. 27477.

[2] *Id.* at 30; *rollo* (G.R. No. 171776), pp. 74-80.

provide necessary training to seafarers in order to qualify them for employment.

Sometime in 1995, NMP undertook an expansion program. A pre-feasibility study conducted by the NMP identified Cavite as a possible site for the expansion as Cavite is close to the employment market for seafarers. Thus, NMP dispatched a team to look for a site in Cavite, and a suitable location consisting of two parcels of land was found at Sta. Cruz de Malabon Estate in Tanza, Cavite: Lots 1730-C and 1730-D, which are both covered by TCT No. T-97296-648 as part of a bigger parcel of land, Lot 1730.[3]

Petitioner Palomo, then NMP Executive Director, presented for approval to the NMP Board of Trustees the two parcels of land they identified. On August 21, 1995, the Board approved the proposal in principle and authorized Palomo "to start negotiations for the acquisition of the site in Cavite and if necessary to pay the earnest money."[4]

Palomo thereafter began negotiations with Glenn Solis, a real estate broker, for the purchase of Lots 1730-C and 1730-D. Solis is the Attorney-in-Fact of the registered owners of said properties by virtue of a Special Power of Attorney (SPA) executed in his favor.

On November 9, 1995, Palomo, in a handwritten memorandum to petitioners Umipig, Fontanilla and Mabitad requested them to "cause the release of the sum of Five Hundred Thousand Pesos (₱500,000) x x x [as] EARNEST MONEY for the purchase/ acquisition of [a] 5-hectare lot for NMP extension to Luzon—in favor of MR. GLEN[N] SOLIS, holder of authority documents of the lot owners—and thereby authorized to represent the owners on their behalf for this purpose."[5]

On November 10, 1995, Disbursement Voucher No. 101-9511-1114 was prepared for the ₱500,000 earnest money with

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[3] TSN, November 22, 2004, pp. 8-11; Exhibits "21" and "22".

[4] Exhibit "18", p. 7.

[5] Exhibit "17".

Glenn B. Solis as claimant. Umipig, then NMP Administrative Officer, after receiving the disbursement voucher and its supporting documents, issued a memorandum on even date to Palomo enumerating the infirmities of the supporting documents attached, to wit:

1. Contract to Sell dated January ___ 1995 for lot with TCT No. 97296 is between Eufrocina Sosa as Vendor and Nilda L. Ramos and six (6) others co-heir/vendor.
2. Yet the authority to sell dated November 8, 1995 was signed by Nilda I. Ramos (only) representing herself and her group.
3. The authority to sell is not notarized (dated November 8, 1995) at ₱370.00/sq. meter while the offer to NMP dated October 11, 1995 is for ₱350.00/sq.m.
4. Tax declaration No. 3908 and 3907 for TCT No. T-16279 and T-16356 are in the name of Eufrocina Raquero.
5. Xerox copy of TCT No. "97267"? is illegible, hence, one can not establish its relevance to the voucher.
6. That the aforesaid documents are all photocopies/xerox, not certified as true xerox copies.
7. That the feasibility study being work out by the NEDA and the NMP for the expansion of NMP to Luzon, is yet to be submitted to the NMP Board of Trustees for approval.
8. The undersigned signs subject voucher with aforesaid infirmities with reservations and doubts as to its legality, in compliance with Management Memo. dated November 9, 1995 for us to release the voucher.[6]

Umipig attached to the disbursement voucher his memorandum to Palomo when he signed Box A thereof. Petitioner Fontanilla-Payabyab, then Budget Officer, stamped the words "Fund Availability," and signed the voucher with note "Subject to clarification as per attached note of AO dated 11/10/95." Petitioner Mabitad, then NMP Chief Accountant, signed Box B of the voucher, and noted "as per findings of AO per attach[ed]

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[6] *Rollo* (G.R. No. 171755), p. 156.

memo, with reservations as to [the] legality of the transaction per observations by AO V."[7] Palomo signed Box C as approving officer.[8]

In response to Umipig's memorandum, Palomo instructed him to clear up said infirmities and authorized him to arrange a travel to Manila with their Finance Officer/Accountant "to clear these acts once and for all." Palomo further added that "[t]ime is of the essence and [they] might lose out in this transaction" and that "the cost of the lot per square meter has been set at ₱350 from the beginning."[9]

On December 10, 1995, a ₱2,000,000 partial payment was released for the purchase of Lots 1730-C and 1730-D through Disbursement Voucher No. 101-9512-082,[10] again with Solis as claimant. Umipig signed Box A but noted "Subj. to submission of legal requirements as previously indicated on Nov[ember] 10, 1995 [Memorandum]." Mabitad signed Box B and noted "w/ reservations as to the legality of the transactions." Palomo signed Box C as approving officer.

On December 21, 1995, a Contract to Sell was executed between Palomo and Solis over Lots 1730-C and 1730-D with a combined area of 22,296 square meters and a total agreed purchase price of ₱7,803,600 or ₱350 per square meter. Said Contract to Sell eventually ripened into a consummated sale (referred hereinafter as "the first purchase") as TCT No. T-936236[11] for Lot 1730-C and TCT No. T-936237[12] for Lot 1730-D are now registered in the name of NMP, such titles having been issued on November 21, 2000.

The foregoing sale transaction (***"first purchase"***) covering Lots 1730-C and 1730-D was the subject of Criminal Case

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[7] Exhibit "16-B".

[8] Exhibit "16".

[9] *Supra* note 6.

[10] Exhibit "8".

[11] Exhibit "21".

[12] Exhibit "22".

No. 26512 filed in the Sandiganbayan against Umipig, Palomo and Mabitad on February 16, 2001. On August 6, 2004, the Sandiganbayan's Fifth Division rendered a decision[13] acquitting all three accused of the charge of violation of Section 3 (e) of R.A. No. 3019.

After consummating the first purchase, Palomo again negotiated with Solis for the purchase of two more parcels of land adjacent to the lots subject of the first purchase: Lot 1731 which was covered by TCT No. 16356[14] and registered in the name of the late Eufrocina Raqueño, married to the late Leoncio Jimenez, and Lot 1732 covered by TCT No. 35812[15] and registered in the name of the late Francisco Jimenez, son of Eufrocina Raqueño and Leoncio Jimenez. Solis this time was armed with two Special Power of Attorneys (SPAs): one dated April 15, 1996 appearing to have been executed by the Jimenez heirs, all residents of California, U.S.A., authorizing Teresita Jimenez-Trinidad to sell Lots 1731 and 1732 and to receive consideration;[16] and another dated July 12, 1996 executed by Trinidad authorizing Solis to sell Lots 1731 and 1732 and to receive consideration.[17]

On August 1, 1996, Palomo and Solis executed a Contract to Sell[18] over Lots 1731 and 1732. It specified a total purchase price of ₱11,517,100 to be paid as follows:

> 4.1 ₱6,910,260 downpayment upon [signing] of [the Contract to Sell].
>
> 4.2 Balance after fifteen (15) days upon receipt of approve[d] Extra-judicial partition of Estate, location plan, reconstitution of owner's copy and signing of Deed of Sale.[19]

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[13] *Rollo* (G.R. No. 171755), pp. 85-118.

[14] Exhibit "N".

[15] Exhibit "O".

[16] Exhibit "C" & "C-1".

[17] Exhibit "B" & "B-1".

[18] Exhibit "A".

[19] Exhibit "A-1".

On even date, Disbursement Voucher No. 101-9608-787[20] was prepared for the down payment of ₱6,910,260 with Solis as payee. Fontanilla-Payabyab stamped the words "FUND AVAILABILITY" and signed the voucher. Umipig signed Box A. Mabitad signed Box B, while Palomo signed Box C as approving officer.

Also on August 1, 1996, a Request for Obligation of Allotments[21] was prepared by Fontanilla-Payabyab for the ₱6,910,260 down payment. Mabitad certified "that unobligated allotments are available for the obligation" and affixed her signature thereon. On August 2, 1996, NMP issued Development Bank of the Philippines (DBP) Check No. 0001584295[22] in the amount of ₱6,910,260 payable to Solis. The signatories to the check were Umipig[23] and Palomo.[24]

On December 27, 1996, Disbursement Voucher No. 101-9612-1524 was prepared for ₱3,303,600 with Solis as payee. Of said amount, ₱1,303,600 was for the full payment of the lots under the first purchase while the remaining ₱2,000,000 was partial payment of the balance for Lots 1731 and 1732.[25] Fontanilla-Payabyab stamped the words "FUND AVAILABILITY" and signed the voucher. Umipig signed Box A. Mabitad signed Box B, while Palomo signed Box C as approving officer. On even date, NMP issued DBP Check No. 0001752005[26] in the amount of ₱3,303,600 payable to Solis. The signatories to the check were Umipig[27] and Palomo.[28]

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[20] Exhibit "D".

[21] Exhibit "E".

[22] Exhibit "F".

[23] Exhibit "F-2".

[24] Exhibit "F-1".

[25] Records (Crim. Case No. 27477), Volume I, p. 308; Exhibit "12".

[26] Exhibit "H".

[27] Exhibit "H-2".

[28] Exhibit "H-1".

The total payments made for the ***"second purchase"*** covering Lots 1731 and 1732 was **₱8,910,260.00,** which is the subject of the present controversy. After receiving these payments, Solis disappeared and never showed up again at the NMP. Palomo even sent Solis three letters dated March 4, 1998,[29] August 11, 1998,[30] and September 30, 1998,[31] to follow up the approved extrajudicial partition of estate, location and/or subdivision plan, reconstitution of owners' copy and signing of Deed of Absolute Sale. Under the Contract to Sell, the submission of said documents was made a condition for payment of the balance, being necessary for the transfer and registration of said properties in the name of NMP.

As no reply was received from Solis, Palomo sought the assistance of the Office of the Solicitor General (OSG) and informed the latter of the inability to locate Solis. The OSG then inquired with the Philippine Consulate General in Los Angeles, California as to the genuineness and authenticity of the SPA that was executed by Urbano Jimenez, *et al*. authorizing Teresita Trinidad to sell Lots 1731 and 1732. In a letter[32] dated June 11, 1999, Vice Consul Bello stated that the SPA executed by Urbano Jimenez, *et al*. and shown to NMP was **fake**. According to Vice Consul Bello, when the Consulate searched its files for 1996, they found an SPA authorizing the sale of Lots 1731 and 1732 but it was not the same as the instrument given to NMP. The genuine SPA[33] for said properties, bearing the same date, O.R. No., Service No., Document No. and Page No. but without wet seal, was executed by Gloria Potente, Marylu Lupisan and Susan Abundo authorizing Presbitero J. Velasco, Jr. as attorney-in-fact. The OSG reported the Consulate's findings to Palomo in a letter[34] dated June 17, 1999.

[29] Exhibit "J".

[30] Exhibit "K".

[31] Exhibit "L".

[32] Exhibit "I".

[33] Exhibit "M".

[34] Exhibit "7".

On July 19, 1999, Palomo filed an Affidavit-Complaint[35] against Solis before the Tacloban City Prosecutor's Office for estafa through falsification of public documents. Upon the request of the Tacloban City Prosecutor's Office, the Commission on Audit (COA) conducted a special audit on the transactions subject of the complaint filed by Palomo.

Atty. Felix M. Basallaje Jr., State Auditor III of the COA and Resident Auditor at the NMP, set forth his findings in his Special Audit Report, to wit:

1. Disbursement in the amount of ₱8,910,260.00 in favor of Mr. Glenn Solis for the purchase of two lots covered by TCT No. 16356 and TCT No. 35812 was not supported by a Torrens Title or such other document that title is vested in the government (NMP) in violation of Sec. 449 of GAAM Vol. I.[36]

2. The contract to sell entered between NMP and Mr. Glenn Solis is tainted with irregularities the parties to the contract not being authorized as required in Sec. 5 of P.D. 1369 and pertinent provisions of the Civil Code of the Philippines.[37]

In the same report, the following persons were considered responsible for the subject transactions:

1. Mr. Glenn Solis -	For acting as vendor of the above subject property (TCT Nos. 16356 and 35812) without authority from the owner thereof;
2. Ms. Teresita Jimenez - Trinidad	For mis[re]presentation/ conspiring with Mr. Glenn Solis by issuing a Special Power of Attorney to sell the above property without authority from the owner.

[35] Exhibits "6" and "6-a".

[36] Exhibit "L-1".

[37] Exhibit "L-2".

3. Mr. Renato B. Palomo - Executive Director	For entering into a contract to sell without authority from the NMP Board of Directors and by signing Box "C" approving of the voucher as payment.
4. Benjamin A. Umipig- Administrative Officer	For signing Box "A" in certifying the payment as lawful.
5. Margie C. Mabitad - Chief Accountant	For signing Box "B" certifying as to availability of funds, that expenditure are proper and supported by documents.
6. Carmencita Fontanilla - Budget Officer	For signing in the voucher for fund control and in the ROA for requesting obligation of the above transactions.[38]

Atty. Basallaje thus made the following recommendations:

1. Disallow in audit all transaction[s] covering payments made to Mr. Glenn Solis under Voucher No. 101-9608-787 and Voucher No. 101-9612-1524 with a total amount of ₱8,910,260.00.

2. Require Mr. Glenn Solis and his principal, Teresita Jimenez Trinidad to restitute the amount received plus damages by filing a separate civil suit against the vendor.

3. Institute the filing of appropriate case against parties involved, if evidence warrants.[39]

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[38] Exhibit "L-4".

[39] Exhibit "L-5".

After preliminary investigation, the Tacloban City Prosecutor's Office issued a Resolution[40] dated January 25, 2001 finding a *prima facie case* of malversation of public funds committed in conspiracy by Solis, Jimenez-Trinidad, Palomo, Fontanilla-Payabyab, Umipig and Mabitad. Upon review, the Deputy Ombudsman for the Visayas approved with modification the resolution of the Tacloban City Prosecutor's Office and recommended instead the prosecution of petitioners for violation of Section 3(e) of R.A. No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act and the filing of a separate Information for Falsification against Solis.[41]

On May 20, 2002, petitioners were charged with violation of Section 3(e), R.A. No. 3019, under the following Information:

> That on or about the 1st day of August 1996, and for sometime prior or subsequent thereto, at Tacloban City, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused RENATO B. PALOMO, BENJAMIN A. UMIPIG, MARGIE C. MABITAD and CARMENCITA FONTANILLA-PAYABYAB, public officers, being the Executive Director, Administrative Officer, Chief Accountant and Budget Officer, respectively, of the National Maritime Polytechnic, stationed at Cabalawan, Tacloban City, in such capacity committing the offense in relation to office, conniving, confederating and mutually helping with each other and with GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD, private individuals, with deliberate intent, with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously enter into a Contract to Sell with accused GLENN [B.] SOLIS, for the acquisition of two (2) parcels of land denominated as Lot Nos. 1731 and 1732 covered with Transfer Certificate of Title Nos. 16356 and 35812, located at Tanza, Cavite, with an area of 32,906 sq. meters more or less, for a consideration in the amount of EIGHT MILLION, NINE HUNDRED TEN THOUSAND, TWO HUNDRED SIXTY PESOS (₱8,910,260.00), Philippine Currency, and consequently in payment thereof issued Development Bank of the Philippines (DBP) Check Nos. 1584295 dated August 2, 1996, in

[40] *Rollo* (G.R. No. 171755), pp. 75-79.

[41] *Id.* at 80-84.

the amount of SIX MILLION, NINE HUNDRED TEN THOUSAND, TWO HUNDRED SIXTY PESOS (₱6,910,260.00) Philippine Currency and 1752005, dated December 27, 1996, in the amount of THREE MILLION, THREE HUNDRED THREE THOUSAND, SIX HUNDRED PESOS, (₱3,303,600.00) Philippine Currency, respectively, through Voucher Nos. 1019608-787 and 101-9612-1524, respectively, despite the absence of a copy of a Torrens Title of the land in the name of the National Maritime Polytechnic (NMP) or any document showing that the title is already vested in the name of the government, as mandated under Section 449 of the Government Accounting and Auditing Manual, Volume I, and despite the lack of authority on the part of the accused GLENN B. SOLIS to sell the said lands not being the real or registered owner and the fictitious/ falsified Special Power of Attorney allegedly issued by accused TERESITA JIMENEZ-TRINIDAD, resulting to the non-acquisition of the land by the NMP, thus, accused public officers, in the course of the performance of their official functions had given unwarranted benefits to accused private individuals GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD and to the damage and prejudice of the government particularly, the National Maritime Polytechnic in the amount aforestated.

CONTRARY TO LAW.[42]

Palomo and Mabitad were arraigned on July 22, 2002.[43] Umipig and Fontanilla-Payabyab were arraigned on September 23, 2002[44] and January 20, 2004,[45] respectively. They all pleaded not guilty. Solis and Jimenez-Trinidad remained at large.

In the Sandiganbayan's Pre-Trial Order[46] dated January 20, 2004, all the parties agreed that the following factual and legal issues would be resolved in the case:

1. Whether or not the act of accused Executive Director Renato Palomo *y* Bermes in entering, in behalf of the NMP, into

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[42] Records (Crim. Case No. 27477), Volume I, pp. 1-2.

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

[44] *Id.* at 115.

[45] *Id.* at 310.

[46] *Id.* at 303-309.

a Contract to Sell with accused Glenn Solis required prior authority and/or approval from the Board of Trustees of NMP; and,

2. Whether or not all of the accused conspired and violated Section 3(e) of R.A. 3019, as amended.[47]

At the trial, the prosecution presented two witnesses: Atty. Basallaje, Jr. and Emerita T. Gomez, State Auditor I, also of the COA.

Atty. Basallaje testified on the audit investigation which the COA Regional Director instructed him to conduct on NMP regarding the transaction involving Lots 1731 and 1732. He likewise identified the Special Audit Report he prepared after the investigation, as well as the documents he had evaluated — only those documents which were attached to the endorsement letter from the COA Regional Director and those on file with him as resident auditor of NMP.[48] He also testified that he informed the management of NMP regarding the audit only after it was terminated. He admitted that he did not read or ask for a copy of the minutes of the August 21, 1995 NMP Board of Trustees meeting which the NMP Management cites as the source of authority for entering the subject transaction. Atty. Basallaje opined that it was incumbent upon the NMP management to support their claim that proper authority existed so he did not ask for a copy.[49]

Emerita Gomez testified that she was assigned at the NMP as auditor from the COA from November 17, 1985 until October 5, 2003. In the course of her duties, she recalled having received documents pertaining to the purchase of Lots 1731 and 1732. Said documents, which she identified in court, are: (1) Disbursement Voucher No. 101-9608-787 dated August 1, 1996 for partial payment to Glenn Solis of the amount of ₱6,910,260 to which a Request for Obligation of Allotments

[47] *Id.* at 308.

[48] TSN, June 16, 2004, p. 54.

[49] *Id.* at 47-49.

was attached; (2) a certified true copy of Check No. 0001584295 dated August 2, 1996 in the amount of ₱6,910,260 paid to the order of Glenn B. Solis; (3) Contract to Sell; (4) Special Power of Attorney executed by Teresita Jimenez-Trinidad in favor of Glenn Solis; (5) Special Power of Attorney purportedly executed by Urbano Jimenez, *et al*. in favor of Teresita Jimenez-Trinidad; (6) a certified true copy of Disbursement Voucher No. 101-9612-1524 dated December 27, 1996 for payment of parcels of land covered by TCT Nos. 16356 and 35812 in the amount of ₱3,303,600 to Glenn Solis; (7) a certified true copy of Check No. 001752005 dated December 27, 1996 in the amount of ₱3,303,600 paid to the order of Glenn Solis; (8) a letter dated June 11, 1999 by Vice Consul Bello addressed to Atty. Carlos Ortega, Assistant Solicitor General; (9) TCT No. 16356 RT-1245 in the name of Eufrocina Raqueno; (10) TCT No. T-35812 in the name of Francisco Jimenez; and (11) Declaration of Real Property in the name of Eufrocina Raqueño.

Gomez said she was the one who supplied the documents to Atty. Basallaje when the latter conducted an audit investigation. She was also tasked to encode the Special Audit Report. Gomez likewise identified the signatures of petitioners Umipig, Fontanilla, Mabitad and Palomo appearing on the disbursement vouchers and checks she had previously identified, and claimed that she was familiar with their signatures.[50]

On the other hand, petitioners testified on their respective defenses, as follows:

Petitioner Palomo related the circumstances surrounding the transaction involving Lots 1731 and 1732. He testified that his authority for the negotiation and payment of earnest money to Glenn Solis came from the Board of Trustees as reflected in the minutes of its August 21, 1995 meeting. He also admitted that it was Solis who prepared the Contract to Sell and that he did not try to meet the owner of the property. When the titles were presented to them, they believed that on their face value, they were in order. Palomo also said that the adjoining lots

[50] TSN, September 6, 2004, pp. 6-22.

were being sold for ₱1,000 to ₱2,000 per square meter while the selling price of the subject lots was only ₱350 per square meter. On cross-examination, Palomo admitted that none of the registered owners are signatories to the SPAs which Solis presented to him and that it was only when they could not anymore contact Solis, after the latter received the payments, that he panicked and tried to check if the documents shown to him were proper and authentic. He further disclosed that he did not consider Section 449 of the Government Accounting and Auditing Manual, Volume I when he transacted with Solis over the lots purchased by NMP.[51]

Petitioner Umipig testified on his duties as NMP Administrative Officer and the circumstances relating to the payments made in connection with the subject lots. He stated that by signing Disbursement Voucher No. 101-9612-1524 dated December 27, 1996, it means that the correct procedure was followed and the voucher was prepared, typed and supported by complete documents as required. He likewise admitted that before he signed the voucher, he presumed that everything was in order because said document had already passed through several offices.

On cross-examination, Umipig said that he made objections, as evidenced by a memorandum, to the payments made for the first purchase but did not anymore object on the payments pertaining to the second purchase because the Board of Trustees already gave a go signal for their purchase. He also cited an alleged COA regulation stating that if the subordinate objects in writing, he will be exonerated if he is later proven correct.[52]

Petitioner Mabitad, meanwhile testified on her duties and responsibilities as Accountant of NMP and identified several documents pertaining to the subject lots. She stated that when she signed Box B of the disbursement vouchers, she certified that funds are available for the purpose and the supporting documents duly certified in Box A are attached. Like Umipig,

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[51] TSN, November 22, 2004, pp. 11-20, 41-55.

[52] TSN, March 8, 2005, pp. 12-18, 23-42.

she also made reservations but she only expressed them in those vouchers pertaining to the first purchase. Mabitad cited Section 106 of the Government Auditing Code of the Philippines (P.D. No. 1445) which she claims relieves her from liability when she made her reservations. She also testified that her only participation in the subject transaction was to certify that the funds for it are available. She likewise stated that she did not make any notations in the disbursements for the second purchase because the first purchase was successful and titles to the lots acquired have been registered in the name of NMP.[53]

Petitioner Fontanilla-Payabyab, for her part, testified on her duties and responsibilities as Budget Officer of NMP. She explained that as budget officer, she is not required to sign vouchers. She nonetheless signed Disbursement Voucher Nos. 101-9608-787 and 101-9612-1524 for her own purpose because she was the one who followed up the release of funds from the Department of Budget and Management (DBM) so she can track the available cash balance of NMP as it was her duty to follow up with the DBM the release of the agency's budget. She further clarified that her signature does not have the effect of validating or invalidating the voucher. She also claimed that even if she is the Head of Finance, she cannot influence the decisions of her subordinates like Mabitad because they have specific jobs under the COA rules and under other laws.[54]

On January 4, 2006, the Fourth Division of the Sandiganbayan issued the assailed decision, the *fallo* of which reads:

ACCORDINGLY, accused RENATO B. PALOMO, BENJAMIN A. UMIPIG, MARGIE A. MABITAD and CARMENCITA FONTANILLA-PAYABYAB, are found guilty beyond reasonable doubt of having violated RA 3019, Sec. 3 (e) and are sentenced to suffer the indeterminate penalty of SIX (6) YEARS AND ONE (1) MONTH AS MINIMUM AND NINE (9) YEARS AS MAXIMUM, perpetual disqualification from public office, and to indemnify jointly

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[53] TSN, May 23, 2005, pp. 6-36.

[54] *Id.* at 72-90.

and severally the Government of the Republic of the Philippines in the amount of EIGHT MILLION NINE HUNDRED TEN THOUSAND AND TWO HUNDRED SIXTY PESOS (Php8,910,260).

Since the Court did not acquire jurisdiction over the person of accused GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD, let the cases against them be, in the meantime, archived, the same to be revived upon their arrest. Let an *alias* warrant of arrest be then issued against accused GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD.

SO ORDERED.[55]

The Sandiganbayan's Ruling

In convicting petitioners, the Sandiganbayan ruled that the evidence on record clearly shows that petitioners acted with evident bad faith and gross inexcusable negligence in entering into the Contract to Sell dated August 1, 1996 with Solis and in disbursing the amount of ₱8,910,260 for the second purchase. Said court held that petitioners violated Section 449 of the Government Accounting and Auditing Manual since the Contract to Sell does not suffice to prove that title is vested in the Government and even contravenes the requirement that proof of title must support the vouchers.

The Sandiganbayan faulted Palomo for breaking the law and acting with evident bad faith when he entered into a deal that gave no guarantee that ownership would be transferred to the Government and that such was obviously disadvantageous to the government. The other petitioners likewise violated the law when they signed the disbursement vouchers in the absence of any document that would prove ownership by the Government. The Sandiganbayan said petitioners cannot claim that they only followed the terms of the Contract to Sell because they also violated its provisions, the last disbursement voucher for ₱2,000,000 having been issued without legal basis. It pointed out that the Contract to Sell provided that a down payment of ₱6,910,260 must be given upon its signing and the payment of

[55] *Rollo* (G.R. No. 171359), pp. 26-27.

the balance must be paid 15 days *after* receipt of several specified documents. Petitioners, however, released a portion of the balance even without receiving any of the said documents.

The Sandiganbayan further noted that despite being apprised of Umipig's reservations on the legality of the transactions with Solis, petitioners deliberately proceeded to sign the disbursement vouchers and made possible the release of the money to Solis. Petitioners thus acted with gross inexcusable negligence when they did not verify the authenticity of the SPAs executed by Solis and Trinidad, and released the ₱2,000,000 for no valid reason.

The Sandiganbayan also ruled that the third element – undue injury to the Government as well as giving unwarranted benefits to a private party – was duly proven. Petitioners' acts unmistakably resulted in the Government's loss of ₱8,910,260 when Solis disappeared after receiving said amount and also gave Solis unwarranted benefits.

Finally, the Sandiganbayan held that the facts established conspiracy among the petitioners because the unlawful disbursements could not have been made had they not affixed their signatures on the disbursement vouchers and checks. When petitioners thus signed the vouchers, they made it appear that disbursements were valid when, in fact, they were not. Since each of the petitioners contributed to attain the end goal, it can be concluded that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them.

The motions for reconsideration filed by Palomo, Payabyab and Mabitad were denied by the Sandiganbayan in its Resolution dated March 1, 2006. Umipig's motion for reconsideration was likewise denied under the Resolution dated January 30, 2006.

These consolidated petitions were filed by Umipig (G.R. No. 171359), Payabyab (G.R. No. 171776), Palomo and Mabitad (G.R. No. 171755).

Petitioners' Arguments

Petitioners question the application of Section 449 of the Government Accounting and Auditing Manual as said provision does not categorically say that disbursement vouchers for the acquisition of land may not be signed unless title to the land is already in the name of Republic of the Philippines, or unless there is another document showing that title is already vested in the Government. They argue that the provision rather contemplates a situation where the evidence of ownership comes after the purchase or when the transaction has been consummated. They likewise contend that even if they were not charged under the Government Accounting and Auditing Manual, it is the regulation on which the finding of guilt was based and upon which they were held to have acted with evident bad faith and gross inexcusable negligence.

Umipig, Palomo and Mabitad also assert that no law, rule or regulation requires them to exercise a higher degree of diligence other than that of a good father of the family. Umipig adds that while his failure to repeat his reservations might be construed as an omission of duties, such omission cannot by any stretch of imagination be construed as negligence characterized by "the want of even the slightest care," or "omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally …." He further contends that he treated the first purchase and the subject contract as one single transaction as both were for one expansion program of the NMP and the lands subject of said acquisitions were contiguous. Thus, he did not see the need to repeat his written reservations. He also argues that there is no evidence that he and his co-petitioners acted in conspiracy as there was no proof of a chain of circumstances showing that each acted as a part of a complete whole.

Palomo and Mabitad, meanwhile assert that the SPAs in favor of Solis and Trinidad appeared to be in order and Palomo had no reason to doubt their authenticity. Accordingly, Palomo cannot be considered negligent or in bad faith, and should instead be presumed to have acted in good faith in the performance of his official duty. As with Mabitad, it is argued that she signed the

vouchers as Chief Accountant whose signature is required by Section 86 of the State Audit Code which concerns the certification of the proper accounting official of the agency concerned that the funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract is available for expenditure and account thereof, subject to verification by the auditor concerned. Thus in signing the voucher, she merely certified as to the availability of funds which is a ministerial duty on her part. She also cites Section 106 of the Government Auditing Code of the Philippines since she made a prior reservation on the vouchers pertaining to the first purchase. Palomo and Mabitad further submit that they have no prior knowledge of perceived infirmities contrary to what was found by the Sandiganbayan, pointing out that in Umipig's Memorandum, there was no mention that the SPAs could possibly be fake. They contend that it was the falsified SPAs that resulted in the filing of charges against them so the determination of conspiracy should revolve around the acts of falsification committed by Solis and Trinidad; hence, it was petitioners who were the victims of said conspirators.

Finally, Fontanilla-Payabyab reiterates that her signature on the subject vouchers was not a requirement for the disbursement as it was only a tracking or monitoring entry on the current cash position of NMP so that she can follow up the next cash allocation release from the DBM. She insists that the disbursement could have been made even without her signature. She also questions the finding of gross negligence on her part since it was not within her competence to determine the legality or illegality of a transaction. Further, she argues that even assuming she was indeed negligent, such finding precludes a ruling of conspiracy since the latter requires intentional participation.

Our Ruling

Petitioners were charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act, as amended, which reads:

Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

The essential elements of Section 3(e) of R.A. No. 3019, as amended, are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[56]

The Court finds it no longer necessary to discuss at length the first element as it is not disputed, having been stipulated by the parties during pre-trial that during the material time and date alleged in the Information, Palomo was the Executive Director, Umipig was the Administrative Officer, Mabitad was Chief Accountant and Fontanilla-Payabyab was the Budget Officer of NMP. The third element of undue injury to the Government is likewise a non-issue since it was likewise stipulated during pre-trial that after payments totaling ₱8,910,260 were

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[56] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 289-290.

made to Solis for the subject lots, the latter disappeared and the SPAs he showed to NMP were found to be fake. Clearly, this is a quantifiable loss for the Government since NMP was not able to acquire title over the subject lots. Thus, the controversy lies in the second element of the crime charged.

Palomo acted with evident bad faith and gross inexcusable negligence; Umipig and Mabitad were grossly negligent in the performance of their duties

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[57] "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[58] "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.[59] "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[60] These three modes are distinct and different from each other. Proof of the existence of any of these modes would suffice.[61]

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[57] *Id.* at 290, citing *Alvizo v. Sandiganbayan*, 454 Phil. 34, 72 (2003).

[58] *Id.*, citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

[59] *Id.*, citing *Air France v. Carrascoso*, *et al.*, 124 Phil. 722, 737 (1966).

[60] *Id.*

[61] *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 229.

We sustain the Sandiganbayan's finding of evident bad faith on the part of Palomo who had no authority to effect substantial payments — ₱8,910,260.00 out of the total consideration of ₱11,517,100.00 — for the lots to be purchased by NMP. The Minutes of the NMP Board meeting of August 21, 1995, which was cited by Palomo, states:

> The chairman after consulting the members of the board indicated that the presentation was approved in principle. The chairman indicated that Mr. Palomo is authorized to start negotiations for the acquisition of the site in Cavite and **if necessary to pay the earnest money.**[62]

Article 1482 of the Civil Code states that: "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract." The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price. Hence, there must first be a perfected contract of sale before we can speak of earnest money.[63]

Palomo requested for the release of down payment in the amount of ₱6,910,260.00 notwithstanding that no contract of sale had yet been consummated, as only a contract to sell was executed by the supposed attorney-in-fact of the vendors, Solis. As earlier mentioned, the Contract to Sell over Lots 1731 and 1732 stipulated that the balance of the total consideration is to be paid 15 days after receipt of the approved "[e]xtra-judicial partition of Estate, location plan, reconstitution of owner's copy and *signing of [the] Deed of Sale.*" This clearly indicates that the parties agreed to execute the contract of sale only after the full payment of the purchase price by the buyer and the corresponding submission by the seller of the documents necessary for the transfer of registration of the lots sold. We have held that where the vendor promises to execute a deed of absolute

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[62] Exhibit "R-1".

[63] *Government Service Insurance System v. Lopez,* G.R. No. 165568, July 13, 2009, 592 SCRA 456, 469, citing *Serrano v. Caguiat,* G.R. No. 139173, February 28, 2007, 517 SCRA 57, 66.

sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. Such stipulation shows that the vendor reserved title to the subject property until full payment of the purchase price.[64]

There being no perfected contract of sale, Palomo had no authority to effect substantial payments for the second purchase. That partial payments on the first purchase was similarly made upon a mere contract to sell, is of no moment; it must be noted that such contract to sell (first purchase) eventually ripened into a consummated sale and titles over Lots 1730-C and 1730-D have been actually transferred in the name of NMP. The second purchase transaction, however, was not consummated despite the unauthorized down payment of ₱6,910,260.00. Even worse, funds were disbursed to pay for the balance despite non-receipt of the specified transfer documents.

Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[65] Mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable.[66] Negligence consists in the disregard of some duty imposed by law; a failure to comply with some duty of care owed by one to another.[67] Negligence is want of care required by the circumstances. It is a relative or comparative, not an

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[64] *Nabus v. Pacson,* G.R. No. 161318, November 25, 2009, 605 SCRA 334, 352.

[65] *Reyes v. Atienza,* G.R. No. 152243, September 23, 2005, 470 SCRA 670, 683.

[66] *Constantino v. Sandiganbayan (First Division)*, G.R. Nos. 140656 & 184482, September 13, 2007, 533 SCRA 205, 222, citing *Sistoza v. Desierto,* 437 Phil. 117, 130 (2002).

[67] F.S. Tantuico, Jr., State Audit Code Philippines Annotated, First Ed., p. 529, citing *Murillo v. Mendoza,* 66 Phil. 689, 699 (1938); 28 R.C.L., pp. 752, 753; Moreno; *Santos v. Rustia,* 90 Phil. 358, 362 (1951); and *Corpus Juris,* Vol. 45, Sec. 582.

absolute term and its application depends upon the situation of the parties, and the degree of care and vigilance which the circumstances reasonably impose.[68]

Palomo's bad faith was evident not only in the disbursement of substantial payment upon a mere contract to sell — whereas the NMP Board granted him express authority only to start negotiations and pay earnest money if needed — but also in the disbursement of ₱1,000,000.00 partial balance despite non-submission by Solis of the specified transfer documents. As correctly observed by the Sandiganbayan, Palomo failed to give a satisfactory explanation on the matter during cross-examination, thus:

PROS. CORESIS

Q In the contract to sell which I have shown to you earlier it is stated here that the balance is to be paid fifteen (15) days upon receipt of the approved extra judicial partition of the estate, location plan, reconstitution of owner's copy and signing of the deed of sale, do you confirm this?

A Yes, sir.

Q **At the time that you paid the second payment** which was amounting to ₱3 million and part of that was for the contract to sell, **there was no deed of sale executed by Glenn B. Solis in favor of National Maritime Polytechnic, am I correct?** On December 27 there was none?

A **I cannot recall.**

Q **You cannot recall because there was in fact none, am I correct?**

A **It could be, sir.**

xxx xxx xxx

Q And the balance is supposed to be paid 15 days upon receipt of the extra-judicial partition and the signing of the deed of sale, is that correct?

[68] *Id.* at 529-530, citing *U.S. v. Juanillo,* 23 Phil. 212, 223 (1912); Moreno.

A Yes, sir.[69] (Emphasis supplied.)

Palomo also committed gross inexcusable negligence in failing to protect the interest of the government in causing the release of substantial sums to Solis despite legal infirmities in the documents presented by the said broker. He cannot seek exoneration by arguing that he merely followed the stipulated terms of payment in the contract to sell. Applicable provisions of existing laws are deemed written and incorporated in every government contract, hence it is the contractual stipulations which must conform to and not contravene the law and not the other way around. By entering into a contract that does not guarantee the transfer of ownership to the Government, petitioner violated Sec. 449 of the Government Accounting and Auditing Manual (GAAM) which provides:

> Section 449. *Purchase of land*. – Land purchased by agencies of the Government shall be evidenced by a Torrens Title drawn in the name of the Republic of the Philippines, or such other document satisfactory to the President of the Philippines that the title is vested in the Government.
>
> These titles and documents shall accompany the vouchers covering the purchase of land, after which they shall be forwarded to the Records Management and Archives Office.

The above rule requires public officers authorized to transact with private landowners not only to ensure that lands to be purchased by Government are covered by a Torrens title, but also that the sellers are the registered owners or their *duly authorized representatives*. For otherwise, there can be no assurance that title would be vested in the Government by virtue of the purchase. Thus, while the provision does not require a title already issued in the name of the Government at the time of the actual purchase, accountable officers should, at the very least, exercise such reasonable diligence so that the titles and documents accompanying the vouchers are genuine and authentic, and the private parties to the contract had the legal right to transmit ownership of the land being bought by the Government.

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[69] *Rollo* (G.R. No. 171359), pp. 19-20.

In accordance with sound accounting rules and practice therefore, it is mandatory for such purchase of land by the government agency or instrumentality to be evidenced by a Torrens title in the name of the Government, or such other document that is satisfactory to the President of the Philippines, to show that the title is vested in the Government.

Petitioners' act of disbursing funds in the absence of documents sufficient to vest title in NMP, the government instrumentality buying the subject lots, failed to comply with the above statutory requirement. The authenticity of the SPAs supposedly showing the authority of the alleged attorney-in-fact, Jimenez-Trinidad, and the latter's sub-agent, Solis, had not been properly verified. The purchase by NMP, which already made substantial or almost full payment of the price, was evidenced only by a contract to sell executed by Solis who was later discovered lacking authority to do so, the SPA in favor of Jimenez-Trinidad being a fake document.

The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority.[70] In this case, Palomo dealt with Solis who was a mere *sub-agent* of the alleged attorney-in-fact of the registered owners, a certain Jimenez-Trinidad, under an SPA which was notarized abroad. At the very least, therefore, Palomo should have exercised reasonable diligence by ascertaining such fact of agency and sub-agency, knowing that he is dealing with a mere broker and not the registered owners themselves who are residents of a foreign country. As noted by the Sandiganbayan, it took only a letter-query sent by the OSG to Consul Bello to verify the authenticity of the SPA document shown by Solis, purportedly executed by the registered owners in favor of Jimenez-Trinidad who in turn executed another SPA in favor of Solis. This was the prudent course for Palomo considering that in the first purchase transaction, Umipig had already noted legal

[70] See *Litonjua, Jr. v. Eternit Corporation,* G.R. No. 144805, June 8, 2006, 490 SCRA 204, 224.

infirmities in the documents presented by Solis. It must also be stressed that at the time Palomo transacted again with Solis for the second purchase in April 1996, the first purchase had not yet resulted in the transfer of title to NMP of Lots 1730-C and 1730-D which took place only later in the year 2000. As it turned out, the SPA for Jimenez-Trinidad presented by Solis was found to be fake. Palomo was indeed grossly negligent in failing to verify the authority of the alleged attorney-in-fact, Jimenez-Trinidad, and simply relied on the representations of Solis who was not directly authorized by the registered owners.

We also concur with the Sandiganbayan's finding that Umipig and Mabitad are guilty of gross inexcusable negligence in the performance of their duties.

The GAAM provides for the basic requirements applicable to all classes of disbursements that shall be complied with,[71] to wit:

a) Certificate of Availability of Fund.–Existence of lawful appropriation, the unexpended balance of which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

Use of moneys appropriated solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body.

b) Approval of claim or expenditure by head of office or his duly authorized representative.

c) **Documents to establish validity of claim. – Submission of documents and other evidences to establish the validity and correctness of the claim for payment.**

d) Conformity of the expenditure to existing laws and regulations.

e) Proper accounting treatment.[72]

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[71] See *Lucman v. Malawi,* G.R. No. 159794, December 19, 2006, 511 SCRA 268, 282.

[72] GOVERNMENT ACCOUNTING AND AUDITING MANUAL, Sec. 168.

Pursuant to COA Circular No. 92-389[73] dated November 3, 1992, Box A shall be signed by "the responsible Officer having direct supervision and knowledge of the facts of the transaction."[74]

Umipig, as signatory to Box A of Disbursement Voucher Nos. 101-9608-787 and 101-9612-1524 caused the release of ₱8,910,260 to Solis, certifying that "Expenses, Cash Advance necessary, lawful and incurred under [his] direct supervision." By making such certification, Umipig attests to the transactions' legality and regularity, which signifies that he had checked all the supporting documents before affixing his signature. If he had indeed exercised reasonable diligence, he should have known that Palomo exceeded the authority granted to him by the Board, and that the SPAs presented by Solis needed further verification as to its authenticity since his authority to sell was given not by the registered owners themselves but by another person (Jimenez-Trinidad) claiming to be the attorney-in-fact of the owners.

Had Umipig made the proper inquiries, NMP would have discovered earlier that the SPA in favor of Jimenez-Trinidad was fake and the unlawful disbursement of the ₱8,910,260 would have been prevented. Such nonchalant stance of Umipig who admitted to have simply presumed everything to be in order in the second purchase and failed to scrutinize the documents presented by Solis in violation of the accounting rules including Sec. 449 of the GAAM, constitutes gross negligence. His reliance on the earlier written reservations/objections he submitted to Palomo during the first purchase will not excuse his negligent acts. The second purchase was a separate and distinct transaction from the first purchase, involving different parcels of land and registered owners. The infirmities he had already observed in the first purchase should have made Umipig more circumspect in giving his approval for the disbursements in the second

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[73] Restating with modifications COA Circular No. 81-55, dated February 23, 1981, and prescribing the use of the Disbursement Voucher, General Form No. 5(A).

[74] *Id.*, 2 (I).

purchase. Additionally, the limited authority granted by the NMP Board to Palomo should have impelled Umipig to be more prudent in the second purchase, as it might expose the government to even greater damage or loss if the expenditure is later proved to have no legal basis.

As for Mabitad, she signed Box B attesting that "[a]dequate available funds/budgetary allotment in the amount x x x; expenditure properly certified; supported by documents marked (x) per checklist x x x; account codes proper; previous cash advance liquidated/accounted for." Box B is accomplished by the Accountant or other equivalent officials in the government-owned or controlled corporation.[75]

At the trial, Mabitad affirmed that her signature in Box B means that the expenditure is certified. She however admitted having merely relied on Umipig's certification that the transactions were legal. Mabitad further asserted that with respect to disbursement vouchers, her responsibilities are merely certifying that funds are available for the purpose and check if the supporting documents which were duly certified in Box A are attached to the voucher. But contrary to her statement suggesting that her act of signing the disbursement voucher was ministerial, as signatory to the said document she is not precluded from raising questions on the legality or regularity of the transaction involved, thus:

> 3. Document Checklist at the Back of the Voucher
>
> The checklist at the back of the voucher enumerates the mandatory minimum supporting documents for the selected transactions.
>
> It should be clear, however, that the submission of the supporting documents enumerated under each type of transaction does not preclude reasonable questions on the funding, legality, regularity, necessity or economy of the expenditure or transaction. **Such questions may be raised by any of the signatories to the voucher.**
>
> The demand for additional documents or equivalents should be in writing. A blank space is provided for additional requirements, if any, and if authorized by any law or regulation. If the space is

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[75] *Id.*, 2 (J).

insufficient, separate check may be used and attached to the voucher.[76] (Emphasis supplied.)

It bears stressing that Umipig and Mabitad are accountable officers, the nature of their accountability under the Government Auditing Code of the Philippines (P.D. No. 1445) was described as follows:

> ***Accountable***. (a) Having responsibility or liability for cash or other property held in trust or under some other relationship with another. (b) [government accounting] **Personally liable for improper payments; said of a certifying or disbursing officer.** (c) Requiring entry on the books of account; said of a transaction not yet recorded, often with reference to its timing. (d) Responsible.
>
> ***Accountable officer.*** An officer who, by reason of the duties of his office, is accountable for public funds or property.[77] (Emphasis and underscoring supplied.)

As such accountable officers, Umipig and Mabitad are cognizant of the requirement in Sec. 449 of the GAAM that purchase of land shall be evidenced by titles or such document of transfer of ownership in favor of the government. The Court cannot uphold their own interpretation of said provision which would require evidence of title or transfer of ownership to Government merely for archiving and recording purposes, as the requirement is intended to protect the interest of the government. By approving the release of payment under disbursement vouchers supported only by a contract to sell executed by a mere sub-agent, Umipig and Mabitag committed gross negligence resulting in the loss of millions of pesos paid to a bogus land broker. The Sandiganbayan therefore did not err in convicting them under Section 3 (e) of R.A. No. 3019.

Umipig and Mabitad nevertheless tried to seek refuge in Sec. 106 of P.D. No. 1445 or the Government Auditing Code of the Philippines, which provides:

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[76] *Id.*, 3.

[77] F.S. Tantuico, Jr., State Audit Code Philippines Annotated, p. 529.

Section 106. *Liability for acts done by direction of superior officer.* – No accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

But as already explained, the written reservations made by Umipig and Mabitad were done only for the first purchase and not the second purchase subject of this case. There was clearly no written notice to Palomo regarding their questions on the legality of payments for the second purchase, either in the voucher itself or in a separate letter/memorandum. Umipig's defense that he had treated the first and second purchases as a single transaction and thus his previous written objections still stand, deserves scant consideration. His certification as the accountable officer having knowledge of facts of the subject transaction is required each time a disbursement voucher is processed. The reason is that an accountable officer is charged with due diligence to ensure that every expenditure is justified and followed the proper procedure.

The negligent acts of Palomo, Umipig and Mabitad thus rendered them personally liable for the loss incurred by the Government in the failed transaction, in accordance with Section 105 of P.D. No. 1445 which provides that "[e]very officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds."

Conspiracy Proven

In *Alvizo v. Sandiganbayan*,[78] this Court said:

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[78] G.R. Nos. 98494-98692, *etc*., July 17, 2003, 406 SCRA 311, 374-375.

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, **the proof of conspiracy**, which is essentially hatched under cover and out of view of others than those directly concerned, **is perhaps most frequently made by evidence of a chain of circumstances only.** (Emphasis supplied.)

Although a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, it must, like the crime itself, be proven beyond reasonable doubt.[79] Mere knowledge, acquiescence or approval is not enough without a showing that the participation was intentional and with a view of furthering a common criminal design or purpose.[80]

In this case, the evidence on record clearly supports the finding of conspiracy among petitioners Umipig, Mabitad and Palomo who all authorized the payments on the second purchase in utter disregard of the requirement in Section 449 of the GAAM, and with gross negligence in failing to ascertain the authority of Solis to sell the same. The damage or injury to the government would have been prevented, had Umipig, Mabitad and Palomo exercised reasonable diligence in transacting with Solis and examining the supporting documents before approving the disbursements in payment of the purchase price of Lots 1731

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[79] *Grefalde v. Sandiganbayan,* G.R. Nos. 136502 & 136505, December 15, 2000, 348 SCRA 367, 389, citing *De la Peña v. Sandiganbayan*, G.R. Nos. 89700-22, October 1, 1999, 316 SCRA 25, 36 and *People v. Marquita*, G.R. Nos. 119958-62, March 1, 2000, 327 SCRA 41, 51.

[80] *Id.*

and 1732. Indeed, the fraudulent transaction would not have succeeded without the cooperation of all the petitioners whose signatures on the corresponding vouchers made possible the release of payments to Solis despite legal infirmities in the supporting documents he submitted.

Umipig and Mabitad deliberately disregarded the rules, the limited authority granted by the NMP Board to Palomo, and the fact that Solis had earlier submitted questionable documents in the first purchase. Umipig and Mabitad cannot justify their laxity in the second purchase simply because the first sale of Lots 1730-C and 1730-D was eventually consummated and titles thereto had been transferred to NMP. It must be noted that NMP secured titles to the said lots under the first purchase only in November 2000, long after Umipig and Mabitad gave their approval for subsequent disbursements for Lots 1731 and 1732 for which Solis submitted a fake SPA. Their participation thus went beyond mere knowledge and acquiescence to the illegal disbursements in the second purchase. Umipig and Mabitad even signed as instrumental witnesses in the Contract to Sell covering Lots 1731 and 1732.

Umipig and Mabitad further authorized the release of partial balance in the amount of ₱1,000,000.00 also approved by Palomo, notwithstanding that the required transfer documents were not submitted by Solis as stipulated in the Contract to Sell. Hence, aside from causing damage or injury to the Government, Umipig, Palomo and Mabitad also gave unwarranted benefits to Solis who — assuming he had the requisite authority from the owners to sell Lots 1731 and 1732 – had no right to receive any portion of the balance until his submission of the required transfer documents to the buyer, NMP.

Fontanilla-Payabyab not liable under Sec. 3 (e) of R.A. No. 3019

As to Fontanilla-Payabyab, her signature appears on the questioned vouchers above her name which was stamped on the vouchers together with the statement "FUND

AVAILABILITY," and not in Boxes A, B or C. Such signature, however, neither validates nor invalidates the vouchers and this was not disputed by Mabitad who testified that Fontanilla-Payabyab's signature as budget officer on the disbursement vouchers is not considered part of standard operating procedure.

Although Fontanilla-Payabyab was the Head of Finance with Mabitad as one of her subordinates, the prosecution failed to establish that her responsibilities include reviewing her subordinate's certifications in disbursement vouchers. As Fontanilla-Payabyab's signature on the voucher was a mere superfluity, it is unnecessary for this Court to make a determination of negligence on her part. Her purpose in doing so, *i.e.,* to monitor the budget allocated and utilized/disbursed, is likewise immaterial considering that her act of signing the voucher did not directly cause the damage or injury. Consequently, there is no basis to hold her liable under Section 3 (e) of R.A. No. 3019.

Penalty for Violation of Section 3 (e), R.A. No. 3019

The penalty for violation of Section 3(e) of R.A. No. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office." Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.

There being no aggravating and mitigating circumstances in this case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

Civil Liability

An offense as a general rule causes two classes of injuries: the first is the social injury produced by the criminal act which

is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated through indemnity, which is civil in nature.[81] Having caused injury or loss to the Government by their gross inexcusable negligence and evident bad faith, petitioners Palomo, Mabitad and Umipig are thus liable to restitute the amount of ₱8,910,260 that was paid to Solis.

WHEREFORE, the Decision dated January 4, 2006 and Resolutions dated January 30, 2006 and March 1, 2006 of the Sandiganbayan, Fourth Division in Criminal Case No. 27477 are hereby **AFFIRMED** with **MODIFICATION**. The conviction of petitioners Benjamin A. Umipig, Margie C. Mabitad and Renato B. Palomo under Section 3 (e) of R.A. No. 3019 is **UPHELD** while the conviction of petitioner Carmencita Fontanilla-Payabyab is **REVERSED** as she is hereby **ACQUITTED** of the said charge.

With costs against petitioners Benjamin A. Umipig in G.R. No. 171359 and Renato B. Palomo and Margie C. Mabitad in G.R. No. 171755.

Costs *de oficio* in G.R. No. 171776.

SO ORDERED.

Bersamin (Acting Chairperson), del Castillo, Perez,[*] and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[81] *Shafer v. Judge, RTC of Olongapo City, Br. 75*, No. L-78848, November 14, 1988, 167 SCRA 386, 392.

[*] Designated Additional Member per Raffle dated July 4, 2012 vice Associate Justice Teresita J. Leonardo-De Castro who inhibited for being then the Presiding Justice of the Sandiganbayan.

[**] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 171514. July 18, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DOMINGO ESPINOSA,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT (COMMONWEALTH ACT NO. 141); FOR ONE TO INVOKE SECTION 48 (b) AND CLAIM AN IMPERFECT TITLE OVER AN ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN ON THE BASIS OF A THIRTY (30)-YEAR POSSESSION AND OCCUPATION, IT MUST BE DEMONSTRATED THAT SUCH POSSESSION AND OCCUPATION COMMENCED ON JANUARY 24, 1947 AND THE THIRTY (30)-YEAR PERIOD WAS COMPLETED PRIOR TO THE EFFECTIVITY OF P.D. NO. 1073.—** For one to invoke Section 48(b) and claim an imperfect title over an alienable and disposable land of the public domain on the basis of a thirty (30)-year possession and occupation, it must be demonstrated that such possession and occupation commenced on January 24, 1947 and the thirty (30)-year period was completed prior to the effectivity of P.D. No. 1073. There is nothing in Section 48(b) that would suggest that it provides for two (2) modes of acquisition. It is not the case that there is an option between possession and occupation for thirty (30) years and possession and occupation since June 12, 1945 or earlier. It is neither contemplated under Section 48(b) that if possession and occupation of an alienable and disposable public land started after June 12, 1945, it is still possible to acquire an imperfect title if such possession and occupation spanned for thirty (30) years at the time of the filing of the application. In this case, the lower courts concluded that Espinosa complied with the requirements of Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 based on supposed evidence that he and his predecessor-in-interest had been in possession of the property for at least thirty (30) years prior to the time he filed his application. However, there is nothing on record showing that as of January 25, 1977 or

prior to the effectivity of P.D. No. 1073, he or Isabel had already acquired title by means of possession and occupation of the property for thirty (30) years. On the contrary, the earliest tax declaration in Isabel's name was for the year 1965 indicating that as of January 25, 1977, only twelve (12) years had lapsed from the time she first came supposedly into possession.

2. **ID.; ID.; ID.; IT WAS INCUMBENT UPON RESPONDENT TO PROVE, AMONG OTHER THINGS, THAT HER PREDECESSOR'S POSSESSION OF THE PROPERTY DATED BACK TO AT LEAST JUNE 12, 1945.—** Assuming that it is Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 that should apply in this case, as the lower courts held, it was incumbent upon Espinosa to prove, among other things, that Isabel's possession of the property dated back at least to June 12, 1945. That in view of the established fact that Isabel's alleged possession and occupation started much later, the lower courts should have dismissed Espinosa's application outright. In sum, the CA, as well as the MTC, erred in not applying the present text of Section 48(b) of the PLA. That there were instances wherein applications were granted on the basis of possession and occupation for thirty (30) years was for the sole reason discussed above. Regrettably, such reason does not obtain in this case.

3. **ID.; ID.; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); BEING CLEAR THAT IT IS SECTION 14 (2) OF P.D. NO. 1529 THAT SHOULD APPLY, IT FOLLOWS THAT THE SUBJECT PROPERTY BEING SUPPOSEDLY ALIENABLE AND DISPOSABLE WILL NOT SUFFICE; THERE MUST BE AN OFFICIAL DECLARATION TO THAT EFFECT BEFORE THE PROPERTY MAY BE RENDERED SUSCEPTIBLE TO PRESCRIPTION.—** Being clear that it is Section 14(2) of P.D. No. 1529 that should apply, it follows that the subject property being supposedly alienable and disposable will not suffice. As Section 14(2) categorically provides, only private properties may be acquired thru prescription and under Articles 420 and 421 of the Civil Code, only those properties, which are not for public use, public service or intended for the development of national wealth, are considered private. In *Heirs of Mario Malabanan v. Republic*, this Court held that there must be an official

declaration to that effect before the property may be rendered susceptible to prescription.

4. **ID.; ID.; ID.; FOR PRESCRIPTION TO RUN AGAINST THE STATE, THERE MUST BE PROOF THAT THERE WAS AN OFFICIAL DECLARATION THAT THE SUBJECT PROPERTY IS NO LONGER EARMARKED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF NATIONAL WEALTH.—** Granting that Isabel and, later, Espinosa possessed and occupied the property for an aggregate period of thirty (30) years, this does not operate to divest the State of its ownership. The property, albeit allegedly alienable and disposable, is not patrimonial. As the property is not held by the State in its private capacity, acquisition of title thereto necessitates observance of the provisions of Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 or possession and occupation since June 12, 1945. For prescription to run against the State, there must be proof that there was an official declaration that the subject property is no longer earmarked for public service or the development of national wealth. Moreover, such official declaration should have been issued at least ten (10) or thirty (30) years, as the case may be, prior to the filing of the application for registration. The period of possession and occupation prior to the conversion of the property to private or patrimonial shall not be considered in determining completion of the prescriptive period. Indeed, while a piece of land is still reserved for public service or the development of national wealth, even if the same is alienable and disposable, possession and occupation no matter how lengthy will not ripen to ownership or give rise to any title that would defeat that of the State's if such did not commence on June 12, 1945 or earlier.

5. **ID.; ID.; ID.; THE NOTATION ON THE SURVEY PLAN DOES NOT CONSTITUTE INCONTROVERTIBLE EVIDENCE THAT WOULD OVERCOME THE PRESUMPTION THAT THE PROPERTY BELONGS TO THE INALIENABLE PUBLIC DOMAIN.—** At any rate, as petitioner correctly pointed out, the notation on the survey plan does not constitute incontrovertible evidence that would overcome the presumption that the property belongs to the inalienable public domain. All lands of the public domain belong

to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. In *Republic v. Sarmiento*, this Court reiterated the earlier ruling in *Menguito v. Republic* that the notation made by a surveyor-geodetic engineer that the property surveyed is alienable and disposable is not the positive government act that would remove the property from the inalienable domain. Neither it is the evidence accepted as sufficient to controvert the presumption that the property is inalienable.

6. **ID.; ID.; ID.; WHILE THE BLUEPRINT COPY OF THE SURVEY PLAN MAY BE OFFERED AS EVIDENCE OF THE IDENTITY, LOCATION AND BOUNDARIES OF THE PROPERTY APPLIED FOR, THE NOTATION THEREIN MAY NOT BE ADMITTED AS EVIDENCE OF ALIENABILITY AND DISPOSABILITY.—** Even if Espinosa's application may not be dismissed due to his failure to present the original tracing cloth of the survey plan, there are numerous grounds for its denial. The blueprint copy of the advanced survey plan may be admitted as evidence of the identity and location of the subject property if: (a) it was duly executed by a licensed geodetic engineer; (b) it proceeded officially from the Land Management Services (LMS) of the DENR; and (c) it is accompanied by a technical description of the property which is certified as correct by the geodetic surveyor who conducted the survey and the LMS of the DENR. As ruled in *Republic v. Guinto-Aldana,* the identity of the land, its boundaries and location can be established by other competent evidence apart from the original tracing cloth such as a duly executed blueprint of the survey plan and technical description. x x x However, while such blueprint copy of the survey plan

may be offered as evidence of the identity, location and the boundaries of the property applied for, the notation therein may not be admitted as evidence of alienability and disposability.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Suico-Chanco Peque Caracut-Arnibal Duran Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* from the Decision[1] dated November 11, 2004 and Resolution[2] dated February 13, 2006 of the Court of Appeals in CA-G.R. CV No. 72456.

On March 3, 1999, respondent Domingo Espinosa (Espinosa) filed with the Municipal Trial Court (MTC) of Consolacion, Cebu an application[3] for land registration covering a parcel of land with an area of 5,525 square meters and situated in *Barangay* Cabangahan, Consolacion, Cebu. In support of his application, which was docketed as LRC Case No. N-81, Espinosa alleged that: (a) the property, which is more particularly known as Lot No. 8499 of Cad. 545-D (New), is alienable and disposable; (b) he purchased the property from his mother, Isabel Espinosa (Isabel), on July 4, 1970 and the latter's other heirs had waived their rights thereto; and (c) he and his predecessor-in-interest had been in possession of the property in the concept of an owner for more than thirty (30) years.

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring; *rollo,* pp. 32-39.

[2] Associate Justice Enrico A. Lanzanas replaced Associate Justice Sesinando E. Villon; *id.* at 40-41.

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

Espinosa submitted the blueprint of Advanced Survey Plan 07-000893[4] to prove the identity of the land. As proof that the property is alienable and disposable, he marked as evidence the annotation on the advance survey plan made by Cynthia L. Ibañez, Chief of the Map Projection Section, stating that "CONFORMED PER L.C. MAP NOTATION L.C. Map No. 2545 Project No. 28 certified on June 25, 1963, verified to be within Alienable & Disposable Area".[5] Espinosa also presented two (2) tax declarations for the years 1965 and 1974 in Isabel's name – Tax Declaration Nos. 013516 and 06137 – to prove that she had been in possession of the property since 1965. To support his claim that he had been religiously paying the taxes due on the property, Espinosa presented a Certification[6] dated December 1, 1998 issued by the Office of the Treasurer of Consolacion, Cebu and three (3) tax declarations for the years 1978, 1980 and 1985 – Tax Declaration Nos. 14010, 17681 and 01071[7].[8]

Petitioner opposed Espinosa's application, claiming that: (a) Section 48(b) of Commonwealth Act No. 141 otherwise known as the "Public Land Act" (PLA) had not been complied with as Espinosa's predecessor-in-interest possessed the property only after June 12, 1945; and (b) the tax declarations do not prove that his possession and that of his predecessor-in-interest are in the character and for the length of time required by law.

On August 18, 2000, the MTC rendered a Judgment[9] granting Espinosa's petition for registration, the dispositive portion of which states:

WHEREFORE, and in view of all the foregoing, judgment is hereby rendered ordering for the registration and the confirmation of title of [Espinosa] over Lot No. 8499, Cad 545-D (New), situated at

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[4] *Id.* at 45.

[5] *Id.*

[6] *Id.* at 52.

[7] *Id.* at 47.

[8] *Id.* at 68.

[9] Under the *sala* of Pairing Judge Wilfredo A. Dagatan; *id.* at 81-86.

[B]arangay Cabangahan, Consolacion, Cebu, Philippines, containing an area of 5,525 square meters and that upon the finality of this decision, let a corresponding decree of registration be issued in favor of the herein applicant in accordance with Section 39, P.D. 1529.

SO ORDERED.[10]

According to the MTC, Espinosa was able to prove that the property is alienable and disposable and that he complied with the requirements of Section 14(1) of Presidential Decree (P.D.) No. 1529. Specifically:

> After a careful consideration of the evidence presented in the above-entitled case, the Court is convinced, and so holds, that [Espinosa] was able to establish his ownership and possession over the subject lot which is within the area considered by the Department of Environment and Natural Resources (DENR) as alienable and disposable land of the public domain.
>
> The Court is likewise convinced that the applicant and that of [predecessor]-in-interest have been in open, actual, public, continuous, adverse and under claim of title thereto within the time prescribed by law (Sec. 14, sub-par. 1, P.D. 1529) and/or in accordance with the Land Registration Act.[11]

Petitioner appealed to the CA and pointed Espinosa's failure to prove that his possession and that of his predecessor-in-interest were for the period required by law. As shown by Tax Declaration No. 013516, Isabel's possession commenced only in 1965 and not on June 12, 1945 or earlier as required by Section 48(b) of the PLA. On the other hand, Espinosa came into possession of the property only in 1970 following the sale that transpired between him and his mother and the earliest tax declaration in his name was for the year 1978. According to petitioner, that Espinosa and his predecessor-in-interest were supposedly in possession for more than thirty (30) years is inconsequential absent proof that such possession began on June 12, 1945 or earlier.[12]

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[10] *Id.* at 86.

[11] *Id.* at 85.

[12] *Id.* at 69-75.

Petitioner also claimed that Espinosa's failure to present the original tracing cloth of the survey plan or a sepia copy thereof is fatal to his application. Citing *Del Rosario v. Republic of the Philippines*[13] and *Director of Lands v. Judge Reyes,*[14] petitioner argued that the submission of the original tracing cloth is mandatory in establishing the identity of the land subject of the application.[15]

Further, petitioner claimed that the annotation on the advance survey plan is not the evidence admissible to prove that the subject land is alienable and disposable.[16]

By way of the assailed decision, the CA dismissed petitioner's appeal and affirmed the MTC Decision dated August 18, 2000. The CA ruled that possession for at least thirty (30) years, despite the fact that it commenced after June 12, 1945, sufficed to convert the property to private. Thus:

> The contention of [petitioner] is not meritorious on the following grounds:
>
> a) The record of the case will show that [Espinosa] has successfully established valid title over the subject land and that he and his predecessor-in-interest have been in continuous, adverse, public and undisturbed possession of said land in the concept of an owner for more than 30 years before the filing of the application. Established jurisprudence has consistently pronounced that "open, continuous and exclusive possession for at least 30 years of alienable public land *ipso jure* converts the same into private property (*Director of Lands vs. Intermediate Appellate Court*, *214 SCRA 604)*. This means that occupation and cultivation for more than 30 years by applicant and his predecessor-in-interest vests title on such applicant so as to segregate the land from the mass of public land (*National Power Corporation vs. Court of Appeals, 218 SCRA 41)*; and

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[13] 432 Phil. 824 (2002).

[14] 160-A Phil. 832 (1975).

[15] *Rollo*, pp. 75-77.

[16] *Id.* at 77-78.

b) It is true that the requirement of possession since June 12, 1945 is the latest amendment of Section 48(b) of the Public Land Act (C.A. No. 141), but a strict implementation of the law would in certain cases result in inequity and unfairness to [Espinosa]. As wisely stated by the Supreme Court in the case of *Republic vs. Court of Appeals*, 235 SCRA 567:

> "Following the logic of the petitioner, any transferee is thus foreclosed to apply for registration of title over a parcel of land notwithstanding the fact that the transferor, or his predecessor-in-interest has been in open, notorious and exclusive possession thereof for thirty (30) years or more."[17]

The CA also ruled that registration can be based on other documentary evidence, not necessarily the original tracing cloth plan, as the identity and location of the property can be established by other competent evidence.

Again, the aforesaid contention of [the petitioner] is without merit. While the best evidence to identify a piece of land for registration purposes may be the original tracing cloth plan from the Land Registration Commission, the court may sufficiently order the issuance of a decree of registration on the basis of the blue print copies and other evidence (*Republic of the Philippines vs. Intermediate Appellate Court, G.R. No. L-70594, October 10, 1986)*. The said case provides further:

> "The fact that the lower court finds the evidence of the applicant sufficient to justify the registration and confirmation of her titles and did not find it necessary to avail of the original tracing cloth plan from the Land Registration Commission for purposes of comparison, should not militate against the rights of the applicant. Such is especially true in this case where no clear, strong, convincing and more preponderant proof has been shown by the oppositor to overcome the correctness of said plans which were found both by the lower court and the Court of Appeals as conclusive proofs of the description and identities of the parcels of land contained therein."

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

There is no dispute that, in case of *Del Rosario vs. Republic, supra¸* the Supreme Court pronounced that the submission in evidence of the original tracing cloth plan, duly approved by the Bureau of Lands, in cases for application of original registration of land is a mandatory requirement, and that failure to comply with such requirement is fatal to one's application for registration. However, such pronouncement need not be taken as an iron clad rule nor to be applied strictly in all cases without due regard to the rationale behind the submission of the tracing cloth plan. x x x:

xxx xxx xxx

As long as the identity of and location of the lot can be established by other competent evidence like a duly approved blueprint copy of the advance survey plan of Lot 8499 and technical description of Lot 8499, containing and identifying the boundaries, actual area and location of the lot, the presentation of the original tracing cloth plan may be excused.[18]

Moreover, the CA ruled that Espinosa had duly proven that the property is alienable and disposable:

[Espinosa] has established that Lot 8499 is alienable and disposable. In the duly approved Advance Survey Plan As-07-0000893 (sic) duly approved by the Land Management Services, DENR, Region 7, Cebu City, it is certified/verified that the subject lot is inside the alienable and disposable area of the disposable and alienable land of the public domain.[19]

Petitioner moved for reconsideration but this was denied by the CA in its Resolution[20] dated February 13, 2006.

Petitioner's Case

Petitioner entreats this Court to reverse and set aside the CA's assailed decision and attributes the following errors: (a) Espinosa failed to prove by competent evidence that the subject property is alienable and disposable; (b) jurisprudence dictates

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

[19] *Id.* at 38.

[20] *Supra* note 2.

that a survey plan identifies the property in preparation for a judicial proceeding but does not convert the property into alienable, much less, private; (c) under Section 17 of P.D. No. 1529, the submission of the original tracing cloth plan is mandatory to determine the exact metes and bounds of the property; and (d) a blueprint copy of the survey plan may be admitted as evidence of the identity and location of the property only if it bears the approval of the Director of Lands.

Issues

The resolution of the primordial question of whether Espinosa has acquired an imperfect title over the subject property that is worthy of confirmation and registration is hinged on the determination of the following issues:

a. whether the blueprint of the advanced survey plan substantially complies with Section 17 of P.D. No. 1529; and

b. whether the notation on the blueprint copy of the plan made by the geodetic engineer who conducted the survey sufficed to prove that the land applied for is alienable and disposable.

Our Ruling

The lower courts were unanimous in holding that Espinosa's application is anchored on Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of the PLA and the grant thereof is warranted in view of evidence supposedly showing his compliance with the requirements thereof.

This Court is of a different view.

Based on Espinosa's allegations and his supporting documents, it is patent that his claim of an imperfect title over the property in question is based on Section 14(2) and not Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of the PLA. Espinosa did not allege that his possession and that of his predecessor-in-interest commenced on June 12, 1945 or earlier as prescribed under the two (2) latter provisions. On the contrary, Espinosa repeatedly alleged that he acquired title thru his possession and

that of his predecessor-in-interest, Isabel, of the subject property for thirty (30) years, or through prescription. Therefore, the rule that should have been applied is Section 14(2) of P.D. No. 1529, 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:
>
> xxx xxx xxx
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

Obviously, the confusion that attended the lower courts' disposition of this case stemmed from their failure to apprise themselves of the changes that Section 48(b) of the PLA underwent over the years. Section 48(b) of the PLA originally states:

> Sec. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
>
> xxx xxx xxx
>
> (b) Those who by themselves or through their predecessors-in-interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Thus, the required possession and occupation for judicial confirmation of imperfect title was since July 26, 1894 or earlier.

On June 22, 1957, Republic Act (R.A.) No. 1942 amended Section 48(b) of the PLA by providing a thirty (30)-year prescriptive period for judicial confirmation of imperfect title. Thus:

(b) Those who by themselves or through their predecessors-in-interest have been in the open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

On January 25, 1977, P.D. No. 1073 was issued, changing the requirement for possession and occupation for a period of thirty (30) years to possession and occupation since June 12, 1945 or earlier. Section 4 of P.D. No. 1073 states:

Sec. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

On June 11, 1978, P.D. No. 1529 was enacted. Notably, the requirement for possession and occupation since June 12, 1945 or earlier was adopted under Section 14(1) thereof.

P.D. No. 1073, in effect, repealed R.A. No. 1942 such that applications under Section 48(b) of the PLA filed after the promulgation of P.D. No. 1073 should allege and prove possession and occupation that dated back to June 12, 1945 or earlier. However, vested rights may have been acquired under Section 48(b) prior to its amendment by P.D. No. 1073. That is, should

petitions for registration filed by those who had already been in possession of alienable and disposable lands of the public domain for thirty (30) years at the time P.D. No. 1073 was promulgated be denied because their possession commenced after June 12, 1945? In *Abejaron v. Nabasa*,[21] this Court resolved this legal predicament as follows:

> However, as petitioner Abejaron's 30-year period of possession and occupation required by the Public Land Act, as amended by R.A. 1942 ran from 1945 to 1975, prior to the effectivity of P.D. No. 1073 in 1977, the requirement of said P.D. that occupation and possession should have started on June 12, 1945 or earlier, does not apply to him. As the *Susi* doctrine holds that the grant of title by virtue of Sec. 48(b) takes place by operation of law, then upon Abejaron's satisfaction of the requirements of this law, he would have already gained title over the disputed land in 1975. This follows the doctrine laid down in *Director of Lands v. Intermediate Appellate Court*, *et al.*, that the law cannot impair vested rights such as a land grant. More clearly stated, "Filipino citizens who by themselves or their predecessors-in-interest have been, prior to the effectivity of P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least 30 years, or at least since January 24, 1947" may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the Public Land Act.[22] (Citations omitted)

Consequently, for one to invoke Section 48(b) and claim an imperfect title over an alienable and disposable land of the public domain on the basis of a thirty (30)-year possession and occupation, it must be demonstrated that such possession and occupation commenced on January 24, 1947 and the thirty (30)-year period was completed prior to the effectivity of P.D. No. 1073.

There is nothing in Section 48(b) that would suggest that it provides for two (2) modes of acquisition. It is not the case that there is an option between possession and occupation for thirty (30) years and possession and occupation since June 12,

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[21] 411 Phil. 552 (2001).

[22] *Id.* at 570.

1945 or earlier. It is neither contemplated under Section 48(b) that if possession and occupation of an alienable and disposable public land started after June 12, 1945, it is still possible to acquire an imperfect title if such possession and occupation spanned for thirty (30) years at the time of the filing of the application.

In this case, the lower courts concluded that Espinosa complied with the requirements of Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 based on supposed evidence that he and his predecessor-in-interest had been in possession of the property for at least thirty (30) years prior to the time he filed his application. However, there is nothing on record showing that as of January 25, 1977 or prior to the effectivity of P.D. No. 1073, he or Isabel had already acquired title by means of possession and occupation of the property for thirty (30) years. On the contrary, the earliest tax declaration in Isabel's name was for the year 1965 indicating that as of January 25, 1977, only twelve (12) years had lapsed from the time she first came supposedly into possession.

The CA's reliance on *Director of Lands v. Intermediate Appellate Court*[23] is misplaced considering that the application therein was filed on October 20, 1975 or before the effectivity of P.D. No. 1073. The same can be said with respect to *National Power Corporation v. Court of Appeals.*[24] The petition for registration therein was filed on August 21, 1968 and at that time, the prevailing rule was that provided under Section 48(b) as amended by R.A. No. 1942.

In *Republic v. Court of Appeals*,[25] the applicants therein entered into possession of the property on June 17, 1978 and filed their application on February 5, 1987. Nonetheless, there is evidence that the individuals from whom the applicant purchased the property, or their predecessors-in-interest, had been in possession

[23] G.R. No. 65663, October 16, 1992, 214 SCRA 604.

[24] G.R. No. 45664, January 29, 1993, 218 SCRA 41.

[25] G.R. No. 108998, August 24, 1994, 235 SCRA 567.

since 1937. Thus, during the effectivity of Section 48(b) as amended by R.A. No. 1942, or while the prevailing rule was possession and occupation for thirty (30) years, or prior to the issuance of P.D. No. 1073, the thirty (30)-year prescriptive period was already completed.

Thus, assuming that it is Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 that should apply in this case, as the lower courts held, it was incumbent upon Espinosa to prove, among other things, that Isabel's possession of the property dated back at least to June 12, 1945. That in view of the established fact that Isabel's alleged possession and occupation started much later, the lower courts should have dismissed Espinosa's application outright.

In sum, the CA, as well as the MTC, erred in not applying the present text of Section 48(b) of the PLA. That there were instances wherein applications were granted on the basis of possession and occupation for thirty (30) years was for the sole reason discussed above. Regrettably, such reason does not obtain in this case.

Being clear that it is Section 14(2) of P.D. No. 1529 that should apply, it follows that the subject property being supposedly alienable and disposable will not suffice. As Section 14(2) categorically provides, only private properties may be acquired thru prescription and under Articles 420 and 421 of the Civil Code, only those properties, which are not for public use, public service or intended for the development of national wealth, are considered private. In *Heirs of Mario Malabanan v. Republic*,[26] this Court held that there must be an official declaration to that effect before the property may be rendered susceptible to prescription:

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property

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

may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420(2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. **For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."** (Emphasis supplied)

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[27]

Thus, granting that Isabel and, later, Espinosa possessed and occupied the property for an aggregate period of thirty (30) years, this does not operate to divest the State of its ownership. The property, albeit allegedly alienable and disposable, is not patrimonial. As the property is not held by the State in its private capacity, acquisition of title thereto necessitates observance of the provisions of Section 48(b) of the PLA in relation to Section 14(1) of P.D. No. 1529 or possession and occupation since June 12, 1945. For prescription to run against the State, there must be proof that there was an official declaration that the subject property is no longer earmarked for public service or the development of national wealth. Moreover, such official declaration should have been issued at least ten (10) or thirty (30) years, as the case may be, prior to the filing of the application

[27] *Id.* at 203.

for registration. The period of possession and occupation prior to the conversion of the property to private or patrimonial shall not be considered in determining completion of the prescriptive period. Indeed, while a piece of land is still reserved for public service or the development of national wealth, even if the same is alienable and disposable, possession and occupation no matter how lengthy will not ripen to ownership or give rise to any title that would defeat that of the State's if such did not commence on June 12, 1945 or earlier.

At any rate, as petitioner correctly pointed out, the notation on the survey plan does not constitute incontrovertible evidence that would overcome the presumption that the property belongs to the inalienable public domain.

All lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.[28]

In *Republic v. Sarmiento*,[29] this Court reiterated the earlier ruling in *Menguito v. Republic*[30] that the notation made by a surveyor-geodetic engineer that the property surveyed is alienable and disposable is not the positive government act that would remove the property from the inalienable domain. Neither it is

[28] See *Republic v. Dela Paz,* G.R. No. 171631, November 15, 2010, 634 SCRA 610, 620.

[29] G.R. No. 169397, March 13, 2007, 518 SCRA 250.

[30] 401 Phil. 274 (2000).

the evidence accepted as sufficient to controvert the presumption that the property is inalienable:

To discharge the *onus*, respondent relies on the blue print copy of the conversion and subdivision plan approved by the DENR Center which bears the notation of the surveyor-geodetic engineer that "this survey is inside the alienable and disposable area, Project No. 27-B. L.C. Map No. 2623, certified on January 3, 1968 by the Bureau of Forestry."

Menguito v. Republic teaches, however, that reliance on such a notation to prove that the lot is alienable is insufficient and does not constitute incontrovertible evidence to overcome the presumption that it remains part of the inalienable public domain.

> "To prove that the land in question formed part of the alienable and disposable lands of the public domain, petitioners relied on the printed words which read: "This survey plan is inside Alienable and Disposable Land Area, Project No. 27-B as per L.C. Map No. 2623, certified by the Bureau of Forestry on January 3, 1968," appearing on Exhibit "E" (Survey Plan No. Swo-13-000227).
>
> This proof is not sufficient. Section 2, Article XII of the 1987 Constitution, provides: "All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. . . ."
>
> For the original registration of title, the applicant (petitioners in this case) must overcome the presumption that the land sought to be registered forms part of the public domain. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, "occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title." To overcome such presumption, incontrovertible evidence must be shown by the applicant. Absent such evidence, the land sought to be registered remains inalienable.
>
> In the present case, petitioners cite a surveyor geodetic engineer's notation in Exhibit "E" indicating that the survey

was inside alienable and disposable land. *Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily,* ***a mere surveyor has no authority to reclassify lands of the public domain****. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable*."[31] Citations omitted and underscoring supplied)

Therefore, even if Espinosa's application may not be dismissed due to his failure to present the original tracing cloth of the survey plan, there are numerous grounds for its denial. The blueprint copy of the advanced survey plan may be admitted as evidence of the identity and location of the subject property if: (a) it was duly executed by a licensed geodetic engineer; (b) it proceeded officially from the Land Management Services (LMS) of the DENR; and (c) it is accompanied by a technical description of the property which is certified as correct by the geodetic surveyor who conducted the survey and the LMS of the DENR. As ruled in *Republic v. Guinto-Aldana,*[32] the identity of the land, its boundaries and location can be established by other competent evidence apart from the original tracing cloth such as a duly executed blueprint of the survey plan and technical description:

Yet if the reason for requiring an applicant to adduce in evidence the original tracing cloth plan is merely to provide a convenient and necessary means to afford certainty as to the exact identity of the property applied for registration and to ensure that the same does not overlap with the boundaries of the adjoining lots, there stands to be no reason why a registration application must be denied for failure to present the original tracing cloth plan, especially where it is accompanied by pieces of evidence—such as a duly executed blueprint of the survey plan and a duly executed technical description of the property—which may likewise substantially and with as much certainty prove the limits and extent of the property sought to be registered.[33]

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[31] *Supra* note 29, at 259-260.

[32] G.R. No. 175578, August 11, 2010, 628 SCRA 210.

[33] *Id.* at 220.

However, while such blueprint copy of the survey plan may be offered as evidence of the identity, location and the boundaries of the property applied for, the notation therein may not be admitted as evidence of alienability and disposability. In *Republic v. Heirs of Juan Fabio*,[34] this Court enumerated the documents that are deemed relevant and sufficient to prove that the property is already outside the inalienable public domain as follows:

> In *Republic v. T.A.N. Properties, Inc.*, we ruled that it is not enough for the Provincial Environment and Natural Resources Office (PENRO) or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant must present a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary, or as proclaimed by the President. Such copy of the DENR Secretary's declaration or the President's proclamation must be certified as a true copy by the legal custodian of such official record. These facts must be established to prove that the land is alienable and disposable.[35] (Citation omitted)

Based on the foregoing, it appears that Espinosa cannot avail the benefits of either Section 14(1) of P.D. No. 1529 in relation to Section 48(b) of the PLA or Section 14(2) of P.D. No. 1529. Applying Section 14(1) of P.D. No. 1529 and Section 48(b) of the PLA, albeit improper, Espinosa failed to prove that: (a) Isabel's possession of the property dated back to June 12, 1945 or earlier; and (b) the property is alienable and disposable. On the other hand, applying Section 14(2) of P.D. No. 1529, Espinosa failed to prove that the property is patrimonial. As to whether Espinosa was able to prove that his possession and occupation and that of Isabel were of the character prescribed by law, the resolution of this issue has been rendered unnecessary by the foregoing considerations.

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[34] G.R. No. 159589, December 23, 2008, 575 SCRA 51.

[35] *Id.* at 77.

WHEREFORE, premises considered, the petition is **GIVEN DUE COURSE** and **GRANTED**. The Decision dated November 11, 2004 and Resolution dated February 13, 2006 of the Court of Appeals in CA-G.R. CV No. 72456 are **REVERSED** and **SET ASIDE** and Domingo Espinosa's application for registration of title over Lot No. 8499 of Cad. 545-D (New) located at *Barangay* Cabangahan, Consolacion, Cebu is hereby **DENIED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172829. July 18, 2012]

ROSA H. FENEQUITO, CORAZON E. HERNANDEZ, and LAURO H. RODRIGUEZ, *petitioners, vs.* **BERNARDO VERGARA, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FAILURE TO COMPLY WITH THE RULES JUSTIFIES DISMISSAL OF PETITION.—** The Court notes at the outset that one of the grounds relied upon by the CA in dismissing petitioners' petition for review is the latter's failure to submit copies of pleadings and documents relevant and pertinent to the petition filed, as required under Section 2, Rule 42 of the Rules of Court. While petitioners filed a Motion for Reconsideration, they, however, failed to comply with these requirements. Worse, they did not even mention anything about it in the said Motion. Section 3, Rule 42 of the same Rules

provides: Sec. 3. *Effect of failure to comply with requirements*. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof. Moreover, it is a settled rule that the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants. In the instant case, petitioners had all the opportunity to comply with the Rules. Nonetheless, they remained obstinate in their non-observance even when they sought reconsideration of the ruling of the CA dismissing their petition. Such obstinacy is incongruous with their late plea for liberality in construing the Rules. On the above basis alone, the Court finds that the instant petition is dismissible.

2. **ID.; ID.; ID.; APPEAL IS IMPROPER SINCE THE REGIONAL TRIAL COURT (RTC) DECISION IS MERELY INTERLOCUTORY AS IT DID NOT DISPOSE OF THE CASE COMPLETELY, BUT LEFT SOMETHING MORE TO BE DONE.—** The factual and legal situations in the present case are essentially on all fours with those involved in *Basa v. People*. In the said case, the accused were charged with swindling and falsification of public documents. Subsequently, the accused filed a Joint Motion to Quash on the ground that the facts charged in each Information do not constitute an offense. Thereafter, the MeTC issued an order in favor of the accused and, accordingly, quashed the Informations. The private complainant, with the conformity of the public prosecutor, filed a motion for reconsideration but the MeTC denied it. On appeal, the RTC reversed the order of the MeTC and directed the continuation of the proceedings. The accused then filed a

petition for review with the CA. In its assailed decision, the CA dismissed the petition on the ground that the remedy of appeal from the RTC decision is improper, because the said decision is actually interlocutory in nature. x x x In the present case, the assailed Decision of the RTC set aside the Order of the MeTC and directed the court *a quo* to proceed to trial by allowing the prosecution to present its evidence. Hence, it is clear that the RTC Decision is interlocutory as it did not dispose of the case completely, but left something more to be done on its merits.

3. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE FACT THAT AN EXPERT WITNESS ALREADY FOUND THAT THE QUESTIONED SIGNATURES WERE NOT WRITTEN BY ONE AND THE SAME PERSON ALREADY CREATES PROBABLE CAUSE TO INDICT PETITIONERS FOR THE CRIME OF FALSIFICATION OF PUBLIC DOCUMENT.— It is clear from a perusal of the cited PNP Crime Laboratory Questioned Document Report No. 048-03 that the document examiner found that the signatures appearing in the questioned Deed of Sale as compared to the standard signatures "reveal divergences in the manner of execution and stroke structure [which is] an indication that they WERE NOT WRITTEN BY ONE AND THE SAME PERSON." The Court agrees with the prosecutor's pronouncement in its Resolution dated September 22, 2003, that although the findings of the PNP Crime Laboratory were qualified by the statement contained in the Report that "no definite conclusion can be rendered due to the fact that questioned signatures are photocopies wherein minute details are not clearly manifested," the fact that an expert witness already found that the questioned signatures were not written by one and the same person already creates probable cause to indict petitioners for the crime of falsification of public document. x x x In the instant case, the Court finds no justification to depart from the ruling of the RTC that the offense charged was committed and that herein petitioners are probably guilty thereof.

4. ID.; ID.; REORGANIZATION OF THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE

NATIONAL PROSECUTION SERVICE (P.D. NO. 1275); MANDATES THAT THE FISCAL (NOW PROSECUTOR) REPRESENTS THE PEOPLE OF THE PHILIPPINES IN THE PROSECUTION OF OFFENSES BEFORE THE TRIAL COURTS.— It is wrong for petitioners to argue that it is the OSG which has authority to file an appeal with the RTC. Section 35 (l), Chapter 12, Title III of Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, mandates the OSG to represent "the Government in the Supreme Court and the Court of Appeals in all criminal proceedings." On the other hand, Section 11 of Presidential Decree No. 1275, entitled "Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service," which was the law in force at the time the appeal was filed, provides that the provincial or the city fiscal (now referred to as prosecutor) "shall have charge of the **prosecution of all crimes**, misdemeanors and violations of city or municipal ordinances **in the courts of such province or city and shall therein discharge all the duties incident to the institution of criminal prosecutions**." In consonance with the above-quoted provision, it has been held by this Court that **the fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts** at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the **regional trial courts**. Since the appeal, in the instant case was made with the RTC of Manila, it is clear that the City Prosecutor or his assistant (in this case, the Assistant City Prosecutor) had authority to file the same.

5. **ID.; ID.; ID.; THERE IS ALSO NOTHING IN P.D. NO. 911 WHICH PROVIDES THAT IN CASES OF APPEAL, AN ASSISTANT CITY PROSECUTOR OR A STATE PROSECUTOR MAY FILE THE SAME ONLY UPON PRIOR APPROVAL OR AUTHORITY OF THE CITY PROSECUTOR OR THE CHIEF STATE PROSECUTOR.—** Moreover, petitioners' reliance on Presidential Decree No. 911 is misplaced, as the cited provision refers only to cases where the assistant fiscal or state prosecutor's power to file an information or dismiss a case is predicated or conditioned upon the prior authority or approval of the provincial or city

fiscal or the Chief State Prosecutor. There is nothing in the said law which provides that in cases of appeal an Assistant City Prosecutor or a State Prosecutor may file the same only upon prior authority or approval of the City Prosecutor or the Chief State Prosecutor. Stated differently, unless otherwise ordered, an Assistant City Prosecutor or a State Prosecutor may file an appeal with the RTC, questioning the dismissal by the MeTC of a case for lack of probable cause, even without prior authority or approval of the City Prosecutor or the Chief State Prosecutor.

APPEARANCES OF COUNSEL

Fernandez and Associates Law Firm for petitioners.

Ongsiako Dela Cruz Bautista Antonio Timtiman for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Resolutions[1] dated March 9, 2006 and May 22, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 29648. The CA Resolution of March 9, 2006 dismissed petitioners' petition for review, while the CA Resolution dated May 22, 2006 denied petitioners' Motion for Reconsideration.

The present petition arose from a criminal complaint for falsification of public documents filed by herein respondent against herein petitioners with the Office of the City Prosecutor of Manila.

On February 11, 2004, an Information for falsification of public documents was filed with the Metropolitan Trial Court

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo (now a member of this Court), concurring; Annexes "A" and "B" to Petition, *rollo*, pp. 16-22.

(MeTC) of Manila by the Assistant City Prosecutor of Manila against herein petitioners.[2]

On April 23, 2004, herein petitioners filed a Motion to Dismiss the Case Based on Absence of Probable Cause.[3]

After respondent's Comment/Opposition[4] was filed, the MeTC issued an Order[5] dated July 9, 2004 dismissing the case on the ground of lack of probable cause.

Aggrieved, respondent, with the express conformity of the public prosecutor, appealed the case to the Regional Trial Court (RTC) of Manila.[6]

On July 21, 2005, the RTC rendered judgment setting aside the July 9, 2004 Order of the MeTC and directing the said court to proceed to trial.[7]

Petitioners then elevated the case to the CA *via* a petition for review.

On March 9, 2006, the CA rendered its presently assailed Resolution[8] dismissing the petition. The CA ruled that the Decision of the RTC is interlocutory in nature and, thus, is not appealable.

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution[9] dated May 22, 2006.

Hence, the instant petition based on the following grounds:

> The Honorable Court of Appeals erred in outrightly dismissing the Petition for Review on the ground that the remedy availed of by petitioners is improper.

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[2] Records, pp. 2-3.

[3] *Id.* at 151-161.

[4] *Id.* at 166-170.

[5] *Id.* at 174-178.

[6] See Notice of Appeal, records, pp. 182-183.

[7] Records, pp. 258-262.

[8] *Rollo*, pp. 16-20.

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

Strict enforcement of the Rules may be suspended whenever the purposes of justice so require.[10]

In their first assigned error, petitioners contend that the Decision of the RTC is final as it disposes with finality the issue of whether the MeTC erred in granting their Motion to Dismiss.

The Court does not agree.

The Court notes at the outset that one of the grounds relied upon by the CA in dismissing petitioners' petition for review is the latter's failure to submit copies of pleadings and documents relevant and pertinent to the petition filed, as required under Section 2,[11] Rule 42 of the Rules of Court. While petitioners filed a Motion for Reconsideration, they, however, failed to comply with these requirements. Worse, they did not even mention anything about it in the said Motion. Section 3, Rule 42 of the same Rules provides:

> Sec. 3. *Effect of failure to comply with requirements*. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

Moreover, it is a settled rule that the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in

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[10] *Id.* at 8.

[11] Section 2. *Form and contents*. – The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall x x x (d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

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accordance with the provisions of law.[12] An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court.[13] Deviations from the Rules cannot be tolerated.[14] The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases.[15] In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity.[16] Their observance cannot be left to the whims and caprices of appellants.[17] In the instant case, petitioners had all the opportunity to comply with the Rules. Nonetheless, they remained obstinate in their non-observance even when they sought reconsideration of the ruling of the CA dismissing their petition. Such obstinacy is incongruous with their late plea for liberality in construing the Rules.

On the above basis alone, the Court finds that the instant petition is dismissible.

Even if the Court bends its Rules to allow the present petition, the Court still finds no cogent reason to depart from the assailed ruling of the CA.

The factual and legal situations in the present case are essentially on all fours with those involved in *Basa v. People.*[18] In the said case, the accused were charged with swindling and falsification of public documents. Subsequently, the accused

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[12] *Mendoza v. United Coconut Planters Bank, Inc*., G.R. No. 165575, February 2, 2011, 641 SCRA 333, 345.

[13] *Id.*

[14] *Baniqued v. Ramos*, G.R. No. 158615, March 4, 2005, 452 SCRA 813, 820.

[15] *MCA-MBF Countdown Cards Philippines, Inc., et al. v. MBF Card International Limited and MBF Discount Card Limited,* G.R. No. 173586, March 14, 2012.

[16] *Id.*

[17] *Id.*

[18] G.R. No. 152444, February 16, 2005, 451 SCRA 510.

filed a Joint Motion to Quash on the ground that the facts charged in each Information do not constitute an offense. Thereafter, the MeTC issued an order in favor of the accused and, accordingly, quashed the Informations. The private complainant, with the conformity of the public prosecutor, filed a motion for reconsideration but the MeTC denied it. On appeal, the RTC reversed the order of the MeTC and directed the continuation of the proceedings. The accused then filed a petition for review with the CA. In its assailed decision, the CA dismissed the petition on the ground that the remedy of appeal from the RTC decision is improper, because the said decision is actually interlocutory in nature.

In affirming the ruling of the CA, this Court held that:

Petitioners erroneously assumed that the RTC Decision is final and appealable, when in fact it is **interlocutory.** Thus, they filed a petition for review with the Court of Appeals under Section 3 (b), Rule 122 of the Revised Rules of Criminal Procedure, which provides:

xxx xxx xxx

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court *in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42*.

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Section 1, Rule 42 of the 1997 Rules of Civil Procedure, as amended, states:

Sec. 1. *How appeal taken; time for filing*. – A party desiring to *appeal* from a decision of the Regional Trial Court rendered *in the exercise of its appellate jurisdiction*, may file a verified *petition for review* with the Court of Appeals, x x x.

The above provisions contemplate of an appeal from a **final** decision or order of the RTC in the exercise of its appellate jurisdiction. Thus, the remedy of appeal under Rule 42 resorted to by petitioners is improper. To repeat, **the RTC Decision is not final, but interlocutory in nature.**

A **final** order is one that which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing

to be done but to enforce by execution what has been determined. Upon the other hand, an order is **interlocutory** if it does not dispose of a case completely, but leaves something more to be done upon its merits.

Tested against the above criterion, the RTC Decision is beyond cavil interlocutory in nature. **It is essentially a denial of petitioners' motion to quash because it leaves something more to be done x x x, *i.e.*, the continuation of the criminal proceedings until the guilt or innocence of the accused is determined.** Specifically, the MeTC has yet to arraign the petitioners, then proceed to trial and finally render the proper judgment.

It is axiomatic that an order denying a motion to quash on the ground that the allegations in the Informations do not constitute an offense cannot be challenged by an appeal. This Court generally frowns upon this remedial measure as regards interlocutory orders. The evident reason for such rule is to avoid multiplicity of appeals in a single action. To tolerate the practice of allowing appeals from interlocutory orders would not only delay the administration of justice but also would unduly burden the courts.[19] (Emphases supplied)

In the present case, the assailed Decision of the RTC set aside the Order of the MeTC and directed the court *a quo* to proceed to trial by allowing the prosecution to present its evidence. Hence, it is clear that the RTC Decision is interlocutory as it did not dispose of the case completely, but left something more to be done on its merits.

In their second assigned error, petitioners claim that assuming for the sake of argument that the remedy they availed of is not proper, the facts of the case would readily show that there exist just and compelling reasons to warrant the relaxation of the rules in the interest of substantial justice.

Petitioners contend that the PNP Crime Laboratory Questioned Document Report, submitted as evidence by respondent to the prosecutor's office, showed that the findings therein are not conclusive and, thus, insufficient to support a finding of probable cause.

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[19] *Id.* at 516-517.

The Court is not persuaded.

It is clear from a perusal of the cited PNP Crime Laboratory Questioned Document Report No. 048-03 that the document examiner found that the signatures appearing in the questioned Deed of Sale as compared to the standard signatures "reveal divergences in the manner of execution and stroke structure [which is] an indication that they WERE NOT WRITTEN BY ONE AND THE SAME PERSON."[20] The Court agrees with the prosecutor's pronouncement in its Resolution[21] dated September 22, 2003, that although the findings of the PNP Crime Laboratory were qualified by the statement contained in the Report that "no definite conclusion can be rendered due to the fact that questioned signatures are photocopies wherein minute details are not clearly manifested," the fact that an expert witness already found that the questioned signatures were not written by one and the same person already creates probable cause to indict petitioners for the crime of falsification of public document.

In *Reyes v. Pearlbank Securities, Inc.*,[22] this Court held:

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. 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.

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances

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[20] Records, pp. 30-31.

[21] *Id.* at 4-5.

[22] G.R. No. 171435, July 30, 2008, 560 SCRA 518.

without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[23]

In the instant case, the Court finds no justification to depart from the ruling of the RTC that the offense charged was committed and that herein petitioners are probably guilty thereof.

With respect to respondent's legal personality to appeal the July 9, 2004 Order of the MeTC, suffice it to say that the appeal filed with the RTC was made with the express conformity of the public prosecutor who handles the case.

It is wrong for petitioners to argue that it is the OSG which has authority to file an appeal with the RTC. Section 35 (l), Chapter 12, Title III of Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, mandates the OSG to represent "the Government in the Supreme Court and the Court of Appeals in all criminal proceedings." On the other hand, Section 11 of Presidential Decree No. 1275, entitled "Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service," which was the law in force at the time the appeal was filed, provides that the provincial or the city fiscal (now referred to as prosecutor) "shall have charge of the **prosecution of all crimes**, misdemeanors and violations of city or municipal ordinances **in the courts of such province or city and shall therein discharge all the duties incident to the institution of criminal prosecutions**."[24] In consonance with the above-quoted provision, it has been held by this Court that **the fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts** at the metropolitan trial

[23] *Id.* at 533-535.

[24] Emphasis supplied.

courts, municipal trial courts, municipal circuit trial courts and the **regional trial courts**.[25] Since the appeal, in the instant case was made with the RTC of Manila, it is clear that the City Prosecutor or his assistant (in this case, the Assistant City Prosecutor) had authority to file the same.

Moreover, petitioners' reliance on Presidential Decree No. 911 is misplaced, as the cited provision refers only to cases where the assistant fiscal or state prosecutor's power to file an information or dismiss a case is predicated or conditioned upon the prior authority or approval of the provincial or city fiscal or the Chief State Prosecutor. There is nothing in the said law which provides that in cases of appeal an Assistant City Prosecutor or a State Prosecutor may file the same only upon prior authority or approval of the City Prosecutor or the Chief State Prosecutor. Stated differently, unless otherwise ordered, an Assistant City Prosecutor or a State Prosecutor may file an appeal with the RTC, questioning the dismissal by the MeTC of a case for lack of probable cause, even without prior authority or approval of the City Prosecutor or the Chief State Prosecutor.

WHEREFORE, the instant petition is **DENIED.** The Resolutions of the Court of Appeals, dated March 9, 2006 and May 22, 2006 in CA-G.R. CR No. 29648, are **AFFIRMED.**

SO ORDERED.

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

[25] *People of the Philippines v. Duca*, G.R. No. 171175, October 9, 2009, 603 SCRA 159, 167, citing *City Fiscal of Tacloban v. Espina*, G.R. No. 83996, October 21, 1988, 166 SCRA 614. (Emphasis supplied.)

THIRD DIVISION

[G.R. No. 175552. July 18, 2012]

SPOUSES ROLANDO D. SOLLER and NENITA T. SOLLER, *petitioners, vs.* **HEIRS OF JEREMIAS ULAYAO, namely, NELSON ULAYAO, FERELYN ULAYAO-DEL MUNDO, EDJUNNE ULAYAO, WILMA ULAYAO, LAILA ULAYAO, ANALYN ULAYAO, and LILIBETH ULAYAO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS; PROPER WHEN THE ANSWER FILED BY THE DEFENDANT DOES NOT TENDER A GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT ONE PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW; FULL BLOWN TRIAL REQUIRED IN CASE AT BAR.— Summary judgments are proper when, upon motion of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law. x x x In this case, records show that the original defendant, Jeremias, raised the special and affirmative defense of *acquisitive prescription* in his answer, claiming that he was in open, continuous and notorious possession of the disputed property as, in fact, his house and other permanent improvements are still existing thereon. As succinctly explained by the CA in its assailed Decision, the defense of acquisitive prescription inevitably involves the issue of actual, physical and material possession, which is always a question of fact. The existence of this issue therefore necessitates, for its proper resolution, the presentation of competent and relevant evidence, which can only be done in the course of a full-blown trial.

APPEARANCES OF COUNSEL

Soller Peig Escat & Peig Law Offices for petitioners.
Miguel D. Ansaldo, Jr. for respondents.

RESOLUTION

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* assails the August 18, 2006 Decision[1] and November 21, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 92478 which vacated and set aside the November 9, 2005 Decision[3] of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro, Branch XLII, which, in turn, affirmed with modification the July 1, 2005 Summary Judgment[4] rendered by the Municipal Circuit Trial Court (MCTC) of Bansud-Gloria, Oriental Mindoro.

The Factual Antecedents

Petitioners-spouses Rolando and Nenita Soller are allegedly the registered owners of a parcel of land situated in Poblacion, Bansud, Oriental Mindoro with an area of 564 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. 72780 of the Register of Deeds of Oriental Mindoro. Petitioners and their predecessors-in-interest were purportedly in open, peaceful, and continuous possession of the property in the concept of owner since time immemorial.

However, in February 1996, the original defendant, now-deceased Jeremias Ulayao (Jeremias), and all persons claiming rights under him, allegedly by means of force, violence, stealth and intimidation, entered into the possession of the land and, despite repeated demands to desist, constructed a house on the property. This prompted petitioners to bring the matter before the *barangay*, but conciliation failed. Thus, petitioners instituted a complaint[5] for recovery of possession with damages before the MCTC of Bansud, Oriental Mindoro.

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[1] *Rollo*, pp. 37-49.

[2] *Id.* at 51.

[3] *Id.* at 52-56.

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

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

In Jeremias' Answer,[6] he denied petitioners' allegations and raised the special and affirmative defense of acquisitive prescription, as he had purportedly been in long, continuous and adverse possession of the property for more than thirty (30) years. Jeremias also claimed that when Paulina Lusterio (Paulina), petitioners' predecessor-in-interest, surreptitiously had the property registered in her name under a free patent, the Community Environment and Natural Resources Office (CENRO) conducted an investigation, upon Jeremias' protest, and found that it was the latter who was in actual occupation and possession of the property. The CENRO thus recommended that the title issued in Paulina's name be revoked in order for the property to be reverted back to the state. To further support his defense of acquisitive prescription, Jeremias claimed that his house and other permanent improvements are still existing on the property.

The MCTC Ruling

Upon motion of petitioners, the MCTC rendered a Summary Judgment upon a finding that no genuine issue of fact had been tendered by the answer. Holding that petitioners' claim to the disputed property was founded on TCT No. 72780 issued in their names, which is indefeasible and cannot be attacked collaterally, the MCTC directed Jeremias and all persons claiming rights under him (1) to surrender the possession of the property to petitioners and (2) to pay actual damages in the amount of ₱3,000.00 per month from February 1996 until actual turnover of the possession of the property, as well as moral damages and attorney's fees, each in the amount of ₱10,000.00.

The RTC Ruling

During the pendency of the case[7] before the MCTC, Jeremias died and was consequently substituted by his heirs, herein respondents, who appealed the Summary Judgment before the RTC.

While the RTC affirmed the findings of the MCTC, it however deleted the award of damages, ruling that the "environmental

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[6] *Id.* at 66-70.

[7] *Supra* note 1, p. 39.

milieu does not justify such recovery x x x"[8] and that there was no showing of gross and evident bad faith on the part of respondents.

The CA Ruling

On appeal before it, the CA found merit in respondents' petition and vacated the summary judgments rendered by the RTC and MCTC on the ground that the defenses raised by respondents' predecessor-in-interest, Jeremias, are *substantially factual* as to necessitate a full-blown trial on the merits. The CA held that, having raised the defense of *acquisitive prescription* in Jeremias' answer, he ought to have been duly heard on such defense in the course of a trial. Consequently, the rendition of a summary judgment in this case was improper. The CA, thus, ordered the remand of the case to the MCTC of Bansud-Gloria for the conduct of a full-blown trial.

Issue Before The Court

The basic issue advanced for resolution in this case is the propriety of rendering a summary judgment.

The Court's Ruling

Summary judgments are proper when, upon motion of the plaintiff or the defendant, the court finds that the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law.[9] In *Viajar v. Estenzo,*[10] the Court explained:

> Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or

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[8] *Supra* note 3, p. 56.

[9] *Calubaquib, et al. v. Republic of the Philippines,* G.R. No. 170658, June 22, 2011.

[10] 178 Phil. 561 (1979).

contested, proceedings for a summary judgment cannot take the place of a trial.

x x x [R]elief by summary judgment can only be allowed after compliance with the minimum requirement of vigilance by the court in a summary hearing considering that this remedy is in derogation of a party's right to a plenary trial of his case. At any rate, 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.

In this case, records show that the original defendant, Jeremias, raised the special and affirmative defense of *acquisitive prescription* in his answer, claiming that he was in open, continuous and notorious possession of the disputed property as, in fact, his house and other permanent improvements are still existing thereon. As succinctly explained by the CA in its assailed Decision, the defense of acquisitive prescription inevitably involves the issue of actual, physical and material possession, which is always a question of fact.[11] The existence of this issue therefore necessitates, for its proper resolution, the presentation of competent and relevant evidence, which can only be done in the course of a full-blown trial.

As aptly observed in the case of *Calubaquib, et al. v. Republic,*[12] where the disputed property was actually covered by an *original certificate of title* (OCT) in the name of the respondent:

More importantly, by proceeding to rule against petitioners without any trial, the trial and appellate courts made a conclusion which was based merely on an assumption that petitioners' defense of acquisitive prescription was a sham, and that the ultimate facts pleaded in their Answer (*e.g.*, open and continuous possession of the property since the early 1900s) cannot be proven at all. This assumption is baseless as it is premature and unfair.

[11] *Supra* note 1, p. 45.

[12] *Supra* note 9.

xxx xxx xxx

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176570. July 18, 2012]

SPOUSES RAMON VILLUGA and MERCEDITA VILLUGA, *petitioners, vs.* **KELLY HARDWARE AND CONSTRUCTION SUPPLY, INC., represented by ERNESTO V. YU, Executive Vice-President and General Manager,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; RESPONDENT'S REQUEST FOR ADMISSION IS NOT DEEMED ABANDONED OR WITHDRAWN BY THE FILING OF THE SECOND AMENDED COMPLAINT.—** The Court agrees with the CA in holding that respondent's Second Amended Complaint supersedes only its Amended Complaint and nothing more. Section 8, Rule 10 of the Rules of Court provides: Sec. 8. *Effect of amended pleading*. – An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived. From the foregoing, it is clear that respondent's Request

for Admission is not deemed abandoned or withdrawn by the filing of the Second Amended Complaint.

2. **ID.; ID.; ID.; ADMISSION BY ADVERSE PARTY; A REQUEST FOR ADMISSION THAT MERELY REITERATES THE ALLEGATIONS IN AN EARLIER PLEADING IS INAPPROPRIATE UNDER RULE 26 OF THE RULES OF COURT, WHICH AS MODE OF DISCOVERY, CONTEMPLATES OF INTERROGATORIES THAT WOULD CLARIFY AND TEND TO SHED LIGHT ON THE TRUTH OR FALSITY OF THE ALLEGATIONS IN THE PLEADINGS.—** The Court also finds no error when the CA ruled that petitioners' Comments on the Request for Admission was filed out of time. x x x Nonetheless, the Court takes exception to the ruling of the CA that by reason of the belated filing of petitioners' Comments on the Request for Admission, they are deemed to have impliedly admitted that they are indebted to respondent in the amount of ₱259,809.50. A careful examination of the said Request for Admission shows that the matters of fact set forth therein are simply a reiteration of respondent's main allegation in its Amended Complaint and that petitioners had already set up the affirmative defense of partial payment with respect to the above allegation in their previous pleadings. This Court has ruled that if the factual allegations in the complaint are the very same allegations set forth in the request for admission and have already been specifically denied, the required party cannot be compelled to deny them anew. A request for admission that merely reiterates the allegations in an earlier pleading is inappropriate under Rule 26 of the Rules of Court, which as a mode of discovery, contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in the pleading. Rule 26 does not refer to a mere reiteration of what has already been alleged in the pleadings. Nonetheless, consistent with the abovementioned Rule, the party being requested should file an objection to the effect that the request for admission is improper and that there is no longer any need to deny anew the allegations contained therein considering that these matters have already been previously denied.

3. **ID.; ID.; SUMMARY JUDGMENTS; HAVING PLEADED A VALID DEFENSE, PETITIONERS WERE DEEMED TO**

HAVE RAISED GENUINE ISSUES OF FACT.— The Court finds that the CA was correct in sustaining the summary judgment rendered by the RTC. x x x Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. Such judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties. x x x In the present case, it bears to note that in its original Complaint, as well as in its Amended Complaint, respondent did not allege as to how petitioners' partial payments of ₱110,301.80 and ₱20,000.00 were applied to the latter's obligations. In fact, there is no allegation or admission whatsoever in the said Complaint and Amended Complaint that such partial payments were made. Petitioners, on the other hand, were consistent in raising their affirmative defense of partial payment in their Answer to the Complaint and Answer to Amended Complaint. Having pleaded a valid defense, petitioners, at this point, were deemed to have raised genuine issues of fact.

4. **ID.; ID.; ID.; THE SUMMARY JUDGMENT OF THE TRIAL COURT IN FAVOR OF RESPONDENT IS PROPER; PETITIONERS' DEFENSE OF PARTIAL PAYMENT IN THEIR ANSWER TO THE SECOND AMENDED COMPLAINT, IN EFFECT, NO LONGER RAISED GENUINE ISSUES OF FACT THAT REQUIRE PRESENTATION OF EVIDENCE IN A FULL-BLOWN TRIAL.—** It is settled that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In the instant case, it is difficult to believe that petitioners do not know how their payment was applied. Instead of denying knowledge, petitioners could have easily asserted that their payments of ₱110,301.80 and ₱20,000.00 were applied to, and should have been deducted from, the sum sought to be recovered by respondent, but they did not, leading the court to no other conclusion than that these payments were indeed applied to their other debts to respondent leaving an outstanding obligation

of ₱259,809.50. On the basis of the foregoing, petitioners' defense of partial payment in their Answer to Second Amended Complaint, in effect, no longer raised genuine issues of fact that require presentation of evidence in a full-blown trial. Hence, the summary judgment of the RTC in favor of respondent is proper.

APPEARANCES OF COUNSEL

Pastor C. Bacani for petitioners.

Esguerra & Blanco 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 November 30, 2006 and February 8, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 69001. The CA Decision affirmed the Orders of the Regional Trial Court (RTC) of Bacoor, Cavite, Branch 89, dated September 28, 1998 and May 6, 1999, while the CA Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On March 3, 1995, herein respondent filed with the RTC of Bacoor, Cavite a Complaint for a Sum of Money and Damages against herein petitioners alleging as follows:

xxx xxx xxx

(3) During the period of November 19, 1992 to January 5, 1993, defendants [herein petitioners] made purchases of various construction materials from plaintiff corporation [herein respondent]

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Edgardo P. Cruz and Enrico A. Lanzanas, concurring; Annex "A" to Petition, *rollo*, pp. 31-53.

[2] Annex "B" to Petition, *rollo*, pp. 54-56.

in the sum of ₱259,809.50, which has not been paid up to the present time, both principal and stipulated interests due thereon.

(4) Plaintiff made several demands, oral and written, for the same defendants to pay all their obligations due plaintiff herein, but defendants fail and refuse to comply with, despite demands made upon them, to the damage and prejudice of plaintiff.

xxx xxx xxx

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that judgment be rendered in favor of plaintiff and against defendants by ordering defendants to pay the sum of:

(1) ₱259,809.50 as principal obligation due plaintiff, plus interest due thereon at 14% interest per annum, until all sums due are paid in full.

(2) ₱64,952.38 by way of reimbursements of attorney's fees plus ₱500.00 appearance fee in court.

(3) ₱26,000.00 for litigation and other related expenses.

And to pay the cost of suit.[3]

In their Answer to Complaint,[4] petitioners admitted having made purchases from respondent, but alleged that they do not remember the exact amount thereof as no copy of the documents evidencing the purchases were attached to the complaint. Petitioners, nonetheless, claimed that they have made payments to the respondent on March 4, 1994 and August 9, 1994 in the amounts of ₱110,301.80 and ₱20,000.00, respectively, and they are willing to pay the balance of their indebtedness after deducting the payments made and after verification of their account.

In a Manifestation[5] dated July 18, 1995, petitioners stated that in order to buy peace, they were willing to pay respondent

[3] Records, pp. 1-2.

[4] *Id.* at 9-10.

[5] *Id.* at 49.

the principal sum of ₱259,809.50, but without interests and costs, and on installment basis.

In its Counter Manifestation,[6] respondent signified that it was amenable to petitioners' offer to pay the principal amount of ₱259,809.50. However, respondent insisted that petitioners should also pay interests, as well as litigation expenses and attorney's fees, and all incidental expenses.

Subsequently, on August 11, 1995, respondent filed a Motion for Partial Judgment on the Pleadings[7] contending that petitioners were deemed to have admitted in their Answer that they owed respondent the amount of ₱259,809.50 when they claimed that they made partial payments amounting to ₱130,301.80. Based on this premise, respondent prayed that it be awarded the remaining balance of ₱129,507.70. Petitioners filed their Opposition[8] to the said Motion.

On September 11, 1995, the RTC issued an Order[9] deferring resolution of respondent's Motion for Partial Judgment on the ground that there is no clear and specific admission on the part of petitioners as to the actual amount that they owe respondent.

On January 30, 1996, respondent filed an Amended Complaint,[10] with leave of court, alleging that between October 1992 until January 5, 1993, petitioners purchased from it (respondent) various construction materials and supplies, the aggregate value of which is ₱279,809.50; that only ₱20,000.00 had been paid leaving a balance of ₱259,809.50.

In their Answer to Amended Complaint,[11] petitioners reiterated their allegations in their Answer to Complaint.

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

[7] *Id.* at 51-52.

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

[9] *Id.* at 60.

[10] *Id.* at 83-86.

[11] *Id.* at 87-88.

On March 8, 1996, respondent filed a Request for Admission[12] asking that petitioners admit the genuineness of various documents, such as statements of accounts, delivery receipts, invoices and demand letter attached thereto as well as the truth of the allegations set forth therein. Respondent basically asked petitioners to admit that the latter's principal obligation is ₱279,809.50 and that only ₱20,000.00 was paid.

On June 3, 1996, respondent filed a Manifestation and Motion[13] before the RTC praying that since petitioners failed to timely file their comment to the Request for Admission, they be considered to have admitted the genuineness of the documents described in and exhibited with the said Request as well as the truth of the matters of fact set forth therein, in accordance with the Rules of Court.

On June 6, 1996, petitioners filed their Comments on the Request for Admission[14] stating their objections to the admission of the documents attached to the Request.

On January 24, 1997, respondent filed its Second Amended Complaint,[15] again with leave of court. The amendment modified the period covered by the complaint. Instead of October 1992 to January 5, 1993, it was changed to July 29, 1992 until August 10, 1994. The amendment also confirmed petitioners' partial payment in the sum of ₱110,301.80 but alleged that this payment was applied to other obligations which petitioners owe respondent. Respondent reiterated its allegation that, despite petitioners' partial payment, the principal amount which petitioners owe remains ₱259,809.50.

Petitioners filed their Answer to the Second Amended Complaint[16] denying the allegations therein and insisting that they have made partial payments.

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[12] *Id.* at 91-92.

[13] *Id.* at 108-109.

[14] *Id.* at 112-113.

[15] *Id.* at 138-142.

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

On September 4, 1997, respondent filed a Motion to Expunge with Motion for Summary Judgment[17] claiming that petitioners' Comments on respondent's Request for Admission is a mere scrap of paper as it was signed by petitioners' counsel and not by petitioners themselves and that it was filed beyond the period allowed by the Rules of Court. Respondent goes on to assert that petitioners, in effect, were deemed to have impliedly admitted the matters subject of the said request. Respondent also contended that it is already entitled to the issuance of a summary judgment in its favor as petitioners not only failed to tender a genuine issue as to any material fact but also did not raise any special defenses, which could possibly relate to any factual issue.

In their Opposition to Motion to Expunge with Motion for Summary Judgment,[18] petitioners argued that respondent's request for admission is fatally defective, because it did not indicate or specify a period within which to answer; that verification by petitioners' counsel is sufficient compliance with the Rules of Court; that petitioners' request for admission should be deemed dispensed with and no longer taken into account as it only relates to the Amended Complaint, which was already abandoned when the Second Amended Complaint was filed; and that summary judgment is improper and without legal basis, as there exists a genuine controversy brought about by petitioners' specific denials and defenses.

On September 28, 1998, the RTC issued an Order, the dispositive portion of which reads as follows:

> ACCORDINGLY, plaintiff's [herein respondent's] Motion to Expunge with Motion for Summary Judgment is hereby GRANTED.
>
> Defendants' [Petitioners'] "Comments on the Request for Admission" dated 04 June 1996 is hereby expunged from the record for being contrary to the Rules of Court.
>
> Judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

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[17] *Id.* at 195-206.

[18] *Id.* at 209-214.

Defendants are hereby ordered to pay, jointly and severally, plaintiff the sum of TWO HUNDRED FIFTY-NINE [THOUSAND] EIGHT HUNDRED NINE PESOS and 50/100 (₱259,809.50), with legal interest due thereon until the whole amount is paid.

SO ORDERED.[19]

Petitioners filed a Motion for Reconsideration, but it was denied by the RTC in its Order dated May 6, 1999.

Unyielding, petitioners filed an appeal with the CA.

On November 30, 2006, the CA rendered its presently assailed Decision, affirming the September 28, 1998 and May 6, 1999 Orders of the RTC.

Petitioners' Motion for Reconsideration was subsequently denied by the CA *via* its Resolution dated February 8, 2007.

Hence, the instant petition for review on *certiorari* raising the following issues:

THE HONORABLE COURT SHOULD NOT HAVE DENIED DEFENDANTS-APPELLANTS' (PETITIONERS) COMMENT AND RULED THAT THERE WAS IMPLIED ADMISSION CONTAINED IN THE REQUEST.

THERE SHOULD NOT HAVE BEEN A SUMMARY JUDGMENT AGAINST DEFENDANTS-APPELLANTS (PETITIONERS).[20]

In their first assigned error, petitioners insist in arguing that respondent waived its Request for Admission when it filed its Second Amended Complaint; that all motions or requests based on the complaint, which was amended, should no longer be considered. Petitioners also contend that the Request for Admission was not in the form specified by the Rules of Court as it did not specify a period within which to reply as required by Section 1, Rule 26 of the same Rules.

As to the second assignment of error, petitioners aver that the summary judgment issued by the RTC is improper and without

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[19] *Id.* at 239.

[20] *Rollo*, p. 18.

legal bases, considering that genuine issues were raised in the pleadings filed by petitioners.

The petition lacks merit.

The Court agrees with the CA in holding that respondent's Second Amended Complaint supersedes only its Amended Complaint and nothing more.

Section 8, Rule 10 of the Rules of Court provides:

> Sec. 8. *Effect of amended pleading*. – An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived.

From the foregoing, it is clear that respondent's Request for Admission is not deemed abandoned or withdrawn by the filing of the Second Amended Complaint.

The Court also finds no error when the CA ruled that petitioners' Comments on the Request for Admission was filed out of time, and quotes with approval the disquisition of the appellate court on this matter, to wit:

> x x x Pursuant to the above-quoted Section 2 of Rule 26 of the Rules of Court, the party to whom the request is directed must respond to the request within a period of not less than ten (10) days after the service thereof, or upon such further time the Court may allow on motion. In the instant case, the plaintiff-appellee's [herein respondent's] "Request" failed to designate any period for the filing of the defendants-appellants' [herein petitioners'] response. Neither did the trial court fix the period for the same upon motion of the parties. However, such failure to designate does not automatically mean that the filing or the service of an answer or comment to the "Request" would be left to the whims and caprices of defendants-appellants. It must be reiterated that one of the main objectives of Rule 26 is [to] expedite the trial of the case (*Duque vs. Court of Appeals*, 383, SCRA 520, 527 [2002]). Thus, it is also provided in the second paragraph of Section 2 of Rule 26 of the Rules of Court that "[o]bjections on the ground of irrelevancy or impropriety of

the matter requested shall be promptly submitted to the court for resolution."[21]

Nonetheless, the Court takes exception to the ruling of the CA that by reason of the belated filing of petitioners' Comments on the Request for Admission, they are deemed to have impliedly admitted that they are indebted to respondent in the amount of ₱259,809.50.

A careful examination of the said Request for Admission shows that the matters of fact set forth therein are simply a reiteration of respondent's main allegation in its Amended Complaint and that petitioners had already set up the affirmative defense of partial payment with respect to the above allegation in their previous pleadings.

This Court has ruled that if the factual allegations in the complaint are the very same allegations set forth in the request for admission and have already been specifically denied, the required party cannot be compelled to deny them anew.[22] A request for admission that merely reiterates the allegations in an earlier pleading is inappropriate under Rule 26 of the Rules of Court, which as a mode of discovery, contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in the pleading.[23] Rule 26 does not refer to a mere reiteration of what has already been alleged in the pleadings.[24] Nonetheless, consistent with the abovementioned Rule, the party being requested should file an objection to the effect that the request for admission is improper and that there is no longer any need to deny anew the allegations contained

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[21] See CA Decision, p. 16; *rollo*, p. 47.

[22] See *Limos v. Odones,* G.R. No. 186979, August 11, 2010, 628 SCRA 288, 298.

[23] *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 153034, September 20, 2005, 470 SCRA 317, 323-324.

[24] *Id.* Note that the subject Request for Admission was filed on March 8, 1996, prior to the amendment of the Rules of Court which took effect on July 1, 1997.

therein considering that these matters have already been previously denied.

The foregoing notwithstanding, the Court finds that the CA was correct in sustaining the summary judgment rendered by the RTC.

Sections 1 and 3, Rule 35 of the Rules of Court provide as follows:

> 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.
>
> Section 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, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, 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.

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays.[25] Such judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties.[26]

In this respect, the Court's ruling in *Nocom v. Camerino,*[27] is instructive, to wit:

> x x x When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules of Court allow a party to obtain

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[25] *Maritime Industry Authority (MARINA) v. Marc Properties Corporation*, G.R. No. 173128, February 15, 2012.

[26] *Gubat v. National Power Corporation*, G.R. No. 167415, February 26, 2010, 613 SCRA 742, 756.

[27] G.R. No. 182984, February 10, 2009, 578 SCRA 390.

immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of [Rule 35 of the Rules of Court] provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[28]

In the present case, it bears to note that in its original Complaint, as well as in its Amended Complaint, respondent did not allege as to how petitioners' partial payments of ₱110,301.80 and ₱20,000.00 were applied to the latter's obligations. In fact, there is no allegation or admission whatsoever in the said Complaint and Amended Complaint that such partial payments were made. Petitioners, on the other hand, were consistent in raising their affirmative defense of partial payment in their Answer to the Complaint and Answer to Amended Complaint. Having pleaded a valid defense, petitioners, at this point, were deemed to have raised genuine issues of fact.

The situation became different, however, when respondent subsequently filed its Second Amended Complaint admitting therein that petitioners, indeed, made partial payments of ₱110,301.80 and ₱20,000.00. Nonetheless, respondent accounted for such payments by alleging that these were applied to petitioners' obligations which are separate and distinct from the sum of ₱259,809.50 being sought in the complaint. This allegation was not refuted by petitioners in their Answer to Second

[28] *Id.* at 409-410.

Amended Complaint. Rather, they simply insisted on their defense of partial payment while claiming lack of knowledge or information to form a belief as to the truth of respondent's allegation that they still owe the amount of ₱259,809.50 despite their payments of ₱110,301.80 and ₱20,000.00. It is settled that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue.[29] In the instant case, it is difficult to believe that petitioners do not know how their payment was applied. Instead of denying knowledge, petitioners could have easily asserted that their payments of ₱110,301.80 and ₱20,000.00 were applied to, and should have been deducted from, the sum sought to be recovered by respondent, but they did not, leading the court to no other conclusion than that these payments were indeed applied to their other debts to respondent leaving an outstanding obligation of ₱259,809.50.

On the basis of the foregoing, petitioners' defense of partial payment in their Answer to Second Amended Complaint, in effect, no longer raised genuine issues of fact that require presentation of evidence in a full-blown trial. Hence, the summary judgment of the RTC in favor of respondent is proper.

WHEREFORE, the instant petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

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[29] *Philippine Bank of Communications v. Go*, G.R. No. 175514, February 14, 2011, 693 SCRA 642, 717.

SECOND DIVISION

[G.R. No. 180027. July 18, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MICHAEL C. SANTOS, VANESSA C. SANTOS, MICHELLE C. SANTOS and DELFIN SANTOS, all represented by DELFIN C. SANTOS, Attorney-in-Fact,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; 1987 CONSTITUTION; NATIONAL PATRIMONY; *JURA REGALIA* OR *REGALIAN* DOCTRINE.—** We start our analysis by applying the principle of *Jura Regalia* or the *Regalian* Doctrine. *Jura Regalia* simply means that the State is the original proprietor of all lands and, as such, is the general source of all private titles. Thus, pursuant to this principle, all claims of private title to land, *save those acquired from native title*, must be traced from some grant, whether express or implied, from the State. Absent a clear showing that land had been let into private ownership through the State's *imprimatur*, such land is presumed to belong to the State.

2. **CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); JUDICIAL CONFIRMATION OF IMPERFECT TITLES; REQUIREMENTS.—** Section 14(1) of Presidential Decree No. 1529 refers to the original registration of "*imperfect*" titles to public land acquired under Section 11(4) in relation to Section 48(b) of Commonwealth Act No. 141, or the *Public Land Act*, as amended. Section 14(1) of Presidential Decree No. 1529 and Section 48(b) of Commonwealth Act No. 141 specify identical requirements for the judicial confirmation of "*imperfect*" titles, to wit: 1. That the subject land forms part of the alienable and disposable lands of the public domain;. 2. That the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership, and; 3. That such possession and occupation must be **since June 12, 1945** or **earlier**.

3. **ID.; ID.; ID.; ID.; RESPONDENTS FAILED TO ESTABLISH THAT THEY OR THEIR PREDECESSORS-IN-INTEREST, HAVE BEEN IN POSSESSION AND OCCUPATION OF THE SUBJECT LOT APPLIED FOR SINCE JUNE 12, 1945 OR EARLIER.—** In this case, the respondents were not able to satisfy the **third** requisite, *i.e.*, that the respondents failed to establish that they or their predecessors-in-interest, have been in possession and occupation of **Lot 3** "*since June 12, 1945 or earlier*." An examination of the evidence on record reveals so: *First*. The testimonies of respondents' predecessors-in-interest and/or their representatives were patently deficient on this point. None of them testified about possession and occupation of the subject parcels of land dating back to 12 June 1945 or earlier. Rather, the said witnesses merely related that they have been in possession of their lands "*for over thirty years*" prior to the purchase thereof by respondents in 1997. Neither can the affirmation of Generosa of the *Joint Affidavit* be considered as sufficient to prove compliance with the third requisite. The said *Joint Affidavit* merely contains a **general** claim that Valentin had "*continuously, openly and peacefully occupied and tilled as absolute owner*" the parcels of Generosa and Teresita even "*before the outbreak of World War 2*" — which lacks specificity and is unsupported by any other evidence. In ***Republic v. East Silverlane Realty Development Corporation,*** this Court dismissed a similar unsubstantiated claim of possession as a "*mere conclusion of law*" that is "*unavailing and cannot suffice:*" Moreover, Vicente Oco did not testify as to what specific acts of dominion or ownership were performed by the respondent's predecessors-in-interest and if indeed they did. He merely made a **general claim** that they came into possession before World War II, which is a **mere conclusion of law and not factual proof of possession, and therefore unavailing and cannot suffice**. **Evidence of this nature should have been received with suspicion, if not dismissed as tenuous and unreliable**.

4. **ID.; ID.; ID.; ID.; THE SUPPORTING TAX DECLARATIONS PRESENTED FALL SHORT OF PROVING POSSESSION SINCE 12 JUNE 1945 OR EARLIER.—** The supporting tax declarations presented by the respondents also fall short of proving possession since 12 June 1945 or earlier. The earliest declaration submitted by the respondents *i.e.*, **Tax Declaration**

No. 9412, was issued only in **1948** and merely covers the portion of **Lot 3** previously pertaining to Generosa and Teresita. Much worse, **Tax Declaration No. 9412** shows no declared improvements on such portion of **Lot 3** as of 1948—posing an apparent contradiction to the claims of Generosa and Teresita in their *Joint Affidavit*. Indeed, the evidence presented by the respondents does not qualify as the "*well-nigh incontrovertible*" kind that is required to prove title thru possession and occupation of public land since 12 June 1945 or earlier. Clearly, respondents are not entitled to registration under Section 14(1) of Presidential Decree No. 1529.

5. **ID.; ID.; ID.; ID.; THERE MUST BE AN EXPRESS DECLARATION FROM THE STATE, ATTESTING TO THE PATRIMONIAL CHARACTER OF THE LAND APPLIED FOR; A MERE CERTIFICATION OR REPORT CLASSIFYING THE SUBJECT LAND AS ALIENABLE AND DISPOSABLE IS NOT SUFFICIENT.—** The requirement of an "*express declaration*" contemplated by ***Malabanan*** is **separate and distinct** from the mere classification of public land as alienable and disposable. On this point, ***Malabanan*** was reiterated by the recent case of ***Republic v. Rizalvo, Jr***. In this case, the respondents were not able to present any "*express declaration*" from the State, attesting to the patrimonial character of **Lot 3**. To put it bluntly, the respondents were not able to prove that acquisitive prescription has begun to run against the State, much less that they have acquired title to **Lot 3** by virtue thereof. As jurisprudence tells us, a mere certification or report classifying the subject land as alienable and disposable is not sufficient. We are, therefore, left with the unfortunate but necessary verdict that the respondents are not entitled to the registration under Section 14(2) of Presidential Decree No. 1529.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Dime Labastilla De Leon Tayag and Eviota for respondents.

DECISION

PEREZ, *J.*:

For review[1] is the Decision[2] dated 9 October 2007 of the Court of Appeals in CA-G.R. CV No. 86300. In the said decision, the Court of Appeals affirmed *in toto* the 14 February 2005 ruling[3] of the Regional Trial Court (RTC), Branch 15, of Naic, Cavite in LRC Case No. NC-2002-1292. The dispositive portion of the Court of Appeals' decision accordingly reads:

> **WHEREFORE**, the instant appeal is hereby **DENIED**. The assailed decision dated February 14, 2005 of the Regional Trial Court (Branch 15) in Naic, Cavite, in LRC Case No. NC-2002-1292 is **AFFIRMED *in toto***. No costs.[4]

The aforementioned ruling of the RTC granted the respondents' Application for Original Registration of a parcel of land under Presidential Decree No. 1529.

The antecedents are as follows:

<u>*Prelude*</u>

In October 1997, the respondents purchased three (3) parcels of unregistered land situated in *Barangay* Carasuchi, Indang, Cavite.[5] The 3 parcels of land were previously owned by one *Generosa Asuncion* (Generosa), one *Teresita Sernal* (Teresita) and by the *spouses Jimmy and Imelda Antona*, respectively.[6]

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[1] *Via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal, concurring. *Rollo*, pp. 21-35.

[3] Penned by Judge Lerio C. Castigador. *Id.* at 123-129.

[4] *Id.* at 34.

[5] *See* Deeds of Absolute Sale. Records, pp. 181-183.

[6] *Id.*

Sometime after the said purchase, the respondents caused the survey and consolidation of the parcels of land. Hence, *per* the consolidation/subdivision plan *Ccs-04-003949-D*, the 3 parcels were consolidated into a *single* lot — "**Lot 3**"—with a determined total area of nine thousand five hundred seventy-seven (9,577) square meters. [7]

The Application for Land Registration

On 12 March 2002, the respondents filed with the RTC an Application[8] for Original Registration of **Lot 3**. Their application was docketed as LRC Case No. NC-2002-1292.

On the same day, the RTC issued an *Order*[9] setting the application for initial hearing and directing the satisfaction of jurisdictional requirements pursuant to Section 23 of Presidential Decree No. 1529. The same *Order*, however, also required the Department of Environment and Natural Resources (DENR) to submit a *report* on the status of **Lot 3**.[10]

On 13 March 2002, the DENR Calabarzon Office submitted its *Report*[11] to the RTC. The *Report* relates that the area covered by **Lot 3** "*falls within the Alienable and Disposable Land, Project No. 13 of Indang, Cavite per LC*[12] *3013 certified on March 15, 1982*." Later, the respondents submitted a *Certification*[13] from the DENR-Community Environment and Natural Resources Office (CENRO) attesting that, indeed, **Lot 3** was classified as an "*Alienable or Disposable Land*" as of 15 March 1982.

After fulfillment of the jurisdictional requirements, the government, through the Office of the Solicitor General, filed

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[7] *Id.* at 9.

[8] *Id.* at 1-5.

[9] *Id.* at 21.

[10] *Id.*

[11] *Id.* at 59.

[12] Stands for "Land Classification Map."

[13] Dated 30 January 2002. *Rollo*, p. 48.

the *lone* opposition[14] to the respondents' application on 13 May 2003.

The Claim, Evidence and Opposition

The respondents allege that their predecessors-in-interest *i.e.*, the previous owners of the parcels of land making up **Lot 3**, have been in "*continuous, uninterrupted, open, public [and] adverse*" possession of the said parcels "*since time immemorial.*"[15] It is by virtue of such lengthy possession, tacked with their own, that respondents now hinge their claim of title over **Lot 3**.

During trial on the merits, the respondents presented, among others, the testimonies of Generosa[16] and the representatives of their two (2) other predecessors-in-interest.[17] The said witnesses testified that they have been in possession of their respective parcels of land for over thirty (30) years *prior* to the purchase thereof by the respondents in 1997.[18] The witnesses also confirmed that neither they nor the interest they represent, have any objection to the registration of **Lot 3** in favor of the respondents.[19]

In addition, Generosa affirmed in open court a *Joint Affidavit*[20] she executed with Teresita.[21] In it, Generosa revealed that the portions of **Lot 3** previously pertaining to her and Teresita were once owned by her father, Mr. Valentin Sernal (Valentin) and that the latter had "*continuously, openly and peacefully occupied*

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[14] Records, pp. 66-68.

[15] *Id.* at 3.

[16] TSN, 10 February 2004, pp. 12-14-A.

[17] Teresita Sernal was represented by her son, Charlie Sernal. TSN, 10 February 2004, pp.14-A-16; The Spouses Jimmy and Imelda Antona were represented by Gregorio Sernal. TSN, 10 February 2004, pp. 17-20

[18] *Id.* at 13, 15 and 18.

[19] *Id.* at 13-14-A, 14-B and 19.

[20] Records, pp. 130-131.

[21] Testimony of Generosa. TSN, 10 February 2004, p. 13.

and tilled as absolute owner" such lands even "*before the outbreak of World War 2*."[22]

To substantiate the above testimonies, the respondents also presented various *Tax Declarations*[23] covering certain areas of **Lot 3**—the earliest of which dates back to 1948 and covers the portions of the subject lot previously belonging to Generosa and Teresita.[24]

On the other hand, the government insists that **Lot 3** still forms part of the public domain and, hence, not subject to private acquisition and registration. The government, however, presented no further evidence to controvert the claim of the respondents.[25]

The Decision of the RTC and the Court of Appeals

On 14 February 2005, the RTC rendered a ruling granting the respondents' Application for Original Registration of **Lot 3**. The RTC thus decreed:

WHEREFORE, in view of the foregoing, this Court confirming its previous Order of general default, decrees and adjudges Lot 3 (Lot 1755) Ccs-04-003949-D of Indang, Cadastre, with a total area of **NINE THOUSAND FIVE HUNDRED FIFTY SEVEN** (9,577) square meters and its technical description as above-described and situated in Brgy. [Carasuchi], Indang, Cavite, pursuant to the provisions of Act 496 as amended by P.D. No. 1529, it is hereby decreed and adjudged to be confirmed and registered in the name of herein applicants **MICHAEL C. SANTOS, VANESSA C. SANTOS, MICHELLE C. SANTOS**, and **DELFIN C. SANTOS**, all residing at No. 60 Rockville Subdivision, Novaliches, Quezon City.

Once this decision has become final, let the corresponding decree of registration be issued by the Administrator, Land Registration Authority.[26]

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[22] Records, p, 130.

[23] *Id.* at 107-128.

[24] *Id.* at 107.

[25] *See* Manifestation and Comment. *Id.* at 191.

[26] *Rollo*, pp. 128-129.

The government promptly appealed the ruling of the RTC to the Court of Appeals.[27] As already mentioned earlier, the Court of Appeals affirmed the RTC's decision on appeal.

Hence, this petition.[28]

The sole issue in this appeal is whether the Court of Appeals erred in affirming the RTC ruling granting original registration of **Lot 3** in favor of the respondents.

The government would have Us answer in the affirmative. It argues that the respondents have failed to offer evidence sufficient to establish its title over **Lot 3** and, therefore, were unable to rebut the *Regalian* presumption in favor of the State.[29]

The government urges this Court to consider the DENR Calabarzon Office *Report* as well as the DENR-CENRO *Certification*, both of which clearly state that **Lot 3** only became "*Alienable or Disposable Land*" on 15 March 1982.[30] The government posits that since **Lot 3** was only classified as alienable and disposable on 15 March 1982, the period of prescription against the State should also commence to run only from such date.[31] Thus, the respondents' 12 March 2002 application—filed nearly twenty (20) years after the said classification—is still premature, as it does not meet the statutory period required in order for extraordinary prescription to set in.[32]

OUR RULING

We grant the petition.

<u>*Jura Regalia and the Property Registration Decree*</u>

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[27] *Via* Notice of Appeal. Records, pp. 205-206.

[28] *Rollo*, pp. 1-19.

[29] *Id.* at 14.

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

[31] *Id.*

[32] *Id.*

We start our analysis by applying the principle of *Jura Regalia* or the *Regalian* Doctrine.[33] *Jura Regalia* simply means that the State is the original proprietor of all lands and, as such, is the general source of all private titles.[34] Thus, pursuant to this principle, all claims of private title to land, *save those acquired from native title*,[35] must be traced from some grant, whether express or implied, from the State.[36] Absent a clear showing that land had been let into private ownership through the State's *imprimatur*, such land is presumed to belong to the State.[37]

Being an unregistered land, **Lot 3** is therefore presumed as land belonging to the State. It is basic that those who seek the entry of such land into the Torrens system of registration must

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[33] The principle is presently enshrined in Section 2, Article XII of the Constitution, thus:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphasis supplied)

[34] *Seville v. National Development Company*, 403 Phil. 843, 854-855 (2001).

[35] Separate Opinion of then Associate Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 960 (2000).

[36] Agcaoili, *Property Registration Decree and Related Laws* (Land Titles and Deeds), 2006, p. 2.

[37] *Republic v. Register of Deeds of Quezon*, G.R. No. 73974, 31 May 1995, 244 SCRA 537, 546; *Aranda v. Republic*, G.R. No. 172331, 24 August 2011, 656 SCRA 140, 146-147.

first establish that it has acquired valid title thereto as against the State, in accordance with law.

In this connection, original registration of title to land is allowed by Section 14 of Presidential Decree No. 1529, or otherwise known as the *Property Registration Decree*. The said section provides:

> **Section 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:
>
> (1) **Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier**.
>
> (2) **Those who have acquired ownership of private lands by prescription under the provisions of existing laws**.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law. (Emphasis supplied)

Basing from the allegations of the respondents in their application for land registration and subsequent pleadings, it appears that they seek the registration of **Lot 3** under either the **first** or the **second** paragraph of the quoted section.

However, after perusing the records of this case, as well as the laws and jurisprudence relevant thereto, We find that *neither* justifies registration in favor of the respondents.

Section 14(1) of Presidential Decree No. 1529

Section 14(1) of Presidential Decree No. 1529 refers to the original registration of "*imperfect*" titles to public land acquired under Section 11(4) in relation to Section 48(b) of Commonwealth

Act No. 141, or the *Public Land Act*, as amended.[38] Section 14(1) of Presidential Decree No. 1529 and Section 48(b) of Commonwealth Act No. 141 specify identical requirements for the judicial confirmation of "*imperfect*" titles, to wit:[39]

1. That the subject land forms part of the alienable and disposable lands of the public domain;.

2. That the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership, and;

3. That such possession and occupation must be **since June 12, 1945** or **earlier**.

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[38] Section 11(4) of Commonwealth Act No. 141 authorizes the disposition of public agricultural lands via "confirmation of imperfect or incomplete titles." Section 48(b) of the same law, on the other hand, lays out the requisites for the judicial confirmation of imperfect titles, to wit:

Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act , to wit:

xxx xxx xxx.

(b) **Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure**. **These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter**.

xxx xxx xxx.

Presidential Decree No. 1073 further amended Section 48(b) of Commonwealth Act No. 141, by fixing the date of possession and occupation required under the latter to "**June 12, 1945 or earlier**." (Emphasis supplied)

[39] *Republic v. East Silverlane Realty Development Corporation*, G.R. No. 186961, 20 February 2012.

In this case, the respondents were not able to satisfy the **third** requisite, *i.e.*, that the respondents failed to establish that they or their predecessors-in-interest, have been in possession and occupation of **Lot 3** "*since June 12, 1945 or earlier*." An examination of the evidence on record reveals so:

First. The testimonies of respondents' predecessors-in-interest and/or their representatives were patently deficient on this point. None of them testified about possession and occupation of the subject parcels of land dating back to 12 June 1945 or earlier. Rather, the said witnesses merely related that they have been in possession of their lands "*for over thirty years*" prior to the purchase thereof by respondents in 1997.[40]

Neither can the affirmation of Generosa of the *Joint Affidavit* be considered as sufficient to prove compliance with the third requisite. The said *Joint Affidavit* merely contains a **general** claim that Valentin had "*continuously, openly and peacefully occupied and tilled as absolute owner*" the parcels of Generosa and Teresita even "*before the outbreak of World War 2*" — which lacks specificity and is unsupported by any other evidence. In ***Republic v. East Silverlane Realty Development Corporation,***[41] this Court dismissed a similar unsubstantiated claim of possession as a "*mere conclusion of law*" that is "*unavailing and cannot suffice*:"

Moreover, Vicente Oco did not testify as to what specific acts of dominion or ownership were performed by the respondent's predecessors-in-interest and if indeed they did. He merely made a **general claim** that they came into possession before World War II, which is a **mere conclusion of law and not factual proof of possession, and therefore unavailing and cannot suffice**.[42] **Evidence of this nature should have been received with suspicion, if not dismissed as tenuous and unreliable**.

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[40] TSN, 10 February 2004, pp. 13, 15 and 18.

[41] *Supra* note 39.

[42] *The Director, Lands Mgt. Bureau v. Court of Appeals*, 381 Phil. 761, 772 (2000).

Second. The supporting tax declarations presented by the respondents also fall short of proving possession since 12 June 1945 or earlier. The earliest declaration submitted by the respondents *i.e.*, **Tax Declaration No. 9412,**[43] was issued only in **1948** and merely covers the portion of **Lot 3** previously pertaining to Generosa and Teresita. Much worse, **Tax Declaration No. 9412** shows no declared improvements on such portion of **Lot 3** as of 1948—posing an apparent contradiction to the claims of Generosa and Teresita in their *Joint Affidavit*.

Indeed, the evidence presented by the respondents does not qualify as the "*well-nigh incontrovertible*" kind that is required to prove title thru possession and occupation of public land since 12 June 1945 or earlier.[44] Clearly, respondents are not entitled to registration under Section 14(1) of Presidential Decree No. 1529.

<u>*Section 14(2) of Presidential Decree No. 1529*</u>

The respondents, however, make an alternative plea for registration, this time, under Section 14(2) of Presidential Decree No. 1529. Notwithstanding their inability to comply with Section 14(1) of Presidential Decree No. 1529, the respondents claim that they were at least able to establish possession and occupation of **Lot 3** for a sufficient number of years so as to acquire title over the same *via* prescription.[45]

As earlier intimated, the government counters the respondents' alternative plea by arguing that the statutory period required in order for extraordinary prescription to set in was not met in this case.[46] The government cites the DENR Calabarzon Office

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[43] Records, p. 107

[44] *Santiago v. De los Santos*, G.R. No. L-20241, 22 November 1974, 61 SCRA 146, 152; *Director of Lands v. Buyco*, G.R. No. 91189, 27 November 1992, 216 SCRA 78, 94; *The Director, Lands Mgt. Bureau v. Court of Appeals*, *supra* note 42 at 772.

[45] Comment. *Rollo,* pp. 174-187.

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

Report as well as the DENR-CENRO *Certification*, both of which state that **Lot 3** only became "*Alienable or Disposable Land*" on 15 March 1982.[47] It posits that the period of prescription against the State should also commence to run only from such date.[48] Hence, the government concludes, the respondents' 12 March 2002 application is still premature.[49]

We find the contention of the government inaccurate but nevertheless deny registration of **Lot 3** under Section 14(2) of Presidential Decree No. 1529.

Section 14(2) of Presidential Decree No. 1529 sanctions the original registration of lands acquired by prescription "*under the provisions of existing law*." In the seminal case of ***Heirs of Mario Malabanan v. Republic***,[50] this Court clarified that the "*existing law*" mentioned in the subject provision refers to no other than Republic Act No. 386, or the *Civil Code of the Philippines*.

Malabanan acknowledged that only lands of the public domain that are "*patrimonial in character*" are "*susceptible to acquisitive prescription*" and, hence, eligible for registration under Section 14(2) of Presidential Decree No. 1529.[51] Applying the pertinent provisions of the Civil Code,[52] ***Malabanan*** further elucidated that in order for public land to be considered as patrimonial "*there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial*."[53] Until then,

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[47] *Id.*

[48] *Id.*

[49] *Id.*

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

[51] *Id.* at 198.

[52] Article 422 in relation to Article 420(2) and Article 421 of the Civil Code.

[53] *Supra* note 50 at 203.

the period of acquisitive prescription against the State will not commence to run.[54]

The requirement of an "*express declaration*" contemplated by ***Malabanan*** is **separate and distinct** from the mere classification of public land as alienable and disposable.[55] On

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[54] *Id.*

[55] The discussion of ***Malabanan*** on this point is instructive:

> Let us now explore the effects under the Civil Code of a declaration by the President or any duly authorized government officer of alienability and disposability of lands of the public domain. **Would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property**? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.
>
> **Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription**. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. **For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."** *Id.* at 202-203. (Emphasis supplied)

Malabanan then laid out the rule:

> **Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, <u>even if classified as alienable or disposable</u>, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall**

this point, ***Malabanan*** was reiterated by the recent case of ***Republic v. Rizalvo, Jr***.[56]

In this case, the respondents were not able to present any "*express declaration*" from the State, attesting to the patrimonial character of **Lot 3**. To put it bluntly, the respondents were not able to prove that acquisitive prescription has begun to run against the State, much less that they have acquired title to **Lot 3** by virtue thereof. As jurisprudence tells us, a mere certification or report classifying the subject land as alienable and disposable is not sufficient.[57] We are, therefore, left with the unfortunate but necessary verdict that the respondents are not entitled to the registration under Section 14(2) of Presidential Decree No. 1529.

There being no compliance with either the first or second paragraph of Section 14 of Presidential Decree No. 1529, the *Regalian* presumption stands and must be enforced in this case. We accordingly overturn the decisions of the RTC and the Court of Appeals for not being supported by the evidence at hand.

WHEREFORE, the instant petition is **GRANTED.** The 9 October 2007 Decision of the Court of Appeals in CA-G.R. CV No. 86300 affirming the 14 February 2005 Decision of the Regional Trial Court, Branch 15, of Naic, Cavite in LRC Case No. NC-2002-1292 is hereby **REVERSED** and **SET ASIDE.** The respondents' application for registration is, accordingly, **DENIED.**

Costs against respondents.

SO ORDERED.

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

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be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law. *Id.* at 203. (Underscoring supplied)

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

[57] *Id.* at 526. *Heirs of Mario Malabanan v. Republic, supra* note 50 at 203.

FIRST DIVISION

[G.R. No. 181250. July 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMMALYN DELA CERNA *y* QUINDAO,** ***alias*** **"INDAY" and REGIE MEDENCELES *y* ISTIL,** *accused,* **REGIE MEDENCELES *y* ISTIL,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** To obtain a conviction for the illegal sale of a dangerous drug, like ecstacy, the State must prove the following, namely: (*a*) the identity of the buyer and the seller, the object of the sale and the consideration; and (*b*) the delivery of the thing sold and the payment thereof. What is decisive is the proof that the sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.
2. **ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.—** The State convincingly and competently established the foregoing elements of the offense charged. Poseur-buyer NBI Agent Zuniga, Jr. testified that the two accused sold ecstacy to him for ₱80,000.00 during a legitimate buy-bust operation; and that he recovered the buy-bust money in Dela Cerna's hand right after the sale. Based on the certification issued by Forensic Chemist Juliet Gelacio-Mahilum, who had subjected the confiscated tablets to physical, chemical and chromatographic examinations as well as to instrumental analysis, the 200 ecstacy tablets with a total weight of 37.4007 grams were found to be positive for the presence of *methylenedioxymethamphetamine*, a dangerous drug. Also presented in court as evidence were the 200 ecstacy tablets, the marked buy-bust money, and the certification from Forensic Chemist Emilia S. Rosaldes confirming that Dela Cerna's left and right hands tested positive for yellow fluorescent powder, the powder dusted on the buy-

bust money prior to the buy-bust operation. NBI Agent Bautista, the buy-bust team leader, corroborated Agent Zuniga, Jr.'s recollections, attesting that he witnessed Agent Zuniga, Jr.'s act of handing over the buy-bust money to Dela Cerna who was then accompanied by Mecendeles; and that Agent Zuniga, Jr. thereafter signaled to the rest of the buy-bust team in order for them to arrest both accused.

3. **ID.; ID.; ID.; ID.; DRUG PUSHERS SELL THEIR PROHIBITED ARTICLES TO ANY PROSPECTIVE CUSTOMER, BE HE A STRANGER OR NOT, IN PRIVATE AS WELL AS IN PUBLIC PLACES, EVEN IN DAYTIME.—** Medenceles' claim of undue incrimination for a very serious crime could not at all be true. If it was, he should have vindicated himself by filing an administrative or criminal complaint against the buy-bust team members. That step would have been expected of him had he been truly innocent. But he did not. His inaction betrayed the unworthiness of his claim. Nor should we give substance to Medenceles' argument that a real drug pusher would not have casually approached just anyone in order to sell drugs. The records indicate that Agent Zuniga, Jr. was not just anyone because the informant, whom both accused were familiar with, accompanied the poseur buyer. Prior to the actual transaction, the informant and the accused had agreed to meet at the venue of the arrest so that the accused could sell the ecstacy to the poseur buyer. Under the circumstances, the poseur buyer was not a stranger to the accused. At any rate, such a defense has been discredited by the Court several times. In *People v. Requiz*, for instance, the Court observed: If pushers peddle drugs only to persons known to them, then drug abuse would certainly not be as rampant as it is today and would not pose a serious threat to society. We have found in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.

4. **ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; SHOWN BY THE ACCUSED'S COMMON PURPOSE AND COMMUNITY OF INTEREST DURING THE TRANSACTION WITH THE POSEUR BUYER.—** Medenceles' insistence that he was implicated only because he had happened to be in the company of Dela Cerna during the buy-bust operation was unworthy of consideration because the established facts contradicted it. The records show that he acted in conspiracy with Dela Cerna. This conclusion of conspiracy between them was based on the firm testimony of poseur buyer Agent Zuniga, Jr. to the effect that both accused were of one mind in selling ecstacy to him. It appears, indeed, that prior to the buy-bust operation, both of the accused sat together inside the McDonald's Restaurant; that in transacting with the poseur buyer, Dela Cerna handed a white paper box containing the 200 ecstacy tablets to Medenceles, her boyfriend, who, in turn, handed the tablets to Agent Zuniga, Jr. in exchange for the marked buy-bust money that Agent Zuniga, Jr. handed over to Dela Cerna; and that the buy-bust money was later recovered from Dela Cerna upon the arrest of the two accused. No other logical conclusion can be drawn from the accused's acts in unison except that they did have a common purpose and community of interest during the transaction with the poseur buyer. There is no question that conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action, and community of interests. Conspiracy between them having been competently established, Dela Cerna and Medenceles were liable as co-principals irrespective of what each of them actually did.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL JUDGE'S EVALUATION OF CREDIBILITY ACCORDED THE HIGHEST RESPECT BY THE COURT.—** Both the RTC and the CA regarded as credible the testimonies of poseur buyer Agent Zuniga, Jr. and Agent Bautista on what transpired during the buy-bust operation. We concur with both lower courts, and hold that, indeed, the testimonies of the NBI agents as entrapping and arresting officers inspire belief and credence considering that the accused did not impute any ill-motive to them for testifying against them

as they did. The RTC judge's evaluation of the credibility of witnesses and their testimonies is accorded the highest respect because she had the unique opportunity to directly observe the demeanor of the witnesses and had been thereby enabled to determine whether the witnesses were speaking the truth or prevaricating. That evaluation, which the CA affirmed, is now binding on the Court because the appellant has not called attention to facts or circumstances of weight that might have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks to reverse and set aside the September 5, 2007 decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00953, which affirmed the conviction of Regie Medenceles *y* Istil for illegal sale of *methylenedioxymethamphetamine*, popularly known as ecstasy, a dangerous drug, as penalized under Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).

On September 10, 2002, the City Prosecutor's Office of Mandaluyong City charged Emmelyn Q. Dela Cerna, *alias Inday*, and Medenceles with violation of Section 5 of Republic Act No. 9165 in the Regional Trial Court in Mandaluyong City (RTC), alleging thus:

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[1] CA *rollo*, pp. 125-142; penned by Associate Justice Arturo G. Tayag (retired) with Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Hakim S. Abdulwahid, concurring.

That on or about the 28th day of August 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to sell, trade, administer, dispense, deliver, give away to another, or distribute any dangerous drug, conspiring and confederating with one another, did, then and there willfully, unlawfully, and feloniously sell, trade, deliver or distribute to National Bureau of Investigation Senior Agent GREGORIO S. ZUNIGA, JR., a poseur buyer, two hundred (200) pieces of light blue color tablets which were found positive to test for Methylenedioxymethamphetamine, commonly known as "Ecstacy", a dangerous drug, for the amount of ₱80,000.00, Philippine Currency, in violation of the above-cited law.

CONTRARY TO LAW.[2]

Both accused pleaded *not guilty* to the foregoing information at their arraignment on September 25, 2005.[3]

The Court of Appeals (CA) summarized the evidence of the parties in its assailed decision, as follows:

At the trial, the prosecution presented the following witnesses: Forensic Chemist Juliet Gelacio-Mahinhim; SI Federico O. Criste; Winmar Lovie U. De Ramos, SA Gregorio Zuniga, Jr.; SA Rosauro Bautista; Forensic Chemist Emilia S. Rosaldez; and Senior Inspector Divinagracia. Their testimonies, woven together, disclosed the following facts:

On 28 August 2002, National Bureau of Investigation (NBI) agents Federico Criste, Gregorio Zuniga, Jr., Winmar Louie de Ramos received a briefing from their team leader, Rosauro Bautista about a buy bust operation that would be conducted that afternoon in Mandaluyong City. They were to proceed to McDonald's at Vargas St., Mandaluyong City, at the back of Shoemart (SM) Megamall. SA Gregorio S. Zuñiga was to act as poseur buyer who would buy more or less 200 pieces of ecstacy pills worth ₱80,000.00 from a certain Inday. Early that morning, Forensic Chemist Emilia A. Rosaldez dusted with fluorescent powder the two (2) ₱100 bills which

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[2] Records, p. 1.

[3] *Id.* at 99.

were placed on top of the two (2) sets of boodle money to be used for the buy bust. She also wrote down the serial numbers of the ₱100 bills, V059146 and FU239560.

Around 5 o'clock in the afternoon, the group proceeded to Mcdonald's at Vargas St., Mandaluyong City and parked their vehicle 15 to 20 meters away from their target. Winmar U. De Ramos acted as a perimeter guard while Federico O. Criste and SI Divinagracia were designated as arresting officers. Zuniga, Jr., the poseur buyer met the informant who informed him that the deal was made. They then proceeded to the second floor of Mcdonald's and when they got there, a woman, three (3) meters away from them, waved them. The informant with Zuniga approached the woman, and when they got near her, the woman handed a box similar to that of a cough syrup paper box to the man seated beside her. The man then handed to Zuniga the white box which was 3 inches tall by 1 ½ to 2 inches in diameter, while Zuniga handed to the man two stacks of boodle money. Thereafter, Zuniga introduced himself as an NBI agent, and after apprising the two of their constitutional rights, arrested the woman and the man, who turned out to be a appellants Emmalyn Dela Cerna *y* Quidao a.k.a. "Inday" and Regie Mendenceles, respectively.

For their part, appellants vehemently denied the charges leveled against them. According to the appellant DE LA CERNA, while they were eating at McDonald's at St. Francis Branch, they were approached by about ten (10) persons who frisked and brought them to the NBI office. One of the agents showed her medicine tablets from the table and placed fluorescent powder on her two palms, then she was placed in such a way that her feet were near on electrical wire, for five (5) minutes, during which, she was hurt.

Further, appellant Medenceles stated that these agents placed a plastic bag on his head, and despite the fact that no items was recovered from him, the present case was filed against him. He did not file a case against the agents who hurt him as they threatened him.[4]

On April 20, 2005, the RTC found the two accused guilty as charged, disposing:

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[4] *Rollo*, pp. 3-5.

WHEREFORE, considering all the foregoing, both accused, EMMALYN DELA CERNA *y* QUINDAO @ Inday and REGIE MENDENCELES *y* ISTIL, are hereby found GUILTY beyond reasonable doubt for violation of Section 5, Article 2, of Republic Act No. 9165 and both are hereby sentenced to suffer the penalty of DEATH and pay the fine of ONE MILLION and FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00).

The transparent plastic bag containing 37.4007 grams of Methylenedioxymethamphetamine (MDMA) or commonly known as "Ecstacy" is hereby deemed forfeited in favor of the government to be disposed of in accordance with existing rules.

Finally, the OIC, Branch Clerk of Court, is directed to submit the two hundred tablets of Methylenedioxymethamphetamine (MDMA), also known as ECSTACY, to the proper government agency provided by law, immediately.

SO ORDERED.[5]

On appeal, the CA affirmed the conviction of both accused but reduced the death penalty to life imprisonment,[6] *viz*:

WHEREFORE, in the light of the foregoing, the assailed judgment dated 20 April 2005 of the Regional Trial Court of Mandaluyong City, Branch 213, is *AFFIRMED* with modifications, that the penalty of death be reduced to life imprisonment.

SO ORDERED.

Only Medenceles appealed.[7] Thereby, the conviction of Dela Cerna became final.

Issues

Medenceles contends that the CA erred in convicting him of the charge because he was implicated only because he was in the company of Dela Cerna during the buy-bust; and insists

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[5] Records, p. 218.

[6] *Id.* at 19.

[7] CA *rollo*, p. 145.

that a real drug pusher would not approach just anyone in order to sell drugs.[8]

Ruling

We affirm the conviction of Medenceles.

To obtain a conviction for the illegal sale of a dangerous drug, like ecstacy, the State must prove the following, namely: (*a*) the identity of the buyer and the seller, the object of the sale and the consideration; and (*b*) the delivery of the thing sold and the payment thereof. What is decisive is the proof that the sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[9]

The State convincingly and competently established the foregoing elements of the offense charged.

Poseur-buyer NBI Agent Zuniga, Jr. testified that the two accused sold ecstacy to him for ₱80,000.00 during a legitimate buy-bust operation;[10] and that he recovered the buy-bust money in Dela Cerna's hand right after the sale.[11] Based on the certification issued by Forensic Chemist Juliet Gelacio-Mahilum, who had subjected the confiscated tablets to physical, chemical and chromatographic examinations as well as to instrumental analysis, the 200 ecstacy tablets with a total weight of 37.4007 grams were found to be positive for the presence of *methylenedioxymethamphetamine*, a dangerous drug.[12] Also presented in court as evidence were the 200 ecstacy tablets, the marked buy-bust money, and the certification from Forensic

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[8] *Id.* at 81-84.

[9] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 212.

[10] TSN, June 10, 2003, p. 11.

[11] *Id.* at 14.

[12] Records, p. 29.

Chemist Emilia S. Rosaldes confirming that Dela Cerna's left and right hands tested positive for yellow fluorescent powder, the powder dusted on the buy-bust money prior to the buy-bust operation.[13]

NBI Agent Bautista, the buy-bust team leader, corroborated Agent Zuniga, Jr.'s recollections, attesting that he witnessed Agent Zuniga, Jr.'s act of handing over the buy-bust money to Dela Cerna who was then accompanied by Mecendeles;[14] and that Agent Zuniga, Jr. thereafter signaled to the rest of the buy-bust team in order for them to arrest both accused.[15]

Both the RTC and the CA regarded as credible the testimonies of poseur buyer Agent Zuniga, Jr. and Agent Bautista on what transpired during the buy-bust operation. We concur with both lower courts, and hold that, indeed, the testimonies of the NBI agents as entrapping and arresting officers inspire belief and credence considering that the accused did not impute any ill-motive to them for testifying against them as they did. The RTC judge's evaluation of the credibility of witnesses and their testimonies is accorded the highest respect because she had the unique opportunity to directly observe the demeanor of the witnesses and had been thereby enabled to determine whether the witnesses were speaking the truth or prevaricating.[16] That evaluation, which the CA affirmed, is now binding on the Court because the appellant has not called attention to facts or circumstances of weight that might have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[17]

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[13] Records, pp. 178-180.

[14] TSN, June 24, 2003, pp. 9-10.

[15] *Id.*

[16] *People v. Pascual*, G.R. No. 173309, January 23, 2007, 512 SCRA 385, 392.

[17] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 293; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

Medenceles' insistence that he was implicated only because he had happened to be in the company of Dela Cerna during the buy-bust operation was unworthy of consideration because the established facts contradicted it. The records show that he acted in conspiracy with Dela Cerna. This conclusion of conspiracy between them was based on the firm testimony of poseur buyer Agent Zuniga, Jr. to the effect that both accused were of one mind in selling ecstacy to him. It appears, indeed, that prior to the buy-bust operation, both of the accused sat together inside the McDonald's Restaurant; that in transacting with the poseur buyer, Dela Cerna handed a white paper box containing the 200 ecstacy tablets to Medenceles, her boyfriend, who, in turn, handed the tablets to Agent Zuniga, Jr. in exchange for the marked buy-bust money that Agent Zuniga, Jr. handed over to Dela Cerna; and that the buy-bust money was later recovered from Dela Cerna upon the arrest of the two accused.[18] No other logical conclusion can be drawn from the accused's acts in unison except that they did have a common purpose and community of interest during the transaction with the poseur buyer. There is no question that conspiracy may be deduced from the mode, method, and manner in which the offense was perpetrated, or inferred from the acts of the accused when such acts point to a joint purpose and design, concerted action, and community of interests.[19] Conspiracy between them having been competently established, Dela Cerna and Medenceles were liable as co-principals irrespective of what each of them actually did.[20]

Medenceles' claim of undue incrimination for a very serious crime could not at all be true. If it was, he should have vindicated himself by filing an administrative or criminal complaint against the buy-bust team members. That step would have been expected

[18] TSN, June 10, 2003, pp. 9-14.

[19] *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, 555 SCRA 255, 260.

[20] *People v. Santiago*, *supra* note 9, at 217.

of him had he been truly innocent. But he did not.[21] His inaction betrayed the unworthiness of his claim.

Nor should we give substance to Medenceles' argument that a real drug pusher would not have casually approached just anyone in order to sell drugs. The records indicate that Agent Zuniga, Jr. was not just anyone because the informant, whom both accused were familiar with, accompanied the poseur buyer. Prior to the actual transaction, the informant and the accused had agreed to meet at the venue of the arrest so that the accused could sell the ecstacy to the poseur buyer. Under the circumstances, the poseur buyer was not a stranger to the accused. At any rate, such a defense has been discredited by the Court several times. In *People v. Requiz*,[22] for instance, the Court observed:

If pushers peddle drugs only to persons known to them, then drug abuse would certainly not be as rampant as it is today and would not pose a serious threat to society. We have found in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.

Section 5, Article II of Republic Act No. 9165 provides:

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,

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[21] TSN, January 18, 2005, p. 8.

[22] G.R. No. 130922, November 19, 1999, 318 SCRA 635, 646-647.

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 such transactions.

Although the law punishes the unauthorized sale of dangerous drugs, such as ecstacy, regardless of quantity and purity, with life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00, the CA properly corrected the penalty prescribed by the RTC in view of the intervening effectivity of Republic Act No. 9346[23] prohibiting the imposition of the death penalty in the Philippines. The retroactive application of Republic Act No. 9346 is already settled.[24]

WHEREFORE, we **AFFIRM** the decision promulgated on September 5, 2007; and **DIRECT** appellant to pay the costs of suit.

SO ORDERED.

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

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[23] *An Act Prohibiting The Imposition of Death Penalty in The Philippines, repealing Republic Act 8177 otherwise known as An Act Designating Death By Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees* (The law was signed on June 24, 2006).

[24] *E.g.*, *People v. Tubongbanua,* G.R. No. 171271, August 31, 2006, 500 SCRA 727; *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[*] Vice Justice Teresita J. Leonardo-De Castro, who is on wellness leave, per Special Order No. 1252 issued on July 12, 2012.

SECOND DIVISION

[G.R. No. 183573. July 18, 2012]

DIZON COPPER SILVER MINES, INC., *petitioner, vs.* **DR. LUIS D. DIZON,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; MINING LAWS; MINERAL PRODUCTION SHARING AGREEMENTS (MPSA); ONE OF THE MINERAL AGREEMENTS INNOVATED BY THE 1987 CONSTITUTION SO ENTERING INTO MPSAs COULD NOT HAVE BEEN INCLUDED IN THE "*INTENTS AND PURPOSES*" OF THE *OPERATING AGREEMENT* WHICH WAS EXECUTED WAY BACK IN 1975.—** Entering into MPSAs, however, could not have been included in the *"intents and purposes"* of the *Operating Agreement*. It must be pointed out that the *Operating Agreement* was executed way back in 1975, during which Presidential Decree No. 463 still governed mining operations in the country. Presidential Decree No. 463, as previous mining laws before it, sanctioned a system of exploitation of natural resources based on "*license, concession or lease*." **MPSAs, on the other hand, deviate drastically from this system**. An MPSA is one of the mineral agreements innovated by the 1987 Constitution by which the State takes on a broader and more dynamic role in the exploration, development and utilization of the country's mineral resources. **By such agreements, the government does not become a mere licensor, concessor or lessor of mining resources—but actually assumes "full control and supervision" in the exploration, development and utilization of the concerned mining claims in consonance with Section 2, Article XII of the Constitution**. The policy introduced by the 1987 Constitution, therefore, represents a significant shift in the hitherto existing relations between the government and mining claimants. This considerable change in the former system of mining leases under previous mining laws, in turn, makes it difficult for this Court to fathom that petitioner and Benguet contemplated the execution of MPSAs

as part of their *Operating Agreement*. To hold otherwise, would simply stretch the limits of reason and human foresight. Accordingly, this Court agrees with the finding of the DENR and the Court of Appeals that MPSA-P-III-16 was filed by Benguet without any valid authorization and, therefore, cannot be considered as a valid MPSA application.

2. **ID.; ID.; ID.; ID.; EFFECT OF INVALIDITY OF MPSA-P-III-16 ON PETITIONER'S RIGHTS AS TO THE 51 MINING CLAIMS NOT COVERED BY THE MINING LEASE CONTRACTS (MLC).—** In the instant case, MPSA-P-III-16 was the *only* MPSA application that was filed before the mandatory deadline. Aside from it, petitioner filed no other *valid* MPSA application covering its mining claims before 15 September 1997. Given the foregoing, it becomes clear that a finding of invalidity of MPSA-P-III-16 has a profound effect on petitioner's rights as to the **51 mining claims *not* covered by MLCs**: *First*. The invalidity of MPSA-P-III-16 necessarily meant that **petitioner was not able to validly exercise its preferential rights under Section 113 of Republic Act No. 7942.** As a result, **petitioner is already deemed to have abandoned its mining claims as of 15 September 1997**. *Second*. The assignment of MPSA-P-III-16 in favor of petitioner has also been rendered of no consequence. Such assignment was made by Benguet, and then approved by the DENR, only in 2004—which is well beyond the 15 September 1997 deadline. At that time, petitioner had already lost any legal vested interest it had in the subject mining claims. *Third*. Petitioner's MPSA-P-III-03-05, filed on 31 January 2005, is considered as a *new* application insofar as the subject 51 mining claims are concerned. **Petitioner thereby enjoys no preference regarding the said application's approval**.

3. **ID.; ID.; ID.; ID.; PHILIPPINE MINING ACT OF 1995 (REPUBLIC ACT NO. 7942); CONFERRED UPON THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) SECRETARY THE EXCLUSIVE AND PRIMARY JURISDICTION TO APPROVE MINERAL AGREEMENTS, SUCH AS MPSAs.—** Anent the issue regarding the approval of MPSA-P-III-05-05, it must be emphasized herein that under Republic Act No. 7942, the DENR Secretary has been conferred with the exclusive and primary jurisdiction to approve mineral agreements, such as

MPSAs. In the seminal case ***Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation***, this Court described such function as purely administrative in nature and one that is fully within the DENR Secretary's competence and discretion. Concededly, it is the DENR Secretary, thru the MGB, who is in the best position to determine to whom mineral agreements are granted. Accordingly, the doctrine of primary jurisdiction finds application to the case at bench. ***Celestial*** captures the doctrine in the context of mining applications in this wise: Settled is the rule that the courts will defer to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them pursuant to the doctrine of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. **Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion**.

4. **ID.; ID.; ID.; ID.; NO ARBITRARINESS ON THE PART OF THE DENR SECRETARY IN APPROVING RESPONDENT'S MPSA-P-III-05-05 AT THE EXPENSE OF PETITIONER'S MPSA-P-III-03-05.—** In the case at bench, this Court finds no such arbitrariness on the part of the DENR Secretary in approving respondent's MPSA-P-III-05-05 at the expense of petitioner's MPSA-P-III-03-05. Contrary to the allegations of petitioner, there was never any "*hasty*" approval of MPSA-P-III-05-05. The records attest that the approval of MPSA-P-III-05-05 by the DENR Secretary came a full ten (10) months after such application was filed and was, in fact, based from the evaluation of the DENR MGB Regional Office III that petitioner's MPSA-P-III-03-05 was filed at a time when the 6 mining claims covered therein were still under subsisting MLCs in favor of the Dizons and, hence, still closed to mining applications. In choosing to act favorably on MPSA-P-III-05-05, the DENR Secretary merely exercised its rightful discretion to determine who among competing mining applicants is more qualified for a mining agreement. This consideration, aside from the fact that petitioner's MPSA-P-

III-03-05 covers areas still closed to mining applications when it was filed, underscores the reasonableness of the orders of the DENR Secretary. This Court finds itself heavy-handed to disturb them.

BRION, *J., separate concurring opinion*:

1. **POLITICAL LAW; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; MINING LAWS; THE PREVIOUS LAWS ON MINING WHICH AUTHORIZED, AMONG OTHERS, MINING CLAIMS AND MINING LEASE CONTRACTS THAT WERE INCONSISTENT WITH R.A. NO. 7942 WERE EXPRESSLY REPEALED; NOTWITHSTANDING THE REPEAL, R.A. NO. 7942 RECOGNIZED AND RESPECTED PREVOUSLY ISSUED VALID AND STILL EXISTING MINING LICENSES UNDER THE OLD MINING LAWS.—** The 1987 Constitution introduced a radical change in the system of exploration, development, and utilization of the country's natural resources. "No longer is the utilization of [natural resources made] through license, concession or lease under the 1935 or 1973 Constitutions"; the present Constitution instead declares, under Section 2, Article XII, that the "exploration, development, and utilization of natural resources shall be under the full control and supervision of the State." Accordingly, the State is authorized to "directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements" with qualified entities. Pursuant to this mandate, Congress enacted Republic Act (*RA*) No. 7942 or the Philippine Mining Act of 1995, which provides for only three modes of mineral agreements between the government and a qualified contractor: **mineral production-sharing agreement**, **co-production agreement**, and **joint venture agreement**. The previous laws on mining (which authorized, among others, mining claims and mining lease contracts) that were inconsistent with RA No. 7942 were expressly repealed. **Notwithstanding the repeal, RA No. 7942 recognized and respected previously issued valid and existing mining licenses under the old mining laws**.

2. **ID.; ID.; ID.; ID.; ID.; UNDER R.A. NO. 7942 ANY APPLICATION FILED BY ANY ENTITY INVOLVING AREAS COVERED BY MINING LEASE CONTRACTS FILED ON OR BEFORE JANUARY 31, 2005, IS PREMATURE AND SHOULD BE DENIED.—** Justice Caprio dissented from the *ponencia* by pointing out that long before the issuance of the MLCs (in 1978), all the 57 mining claims have been assigned by Celestino and his heirs in favor of Dizon Mines (in 1966). Although the MLCs were issued in the names of Celestino and his heirs, these were held in trust for Dizon Mines which acquired all the mining claims by virtue of the assignment. Justice Carpio thus claims that Dizon Mines was not required to secure the consent of Celestino and his heirs to file the MPSA applications with respect to the six mining claims covered by the MLCs. With due respect, I find the need for authorization from Celestino and his heirs with respect to the six mining claims covered by the MLCs irrelevant. These MLCs were to expire on January 31, 2005. Section 19 of RA No. 7942, however, prohibits mineral agreement applications involving areas that are covered by valid and existing mining rights. Section 112 of RA No. 7942 specifically provides that "[a]ll valid and existing mining lease contracts x x x at the date of effectivity of [the] Act, shall remain valid, shall not be impaired, and shall be recognized by the Government[.]" Hence, under the law, **any application *filed by any entity* involving areas covered by the MLCs filed on or before January 31, 2005 is premature and should be denied.** Dizon Mines' MPSA-P-III-16 and MPSA-P-III-03-05 were filed on December 16, 2004 and January 31, 2005, respectively; as both MPSA applications were filed before the opening of the period for application, the dismissal of the applications with respect to the areas covered by the MLCs is thus proper.

3. **ID.; ID.; ID.; ID.; BENGUET CORPORATION DOES NOT HAVE THE PROPER AUTHORITY TO FILE THE MINERAL PRODUCTION SHARING AGREEMENTS (MPSA) APPLICATIONS.—** I agree with the *ponencia*'s finding that Benguet Corporation did not have the proper authority to file the MPSA applications. While Benguet was authorized "to prepare, execute, amend, correct, supplement and register any document x x x necessary to carry out the

intents and purposes" of the Operating Agreement, entering into an MPSA with the government could not have been among those contemplated. The Operating Agreement was executed in 1975 when the mining laws provided only minimal participation by the State in mining activities; the passage of the 1987 Constitution, on one hand, and of RA No. 7942, on the other hand, drastically changed the system by giving the State full control and supervision over exploration, development and utilization of natural resources, and allowing only limited forms of mining agreements. Such dynamic change in the relationship between the State and the mining right holder could not have been among those that Benguet Corporation was authorized to enter into under the Operating Agreement.

4. **ID.; ID.; ID.; ID.; ID.; PETITIONER NEVER SUBMITTED PROOF THAT ITS FORMER PRESIDENT WAS AUTHORIZED BY THE BOARD OR ITS BYLAWS TO GIVE AUTHORIZATION TO BENGUET CORPORATION.—** A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents *when authorized by a board resolution or its bylaws*. Dizon Mines never submitted proof that Juvencio Dizon, Dizon Mines' President, was authorized by the Board or its bylaws. While the letter dated June 14, 1991, addressed to Benguet Corporation and signed by Juvencio Dizon, states that –We hereby confirm and approve the filing of the MPSA proposal in accordance with plan presented in your letter dated June 3, [1991,] it was not accompanied by a resolution from Dizon Mines' Board of Directors, either agreeing with Benguet Corporation's MPSA application or granting its President the authority to agree with the application. Thus, at the time of filing, Benguet Corporation's MPSA application could not validly be considered as filed in behalf of Dizon Mines in the absence of a proper authorization from the latter. By the time Benguet Corporation assigned to Dizon Mines its MPSA application on October 22, 2004, the September 15, 1997 deadline had already lapsed. Hence, Dizon Mines was unable to exercise its preferential rights within the period set by law.

5. **ID.; ID.; ID.; ID.; ID.; SINCE PETITONER FAILED TO EXERCISE THEIR PREFERENTIAL RIGHTS ON AREAS COVERED BY THEIR MINING CLAIMS, THEY ARE**

DISQUALIFIED FROM FILING ANY MINERAL PRODUCTION SHARING AGREEMENT APPLICATION INVOLVING THE AREAS COVERED BY THE 57 MINING CLAIMS.— Under Section 10 of DENR Memorandum Order No. 97-07, "any valid and existing mining claim x x x for which the concerned holder failed to file [the necessary] Mineral Agreement application by September 15, 1997, shall [be] considered **automatically abandoned** and **the area covered thereby rendered open to Mining Applications effective September 16, 1997**[.]" Since MPSA-P-III-16 and MPSA-P-III-03-05 were transferred to/filed by Dizon Mines after the September 15, 1997 cut-off date, the *ponencia* considered these as new MPSA applications. However, the same administrative issuance disqualifies holders who failed to exercise their preferential rights from applying for MPSAs on areas covered by their abandoned mining claims: DENR Memorandum Order No. 97-07. Section 11. *Acceptance of Mining Application Over the Areas Subject to Mining Claims and Lease/Quarry Applications Abandoned After September 15, 1997*. xxx The holder of a valid and existing mining claim or lease/quarry application who **failed to file the necessary Mineral Agreement Application** on or before September 15, 1997 shall be **disqualified** from thereafter filing a Mining Application over the same area covered by such abandoned claim or application. Accordingly, Dizon Mines is disqualified from filing any Mineral Production Sharing Agreement application involving the areas covered by the 57 mining claims. Given the foregoing consideration, I agree that the Department of Environment and Natural Resources Secretary's denial of Dizon Copper-Silver Mines, Inc.'s MPSA-P-III-16 and MPSA-P-III-03-05 is proper.

CARPIO, *J.*, *dissenting opinion*:

1. **MERCANTILE LAW; CORPORATION CODE; WHILE A CORPORATE OFFICER CANNOT BIND THE CORPORATION WITHOUT AUTHORIZATION FROM THE BOARD OF DIRECTORS, THE AUTHORITY OF THE OFFICERS, COMMITTEES, OR AGENTS TO BIND THE CORPORATION CAN BE DERIVED FROM LAW, THE CORPORATE BY-LAWS, OR FROM AUTHORIZATION FROM THE BOARD EXPRESSLY OR**

IMPLIEDLY BY HABIT, CUSTOM OR ACQUIESCENCE IN THE GENERAL COURSE OF BUSINESS.— Generally, in the absence of authority from the board of directors, no person can validly bind a corporation, not even its corporate officers. However, the board of directors may validly delegate some of its functions and powers to its officers, committees, or agents. The authority of the officers, committees, or agents to bind the corporation can be derived from law, the corporate by-laws, **or from authorization from the board, expressly or *impliedly by habit, custom or acquiescence in the general course of business***. This Court has ruled: xxx [R]atification can be made by the corporate board either expressly or impliedly. **Implied ratification may take various forms — like silence or acquiescence;** by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.

2. **ID.; ID.; FACT THAT PETITIONER ACKNOWLEDGED IN ITS MEMORANDUM THAT BENGUET CORPORATION WAS ACTING ON ITS BEHALF IN FILING THE MPSA-P-111-16 APPLICATION SHOW ITS APPROVAL OF ITS FORMER PRESIDENT'S ACT IN AUTHORIZING THE CORPORATION AS WELL AS ITS ACCEPTANCE AND RETENTION OF THE BENEFITS FLOWING FROM SUCH ACT.—** From the time Juvencio issued the authorization letter on 14 June 1991 to the present, **or over a period of more than 20 years**, Dizon Copper never questioned Juvencio's authority to write the 14 June 1991 letter to BCI authorizing BCI to file the MPSA-P-III-16 application. Justice Perez points out that "when there exists <u>other facts that clearly deny or contradict any such intent</u> on the part of the principal — implied ratification cannot be inferred from such *mere* silence." The fact is, there was **no mere silence** by Dizon Copper. In its Memorandum dated 22 April 2009, Dizon Copper stated that "[o]n 04 July 1991, Benguet filed, **in behalf of Petitioner DCSMI** and other claim owners, a[n] MPSA application, known as "MPSA-P-III-16," over existing mining claims with a total area of 8,576 hectares, inclusive of Petitioner DCSMI's 57 existing mining claims covering 513 hectares." Thus, ***Dizon Copper*** *expressly acknowledged* **in its Memorandum that BCI was acting on its behalf in filing the MPSA-P-III-16 application**. Dizon Copper never

questioned the authorization given by Juvencio to BCI file the application on Dizon Copper's behalf. More importantly, the statement in Dizon Copper's Memorandum showed its **approval of Juvencio's act** as well as its acceptance and retention of the benefits flowing from such act.

3. **ID.; ID.; THE ACT OF PETITIONER'S FORMER PRESIDENT IN GIVING AUTHORITY TO BENGUET CORPORATION WAS BOTH NECESSARY AND APPRORIATE TO PRESERVE THEIR VALUEABLE PREFERENTIAL RIGHT, AS WELL AS TO CONTINUE WITH THEIR CORE BUSINESS; SUCH ACT BEARS THE IMPLIED AUTHORITY OF PETITIONER'S BOARD IN ACCORDANCE WITH WELL-SETTLED JURISPRUDENCE.—** In short, no one can say that Juvencio was not acting within any express or implied authority because Dizon Copper never questioned Juvencio's authority to issue the authorization letter to BCI, and in fact Dizon Copper **expressly acknowledged** that BCI was acting on Dizon Copper's behalf in filing the MPSA-P-III-16 application. More importantly, it would be self-defeating and self-destructive for Dizon Copper to disown Juvencio's 14 June 1991 letter to BCI for it would mean the loss of Dizon Copper's valuable preferential right to a mineral agreement with the government. In fact, any act of Dizon Copper's board disowning Juvencio's letter to BCI would be contrary to the best interest of Dizon Copper, and would subject the board to suit for damages by stockholders of Dizon Copper. Juvencio's act in giving authority to BCI was both **necessary and appropriate** to preserve a valuable preferential right of Dizon Copper, as well as to continue the core business of Dizon Copper. Such act bears the **implied authority of the board** of Dizon Copper, in accordance with well-settled jurisprudence.

4. **ID.; ID.; THE SUPPOSED LACK OF AUTHORITY OF PETITIONER'S FORMER PRESIDENT IS NEGATED BY THE FACT THAT IT EXPRESSLY ACKNOWLEDGED IN ITS MEMORANDUM THAT BENGUET CORPORATION WAS ACTING IN ITS BEHALF IN FILING THE MPSA-P-III-16.—** Justice Perez states that the Operating Agreement prohibited BCI from entering into any major contract. In this case, BCI filed the MPSA-P-III-16

application in order to continue its operations under the Operating Agreement and it acted on behalf of Dizon Copper upon authority from Juvencio. Justice Perez further states that the doctrine of apparent authority has no application because BCI cannot be considered an innocent party who has no knowledge of Juvencio's lack of authority to bind the corporation. Again, Juvencio's supposed lack of authority is negated by the fact that Dizon Copper **expressly acknowledged** in its Memorandum that BCI was acting in its behalf in filing the MPSA-P-III-16 application. Besides, Juvencio's act in giving BCI the authority is both **necessary and appropriate** to protect and continue Dizon Copper's main business.

5. **ID.; ID.; PETITIONER DID NOT ABANDON ITS VALID AND EXISTING MINING CLAIM BECAUSE BENGUET CORPORATION FILED THE MPSA-P-111-16 APPLICATION ON ITS BEHALF, AN ACT NECESSARY AND APPROPRIATE TO CONTINUE ITS MAIN BUSINESS.—** The second point raised, this time by Justice Brion, is that the authorization from Celestino and his heirs with respect to the six minings claims covered by the MLCs, is irrelevant. x x x. The rule that no application for mineral agreements may be filed involving areas covered by existing MLCs applies to ***third persons*** other than the holder of the MLCs. This is precisely to protect the preferential right of existing holders of MLCs before opening the application to the public or third parties. The ponencia and Justice Brion admit that the holder of MLCs has the preferential right to enter into a mineral agreement with the government involving areas covered by the holder of MLCs. However, the *ponencia* and Justice Brion point out that only BCI filed an MPSA application before the 15 September 1997 deadline and that BCI did not have authority to file the MPSA-P-III-16 application on behalf of Dizon Copper. Again, it boils down to whether Juvencio had authority to write the 14 June 1991 letter to BCI. BCI's authority to file the MPSA-P-III-16 application on behalf of Dizon Copper has been duly established in this case. As such, BCI's assignment of the MPSA-P-III-16 application to Dizon Copper should be reckoned from the time BCI filed the application before the 15 September 1997 deadline and not from the time of the assignment of the MPSA-P-III-16

application to Dizon Copper. Dizon Copper did not abandon its valid and existing mining claim because BCI filed the MPSA-P-III-16 application on its behalf, an act necessary and appropriate to continue the main business of Dizon Copper.

APPEARANCES OF COUNSEL

Jose S. Songco for petitioner.

Kho Bustos Malcontento Argosino Law Offices for petitioner.

D E C I S I O N

PEREZ, *J.*:

For review[1] are the Decision[2] dated 9 May 2008 and Resolution[3] dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 99947. In the assailed decision, the Court of Appeals declared as void *ab initio* petitioner's applications for Mineral Production Sharing Agreements (MPSA) but held as valid a similar application of the respondent. The decision was a reversal of the ruling[4] of the Office of the President (OP) in O.P. Case No. 06-C-113 and a reinstatement of the previous orders[5] issued by the Secretary of the Department of Environment and Natural Resources (DENR). The decretal portion of the decision of the appellate court accordingly reads:[6]

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[1] *Via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Sesinando E. Villon with Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring. *Rollo*, pp. 9-23.

[3] *Id.* at 25.

[4] Signed by former Executive Secretary Eduardo R. Ermita under authority of then President Gloria Macapagal-Arroyo. *Id.* at 225-233.

[5] The 29 December 2005 Order was issued by former DENR Secretary Michael T. Defensor, while the 14 February 2006 Order was issued by then DENR Acting Secretary Ramon J.P. Paje. *Id.* at 153-154 and 173-174.

[6] *Id.* at 23.

WHEREFORE, the petition is **GRANTED**. The assailed decision dated December 4, 2006 and resolution dated June 20, 2007 of the Office of the President are hereby **REVERSED and SET ASIDE**. The orders dated December 29, 2005 and February 14, 2006 issued by the Secretary of the Department of Environment and Natural Resources are **REINSTATED**.

The antecedents are as follows:

The 57 Mining Claims

On 13 November 1935, Celestino M. Dizon (Celestino) filed with the Office of the Mining Recorder,[7] *Declarations of Location*[8] over fifty-seven (57) mining claims in San Marcelino, Zambales. The 57 mining claims, with an aggregate area of 513 hectares, were thereby recorded in the following manner:[9]

1. Twenty-nine (29) mining claims were registered in the name of Celestino.
2. Twelve (12) mining claims were registered in the name of Maria D. Dizon, the wife of Celestino.
3. Eleven (11) mining claims were registered in the name of Helen D. Dizon, a daughter of Celestino.
4. Three (3) mining claims were registered in the name of the heirs of Eustaquio L. Dizon, who was the father of Celestino.
5. Two (2) mining claims were registered in the name of the heirs of Tiburcia M. Dizon, who was the mother of Celestino.

In 1966, herein petitioner Dizon Copper-Silver Mines, Inc. was organized.[10] Among its incorporators were Celestino and his son, herein respondent Dr. Luis D. Dizon.[11]

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[7] Of Iba, Zambales.

[8] The declaration of locations was submitted under Act No. 624 in relation to Section 22 of Act of Congress of 1 July 1902.

[9] *Rollo*, p. 536.

[10] *Id.* at 10.

[11] *Id.*

On 27 January 1967, Celestino, for himself and as attorney-in-fact of the other registered claim-owners, assigned their 57 mining claims to petitioner.[12]

On 6 September 1975, petitioner entered into an *Operating Agreement*[13] with Benguet Corporation[14] (Benguet). In such agreement, petitioner authorized Benguet to, among others, "*explore, equip, develop and operate*" the 57 mining claims.[15]

In 1977, Celestino died.

In 1978, the 57 mining claims became the subject of a mining lease application[16] with the Bureau of Mines. [17] Consequently, on 1 February 1980, the government issued five (5) Mining Lease Contracts (MLCs) covering six (6) out of the 57 mining claims. They are:[18]

1. MLC No. MRD-211 — issued in favor of the **heirs of Celestino;**
2. MLC No. MRD-212 — issued in favor of the **heirs of Celestino;**
3. MLC No. MRD-213 — issued in favor of **Maria D. Dizon;**

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[12] The assignment was mentioned and reaffirmed in a document entitled "*Agreement*" dated 8 October 1975 between petitioner and Benguet. *Id.* at 532-536.

[13] *Id.* at 94-147.

[14] Then known as "Benguet Consolidated, Inc."

[15] *Rollo*, p. 95.

[16] The application was submitted pursuant to Presidential Decree No. 1214, which requires holders of mining claims under the Act of Congress of 1 July 1902, as amended, to file therefor, within one (1) year from the approval of such decree, mining lease applications under Presidential Decree No. 463, or otherwise known as the Mineral Resources Development Decree of 1974 (Section 1 of Presidential Decree No. 1214).

[17] Now Mines and Geosciences Bureau (Presidential Decree No. 1281 in relation to Section 15 of Executive Order No. 192 dated 10 June 1987).

[18] *Rollo*, pp. 537-576.

4. MLC No. MRD-219 — issued in favor of **Helen D. Dizon;**

5. MLC No. MRD-222 — issued in favor of the **heirs of Celestino.**

The MLCs were issued for a term of twenty-five (25) years, or up to *31 January 2005*.[19]

<u>*The MPSA Applications*</u>

On 4 July 1991, Benguet filed an MPSA application with the DENR. [20] The application, designated as **MPSA-P-III-16,**[21] seeks to place all existing mining claims and interests then operated by Benguet under production sharing agreements in line with Executive Order No. 279 of 25 July 1987.[22] Specifically, MPSA-P-III-16 covers the following mining interests:[23]

1. Forty-two (42) mining claims[24] of the Sagittarius Alpha Realty Corporation;

2. Two (2) prospecting permits over two (2) parcels of land[25] of the Camalca Mining Corporation; *and*

3. The remaining **51 mining claims of petitioner** are not under MLCs.

On 3 March 1995, Republic Act No. 7942, or the Philippine Mining Act of 1995, was enacted.

On 12 December 1997, Benguet and petitioner terminated their *Operating Agreement*. In 2004, Benguet assigned MPSA-

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[19] *Id.* at 538, 546, 554, 562 and 570.

[20] *Id.* at 10.

[21] Formerly denominated as MA-P-III-16.

[22] See Article 9.1. of DENR Administrative Order No. 57, series of 1989.

[23] Originally covers an aggregate area of more than 8,000 hectares, but was subsequently amended to cover just an area of more than 4,000 hectares. Records, pp. 342-343.

[24] Covering an area of 3,195.92 hectares. *Id.* at 342.

[25] Covering an area of 1,000 hectares. *Id.*

P-III-16 in favor of the latter.[26] On 22 October 2004, the DENR Mines and Geosciences Bureau (MGB) Regional Office III signified its acquiescence and recorded MPSA-P-III-16 in the name of petitioner.[27]

On 16 December 2004, petitioner sent a letter to the DENR MGB Regional Office III, requesting the said office to include the 6 mining claims under MLCs in MPSA-P-III-16.[28] On 4 January 2005, the DENR MGB Regional Office III informed[29] the petitioner of its approval of the request and manifested that the 6 mining claims under the MLCs will now be included in MPSA-P-III-16.

Despite the pendency of MPSA-P-III-16, petitioner nonetheless filed with the DENR another MPSA application on 31 January 2005. This time, petitioner's application was designated as **MPSA-P-III-03-05**[30] and covers ***all*** **57 of its mining claims, inclusive of the 6 under MLCs.**[31]

On 28 February 2005, respondent filed with the DENR his **MPSA-P-III-05-05**[32] — an MPSA application covering 281.9544 hectares of mineral location in San Marcelino, Zambales. **It includes the 6 mining claims under MLCs.**[33]

Subsequently, the DENR MGB Regional Office III verified that several areas applied for by respondent in MPSA-P-III-05-05 overlaps with those in petitioner's MPSA-P-III-16 and MPSA-P-III-03-05.[34]

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[26] Thru a "Deed of Assignment." *Id.* at 12-13.

[27] *Rollo*, p. 150.

[28] *Id.* at 440.

[29] *Id.* at 441.

[30] Formerly denominated as MA-P-III-03-05. *Id.* at 11.

[31] Records, p. 342.

[32] Formerly denominated as MA-P-III-05-05. *Rollo*, p. 11.

[33] Records, pp. 342-343.

[34] *Id.* at 341-342.

The DENR Orders

On 29 December 2005, the DENR Secretary issued an Order[35] declaring petitioner's MPSA-P-III-16 and MPSA-P-III-03-05 void *ab initio*. In contrast, the order held respondent's MPSA-P-III-05-05 as a valid MPSA application worthy of due course.[36] The dispositive portion of the order thus reads:[37]

> **WHEREFORE**, in view of the foregoing considerations, Benguet Corporation MPSA-III-P-16 [sic] application and Dizon Copper Silver Mines Incorporated Application MP-P-III-03-05 [sic] are declared, as they are, declared VOID *AB-INITIO*, while Dr. Luis D. Dizons MA-P-III-05-05 [sic] (APSA-0001389-III) is hereby, as it is declared VALID and EXISTING and can be given due course, subject to strict compliance with the provision of the Philippine Mining Act of 1995 and its Implementing Rules and Regulations.

In nullifying petitioner's applications, the DENR Secretary echoed the findings of the DENR MGB Regional Office III that:

1. **With respect to MPSA-P-III-16.** Benguet has no personality to file MPSA-P-III-16.[38] Benguet, by itself, has no legal personality to file such application because it is a mere operator of petitioner.[39] Moreover, MPSA-P-III-16 was denied *area status and clearance* by the Forest Management Services of DENR Region III.[40]

2. **With respect to MPSA-P-III-03-05.** MPSA-P-III-03-05 was filed at a time when several areas included therein were still *closed* to mining applications.[41] Such areas refer to those

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[35] The order was issued by former DENR Secretary Michael T. Defensor. *Rollo*, pp. 153-154.

[36] *Id.* at 154.

[37] *Id.*

[38] *Id.* at 153.

[39] *Id.*

[40] *Id.* at 154.

[41] *Id.*

subject to the MLCs that, as it turned out, were not yet expired when MPSA-P-III-03-05 was filed.[42]

On 17 January 2006, petitioner filed before the DENR a *Motion for Reconsideration*[43] of the 29 December 2005 order. Petitioner also submitted a *Supplemental Motion for Reconsideration*[44] on 31 January 2006.

On 14 February 2006, the DENR Acting Secretary issued an Order[45] denying petitioner's motion for reconsideration. The motion for reconsideration of the petitioner was dismissed for being moot and academic, on account of the fact that on the day before such motion was filed, or on 17 January 2006, the DENR already approved MPSA-P-III-05-05 and a full-fledged MPSA, designated as **MPSA No. 227-2006-III**,[46] was already issued in favor of the respondent.[47]

Petitioner promptly filed an appeal[48] to the Office of the President.

<u>*The OP Ruling*</u>

On appeal, the OP completely reversed the DENR Secretary. In its Decision[49] dated 4 December 2006, the OP: (1) overturned the 29 December 2005 and 14 February 2006 orders of the DENR Secretary, (2) cancelled the approval of MPSA-P-III-05-05 into MPSA No. 227-2006-III, and (3) revived petitioner's MPSA-P-III-03-05 for further re-evaluation by the DENR. The *fallo* of the OP ruling reads:[50]

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[42] *Id.*

[43] *Id.* at 155-164.

[44] *Id.* at 165-172.

[45] The order was issued by then DENR Acting Secretary Ramon J.P. Paje. *Id.* at 173-174.

[46] Records, pp. 19-40.

[47] *Rollo*, p. 174.

[48] *Id.* at 175-200.

[49] Signed by former Executive Secretary Eduardo R. Ermita under authority of then President Gloria Macapagal-Arroyo. *Id.* at 225-233.

[50] *Id.* at 232.

WHEREFORE, premises considered, the DENR Order dated December 29, 2005 declaring MPSA-P-III-16 and MA-P-III-03-05 void *ab initio* and declaring MA-P-III-05-05 as valid and existing, and the DENR ORDER dismissing DCSMI's [petitioner's] motion for reconsideration, are hereby **REVERSED** and **SET ASIDE**. The issuance of MPSA No. 227-2006-III in favor of Dr. Dizon [respondent] is likewise **SET ASIDE**. The Mineral Production Agreement Application of DCMI [petitioner], denominated as MA-P-III-03-05, is hereby **REMANDED** to the DENR for **REEVALUATION** if the same is compliant with the requirements of the law.

Aggrieved, respondent appealed[51] to the Court of Appeals.

<u>The Decision of the Court of Appeals and This Petition</u>

As earlier intimated, the Court of Appeals reversed the ruling of the OP and reinstated the 29 December 2005 and 14 February 2006 Orders of the DENR Secretary.[52] In doing so, the appellate court substantially agreed with the findings of the DENR.

Hence, the present appeal[53] raising the core issue of whether the Court of Appeals erred in reinstating the 29 December 2005 and 4 February 2006 Orders of the DENR Secretary.

The petitioner, for its part, would like this Court to answer in the affirmative. Petitioner maintains that MPSA-P-III-16 and MPSA-P-III-03-05 were valid MPSA applications.[54] In support thereof, petitioner contradicts the findings of the DENR, as concurred in by the Court of Appeals, and argues that:

1. Benguet has the personality to file MPSA-P-III-16.[55] The authority of Benguet to file mining applications on behalf of petitioner is justified by —

a. Sections 1.01 (b), 1.03, 7.01 (j) and 9.04 of the *Operating Agreement* between petitioner and Benguet:

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[51] *Via* a Petition for Review under Rule 43 of the Rules of Court.

[52] *Rollo*, pp. 9-23.

[53] *Id.* at 29-72.

[54] *Id.*

[55] *Id.* at 58-62.

i. Section 1.01 (b)[56] gives Benguet authority for the "*acquisition of other real rights xxx*."

ii. Section 1.03[57] grants Benguet authority to "*apply for patent or lease and/or patent or lease surveys*" with respect to the 57 mining claims.

iii. Section 7.01 (j)[58] gives Benguet authority to "*xxx enter into contracts, agreements xxx.*"

iv. Section 9.04[59] constitutes Benguet as attorney-in-fact of petitioner, authorized "*to prepare, execute, amend, correct, supplement and register any document relating to or affecting*" the 57 mining claims "*which may be necessary to be executed, amended, corrected, supplemented, filed or registered*."

b. *Letter dated 14 June 1991* of petitioner to Benguet,[60] which was appended in MPSA-P-III-16. In the said letter, petitioner, thru its then president Mr. Juvencio D. Dizon, signified its conformity with the proposal of Benguet to file a production sharing agreement application covering the 57 mining claims.[61]

2. Benguet, by submitting the complete requirements for an MPSA application in MPSA-P-III-16, fully complied with the requirements of Sections 112 and 113 of Republic Act No. 7942.[62] Thus, petitioner still has the preferential right over any other similar applicants to pursue the area covered by the subject 57 mining claims.[63]

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[56] *Id.* at 96.

[57] *Id.* at 97-98.

[58] *Id.* at 112.

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

[60] *Id.* at 148.

[61] *Id.*

[62] *Id.* at 62-66.

[63] *Id.* at 65.

3. While MPSA-P-III-03-05 was filed during the subsistence of the MLCs, such fact does not suffice to totally nullify said application. The claims under the MLCs, which are supposedly *not* open to mining applications, all but occupy only a small portion of the area covered in MPSA-P-III-03-05.[64]

Petitioner also accuses the DENR Secretary of "*hastily*" approving MPSA-P-III-05-05 into MPSA No. 227-2006-III.[65] Petitioner alleges that MPSA-P-III-05-05 was approved despite non-compliance by the respondent with the "*mandatory*" requirements under Sections 37 and 38 of the Implementing Rules and Regulations (IRR) of Republic Act No. 7942.[66]

OUR RULING

We deny the appeal.

MPSA-P-III-16 is Not a Valid MPSA Application

Before discussing the merits of MPSA-P-III-16 as an MPSA application, it is significant to point out that as of 22 December 2005, the DENR Secretary had already issued a *Memorandum*[67] sustaining the denial by the Forest Management Service of DENR Region III to issue an *area status and clearance* for MPSA-P-III-16. Among the reasons set forth by the DENR in refusing to issue such clearance were:[68]

1. x x x.

2. The application for clearance was denied two times by the Technical Director of the Forest Management Service of DENR Region III which is the "Government Agency concerned" with the authority in the regions which has jurisdiction over the applied for as far as Forest management is concern [sic]. The first denial was on November 9, 1998 and the second on February 25, 1999.

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[64] *Id.* at 70.

[65] *Id.* at 46-57.

[66] The IRR of Republic Act No. 7942 is DENR Administrative Order No. 96-40. *Id.* at 46-52.

[67] Records, p. 358.

[68] *Id.*

3. **The area is within both a "DENR Project Area" — The President Ramon Magsaysay Reforestation Project of CENRO-Olongapo; and, "The Southern Zambales Forest Reserve established under Republic Act No. 3092" with the latter encompassing most of the entire area of the MPSA application**. (Emphasis supplied).

Verily, the DENR Secretary excluded "*most of the entire area*" originally covered by MPSA-P-III-16 as closed to mining applications for being within the "*President Ramon Magsaysay Reforestation Project of CENRO-Olongapo"* and *"The Southern Zambales Forest Reserve*."[69] The *Memorandum*, as the Court takes it, effectively leaves the mining claims of petitioner as the only point of contention left in MPSA-P-III-16.

Now, to the issue at hand.

As can be culled from the facts, Benguet filed MPSA-P-III-16 in order to place the mining claims and interests operated by it, *which includes those of the petitioner*, under MPSAs. The application, in effect, seeks to enforce a *right*[70] belonging to holders of existing mining claims and others interests to enter into mineral agreements with the government. As mere operator, therefore, Benguet cannot file MPSA-P-III-16 *in its name* without authorization from the holders of the mining claims and interests included therein.

Petitioner argues in favor of the validity of MPSA-P-III-16, at least insofar as its mining claims are concerned, on the assertion that it duly authorized Benguet to file the application under their *Operating Agreement* and its *Letter dated 14 June 1991*.[71]

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[69] *Id.*

[70] Such right was affirmed in Section 113 of Republic Act No. 7942, wherein holders of existing mining claims or lease/quarry applications were given a preferential right to enter into mineral agreements with the government involving their claims or pending applications, to wit:

> **Section 113**. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications*. — Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

[71] *Rollo*, pp. 58-62.

We are not convinced.

First. It must be clarified at the outset that the inclusion of the 6 mining claims under MLCs in MPSA-P-III-16 is not valid. The records of this case are definite that the MLCs covering 6 of the subject claims were actually issued by the government in the names of Maria Dizon, Helen Dizon and the heirs of Celestino — *not* in favor of the petitioner.[72] Hence, such mining leases could not be included in MPSA-P-III-16 for possible *conversion* into MPSAs without securing the individual consent of the recognized lessees thereof. Needless to state, authorization by the petitioner in connection with the mining claims covered by the MLCs, if there was any, would not be material.

Second. With respect to the remaining 51 mining claims not under MLCs, this Court finds absolutely nothing in the *Operating Agreement* between petitioner and Benguet that can reasonably be construed as giving the latter authority to file an MPSA application thereon. After perusal of the records, this Court finds that the provisions of the *Operating Agreement* relied upon by petitioner in arguing otherwise, were taken out of context:

1. Benguet's authority "*to acquire real rights*" under Section 1.01 (b) is actually limited only to such rights "*as indicated in the Development Program*" of the Operating Agreement.[73]

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[72] *Id.* at 537-576.

[73] Section 1.01 (b) of the *Operating Agreement,* in full, provides:

Section 1.01. Work Obligations Prior to Productive Operation. —

During the period the Agreement is in force, BENGUET agrees to perform, prior to productive operation, the following in accordance with generally accepted mining and business practices suitable to Philippine conditions:

a. x x x.

b. to spend not less than ₱5.2 million in the development of the property within one (1) year from the signing of the Operating Agreement. A portion of said amount shall be spent for the construction of roads and the **acquisition of other real rights as indicated in the attached Development Program marked as Annex "B"**. BENGUET may spend more than the amount above-mentioned if deemed necessary by BENGUET. *Id.* at 95-96. (Emphasis supplied).

Unfortunately, an MPSA was never shown to have been contemplated by, much less included in, such Development Program.

2. Section 1.03 only grants Benguet authority to "*apply for patent or lease and/or patent or lease surveys*."[74] However, as will be discussed below, a mining patent, lease or any survey thereof is substantially different from an MPSA.

3. Section 7.01 (j), on the other hand, premises the authority of Benguet to "*enter into contracts, agreements*" on Section 7.03 of the *Operating Agreement* that actually requires prior authorization from petitioner in the event the former enters into any "*major contracts*."[75] An MPSA may be considered as falling

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[74] Section 1.03 of the *Operating Agreement* significantly states:

Section 1.03. Payment of Taxes: Assessment Work Application for Patent and/or Lease. —

BENGUET shall pay all taxes and other charges assessable, perform and record all assessments work on the PROPERTIES, **apply for patent or lease and/or patent or lease surveys** with respect to such mineral claims constituting the PROPERTIES as, in Benguet's sole opinion, is justified and desirable, and to advance all costs and expenses necessary for these purposes, which costs and expenses are to be charged in General Overhead as defined in this Agreement. The term PROPERTIES include those mineral claims which may subsequently be subjected to this Agreement, and the identical rights and commitments just enumerated shall devolve upon BENGUET in respect of these later claims from the date of their said inclusion. *Id.* at 97-98. (Emphasis supplied).

[75] Section 7.01 (j) in relation to Section 7.03 of the *Operating Agreement* provides:

Section 7.01. Specific Rules, Powers and Privileges.

During the life of this Agreement, unless otherwise herein provided, BENGUET shall have the sole, exclusive and irrevocable power, right and privilege and the sole and exclusive discretion and judgment to do all or any of the following acts or things:

xxx xxx xxx.

j. **subject to Section 7.03 to enter into contracts, agreements, assignments, conveyances and understandings of any kind with reference to the exploration, development and equipping of the PROPERTIES, and the mining and beneficiation of**

under the term "*major contracts*" for the simple reason that it will re-define the very relations between the owners of the existing mining claims and the government with respect to such claims.

In connection with the foregoing, the *Letter dated 14 June 1991*, appended in MPSA-P-III-16, cannot be considered as valid authorization from petitioner. There was no showing that the board of directors of petitioner approved of Benguet's proposal to file an MPSA application.

4. Neither can Section 9.04, which constituted Benguet as attorney-in-fact of petitioner, be construed as sufficient authorization. The said section confines the authority of Benguet "*to prepare, execute, amend, correct, supplement and register any document*" relating to the 57 mining claims, only to those documents "*necessary to carry out the intents and purposes*" of the *Operating Agreement*.[76]

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ore derived therefrom, and marketing the resulting marketable product; and

xxx xxx xxx.

Section 7.03. Approval by DIZON of Major Contracts.

xxx xxx xxx.

Appointments of supervisor and assayer, marketing, smelting, and **other similar major contracts** shall be executed by BENGUET during the lifetime of this Agreement **subject to the approval of DIZON**. *Id.* at 111-113. (Emphasis supplied).

[76] Section 9.04 of the Operating Agreement states:

Section 9.04. Execution of Necessary Documents.

At BENGUET's request, **DIZON shall execute any document which may be necessary to carry out the intents and purposes of this Agreement**. If DIZON refuses or fails to comply with BENGUET's requests, **BENGUET shall have the authority to execute** *such* **document** and, for that purpose, DIZON hereby irrevocably names, appoints and constitutes BENGUET, with full power of substitution, as its true and lawful attorney-in-fact, for DIZON and its successors or assigns, to prepare, execute, amend, correct, supplement and register any document relating to or affecting the PROPERTIES which may be necessary to be executed, amended, corrected, supplemented, filed or registered, hereby ratifying and confirming all that BENGUET or BENGUET's substitute, successors or assigns shall lawfully do or cause to be done by virtue of this authority. *Id.* at 116-117. (Emphasis supplied).

Entering into MPSAs, however, could not have been included in the "*intents and purposes*" of the *Operating Agreement*. It must be pointed out that the *Operating Agreement* was executed way back in 1975, during which Presidential Decree No. 463 still governed mining operations in the country. Presidential Decree No. 463, as previous mining laws before it, sanctioned a system of exploitation of natural resources based on "*license, concession or lease*."[77] **MPSAs, on the other hand, deviate drastically from this system.**

An MPSA is one of the mineral agreements innovated by the 1987 Constitution by which the State takes on a broader and more dynamic role in the exploration, development and utilization of the country's mineral resources.[78] **By such agreements, the government does not become a mere licensor, concessor or lessor of mining resources — but actually assumes "full control and supervision" in the exploration, development and utilization of the concerned mining claims in consonance with Section 2, Article XII of the Constitution.**[79] The policy

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[77] *Miner's Association of the Philippines, Inc. v. Factoran, Jr.*, G.R. No. 98332, 16 January 1995, 240 SCRA 100, 113-114.

[78] *Id.* at 114.

[79] Section 2, Article XII of the Constitution provides:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

introduced by the 1987 Constitution, therefore, represents a significant shift in the hitherto existing relations between the government and mining claimants. This considerable change in the former system of mining leases under previous mining laws, in turn, makes it difficult for this Court to fathom that petitioner and Benguet contemplated the execution of MPSAs as part of their Operating Agreement. To hold otherwise, would simply stretch the limits of reason and human foresight.

Accordingly, this Court agrees with the finding of the DENR and the Court of Appeals that MPSA-P-III-16 was filed by Benguet without any valid authorization and, therefore, cannot be considered as a valid MPSA application.

Effect of the Invalidity of MPSA-P-III-16

In order to fully understand the effect of the invalidity of MPSA-P-III-16 on the mining claims of the petitioner and its rights thereto, the relevant provisions of Republic Act No. 7942 as well as its IRR must be considered.

In so far as the **6 mining claims under MLCs** are concerned, **Section 112** of Republic Act No. 7942 applies. The provision provides for the *non-impairment and continued recognition* of existing valid mining leases, which means that the subject leases will remain valid until their expiration, *i.e.*, on 31 January 2005.[80]

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xxx xxx xxx. (Emphasis supplied).

[80] Section 112 of Republic Act No. 7942 provides:

Section 112. *Non-impairment of Existing Mining/Quarrying Rights.* — **All valid and existing mining lease contracts**, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, at the date of effectivity of this Act, **shall remain valid, shall not be impaired, and shall be recognized by the Government:** Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the Secretary, in writing, not to avail of said provisions: Provided, further, That no renewal of mining lease contracts shall be made after the expiration of its term: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations. (Emphasis supplied).

On the other hand, the **51 mining claims** *not* **covered by MLCs** are subject to **Section 113** of Republic Act No. 7942. The said section gives "*holders of existing mining claims, lease or quarry applications*" with "*preferential rights to enter into any mode of mineral agreement with the government*" within two (2) years from the promulgation of the rules and regulations implementing said law.[81]

Section 113 was further clarified by Section 273 of the IRR[82] of Republic Act No. 7942 and by DENR Memorandum Order (M.O.) No. 97-07. The pertinent provisions of DENR M.O. 97-07 states:

Section 4. Date of Deadline Under Sections 272 and 273 of the IRR.

Consistent with pertinent national policy, the September 13, 1997 deadline under Section 272 of the IRR and the September 14, 1997 deadline under Section 273 of the IRR, which fall on a Saturday and Sunday, respectively, shall be imposed on **September 15, 1997.**

xxx xxx xxx

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[81] Section 113 of Republic Act No. 7942 provides:

Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications*. — Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.

[82] Section 273 of the IRR of Republic Act No. 7942 states:

Section 273. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications:*

Holders of valid and existing mining claims, lease/quarry applications shall be given *preferential rights* to enter into any mode of Mineral Agreement with the Government **until September 14, 1997**: *Provided*, **That failure on the part of the holders of valid and subsisting mining claims, lease/quarry applications to exercise their preferential rights within the said period to enter into any mode of Mineral Agreements shall constitute automatic abandonment of the mining claims, quarry/lease applications** and the area thereupon shall be declared open for mining application by other interested parties. (Emphasis and underscoring supplied).

Section 8. Claimants/Applicants Required to File Mineral Agreement.

Only holders of mining claims and lease/quarry applications filed prior to the effectivity of the Act which are valid and existing as defined in Section 5 hereof <u>who have not filed any Mineral Agreement applications over areas covered by such mining claims and lease/quarry applications</u> are required to file Mineral Agreement applications pursuant to Section 273 of the IRR on or before September 15, 1997; *Provided*, that the holder of such a mining claim or lease/quarry application involved in a mining dispute/ease shall instead file on or before said deadline a Letter of Intent to file the necessary Mineral Agreement application; *Provided, further*, That if the mining claim or lease/quarry application is not determined to be invalid in the dispute/case, the claimant or applicant shall have thirty (30) days from the final resolution of the dispute/case to filed the necessary Mineral Agreement application; ***Provided, finally,*** **that failure by the claimant or applicant to file the necessary Mineral Agreement application within said thirty (30)-day period shall result in the abandonment of such claim or application, after which, any area covered by the same shall be opened for Mining Applications.**

Holders of such valid and existing mining claims and lease/quarry applications who had filed or been granted applications other than those for Mineral Agreements prior to September 15, 1997 shall have until such date to file/convert to Mineral Agreement applications, otherwise, such previously filed or granted applications shall be cancelled. (Emphasis and underscoring supplied).

Per the above-cited provisions of DENR M.O. No. 97-07, holders of existing mining claims or lease/quarry applications have only until **the 15th of September 1997 to file an appropriate mineral agreement application** in the exercise of their "*preferential rights to enter into mineral agreements with the government*" involving their claims. DENR M.O. No. 97-07 also provides that **failure of the said holders to exercise such preferential right is deemed an abandonment of their existing mining claims or applications.**

In the instant case, MPSA-P-III-16 was the *only* MPSA application that was filed before the mandatory deadline. Aside

from it, petitioner filed no other *valid* MPSA application covering its mining claims before 15 September 1997.

Given the foregoing, it becomes clear that a finding of invalidity of MPSA-P-III-16 has a profound effect on petitioner's rights as to the **51 mining claims** *not* **covered by MLCs**:

First. The invalidity of MPSA-P-III-16 necessarily meant that **petitioner was not able to validly exercise its preferential rights under Section 113 of Republic Act No. 7942**. As a result, **petitioner is already deemed to have abandoned its mining claims as of 15 September 1997.**

Second. The assignment of MPSA-P-III-16 in favor of petitioner has also been rendered of no consequence. Such assignment was made by Benguet, and then approved by the DENR, only in 2004 — which is well beyond the 15 September 1997 deadline.[83] At that time, petitioner had already lost any legal vested interest it had in the subject mining claims.

Third. Petitioner's MPSA-P-III-03-05, filed on 31 January 2005, is considered as a *new* application insofar as the subject 51 mining claims are concerned. **Petitioner thereby enjoys no preference regarding the said application's approval.**

We now come to the final issue raised.

MPSA-P-III-05-05 over MPSA-P-III-03-05

Petitioner next argues that the Court of Appeals erred in sustaining the DENR's approval of respondent's MPSA-P-III-05-05 into MPSA No. 227-2006-III.[84] Petitioner alleges that the appellate court failed to recognize that the DENR Secretary had adopted a "*hasty*" procedure in assessing the merits of respondent's MPSA-P-III-05-05 and had approved the same without requiring the latter to comply with Sections 37 and 38 of the IRR of Republic Act No. 7942.[85] Petitioner thus asks this Court to set aside MPSA No. 227-2006-III and to order

[83] See *Rollo*, p. 150 and Records, pp. 12-13.

[84] *Rollo*, pp. 46-57.

[85] *Id.*

the DENR to instead make a re-evaluation of its own application, MPSA-P-III-03-05.[86]

We are not persuaded.

To begin with, petitioner's postulation that respondent did not comply with Sections 37 and 38 of the IRR of Republic Act No. 7942,[87] raises a factual issue that was never raised in

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[86] *Id.* at 71.

[87] Sections 37 and 38 of the IRR of Republic Act No. 7942 (DENR Administrative Order No. 96-40) require an MPSA applicant to secure area status and clearances and to publish their applications. They state:

Section 37. Area Status/Clearance.

Within fifteen (15) working days from receipt of the Mineral Agreement application, the Bureau/concerned Regional Office(s) shall check in the control maps if the area is free/open for mining applications. The Regional Office shall also transmit a copy of the location map/sketch plan of the applied area to the pertinent Department sector(s) affected by the Mineral Agreement application for area status, copy furnished the concerned municipality(ies)/city(ies) and other relevant offices or agencies of the Government for their information. Upon notification of the applicant by the Regional Office as to the transmittal of said document to the concerned Department sector(s) and/or Government agency(ies), it shall be the responsibility of the same applicant to secure the necessary area status/ consent/clearance from said Department sector(s) and/or Government agency(ies). The concerned Department sector(s) must submit the area status/consent/clearance on the proposed contract area within thirty (30) working days from receipt of the notice: *Provided*, That the concerned Department sector(s) can not unreasonably deny area clearance/consent without legal and/or technical basis: *Provided, further*, That if the area applied for falls within the administration of two (2) or more Regional Offices, the concerned Regional Office(s) which has/have jurisdiction over the lesser area(s) of the application shall follow the same procedure.

In reservations/reserves/project areas under the jurisdiction of the Department/Bureau/Regional Office(s) where consent/clearance is denied, the applicant may appeal the same to the Office of the Secretary.

If the proposed contract area is open for mining applications, the Bureau/ concerned Regional Office(s) shall give written notice to the applicant to pay the corresponding Bureau/Regional Office(s) clearance fee (Annex 5-A): *Provided*, That if a portion of the area applied for is not open for mining applications, the concerned Regional Office shall, within fifteen (15) working days from receipt of said written notice, exclude the same from the coverage of Mineral Agreement application: *Provided, further*, That in cases of

the proceedings *a quo*. The procedural norm is that factual issues are barred in appeals by *certiorari*, with more reason

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overlapping of claims/conflicts/complaints from landowners, NGOs, LGUs and other concerned stakeholders, the Regional Director shall exert all efforts to resolve the same.

Section 38. *Publication/Posting/Radio Announcement of a Mineral Agreement Application*.

Within fifteen (15) working days from receipt of the necessary area clearances, the Bureau/concerned Regional Office(s) shall issue to the applicant the Notice of Application for Mineral Agreement for publication, posting and radio announcement which shall be done within fifteen (15) working days from receipt of the Notice. The Notice must contain, among others, the name and complete address of the applicant, duration of the agreement applied for, extent of operation to be undertaken, area location, geographical coordinates/meridional block(s) of the proposed contract area and location map/sketch plan with index map relative to major environmental features and projects and to the nearest municipalities.

The Bureau/concerned Regional Office(s) shall cause the publication of the Notice once a week for two (2) consecutive weeks in two (2) newspapers: one of general circulation published in Metro Manila and another published in the municipality or province where the proposed contract area is located, if there be such newspapers; otherwise, in the newspaper published in the nearest municipality or province.

The Bureau/concerned Regional Office shall also cause the posting for two (2) consecutive weeks of the Notice on the bulletin boards of the Bureau, the concerned Regional Office(s), PENRO(s), CENRO(s) and in the concerned province(s) and municipality(ies), copy furnished the *barangay*(*s*) where the proposed contract area is located. Where necessary, the Notice shall be in a language generally understood in the concerned locality where it is posted.

The radio announcements shall be made daily for two (2) consecutive weeks in a local radio program and shall consist of the name and complete address of the applicant, area location, duration of the agreement applied for and instructions that information regarding such application may be obtained at the Bureau/concerned Regional Office(s). The publication and radio announcements shall be at the expense of the applicant.

Within thirty (30) calendar days from the last date of publication/posting/radio announcements, the authorized officer(s) of the concerned office(s) shall issue a certification(s) that the publication/posting/radio announcement have been complied with. Any adverse claim, protest or opposition shall be filed directly, within thirty (30) calendar days from the last date of publication/posting/radio announcement, with the concerned Regional Office

if such issues are only being raised for the first time before this Court.[88]

Anent the issue regarding the approval of MPSA-P-III-05-05, it must be emphasized herein that under Republic Act No. 7942, the DENR Secretary has been conferred with the exclusive and primary jurisdiction to approve mineral agreements, such as MPSAs.[89] In the seminal case ***Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation***, this Court described such function as purely administrative in nature and one that is fully within the DENR Secretary's competence and discretion. Concededly, it is the DENR Secretary, thru the MGB, who is in the best position to determine to whom mineral agreements are granted.[90]

Accordingly, the doctrine of primary jurisdiction finds application to the case at bench. ***Celestial*** captures the doctrine in the context of mining applications in this wise:

> Settled is the rule that the courts will defer to the decisions of the administrative offices and agencies by reason of their expertise

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or through any concerned PENRO or CENRO for filing in the concerned Regional Office for purposes of its resolution by the Panel of Arbitrators pursuant to the provisions of the Act and these implementing rules and regulations. Upon final resolution of any adverse claim, protest or opposition, the Panel of Arbitrators shall issue a Certification to that effect within five (5) working days from the date of finality of resolution thereof. Where no adverse claim, protest or opposition is filed after the lapse of the period for filing the adverse claim, protest or opposition, the Panel of Arbitrators shall likewise issue a Certification to that effect within five (5) working days therefrom.

However, previously published valid and existing mining claims are exempted from the publication/posting/radio announcement required under this Section.

No Mineral Agreement shall be approved unless the requirements under this Section are fully complied with and any adverse claim/protest/opposition thereto is finally resolved by the Panel of Arbitrators.

[88] See Section 1, Rule 45 of the Rules of Court.

[89] *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*, G.R. No. 169080, 19 December 2007, 541 SCRA 166, 195.

[90] *Id.* at 197.

and experience in the matters assigned to them pursuant to the doctrine of primary jurisdiction. Administrative decisions on matter within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law. **Unless it is shown that the then DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court cannot look into or review the wisdom of the exercise of such discretion.**[91] (Emphasis supplied).

In the case at bench, this Court finds no such arbitrariness on the part of the DENR Secretary in approving respondent's MPSA-P-III-05-05 at the expense of petitioner's MPSA-P-III-03-05. Contrary to the allegations of petitioner, there was never any "*hasty*" approval of MPSA-P-III-05-05. The records attest that the approval of MPSA-P-III-05-05 by the DENR Secretary came a full ten (10) months after such application was filed[92] and was, in fact, based from the evaluation of the DENR MGB Regional Office III that petitioner's MPSA-P-III-03-05 was filed at a time when the 6 mining claims covered therein were still under subsisting MLCs in favor of the Dizons[93] and, hence, still closed to mining applications.[94]

In choosing to act favorably on MPSA-P-III-05-05, the DENR Secretary merely exercised its rightful discretion to determine who among competing mining applicants is more qualified for a mining agreement. This consideration, aside from the fact that petitioner's MPSA-P-III-03-05 covers areas still closed to

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[91] *Id.* at 209.

[92] Records, pp. 341-342.

[93] *Rollo*, p. 153 and Records, pp. 538, 546, 554, 562 and 570; Section 112 of Republic Act No. 7942.

[94] Per Section 19 (c) of Republic Act No. 7942, which states:

Section 19. *Areas Closed to Mining Applications*. — Mineral agreement or financial or technical assistance agreement applications shall not be allowed:

xxx xxx xxx

(c) In areas **covered by valid and existing mining rights**; (Emphasis supplied).

mining applications when it was filed, underscores the reasonableness of the orders of the DENR Secretary. This Court finds itself heavy-handed to disturb them.

WHEREFORE, the instant petition is **DENIED**. The appealed Decision dated 9 May 2008 and Resolution dated 1 July 2008 of the Court of Appeals in CA-G.R. SP No. 99947 are hereby **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

Reyes, J., concurs.

Brion, J., see concurring opinion.

Carpio, J., see dissenting opinion.

Sereno, J., joins the dissent of *J*. Carpio.

SEPARATE CONCURRING OPINION

BRION, *J*.:

I **concur** with the *ponencia* in denying the petition for review on *certiorari* of Dizon Copper-Silver Mines, Inc. (*Dizon Mines*). The denial of the petition effectively affirms the Order dated December 29, 2005 of the Secretary of the Department of Environment and Natural Resources (*DENR*) declaring void *ab initio* the two Mineral Production Sharing Agreement (*MPSA*) applications of Dizon Mines (**MPSA-P-III-16** which was assigned by Benguet Corporation to Dizon Mines and **MPSA-P-III-03-05** which was filed by Dizon Mines itself). A review of the facts and the applicable laws shows that **<u>there is legal basis to dismiss Dizon Mines' MPSA applications.</u>**

The 1987 Constitution introduced a radical change in the system of exploration, development, and utilization of the country's natural resources. "No longer is the utilization of [natural resources made] through license, concession or lease

under the 1935 or 1973 Constitutions"[1]; the present Constitution instead declares, under Section 2, Article XII, that the "exploration, development, and utilization of natural resources shall be under the full control and supervision of the State." Accordingly, the State is authorized to "directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements"[2] with qualified entities.

Pursuant to this mandate, Congress enacted Republic Act (*RA*) No. 7942 or the Philippine Mining Act of 1995, which provides for only three modes of mineral agreements between the government and a qualified contractor: **mineral production-sharing agreement**, **co-production agreement**, and **joint venture agreement**.[3] The previous laws on mining (which authorized, among others, mining claims and mining lease contracts) that were inconsistent with RA No. 7942 were expressly repealed.[4] **Notwithstanding the repeal, RA No. 7942 recognized and respected previously issued valid and existing mining licenses under the old mining laws**. The pertinent provisions of RA No. 7942 state:

Section 19. *Areas Closed to Mining Applications*. - **Mineral agreement** or financial or technical assistance agreement **applications shall not be allowed:**

xxx xxx xxx

c. In areas covered by valid and existing mining rights;

xxx xxx xxx

Section 112. *Non-Impairment of Existing Mining/Quarrying Rights*. - **All valid and existing mining lease contracts**, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, **at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall**

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[1] *Miners Association of the Philippines v. Hon. Factoran, Jr., et al.*, 310 Phil. 113, 119 (1995).

[2] CONSTITUTION, Article XII, Section 2.

[3] RA No. 7942, Section 26.

[4] *Id.*, Section 115.

be recognized by the Government: Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That **no renewal of mining lease contracts shall be made after the expiration of its term**: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.

Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications.* - **Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.** [italics and emphases ours]

Dizon Mines claims to hold two sets of mining rights under repealed mining laws, both are the subjects of its two MPSA applications: (1) the six mining claims covered by Mining Lease Contracts (MLCs), and (2) the 51 mining claims assigned to it by Celestino M. Dizon and his heirs in 1967. The recognitions of these two mining rights are separetely governed by Sections 112 and 113 of RA No. 7942, and should be treated accordingly.

a. The mining rights under the MLCs

The *ponencia* pointed out that the six mining claims covered by the MLCs were in the names of Celestino and his heirs, not Dizon Mines. Hence, these mining claims cannot be included in MPSA-P-III-16 for conversion to MPSA by Dizon Mines, without the individual consent of Celestino and his heirs. Accordingly, any authorization by Dizon Mines for conversion of the MLCs to MPSAs would not be material.

Justice Caprio dissented from the *ponencia* by pointing out that long before the issuance of the MLCs (in 1978), all the 57 mining claims have been assigned by Celestino and his heirs in favor of Dizon Mines (in 1966). Although the MLCs were issued

in the names of Celestino and his heirs, these were held in trust for Dizon Mines which acquired all the mining claims by virtue of the assignment. Justice Carpio thus claims that Dizon Mines was not required to secure the consent of Celestino and his heirs to file the MPSA applications with respect to the six mining claims covered by the MLCs.

With due respect, I find the need for authorization from Celestino and his heirs with respect to the six mining claims covered by the MLCs irrelevant. These MLCs were to expire on January 31, 2005.[5] Section 19 of RA No. 7942, however, prohibits mineral agreement applications involving areas that are covered by valid and existing mining rights. Section 112 of RA No. 7942 specifically provides that "[a]ll valid and existing mining lease contracts x x x at the date of effectivity of [the] Act, shall remain valid, shall not be impaired, and shall be recognized by the Government[.]" Hence, under the law, **any application *filed by any entity* involving areas covered by the MLCs filed on or before January 31, 2005 is premature and should be denied.** Dizon Mines' MPSA-P-III-16 and MPSA-P-III-03-05 were filed on December 16, 2004[6] and January 31, 2005, respectively; as both MPSA applications were filed before the opening of the period for application, the dismissal of the applications with respect to the areas covered by the MLCs is thus proper.

b. The mining rights under the remaining 51 mining claims

What, therefore, remains is the validity of the two MPSA applications insofar as they involve the other 51 mining claims. The recognition and protection guaranteed under Section 19 of RA No. 7942 similarly extend to these 51 mining claims, but Section 113 of the same law limits the guarantee to a two-year period, counted from the date of promulgation of RA No. 7942's

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[5] *Rollo*, pp. 538, 546, 554, 562 and 570.

[6] Based on a letter of the same date sent by Dizon Mines to DENR Mines and Geosciences Bureau Regional Office III requesting inclusion of the 6 mining claims under MLCs in MPSA-P-III-16; *id.* at 440. The request was approved on January 4, 2005; *id.* at 342.

implementing rules and regulations. Within this two-year period, two rules should be observed: (1) no application for mineral agreements may be filed involving the areas covered by the mining claims,[7] and (2) the holder of the mining claims has the preferential right to enter into a mineral agreement with the government involving the areas covered by the holder's mining claims.[8] In other words, for the duration that the holder of mining claims has preferential rights to enter into a mineral agreement, no application for mineral agreements may be filed by other interested entities.

Section 273 of DENR Administrative Order No. 96-40 or the *Revised Implementing Rules and Regulations of Republic Act No. 7942 Otherwise Known as the "Philippine Mining Act of 1995"* sets the two-year cut off period on September 14, 1997. Since September 14, 1997 fell on a Sunday, the DENR clarified in its Memorandum Order No. 97-07 (dated August 27, 1997) that holders of existing and valid mining claims would have until September 15, 1997 to exercise their preferential rights. As the *ponencia* pointed out, only Benguet Corporation's MPSA application (MPSA-P-III-16) was filed before the September 15, 1997 deadline. The problem, however, was that Benguet Corporation was not a holder of the 57 mining claims but a mere operator, and it did not have the proper authority to file MPSA applications in behalf of Dizon Mines.[9]

On this point, I agree with the *ponencia*'s finding that Benguet Corporation did not have the proper authority to file the MPSA applications. While Benguet was authorized "to prepare, execute, amend, correct, supplement and register any document x x x necessary to carry out the intents and purposes"[10] of the Operating Agreement, entering into an MPSA with the government could

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[7] RA No. 7942, Section 19.

[8] *Id.,* Section 113.

[9] Parenthetically, Benguet Corporation cannot file the MPSA-P-III-16 application in its own capacity because of the restriction under Section 19 of RA No. 7942.

[10] Section 9.04 of the Operating Agreement.

not have been among those contemplated. The Operating Agreement was executed in 1975 when the mining laws provided only minimal participation by the State in mining activities; the passage of the 1987 Constitution, on one hand, and of RA No. 7942, on the other hand, drastically changed the system by giving the State full control and supervision over exploration, development and utilization of natural resources, and allowing only limited forms of mining agreements. Such dynamic change in the relationship between the State and the mining right holder could not have been among those that Benguet Corporation was authorized to enter into under the Operating Agreement.

A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents *when authorized by a board resolution or its bylaws*.[11] Dizon Mines never submitted proof that Juvencio Dizon, Dizon Mines' President, was authorized by the Board or its bylaws. While the letter dated June 14, 1991, addressed to Benguet Corporation and signed by Juvencio Dizon, states that –

> We hereby confirm and approve the filing of the MPSA proposal in accordance with plan presented in your letter dated June 3, [1991,]

it was not accompanied by a resolution from Dizon Mines' Board of Directors, either agreeing with Benguet Corporation's MPSA application or granting its President the authority to agree with the application.

Thus, at the time of filing, Benguet Corporation's MPSA application could not validly be considered as filed in behalf of Dizon Mines in the absence of a proper authorization from the latter. By the time Benguet Corporation assigned to Dizon Mines its MPSA application on October 22, 2004, the September 15, 1997 deadline had already lapsed. Hence, Dizon Mines was unable to exercise its preferential rights within the period set by law.

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[11] *Antonio B. Salenga, et al. v. Court of Appeals and Clark Development Corporation*, G.R. No. 174941, February 1, 2012.

Under Section 10 of DENR Memorandum Order No. 97-07, "any valid and existing mining claim x x x for which the concerned holder failed to file [the necessary] Mineral Agreement application by September 15, 1997, shall [be] considered **automatically abandoned** and **the area covered thereby rendered open to Mining Applications effective September 16, 1997**[.]" Since MPSA-P-III-16 and MPSA-P-III-03-05 were transferred to/filed by Dizon Mines after the September 15, 1997 cut-off date, the *ponencia* considered these as new MPSA applications. However, the same administrative issuance disqualifies holders who failed to exercise their preferential rights from applying for MPSAs on areas covered by their abandoned mining claims:

DENR Memorandum Order No. 97-07. Section 11. *Acceptance of Mining Application Over the Areas Subject to Mining Claims and Lease/Quarry Applications Abandoned After September 15, 1997.*

xxx xxx xxx

The holder of a valid and existing mining claim or lease/quarry application who **failed to file the necessary Mineral Agreement Application** on or before September 15, 1997 shall be **disqualified** from thereafter filing a Mining Application over the same area covered by such abandoned claim or application.

Accordingly, Dizon Mines is disqualified from filing any Mineral Production Sharing Agreement application involving the areas covered by the 57 mining claims. Given the foregoing consideration, I agree that the Department of Environment and Natural Resources Secretary's denial of Dizon Copper-Silver Mines, Inc.'s MPSA-P-III-16 and MPSA-P-III-03-05 is proper.

DISSENTING OPINION

CARPIO, *J.*:

The thrust of both the *ponencia* of Justice Perez and the Separate Concurring Opinion of Justice Brion is the lack of authority of Benguet Consolidated, Inc. (BCI) to file the MPSA-P-III-16 application on behalf of Dizon Copper Silver Mines, Inc. (Dizon Copper).

The first point raised is that a corporate officer cannot bind the corporation without authorization from the board of directors. Juvencio D. Dizon, President of Dizon Copper, was allegedly not acting within any express or implied authority from Dizon Copper's board in writing the 14 June 1991 letter to BCI giving authority to BCI to file the MPSA-P-III-16 application. Further, there was allegedly no ratification on the part of Dizon Copper to Juvencio's act of giving such authority to BCI.

Generally, in the absence of authority from the board of directors, no person can validly bind a corporation, not even its corporate officers.[1] However, the board of directors may validly delegate some of its functions and powers to its officers, committees, or agents.[2] The authority of the officers, committees, or agents to bind the corporation can be derived from law, the corporate by-laws, **or from authorization from the board, expressly or *impliedly by habit, custom or acquiescence in the general course of business***.[3] This Court has ruled:

> xxx [R]atification can be made by the corporate board either expressly or impliedly. **Implied ratification may take various forms — like silence or acquiescence**; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.[4] (Emphasis supplied)

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[1] *People's Aircargo and Warehousing Co., Inc. v. CA*, 357 Phil. 850 (1998).

[2] *Id*.

[3] *Id*.

[4] *MWSS v. CA*, 357 Phil. 966, 985-986 (1998).

From the time Juvencio issued the authorization letter on 14 June 1991 to the present, **or over a period of more than 20 years**, Dizon Copper never questioned Juvencio's authority to write the 14 June 1991 letter to BCI authorizing BCI to file the MPSA-P-III-16 application. Justice Perez points out that "when there exists other facts that clearly deny or contradict any such intent on the part of the principal — implied ratification cannot be inferred from such *mere* silence."

The fact is, there was no **mere silence** by Dizon Copper. In its Memorandum dated 22 April 2009, Dizon Copper stated that "[o]n 04 July 1991, Benguet filed, i**n behalf of Petitioner DCSMI** and other claim owners, a[n] MPSA application, known as "MPSA-P-III-16," over existing mining claims with a total area of 8,576 hectares, inclusive of Petitioner DCSMI's 57 existing mining claims covering 513 hectares."[5] Thus, **Dizon Copper *expressly acknowledged*** *in its* **Memorandum that BCI was acting on its behalf in filing the MPSA-P-III-16 application**. Dizon Copper never questioned the authorization given by Juvencio to BCI file the application on Dizon Copper's behalf. More importantly, the statement in Dizon Copper's Memorandum showed its **approval of Juvencio's act** as well as its acceptance and retention of the benefits flowing from such act.

In short, no one can say that Juvencio was not acting within any express or implied authority because Dizon Copper never questioned Juvencio's authority to issue the authorization letter to BCI, and in fact Dizon Copper **expressly acknowledged** that BCI was acting on Dizon Copper's behalf in filing the MPSA-P-III-16 application.

More importantly, it would be self-defeating and self-destructive for Dizon Copper to disown Juvencio's 14 June 1991 letter to BCI for it would mean the loss of Dizon Copper's valuable preferential right to a mineral agreement with the government. In fact, any act of Dizon Copper's board disowning Juvencio's letter to BCI would be contrary to the best interest of Dizon Copper, and would subject the board to suit for damages

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[5] *Rollo*, pp. 688-689.

by stockholders of Dizon Copper. Juvencio's act in giving authority to BCI was both **necessary and appropriate** to preserve a valuable preferential right of Dizon Copper, as well as to continue the core business of Dizon Copper. Such act bears the **implied authority of the board** of Dizon Copper, in accordance with well-settled jurisprudence, thus:

> Corporate officers, in their case, may act on such matters as may be authorized either expressly by the By-laws or Board Resolutions or impliedly such as by general practice or policy or as are implied by express powers. When officers are allowed to act in certain particular cases, their acts conformably therewith can bind the company. **Hence, a corporate officer entrusted with general management and control of the business has the implied authority to act or contract for the corporation which may be *necessary or appropriate* to conduct the ordinary business**. xxx[6] (Boldfacing and italicization supplied)

Justice Perez states that the Operating Agreement prohibited BCI from entering into any major contract. In this case, BCI filed the MPSA-P-III-16 application in order to continue its operations under the Operating Agreement and it acted on behalf of Dizon Copper upon authority from Juvencio. Justice Perez further states that the doctrine of apparent authority has no application because BCI cannot be considered an innocent party who has no knowledge of Juvencio's lack of authority to bind the corporation. Again, Juvencio's supposed lack of authority is negated by the fact that Dizon Copper **expressly acknowledged** in its Memorandum that BCI was acting in its behalf in filing the MPSA-P-III-16 application. Besides, Juvencio's act in giving BCI the authority is both **necessary and appropriate** to protect and continue Dizon Copper's main business.

The second point raised, this time by Justice Brion, is that the authorization from Celestino and his heirs with respect to the six minings claims covered by the MLCs, is irrelevant. Justice Brion states:

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[6] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia,* 381 Phil. 911, 929 (2000).

x x x. These MLCs were to expire on January 31, 2005. Section 19 of RA No. 7942, however, prohibits mineral agreement applications involving areas that are covered by valid and existing mining rights. Section 112 of RA No. 7942 specifically provides that "[a]ll valid and existing mining lease contracts xxx at the date of effectivity of [the] Act, shall remain valid, shall not be impaired, and shall be recognized by the Government[.]" Hence, under the law, **any application *filed by any entity* involving areas covered by the MLCs filed on or before January 31, 2005 is premature and should be denied**. Dizon Mines' MPSA-P-III-16 and MPSA-P-III-03-05 were filed on December 16, 2004 and January 31, 2005, respectively; as both applications were filed before the opening of the period for application, the dismissal of the applications with respect to the areas covered by the MLCs is thus proper.[7]

The rule that no application for mineral agreements may be filed involving areas covered by existing MLCs applies to ***third persons*** other than the holder of the MLCs. This is precisely to protect the preferential right of existing holders of MLCs before opening the application to the public or third parties.

In his *ponencia*, Justice Perez stated:

Per xxx DENR M.O. No. 97-07, holders of existing mining claims or lease/quarry applications have only until **the 15th of September 1997 to file an appropriate mineral agreement application** in the exercise of their "*preferential rights to enter into mineral agreements with the government*" involving their claims. DENR M.O. No. 97-07 also provides that **failure of the said holders to exercise such preferential right is deemed an abandonment of their existing mining claims or applications**.

In the instant case, MPSA-P-III-16 was the *only* MPSA application that was filed before the mandatory deadline. Aside from it, petitioner filed no other *valid* MPSA application covering its mining claims before 15 September 1997.

Given the foregoing, it becomes clear that a finding of invalidity of MPSA-P-III-16 has a profound effect on petitioner's rights as to the **51 mining claims not covered by MLCs**:

[7] Separate Concurring Opinion, Brion, *J*., pp. 3-4. Emphasis in the original, citations omitted.

> *First*: The validity of MPSA-P-III-16 necessarily meant that **petitioner was not able to validly exercise its preferential rights under Section 113 of R.A. 7924**. As a result, **petitioner is already deemed to have abandoned its mining claims as of 15 September 1997**.
>
> *Second*: The assignment of MPSA-P-III-16 in favor of petitioner has also been rendered of no consequence. Such assignment was made by Benguet, and then approved by the DENR, only in 2004- which is well beyond the 15 September 1997 deadline. At that time, petitioner has already lost any legal vested interest it has in the subject mining claims.
>
> *Third*: Petitioner's MPSA-III-03-05, filed on 31 January 2005, is considered as a new application insofar as the subject 51 mining claims are concerned. **Petitioner thereby enjoys no preference regarding the said application's approval**.

The *ponencia* and Justice Brion admit that the holder of MLCs has the preferential right to enter into a mineral agreement with the government involving areas covered by the holder of MLCs. However, the *ponencia* and Justice Brion point out that only BCI filed an MPSA application before the 15 September 1997 deadline and that BCI did not have authority to file the MPSA-P-III-16 application on behalf of Dizon Copper.

Again, it boils down to whether Juvencio had authority to write the 14 June 1991 letter to BCI. BCI's authority to file the MPSA-P-III-16 application on behalf of Dizon Copper has been duly established in this case. As such, BCI's assignment of the MPSA-P-III-16 application to Dizon Copper should be reckoned from the time BCI filed the application before the 15 September 1997 deadline and not from the time of the assignment of the MPSA-P-III-16 application to Dizon Copper. Dizon Copper did not abandon its valid and existing mining claim because BCI filed the MPSA-P-III-16 application on its behalf, an act necessary and appropriate to continue the main business of Dizon Copper.

Hence, the petition should be granted.

THIRD DIVISION

[G.R. No. 185527. July 18, 2012]

HARRY L. GO, TONNY NGO, JERRY NGO and JANE GO, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES and HIGHDONE COMPANY, LTD., *ET AL.*,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; EXAMINATION OF WITNESS FOR THE PROSECUTION UNDER SECTION 15, RULE 119 OF THE RULES OF COURT; PROCEDURE COVERS THE EXAMINATION OF AN UNAVAILABLE PROSECUTION WITNESS.—** The examination of witnesses must be done orally before a judge in open court. This is true especially in criminal cases where the Constitution secures to the accused his right to a public trial and to meet the witnessess against him face to face. The requirement is the "safest and most satisfactory method of investigating facts" as it enables the judge to test the witness' credibility through his manner and deportment while testifying. It is not without exceptions, however, as the Rules of Court recognizes the conditional examination of witnesses and the use of their depositions as testimonial evidence in lieu of direct court testimony.

2. **ID.; ID.; ID.; ID.; THE MODES OF DISCOVERY UNDER RULE 23 TO 28 OF THE RULES OF COURT ARE ALSO AVAILABLE IN CRIMINAL PROCEEDINGS FOR THE BENEFIT OF THE DEFENSE AND THE PROSECUTION.—** Even in criminal proceedings, there is no doubt as to the availability of conditional examination of witnesses – both for the benefit of the defense, as well as the prosecution. The Court's ruling in the case of *Vda. de Manguerra v. Risos* explicitly states that – "x x x As exceptions, Rule 23 to 28 of the Rules of Court provide for the different modes of discovery that may be resorted to by a party to an action. These rules are adopted either to perpetuate the testimonies of witnesses or as modes of discovery. In criminal proceedings, Sections 12,

13 and 15, Rule 119 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, allow the conditional examination of both the defense and prosecution witnesses." The procedure under Rule 23 to 28 of the Rules of Court allows the taking of depositions in civil cases, either upon oral examination or written interrogatories, before any judge, notary public or person authorized to administer oaths at any time or place within the Philippines; or before any Philippine consular official, commissioned officer or person authorized to administer oaths in a foreign state or country, with no additional requirement except reasonable notice in writing to the other party.

3. **ID.; ID.; ID.; ID.; THE CONDITIONAL EXAMINATION OF A PROSECUTION WITNESS MUST TAKE PLACE AT NO OTHER PLACE THAN THE COURT WHERE THE CASE IS PENDING; REASON FOR THE RULE.—** But for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would forseeably be unavailable for trial, the testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the Revised Rules of Criminal Procedure. The pertinent provision reads thus: SEC. 15. Examination of witness for the prosecution. – When it satisfactorily appears that a witness for the prosecution is *too sick or infirm to appear at the trial* as directed by the court, or *has to leave the Philippines with no definite date of returning*, he may forthwith be conditionally examined before the court where the case is pending. x x x Since the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending, the RTC properly nullified the MeTC's orders granting the motion to take the deposition of Li Luen Ping before the Philippine consular official in Laos, Cambodia. x x x Certainly, to take the deposition of the prosecution witness elsewhere and not before the very same court where the case is pending would not only deprive a detained accused of his right to attend the proceedings but also deprive the trial judge of the opportunity to observe the prosecution witness' deportment and properly assess his credibility, which is especially intolerable when the witness' testimony is crucial to the prosecution's case against the accused. This is the import of the Court's

ruling in *Vda. de Manguerra* where we further declared that – While we recognize the prosecution's right to preserve the testimony of its witness in order to prove its case, we cannot disregard the rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.

4. **ID.; ID.; ID.; ID.; THE SUGGESTED SUPPLETORY APPLICATION OF RULE 23 OF THE RULES OF COURT IN THE TESTIMONIAL EXAMINATION OF AN UNAVAILABLE PROSECUTION WITNESS HAS BEEN CATEGORICALLY RULED OUT BY THE COURT.—** It is argued that since the Rules of Civil Procedure is made explicitly applicable in all cases, both civil and criminal as well as special proceedings, the deposition-taking before a Philippine consular official under Rule 23 should be deemed allowable also under the circumstances. However, the suggested suppletory application of Rule 23 in the testimonial examination of an unavailable prosecution witness has been categorically ruled out by the Court in the same case of *Vda. de Manguerra*, as follows: It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise."

5. **ID.; ID.; ID.; ID.; THE CONDITIONAL EXAMINATION OF A PROSECUTION WITNESS CANNOT DEFEAT THE RIGHTS OF THE ACCUSED TO PUBLIC TRIAL AND CONFRONTATION OF WITNESSES.—** There is a great deal of difference between the face-to-face confrontation in a public criminal trial in the presence of the presiding judge and the cross-examination of a witness in a foreign place outside the courtroom in the absence of a trial judge. In the aptly cited case of *People v. Estenzo,* the Court noted the uniqueness

and significance of a witness testifying in open court. x x x The right of confrontation, on the other hand, is held to apply specifically to criminal proceedings and to have a twofold purpose: (1) to afford the accused an opportunity to test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses. The Court explained in *People v. Seneris* that the constitutional requirement "insures that the witness will give his testimony under oath, thus deterring lying by the threat of perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility."

6. **ID.; ID.; ID.; ID.; THE RIGHT OF CONFRONTATION IS VIEWED AS A GUARANTEE AGAINST THE USE OF UNRELIABLE TESTIMONY IN CRIMINAL TRIALS.—** As the right of confrontation is intended "to secure the accused in the right to be tried as far as facts provable by witnesses as meet him face to face at the trial who give their testimony in his presence, and give to the accused an opportunity of cross-examination," it is properly viewed as a guarantee against the use of unreliable testimony in criminal trials. In the American case of *Crawford v. Washington,* the US Supreme Court had expounded on the procedural intent of the confrontation requirement, thus: Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's [right to confront witness face to face] protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability". Certainly, none of the authorities discussed above acknowledges any general reliability exception to the common-law rule. Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined."

7. **ID.; ID.; ID.; ID.; THE *WEBB* RULING IS NOT ON ALL FOURS WITH THE INSTANT CASE.—** The CA found the frail and infirm condition of the prosecution witness as sufficient and compelling reason to uphold the MeTC Orders granting the deposition-taking, following the ruling in the case of *People v. Webb* that the taking of an unavailable witness' deposition is in the nature of a discovery procedure the use of which is within the trial court's sound discretion which needs only to be exercised in a reasonable manner and in consonance with the spirit of the law. But the ruling in the cited case is not instantly applicable herein as the factual settings are not similar. The accused in the *Webb* case had sought to take the oral deposition of five defense witnesses before a Philippine consular agent in lieu of presenting them as live witnesses, alleging that they were all residents of the United States who could not be compelled by subpoena to testify in court. The trial court denied the motion of the accused but the CA differed and ordered the deposition taken. When the matter was raised before this Court, we sustained the trial court's disallowance of the deposition-taking on the limited ground that there was no necessity for the procedure as the matter sought to be proved by way of deposition was considered merely corroborative of the evidence for the defense. In this case, where it is the prosecution that seeks to depose the complaining witness against the accused, the stringent procedure under Section 15, Rule 119 cannot be ignored without violating the constitutional rights of the accused to due process.

8. **ID.; ID.; ID.; ID.; THE PROSECUTION ALLOWED ITS MAIN WITNESS TO LEAVE THE COURT'S JURISDICTION WITHOUT AVAILING OF THE COURT PROCEDURE INTENDED TO PRESERVE THE TESTIMONY OF SUCH WITNESS.—** The Court takes note that prosecution witness Li Luen Ping had managed to attend the initial trial proceedings before the MeTC of Manila on September 9, 2004. At that time, Li Luen Ping's old age and fragile constitution should have been unmistakably apparent and yet the prosecution failed to act with zeal and foresight in having his deposition or testimony taken before the MeTC pursuant to Section 15, Rule 119 of the Revised Rules of Court. In fact, it should have been imperative for the prosecution to have moved for the preservation of Li Luen Ping's testimony

at that first instance given the fact that the witness is a non-resident alien who can leave the Philippines anytime without any definite date of return. Obviously, the prosecution allowed its main witness to leave the court's jurisdiction without availing of the court procedure intended to preserve the testimony of such witness. The loss of its cause is attributable to no other party.

9. **ID.; ID.; ID.; ID.; THE STATE MUST RESORT TO DEPOSITION-TAKING SPARINGLY IF IT IS TO GUARD AGAINST ACCUSATIONS OF VIOLATING THE RIGHT OF THE ACCUSED TO MEET THE WITNESSES AGAINST HIM FACE TO FACE.—** Even after failing to secure Li Luen Ping's conditional examination before the MeTC prior to said witness' becoming sick and unavailable, the prosecution would capitalize upon its own failure by pleading for a liberal application of the rules on depositions. It must be emphasized that while the prosecution must provide the accused every opportunity to take the deposition of witnesses that are material to his defense in order to avoid charges of violating the right of the accused to compulsory process, the State itself must resort to deposition-taking sparingly if it is to guard against accusations of violating the right of the accused to meet the witnesses against him face to face. Great care must be observed in the taking and use of depositions of prosecution witnesses to the end that no conviction of an accused will rely on *ex parte* affidavits and depositions. Thus, the CA ignored the procedure under the Revised Rules of Criminal Procedure for taking the deposition of an unavailable prosecution witness when it upheld the trial court's order allowing the deposition of prosecution witness Li Luen Ping to take place in a venue other than the court where the case is pending. This was certainly grave abuse of discretion.

APPEARANCES OF COUNSEL

Dennis I. Santos and Arturo S. Santos for petitioners.
The Solicitor General for public respondent.
Marbibi & Associates Law Office for Highdone Co., Ltd.

DECISION

PERLAS-BERNABE, *J.*:

The procedure for taking depositions in criminal cases recognizes the prosecution's right to preserve testimonial evidence and prove its case despite the unavailability of its witness. It cannot, however, give license to prosecutorial indifference or unseemly involvement in a prosecution witness' absence from trial. To rule otherwise would effectively deprive the accused of his fundamental right to be confronted with the witnesses against him.

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, petitioners seek to nullify and set aside the February 19, 2008 Decision[1] and November 28, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 99383, which reversed the September 12, 2006 Order[3] issued by the Regional Trial Court (RTC) of Manila, Branch 27 in Civil Case No. 06-114844 and upheld the grant of the prosecution's motion to take the testimony of a witness by oral depositions in Laos, Cambodia.

Petitioners Harry Go, Tonny Ngo, Jerry Ngo and Jane Go were charged before the Metropolitan Trial Court (MeTC) of Manila for *Other Deceits* under Article 318 of the Revised Penal Code (RPC) docketed as Criminal Case No. 396447. The Information[4] dated September 24, 2003, later amended[5] on September 14, 2004, reads:

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring; *rollo*, pp. 44-55.

[2] Annex "B" of the Petition, *id.* at pp. 56-59.

[3] Issued by Judge Teresa P. Soriaso, *id.* at pp. 136-142.

[4] Annex "C" of the Petition, *id.* at pp. 60-61.

[5] Annex "D" of the Petition, *id.* at pp. 62-63.

"That sometime in August 1996, in the City of Manila, Philippines, the said accused, conspiring, confederating together and helping one another, did then and there willfully, unlawfully and feloniously defraud Highdone Company Ltd. Represented by Li Luen Ping, in the following manner, to wit: all said accused, by means of false manifestations and fraudulent representations which they made to said Li Luen Ping to the effect that they have chattels such as machinery, spare parts, equipment and raw materials installed and fixed in the premises of BGB Industrial Textile Mills Factory located in the Bataan Export Processing Zone (BEPZ) in Mariveles, Bataan, executed a Deed of Mortgage for a consideration of the amount of $464,266.90 or its peso equivalent at ₱20,892,010.50 more or less in favor of ML Resources and Highdone Company Ltd. Representing that the said deed is a FIRST MORTGAGE when in truth and in fact the accused well knew that the same had been previously encumbered, mortgaged and foreclosed by CHINA BANK CORPORATION as early as September 1994 thereby causing damage and prejudice to said HIGHDONE COMPANY LTD., in the said amount of $464,266.90 or its peso equivalent at ₱20,892,010.50 more or less."

Upon arraignment, petitioners pleaded not guilty to the charge.

The prosecution's complaining witness, Li Luen Ping, a frail old businessman from Laos, Cambodia, traveled from his home country back to the Philippines in order to attend the hearing held on September 9, 2004. However, trial dates were subsequently postponed due to his unavailability.

On October 13, 2005, the private prosecutor filed with the MeTC a Motion to Take Oral Deposition[6] of Li Luen Ping, alleging that he was being treated for lung infection at the Cambodia Charity Hospital in Laos, Cambodia and that, upon doctor's advice, he could not make the long travel to the Philippines by reason of ill health.

Notwithstanding petitioners' Opposition,[7] the MeTC granted[8] the motion after the prosecution complied with the directive to

[6] Annex "E" of the Petition, *id.* at pp. 64-66

[7] Annex "F" of the Petition, *id.* at pp. 67-68.

[8] Annex "H" of the Petition, *id.* at pp. 73-74.

submit a Medical Certificate of Li Luen Ping. Petitioners sought its reconsideration which the MeTC denied,[9] prompting petitioners to file a Petition for *Certiorari*[10] before the RTC.

On September 12, 2006, the RTC granted the petition and declared the MeTC Orders null and void.[11] The RTC held that Section 17, Rule 23 on the taking of depositions of witnesses in civil cases cannot apply suppletorily to the case since there is a specific provision in the Rules of Court with respect to the taking of depositions of prosecution witnesses in criminal cases, which is primarily intended to safeguard the constitutional rights of the accused to meet the witness against him face to face.

Upon denial by the RTC of their motion for reconsideration through an Order dated March 5, 2006,[12] the prosecution elevated the case to the CA.

On February 19, 2008, the CA promulgated the assailed Decision which held that no grave abuse of discretion can be imputed upon the MeTC for allowing the deposition-taking of the complaining witness Li Luen Ping because no rule of procedure expressly disallows the taking of depositions in criminal cases and that, in any case, petitioners would still have every opportunity to cross-examine the complaining witness and make timely objections during the taking of the oral deposition either through counsel or through the consular officer who would be taking the deposition of the witness.

On November 28, 2008, the CA denied petitioners' motion for reconsideration. Hence, this petition alleging that –

I. THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE METROPOLITAN TRIAL COURT INFRINGED THE CONSTITUTIONAL RIGHT OF THE PETITIONERS TO A PUBLIC TRIAL IN ALLOWING THE TAKING OF THE DEPOSITION OF THE COMPLAINING WITNESS IN LAOS, CAMBODIA.

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[9] Annex "L" of the Petition, *id.* at p. 90.

[10] Annex "M" of the Petition, *id.* at pp. 92-112.

[11] RTC Order, Annex "O" of the Petition, *id.* at pp. 136-142.

[12] Annex "R" of the Petition, *id.* at pp. 173-174.

II. THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE DEPOSITION TAKING OF THE COMPLAINING WITNESS IN LAOS, CAMBODIA IS AN INFRINGEMENT OF THE CONSTITUTIONAL RIGHT OF THE PETITIONERS TO CONFRONT THE SAID WITNESS FACE TO FACE.

III. THE COURT OF APPEALS ERRED IN SUSTAINING THE JUDICIAL LEGISLATION COMMITTED BY THE METROPOLITAN TRIAL COURT IN APPLYING THE RULES ON DEPOSITION-TAKING IN CIVIL CASES TO CRIMINAL CASES.

IV. THE COURT OF APPEALS ERRED IN LIMITING THE TRADITIONAL DEFINITION OF GRAVE ABUSE OF DISCRETION, OVERLOOKING THE ESTABLISHED RULE THAT VIOLATION OF THE CONSTITUTION, THE LAW OR JURISPRUDENCE SIMILARLY COMES WITHIN THE PURVIEW OF GRAVE ABUSE OF DISCRETION.

We rule in favor of petitioners.

The Procedure for Testimonial Examination of an Unavailable Prosecution Witness is Covered Under Section 15, Rule 119.

The examination of witnesses must be done orally before a judge in open court.[13] This is true especially in criminal cases where the Constitution secures to the accused his right to a public trial and to meet the witnessess against him face to face. The requirement is the "safest and most satisfactory method of investigating facts" as it enables the judge to test the witness' credibility through his manner and deportment while testifying.[14] It is not without exceptions, however, as the Rules of Court recognizes the conditional examination of witnesses and the use of their depositions as testimonial evidence in lieu of direct court testimony.

Even in criminal proceedings, there is no doubt as to the availability of conditional examination of witnesses – both for the benefit of the defense, as well as the prosecution. The Court's

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[13] Section 1, Rule 132, Rules of Court.

[14] Francisco, R.J., *Evidence*, 1993 Edition, p. 437.

ruling in the case of *Vda. de Manguerra v. Risos*[15] explicitly states that –

> "x x x As exceptions, Rule 23 to 28 of the Rules of Court provide for the different modes of discovery that may be resorted to by a party to an action. These rules are adopted either to perpetuate the testimonies of witnesses or as modes of discovery. In criminal proceedings, Sections 12, 13 and 15, Rule 119 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, allow the conditional examination of both the defense and prosecution witnesses." (Underscoring supplied)[16]

The procedure under Rule 23 to 28 of the Rules of Court allows the taking of depositions in civil cases, either upon oral examination or written interrogatories, before any judge, notary public or person authorized to administer oaths at any time or place within the Philippines; or before any Philippine consular official, commissioned officer or person authorized to administer oaths in a foreign state or country, with no additional requirement except reasonable notice in writing to the other party.[17]

But for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would forseeably be unavailable for trial, the testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the Revised Rules of Criminal Procedure. The pertinent provision reads thus:

SEC. 15. Examination of witness for the prosecution. – When it satisfactorily appears that a witness for the prosecution is *too sick or infirm to appear at the trial* as directed by the court, or *has to leave the Philippines with no definite date of returning*, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has

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[15] G.R. No. 152643, August 28, 2008, 563 SCRA 499.

[16] *Id.* at pp. 506-507.

[17] Sections 1, 10, 11, 14 and 15, Rule 23, *1997 Rules of Civil Procedure*.

been served on him shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

Since the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending, the RTC properly nullified the MeTC's orders granting the motion to take the deposition of Li Luen Ping before the Philippine consular official in Laos, Cambodia. We quote with approval the RTC's ratiocination in this wise:

The condition of the private complainant being sick and of advanced age falls within the provision of Section 15 Rule 119 of the Rules of Court. However, said rule substantially provides that he should be conditionally examined before the court where the case is pending. Thus, this Court concludes that the language of Section 15 Rule 119 must be interpreted to require the parties to present testimony at the hearing through live witnesses, whose demeanor and credibility can be evaluated by the judge presiding at the hearing, rather than by means of deposition. No where in the said rule permits the taking of deposition outside the Philippines whether the deponent is sick or not.[18] (Underscoring supplied)

Certainly, to take the deposition of the prosecution witness elsewhere and not before the very same court where the case is pending would not only deprive a detained accused of his right to attend the proceedings but also deprive the trial judge of the opportunity to observe the prosecution witness' deportment and properly assess his credibility, which is especially intolerable when the witness' testimony is crucial to the prosecution's case against the accused. This is the import of the Court's ruling in *Vda. de Manguerra*[19] where we further declared that –

While we recognize the prosecution's right to preserve the testimony of its witness in order to prove its case, we cannot disregard

[18] RTC Order, *rollo*, pp. 138-139.

[19] G.R. No. 152643, August 28, 2008, 563 SCRA 499.

the rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.[20] (Underscoring supplied)

It is argued that since the Rules of Civil Procedure is made explicitly applicable in all cases, both civil and criminal as well as special proceedings, the deposition-taking before a Philippine consular official under Rule 23 should be deemed allowable also under the circumstances. However, the suggested suppletory application of Rule 23 in the testimonial examination of an unavailable prosecution witness has been categorically ruled out by the Court in the same case of *Vda. de Manguerra*, as follows:

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise." (Underscoring supplied)

The Conditional Examination of a Prosecution Witness Cannot Defeat the Rights of the Accused to Public Trial and Confrontation of Witnesses

The CA took a simplistic view on the use of depositions in criminal cases and overlooked fundamental considerations no less than the Constitution secures to the accused, *i.e.*, the right to a public trial and the right to confrontation of witnesses. Section 14(2), Article III of the Constitution provides as follows:

Section 14. (1) x x x

[20] *Id.* at p. 510.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Underscoring supplied)

In dismissing petitioners' apprehensions concerning the deprivation of their constitutional rights to a public trial and confrontation, the CA opined that petitioners would still be accorded the right to cross-examine the deponent witness and raise their objections during the deposition-taking in the same manner as in a regular court trial.

We disagree. There is a great deal of difference between the face-to- face confrontation in a public criminal trial in the presence of the presiding judge and the cross-examination of a witness in a foreign place outside the courtroom in the absence of a trial judge. In the aptly cited case of *People v. Estenzo,*[21] the Court noted the uniqueness and significance of a witness testifying in open court, thus:

"The main and essential purpose of requiring a witness to appear and testify orally at a trial is to secure for the adverse party the opportunity of cross-examination. "The opponent", according to an eminent authority, "demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross examination which cannot be had except by the direct and personal putting of questions and obtaining immediate answers." There is also the advantage of the witness before the judge, and it is this – it enables the judge as trier of facts "to obtain the elusive and incommunicable evidence of a witness' deportment while testifying, and a certain subjective moral effect is produced upon the witness. It is only when the witness testifies orally that the judge may have a true idea of his countenance, manner and expression,

[21] No. L-41166, August 25, 1976, 72 SCRA 428

which may confirm or detract from the weight of his testimony. Certainly, the physical condition of the witness will reveal his capacity for accurate observation and memory, and his deportment and physiognomy will reveal clues to his character. These can only be observed by the judge if the witness testifies orally in court. x x x"[22] (Underscoring supplied)

The right of confrontation, on the other hand, is held to apply specifically to criminal proceedings and to have a twofold purpose: (1) to afford the accused an opportunity to test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses.[23] The Court explained in *People v. Seneris*[24] that the constitutional requirement "insures that the witness will give his testimony under oath, thus deterring lying by the threat of perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility."[25]

As the right of confrontation is intended "to secure the accused in the right to be tried as far as facts provable by witnesses as meet him face to face at the trial who give their testimony in his presence, and give to the accused an opportunity of cross-examination,"[26] it is properly viewed as a guarantee against the use of unreliable testimony in criminal trials. In the American case of *Crawford v. Washington,*[27] the US Supreme Court had expounded on the procedural intent of the confrontation requirement, thus:

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[22] *Id.* at 432.

[23] Bernas, J.G., *The 1987 Constitution: A Commentary*, 1996 Edition, p. 463, citing *U.S. v. Anastacio*, 6 Phil. 413, 416 (1906); *U.S. v. Raymundo*, 14 Phil. 416, 438 (1909); and *U.S. v. Javier*, 37 Phil. 449, 452 (1918).

[24] No. L-48883, August 6, 1980, 99 SCRA 92.

[25] Citing *California v. Green*, 339 US 157 (1970).

[26] *United States v. Javier*, No. L-12990, January 21, 1918, 37 Phil. 449, citing *Dowdell v. U.S.,* 22 US 325.

[27] 541 U.S. 26 (2004).

Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's [right to confront witness face to face] protection to the vagaries of the rules of evidence, much less to amorphous notions of "reliability." Certainly, none of the authorities discussed above acknowledges any general reliability exception to the common-law rule. Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation. To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined." (Underscoring supplied)

The Webb Ruling is Not on All Fours with the Instant Case

The CA found the frail and infirm condition of the prosecution witness as sufficient and compelling reason to uphold the MeTC Orders granting the deposition-taking, following the ruling in the case of *People v. Webb*[28] that the taking of an unavailable witness' deposition is in the nature of a discovery procedure the use of which is within the trial court's sound discretion which needs only to be exercised in a reasonable manner and in consonance with the spirit of the law.[29]

But the ruling in the cited case is not instantly applicable herein as the factual settings are not similar. The accused in the *Webb* case had sought to take the oral deposition of five defense witnesses before a Philippine consular agent in lieu of presenting them as live witnesses, alleging that they were all residents of the United States who could not be compelled by subpoena to testify in court. The trial court denied the motion of the accused but the CA differed and ordered the deposition

[28] G.R. No. 132577, August 17, 1999, 312 SCRA 573.

[29] CA Decision, *rollo*, p. 52.

taken. When the matter was raised before this Court, we sustained the trial court's disallowance of the deposition-taking on the limited ground that there was no necessity for the procedure as the matter sought to be proved by way of deposition was considered merely corroborative of the evidence for the defense.[30]

In this case, where it is the prosecution that seeks to depose the complaining witness against the accused, the stringent procedure under Section 15, Rule 119 cannot be ignored without violating the constitutional rights of the accused to due process.

Finally, the Court takes note that prosecution witness Li Luen Ping had managed to attend the initial trial proceedings before the MeTC of Manila on September 9, 2004. At that time, Li Luen Ping's old age and fragile constitution should have been unmistakably apparent and yet the prosecution failed to act with zeal and foresight in having his deposition or testimony taken before the MeTC pursuant to Section 15, Rule 119 of the Revised Rules of Court. In fact, it should have been imperative for the prosecution to have moved for the preservation of Li Luen Ping's testimony at that first instance given the fact that the witness is a non-resident alien who can leave the Philippines anytime without any definite date of return. Obviously, the prosecution allowed its main witness to leave the court's jurisdiction without availing of the court procedure intended to preserve the testimony of such witness. The loss of its cause is attributable to no other party.

Still, even after failing to secure Li Luen Ping's conditional examination before the MeTC prior to said witness' becoming sick and unavailable, the prosecution would capitalize upon its own failure by pleading for a liberal application of the rules on depositions. It must be emphasized that while the prosecution must provide the accused every opportunity to take the deposition of witnesses that are material to his defense in order to avoid charges of violating the right of the accused to compulsory

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[30] *People v. Webb*, *supra* note 25, at 592.

process, the State itself must resort to deposition-taking sparingly if it is to guard against accusations of violating the right of the accused to meet the witnesses against him face to face. Great care must be observed in the taking and use of depositions of prosecution witnesses to the end that no conviction of an accused will rely on *ex parte* affidavits and depositions.[31]

Thus, the CA ignored the procedure under the Revised Rules of Criminal Procedure for taking the deposition of an unavailable prosecution witness when it upheld the trial court's order allowing the deposition of prosecution witness Li Luen Ping to take place in a venue other than the court where the case is pending. This was certainly grave abuse of discretion.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated February 19, 2008 and the Resolution dated November 28, 2008 of the Court of Appeals are **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the Regional Trial Court which disallowed the deposition-taking in Laos, Cambodia is **REINSTATED**.

SO ORDERED.

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

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[31] *See* Cruz, I., *Constitutional Law*, 1995 Edition, p. 324.

SPECIAL SECOND DIVISION

[G.R. No. 187425. July 18, 2012]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **AGFHA INCORPORATED,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE COURT CLARIFIES THAT THE DECISION IN THE INSTANT CASE INCLUDED THE PAYMENT OF INTEREST AS STATED IN OCTOBER 18, 2005 DECISION OF THE SECOND DIVISION OF THE COURT OF TAX APPEALS.— Indeed, the March 28, 2011 Decision of the Court *affirmed* the February 25, 2009 Decision of the CTA-EB which earlier *affirmed in toto* the October 18, 2005 Resolution of the CTA-2D. There were no statements in the Court's decision which in any way affected its final pronouncement as to the interest. It was, therefore, not deleted. Considering that the October 15, 2005 CTA-2D Resolution was affirmed with finality, it could only mean that its pronouncement as to the payment of interest was sustained by the CTA-EB and by this Court. Unquestionably, the said CTA-2D Resolution has become final and executory and nothing can be done except to clarify it. Following the doctrine of immutability and inalterability of a final judgment, the said decision can no longer be modified, in any respect, either by the court which rendered it or even by this Court. Petitioner's stance of computing the legal interest on the value of the lost shipment from August 13, 2004 is barred by the final and executory character of the said decision. Hence, respondent is entitled to legal interest from February 1993 until petitioner pays the full amount of its obligation. **WHEREFORE,** the Court clarifies that the decision in this case includes the payment of interest as stated in the October 18, 2005 Decision of the Second Division of the Court of Tax Appeals.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rico & Associates for respondent.

RESOLUTION

MENDOZA, *J.*:

For resolution is the Motion for Clarification/Correction[1] filed by Agfha Incorporated *(respondent)* praying that the dispositive portion of the March 28, 2011 Decision of the Court be clarified and corrected insofar as the rate of interest on the obligation of the petitioner, Commissioner of Customs *(petitioner)*, to respondent is concerned.

Records show that on October 18, 2005, the Second Division of the Court of Tax Appeals *(CTA-2D)* issued its Resolution[2] holding petitioner liable to pay respondent the amount of US$160,348.08, which represented the value of the subject lost shipment that was seized by petitioner from respondent, payable in Philippine currency and computed at the exchange rate prevailing at the time of actual payment. The dispositive portion of the CTA-2D Resolution reads, as follows:

> WHEREFORE, premises considered, respondent Commissioner of Customs' "Motion for Partial Reconsideration" is hereby PARTIALLY GRANTED. The Resolution dated May 17, 2005 is hereby MODIFIED but only insofar as the Court did not impose the payment of the proper duties and taxes on the subject shipment. Accordingly, the dispositive portion of Our Resolution, dated May 17, 2005, is hereby MODIFIED to read as follows:
>
> > WHEREFORE, premises considered, the Bureau of Customs is adjudged liable to petitioner AGFHA, Inc. for the value of the subject shipment in the amount of ONE HUNDRED SIXTY THOUSAND THREE HUNDRED FORTY EIGHT and 08/100 US Dollars (US$160, 348. 08), subject, however, to the payment of the prescribed taxes and duties, at the time of the importation. The Bureau of Customs' liability may be paid in Philippine Currency, computed at the exchange rate prevailing at the time of actual payment, **with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the**

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[1] *Rollo*, pp. 242-246.

[2] CTA records, pp. 532-552.

finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid.

The payment shall be taken from the sale or sales of the goods or properties which were seized or forfeited by the Bureau of Customs in other cases.

SO ORDERED.

Petitioner appealed the October 18, 2005 Resolution of the CTA-2D to the CTA-*En Banc (CTA-EB)*. On February 25, 2009, CTA-EB dismissed petitioner's appeal for lack of merit and ***affirmed in toto*** the CTA-2D Resolution. Petitioner then filed with this Court a petition for review challenging the February 25, 2009 Decision of the CTA-EB.

On March 28, 2011, this Court rendered its decision ***affirming*** the February 25, 2009 Decision of the CTA-EB, the dispositive portion of which reads:

Wherefore, the February 25, 2009 Decision of the Court of Tax Appeals *En Banc*, in C.T.A. EB No. 136 is hereby **AFFIRMED.** The Commissioner of Customs is hereby ordered to pay, in accordance with law, the value of the subject lost shipment in the amount of US$160,348.08, computed at the exchange rate prevailing at the time of actual payment after payment of the necessary customs duties.

In the subject Motion for Clarification/Correction, respondent notes that the portion in the CTA-2D Resolution, referring to the interests petitioner was directed to pay respondent as affirmed by the CTA-*En Banc*, was inadvertently omitted in the March 28, 2011 Decision of the Court. The pertinent portion reads: "with legal interests thereon at the rate of 6% per annum computed from February 1993 up to the finality of this Resolution. In lieu of the 6% interest, the rate of legal interest shall be 12% per annum upon finality of this Resolution until the value of the subject shipment is fully paid."

Respondent is of the view that the omission was simply due to inadvertence because the body of the decision contained no

discussion or rationalization that intended to delete the interest on the liability of petitioner. Therefore, respondent prays that the Court's March 28, 2011 Decision be clarified and corrected to include the 6% and 12% rates of interests on petitioner's obligation, awarded in favor of respondent.

In his Comment, petitioner argues that the computation of the legal interest on the value of the subject lost shipment must be reckoned from August 13, 2004 when respondent made a formal judicial demand of the value of its lost shipment, and not from February 1993, when the subject lost shipment was seized. Petitioner asserts that respondent is entitled to 6% per annum legal interest from August 13, 2004 until the finality of the CTA decision. Thereafter, the rate of legal interest shall be 12% per annum until petitioner fully pays its obligation.

The Court finds merit in the subject motion.

Indeed, the March 28, 2011 Decision of the Court *affirmed* the February 25, 2009 Decision of the CTA-EB which earlier *affirmed in toto* the October 18, 2005 Resolution of the CTA-2D. There were no statements in the Court's decision which in any way affected its final pronouncement as to the interest. It was, therefore, not deleted.

Considering that the October 15, 2005 CTA-2D Resolution was affirmed with finality, it could only mean that its pronouncement as to the payment of interest was sustained by the CTA-EB and by this Court. Unquestionably, the said CTA-2D Resolution has become final and executory and nothing can be done except to clarify it. Following the doctrine of immutability and inalterability of a final judgment, the said decision can no longer be modified, in any respect, either by the court which rendered it or even by this Court. Petitioner's stance of computing the legal interest on the value of the lost shipment from August 13, 2004 is barred by the final and executory character of the said decision. Hence, respondent is entitled to legal interest from February 1993 until petitioner pays the full amount of its obligation.

WHEREFORE, the Court clarifies that the decision in this case includes the payment of interest as stated in the October 18, 2005 Decision of the Second Division of the Court of Tax Appeals.

SO ORDERED.

Carpio (Senior Associate Justice Chairperson), Peralta, Bersamin, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190810. July 18, 2012]

LORENZA C. ONGCO, *petitioner, vs.* **VALERIANA UNGCO DALISAY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; NATURE AND REQUISITES, EXPLAINED.—** Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. This remedy, however, is not a right. x x x [I]ntervention is not a matter of right, but is left to the trial court's sound discretion. The trial court must not only determine if the requisite **legal interest** is present, but also take into consideration the **delay** and the consequent **prejudice** to the original parties that the intervention will cause. Both requirements must concur, as the first requirement on legal interest is not more important than the second requirement that no delay and prejudice should result. To help ensure that delay does not result from the granting of a motion to intervene, the Rules also explicitly say that

intervention may be allowed only before rendition of judgment by the trial court.

2. **ID.; ID.; ID.; WHERE THE INTEREST OF THE PARTY SOUGHT TO INTERVENE IS ONLY INCHOATE, INTERVENTION IS NOT ALLOWED.—** Petitioner has not shown any legal interest of such nature that she "will either gain or lose by the direct legal operation of the judgment." On the contrary, her interest is indirect and contingent. She has not been granted a free patent over the subject land, as she in fact admits being only in the process of applying for one. Her interest is at best inchoate. In *Firestone Ceramics v. CA,* the Court held that the petitioner who anchored his motion to intervene on his legal interest arising from his pending application for a free patent over a portion of the subject land merely had a collateral interest in the subject matter of the litigation. His collateral interest could not have justified intervention.

3. **ID.; ID.; ID.; PERIOD FOR FILING MOTION FOR INTERVENTION SHOULD BE STRICTLY APPLIED IN LAND REGISTRATION CASES.—** There is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced. This rule should apply more strictly to land registration cases, in which there is a possibility that a great number of claimant-oppositors may cause a delay in the proceedings by filing motions to intervene after the trial court — sitting as a land registration court — has rendered judgment. x x x [I]t must be noted that a land registration proceeding is an action *in rem*. Thus, only a general notice to the public is required, and not a personal one. Its publication already binds the whole world, including those who will be adversely affected. This, according to this Court, is the only way to give meaning to the finality and indefeasibility of the Torrens title to be issued as against the argument that the said rule could result in actual injustice. In the present case, the MTC found that the required publication

was made by respondent Dalisay when she applied for land registration. That publication was sufficient notice to petitioner Ongco. Thus, petitioner only had herself to blame when she failed to intervene as soon as she could before the rendition of judgment.

4. **ID.; ID.; ID.; INTERVENTION ON APPEAL CANNOT BE ALLOWED WHERE THE PARTY SOUGHT TO INTERVENE IS NOT AN INDISPENSABLE PARTY.—** [P]etitioner Ongco would now like the Court to exceptionally allow intervention even after judgment has been rendered by the MTC in the land registration case. She cites instances in which this Court allowed intervention on appeal. However, the cases she cited are inapplicable to the present case, because the movants therein who wanted to intervene were found by the Court to be **indispensable parties**. Thus, under Section 7, Rule 3 of the Rules of Court, they had to be joined because, without them, there could be no final determination of the actions. Indeed, if indispensable parties are not impleaded, any judgment would have no effect. x x x In the present case, petitioner Ongco is not an indispensable party. As already noted, her interests are inchoate and merely collateral, as she is only in the process of applying for a free patent. Also, the action for land registration may proceed and be carried to judgment without joining her. This is because the issues to be threshed out in a land registration proceeding — such as whether the subject land is alienable and disposable land of the public domain; and whether the applicant or her predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the said land under a *bona fide* claim of ownership since 12 June 1945, or earlier — can be threshed out without joining petitioner.

APPEARANCES OF COUNSEL

Leonardo C. Aseoche for respondent.

DECISION

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure asking the Court to rule whether petitioner may intervene in a land registration case.

The Petition seeks to annul and set aside the Court of Appeals (CA) Resolutions[1] dated 30 September 2009 and 11 November 2009 (assailed Resolutions), which denied petitioner's Motion for Leave to Intervene dated 23 June 2009.

FACTUAL ANTECEDENTS

On 15 October 2007, respondent Valeriana Ungco Dalisay (Dalisay) applied for registration of a parcel of land designated as Lot 1792, Cad-609-D, by filing an Application for Land Registration before the Municipal Trial Court (MTC) of Binangonan, Branch 2.[2] At the hearings, no oppositor aside from the Republic of the Philippines (the Republic) came. Neither was there any written opposition filed in court. Thus, an Order of General Default was issued against the whole world except the Republic. Consequently, on 15 October 2008, the court found respondent Dalisay to have clearly shown a registrable right over the subject property and ordered that a decree of registration be issued by the Land Registration Authority once the Decision had become final.[3] Herein petitioner Lorenza C. Ongco (Ongco) never intervened in the proceedings in the trial court.

The Republic filed an appeal with the CA docketed as CA-G.R. CV No. 92046.[4] While the case was pending appeal, petitioner

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[1] *Rollo*, pp. 45-47, 49; in CA-G.R. CV No. 92046, and both penned by Justice Vicente S.E. Veloso and concurred in by Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison.

[2] *Rollo*, pp. 250-253; Application for Land Registration of herein respondent Dalisay.

[3] *Id.* at 51-54; Decision of the MTC-Branch 2 dated 15 October 2008.

[4] *Id.* at 21.

Ongco filed a "Motion for Leave to Intervene" dated 23 June 2009 with an attached Answer-in-Intervention.[5]

The Answer-in-Intervention sought the dismissal of respondent Dalisay's Application for Land Registration on the ground that, contrary to the allegations of Dalisay, the subject property was not free from any adverse claim. In fact, petitioner Ongco had allegedly been previously found to be in actual possession of the subject land in an earlier case filed before the Department of Environment and Natural Resources (DENR) when she applied for a free patent on the land.[6]

In her Comment/Objection to the Motion for Leave to Intervene, Dalisay contended that Ongco did not have a legal interest over the property.[7] Moreover, the intervention would unduly delay the registration proceeding, which was now on appeal. Besides, petitioner's interest, if any, may be fully protected in a separate and direct proceeding. Additionally, Dalisay pointed out that Section 2, Rule 19 of the Rules of Court was clear that intervention may be filed at any time before rendition of judgment by the trial court, but not at any other time. The Republic, on the other hand, said that it was interposing no objection to the Motion for Leave to Intervene.[8]

On 30 September 2009, the CA issued its first assailed Resolution[9] denying the Motion for Intervention for having been filed beyond the period allowed by law. It said:

> Lorenza C. Ongco's prayer to be allowed to intervene in the instant "MOTION FOR LEAVE TO INTERVENE XXX" is **DENIED**[,] said motion having been filed beyond the period allowed by law.
>
> *Manalo vs. Court of Appeals* is emphatic:

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[5] *Id.*

[6] *Id.* at 22.

[7] *Id.* at 190-195.

[8] *Id.* at 196-197.

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

> **Intervention** is **not a matter of right** but **may be permitted** by the courts only **when the statutory conditions** for the right to intervene **[are] shown**. Thus, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. In determining the propriety of letting a party intervene in a case, the tribunal should not limit itself to inquiring whether "a person (1) has a legal interest in the matter in litigation; (2) or in the success of either of the parties; (3) or an interest against both; (4) or when is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof." Just as important, as (the Supreme Court had) stated in *Big Country Ranch Corporation v. Court of Appeals* [227 SCRA 161{1993}], is the function to consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.
>
> **The period within which a person may intervene is also restricted.** Section 2, Rule 19 of the 1997 Rules of Civil Procedure requires:
>
> "SECTION 2. *Time to intervene*. — The motion to intervene may be filed **at any time before the rendition of judgment by the trial court***,* x x x."
>
> **After the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation.**

Here, the subject motion was filed only on **June 23, 2009**, way beyond the rendition of the Decision dated October 15, 2008 (subject of the instant appeal by the Office of the Solicitor General) by the Regional Trial Court of Binangonan, Branch 2. As a necessary consequence, the prayed for admission of the instant "ANSWER-IN-INTERVENTION could only be denied. x x x. (Emphases in the original)

Petitioner filed a Motion for Reconsideration,[10] which was also denied in a Resolution dated 11 November 2009.

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[10] *Id.* at 200-205.

Hence, the instant Petition for Review under Rule 45.

In her three-page Comment[11] on the Petition, respondent Dalisay briefly argues that the CA did not commit any error, because it properly applied the technical rules of procedure in denying the Motion for Intervention. She also argues that the issues being presented are factual and, as such, not reviewable in a Petition for Review under Rule 45.

In her Reply,[12] petitioner asserts that the issues to be resolved in her Petition are questions of law: whether the requisites for intervention are present, and whether the intervention she is seeking is an exception to the general rule that intervention must be filed before judgment is rendered by the trial court.

Issue for Resolution and the Ruling of the Court

The issue for resolution in the instant case is whether the CA committed reversible error in denying the Motion for Intervention of petitioner.

We rule to deny the Petition.

DISCUSSION

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings.[13] This remedy, however, is not a right. The rules on intervention are set forth clearly in Rule 19 of the Rules of Court, which reads:

Sec. 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of

[11] *Id.* at 300-302.

[12] *Id.* at 305-309.

[13] *Hi-Tone Marketing Corporation v. Baikal Realty Corporation*, 480 Phil. 545 (2004).

the court or of an officer thereof **may, with leave of court, be allowed to intervene in the action**. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Sec. 2. Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties. (Emphasis supplied)

It can be readily seen that intervention is not a matter of right, but is left to the trial court's sound discretion. The trial court must not only determine if the requisite **legal interest** is present, but also take into consideration the **delay** and the consequent **prejudice** to the original parties that the intervention will cause. Both requirements must concur, as the first requirement on legal interest is not more important than the second requirement that no delay and prejudice should result.[14] To help ensure that delay does not result from the granting of a motion to intervene, the Rules also explicitly say that intervention may be allowed only before rendition of judgment by the trial court.

In *Executive Secretary v. Northeast Freight*,[15] this Court explained intervention in this wise:

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, **what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof.** As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that **the intervenor will either gain or lose by the direct legal operation of the judgment.** The interest must be actual and material, a concern which is more than mere curiosity, or academic

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[14] *Magsaysay-Labrador v. CA*, 259 Phil 748 (1989).

[15] G.R. No. 179516, 17 March 2009, 581 SCRA 736.

or sentimental desire; **it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral**. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding." (Emphasis supplied)

Applying the foregoing points to the case at bar, **Ongco may not be allowed to intervene.**

Petitioner has not shown any legal interest of such nature that she "will either gain or lose by the direct legal operation of the judgment." On the contrary, her interest is indirect and contingent. She has not been granted a free patent over the subject land, as she in fact admits being only in the process of applying for one.[16] Her interest is at best inchoate. In *Firestone Ceramics v. CA*,[17] the Court held that the petitioner who anchored his motion to intervene on his legal interest arising from his pending application for a free patent over a portion of the subject land merely had a collateral interest in the subject matter of the litigation. His collateral interest could not have justified intervention.

In any event, the Motion for Intervention was filed only with the CA **after** the MTC had rendered judgment. By itself, this inexcusable delay is a sufficient ground for denying the motion. To recall, the motion should be filed "any time before rendition of judgment." The history and rationale of this rule has been explained thusly:

1. **The former rule as to when intervention may be allowed was expressed in Sec. 2, Rule 12 as "before or during a trial," and this ambiguity also gave rise to indecisive doctrines**. Thus, inceptively it was held that a motion for leave to intervene may be filed "before or during a trial" even on the day when the case is submitted for decision (*Falcasantos vs. Falcasantos*, *L-4627,*

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[16] *Rollo*, p. 22.

[17] 372 Phil. 401 (1999).

May 13, 1952) as long as it will not unduly delay the disposition of the case. The term "trial" was used in its restricted sense, *i.e.*, the period for the introduction for intervention was filed *after* the case had already been submitted for decision, the denial thereof is proper (*Vigan Electric Light Co., Inc. vs. Arciaga, L-29207 and L-29222, July 31, 1974*). However, it has also been held that intervention may be allowed at any time before the rendition of final judgment (*Linchauco vs. CA, et al., L-23842, Mar. 13, 1975*). Further, in the exceptional case of *Director of Lands vs. CA, et al.* (L-45168, Sept. 25, 1979), the Supreme Court permitted intervention in a case pending before it on appeal in order to avoid injustice and in consideration of the number of parties who may be affected by the dispute involving overlapping of numerous land titles.

2. **The uncertainty in these ruling has been eliminated by the present Sec. 2 of this amended Rule which permits the filing of the motion to intervene at any time before the *rendition* of the judgment in the case**, in line with the doctrine in *Lichauco* above cited. **The justification advanced for this is that before judgment is rendered, the court, for good cause shown, may still allow the introduction of additional evidence** and that is still within a liberal interpretation of the period for trial. **Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, and would not require an overall reassessment of said claims as would be the case if the judgment had already been rendered**.[18] (Emphases supplied)

Indeed, in *Manalo v. CA*,[19] the Court said:

The period within which a person may intervene is also restricted. Section 2, Rule 19 of the 1997 Rules of Civil Procedure requires:

"SECTION 2. Time to intervene. — The motion to intervene may be filed at any time before the rendition of judgment by the trial court x x x."

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[18] FLORENZ D. REGALADO, *REMEDIAL LAW COMPENDIUM*, VOL. I, 319-320 (9th rev. ed. 2005).

[19] 419 Phil. 215 (2001).

After the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation. (Emphases supplied)

There is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced. This rule should apply more strictly to land registration cases, in which there is a possibility that a great number of claimant-oppositors may cause a delay in the proceedings by filing motions to intervene after the trial court — sitting as a land registration court — has rendered judgment.

Also, it must be noted that a land registration proceeding is an action *in rem*. Thus, only a general notice to the public is required, and not a personal one. Its publication already binds the whole world, including those who will be adversely affected. This, according to this Court, is the only way to give meaning to the finality and indefeasibility of the Torrens title to be issued as against the argument that the said rule could result in actual injustice.[20] In the present case, the MTC found that the required publication was made by respondent Dalisay when she applied for land registration. That publication was sufficient notice to petitioner Ongco. Thus, petitioner only had herself to blame when she failed to intervene as soon as she could before the rendition of judgment.

We also note that, had petitioner learned of the trial court proceedings in time, and had she wanted to oppose the application, the proper procedure would have been to ask for the lifting of the order of default and then to file the opposition.[21] It would

[20] *Francisco v. Court of Appeals*, 9 Phil. 186 (1980).

[21] NARCISO PEÑA, *ET AL.*, *REGISTRATION OF LAND TITLES AND DEEDS*, 84 (rev. ed. 2008).

be an error of procedure to file a motion to intervene. This is because, as discussed above, proceedings in land registration are *in rem* and not *in personam*.[22]

Aware of her fatal shortcoming, petitioner Ongco would now like the Court to exceptionally allow intervention even after judgment has been rendered by the MTC in the land registration case. She cites instances in which this Court allowed intervention on appeal. However, the cases she cited are inapplicable to the present case, because the movants therein who wanted to intervene were found by the Court to be **indispensable parties**. Thus, under Section 7, Rule 3 of the Rules of Court, they had to be joined because, without them, there could be no final determination of the actions. Indeed, if indispensable parties are not impleaded, any judgment would have no effect.

In *Galicia v. Manliquez*,[23] the first case cited by petitioner, the Court found that the defendant-intervenors were indispensable parties, being the indisputable compulsory co-heirs of the original defendants in the case for recovery of possession and ownership, and annulment of title. Thus, without them, there could be no final determination of the action. Moreover, they certainly stood to be affected by any judgment in the case, considering their "ostensible ownership of the property."

In *Mago v. CA*,[24] the intervenor was the rightful awardee of a piece of land that was mistakenly awarded by the NHA to another awardee. Thus, the latter was given title to land with an area that was more than that intended to be awarded to him. The NHA then cancelled the title mistakenly awarded and ordered the subdivision of the lot into two. The recipient of the mistakenly awarded title filed a Petition for injunction to enjoin the NHA from cancelling the title awarded. The Petition was granted and the judgment became final. The other awardee filed a Motion to Intervene, as well as a Petition for Relief from Judgment, which were both denied by the trial court. The CA affirmed the

[22] *Id.*

[23] G.R. No. 155785, 13 April 2007, 521 SCRA 85.

[24] 363 Phil. 225 (1999).

Decision of the court *a quo*. This Court, however, found that the intervention should have been granted, considering the indisputable admission of the NHA, the grantor-agency itself, that the intervenor was the rightful awardee of half of the lot mistakenly awarded. Thus, the intervenor stood to be deprived of his rightful award when the trial court enjoined the cancellation of the mistakenly awarded title and the subdivision of the lot covered by the title. The intervenor's legal interest, in other words, was directly affected.

In the present case, petitioner Ongco is not an indispensable party. As already noted, her interests are inchoate and merely collateral, as she is only in the process of applying for a free patent. Also, the action for land registration may proceed and be carried to judgment without joining her. This is because the issues to be threshed out in a land registration proceeding— such as whether the subject land is alienable and disposable land of the public domain; and whether the applicant or her predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the said land under a *bona fide* claim of ownership since 12 June 1945, or earlier — can be threshed out without joining petitioner.

True, the evidence to be adduced by petitioner Ongco – to prove that she, not Dalisay, has been in possession of the land subject of the application for registration of respondent – has a bearing on the determination of the latter's right to register her title to the land. In particular, this evidence will help debunk the claim of respondent that she has been in open, continuous, exclusive and notorious possession of the subject parcel of land. In fact, this same evidence must have been the reason why the Republic did not interpose any objection to the Motion for Intervention. None of these facts, however, makes petitioner an indispensable party; for there are many other ways of establishing the fact of open, continuous, exclusive and notorious possession of the subject parcel of land or the lack thereof.

If any, the only indispensable party to a land registration case is the Republic. Against it, no order of default would be effective, because the Regalian doctrine presumes that all lands

not otherwise appearing to be clearly under private ownership are presumed to belong to the State.[25]

In any case, we note that petitioner is not left without any remedy in case respondent succeeds in getting a decree of registration. Under Section 32 of Presidential Decree No. 1529, or the Property Registration Decree, there is a remedy available to any person deprived of land — or of any estate or interest therein — through an adjudication or a confirmation of title obtained by actual fraud. The person may file, in the proper court, a petition for reopening and reviewing the decree of registration within one year from the date of entry thereof. This Court has ruled that actual fraud is committed by a registration applicant's failure or intentional omission to disclose the fact of actual physical possession of the premises by the party seeking a review of the decree. It is fraud to knowingly omit or conceal a fact from which benefit is obtained, to the prejudice of a third person.[26] Thus, if he is so minded, petitioner can still file for a petition to review the decree of registration.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Court of Appeals Resolutions dated 30 September 2009 and 11 November 2009, which denied petitioner's Motion for Leave to Intervene in CA-G.R. CV No. 92046, are hereby **AFFIRMED**.

SO ORDERED.

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

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[25] AMADO D. AQUINO, LAND REGISTRATION AND RELATED PROCEEDINGS, 62 (4th ed. 2007) citing *Republic v. Sayo*, G.R. No. 60413, 31 October 1990, 191 SCRA 71 (1990).

[26] *Nicolas v. Director of Lands*, 119 Phil. 258 (1963).

THIRD DIVISION

[G.R. No. 191109. July 18, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the PHILIPPINE RECLAMATION AUTHORITY (PRA), *petitioner, vs.* **CITY OF PARAÑAQUE,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; PHILIPPINE RECLAMATION AUTHORITY (PRA) IS AN INCORPORATED GOVERNMENT INSTRUMENTALITY WHICH IS EXEMPT FROM PAYMENT OF REAL PROPERTY TAX.—** This Court is convinced that PRA is not a GOCC either under Section 2(3) of the Introductory Provisions of the Administrative Code or under Section 16, Article XII of the 1987 Constitution. The facts, the evidence on record and jurisprudence on the issue support the position that PRA was not organized either as a stock or a non-stock corporation. Neither was it created by Congress to operate commercially and compete in the private market. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Being an incorporated government instrumentality, it is exempt from payment of real property tax.

2. **ID.; ID.; ID.; EXEMPTION OF PRA FROM PAYMENT OF REAL PROPERTY TAX, EXPLAINED.—** It is clear from Section 234 that real property owned by the Republic of the Philippines *(the Republic)* is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. In this case, there is no proof that PRA granted the beneficial use of the subject reclaimed lands to a taxable entity. There is no showing on record either that PRA leased the subject reclaimed properties to a private taxable entity. This exemption should be read in relation to Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies

and instrumentalities x x x." The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax. Indeed, the Republic grants the beneficial use of its real property to an agency or instrumentality of the national government. This happens when the title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption, unless "the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

3. **ID.; ID.; ID.; RECLAIMED LANDS OF THE PRA ARE STILL PART OF THE PUBLIC DOMAIN.—** [T]he subject lands are reclaimed lands, specifically portions of the foreshore and offshore areas of Manila Bay. As such, these lands remain public lands and form part of the public domain. In the case of *Chavez v. Public Estates Authority and AMARI Coastal Development Corporation*, the Court held that foreshore and submerged areas irrefutably belonged to the public domain and were inalienable unless reclaimed, classified as alienable lands open to disposition and further declared no longer needed for public service. The fact that alienable lands of the public domain were transferred to the PEA (now PRA) and issued land patents or certificates of title in PEA's name did not automatically make such lands private. This Court also held therein that reclaimed lands retained their inherent potential as areas for public use or public service. x x x They are properties of public dominion. The ownership of such lands remains with the State unless they are withdrawn by law or presidential proclamation from public use.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose Torrefranca for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, on pure questions of law, assailing the January 8, 2010 Order[1] of the Regional Trial Court, Branch 195, Parañaque City *(RTC),* which ruled that petitioner Philippine Reclamation Authority *(PRA)* is a government-owned and controlled corporation *(GOCC)*, a taxable entity, and, therefore, not exempt from payment of real property taxes. The pertinent portion of the said order reads:

> In view of the finding of this court that petitioner is not exempt from payment of real property taxes, respondent Parañaque City Treasurer Liberato M. Carabeo did not act xxx without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the warrants of levy on the subject properties.
>
> WHEREFORE, the instant petition is dismissed. The Motion for Leave to File and Admit Attached Supplemental Petition is denied and the supplemental petition attached thereto is not admitted.

The Public Estates Authority *(PEA)* is a government corporation created by virtue of Presidential Decree *(P.D.)* No. 1084 (*Creating the Public Estates Authority, Defining its Powers and Functions, Providing Funds Therefor and For Other Purposes*) which took effect on February 4, 1977 to provide a coordinated, economical and efficient reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by, the government with the object of maximizing their utilization and hastening their development consistent with public interest.

On February 14, 1979, by virtue of Executive Order *(E.O.)* No. 525 issued by then President Ferdinand Marcos, PEA was designated as the agency primarily responsible for integrating, directing and coordinating all reclamation projects for and on behalf of the National Government.

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[1] *Rollo*, pp. 50-55.

On October 26, 2004, then President Gloria Macapagal-Arroyo issued E.O. No. 380 transforming PEA into PRA, which shall perform all the powers and functions of the PEA relating to reclamation activities.

By virtue of its mandate, PRA reclaimed several portions of the foreshore and offshore areas of Manila Bay, including those located in Parañaque City, and was issued Original Certificates of Title (OCT Nos. 180, 202, 206, 207, 289, 557, and 559) and Transfer Certificates of Title (TCT Nos. 104628, 7312, 7309, 7311, 9685, and 9686) over the reclaimed lands.

On February 19, 2003, then Parañaque City Treasurer Liberato M. Carabeo *(Carabeo)* issued Warrants of Levy on PRA's reclaimed properties (Central Business Park and *Barangay* San Dionisio) located in Parañaque City based on the assessment for delinquent real property taxes made by then Parañaque City Assessor Soledad Medina Cue for tax years 2001 and 2002.

On March 26, 2003, PRA filed a petition for prohibition with prayer for temporary restraining order *(TRO)* and/or writ of preliminary injunction against Carabeo before the RTC.

On April 3, 2003, after due hearing, the RTC issued an order denying PRA's petition for the issuance of a temporary restraining order.

On April 4, 2003, PRA sent a letter to Carabeo requesting the latter not to proceed with the public auction of the subject reclaimed properties on April 7, 2003. In response, Carabeo sent a letter stating that the public auction could not be deferred because the RTC had already denied PRA's TRO application.

On April 25, 2003, the RTC denied PRA's prayer for the issuance of a writ of preliminary injunction for being moot and academic considering that the auction sale of the subject properties on April 7, 2003 had already been consummated.

On August 3, 2009, after an exchange of several pleadings and the failure of both parties to arrive at a compromise agreement, PRA filed a *Motion for Leave to File and Admit Attached*

Supplemental Petition which sought to declare as null and void the assessment for real property taxes, the levy based on the said assessment, the public auction sale conducted on April 7, 2003, and the Certificates of Sale issued pursuant to the auction sale.

On January 8, 2010, the RTC rendered its decision dismissing PRA's petition. In ruling that PRA was not exempt from payment of real property taxes, the RTC reasoned out that it was a GOCC under Section 3 of P.D. No. 1084. It was organized as a stock corporation because it had an authorized capital stock divided into no par value shares. In fact, PRA admitted its corporate personality and that said properties were registered in its name as shown by the certificates of title. Therefore, as a GOCC, local tax exemption is withdrawn by virtue of Section 193 of Republic Act (R.A.) No. 7160 [Local Government Code *(LGC)*] which was the prevailing law in 2001 and 2002 with respect to real property taxation. The RTC also ruled that the tax exemption claimed by PRA under E.O. No. 654 had already been expressly repealed by R.A. No. 7160 and that PRA failed to comply with the procedural requirements in Section 206 thereof.

Not in conformity, PRA filed this petition for *certiorari* assailing the January 8, 2010 RTC Order based on the following

GROUNDS

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT PETITIONER IS LIABLE TO PAY REAL PROPERTY TAX ON THE SUBJECT RECLAIMED LANDS CONSIDERING THAT PETITIONER IS AN INCORPORATED INSTRUMENTALITY OF THE NATIONAL GOVERNMENT AND IS, THEREFORE, EXEMPT FROM PAYMENT OF REAL PROPERTY TAX UNDER SECTIONS 234(A) AND 133(O) OF REPUBLIC ACT 7160 OR THE LOCAL GOVERNMENT CODE *VIS-À-VIS* MANILA INTERNATIONAL AIRPORT AUTHORITY V. COURT OF APPEALS.

II

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THAT RECLAIMED LANDS ARE PART OF THE PUBLIC DOMAIN AND, HENCE, EXEMPT FROM REAL PROPERTY TAX.

PRA asserts that it is not a GOCC under Section 2(13) of the Introductory Provisions of the Administrative Code. Neither is it a GOCC under Section 16, Article XII of the 1987 Constitution because it is not required to meet the test of economic viability. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Although it has a capital stock divided into shares, it is not authorized to distribute dividends and allotment of surplus and profits to its stockholders. Therefore, it may not be classified as a stock corporation because it lacks the second requisite of a stock corporation which is the distribution of dividends and allotment of surplus and profits to the stockholders.

It insists that it may not be classified as a non-stock corporation because it has no members and it is not organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers as provided in Section 88 of the Corporation Code.

Moreover, PRA points out that it was not created to compete in the market place as there was no competing reclamation company operated by the private sector. Also, while PRA is vested with corporate powers under P.D. No. 1084, such circumstance does not make it a corporation but merely an incorporated instrumentality and that the mere fact that an incorporated instrumentality of the National Government holds title to real property does not make said instrumentality a GOCC. Section 48, Chapter 12, Book I of the Administrative Code of 1987 recognizes a scenario where a piece of land owned by the Republic is titled in the name of a department, agency or instrumentality.

Thus, PRA insists that, as an incorporated instrumentality of the National Government, it is exempt from payment of real property tax except when the beneficial use of the real property is granted to a taxable person. PRA claims that based on Section 133(o) of the LGC, local governments cannot tax the national government which delegate to local governments the power to tax.

It explains that reclaimed lands are part of the public domain, owned by the State, thus, exempt from the payment of real estate taxes. Reclaimed lands retain their inherent potential as areas for public use or public service. While the subject reclaimed lands are still in its hands, these lands remain public lands and form part of the public domain. Hence, the assessment of real property taxes made on said lands, as well as the levy thereon, and the public sale thereof on April 7, 2003, including the issuance of the certificates of sale in favor of the respondent Parañaque City, are invalid and of no force and effect.

On the other hand, the City of Parañaque *(respondent)* argues that PRA since its creation consistently represented itself to be a GOCC. PRA's very own charter (P.D. No. 1084) declared it to be a GOCC and that it has entered into several thousands of contracts where it represented itself to be a GOCC. In fact, PRA admitted in its original and amended petitions and pre-trial brief filed with the RTC of Parañaque City that it was a GOCC.

Respondent further argues that PRA is a stock corporation with an authorized capital stock divided into 3 million no par value shares, out of which 2 million shares have been subscribed and fully paid up. Section 193 of the LGC of 1991 has withdrawn tax exemption privileges granted to or presently enjoyed by all persons, whether natural or juridical, including GOCCs.

Hence, since PRA is a GOCC, it is not exempt from the payment of real property tax.

THE COURT'S RULING

The Court finds merit in the petition.

Section 2(13) of the Introductory Provisions of the Administrative Code of 1987 defines a GOCC as follows:

SEC. 2. General Terms Defined. – x x x

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x.

On the other hand, Section 2(10) of the Introductory Provisions of the Administrative Code defines a government "instrumentality" as follows:

SEC. 2. General Terms Defined. –– x x x

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. x x x

From the above definitions, it is clear that a GOCC must be "organized as a stock or non-stock corporation" while an instrumentality is vested by law with corporate powers. Likewise, when the law makes a government instrumentality operationally autonomous, the instrumentality remains part of the National Government machinery although not integrated with the department framework.

When the law vests in a government instrumentality corporate powers, the instrumentality does not necessarily become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality

is deemed a GOCC. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines, and Bangko Sentral ng Pilipinas. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2(13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. They are not, however, GOCCs in the strict sense as understood under the Administrative Code, which is the governing law defining the legal relationship and status of government entities.[2]

Correlatively, Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x." Section 87 thereof defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers." Further, Section 88 provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers."

Two requisites must concur before one may be classified as a stock corporation, namely: (1) that it has **capital stock** divided into shares; and (2) that it is **authorized to distribute** dividends and allotments of surplus and profits to its stockholders. If only one requisite is present, it cannot be properly classified as a stock corporation. As for non-stock corporations, they must have members and must not distribute any part of their income to said members.[3]

In the case at bench, PRA is not a GOCC because it is neither a stock nor a non-stock corporation. It cannot be considered as

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[2] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, July 20, 2006, 495 SCRA 618-619.

[3] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 169836, July 31, 2007, 528 SCRA 706, 712.

a stock corporation because although it has a capital stock divided into no par value shares as provided in Section 7[4] of P.D. No. 1084, it is not authorized to distribute dividends, surplus allotments or profits to stockholders. There is no provision whatsoever in P.D. No. 1084 or in any of the subsequent executive issuances pertaining to PRA, particularly, E.O. No. 525,[5] E.O. No. 654[6] and EO No. 798[7] that authorizes PRA to distribute dividends, surplus allotments or profits to its stockholders.

PRA cannot be considered a non-stock corporation either because it does not have members. A non-stock corporation

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[4] **Section 7.** *Capital Stock.* The Authority shall have an authorized capital stock divided into THREE MILLION (3,000,000) no par value shares to be subscribed and paid for as follows:

(a) TWO MILLION (2,000,000) shares shall be originally subscribed and paid for by the Republic of the Philippines by the transfer, conveyance and assignment of all the rights and interest of the Republic of the Philippines in that contract executed by and between the Construction and Development Corporation of the Philippines and the Bureau of Public Highways on November 20, 1973 the fair value of such rights and interests to be determined by the Board of Directors and approved by the President of the Philippines and the amount of FIVE MILLION (₱5,000,000.00) PESOS in cash;

(b) The remaining ONE MILLION (1,000,000) shares of stock may be subscribed and paid for by the Republic of the Philippines or by government financial institutions at values to be determined by the Board and approved by the President of the Philippines.

The fair value of the interests hereby transferred shall, for all intents and purposes, be considered as paid-up capital pertaining to the government of the Republic of the Philippines in the Authority.

The voting power pertaining to the shares of stock subscribed by the government of the Republic of the Philippines shall be vested in the President of the Philippines or in such person or persons as he may designate.

[5] Entitled "Designating the Public Estates Authority as the Agency primarily responsible for all Reclamation Projects" dated February 14, 1979.

[6] Entitled "Further Defining Certain Functions and Powers of the Public Estates Authority" dated February 26, 1981.

[7] Entitled "Transferring the Philippine Reclamation Authority from the Department of Public Works and Highways to the Department of Environment and Natural Resources" dated May 14, 2009.

must have members.[8] Moreover, it was not organized for any of the purposes mentioned in Section 88 of the Corporation Code. Specifically, it was created to manage all government reclamation projects.

Furthermore, there is another reason why the PRA cannot be classified as a GOCC. Section 16, Article XII of the 1987 Constitution provides as follows:

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The fundamental provision above authorizes Congress to create GOCCs through special charters on two conditions: 1) the GOCC must be established for the common good; and 2) the GOCC must meet the test of economic viability. In this case, PRA may have passed the first condition of common good but failed the second one - economic viability. Undoubtedly, the purpose behind the creation of PRA was not for economic or commercial activities. Neither was it created to compete in the market place considering that there were no other competing reclamation companies being operated by the private sector. As mentioned earlier, PRA was created essentially to perform a public service considering that it was primarily responsible for a coordinated, economical and efficient reclamation, administration and operation of lands belonging to the government with the object of maximizing their utilization and hastening their development consistent with the public interest. Sections 2 and 4 of P.D. No. 1084 reads, as follows:

Section 2. *Declaration of policy.* It is the declared policy of the State to provide for a coordinated, economical and efficient reclamation of lands, and the administration and operation of lands belonging to, managed and/or operated by the government, with the

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[8] *Manila International Airport Authority v. Court of Appeals*, *supra* note 2.

object of maximizing their utilization and hastening their development consistent with the public interest.

Section 4. *Purposes.* The Authority is hereby created for the following purposes:

(a) To reclaim land, including foreshore and submerged areas, by dredging, filling or other means, or to acquire reclaimed land;

(b) To develop, improve, acquire, administer, deal in, subdivide, dispose, lease and sell any and all kinds of lands, buildings, estates and other forms of real property, owned, managed, controlled and/or operated by the government.

(c) To provide for, operate or administer such services as may be necessary for the efficient, economical and beneficial utilization of the above properties.

The twin requirement of common good and economic viability was lengthily discussed in the case of *Manila International Airport Authority v. Court of Appeals*,[9] the pertinent portion of which reads:

Third, the government-owned or controlled corporations created through special charters are those that meet the two conditions prescribed in Section 16, Article XII of the Constitution. The first condition is that the government-owned or controlled corporation must be established for the **common good**. The second condition is that the government-owned or controlled corporation must meet the test of **economic viability**. Section 16, Article XII of the 1987 Constitution provides:

> SEC. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

The Constitution expressly authorizes the legislature to create "government-owned or controlled corporations" through special charters only if these entities are required to meet the twin conditions

[9] *Id.*

of common good and economic viability. In other words, Congress has no power to create government-owned or controlled corporations with special charters unless they are made to comply with the two conditions of common good and economic viability. **The test of economic viability applies only to government-owned or controlled corporations that perform economic or commercial activities and need to compete in the market place. Being essentially economic vehicles of the State for the common good — meaning for economic development purposes — these government-owned or controlled corporations with special charters are usually organized as stock corporations just like ordinary private corporations.**

In contrast, government instrumentalities vested with corporate powers and performing governmental or public functions need not meet the test of economic viability. These instrumentalities perform essential public services for the common good, services that every modern State must provide its citizens. These instrumentalities need not be economically viable since the government may even subsidize their entire operations. These instrumentalities are not the "government-owned or controlled corporations" referred to in Section 16, Article XII of the 1987 Constitution.

Thus, the Constitution imposes no limitation when the legislature creates government instrumentalities vested with corporate powers but performing essential governmental or public functions. Congress has plenary authority to create government instrumentalities vested with corporate powers provided these instrumentalities perform essential government functions or public services. However, when the legislature creates through special charters corporations that perform economic or commercial activities, such entities — known as "government-owned or controlled corporations" — must meet the test of economic viability because they compete in the market place.

This is the situation of the Land Bank of the Philippines and the Development Bank of the Philippines and similar government-owned or controlled corporations, **which derive their income to meet operating expenses solely from commercial transactions in competition with the private sector**. The intent of the Constitution is to prevent the creation of government-owned or controlled

corporations that cannot survive on their own in the market place and thus merely drain the public coffers.

Commissioner Blas F. Ople, proponent of the test of economic viability, explained to the Constitutional Commission the purpose of this test, as follows:

> MR. OPLE: Madam President, the reason for this concern is really that when the government creates a corporation, there is a sense in which this corporation becomes exempt from the test of economic performance. We know what happened in the past. If a government corporation loses, then it makes its claim upon the taxpayers' money through new equity infusions from the government and what is always invoked is the common good. That is the reason why this year, out of a budget of ₱115 billion for the entire government, about ₱28 billion of this will go into equity infusions to support a few government financial institutions. And this is all taxpayers' money which could have been relocated to agrarian reform, to social services like health and education, to augment the salaries of grossly underpaid public employees. And yet this is all going down the drain.
>
> Therefore, when we insert the phrase "ECONOMIC VIABILITY" together with the "common good," this becomes a restraint on future enthusiasts for state capitalism to excuse themselves from the responsibility of meeting the market test so that they become viable. And so, Madam President, I reiterate, for the committee's consideration and I am glad that I am joined in this proposal by Commissioner Foz, the insertion of the standard of "ECONOMIC VIABILITY OR THE ECONOMIC TEST," together with the common good.

Father Joaquin G. Bernas, a leading member of the Constitutional Commission, explains in his textbook The 1987 Constitution of the Republic of the Philippines: A Commentary:

> The second sentence was added by the 1986 Constitutional Commission. The significant addition, however, is the phrase "in the interest of the common good and subject to the test of economic viability." The addition includes the ideas that they must show capacity to function efficiently in business and that they should not go into activities which the private sector can

do better. Moreover, economic viability is more than financial viability but also includes capability to make profit and generate benefits not quantifiable in financial terms.

Clearly, the test of economic viability does not apply to government entities vested with corporate powers and performing essential public services. The State is obligated to render essential public services regardless of the economic viability of providing such service. The non-economic viability of rendering such essential public service does not excuse the State from withholding such essential services from the public.

However, government-owned or controlled corporations with special charters, organized essentially for economic or commercial objectives, must meet the test of economic viability. These are the government-owned or controlled corporations that are usually organized under their special charters as stock corporations, like the Land Bank of the Philippines and the Development Bank of the Philippines. These are the government-owned or controlled corporations, along with government-owned or controlled corporations organized under the Corporation Code, that fall under the definition of "government-owned or controlled corporations" in Section 2(10) of the Administrative Code. [Emphases supplied]

This Court is convinced that PRA is not a GOCC either under Section 2(3) of the Introductory Provisions of the Administrative Code or under Section 16, Article XII of the 1987 Constitution. The facts, the evidence on record and jurisprudence on the issue support the position that PRA was not organized either as a stock or a non-stock corporation. Neither was it created by Congress to operate commercially and compete in the private market. Instead, PRA is a government instrumentality vested with corporate powers and performing an essential public service pursuant to Section 2(10) of the Introductory Provisions of the Administrative Code. Being an incorporated government instrumentality, it is exempt from payment of real property tax.

Clearly, respondent has no valid or legal basis in taxing the subject reclaimed lands managed by PRA. On the other hand, Section 234(a) of the LGC, in relation to its Section 133(o),

exempts PRA from paying realty taxes and protects it from the taxing powers of local government units. Sections 234(a) and 133(o) of the LGC provide, as follows:

SEC. 234. Exemptions from Real Property Tax – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions **excep**t when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

xxx xxx xxx

SEC. 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

xxx xxx xxx

(o) Taxes, fees or charges of any kinds on the National Government, its agencies and instrumentalities, and local government units. [Emphasis supplied]

It is clear from Section 234 that real property owned by the Republic of the Philippines *(the Republic)* is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person. In this case, there is no proof that PRA granted the beneficial use of the subject reclaimed lands to a taxable entity. There is no showing on record either that PRA leased the subject reclaimed properties to a private taxable entity.

This exemption should be read in relation to Section 133(o) of the same Code, which prohibits local governments from imposing "[t]axes, fees or charges of any kind on the National Government, its agencies and instrumentalities x x x." The Administrative Code allows real property owned by the Republic to be titled in the name of agencies or instrumentalities of the national government. Such real properties remain owned by the Republic and continue to be exempt from real estate tax.

Indeed, the Republic grants the beneficial use of its real property to an agency or instrumentality of the national government. This happens when the title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption, unless "the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."[10]

The rationale behind Section 133(o) has also been explained in the case of the *Manila International Airport Authority*,[11] to wit:

> Section 133(o) recognizes the basic principle that **local governments cannot tax the national government**, which historically merely delegated to local governments the power to tax. While the 1987 Constitution now includes taxation as one of the powers of local governments, local governments may only exercise such power "subject to such guidelines and limitations as the Congress may provide."
>
> When local governments invoke the power to tax on national government instrumentalities, such power is construed strictly against local governments. The rule is that a tax is never presumed and there must be clear language in the law imposing the tax. Any doubt whether a person, article or activity is taxable is resolved against taxation. This rule applies with greater force when local governments seek to tax national government instrumentalities.
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> Another rule is that a tax exemption is strictly construed against the taxpayer claiming the exemption. However, when Congress grants an exemption to a national government instrumentality from local taxation, such exemption is construed liberally in favor of the national government instrumentality. As this Court declared in *Maceda v. Macaraig, Jr.*:
>
> > The reason for the rule does not apply in the case of exemptions running to the benefit of the government itself or its agencies. In such case the practical effect of an exemption

[10] Local Government Code, Section 234(a).

[11] *Supra* note 2.

> is merely to reduce the amount of money that has to be handled by government in the course of its operations. For these reasons, provisions granting exemptions to government agencies may be construed liberally, in favor of non tax-liability of such agencies.

There is, moreover, no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.

There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.

Thus, Section 133 of the Local Government Code states that "unless otherwise provided" in the Code, local governments cannot tax national government instrumentalities. As this Court held in *Basco v. Philippine Amusements and Gaming Corporation*:

> The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (*MC Culloch v. Maryland*, 4 Wheat 316, 4 L Ed. 579)

This doctrine emanates from the "supremacy" of the National Government over local governments.

> "Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (*Johnson v. Maryland*, 254 US 51) and it can be agreed that no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal

responsibilities, or even to seriously burden it in the accomplishment of them." (Antieau, Modern Constitutional Law, Vol. 2, p. 140, emphasis supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as "a tool for regulation." (*U.S. v. Sanchez*, 340 US 42)

The power to tax which was called by Justice Marshall as the "power to destroy" (*McCulloch v. Maryland, supra*) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it. [Emphases supplied]

The Court agrees with PRA that the subject reclaimed lands are still part of the public domain, owned by the State and, therefore, exempt from payment of real estate taxes.

Section 2, Article XII of the 1987 Constitution reads in part, as follows:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of waterpower, beneficial use may be the measure and limit of the grant.

Similarly, Article 420 of the Civil Code enumerates properties belonging to the State:

Art. 420. The following things are property of public dominion:

(1) Those **intended for public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the development of the national wealth. [Emphases supplied]

Here, the subject lands are reclaimed lands, specifically portions of the foreshore and offshore areas of Manila Bay. As such, these lands remain public lands and form part of the public domain. In the case of *Chavez v. Public Estates Authority and AMARI Coastal Development Corporation*,[12] the Court held that foreshore and submerged areas irrefutably belonged to the public domain and were inalienable unless reclaimed, classified as alienable lands open to disposition and further declared no longer needed for public service. The fact that alienable lands of the public domain were transferred to the PEA (now PRA) and issued land patents or certificates of title in PEA's name did not automatically make such lands private. This Court also held therein that reclaimed lands retained their inherent potential as areas for public use or public service.

As the central implementing agency tasked to undertake reclamation projects nationwide, with authority to sell reclaimed lands, PEA took the place of DENR as the government agency charged with leasing or selling reclaimed lands of the public domain. The reclaimed lands being leased or sold by PEA are not private lands, in the same manner that DENR, when it disposes of other alienable lands, does not dispose of private lands but alienable lands of the public domain. Only when qualified private parties acquire these lands will the lands become private lands. In the hands of the government agency tasked and authorized to dispose of alienable of disposable lands of the public domain, these lands are still public, not private lands.

Furthermore, PEA's charter expressly states that PEA "shall hold lands of the public domain" as well as "any and all kinds of lands." PEA can hold both lands of the public domain and private lands.

[12] 433 Phil. 506, 589 (2002).

Thus, the mere fact that alienable lands of the public domain like the Freedom Islands are transferred to PEA and issued land patents or certificates of title in PEA's name does not automatically make such lands private.[13]

Likewise, it is worthy to mention Section 14, Chapter 4, Title I, Book III of the Administrative Code of 1987, thus:

SEC 14. Power to Reserve Lands of the Public and Private Dominion of the Government.—

(1)The President shall have the power to reserve for settlement or public use, and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved land shall thereafter remain subject to the specific public purpose indicated until otherwise provided by law or proclamation.

Reclaimed lands such as the subject lands in issue are reserved lands for public use. They are properties of public dominion. The ownership of such lands remains with the State unless they are withdrawn by law or presidential proclamation from public use.

Under Section 2, Article XII of the 1987 Constitution, the foreshore and submerged areas of Manila Bay are part of the "lands of the public domain, waters x x x and other natural resources" and consequently "owned by the State." As such, foreshore and submerged areas "shall not be alienated," unless they are classified as "agricultural lands" of the public domain. The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use.

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[13] *Id.* at 584-585.

As the Court has repeatedly ruled, properties of public dominion are not subject to execution or foreclosure sale.[14] Thus, the assessment, levy and foreclosure made on the subject reclaimed lands by respondent, as well as the issuances of certificates of title in favor of respondent, are without basis.

WHEREFORE, the petition is **GRANTED**. The January 8, 2010 Order of the Regional Trial Court, Branch 195, Parañaque City, is **REVERSED** and **SET ASIDE**. All reclaimed properties owned by the Philippine Reclamation Authority are hereby declared **EXEMPT** from real estate taxes. All real estate tax assessments, including the final notices of real estate tax delinquencies, issued by the City of Parañaque on the subject reclaimed properties; the assailed auction sale, dated April 7, 2003; and the Certificates of Sale subsequently issued by the Parañaque City Treasurer in favor of the City of Parañaque, are all declared **VOID**.

SO ORDERED.

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

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[14] *Manila International Airport Authority v. Court of Appeals*, *supra* note 2.

[*] Designated Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated July 18, 2012.

FIRST DIVISION

[G.R. No. 192999. July 18, 2012]

DIAMOND FARMS, INC., *petitioner, vs.* **DIAMOND FARM WORKERS MULTI-PURPOSE COOPERATIVE, ELISEO EMANEL, VOLTAIRE LOPEZ, RUEL ROMERO, PATRICIO CAPRICIO, ERNESTO FATALLO, ZOSIMO GOMEZ and 100 JOHN DOES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); AGRARIAN REFORM BENEFICIARIES CANNOT BE CHARGED WITH UNLAWFUL OCCUPATION.—** [W]e agree that respondents are not guilty of unlawful occupation and that there exists no basis to award damages and attorney's fees to petitioner as respondents are agrarian reform beneficiaries who have been identified as such, and in whose favor CLOAs have been issued. We thus uphold the ruling denying petitioner's prayers in its complaint for unlawful occupation, damages and attorney's fees. x x x We also find the action taken by respondents to guard the land as reasonable and necessary to protect their legitimate possession and prevent precisely what petitioner attempted to do. Such course was justified under Article 429 of the Civil Code[.] x x x Being legitimate possessors of the land and having exercised lawful means to protect their possession, respondents were not guilty of unlawful occupation.

2. **ID.; ID.; ID.; PROCEDURE AND CONDITION FOR ACQUISITION OF PRIVATE LANDS; OWNER LOST ITS POSSESSION AND OWNERSHIP WHEN THE CONDITION WAS FULFILLED.—** The procedure for acquisition of private lands under Section 16 (e) of the CARL is that upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds, the

DAR shall take immediate possession of the land and request the proper Register of Deeds to issue a TCT in the name of the Republic of the Philippines. Thereafter, the DAR shall proceed with the redistribution of the land to the qualified beneficiaries[.] x x x Petitioner eventually acknowledged that there was indeed a deposit of the initial valuation of the land. There were two deposits of cash and agrarian reform bonds as compensation for the 109-hectare land owned by petitioner[.] x x x [P]etitioner also manifested that the Republic's TCTs which are derived from its TCTs pursuant to the CARL are neither attacked nor assailed in this case. Petitioner even argued that the transfer of possession and ownership of the land to the government is conditioned upon the receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation with an accessible bank. Following petitioner's own reasoning, petitioner has already lost its possession and ownership when the condition was fulfilled.

3. **ID.; ID.; ID.; A COMPLAINT FOR UNLAWFUL OCCUPATION WITH PRAYER TO VACATE AND PAY DAMAGES CANNOT BE MISTAKEN AS ONE FOR DETERMINATION OF JUST COMPENSATION.—** What petitioner stressed before us and before the CA to assail respondents' possession is its less-than-candid claim that it has yet to receive any compensation for the lands acquired by the government. Petitioner's cause of action in its complaint for unlawful occupation with prayer that respondents be ordered to vacate and pay damages and attorney's fees cannot also be mistaken as one for determination of just compensation. Thus, just compensation was never an issue in the case. x x x We said that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as SAC to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function. This case however was not brought before the SAC on determination of just compensation. No reversible error was therefore committed by the CA when it did not rule on just compensation.

4. **ID.; ID.; ID.; NET LOSSES ARE IRRELEVANT IN THE COMPUTATION OF THE FARMERS' PRODUCTION**

SHARE; COMPUTATION OF FARMERS' PRODUCTION SHARE, UPHELD.— Petitioner cites its net losses, computed after deductions were made on the amount of its sales. These losses however, have no bearing in computing the production share which is based on gross sales. And petitioner's own allegation of weekly production worth ₱1.46 million — the same amount used by petitioner as basis of its claim for damages — debunks its claim that no basis exists that there were sales from agricultural products of the subject land. Likewise supporting the existence of sales is petitioner's own computation of respondents' production share and its deposit of the amount of ₱2.51 million before the Office of the Regional Adjudicator. It must be noted also that farm operations normalized within five days from the filing of the complaint. In sum, petitioner failed to show any reversible error committed by the CA in affirming the DARAB's computation of respondents' production share based on the approved PPS Scheme. Notably, petitioner has admitted the fact of approval of the PPS Scheme.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Tesiorna Escurzon & Gonzales Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Diamond Farms, Inc. appeals the Decision[1] dated December 17, 2009 and Resolution[2] dated July 15, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 101384.

The facts of the case are as follows:

Petitioner is a corporation engaged in commercial farming of bananas.[3] It owned 1,023.8574 hectares of land in Carmen,

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[1] *Rollo*, pp. 39-56. Penned by Associate Justice Rebecca De Guia-Salvador with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez.

[2] *Id.* at 78-79.

[3] *Id.* at 9, 40.

Davao. A big portion of this land measuring 958.8574 hectares (958-hectare land) was initially deferred for acquisition and distribution under the Comprehensive Agrarian Reform Program (CARP).[4] On November 3, 1992, Secretary Ernesto D. Garilao of the Department of Agrarian Reform (DAR) likewise approved the Production and Profit Sharing (PPS) Scheme proposed by the Philippine Banana Growers and Exporters Association as the mode of compliance with the required production sharing under Section 32 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL).[5]

Later, on February 14, 1995, the Deferment Order was lifted and the aforesaid 958-hectare land was placed under CARP coverage. Thereafter, 698.8897 hectares of the 958-hectare land were awarded to members of the Diamond Agrarian Reform Beneficiaries Multi-Purpose Cooperative (DARBMUPCO). Petitioner, however, maintained management and control of 277.44 hectares of land, including a portion measuring 109.625 hectares (109-hectare land).

On November 23, 1999, petitioner's certificates of title over the 109-hectare land were cancelled. In lieu thereof, Transfer Certificates of Title (TCT) Nos. T-154155 to T-154160 were issued in the name of the Republic of the Philippines. On August 5, 2000, the DAR identified 278 CARP beneficiaries of the 109-hectare land, majority of whom are members of respondent Diamond Farm Workers Multi-Purpose Cooperative (DFWMPC). On October 26, 2000, the DAR issued six Certificates of Land Ownership Award (CLOAs) collectively in favor of the 278 CARP beneficiaries.[6]

Subsequently, on July 2, 2002, petitioner filed a complaint[7] for unlawful occupation, damages and attorney's fees against respondents. Petitioner alleged that as of November 1995, it

[4] *Id.* at 11, 40-41.

[5] *Id.* at 11, 41.

[6] *Id.* at 11-12, 41-42.

[7] *Id.* at 80-84.

was the holder of TCT Nos. 112068 and 112073 covering two parcels of land within the 109-hectare land. It alleged that it had been in possession for a long time of the two lands, which had a total area of 74.3393 hectares (74-hectare land), and grew thereon export-quality banana, producing on average 11,000 boxes per week worth ₱1.46 million. It alleged that the DAR's August 5, 2000 Order distributing the 109-hectare land to 278 CARP beneficiaries was not yet final on account of appeals, and therefore petitioner remains the lawful possessor of the subject land (109-hectare land) and owner of the improvements thereon. But while the CARP beneficiaries have not been finally designated and installed, respondents – its farm workers – refused to do their work from June 10, 2002, forcibly entered and occupied the 74-hectare land, and prevented petitioner from harvesting and introducing agricultural inputs. Thus, petitioner prayed that respondents be ordered to vacate the subject land; that it be allowed to harvest on the 74-hectare land; and that respondents be ordered to pay it lost income of ₱1.46 million per week from June 10, 2002 until farm operation normalizes, exemplary damages of ₱200,000, attorney's fees of ₱200,000, appearance fees, incidental expenses of ₱100,000 and costs.

In their answer with compulsory counterclaim,[8] respondents admitted that petitioner was the holder of TCT Nos. 112068 and 112073, covering the 74-hectare land and that the said land produces 11,000 boxes of export-quality bananas per week. Respondents added that besides the 74-hectare land, petitioner owned four other parcels of land covered by TCT Nos. 112058, 112059, 112062 and 112063 having a total area of 35.2857 hectares (35-hectare land). These six parcels, which altogether have a total area of 109.625 hectares (109-hectare land), were acquired by the government upon the issuance of TCTs in the name of the Republic of the Philippines. But even after CLOAs were issued to the 278 CARP beneficiaries, petitioner continued to manage the 109-hectare land, paying wages to respondents as farm workers. Since 1995 they had been demanding from petitioner payment of their production share to no avail.

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[8] *Id.* at 86-100.

Respondents further claimed that petitioner conspired with 67 CARP beneficiaries to occupy and cultivate the 35-hectare land. Petitioner tried to allow alleged beneficiaries to occupy portions of the 74-hectare land, but respondents guarded it to protect their own rights, so the intruders were able to occupy only the pumping structure. Thereafter, petitioner stopped farm operation on the 74-hectare land and refused their request to resume farm operation. By way of relief, respondents prayed that their rights as CARP beneficiaries of the 109-hectare land be recognized and that their counterclaims for production share, profit share, accrued income and interest be granted.

Petitioner filed a reply[9] and alleged that respondents initiated the commission of premature and unlawful entry into the 35-hectare land and did nothing to curb the unlawful entry of other parties. Petitioner also admitted that respondents recently allowed it to harvest and perform essential farm operations.

In their rejoinder,[10] respondents denied that they illegally entered the 35-hectare land. They averred that petitioner promoted the entry of third parties and cited petitioner's agreements with third parties for the harvest of fruits thereon.

During the proceedings before the Office of the Regional Adjudicator, petitioner submitted its computation of respondents' production and profit share from the 109-hectare land for the years 1995 to 1999 and accordingly deposited the amount of ₱2.51 million. Respondents were required to submit a project of distribution, and the parties were ordered to submit position papers. Upon compliance by respondents with the order to submit a project of distribution, the Office of the Regional Adjudicator ordered the release of the amount deposited by petitioner to respondents.[11] Respondents thereafter submitted their position paper,[12] wherein they reiterated that they had to guard the land

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[9] *Id.* at 131-133.

[10] *Id.* at 134-137.

[11] *Id.* at 155-156.

[12] *Id.* at 138-148.

to protect their rights. They confirmed petitioner's acceptance of their request to resume normal farm operation, and manifested that a precarious peace and harmony thereafter reigned on the 109-hectare land. They also repeated their prayers in their answer. Petitioner, on the other hand, failed to file its position paper despite several requests for extension of time to file the same.[13]

In his Decision,[14] the Regional Agrarian Reform Adjudicator ruled that petitioner lost its ownership of the subject land when the government acquired it and CLOAs were issued in favor of the 278 CARP beneficiaries. The appeals from the Distribution Order will not alter the fact that petitioner is no longer the owner of the subject land. Also, respondents have been identified as CARP beneficiaries; hence, they are not unlawfully occupying the land. The Adjudicator added that petitioner is unlawfully occupying the land since it has no contract with the CARP beneficiaries. Thus, the Adjudicator denied petitioner's prayers in its complaint and granted respondents' counterclaims.

Aggrieved, petitioner appealed to the DARAB, but the DARAB denied petitioner's appeal in a Decision[15] dated December 11, 2006. The DARAB ruled that petitioner is unlawfully occupying the subject land; hence, its complaint against respondents for unlawful occupation lacks merit. It also ruled that petitioner is no longer entitled to possess the subject land; that petitioner lost its ownership thereof; that ownership was transferred to the 278 CARP beneficiaries; that the appeals from the Distribution Order concern distribution and will not restore petitioner's ownership; that the 278 CARP beneficiaries can now exercise their rights of ownership and possession; and that petitioner should have delivered possession of the 109-hectare land to the CARP beneficiaries on August 5, 2000 instead of remaining in possession and in control of farm operations.

In awarding production and profit share, the DARAB held that Section 32 of the CARL requires petitioner to distribute

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[13] *Id.* at 156-157.

[14] *Id.* at 149-166.

[15] *Id.* at 276-299.

said share to respondents. The DARAB computed the production and profit share based on the PPS Scheme proposed by the Philippine Banana Growers and Exporters Association and approved by DAR Secretary Ernesto D. Garilao. The dispositive portion of the DARAB's December 11, 2006 Decision reads:

> **WHEREFORE**, premises considered, the Appeal is hereby **DENIED** for lack of merit.
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> The assailed Decision is hereby **MODIFIED** to read as follows:
>
> 1. **DENYING** the reliefs prayed for in the complaint;
> 2. **ORDERING** the [petitioner] to turn over to the respondents the possession of the subject landholding and respect the respondents' peaceful possession thereof;
> 3. **ORDERING** the [petitioner] to pay the respondents the following amount:
>   a. ₱27,553,703.25 less ₱2,511,786.00 as Production and Profit Share (PPS) from 15 February 1995 to 31 December 2005;
>   b. ₱17,796,473.43 as lease rental for the use of the land of [petitioner] from 26 October 2000 up to 31 December 2005;
>   c. ₱6,205,011.89 as accrued interest on the unpaid PPS from 01 March 1996 to 01 March 2006; and
>   d. ₱2,241,930.90 as accrued interest on the unpaid lease rental from 01 January 2001 to 01 January 2006.
> 4. **ENCOURAGING** the parties to enter into an agribusiness venture over the subject landholding, if feasible.
>
> **SO ORDERED**.[16]

Its motion for reconsideration having been denied, petitioner appealed to the CA raising the following arguments: (1) respondents are not the lawful possessors of the subject land as well as the valuable improvements thereon, prior to receipt by petitioner of the corresponding payment for the land from the

[16] *Id.* at 297-298.

government, or upon deposit in favor of petitioner of the compensation for the same in cash or in Land Bank of the Philippines (LBP) bonds; (2) not being lawful possessors of the subject land, respondents are not entitled to production share in the amount of ₱25.04 million and interest thereon in the amount of ₱6.21 million; and (3) not being lawful possessors of the subject land, respondents are not entitled to lease rentals as well as accrued interest thereon.[17]

As afore-stated, the CA in the assailed Decision affirmed the DARAB decision. The CA, however, deleted the award of lease rentals and interest thereon, to wit:

> **WHEREFORE**, the assailed December 11, 2006 Decision and August 29, 2007 Resolution are **MODIFIED** to delete the DARAB's award of lease rentals and interests thereon in favor of respondents. The rest is **AFFIRMED *in toto***.
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> **SO ORDERED**.[18]

The CA agreed with the DARAB in rejecting petitioner's bare and belated allegation that it has not received just compensation. The alleged nonpayment of just compensation is also a collateral attack against the TCTs issued in the name of the Republic of the Philippines. The CA found that petitioner has never sought the nullification of the Republic's TCTs. Further, the CA found no credible evidence relating to proceedings for payment of just compensation. The CA held that the issuance of the Republic's TCTs and CLOAs in favor of the 278 CARP beneficiaries implies the deposit in cash or LBP bonds of the amount initially determined as compensation for petitioner's land or the actual payment of just compensation due to petitioner. Additionally, the appeals over the Distribution Order cannot justify petitioner's continued possession since the appeals concern only the manner of distribution.

The CA held that petitioner became liable for respondents' production share when the Deferment Order was lifted. The

[17] *Id.* at 47-49.

[18] *Id.* at 56.

CA noted that the DARAB computed the production share based on the approved PPS Scheme. The CA also noted petitioner's deposit of ₱2.51 million as petitioner's recognition of respondents' right to production share.

Aggrieved, petitioner filed a motion for partial reconsideration contending that the CA erred when it affirmed the DARAB in ordering petitioner to (1) turn over possession of the subject land to respondents and respect their possession thereof and (2) pay respondents production and profit share of ₱25.04 million and interest of ₱6.21 million.[19] The CA, however, denied petitioner's motion for partial reconsideration.

Hence, petitioner filed the present appeal. Respondents, on the other hand, no longer appealed the CA Decision and Resolution.

In its petition, petitioner argues that

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS, IN COMPLETE DEROGATION OF THE PETITIONER'S CONSTITUTIONAL RIGHT TO RECEIVE JUST COMPENSATION FOR THE TAKING OF ITS PROPERTY, COMMITTED A SERIOUS ERROR OF LAW WHEN IT AFFIRMED THE PORTION OF THE DECISION OF THE DARAB BASED ON ITS REASONING THAT THE ISSUE OF NON-PAYMENT OF JUST COMPENSATION TO THE PETITIONER IS AN ISSUE RAISED ONLY AT THE DARAB LEVEL; THIS RULING IS SIMPLY NOT IN ACCORD WITH LAW AND PERTINENT JURISPRUDENCE

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN CONSIDERING THE PETITIONER'S ASSERTION OF ITS CONSTITUTIONAL RIGHT TO JUST COMPENSATION AS A COLLATERAL ATTACK ON THE REPUBLIC'S TITLE[20]

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[19] *Id.* at 58.

[20] *Id.* at 18.

Essentially, the issues for our resolution are: (1) whether respondents are guilty of unlawful occupation and liable to petitioner for damages and attorney's fees, (2) whether petitioner should turn over possession of the subject land to respondents and respect their possession thereof, and (3) whether the award of production share and interest was proper.

Petitioner insists that prior to its receipt of the corresponding payment for the land from the government or deposit in its favor of the compensation for the land in cash or in LBP bonds, respondents cannot be deemed lawful possessors of the subject land and the valuable improvements thereon, citing Section 16 (e) of the CARL. According to petitioner, "[i]t has yet to receive any compensation for the lands acquired by the government."[21] Petitioner also contends that the CA erred in ruling that the issue of nonpayment of just compensation was raised only at the DARAB level, such being an unavoidable issue intertwined with its cause of action. Petitioner further avers that the CA erred in ruling that petitioner's assertion of its constitutional right to just compensation is a collateral attack on the TCTs of the Republic of the Philippines. Petitioner maintains that the Republic's TCTs which are derived from its TCTs pursuant to the CARL are neither attacked nor assailed in this case. Petitioner thus prays that it be declared as the lawful owner and possessor of the subject land until its actual receipt of just compensation.

In their comment, respondents claim that petitioner is just trying to mislead this Court that it has not been paid compensation for its property. Respondents cite two Certifications[22] of Deposit (CARP Form No. 17) showing that the LBP deposited ₱9.92 million in cash and agrarian reform bonds as compensation for 91.3925 hectares of land and another 18.2325 hectares of land, or for 109.625 hectares of land (109-hectare land), owned by petitioner and covered by TCT Nos. T-112058, 112059, 112062, 112063, 112068, and 112073. Respondents also cite a DAR

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[21] *Id.* at 26.

[22] *Id.* at 401-402.

Memorandum[23] dated November 22, 1999 (CARP Form No. 18) requesting the Register of Deeds to issue TCTs in the name of the Republic of the Philippines. Respondents then summarized the consequent cancellations of the TCTs by attaching certified true copies of:

xxx xxx xxx

4. [TCT Nos.] T-112058, T-112059, T-112062, T-112063, T-112073 and T-112068 of petitioner [which show that] LBP Certificates of Deposit and DAR Memorandum-Request were duly annotated at the back thereof, and that the same were cancelled on 23 November 1999 upon issuance of TCTs in favor [of] the Republic of the Philippines;

5. [TCT Nos.] T-154159, T-154160, T-154157, T-154156, T-154155 issued in favor of the Republic of the Philippines showing that the same were cancelled on 30 October 2000 upon issuance of TCT[s] in favor of herein respondents;

6. [TCT Nos.] C-14005, C-14006, C-15311, C-15526, C-15527, C-14007, C-14004 issued in favor of herein respondents showing 'THAT THE FARM/HOMELOT DESCRIBED IN THIS CERTIFICATE OF LANDOWNERSHIP AWARD IS ENCUMBERED IN FAVOR OF THE LAND BANK OF THE PHILIPPINES TO SECURE FULL PAYMENT OF ITS VALUE UNDER [THE CARL] BY THE FARMER-BENEFICIARY NAMED HEREIN,' and that the same were already cancelled on April 30, 2009 upon issuance of TCTs in favor of herein respondent cooperative [now Davao Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative – DFARBEMPCO].[24]

In its reply, petitioner states that to "set the record straight, the documents presented by respondents refer to the deposit of the initial valuation of the land" as determined by the LBP. This is not the just compensation for the land which is required to be determined by a court of justice.[25] According to petitioner, Sections 56 and 57 of the CARL provides that the Regional Trial Court (RTC), acting as a Special Agrarian Court (SAC),

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[23] *Id.* at 403.

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

[25] *Id.* at 544.

has the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Petitioner also states that the issue of just compensation may be easily gleaned at least from the submissions of the parties in their pleadings and one that had therefore been tried under the parties' implicit agreement.

We find petitioner's contentions bereft of merit.

On the first issue, we agree that respondents are not guilty of unlawful occupation and that there exists no basis to award damages and attorney's fees to petitioner as respondents are agrarian reform beneficiaries who have been identified as such, and in whose favor CLOAs have been issued. We thus uphold the ruling denying petitioner's prayers in its complaint for unlawful occupation, damages and attorney's fees. However, we note significant facts which dispute some findings of the Adjudicator, DARAB and CA, and make the necessary clarification or correction as appropriate.

It is beyond that petitioner is the farm operator and manager while respondents are the farm workers. Both parties enjoyed possession of the land. Together, they worked thereon. Before CARP, petitioner was the landowner, farm operator and manager. Respondents are its farm workers. After the deferment period, CARP finally dawned. Petitioner lost its status as landowner, but not as farm operator and manager. Respondents remained as petitioner's farm workers and received wages from petitioner.

Now, the unrebutted claim of respondents in their answer and position paper is that they guarded the 74-hectare land to protect their rights as farm workers and CARP beneficiaries. They were compelled to do so when petitioner attempted to install other workers thereon, after it conspired with 67 CARP beneficiaries to occupy the 35-hectare land. They were fairly successful since the intruders were able to occupy the pumping structure. The government, including this Court, cannot condone petitioner's act to thwart the CARP's implementation. Installing workers on a CARP-covered land when the DAR has already identified the CARP beneficiaries of the land and has already

ordered the distribution of the land to them serves no other purpose than to create an impermissible roadblock to installing the legitimate beneficiaries on the land.

We also find the action taken by respondents to guard the land as reasonable and necessary to protect their legitimate possession and prevent precisely what petitioner attempted to do. Such course was justified under Article 429 of the Civil Code which reads:

ART. 429. The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

Being legitimate possessors of the land and having exercised lawful means to protect their possession, respondents were not guilty of unlawful occupation.

As to the immediate resumption of farm operations, petitioner admitted that respondents have already allowed it to harvest and perform essential activities. Respondents have confirmed that petitioner accepted their request to resume normal farm operations such that a precarious peace and harmony reigned on the 109-hectare land. That farm operations resumed is evident from petitioner's claim of lost income amounting to ₱1.46 million a week for four weeks, from June 10, 2002 to July 7, 2002.[26] Due to the parties' quick and voluntary agreement, farm operation and the parties' relationship normalized within five days from the filing of the complaint on July 2, 2002. We thus agree that petitioner must respect respondents' possession.

However, we disagree with the finding of the Adjudicator and DARAB that petitioner is guilty of unlawful occupation. Since respondents themselves have asked petitioner to resume its farm operation, petitioner's possession cannot be said to be illegal and unjustified.

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[26] *Id.* at 31.

This notwithstanding, we sustain the order for petitioner to turn over possession of the 109-hectare land. The DARAB and the DAR shall ensure that possession of the land is turned over to qualified CARP beneficiaries.

The procedure for acquisition of private lands under Section 16 (e) of the CARL is that upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds, the DAR shall take immediate possession of the land and request the proper Register of Deeds to issue a TCT in the name of the Republic of the Philippines. Thereafter, the DAR shall proceed with the redistribution of the land to the qualified beneficiaries, to wit:

SEC. 16. *Procedure for Acquisition of Private Lands.* – For purposes of acquisition of private lands, the following procedures shall be followed:

xxx xxx xxx

(e) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

xxx xxx xxx

Petitioner eventually acknowledged that there was indeed a deposit of the initial valuation of the land. There were two deposits of cash and agrarian reform bonds as compensation for the 109-hectare land owned by petitioner and covered by TCT Nos. T-112058, 112059, 112062, 112063, 112068 and 112073. Notably, petitioner also manifested that the Republic's TCTs which are derived from its TCTs pursuant to the CARL are neither attacked nor assailed in this case. Petitioner even

argued that the transfer of possession and ownership of the land to the government is conditioned upon the receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation with an accessible bank.[27] Following petitioner's own reasoning, petitioner has already lost its possession and ownership when the condition was fulfilled. Likewise undisputed is that in 2000, CLOAs had been issued collectively in favor of the 278 CARP beneficiaries of the 109-hectare land. These CLOAs constitute evidence of ownership by the beneficiaries under the then provisions of Section 24[28] of the CARL, to wit:

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[27] *Id.* at 26.

[28] Section 24, as amended by Republic Act No. 9700 (published in the *Manila Bulletin* and *Philippine Star* on August 24, 2009), now reads:

SECTION 24. *Award to Beneficiaries*. – The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from date of registration of the title in the name of the Republic of the Philippines: *Provided*, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds, subject to the conditions, limitations and qualifications of this Act, the property registration decree, and other pertinent laws. The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732.

It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto.

Identified and qualified agrarian reform beneficiaries, based on Section 22 of Republic Act No. 6657, as amended, shall have usufructure rights over the awarded land as soon as the DAR takes possession of such land, and such right shall not be diminished even pending the awarding of the emancipation patent or the certificate of land ownership award.

SEC. 24. *Award to Beneficiaries*. – The rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award of the land to him, which award shall be completed within one hundred eighty (180) days from the time the DAR takes actual possession of the land. Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award, x x x. (Underscoring ours.)

In the light of the foregoing, this Court cannot grant petitioner's plea that it be declared as the lawful owner of the 109-hectare land. It is also to be noted that in its complaint, petitioner did not even claim ownership of the 109-hectare land. Petitioner could only state that as of November 1995, it was the holder of the TCTs covering the 74-hectare land and that pending resolution of the appeals from the distribution orders, it remains in the meantime as the lawful possessor of the 109-hectare land. Nothing therefore supports petitioner's claim that it is the lawful owner of the 109-hectare land.

To reiterate, petitioner had lost its ownership of the 109-hectare land and ownership thereof had been transferred to the CARP beneficiaries. Respondents themselves have requested petitioner to resume its farm operations and this fact has given petitioner a temporary right to enjoy possession of the land as farm operator and manager.

We, however, agree that petitioner must now turn over possession of the 109-hectare land.

The matter has already been settled in *Hacienda Luisita, Incorporated, etc. v. Presidential Agrarian Reform Council, et al.*,[29] when we ruled that the Constitution and the CARL intended the farmers, individually or collectively, to have control over agricultural lands, otherwise all rhetoric about agrarian reform will be for naught. We stressed that under Section 4,

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR.

[29] G.R. No. 171101, April 24, 2012, pp. 17-22.

Article XIII of the 1987 Constitution and Section 2 of the CARL, the agrarian reform program is founded on the right of farmers and regular farm workers who are landless to own directly or collectively the lands they till. The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.

Under Section 16 (e) of the CARL, the DAR is mandated to proceed with the redistribution of the land to the qualified beneficiaries after taking possession of the land and requesting the proper Register of Deeds to issue a TCT in the name of the Republic of the Philippines. Section 24 of the CARL is yet another mandate to complete the award of the land to the beneficiary within 180 days from the time the DAR takes actual possession of the land.[30] And under Section 20 of DAR Administrative Order No. 9, Series of 1998, also known as the Rules and Regulations on the Acquisition, Valuation, Compensation and Distribution of Deferred Commercial Farms, CLOAs shall be registered immediately upon generation, and the Provincial Agrarian Reform Officer (PARO) shall install or cause the installation of the beneficiaries in the commercial farm within seven days from registration of the CLOA. Section 20 of the Rules provides:

> SEC. 20. *Registration of CLOAs and Installation of Beneficiaries* – CLOAs shall be registered immediately upon generation. The PARO shall install or cause the installation of the beneficiaries in the commercial farm within seven (7) days from registration of the CLOA.

We hold that the 109-hectare land must be distributed to qualified CARP beneficiaries. They must be installed on the land and have possession and control thereof.

A problem that emerged in this case is the identification of qualified CARP beneficiaries. Respondents' own evidence does not definitively show who are the legitimate CARP beneficiaries

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[30] Under the amended provisions of Section 24, such award shall be completed in not more than 180 days from the date of registration of the title in the name of the Republic of the Philippines.

in the 109-hectare land. TCT Nos. 112058, 112059, 112062, 112063, 112068, and 112073, issued in the name of petitioner, were cancelled by TCT Nos. 154155 to 154160 issued in the name of the Republic of the Philippines. The Republic's TCTs were cancelled by TCT Nos. C-14002 to C-14007.[31] Notably, TCT Nos. C-14004,[32] C-14006,[33] and C-14007[34] show that they were respectively cancelled by TCT Nos. C-27342, C-27344, and C-27345, all in favor of DFARBEMPCO. It must be verified however if DFARBEMPCO is the legitimate successor of DFWMPC, herein respondent cooperative. As regards TCT No. C-14005,[35] there was a partial cancellation by TCT No. C-27110 in favor of DARBMUPCO and total cancellation by TCT No. C-27343 in favor of DFARBEMPCO. Nothing is shown about TCT Nos. C-14002 to C-14003.

Neither can TCT Nos. C-15311,[36] C-15526,[37] and C-15527[38] provide clarity. These TCTs cited by respondents contain entries of partial or total cancellation by TCT Nos. C-27346, C-27115 and C-27114, in favor of DFARBEMPCO or DARBMUPCO. The areas covered by TCT Nos. C-15311, C-15526, and C-15527 also appear to be different than those covered by the cancelled TCTs in the name of petitioner and the Republic of the Philippines. Hence, it is imperative that the DAR and PARO assist the DARAB so that the 109-hectare land may be properly turned over to qualified CARP beneficiaries, whether individuals or cooperatives. Needless to stress, the DAR and PARO have been given the mandate to distribute the land to qualified beneficiaries and to install them thereon.

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[31] *Rollo*, pp. 405-448.

[32] *Id.* at 515-524.

[33] *Id.* at 459-468.

[34] *Id.* at 505-514.

[35] *Id.* at 449-458.

[36] *Id.* at 469-480.

[37] *Id.* at 481-492.

[38] *Id.* at 493-504.

To fully address petitioner's allegations, we move on to its claim that the issue of just compensation is an issue that may easily be gleaned at least from the submissions of the parties in their pleadings and one that had therefore been tried under the parties' implicit agreement.

Petitioner's claim is unfounded. Even the instant appeal[39] is silent on the factors to be considered[40] in determining just compensation. These factors are enumerated in Section 17[41] of the CARL which reads:

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

What petitioner stressed before us and before the CA to assail respondents' possession is its less-than-candid claim that it has yet to receive any compensation for the lands acquired by the

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[39] *Id.* at 9-33.

[40] See *Land Bank of the Philippines v. Livioco*, G.R. No. 170685, September 22, 2010, 631 SCRA 86, 108.

[41] Section 17, as amended by Republic Act No. 9700 (August 7, 2009), now reads:

SECTION 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, <u>and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court</u>. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government

government.[42] Petitioner's cause of action in its complaint for unlawful occupation with prayer that respondents be ordered to vacate and pay damages and attorney's fees cannot also be mistaken as one for determination of just compensation. Thus, just compensation was never an issue in this case.

Sections 56 and 57 of the CARL likewise provides that the RTC, acting as SAC, has original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, to wit:

> SEC. 56. *Special Agrarian Court*. - The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.
>
> xxx xxx xxx
>
> SEC. 57. *Special Jurisdiction*. – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, x x x.

We said that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as SAC to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.[43] This case however was not brought before the SAC on determination of just compensation. No reversible error was therefore committed by the CA when it did not rule on just compensation.

On the third issue, petitioner contends that respondents are not entitled to production share as well as interest since they are not lawful possessors of the subject land. Petitioner asserts that the 3% production share under Section 32 of the CARL may only be given if there are sales from the production of the

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financing institution on the said land shall be considered as additional factors to determine its valuation.

[42] *Rollo*, pp. 26, 339.

[43] *Hacienda Luisita Inc.*, *supra* note 29 at 14.

land. Petitioner however claims that it has incurred losses and that respondents admitted that farm operations in the subject land have not normalized. Petitioner thus submits that there is no factual basis in the production share from the sale of agricultural products in the subject land.

The contention has no merit.

We have already ruled that respondents' possession is legitimate. On petitioner's claim that it incurred losses, Section 32 of the CARL clearly states that the 3% production share of the farm workers is based on "gross sales from the production of such lands," to wit:

> SEC. 32. *Production-Sharing*. – Pending final land transfer, individuals or entities owning, or operating under lease or management contract, agricultural lands are hereby mandated to execute a production-sharing plan with their farmworkers or farmworkers' organization, if any, whereby three percent (3%) of the gross sales from the production of such lands are distributed within sixty (60) days of the end of the fiscal year as compensation to regular and other farmworkers in such lands over and above the compensation they currently receive: *Provided*, That these individuals or entities realize gross sales in excess of five million pesos per annum unless the DAR, upon proper application, determines a lower ceiling. (Underscoring ours.)

Petitioner cites its net losses, computed after deductions were made on the amount of its sales. These losses however, have no bearing in computing the production share which is based on gross sales. And petitioner's own allegation of weekly production worth ₱1.46 million – the same amount used by petitioner as basis of its claim for damages – debunks its claim that no basis exists that there were sales from agricultural products of the subject land. Likewise supporting the existence of sales is petitioner's own computation of respondents' production share and its deposit of the amount of ₱2.51 million before the Office of the Regional Adjudicator. It must be noted also that farm operations normalized within five days from the filing of the complaint.

In sum, petitioner failed to show any reversible error committed by the CA in affirming the DARAB's computation of respondents' production share based on the approved PPS Scheme. Notably, petitioner has admitted the fact of approval of the PPS Scheme.[44]

WHEREFORE, we **DENY** the petition for lack of merit and **AFFIRM** the Decision dated December 17, 2009 and Resolution dated July 15, 2010 of the Court of Appeals in CA-G.R. SP No. 101384.

We also **DIRECT** the Department of Agrarian Reform and the Provincial Agrarian Reform Officer to assist the Department of Agrarian Reform Adjudication Board in the distribution of the 109-hectare land to the qualified agrarian reform beneficiaries, whether individuals or cooperatives.

Let a copy of this Decision be served upon the Department of Agrarian Reform.

With costs against the petitioner.

SO ORDERED.

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

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[44] *Rollo*, p. 11.

[*] Designated Acting Chairperson of the First Division per Special Order No. 1251 dated July 12, 2012.

[**] Designated Acting Member of the First Division per Special Order No. 1252 dated July 12, 2012.

[***] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 193679. July 18, 2012]

C.F. SHARP CREW MANAGEMENT, INC., NORWEGIAN CRUISE LINES and NORWEGIAN SUN, and/or ARTURO ROCHA, *petitioners, vs.* **JOEL D. TAOK,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISABILITY BENEFITS; INSTANCES WHERE A SEAFARER MAY PURSUE AN ACTION FOR TOTAL AND PERMANENT DISABILITY BENEFITS.—** Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor

selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

2. **ID.; ID.; ID.; ID.; A SEAFARER WHO IS IN A STATE OF TEMPORARY TOTAL DISABILITY CANNOT CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS.—** As the facts of this case show, Taok filed a complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the petitioners were still attempting to address his medical condition which the law considers as temporary; and while the company-designated doctors were still in the process of determining whether he is permanently disabled or still capable of performing his usual sea duties. None of the enumerated instances when an action for total and permanent disability benefits may be instituted is present. As previously stated, the 120-day period had not yet lapsed and the company-designated physician has not yet made any declaration as to his fitness or disability. Thus, in legal contemplation, Taok was still considered to be totally yet temporarily disabled at the time he filed the complaint. Being in a state of temporary total disability, Taok cannot claim total and permanent disability benefits[.]

3. **ID.; ID.; ID.; ID.; A SEAFARER IS NOT ENTITLED TO SICKNESS WAGES AFTER HE FILED A COMPLAINT FOR TOTAL AND PERMANENT DISABILITY BENEFITS.—** The lower tribunals unanimously ruled that Taok is entitled to sickness allowance in an amount equivalent to his wages for 120 days. This, however, is erroneous. They should have not lost sight of the fact that Taok had taken a position, albeit erroneous, that he was no longer temporarily disabled by filing a complaint for total and permanent disability benefits. Alternatively, the claim that petitioners should not be paying him sickness wages but the benefits corresponding to total and permanent disability is necessarily implied from Taok's choice of remedy and the time within which he made

that choice: while the company-designated physician was still in the process of determining his fitness or unfitness for sea duty and within the 120-day period. Apart from considering Taok as having abandoned his claim for sickness wages for the period after he filed the subject complaint, there is an inherent inconsistency between Taok's claim for total and permanent disability benefits and sickness wages for the period that he claimed to be total and permanently disabled.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.

R.C. Carrera Law Office 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 May 25, 2010 and Resolution[2] dated September 8, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 103728 for being contrary to law and jurisprudence.

The Facts

Petitioner C.F. Sharp Crew Management, Inc. (C.F. Sharp) is a domestic corporation engaged in the recruitment and placement of Filipino seafarers abroad. Petitioner Norwegian Cruise Line, Ltd. (Norwegian Cruise), C.F. Sharp's principal, is a foreign shipping company, which owned and operated the vessel M/V Norwegian Sun. C.F. Sharp, on Norwegian Cruise's behalf, entered into a ten (10)-month employment contract with respondent Joel D. Taok (Taok) where the latter was engaged as cook on board M/V Norwegian Sun with a monthly salary of US$396.00. Deemed written in their contract is the Philippine Overseas Employment Administration-Standard Employment

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Samuel H. Gaerlan, concurring; *rollo*, pp. 72-80.

[2] *Id.* at 108-109.

Contract (POEA-SEC), which was issued pursuant to Department Order No. 4 of the Department of Labor and Employment and POEA Memorandum Circular No. 9, both series of 2000. Taok boarded the vessel on January 8, 2006.[3]

On July 25, 2006, Taok complained of pain in his left parasternal area, dizziness, difficulty in breathing and shortness of breath prompting the ship physician to bring him to Prince Rupert Regional Hospital in Canada for consultation. Taok was confined until July 29, 2006 and his attending physician, Dr. Johann Brocker (Dr. Brocker), diagnosed him with atrial fibrillation and was asked to take an anti-coagulant and anti-arrhythmic drug for four (4) weeks. He was advised not to report for work until such time he has undergone DC cardioversion, echocardiography and exercise stress test. Dr. Brocker projected that Taok may resume his ordinary duties within six (6) to eight (8) weeks.[4] On August 5, 2006, Taok was repatriated to the Philippines for further treatment.

On August 7, 2006, upon his arrival, Taok went to Sachly International Health Partners, Inc. (Sachly), a company-designated clinic, and the physician who attended to his case, Dr. Susannah Ong-Salvador, recommended the conduct of several tests while considering the possibility of atrial fibrillation.[5]

On September 18, 2006, Taok was once again examined at Sachly and his attending physicians, including a cardiologist, diagnosed him with "cardiomyopathy, ischemic *vs.* dilated (idiopathic); S/P coronary angiography." Taok was advised to regularly monitor his Protime and INR and to continue taking his medications. He was asked to return on October 18, 2006 for re-evaluation.[6]

Taok did not subject himself to further examination. Instead, he filed on September 19, 2006 a complaint for total and

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[3] *Id.* at 34.

[4] *Id.* at 134-136.

[5] *Id.* at 73, 137-139.

[6] *Id.* at 140.

permanent disability benefits, which was docketed as NLRC NCR OFW Case No. (L) 06-09-02902-00 and raffled to Labor Arbiter Elias H. Salinas (LA Salinas).

In a Decision[7] dated March 7, 2007, the dispositive portion of which is quoted below, LA Salinas dismissed Taok's claim for total and permanent disability.

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for permanent disability benefits for lack of merit. Respondents C.F. Sharp Crew Management, Inc. and Norwegian Cruise Line, Ltd. are however ordered to jointly and severally pay [Taok] the peso equivalent at the time of actual payment of the sum of US$1,584.00 as sickness wages plus the amount of ten percent thereof as attorney's fee.
>
> All other claims are ordered dismissed.
>
> SO ORDERED.[8]

LA Salinas ruled that Taok had no cause of action for total and permanent disability at the time he filed his complaint:

> Under the Amended POEA Standard Employment Contract, disability benefits are granted to a seafarer when he suffers a work-related illness and/or injury while working on board the vessel and such illness or injury renders him disabled. This is extant from Section 20(B) of the POEA Standard Employment Contract which is quoted hereunder:
>
> > *"B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS*
> >
> > *The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows xxx xxx xxx"*

Under the Amended POEA Contract, it is essential that the following requirements are met in order for a seafarer to be entitled to disability benefits:

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[7] *Id.* at 112-120.

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

a. the seafarer suffers an illness or injury during his employment;

b. that the illness [or] injury is proven to be work-related;

c. that the seafarer is declared disabled because of the illness or injury;

d. that the disability of the seafarer is assessed by the company doctor.

As borne out by the records, [Taok] filed the present claim for disability benefits on September 19, 2006. On said date, he was still undergoing treatment with the company-designated doctor. More importantly, there was still no assessment or declaration that the seafarer is disabled on said date. Hence, there was still no finding of disability on the part of [Taok].

It is therefore clear that [Taok] has no cause of action at the time that he instituted the present complaint. He was still undergoing treatment with the company-designated physician and there exists no medical finding that he was disabled. The allegation that "[Taok] feels that he is already unfit for sea duty as his condition is rapidly deteriorating" is not sufficient to give him a cause of action to lodge a complaint for disability benefits.[9]

LA Salinas also ruled that Taok failed to prove that his illness is work-related:

Under the Amended POEA Contract, the important requirement of work-relatedness was incorporated. The incorporation of the work-related provision has made essential the causal connection between a seafarer's work and the illness upon which the claim for disability is predicated upon.

In the case at bar, atrial fibrillation is not work-related since it is not an occupational disease under the Amended POEA Contract. Likewise, [Taok] failed to introduce credible evidence to show that his illness is work-related. It should be emphasized that it is [Taok] who has the burden of evidence to prove that the illness for which he anchors his present claim for disability benefits is work-related. As held in the case of *Rosario vs. Denklav*, G.R. No. 166906, March 16, 2005:

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

> *"The burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability. Here, petitioner failed to discharge this burden."*

In the present case, [Taok] has not presented any evidence to prove that his illness is work-related. Aside from his bare allegations that his illness is work-related, [Taok] miserably failed to introduce evidence to support such an allegation.

Thus, in the absence of substantial evidence, working conditions cannot be presumed to have increased the risk of contracting the disease, (*Rivera v. Wallem*, G.R. No. 160315, November 11, 2005).[10]

Despite the unavailability of total and permanent disability benefits, LA Salinas ruled that Taok is entitled to sickness benefits. Specifically:

However, with respect to [Taok's] claim for sickness wages, there is no evidence on record that the same had been duly paid by the [petitioners]. It should be stressed that parties have not disputed that [Taok] was repatriated for medical reasons. Though there is no proof that [Taok's] ailment is work-related that would have entitled him to the payment of disability benefits, the liability of the [petitioners] for the payment of [Taok's] sickness wages subsist pursuant to the provision of paragraph 3, B of Section 20 of the Standard Contract for Filipino Seafarers, to wit:

> *"3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall the period exceed one hundred twenty (120) days."*

Thus, it stands to reason that [Taok] should be paid his sickness wages equivalent to his four months salary in the amount of US$1,584.00.[11]

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[10] *Id.* at 117-118.

[11] *Id.* at 119.

Taok appealed to the National Labor Relations Commission (NLRC) and presented two (2) medical certificates to support his claim for total and permanent disability benefits. The medical certificate dated December 4, 2006, which was issued by Dr. Francis Marie A. Purino, stated that Taok was suffering from cardiomyopathy and moderately severe systolic dysfunction.[12] The medical certificate dated June 13, 2007, which was issued by Dr. Efren R. Vicaldo (Dr. Vicaldo), stated that Taok manifested signs compatible with those of atrial fibrillation and declared him unfit for sea duty. Dr. Vicaldo declared that Taok's illness is work-related.[13]

In a Resolution[14] dated November 19, 2007, the NLRC affirmed the dismissal of Taok's complaint:

Upon the other hand, before the seafarer may be entitled to disability compensation, the following conditions must be sufficiently established by the seafarer like [Taok]:

"1. That the illness/injury was suffered during the term of employment;

2. That the illness/injury is work-related;

3. That the seafarer report to the company-designated physician for a post[-]employment medical examination and evaluation within three (3) working days from the time of his return; AND

4. That any disability should be assessed by the company-designated physician on the basis of the Schedule of Disability Grades as provided under the POEA-SEC."

A careful scrutiny of the records, however, reveals that [Taok] failed to establish or satisfy all the foregoing requirements. While his illness manifested during the term of his employment and he reported to the company-designated physician for post[-]employment

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[12] *Id.* at 143.

[13] *Id.* at 142.

[14] Penned by Commissioner Perlita B. Velasco, with Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go, concurring; *id.* at 122-130.

medical examination within the required period, there is no showing that his illness is work-related and that as a consequence of such work-related illness, he is suffering from a disability assessed by a company[-] designated physician on the basis of the Schedule of Disability Grades specified under the POEA-SEC. In fact, as aptly observed by the Labor Arbiter[,] when [Taok] instituted his complaint for disability benefits barely a month after his repatriation, he was still undergoing treatment and evaluation by the company-designated physician. Thus, there was still no finding as to whether or not his ailment is work-related and whether or not he is suffering from any disability. x x x[15]

Taok moved for reconsideration but this was denied by the NLRC in a Resolution[16] dated March 18, 2008.

Taok, thus, filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, alleging that the assailed issuances of the NLRC were attended with grave abuse of discretion. The CA, in its Decision[17] dated May 25, 2010 agreed with Taok and reversed the findings of the NLRC:

WHEREFORE, premises considered, the assailed Decision of the NLRC in NLRC NCR CA No. 052971-07 is hereby **REVERSED** and **SET ASIDE**. Private respondents C.F. SHARP CREW MANAGEMENT, INC., ARTURO ROCHA, NORWEGIAN CRUISE LINE and NORWEGIAN SUN, are **ORDERED** to pay jointly and severally the amount of **US$60,000.00** as permanent and total disability benefits of [Taok] and **US$1,584.00** as sickness wages plus the amount of **ten (10) percent** thereof as attorney's fee.

SO ORDERED.[18]

In holding that petitioners are liable for total and permanent disability benefits, the CA ruled that: (a) Taok's illness is compensable under Section 32-A of POEA-SEC; and (b) since Taok was asymptomatic prior to boarding and he manifested

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[15] *Id.* at 126-127.

[16] *Id.* at 132-133.

[17] *Id.* at 72-80.

[18] *Id.* at 79.

signs of his illnesses while under the petitioners' employ, the causal relationship between his work and his illness is presumed pursuant to paragraph 11(c) of Section 32-A of POEA-SEC and the petitioners failed to prove the contrary:

"Under the Labor Code, as amended, the law applicable to the case at bar, in order for the employee to be entitled to sickness benefits, the sickness resulting therefrom must be or must have resulted from either (a) any illness definitely accepted as an occupational disease listed by the Commission, or (b) any illness caused by employment, subject to proof that the risk of contracting the same is increased by working conditions." In other words, "for a sickness and the resulting disability to be compensable, the said sickness must be an occupational disease listed under Sec. 32 of POEA Memorandum Circular No. 09, S-2000, otherwise, the claimant or employee concerned must prove that the risk of contracting the disease is increased by the working condition."

xxx xxx xxx

[Taok's] illness was characterized as *"cardiomyopathy, ischemic vs. dilated (idiopathic); S/P coronary angiography"* or dilated myopathy which falls under the classification *"cardiovascular diseases"* under Sec. 32-A of Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 09, S-2000.

Likewise, Sec. 32-A of POEA Memorandum Circular No. 09, S-2000 provides the following conditions in order for the cardiovascular disease to be considered as compensable occupational disease:

"a) If the heart disease was known to have been present during employment there must be proof that an acute exacerbation clearly precipitated by the unusual strain by reason of the nature of his work.

b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty [-]four (24) hours by the clinical signs of a cardiac insult to constitute causal relationship.

c) If a person who was apparently asymptomatic before subjecting himself to strain of work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship."

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Indisputably, cardiovascular diseases, which, as herein above-stated, include atherosclerotic heart disease, atrial fibrillation, cardiac arrhythmia, are listed as compensable occupational diseases under Sec. 32-A Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 09, S-2000, hence, no further proof of causal relation between the disease and claimant's work is necessary.[19] (Citation omitted)

The CA found the evidence submitted by Taok sufficient to establish a causal connection between his illness and his work. According to the CA, it is not necessary that Taok prove with certainty that it was his work that caused his illness. As he displayed no signs of having any cardiovascular disease prior to being employed, it would suffice that there was evidence that he manifested the symptoms of his medical condition during his employment to show the probability of a causal relationship. The petitioners failed to demonstrate that Taok's consumption of sixty (60) cigarette sticks per day for twenty (20) years and regular alcohol intake were the proximate causes. Below are the relevant portions of the CA's decision:

Contrary to private respondents' claim, [Taok's] strenuous work is the proximate cause of his hypertensive cardiovascular disease. Private respondents' assertion that subject illness was developed by [Taok's] consumption of sixty (60) sticks of cigarettes a day for 20 years and drinking of alcohol deserves scant consideration. On the contrary, Dr. Johann Brocker of Prince Rupert Internal Medicine indicated in his medical findings that [Taok] is a non-smoker and had no recent excessive alcohol intake. Secondly, private respondents' designated physician declared [Taok] ill and unfit in their medical progress report on 7 August [2006] and 18 September 2006, respectively, that they recommended that [Taok] should continue with his medications and should be monitored weekly.[20] (Citation omitted)

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[19] *Id.* at 76-78.

[20] *Id.* at 78.

Petitioners moved for reconsideration but this was denied by the CA in a Resolution[21] dated September 8, 2010.

Before this Court, petitioners are principally contending that the CA has no basis in awarding Taok with total and permanent disability benefits and sickness wages. It is the company-designated physician who should determine the disability grading or fitness to work of seafarers and such determination was yet to be made at the time Taok filed his complaint.

Petitioners claim that the CA's issuance of a writ of *certiorari* to reverse and set aside the NLRC's Resolutions dated November 19, 2007 and March 18, 2008 is erroneous as: (a) Taok's illnesses are not compensable; (b) assuming the contrary, Taok failed to prove that it was his working conditions that caused his ailments or that they aggravated the risk of contracting them; (c) contrary to Taok's claim that it was his duties as cook that engendered his medical condition, his excessive smoking for a considerable period of time and regular alcohol intake are the primary causes thereof; and (d) while stress is one of the recognized causes of atrial fibrillation and cardiomyopathy, his duties as cook are definitely not strenuous. Petitioners claim that the CA had no basis for stating that evidence of a causal relationship between a seafarer's illness and his work is presumed as Section 32-A of the POEA-SEC requires proof of work-relatedness.

Petitioners also claim that assuming as true that Taok had been rendered unfit for sea duty as stated in the medical certificate issued by Dr. Vicaldo in June 13, 2007, it was because of his failure to return for a follow-up check-up on October 18, 2006 for further examination. This falls short of the diligence required given the circumstances and this bars him from claiming disability benefits.[22]

With respect to the award of sickness wages, petitioners allege that they had already paid Taok the said benefit in an amount

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[21] *Id.* at 108-109.

[22] *Id.* at 55-58.

corresponding to the period from August 6, 2006 to September 31, 2006.[23]

Our Ruling

A seafarer's right to disability benefits is a matter governed by law, contract and medical findings. The relevant legal provisions are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation (AREC). The relevant contracts are the POEA-SEC, the collective bargaining agreement (CBA), if any, and the employment agreement between the seafarer and his employer.

Considering that the present dispute centers on Taok's claim for total and permanent disability and given the nature of his ailments, this Court makes reference to the definition of total and permanent disability under Article 192(c)(1) of the Labor Code:

(c) The following disabilities shall be deemed total and permanent:

> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

xxx xxx xxx

This Court also deems it necessary to cite Section 2(a), Rule X of the AREC for being the rule referred to in Article 192(c)(1) of the Labor Code:

Sec. 2. Period of Entitlement — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

[23] *Id.* at 97-100, 144-145.

On the other hand, Paragraphs 1, 2, 3, 5 and 6 of Section 20-B of the POEA-SEC enumerate the duties of an employer to his employee who suffers work-related diseases or injuries during the term of their employment contract. To quote:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation, or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

This Court likewise takes note of the Paragraph 11 of Section 32-A of the POEA-SEC quoted in the assailed decision of the CA, which enumerates the three (3) conditions for a cardiovascular disease to be considered compensable. This is in view of the CA's conclusion that Taok complied with the third condition and that his ailments are cardiovascular in nature.

This Court observed that the CA's appreciation of the case is different from that of the NLRC and that of LA Salinas. Particularly, the CA deemed it appropriate to award total and permanent disability benefits to Taok because atrial fibrillation and cardiomyopathy are cardiovascular diseases and the evidence on record sufficiently proved the existence of one of the conditions stated in Paragraph 11, Section 32-A of the POEA-SEC. The CA stressed that under this particular condition, Taok's illnesses are presumed to be work-related based on the undisputed fact that Taok manifested the symptoms while he was in the performance of his duties.

On the other hand, while the labor tribunals resolved the issue of whether Taok's illnesses are compensable under the provisions of the POEA-SEC, it is apparent that the dismissal of Taok's complaint is primarily based on its supposed lack of a cause of action. They held that the duty to pay total and permanent disability benefits will not arise in the absence of a finding of disability by the company-designated physician and Taok's opinion that his medical condition had rendered him unfit for sea duty is not the kind of assessment contemplated and acceptable under the POEA-SEC.

The CA did not rule on the issue of whether NLRC was correct in holding that the determination of the company-designated physician is necessary for a cause of action for total and permanent disability benefits to arise. As far as the CA is concerned, Taok acquired a cause of action for total and permanent disability

benefits when he became symptomatic while on sea duty, subsequently diagnosed with atrial fibrillation and cardiomyopathy by the company-designated physician, then repatriated and under treatment by the company-designated physician. That there was no declaration by the company-designated physician that Taok is totally and permanently disabled is inconsequential.

Taok is not entitled to total and permanent disability benefits.

This Court finds the CA to have committed a serious error in this regard. The NLRC and LA Salinas did not commit grave abuse of discretion in dismissing Taok's complaint that would warrant the issuance of a writ of *certiorari*.

The special civil action for *certiorari* under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[24]

In this case, Taok failed to demonstrate that the NLRC's dismissal of his complaint was attended with grave abuse of discretion or that the NLRC had no jurisdiction to order the same. On the contrary, the dismissal was warranted since at

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[24] *Julie's Franchise Corporation v. Ruiz,* G.R. No. 180988, August 28, 2009, 597 SCRA 463, 471, citing *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693.

the time Taok filed his complaint against the petitioners, he had no cause of action against them.

When Taok filed his complaint on September 19, 2006, the 120-day period for him to be considered in legal contemplation as totally and permanently disabled under Article 192(c)(1) of the Labor Code had not yet lapsed. It was on July 27, 2006 that he was brought to Prince Rupert Medical Hospital for medical attention. If this would be considered as his first day of disability pursuant to Section 2(a), Rule X of the AREC or the day he signed-off from the vessel based on Paragraph 3, Section 20-B of the POEA-SEC, only 55 days had elapsed.

The importance of this 120-day period cannot be overemphasized that the CA's failure to consider and apply it in the disposition of this case strikes this Court as absurd. In *Vergara v. Hammonia Maritime Services, Inc.*,[25] this Court discussed the significance of the 120-day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability.

It is also in *Vergara* that this Court addressed the apparent conflict between Paragraph 3, Section 20 of the POEA-SEC on the one hand and Article 192(c)(1) of the Labor Code and Section 2, Rule X of the AREC. While it may appear under Paragraph 3, Section 20 of the POEA-SEC and Article 192(c)(1) of the Labor Code that the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with Section 2, Rule X of the AREC indicates otherwise. That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a

[25] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

maximum of 240 days. Within such period, the seafarer is entitled to sickness wages. In *Vergara*, this Court stated:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course be declared fit to work at any time such declaration is justified by his medical condition.[26] (Citations omitted)

Based on this Court's pronouncements in *Vergara*, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated

[26] *Id.* at 628.

physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

As the facts of this case show, Taok filed a complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the petitioners were still attempting to address his medical condition which the law considers as temporary; and while the company-designated doctors were still in the process of determining whether he is permanently disabled or still capable of performing his usual sea duties.

None of the enumerated instances when an action for total and permanent disability benefits may be instituted is present. As previously stated, the 120-day period had not yet lapsed and the company-designated physician has not yet made any declaration as to his fitness or disability. Thus, in legal contemplation, Taok was still considered to be totally yet temporarily disabled at the time he filed the complaint. Being in a state of temporary total disability, Taok cannot claim total and permanent disability benefits as he is only entitled to: (a) sickness wages under Section 20-B(3) of the POEA-SEC; (b) repatriation with the employer shouldering the full costs thereof under Section 20-B(5); and (c) medical treatment including board and lodging with the full costs thereof borne by the employer.

Taok cannot be considered as having acquired a cause of action for total and permanent disability benefits.

Consequently, any further discussion as to whether Taok's ailments are compensable or whether his alleged disability is partial and permanent or total and permanent would be a mere surplusage. The medical certificates Taok presented to prove that he is totally and permanently disabled are of no use and will not give him that cause of action that he sorely lacked at the time he filed his complaint. Indeed, a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a certification as to his fitness or disability and he finds this disagreeable. Under the same provision, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings. It is patent from the records that Taok submitted these medical certificates during the pendency of his appeal before the NLRC. More importantly, Taok prevented the company-designated physician from determining his fitness or unfitness for sea duty when he did not return on October 18, 2006 for re-evaluation. Thus, Taok's attempt to convince this Court to put weight on the findings of his doctors-of-choice will not prosper given his failure to comply with the procedure prescribed by the POEA-SEC.

Taok is not entitled to sickness wages from the period after he filed a complaint for total and permanent disability benefits.

As provided under Paragraph 3, Section 20-B of the POEA-SEC, a seafarer is entitled to sickness wages during the period he is deemed to be temporarily and totally disabled. Without need for further extrapolation, the objective of the law in providing for the payment of sickness wages is to aid the seafarer while his disability prevents him from performing his usual duties.

As discussed above, this condition of temporary and total disability may last for a period of 120 to 240 days depending on the need for further medical treatment. It bears emphasis,

however, that the seafarer is not automatically entitled to 120 to 240 days worth of sickness wages. If the company-designated physician determines that the seafarer is already fit for sea duty, then, the employer's obligation to pay sickness wages ceases and he is entitled to reinstatement to his former position. On the other hand, if the company-designated physician declares that the seafarer is already permanently disabled, the employer's obligation to pay sickness wages likewise ceases as the obligation to pay the corresponding disability benefits.

The lower tribunals unanimously ruled that Taok is entitled to sickness allowance in an amount equivalent to his wages for 120 days. This, however, is erroneous. They should have not lost sight of the fact that Taok had taken a position, albeit erroneous, that he was no longer temporarily disabled by filing a complaint for total and permanent disability benefits. Alternatively, the claim that petitioners should not be paying him sickness wages but the benefits corresponding to total and permanent disability is necessarily implied from Taok's choice of remedy and the time within which he made that choice: while the company-designated physician was still in the process of determining his fitness or unfitness for sea duty and within the 120-day period. Apart from considering Taok as having abandoned his claim for sickness wages for the period after he filed the subject complaint, there is an inherent inconsistency between Taok's claim for total and permanent disability benefits and sickness wages for the period that he claimed to be total and permanently disabled.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 25, 2010 and Resolution dated September 8, 2010 of the Court of Appeals in CA-G.R. SP No. 103728 are hereby **REVERSED** and **SET ASIDE**. Joel D. Taok's complaint docketed as NLRC NCR OFW Case No. (L) 06-09-02902-00 is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200922. July 18, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CESAR CONCEPCION *y* BULANIO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; ROBBERY AND THEFT, DISTINGUISHED.—** Article 293 of the RPC defines robbery as a crime committed by "any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything." Robbery with homicide occurs when, by reason or on occasion of the robbery, the crime of homicide shall have been committed. In Article 249 of the RPC, any person who shall kill another shall be deemed guilty of homicide. Homicide, as used in robbery with homicide, is to be understood in its generic sense to include parricide and murder. The penalty for the crime of robbery with homicide is *reclusion perpetua* to death. Theft, on the other hand, is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. The penalty of *prision correctional* in its minimum and medium periods is imposed upon persons guilty of theft, if the value of the thing stolen is more than ₱200 but does not exceed ₱6,000.

2. **ID.; THEFT; WHERE THE PROSECUTION FAILED TO ESTABLISH THE USE OF VIOLENCE, INTIMIDATION OR FORCE, ONLY THEFT IS COMMITTED .—** The prosecution failed to establish that Concepcion used violence, intimidation or force in snatching Acampado's shoulder bag. Acampado herself merely testified that Concepcion snatched her shoulder bag which was hanging on her left shoulder. Acampado did not say that Concepcion used violence, intimidation or force in snatching her shoulder bag. Given the facts, Concepcion's snatching of Acampado's shoulder bag constitutes the crime of theft, not robbery. Concepcion's crime of theft was aggravated by his use of motorcycle in committing

the crime. Under Article 14(20) of the RPC, the use of a motor vehicle as a means of committing a crime is a generic aggravating circumstance.

3. **ID.; ID.; PENALTY FOR THEFT WITH GENERIC AGGRAVATING CIRCUMSTANCE OF USE OF MOTOR VEHICLE.—** Since Concepcion is guilty of the crime of theft of property valued at ₱3,000, the penalty shall be the maximum period imposed by the RPC due to the presence of the generic aggravating circumstance of use of a motor vehicle in the commission of the crime. The maximum penalty to be imposed upon Concepcion is *prision correctional* in its medium period. However, applying the Indeterminate Sentence Law, the minimum period of Concepcion's penalty shall be within the range of the penalty next lower to that prescribed by the RPC for the offense, which is *arresto mayor* in its maximum period. For this reason, we impose upon Concepcion the penalty of *arresto mayor* in its maximum period, which is 6 months, to *prision correctional* in its medium period, which is 4 years and 2 months.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a criminal case filed against the accused Cesar Concepcion *y* Bulanio (Concepcion) for the crime of robbery with homicide under Article 294 of the Revised Penal Code (RPC), committed as follows:

That on or about the 25th day of May 2004, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with his co-accused ROSENDO OGARDO, JR. *Y* VILLEGAS, with intent to gain, by means of force, violence and

intimidation of person, did then and there, willfully, unlawfully and feloniously rob one JENNIFER ACAMPADO *Y* QUIMPO, in the following manner, to wit: While complainant was walking along Panay Avenue corner Timog Avenue, Barangay Paligsahan, this City, accused suddenly appeared from behind riding in a Suzuki motorcycle with Plate no. RG-7037 and forcibly took, robbed and carried away complainant's shoulder bag containing wrist watch, earring, brochure, bracelet and wallet all valued at ₱3,000.00, Philippine Currency, and that on the occasion of the said robbery, accused ROSENDO OGARDO, JR. *Y* VILLEGAS died due to vehicular accident; to the damage and prejudice of the said offended party in the aforementioned amount.

Contrary to law.[1]

The Regional Trial Court (RTC) of Quezon City, Branch 81, in its Decision dated 1 August 2006 (RTC Decision),[2] found Concepcion guilty beyond reasonable doubt of the crime of robbery with homicide and sentenced him to suffer the penalty of *reclusion perpetua* with all accessory penalties provided by law, and to reimburse private complainant Jennifer Q. Acampado (Acampado) the amount of ₱3,000 representing the cash, jewelry and other personal items taken from her. On appeal, the Fourth Division of the Court of Appeals (CA) affirmed *in toto* the RTC Decision.

Prosecution's Version of Facts

The RTC Decision provided the prosecution's version of facts, as supported by the records:

At around 11:00 o'clock a.m. of May 25, 2004, while private complainant Jennifer Acampado was at the corner of Mother Ignacia Street, Quezon City and at another street which she could not remember and seemed to be deserted at that time, a male person riding at the back of the driver of a motorcycle whom she later identified in open court as accused Cesar Concepcion, snatched her brown Avon bag with black strap which at that time, was placed on her left shoulder. The black motorcycle with white covering at the

[1] CA *rollo*, p. 11.

[2] *Id.* at 13-16.

back side and with plate number which is not visible to the eye, came from behind her. As the motorcycle sped away, the accused even raised and waved the bag that he snatched from Jennifer who was unable to do anything but just cry and look at the snatcher so much so that she recognized him in the process.

Meanwhile, while prosecution witness Joemar de Felipe was driving his R & E Taxi, in the same vicinity, he witnessed the subject snatching incident. As the accused was waving the bag at Jennifer, he blew his horn. Ogardo drove faster so that de Felipe gave a chase and kept on blowing his horn. Eventually, Ogardo lost control of the motorcycle and it crashed in front of his taxi, sending its two occupants to the pavement. De Felipe immediately alighted from the taxi with the intention to arrest the snatchers. At that juncture, some policemen from the Kamuning Police Station 10, EDSA, Kamuning, Quezon City, arrived. Seeing that the snatchers were badly injured, the policemen brought them to the East Avenue Medical Center, Quezon City where Ogardo later expired.[3]

Defense's Version of Facts

The RTC Decision likewise summarized the defense's version of facts, as follows:

For the defense, the accused testified. He denies participation in the snatching incident and contends that at around 11:00 a.m. of May 25, 2004, he and his companion, Rosendo Ogardo, were riding in a motorcycle when suddenly there was this chasing by another motorcycle. A taxi bumped their motorcycles and Rosendo was thrown to the gutter. Rosendo was severely injured. The police brought them to the East Avenue Medical Center where Rosendo died. Thereafter, he was brought to the police station where a woman pointed to him as snatcher. A case for robbery with homicide was filed against him on the same day.[4]

The Decision of the Regional Trial Court

The RTC declared Concepcion guilty beyond reasonable doubt of the crime of robbery with homicide. The dispositive portion of the RTC Decision reads:

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

[4] *Id.* at 15.

WHEREFORE, the Court finds accused CESAR CONCEPCION *y* BULANIO guilty beyond reasonable doubt of the crime of ROBBERY WITH HOMICIDE described and penalized under Article 294 of the Revised Penal Code as amended by R.A. 7659 in relation to Article 61 of the RPC and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided by law and to reimburse private complainant Jennifer Acampado the amount of ₱3,000 representing the cash, jewelry and other personal items taken from her.[5]

The RTC declared that all elements of the crime of robbery were duly proven. The prosecution sufficiently established the identity of Concepcion as the person who snatched Acampado's bag because Concepcion was positively identified by the victim Acampado and Joemar de Felipe (de Felipe), who both had no ill-motive to falsely testify against Concepcion.

<u>The Decision of the Court of Appeals</u>

The CA affirmed the conviction of Concepcion. The dispositive portion of the CA Decision reads:

WHEREFORE, the appealed decision of Branch 81 of the RTC of Quezon City, dated August 1, 2006 is hereby AFFIRMED *IN TOTO*.[6]

The CA declared that robbery with homicide was committed. The CA held that, for as long as the homicide resulted during, or because of, the robbery, even if the killing was by mere accident, robbery with homicide was committed. It is immaterial that death supervened by mere accident or that the victim of homicide was a person other than the victim of robbery or that two or more persons were killed. What is essential is that there is a direct relation or intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time.[7]

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[5] *Id.* at 16.

[6] *Rollo*, p. 11.

[7] *Id.* at 10.

The Issues

Concepcion, in his brief, raised the following issues:

I. THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

II. THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8]

Concepcion discussed the issues jointly, claiming that the CA erred because: (a) it gave credence to the inconsistent testimonies of the prosecution witnesses regarding the date and manner of the commission of the crime; (b) even assuming that he snatched Acampado's shoulder bag, Concepcion should be held liable for simple theft only; and (c) the prosecution failed to establish that Ogardo's death was by reason or on the occasion of the alleged robbery.[9]

The Ruling of the Court

Inconsistent Testimonies of Prosecution Witnesses

Concepcion claims that Acampado and de Felipe, both prosecution witnesses, made inconsistent testimonies. First, de Felipe testified that the snatching incident happened on 26 May 2004, when the information states that the alleged crime was committed on 25 May 2004.[10] Second, Acampado testified that Concepcion was on board the motorcycle, sitting at the back of Ogardo, when Concepcion snatched Acampado's shoulder bag from behind. In contrast, de Felipe testified that Concepcion alighted from the motorcycle and forcibly took Acampado's

[8] CA *rollo*, p. 41.

[9] *Id.* at 41-44.

[10] *Id.* at 41.

shoulder bag.[11] Lastly, de Felipe, on direct examination, claimed that the motorcycle slid and Ogardo and Concepcion fell on the street. On cross examination, however, de Felipe admitted that his taxi bumped the motorcycle, causing Concepcion and Ogardo to be thrown off the motorcycle.[12]

It is a general principle of law that factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which, if properly considered, would have materially affected the outcome of the case.[13] We find no compelling reason to disturb the factual findings of the RTC, as affirmed by the CA, in this case.

Robbery vs. Theft

On the second and third issues, Article 293 of the RPC defines robbery as a crime committed by "any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything." Robbery with homicide occurs when, by reason or on occasion of the robbery, the crime of homicide shall have been committed.[14] In Article 249 of the RPC, any person who shall kill another shall be deemed guilty of homicide. Homicide, as used in robbery with homicide, is to be understood in its generic sense to include parricide and murder.[15] The penalty for the crime of robbery with homicide is *reclusion perpetua* to death.[16]

Theft, on the other hand, is committed by any person who, with intent to gain but without violence against or intimidation

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[11] *Id.* at 42.

[12] *Id.*

[13] *People v. Mendoza,* 324 Phil. 273, 285 (1996); *People v. Gallo*, G.R. No. 187730, 29 June 2010, 622 SCRA 439, 460.

[14] Revised Penal Code, Art. 294(1).

[15] *People v. Manalang*, 252 Phil. 147, 163 (1989).

[16] Revised Penal Code, Art. 294(1).

of persons nor force upon things, shall take the personal property of another without the latter's consent.[17] The penalty of *prision correccional* in its minimum and medium periods is imposed upon persons guilty of theft, if the value of the thing stolen is more than ₱200 but does not exceed ₱6,000.[18]

By definition in the RPC, robbery can be committed in three ways, by using: (a) violence against any person; (b) intimidation of any person; and/or (c) force upon anything. Robbery by use of force upon things is provided under Articles 299 to 305 of the RPC.

The main issue is whether the snatching of the shoulder bag in this case is robbery or theft. Did Concepcion employ violence or intimidation upon persons, or force upon things, when he snatched Acampado's shoulder bag?

In *People v. Dela Cruz*,[19] this Court found the accused guilty of theft for snatching a basket containing jewelry, money and clothing, and taking off with it, while the owners had their backs turned.

In *People v. Tapang*,[20] this Court affirmed the conviction of the accused for frustrated theft because he stole a white gold ring with diamond stones from the victim's pocket, which ring was immediately or subsequently recovered from the accused at or about the same time it was stolen.

In *People v. Omambong*,[21] the Court distinguished robbery from theft. The Court held:

> Had the appellant then run away, he would undoubtedly have been guilty of theft only, because the asportation was not effected against the owner's will, but only without his consent; although, of

[17] Revised Penal Code, Art. 308.

[18] Revised Penal Code, Art. 309(3).

[19] 76 Phil. 601 (1946).

[20] 88 Phil. 721, 722 (1951).

[21] 34 O.G. 1853 (1936).

course, there was some sort of force used by the appellant in taking the money away from the owner.

xxx xxx xxx

What the record does show is that when the offended party made an attempt to regain his money, the appellant's companions used violence to prevent his succeeding.

xxx xxx xxx

The crime committed is therefore robbery and not theft, because personal violence was brought to bear upon the offended party before he was definitely deprived of his money.[22]

The prosecution failed to establish that Concepcion used violence, intimidation or force in snatching Acampado's shoulder bag. Acampado herself merely testified that Concepcion snatched her shoulder bag which was hanging on her left shoulder. Acampado did not say that Concepcion used violence, intimidation or force in snatching her shoulder bag. Given the facts, Concepcion's snatching of Acampado's shoulder bag constitutes the crime of theft, not robbery. Concepcion's crime of theft was aggravated by his use of a motorcycle in committing the crime. Under Article 14(20) of the RPC, the use of a motor vehicle as a means of committing a crime is a generic aggravating circumstance. Thus, the maximum period of the penalty for the crime of theft shall be imposed upon Concepcion due to the presence of a generic aggravating circumstance and the absence of any mitigating circumstance.

Based on the RTC Decision's statement of facts which was affirmed by the CA, Concepcion's co-conspirator, Rosendo Ogardo, Jr. *y* Villegas (Ogardo), who was driving the motorcycle, died because he lost control of the motorcycle and crashed in front of de Felipe's taxi. Since Concepcion, as passenger in the motorcycle, did not perform or execute any act that caused the death of Ogardo, Concepcion cannot be held liable for homicide.

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[22] *Id.* at 1853-1854.

Indeterminate Sentence Law

Section 1 of Act No. 4103 (The Indeterminate Sentence Law) provides:

> [I]n imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense x x x
>
> xxx xxx xxx
>
> This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof.

Since Concepcion is guilty of the crime of theft of property valued at ₱3,000, the penalty shall be the maximum period imposed by the RPC due to the presence of the generic aggravating circumstance of use of a motor vehicle in the commission of the crime. The maximum penalty to be imposed upon Concepcion is *prision correccional* in its medium period. However, applying the Indeterminate Sentence Law, the minimum period of Concepcion's penalty shall be within the range of the penalty next lower to that prescribed by the RPC for the offense, which is *arresto mayor* in its maximum period. For this reason, we impose upon Concepcion the penalty of *arresto mayor* in its maximum period, which is 6 months, to *prision correccional* in its medium period, which is 4 years and 2 months.

WHEREFORE, we **SET ASIDE** the 6 September 2011 Decision of the Court of Appeals in C.A.-G.R. CR-H.C. No. 04200 affirming the judgment of conviction of robbery with homicide of the Regional Trial Court, Branch 81 of Quezon City in Criminal Case No. 04-127163 dated 1 August 2006. We find appellant Cesar Concepcion *y* Bulanio **GUILTY** beyond reasonable doubt of the crime of **THEFT** with the presence of a generic aggravating circumstance of use of motor vehicle in the commission of the crime and impose upon him the indeterminate penalty of *arresto mayor* in its maximum period, or 6 months, to *prision correccional* in its medium period, or 4 years and 2 months.

We **DIRECT** the Director of the Bureau of Corrections to implement this Decision and to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192450. July 23, 2012]

SANTIAGO V. SOQUILLO, *petitioner, vs.* **JORGE P. TORTOLA,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; WHERE THE CASE WAS FOR DECLARATION OF NULLITY OF FREE PATENT AND TITLE, THE STATE WAS NOT A REAL PARTY-IN-INTEREST.— In Soquillo's appeal filed with the CA, he raised for the first time the issue of Tortola's

complaint allegedly not stating a cause of action for having been filed in the latter's name when the State was the real party-in-interest. If in the interest of sheer liberality, we were to resolve the issue, there is still no ample ground to dismiss Tortola's complaint. x x x In Tortola's complaint, he alleged prior ownership of the disputed property and fraud exercised upon him by the heirs of Coloso, Jr. to obtain a free patent and certificate of title covering the same. The complaint was not for reversion but for the declaration of nullity of the free patent and title. Hence, Tortola was the real party-in-interest and the complaint was properly filed in his name.

APPEARANCES OF COUNSEL

Oscar P. Rabanes for petitioner.

D E C I S I O N

REYES, *J*.:

Antecedent Facts

On March 28, 1966, Lorenzo Coloso, Jr. (Coloso, Jr.) sold to Ramon Jamis (Jamis) a 1,192 square meter parcel of land (disputed property) situated in Alubijid, Misamis Oriental. A notarized deed of conditional sale of an unregistered land was thus executed.

As indicated in a notarized deed of definite sale dated March 29, 1966, Jamis thereafter sold the disputed property to herein respondent Jorge P. Tortola (Tortola).

Tortola took possession of the disputed property, planted it with fruit-bearing trees, and built a residential lot thereon. He also paid the realty taxes due from the said property corresponding to the years 1975 to 2002. However, the receipts for the payments still stated Coloso, Jr.'s name, with the exception of Tax Declaration Nos. 942443, indicating "Lorenzo Coloso, Jr. c/o Mr. Tortola" and 026083, bearing the name of "Jorge Tortola".[1]

[1] *Rollo*, pp. 34-35.

In 1977, Tortola and his family moved to Bukidnon. He left Godofredo Villaflores (Villaflores) as his agent and caretaker of the disputed property.

Tortola received from Atty. Rene Artemio Pacana (Atty. Pacana) a letter dated March 1, 1988 informing the former that Arthur Coloso (Coloso) and the other heirs of Coloso, Jr. had sought his legal services to recover the disputed property. Atty. Pacana requested from Tortola an explanation as to how the latter acquired the disputed property. In a reply letter dated March 14, 1988 sent to Atty. Pacana, Tortola attached a copy of the notarized deed of definite sale executed between the latter and Jamis.

In 1992, Atty. Pacana once again sent a letter reiterating his prior inquiries and demanding for documents to prove that Coloso, Jr. disposed the disputed property in Tortola's favor. Tortola reminded Atty. Pacana of his reply letter in 1988 and again enclosed copies of the notarized deeds of conditional and definite sale executed in 1966.

On September 21, 1993, Coloso and the other heirs of Coloso, Jr. filed an application for free patent with the Office of the Community Environment and Natural Resources (CENRO) of Cagayan de Oro City to obtain a title over the disputed property.

On July 15, 1994, a survey of the disputed property was conducted. The land investigator reported that the heirs of Coloso, Jr. were in possession and were cultivating the disputed property, hence, he recommended to the CENRO the issuance of a free patent in their favor.

On December 14, 1994, Original Certificate of Title (OCT) No. P-20825 covering the disputed property was issued in favor of the Heirs of Coloso, Jr.

On October 11, 2000, Coloso and the other heirs of Coloso, Jr. executed a notarized deed of absolute sale conveying the disputed property to herein petitioner Santiago V. Soquillo (Soquillo).

In 2001, Soquillo filed before the Municipal Trial Court (MTC) of Alubijid a complaint for illegal detainer against Villaflores and his wife. The complaint was docketed as Civil Case No. 245. Villaflores failed to file an answer thereto, hence, the case was decided in favor of Soquillo. Villaflores and his wife were ejected from the disputed property.

Tortola discovered Villaflores' ejectment from the disputed property. On September 16, 2002, Tortola filed before the Regional Trial Court (RTC), Branch 44, Initao, Misamis Oriental a complaint against Coloso, the Heirs of Coloso, Jr., Soquillo, and the MTC of Alubijid, Misamis Oriental for annulment of title/sale/judgment with prayers for the issuance of injunctive reliefs and award of damages. The complaint, origin of the instant petition, was docketed as Civil Case No. 2002-393.

The RTC Decision

On September 18, 2007, the RTC rendered a Decision[2] disposing of the complaint as follows:

(a) Tortola was declared as the owner and legal possessor of the disputed property.

(b) The deed of sale executed on October 11, 2000 between Coloso and Soquillo was ordered annulled.

(c) The Register of Deeds (RD) of Misamis Oriental was ordered to annul and cancel OCT No. P-20825 in the names of the heirs of Coloso, Jr. and to issue a transfer certificate of title in Tortola's favor.

(d) The decision of the MTC in Civil Case No. 245 was annulled and set aside.

(e) The defendants in the complaint, among whom was herein petitioner Soquillo, were ordered to pay Tortola ₱50,000.00 as moral damages, ₱10,000.00 as exemplary damages and ₱20,000.00 as attorney's fees.[3]

The RTC ratiocinated that:

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[2] Under the *sala* of Presiding Judge Dennis Z. Alcantar; *id.* at 31-39.

[3] *Id.* at 38-39.

[I]t can be established that [Tortola] acquired a right over the subject parcel of land under a Deed of Definite Sale dated March 29, 1966, which was registered on September 5, 2002 in the Registry of Deeds, and by the cancellation of Tax Declaration No. 023086 by Tax Declaration No. 026083 in the name of Jorge Tortola.

Registration of the instrument in the Office of the Register of Deeds constitute[s] constructive notice to the parties of the transfer of ownership over the subject property.

[Tortola] occupied the said property and constructed his house and resided thereon until he left for Maramag, Bukidnon sometime in the late 1960's, leaving the occupation of the said property to Spouses Villaflores, with his permission, continuously until 2002.

The ownership and possession of the land was admitted and acknowledged by the herein defendants Heirs of Coloso[, Jr.] in their letters to [Tortola]. Likewise, defendant Soquillo, admitted the actual occupation of the land by Spouses Villaflores by the fact of his filing a civil action against them in court.

x x x Under the law, if the property has not yet passed to an innocent purchaser for value, an action for reconveyance is still available. Defendant Soquillo cannot be considered as an innocent purchaser for value or that he acquired the subject property through mistake and fraud. He can only be considered a trustee by implication, for the benefit of [Tortola], who is the true and lawful owner of the litigated land, pursuant to Article 1456 of the New Civil Code.

Defendants assert laches as a defense. Laches cannot prejudice the lawful right of [Tortola] in its ownership and possession of the subject litigated property. There was no failure or neglect on the part of [Tortola] in asserting his rights after knowing defendant's (sic) conduct, evidenced by all the letters sent to the defendants resulting to their knowledge of the actual ownership and occupation of the subject land. [Tortola] is not negligent and has not omitted to assert his right and/or abandoned or declined to assert his rights, proof of such is the filing of the instant complaint.

> The principle of indefeasibillity of title does not apply where fraud attended the issuance of title, as in this case. The settled rule is that a free patent issued over a private land, which in this case the subject litigated land belonged to plaintiff-Tortola, is null and void, and produces no legal effects whatsoever (Heirs

of *Simplicio Santiago vs. Heirs of Mariano E. Santiago*, 404 SCRA 193).

[Tortola] was compelled to litigate to protect his interests and vindicate his rights.

The issuance of Original Certificate of Title No. P-20825 lacks the required publication, notice, survey, certification and other mandatory requirements, under the law, which legally allows such title to be cancelled and transferred to the legal owner, [Tortola], because there could have been no notice of the application that can be issued or posted on September 20, 1993 because the application was filed and received by the CENRO only on September 21, 1993.

Defendant Soquillo purchased the land from the Heirs of Coloso[, Jr.] in spite of his knowledge that the land is owned by [Tortola] and that the Heirs of Coloso[, Jr.] were not in actual possession of the subject land, which land was actually occupied, at that time, by the Spouses Villaflores, the lessee[s] of [Tortola]. Such knowledge of an unregistered sale is equivalent to registration. Further, the deed of sale in favor of Soquillo was not registered with the Register of Deeds of Misamis Oriental until today.

xxx xxx xxx

x x x Such proof of ownership and possession of [Tortola] is corroborated by the testimony and certification of the former Barangay Captain of Lourdes, Alubijid, Misamis Oriental, attesting to the truth that [Tortola] is the actual occupant of the litigated land and such occupancy was never questioned, disturbed, contested or molested until October 18, 2001, where his agents Spouses Villaflores was (sic) summoned and later on, made the defendants in an illegal detainer case before the court.[4] (Citations omitted)

Soquillo filed before the Court of Appeals (CA) an appeal to the foregoing. He argued that the RTC erred in not finding that Tortola's complaint stated no cause of action. He alleged that since Tortola sought the cancellation of a free patent, not him but the State, was the real party-in-interest. Soquillo likewise averred that he was a purchaser in good faith and for value, thus, the RTC's order to reconvey the disputed property and award damages in Tortola's favor was improper.

[4] *Id.* at 35-38.

The CA Decision

On April 23, 2010, the CA rendered a Decision[5] denying Soquillo's appeal. The CA declared:

The defense that the Complaint below failed to state a cause of action must be raised at the earliest possible time. In fact, it can be raised as a ground for Motion to Dismiss under Rule 16 of the Revised Rules of Civil Procedure. Here, [Soquillo], as shown by the records of the case, neither raised such issue in their Answer nor filed a Motion to Dismiss raising such issue.

xxx xxx xxx

x x x [Soquillo] cannot be considered a purchaser in good faith and for value because defendant Arthur Coloso as Attorney-in-fact of the heirs of Lorenzo Boy Coloso did not have the right to sell the disputed land to the former.

xxx xxx xxx

x x x [D]efendant Arthur Coloso had prior knowledge that the disputed land was already occupied by Mr. Villaflores, as agent of [Tortola]. However, despite such knowledge, defendant Arthur Coloso as representative of the heirs of Lorenzo Boy Coloso, Jr., filed an Application for Free Patent, and falsely declared therein that they occupied and cultivated the disputed land since 1985. By reason of such application and false declarations, the defendants were issued an Original Certificate of Title No. P-20825.

Such false declarations in the Application, however, constituted concealment of material facts, which amounted to fraud. This, therefore, inevitably resulted to the cancellation of title, as is pursuant to ***Heirs of Carlos Alcaraz vs. Republic of the Philippines, et al.***, where the Supreme Court stated:

"xxx xxx xxx

Doubtless, petitioner's (sic) failure to state in their free patent application that private respondents, as representatives of the heirs of Timotea and Igmedio, are also in possession of the land subject thereof clearly

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[5] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando, concurring; *id.* at 40-49.

> **constitutes a concealment of a material fact amounting to fraud and misrepresentation within the context of the aforequoted provision, sufficient enough to cause** *ipso facto* **the cancellation of their patent and title.** For sure, had only petitioners made such a disclosure, the Director of Lands would have had second thoughts in directing the issuance of petitioners' patent and title.
>
> xxx xxx xxx"

Consequently, contrary to [Soquillo's] contention, the principle of indefeasibility of title cannot be invoked in this case. Public policy demands that one who obtains title to a public land through fraud should not be allowed to benefit therefrom.

xxx xxx xxx

Furthermore, defendant-appellant Santiago Soquillo cannot be considered as purchaser in good faith and for value. The fact that defendants Heirs of Lorenzo Boy Coloso, Jr. were not in possession of the disputed land should have impelled him to go beyond the title, as is in harmony with the Supreme Court's pronouncement in ***Eagle Realty Corporation vs. Republic of the Philippines, et al.***, which reads:

> "Indeed, the general rule is that a purchaser may rely on what appears on the face of a certificate of title. x x x An **exception to this rule is when there exist important facts that would create suspicion in an otherwise reasonable man (and spur him) to go beyond the present title and to investigate those that preceded it**. x x x **One who falls within the exception can neither be denominated an innocent purchaser for value nor a purchaser in good faith, hence, does not merit the protection of the law**."

Besides, defendants, Heirs of Lorenzo Coloso, Jr., had not transferred any rights over the disputed land to [Soquillo], because the former were not owners of the same at the time they sold the land to [Soquillo]. x x x No one can give what he does not have– x x x.

Moreover, since defendant Arthur Coloso as representative of the Heirs of Lorenzo Boy Coloso, Jr. acquired OCT No. P-20825 over the disputed land through fraud, We sustain [the] lower court's

award of moral and exemplary damages pursuant to Articles 21, 2219(10), and 2229 of the New Civil Code. The award of Attorney's fees is likewise sustained considering that [Tortola] was compelled to litigate in order to protect his interest pursuant to Article 2208 (1 and 2) of the New Civil Code.[6] (Citations omitted and emphasis supplied)

Hence, the instant petition for review[7] raising the following issues:

WHETHER OR NOT THE CA ERRED IN:

(1) NOT FINDING THAT THE COMPLAINT STATES NO CAUSE OF ACTION;

(2) NOT FINDING THAT THE PETITIONER IS A PURCHASER IN GOOD FAITH AND FOR VALUE; and

(3) AWARDING MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[8]

In the instant petition, Soquillo reiterates the arguments he had proferred in the proceedings below. On the other hand, no comment was filed by Tortola as the copy of the resolution requiring him to file the same had been returned to the court with the notation "RTS, unknown, insufficient address."[9]

Our Disquisition

The instant petition is bereft of merit.

Questions of law and not of facts are the proper subjects of a petition for review on *certiorari* under Rule 45.

In *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*,[10] we declared:

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

[7] *Id.* at 8-30.

[8] *Id.* at 18.

[9] *Id.* at 80.

[10] G.R. No. 190515, June 6, 2011, 650 SCRA 656.

"This rule [Rule 45 of the Rules of Court through which Soquillo filed the instant petition] provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **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**[.]"[11] (Emphasis supplied)

In the case at bar, Soquillo raises factual questions which were already resolved in the proceedings below. Further, the factual findings of the RTC and the CA were in accord with each other and were supported by substantial evidence.

Even if we were to resolve the first issue raised by Soquillo relative to the alleged lack of standing of Tortola as the real party-in-interest, there is still no ground to dismiss the latter's complaint. The action filed by Tortola was not for reversion, but for the declaration of nullity of a free patent and a certificate of title.

In Soquillo's appeal filed with the CA, he raised for the first time the issue of Tortola's complaint allegedly not stating a cause of action for having been filed in the latter's name when the State was the real party-in-interest.

If in the interest of sheer liberality, we were to resolve the issue, there is still no ample ground to dismiss Tortola's complaint.

Banguilan v. Court of Appeals[12] was emphatic that:

Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut distinguishes an action for reversion from an action for declaration of nullity of free patents and certificates of title as follows:

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[11] *Id.* at 660.

[12] G.R. No. 165815, April 27, 2007, 522 SCRA 644.

> "An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. **The difference between them lies in the *allegations as to the character of ownership* of the realty whose title is sought to be nullified.** In an action for *reversion*, the pertinent allegations in the complaint would *admit State ownership* of the disputed land. Hence in *Gabila v. Barriga* where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were cancelled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.
>
> On the other hand, *a cause of action for declaration of nullity of free patent and certificate of title* would require *allegations of the plaintiff's ownership* of the contested lot *prior to the issuance* of such free patent and certificate of title as well as the *defendant's fraud or mistake*, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefor is consequently void *ab initio*. The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant. x x x[.]"[13] (Citations omitted and emphasis supplied)

In Tortola's complaint, he alleged prior ownership of the disputed property and fraud exercised upon him by the heirs of Coloso, Jr. to obtain a free patent and certificate of title covering the same. The complaint was not for reversion but for the declaration of nullity of the free patent and title. Hence, Tortola was the real party-in-interest and the complaint was properly filed in his name.

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[13] *Id.* at 653.

The second and third issues raised by Soquillo had already been exhaustively discussed by the RTC and the CA. The disquisitions relative thereto made by the courts *a quo* were supported by substantial evidence, hence, they need not be disturbed.

The second and third issues raised by Soquillo were exhaustively discussed by the RTC and the CA. Soquillo was not a purchaser in good faith. He and the heirs of Coloso, Jr. who were his predecessors-in-interest, knew about the sale made to Tortola and the possession of the disputed property by Villaflores. Besides, Tortola registered the sale, albeit with much delay, in 2002. As of the time Tortola's complaint was filed, no registration was effected by Soquillo.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **DENIED.** The Decision dated April 23, 2010 of the Court of Appeals in CA-G.R. CV No. 01476 is **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Sereno, JJ.,* concur.

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[*] Additional member per Special Order No. 1257 dated July 19, 2012, in view of the leave of absence of Associate Justice Arturo D. Brion.

SECOND DIVISION

[G.R. No. 198860. July 23, 2012]

ABRAHAM RIMANDO, *petitioner, vs.* **NAGUILIAN EMISSION TESTING CENTER, INC., represented by its President, ROSEMARIE LLARENAS and HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; A PETITION FOR *MANDAMUS* TO COMPEL A MAYOR TO ISSUE A BUSINESS PERMIT BECOMES MOOT AND ACADEMIC UPON EXPIRATION OF THE PERIOD COVERED BY THE PERMIT.—** We agree with the CA that the petition for *mandamus* has already become moot and academic owing to the expiration of the period intended to be covered by the business permit. An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value or in the nature of things, cannot be enforced. In such cases, there is no actual substantial relief to which the applicant would be entitled to and would be negated by the dismissal of the petition. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness. The objective of the petition for *mandamus* to compel the petitioner to grant a business permit in favor of respondent corporation for the period 2008 to 2009 has already been superseded by the passage of time and the expiration of the petitioner's term as mayor. Verily then, the issue as to whether or not the petitioner, in his capacity as mayor, may be compelled by a writ of *mandamus* to release the respondent's business permit ceased to present a justiciable controversy such that any ruling thereon would serve no practical value. Should the writ be issued, the petitioner can no longer abide thereby; also, the effectivity date of the business permit no longer subsists.

2. **ID.; ID.; ID.; A MAYOR CANNOT BE COMPELLED BY *MANDAMUS* TO ISSUE A BUSINESS PERMIT.—** [A] mayor cannot be compelled by *mandamus* to issue a business

permit since the exercise of the same is a delegated police power hence, discretionary in nature. This was the pronouncement of this Court in *Roble Arrastre, Inc. v. Hon. Villaflor* where a determination was made on the nature of the power of a mayor to grant business permits under the Local Government Code, *viz*: x x x Section 444(b)(3)(iv) of the Local Government Code of 1991, whereby the power of the respondent mayor to issue license and permits is circumscribed, is a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. As to the question of whether the power is validly exercised, the matter is within the province of a writ of *certiorari,* but certainly, not of *mandamus.*

APPEARANCES OF COUNSEL

Joven F. Costales for petitioner.

Reyes-Eleazar & Associates for private respondent.

R E S O L U T I O N

REYES, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside Decision[2] dated March 30, 2011 of the Court of Appeals (CA) in CA-G.R. SP NO. 112152.

The Facts

The present controversy stemmed from a petition for *mandamus* and damages filed before Branch 67 of the Regional Trial Court (RTC) of Bauang, La Union, by Naguilian Emission Testing Center, Inc., represented by its President, Rosemarie Llarenas (respondent) against Abraham P. Rimando (petitioner), who,

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[1] *Rollo*, pp. 4-20.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Mariflor P. Punzalan Castillo and Jane Aurora C. Lantion, concurring; *id.* at 22-22.

at the time material to the case, was the sitting mayor of the Municipality of Naguilian, La Union.

The petition prayed for the issuance of a writ of *mandamus* to compel the petitioner to issue a business permit in favor of the respondent.

In support of its plea, the respondent claimed that its business is being conducted on a parcel of land which formerly belonged to the national government but later on certified by the Department of Environment and Natural Resources (DENR) as an alienable and disposable land of the public domain. The respondent had operated its business of emission testing on the land from 2005 to 2007. On January 18, 2008, the respondent filed an application for the renewal of its business permit and paid the corresponding fees therefor.

The petitioner, however, refused to issue a business permit unless and until the respondent executes a contract of lease with the Municipality of Naguilian. The respondent was amenable to signing such contract subject to some proposed revisions, which, however, were not acceptable to the petitioner. The parties did not reach a common ground hence, the petition for *mandamus*.

The Ruling of the RTC

On May 26, 2009, the RTC denied the petition[3] for lack of merit based on the ratiocinations that: (a) the Municipality of Naguilian is the declared owner of the subject parcel of land by virtue of Tax Declaration No. 002-01197; (b) under Section 6A.01 of the Revenue Code of the Municipality of Naguilian, the municipality has the right to require the petitioner to sign a contract of lease because its business operation is being conducted on a real property owned by the municipality; and (c) a mayor's duty to issue business permits is discretionary in nature which may not be enforced by a *mandamus* writ. The decretal portion of the decision reads:

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[3] Under the *sala* of Judge Ferdinand A. Fe; *id.* at 46-49.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.[4]

The Ruling of the CA

Unwaivering, the respondent appealed to the CA. In its Decision[5] dated March 30, 2011, the CA held that the appeal was dismissible on the ground of mootness considering that the period for which the business period was being sought had already lapsed. As such, any ruling on the matter would bring no practical relief. Nonetheless, the CA proceeded to resolve the issues involved in the appeal for academic purposes.

The CA disagreed with the RTC and found that the factual milieu of the case justifies the issuance of a writ of *mandamus*. The CA reasoned that the tax declaration in the name of the municipality was insufficient basis to require the execution of a contract of lease as a condition *sine qua non* for the renewal of a business permit. The CA further observed that *Sangguniang Bayan* Resolution No. 2007-81, upon which the municipality anchored its imposition of rental fees, was void because it failed to comply with the requirements of the Local Government Code and its Implementing Rules and Regulations.

The CA held that the petitioner may not be held liable for damages since his action or inaction, for that matter, was done in the performance of official duties that are legally protected by the presumption of good faith. The CA likewise stressed that the civil action filed against the petitioner had already become moot and academic upon the expiration of his term as the mayor of Naguilian, La Union.

Despite its incessant declarations on the mootness of the case, the CA disposed of the appeal in this wise:

WHEREFORE, the *Decision* dated 26 May 2009 of the Regional Trial Court, First Judicial Region, Bauang, La Union, Branch 67,

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[4] *Id.* at 49.

[5] *Supra* note 2.

in Special Civil Action Case No. 72-BG, is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.[6]

The petitioner moved for reconsideration[7] questioning the pronouncement of the CA that *Sangguniang Bayan* Resolution No. 2007-81 was void and arguing that a petition for *mandamus* is not the proper vehicle to determine the issue on the ownership of the subject land. The motion was denied in the CA Resolution[8] dated September 30, 2011.

The petitioner is now before this Court reiterating the arguments raised in his motion for reconsideration.

Our Ruling

We agree with the CA that the petition for *mandamus* has already become moot and academic owing to the expiration of the period intended to be covered by the business permit.

An issue or a case becomes moot and academic when it ceases to present a justiciable controversy so that a determination thereof would be without practical use and value[9] or in the nature of things, cannot be enforced.[10] In such cases, there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal of the petition.[11] As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.[12]

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[6] *Rollo*, p. 33.

[7] *Id.* at 34-41.

[8] *Id.* at 42-43.

[9] *Philippine Airlines, Inc. v. Pascua*, 456 Phil. 425, 436 (2003).

[10] *Lanuza, Jr. v. Yuchengco*, 494 Phil. 125, 133 (2005); See also *Gonzales v. Narvasa*, 392 Phil. 518, 522 (2000); *Villarico v. Court of Appeals*, 424 Phil. 26 (2002); *King v. Court of Appeals*, 514 Phil. 465, 470 (2005).

[11] *Soriano Vda. De Dabao v. Court of Appeals*, 469 Phil. 928 (2004).

[12] *Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

The objective of the petition for *mandamus* to compel the petitioner to grant a business permit in favor of respondent corporation for the period 2008 to 2009 has already been superseded by the passage of time and the expiration of the petitioner's term as mayor. Verily then, the issue as to whether or not the petitioner, in his capacity as mayor, may be compelled by a writ of *mandamus* to release the respondent's business permit ceased to present a justiciable controversy such that any ruling thereon would serve no practical value. Should the writ be issued, the petitioner can no longer abide thereby; also, the effectivity date of the business permit no longer subsists.

While the CA is not precluded from proceeding to resolve the otherwise moot appeal of the respondent, we find that the decretal portion of its decision was erroneously couched.

The CA's conclusions on the issue of ownership over the subject land and the invalidity of *Sangguniang Bayan* Resolution No. 2007-81, aside from being unsubstantiated by convincing evidence, can no longer be practically utilized in favor of the petitioner. Thus, the overriding and decisive factor in the final disposition of the appeal was its mootness and the CA should have dismissed the same along with the petition for *mandamus* that spawned it.

More importantly, a mayor cannot be compelled by *mandamus* to issue a business permit since the exercise of the same is a delegated police power hence, discretionary in nature. This was the pronouncement of this Court in *Roble Arrastre, Inc. v. Hon. Villaflor*[13] where a determination was made on the nature of the power of a mayor to grant business permits under the Local Government Code,[14] *viz*:

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[13] 531 Phil. 30 (2006).

[14] Although the case involved the issuance of a business permit for arrastre service, the general power of a mayor to issue business permits is encapsulated in the same legal provision of the Local Government Code without distinguishing the nature of the business for which a permit is sought.

Central to the resolution of the case at bar is a reading of Section 444(b)(3)(iv) of the Local Government Code of 1991, which provides, thus:

> SEC. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.*
>
> (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to *Section 16 of this Code*, the municipal mayor shall:
>
> xxx xxx xxx
>
> 3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:
>
> xxx xxx xxx
>
> (iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance.

As Section 444(b)(3)(iv) so states, the power of the municipal mayor to issue licenses is pursuant to Section 16 of the Local Government Code of 1991, which declares:

> SEC. 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.

Section 16, known as the general welfare clause, encapsulates the delegated police power to local governments. Local government units exercise police power through their respective legislative bodies. Evidently, the Local Government Code of 1991 is unequivocal that the municipal mayor has the power to issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance. x x x

xxx xxx xxx

Section 444(b)(3)(iv) of the Local Government Code of 1991, whereby the power of the respondent mayor to issue license and permits is circumscribed, is a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. As to the question of whether the power is validly exercised, the matter is within the province of a writ of *certiorari*, but certainly, not of *mandamus*.[15] (Citations omitted)

Indeed, as correctly ruled by the RTC, the petition for *mandamus* filed by the respondent is incompetent to compel the exercise of a mayor's discretionary duty to issue business permits.

WHEREFORE, premises considered, the Decision dated March 30, 2011 of the Court of Appeals in CA-G.R. SP No. 112152 is hereby **SET ASIDE**. The Decision dated May 26, 2009 of the Regional Trial Court of Bauang, La Union is **REINSTATED**.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Sereno, JJ.,* concur.

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[15] *Supra* note 13, at 43-46.

[*] Additional member per Special Order No. 1257 dated July 19, 2012, in lieu of the absence of Associate Justice Arturo D. Brion.

EN BANC

[A.C. No. 7360. July 24, 2012]

ATTY. POLICARPIO I. CATALAN, JR., *complainant, vs.* **ATTY. JOSELITO M. SILVOSA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; PROHIBITION AGAINST REPRESENTATION OF CONFLICTING INTERESTS APPLIES ALTHOUGH THE ATTORNEY'S INTENTION WAS HONEST.—** We agree with Comm. Funa's finding that Atty. Silvosa violated Rule 6.03. When he entered his appearance on the Motion to Post Bail Bond Pending Appeal, Atty. Silvosa conveniently forgot Rule 15.03 which provides that "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts." Atty. Silvosa's attempts to minimize his involvement in the same case on two occasions can only be described as desperate. He claims his participation as public prosecutor was only to appear in the arraignment and in the pre-trial conference. He likewise claims his subsequent participation as collaborating counsel was limited only to the reinstatement of the original bail. x x x Indeed, the prohibition against representation of conflicting interests applies although the attorney's intentions were honest and he acted in good faith.

2. **ID.; ID.; AN ATTORNEY WHO IS CHARGED WITH BRIBERY MUST OVERCOME THE EVIDENCE AGAINST HIM.—** Atty. Silvosa denies Pros. Toribio's accusation of bribery and casts doubt on its veracity by emphasizing the delay in presenting a complaint before the IBP. Comm. Funa, by stating that there is difficulty in ascertaining the veracity of the facts with certainty, in effect agreed with Atty. Silvosa. Contrary to Comm. Funa's ruling, however, the records show that Atty. Silvosa made an attempt to bribe Pros. Toribio and failed. Pros. Toribio executed her affidavit on 14 June 1999, a day after the failed bribery attempt, and had it notarized by Atty. Nemesio Beltran, then President of the IBP-Bukidnon Chapter. There was no reason for Pros.

Toribio to make false testimonies against Atty. Silvosa. Atty. Silvosa, on the other hand, merely denied the accusation and dismissed it as persecution. When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him. He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him. Atty. Silvosa failed in this respect.

3. **ID.; ID.; ID.; A CONVICTION FOR THE CRIME OF BRIBERY IS A GROUND FOR DISBARMENT.—** Atty. Silvosa's representation of conflicting interests and his failed attempt at bribing Pros. Toribio merit at least the penalty of suspension. Atty. Silvosa's final conviction of the crime of direct bribery clearly falls under one of the grounds for disbarment under Section 27 of Rule 138. Disbarment follows as a consequence of Atty. Silvosa's conviction of the crime. We are constrained to impose a penalty more severe than suspension because we find that Atty. Silvosa is predisposed to flout the exacting standards of morality and decency required of a member of the Bar. His excuse that his conviction was not in his capacity as a lawyer, but as a public officer, is unacceptable and betrays the unmistakable lack of integrity in his character. The practice of law is a privilege, and Atty. Silvosa has proved himself unfit to exercise this privilege.

D E C I S I O N

***PER CURIAM*:**

This is a complaint filed by Atty. Policarpio I. Catalan, Jr. (Atty. Catalan) against Atty. Joselito M. Silvosa (Atty. Silvosa). Atty. Catalan has three causes of action against Atty. Silvosa: (1) Atty. Silvosa appeared as counsel for the accused in the same case for which he previously appeared as prosecutor; (2) Atty. Silvosa bribed his then colleague Prosecutor Phoebe Toribio (Pros. Toribio) for ₱30,000; and (3) the Sandiganbayan convicted Atty. Silvosa in Criminal Case No. 27776 for direct bribery. Integrated Bar of the Philippines' (IBP) Commissioner for Bar Discipline Dennis A.B. Funa (Comm. Funa) held Atty. Silvosa

liable only for the first cause of action and recommended the penalty of reprimand. The Board of Governors of the IBP twice modified Comm. Funa's recommendation: first, to a suspension of six months, then to a suspension of two years.

Atty. Silvosa was an Assistant Provincial Prosecutor of Bukidnon and a Prosecutor in Regional Trial Court (RTC), Branch 10, Malaybalay City, Bukidnon. Atty. Silvosa appeared as public prosecutor in Criminal Case No. 10256-00, "*People of the Philippines v. SPO2 Elmor Esperon y Murillo, et al*." (Esperon case), for the complex crime of double frustrated murder, in which case Atty. Catalan was one of the private complainants. Atty. Catalan took issue with Atty. Silvosa's manner of prosecuting the case, and requested the Provincial Prosecutor to relieve Atty. Silvosa.

In his first cause of action, Atty. Catalan accused Atty. Silvosa of appearing as private counsel in a case where he previously appeared as public prosecutor, hence violating Rule 6.03 of the Code of Professional Responsibility.[1] Atty. Catalan also alleged that, apart from the fact that Atty. Silvosa and the accused are relatives and have the same middle name, Atty. Silvosa displayed manifest bias in the accused's favor. Atty. Silvosa caused numerous delays in the trial of the Esperon case by arguing against the position of the private prosecutor. In 2000, Provincial Prosecutor Guillermo Ching granted Atty. Catalan's request to relieve Atty. Silvosa from handling the Esperon case. The RTC rendered judgment convicting the accused on 16 November 2005. On 23 November 2005, Atty. Silvosa, as private lawyer and as counsel for the accused, filed a motion to reinstate bail pending finality of judgment of the Esperon case.

In his second cause of action, Atty. Catalan presented the affidavit of Pros. Toribio. In a case for frustrated murder where Atty. Catalan's brother was a respondent, Pros. Toribio reviewed the findings of the investigating judge and downgraded the offense

[1] A lawyer shall not, after leaving the government service, accept engagement or employment in connection with any matter in which he had intervened while in the said service.

from frustrated murder to less serious physical injuries. During the hearing before Comm. Funa, Pros. Toribio testified that, while still a public prosecutor at the time, Atty. Silvosa offered her ₱30,000 to reconsider her findings and uphold the charge of frustrated murder.

Finally, in the third cause of action, Atty. Catalan presented the Sandiganbayan's decision in Criminal Case No. 27776, convicting Atty. Silvosa of direct bribery on 18 May 2006. Nilo Lanticse (Lanticse) filed a complaint against Atty. Silvosa before the National Bureau of Investigation (NBI). Despite the execution of an affidavit of desistance by the complainant in a homicide case in favor of Lanticse's father-in-law, Arsenio Cadinas (Cadinas), Cadinas still remained in detention for more than two years. Atty. Silvosa demanded ₱15,000 from Lanticse for the dismissal of the case and for the release of Cadinas. The NBI set up an entrapment operation for Atty. Silvosa. GMA 7's television program *Imbestigador* videotaped and aired the actual entrapment operation. The footage was offered and admitted as evidence, and viewed by the Sandiganbayan. Despite Atty. Silvosa's defense of instigation, the Sandiganbayan convicted Atty. Silvosa. The dispositive portion of Criminal Case No. 27776 reads:

WHEREFORE, this court finds JOSELITO M. SILVOSA GUILTY, beyond reasonable doubt, of the crime of direct bribery and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, one year, one month and eleven days of *prision correccional,* as minimum, up to three years, six months and twenty days of *prision correccional*, as maximum;

(B) Fine of TEN THOUSAND PESOS (Php 10,000.00), with subsidiary imprisonment in case of insolvency; and

(C) All other accessory penalties provided for under the law.

SO ORDERED.[2]

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[2] *Rollo*, p. 34.

In his defense, on the first cause of action, Atty. Silvosa states that he resigned as prosecutor from the Esperon case on 18 October 2002. The trial court released its decision in the Esperon case on 16 November 2005 and cancelled the accused's bail. Atty. Silvosa claims that his appearance was only for the purpose of the reinstatement of bail. Atty. Silvosa also denies any relationship between himself and the accused.

On the second cause of action, Atty. Silvosa dismisses Pros. Toribio's allegations as "self-serving" and "purposely dug by [Atty. Catalan] and his puppeteer to pursue persecution."

On the third cause of action, while Atty. Silvosa admits his conviction by the Sandiganbayan and is under probation, he asserts that "conviction under the 2nd paragraph of Article 210 of the Revised Penal Code, do [sic] not involve moral turpitude since the act involved 'do [sic] not amount to a crime.'" He further claims that "it is not the lawyer in respondent that was convicted, but his capacity as a public officer, the charge against respondent for which he was convicted falling under the category of crimes against public officers x x x."

In a Report and Recommendation dated 15 September 2008, Comm. Funa found that:

> As for the first charge, the wordings and prohibition in Rule 6.03 of the *Code of Professional Responsibility* [are] quite clear. [Atty. Silvosa] did intervene in Criminal Case No. 10246-00. [Atty. Silvosa's] attempt to minimize his role in said case would be unavailing. The fact is that he is presumed to have acquainted himself with the facts of said case and has made himself familiar with the parties of the case. Such would constitute sufficient intervention in the case. The fact that, subsequently, [Atty. Silvosa] entered his appearance in said case only to file a *Motion to Post Bail Bond Pending Appeal* would still constitute a violation of Rule 6.03 as such act is sufficient to establish a lawyer-client relation.
>
> As for the second charge, there is certain difficulty to dissect a claim of bribery that occurred more than seven (7) years ago. In this instance, the conflicting allegations are merely based on the word of one person against the word of another. With [Atty. Silvosa's]

vehement denial, the accusation of witness [Pros.] Toribio stands alone unsubstantiated. Moreover, we take note that the alleged incident occurred more than seven (7) years ago or in 1999, [l]ong before this disbarment case was filed on November 2006. Such a long period of time would undoubtedly cast doubt on the veracity of the allegation. Even the existence of the bribe money could not be ascertained and verified with certainty anymore.

As to the third charge, [Atty. Silvosa] correctly points out that herein complainant has no personal knowledge about the charge of extortion for which [Atty. Silvosa] was convicted by the Sandiganbayan. [Atty. Catalan] was not a party in said case nor was he ever involved in said case. The findings of the Sandiganbayan are not binding upon this Commission. The findings in a criminal proceeding are not binding in a disbarment proceeding. No evidence has been presented relating to the alleged extortion case.

PREMISES CONSIDERED, it is submitted that [Atty. Silvosa] is GUILTY only of the First Charge in violating Rule 6.03 of the Code of Professional Responsibility and should be given the penalty of REPRIMAND.

Respectfully submitted.[3]

In a Resolution dated 9 October 2008, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Comm. Funa and suspended Atty. Silvosa from the practice of law for six months. In another Resolution dated 28 October 2011, the IBP Board of Governors increased the penalty of Atty. Silvosa's suspension from the practice of law to two years. The Office of the Bar Confidant received the notice of the Resolution and the records of the case on 1 March 2012.

We sustain the findings of the IBP only in the first cause of action and modify its recommendations in the second and third causes of action.

Atty. Catalan relies on Rule 6.03 which states that "A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had

[3] *Id.* at 145-146.

intervened while in said service." Atty. Silvosa, on the hand, relies on Rule 2.01 which provides that "A lawyer shall not reject, except for valid reasons the cause of the defenseless or the oppressed" and on Canon 14 which provides that "A lawyer shall not refuse his services to the needy."

We agree with Comm. Funa's finding that Atty. Silvosa violated Rule 6.03. When he entered his appearance on the Motion to Post Bail Bond Pending Appeal, Atty. Silvosa conveniently forgot Rule 15.03 which provides that "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts."

Atty. Silvosa's attempts to minimize his involvement in the same case on two occasions can only be described as desperate. He claims his participation as public prosecutor was only to appear in the arraignment and in the pre-trial conference. He likewise claims his subsequent participation as collaborating counsel was limited only to the reinstatement of the original bail. Atty. Silvosa will do well to take heed of our ruling in *Hilado v. David*:[4]

> An attorney is employed — that is, he is engaged in his professional capacity as a lawyer or counselor — when he is listening to his client's preliminary statement of his case, or when he is giving advice thereon, just as truly as when he is drawing his client's pleadings, or advocating his client's pleadings, or advocating his client's cause in open court.
>
> xxx xxx xxx
>
> Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. It is founded on principles of public policy, on good taste. As has been said in another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these

[4] 84 Phil. 569, 576-579 (1949). Citations omitted.

thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.

Indeed, the prohibition against representation of conflicting interests applies although the attorney's intentions were honest and he acted in good faith.[5]

Atty. Silvosa denies Pros. Toribio's accusation of bribery and casts doubt on its veracity by emphasizing the delay in presenting a complaint before the IBP. Comm. Funa, by stating that there is difficulty in ascertaining the veracity of the facts with certainty, in effect agreed with Atty. Silvosa. Contrary to Comm. Funa's ruling, however, the records show that Atty. Silvosa made an attempt to bribe Pros. Toribio and failed. Pros. Toribio executed her affidavit on 14 June 1999, a day after the failed bribery attempt, and had it notarized by Atty. Nemesio Beltran, then President of the IBP-Bukidnon Chapter. There was no reason for Pros. Toribio to make false testimonies against Atty. Silvosa. Atty. Silvosa, on the other hand, merely denied the accusation and dismissed it as persecution. When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him. He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.[6] Atty. Silvosa failed in this respect.

Unfortunately for Atty. Silvosa, mere delay in the filing of an administrative complaint against a member of the bar does not automatically exonerate a respondent. Administrative offenses do not prescribe. No matter how much time has elapsed from the time of the commission of the act complained of and the

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[5] *Pormento, Sr. v. Atty. Pontevedra*, 494 Phil. 164, 183 (2005). Citation omitted.

[6] *Radjaie v. Atty. Alovera*, 392 Phil. 1, 17 (2000) citing *Reyes v. Gaa,* 316 Phil. 97, 101 (1995).

time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court.[7]

We disagree with Comm. Funa's ruling that the findings in a criminal proceeding are not binding in a disbarment proceeding.

First, disbarment proceedings may be initiated by any interested person. There can be no doubt of the right of a citizen to bring to the attention of the proper authority acts and doings of public officers which a citizen feels are incompatible with the duties of the office and from which conduct the public might or does suffer undesirable consequences.[8] Section 1, Rule 139-B reads:

> Section 1. *How Instituted.* – Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.
>
> The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in government service.
>
> xxx xxx xxx

It is of no moment that Atty. Catalan is not the complainant in Criminal Case No. 27776, and that Lanticse, the complainant therein, was not presented as a witness in the present case. There is no doubt that the Sandiganbayan's judgment in Criminal Case No. 27776 is a matter of public record and is already final. Atty. Catalan supported his allegation by submitting documentary evidence of the Sandiganbayan's decision in Criminal Case No. 27776. Atty. Silvosa himself admitted, against his interest, that he is under probation.

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[7] *Heck v. Judge Santos*, 467 Phil. 798, 825 (2004).

[8] *Marcelo v. Javier, Sr.,* Adm. Case No. 3248, 18 September 1992, 214 SCRA 1, 14. Citation omitted.

Second, conviction of a crime involving moral turpitude is a ground for disbarment. Moral turpitude is defined as an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men, or to society in general, contrary to justice, honesty, modesty, or good morals.[9] Section 27, Rule 138 provides:

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 admission to practice, or for a willful disobedience of any lawful order of a superior court, 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. (Emphasis supplied)

In a disbarment case, this Court will no longer review a final judgment of conviction.[10]

Third, the crime of direct bribery is a crime involving moral turpitude. In *Magno v. COMELEC*,[11] we ruled:

By applying for probation, petitioner in effect admitted all the elements of the crime of direct bribery:

1. *the offender is a public officer*;

2. *the offender accepts an offer or promise or receives a gift or present by himself or through another*;

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[9] *Dela Torre v. COMELEC,* 327 Phil. 1144, 1150 (1996). Citations omitted.

[10] *Re: SC Decision dated May 20, 2008 in G.R. No. 161455 under Rule 139-B of the Rules of Court v. Atty. Rodolfo D. Pactolin*, A.C. No. 7940, 24 April 2012; *Moreno v. Atty. Araneta,* 496 Phil. 788 (2005); *In Re: Rodolfo Pajo*, 203 Phil. 79 (1982); *In the matter of Disbarment Proceedings v. Narciso N. Jaramillo*, 101 Phil. 323 (1957).

[11] 439 Phil. 339, 346-347 (2002).

3. such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and

4. *the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.*

Moral turpitude can be inferred from the third element. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals. In all respects, direct bribery is a crime involving moral turpitude. (Italicization in the original)

Atty. Silvosa's representation of conflicting interests and his failed attempt at bribing Pros. Toribio merit at least the penalty of suspension. Atty. Silvosa's final conviction of the crime of direct bribery clearly falls under one of the grounds for disbarment under Section 27 of Rule 138. Disbarment follows as a consequence of Atty. Silvosa's conviction of the crime. We are constrained to impose a penalty more severe than suspension because we find that Atty. Silvosa is predisposed to flout the exacting standards of morality and decency required of a member of the Bar. His excuse that his conviction was not in his capacity as a lawyer, but as a public officer, is unacceptable and betrays the unmistakable lack of integrity in his character. The practice of law is a privilege, and Atty. Silvosa has proved himself unfit to exercise this privilege.

WHEREFORE, respondent Atty. Joselito M. Silvosa is hereby **DISBARRED** and his name **ORDERED STRICKEN** from the Roll of Attorneys. Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to respondent's

personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and to the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro, J., on official leave.

Brion and *Mendoza, JJ.,* on leave.

Peralta, J., on official business.

EN BANC

[B.M. No. 2112. July 24, 2012]

IN RE: PETITION TO RE-ACQUIRE THE PRIVILEGE TO PRACTICE LAW IN THE PHILIPPINES, EPIFANIO B. MUNESES, *petitioner.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; PRIVILEGE TO PRACTICE LAW; LOSS OF FILIPINO CITIZENSHIP CARRIES WITH IT LOSS OF THE PRIVILEGE TO ENGAGE IN THE PRACTICE OF LAW; REQUIREMENTS TO RE-ACQUIRE THE PRIVILEGE.— The Court reiterates that Filipino citizenship is a requirement for admission to the bar and is, in fact, a continuing requirement for the practice of law. The loss thereof means termination of the petitioner's membership in the bar; *ipso jure* the privilege to engage in the practice of law. Under R.A. No. 9225, natural-born citizens

who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have re-acquired their Philippine citizenship upon taking the oath of allegiance to the Republic. Thus, a Filipino lawyer who becomes a citizen of another country and later re-acquires his Philippine citizenship under R.A. No. 9225, remains to be a member of the Philippine Bar. However, as stated in *Dacanay*, the right to resume the practice of law is not automatic. R.A. No. 9225 provides that a person who intends to practice his profession in the Philippines must apply with the proper authority for a license or permit to engage in such practice. xxx The OBC further required the petitioner to update his compliance, particularly with the MCLE.

R E S O L U T I O N

REYES, *J.*:

On June 8, 2009, a petition was filed by Epifanio B. Muneses (petitioner) with the Office of the Bar Confidant (OBC) praying that he be granted the privilege to practice law in the Philippines.

The petitioner alleged that he became a member of the Integrated Bar of the Philippines (IBP) on March 21, 1966; that he lost his privilege to practice law when he became a citizen of the United States of America (USA) on August 28, 1981; that on September 15, 2006, he re-acquired his Philippine citizenship pursuant to Republic Act (R.A.) No. 9225 or the "Citizenship Retention and Re-Acquisition Act of 2003" by taking his oath of allegiance as a Filipino citizen before the Philippine Consulate General in Washington, D.C., USA; that he intends to retire in the Philippines and if granted, to resume the practice of law. Attached to the petition were several documents in support of his petition, albeit mere photocopies thereof, to wit:

1. Oath of Allegiance dated September 15, 2006 before Consul General Domingo P. Nolasco;
2. Petition for Re-Acquisition of Philippine Citizenship of same date;

3. Order for Re-Acquisition of Philippine Citizenship also of same date;
4. Letter dated March 13, 2008 evidencing payment of membership dues with the IBP;
5. Attendance Forms from the Mandatory Continuing Legal Education (MCLE).

In Bar Matter No. 1678, dated December 17, 2007, the Court was confronted with a similar petition filed by Benjamin M. Dacanay (Dacanay) who requested leave to resume his practice of law after availing the benefits of R.A. No. 9225. Dacanay was admitted to the Philippine Bar in March 1960. In December 1998, he migrated to Canada to seek medical attention for his ailments and eventually became a Canadian citizen in May 2004. On July 14, 2006, Dacanay re-acquired his Philippine citizenship pursuant to R.A. No. 9225 after taking his oath of allegiance before the Philippine Consulate General in Toronto, Canada. He returned to the Philippines and intended to resume his practice of law.

The Court reiterates that Filipino citizenship is a requirement for admission to the bar and is, in fact, a continuing requirement for the practice of law. The loss thereof means termination of the petitioner's membership in the bar; *ipso jure* the privilege to engage in the practice of law. Under R.A. No. 9225, natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have re-acquired their Philippine citizenship upon taking the oath of allegiance to the Republic.[1] Thus, a Filipino lawyer

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[1] Section 3. *Retention of Philippine Citizenship* - Any provision of law to the contrary notwithstanding, natural born citizens of the Philippines by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I ______, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines and I hereby declare that I recognize and accept the supreme authority of

who becomes a citizen of another country and later re-acquires his Philippine citizenship under R.A. No. 9225, remains to be a member of the Philippine Bar. However, as stated in *Dacanay*, the right to resume the practice of law is not automatic.[2] R.A. No. 9225 provides that a person who intends to practice his profession in the Philippines must apply with the proper authority for a license or permit to engage in such practice.[3]

It can not be overstressed that:

> The practice of law is a privilege burdened with conditions. It is so delicately affected with public interest that it is both the power and duty of the State (through this Court) to control and regulate it in order to protect and promote the public welfare.
>
> Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful observance of the legal profession, compliance with the mandatory continuing legal education requirement and payment of membership fees to the Integrated Bar of the Philippines (IBP) are the conditions required for membership in good standing in the bar and for enjoying the privilege to practice law. Any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients repose in him for the continued exercise of his professional privilege.[4]

Thus, in pursuance to the qualifications laid down by the Court for the practice of law, the OBC required the herein petitioner to submit the original or certified true copies of the following documents in relation to his petition:

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the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

[2] *Petition for Leave to Resume Practice of Law, Benjamin Dacanay, Petitioner*, B.M. No. 1678, December 17, 2007.

[3] R.A. No. 9225, Section 5.

[4] *Supra* note 2.

1. Petition for Re-Acquisition of Philippine Citizenship;
2. Order (for Re-Acquisition of Philippine citizenship);
3. Oath of Allegiance to the Republic of the Philippines;
4. Identification Certificate (IC) issued by the Bureau of Immigration;
5. Certificate of Good Standing issued by the IBP;
6. Certification from the IBP indicating updated payments of annual membership dues;
7. Proof of payment of professional tax; and
8. Certificate of compliance issued by the MCLE Office.

In compliance thereof, the petitioner submitted the following:

1. Petition for Re-Acquisition of Philippine Citizenship;
2. Order (for Re-Acquisition of Philippine citizenship);
3. Oath of Allegiance to the Republic of the Philippines;
4. Certificate of Re-Acquisition/Retention of Philippine Citizenship issued by the Bureau of Immigration, in lieu of the IC;
5. Certification dated May 19, 2010 of the IBP-Surigao City Chapter attesting to his good moral character as well as his updated payment of annual membership dues;
6. Professional Tax Receipt (PTR) for the year 2010;
7. Certificate of Compliance with the MCLE for the 2nd compliance period; and
8. Certification dated December 5, 2008 of Atty. Gloria Estenzo-Ramos, Coordinator, UC-MCLE Program, University of Cebu, College of Law attesting to his compliance with the MCLE.

The OBC further required the petitioner to update his compliance, particularly with the MCLE. After all the

requirements were satisfactorily complied with and finding that the petitioner has met all the qualifications and none of the disqualifications for membership in the bar, the OBC recommended that the petitioner be allowed to resume his practice of law.

Upon this favorable recommendation of the OBC, the Court adopts the same and sees no bar to the petitioner's resumption to the practice of law in the Philippines.

WHEREFORE, the petition of Attorney Epifanio B. Muneses is hereby **GRANTED**, subject to the condition that he shall re-take the Lawyer's Oath on a date to be set by the Court and subject to the payment of appropriate fees.

Furthermore, the Office of the Bar Confidant is directed to draft the necessary guidelines for the re-acquisition of the privilege to resume the practice of law for the guidance of the Bench and Bar.

SO ORDERED.

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

Brion[**] and *Mendoza,*[***] *JJ.,* on leave.

[*] Per Section 12, R.A. 296, The Judiciary Act of 1984, as amended.

[**] On Leave per Special Order No. 1257 dated July 19, 2012.

[***] On leave.

EN BANC

[G.R. No. 185806. July 24, 2012]

GENEROSO ABELLANOSA, CARMENCITA D. PINEDA, BERNADETTE R. LAIGO, MENELIO D. RUCAT, and DORIS A. SIAO, *petitioners, vs.* **COMMISSION ON AUDIT and NATIONAL HOUSING AUTHORITY,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (R.A. 6758); THE GRANT OF ADDITIONAL INCENTIVE ALLOWANCES TO NHA PROJECT PERSONNEL UNDER RESOLUTION NO. 464 WAS INCONSISTENT WITH R.A. 6758.— The issuance of Resolution No. 464 by the NHA was without legal basis. At the time of its issuance in 1982, Section 3 of P.D. 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees despite the inconsistency of those allowances with the position classification or rates indicated in the National Compensation and Position Classification Plan. Petitioners' contention that P.D. 1597 only repealed Section 4 of P.D. 985, but not Section 2 thereof, is without basis. While Section 2 of P.D. 1597 only mentions Section 4 of P.D. 985, Section 3 of P.D. 1597 specifically refers to all inconsistent laws or issuances. Thereafter, or in 1989, R.A. 6758 further reinforced this policy by expressly decreeing that all allowances not specifically mentioned therein, or as may be determined by the DBM, shall be deemed included in the standardized salary rates prescribed. Under Section 12 of R.A. 6758, all kinds of allowances are integrated in the standardized salary rates. x x x Only those additional compensation benefits being received by incumbents as of 1 July 1989, which were not integrated into the standardized salary rates, shall continue to be authorized. In this case, the incentive allowances granted under Resolution No. 464 are clearly not among those enumerated under R.A. 6758. Neither

has there been any allegation that the allowances were specifically determined by the DBM to be an exception to the standardized salary rates. Hence, such allowances can no longer be granted after the effectivity of R.A. 6758.

APPEARANCES OF COUNSEL

Cipriano P. Lupera for petitioners.

The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 64 of the Rules of Court, seeking to annul Commission on Audit (COA) Decision No. 2008-102 dated 24 October 2008,[1] which affirmed the disallowance of the Incentive Allowance involved herein amounting to ₱401,284.39.

Statement of the Facts and of the Case

On 31 July 1975, Presidential Decree No. (P.D.) 757 was enacted, creating the National Housing Authority (NHA) and defining its powers and functions, among others. Section 10 thereof provides:

Section 10. *Organizational Structure of the Authority.* The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.

The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if necessary, of the Authority: Provided, That **the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and**

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[1] Issued by COA Chairperson Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr., *rollo*, pp. 46-54.

Position Classification Office and from the examination and/or eligibility requirement of the Civil Service Commission. Subject to the approval of the Board, **the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel**. (Emphasis supplied.)

On 22 August 1976, P.D. 985, entitled "A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same," was enacted. Section 2 thereof provides:

Section 2. *Declaration of Policy.* It is hereby declared to be the policy of the national government to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions. In determining rates of pay, due regard shall be given to, among others, prevailing rates in private industry for comparable work. For this purpose, there is hereby established a system of compensation standardization and position classification in the national government for all departments, bureaus, agencies, and offices including government-owned or controlled corporations and financial institutions: Provided, That **notwithstanding a standardized salary system established for all employees, additional financial incentives may be established by government corporation[s] and financial institutions for their employees to be supported fully from their corporate funds** and for such technical positions as may be approved by the President in critical government agencies. (Emphasis supplied.)

On 11 June 1978, however, P.D. 1597 was enacted, otherwise known as "Further Rationalizing the System of Compensation and Position Classification in the National Government." Sections 3 and 5 thereof read:

Section 3. *Repeal of Special Salary Laws and Regulations.* All laws, decrees, executive orders and other issuances or parts thereof, that exempt agencies from the coverage of the National Compensation and Position Classification System as established by P.D. No. 985 and P.D. No. 1285, or which authorize and fix position classification,

salaries, pay rates/ranges or allowances for specified positions, to groups of officials and employees, or to agencies, that are inconsistent with the position classification or rates in the National Compensation and Position Classification Plan, are hereby repealed.

xxx xxx xxx

Section 5. *Allowances, Honoraria, and Other Fringe Benefits.* Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

On 23 June 1982, the Board of Directors of the NHA issued Resolution No. 464, granting additional incentive benefits to its project personnel. Resolution No. 464 provides in relevant part:

RESOLVED, that to encourage personnel particularly those in the technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:

A. Personnel from one Region assigned to another Region (*e.g.* Metro Manila to Visayas or Mindanao):

1. Incentive Allowance equivalent to 20% of basic pay.

2. Air Fare (once a quarter).

3. Flight Insurance (Not more than ₱10.00 premium per flight)

4. Staff Housing.

B. Personnel assigned to Project in a Region within which he is residing (*e.g.* Metro Manila Staff assigned to ZIP Project within Metro Manila):

Incentive Allowance equivalent to 10% of basic pay. be as it is hereby, approved, subject to availability of funds and implementing guidelines to be issued by Management.[2]

Resolution No. 464 was implemented through Memorandum Circular No. 331 dated 17 August 1984,[3] issued by Mr. Gaudencio V. Tobias, NHA General Manager.

On 1 July 1989, Republic Act No. (R.A.) 6758, otherwise known as the Compensation and Position Classification Act of 1989, was enacted, rationalizing the salaries of government employees. Sections 12 and 16 of R.A. 6758 provide:

Section 12. *Consolidation of Allowances and Compensation*. - All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

xxx xxx xxx

Section 16. *Repeal of Special Salary Laws and Regulations*. - All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

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[2] *Rollo*, p. 67.

[3] *Id.* at 89-92.

On 2 October 1989, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10, implementing R.A. 6758. Sections 5.4 and 5.5 of CCC No. 10 enumerate the allowances and fringe benefits that are allowed to be granted even after 1 July 1989, provided that in the case of allowances mentioned under Section 5.5, the grant thereof is with appropriate authorization either from the DBM or the Office of the President, or through legislative issuances. Without the said authorization, payment made for the allowances or fringe benefits after 1 July 1989 shall be considered as illegal disbursement of public funds.

Consequently, the Officer-in-Charge, COA-NHA, issued a Memorandum dated 5 December 1990, informing the NHA management that the payment of the incentive allowance should be discontinued. On 25 January 1991, the then NHA General Manager issued a Memorandum[4] declaring the termination of payment of incentive and housing allowances.

On 12 August 1998, this Court, in *De Jesus v. Commission on Audit*,[5] declared CCC No. 10 ineffective for lack of publication in the *Official Gazette* or in a newspaper of general circulation. Subsequently, the NHA resumed payment of the incentive allowance to its employees, including petitioners, for the period February 1994 to December 1999, based on NHA Resolution No. 464 and Memorandum Circular No. 331. The total payments amounted to ₱808,645.90, broken down as follows:

Generoso P. Abellanosa	₱204,407.80
Bernadette R. Laigo	178,494.20
Carmencita D. Pineda	171,216.30
Menelio D. Rucat	93,310.60
Doris A. Siao	161,217.00

[4] *Id.* at 118.

[5] 355 Phil. 584 (1998).

As the aforesaid amount did not yet constitute the maximum of 20% of their basic pay as authorized under NHA Resolution No. 464, petitioners filed their claims for payment of ₱1,003,210.96 covering the balance for the period February 1994 to December 1999.[6] This move prompted the NHA Head Office, in a letter dated 10 September 2001, to seek the opinion of the COA-NHA on the legality of the claim for payment of incentive allowance differential. However, pending receipt of the opinion, the NHA Project Office in Iligan City paid, on 19 September 2001, the amount of ₱100,321.10 representing the first tranche of the balance of the incentive allowance. This transaction was passed in audit by Auditor Agapito Generelao, Jr.

On 18 September 2001, the Assistant Corporate Auditor/ Officer-in-Charge, COA-NHA, issued an adverse opinion relative to the payment of the incentive allowance. Consequently, the NHA General Manager issued a Memorandum dated 25 September 2001, stating that the payment of the said allowance would be held in abeyance. Nonetheless, the NHA Field Office proceeded to pay, on 20 February 2003, the second tranche of the incentive allowance amounting to ₱300,963.29, for a total of ₱401,284.39 for both payments. The payment was again passed in audit by Mr. Benito S. Napoles, Jr., Audit Team Leader. On 29 June 2004, Atty. Jose M. Agustin, State Auditor, COA-NHA, issued a letter[7] to the Officer-in-Charge of the NHA, reiterating the adverse opinion on the payment of the incentive allowance.

On 16 July 2004, Atty. Agustin issued Audit Observation Memorandum (AOM) No. 2004-07-115. He noted therein that the payments had no legal authority, because the power granted to the boards of government-owned or -controlled corporations (GOCCs) and government financial institutions (GFIs) – a power granted by their charters, which allowed them to fix, determine

[6] *Rollo*, p. 68.

[7] *Id.* at 72-73.

and authorize the grant of compensation—had already been repealed by Section 3 of P.D. 1597 dated 11 June 1978; and that the allowances, honoraria and other fringe benefits granted through GOCC/GFI Board Resolutions without the confirmation of the DBM or the Office of the President prior to the effectivity of R.A. 6758 cannot be allowed to continue, since these do not fall within the purview of appropriate authorization under R.A. 6758.

Consequently, the Legal and Adjudication Office (LAO)-Corporate disallowed the total amount of ₱401,284.39 under Notice of Disallowance (ND) No. NHA-2005-001 (01 and 03) dated 24 January 2005.[8] The Notice found the following persons liable: (1) Generoso C. Abellanosa, District Manager, for approving the transaction, signing the check, and being the payee; (2) Bernadette R. Laigo, Finance Officer, for certifying that the expenses were necessary, lawful, and incurred under her direct supervision; and for certifying the adequacy of the documentary attachments, fund availability, propriety of the expenditures, and her being the payee; and (3) all the payees, namely, Jerry R. Baviera, Carmencita D. Pineda, Menelio D. Rucat, and Doris A. Siao.

On appeal, the Adjudication and Settlement Board (ASB) of the COA affirmed the disallowance under ASB Decision No. 2007-025 dated 10 April 2007,[9] stressing that the power of the boards of the GOCCs and GFIs to grant compensation and incentives had already been repealed by Section 3 of P.D. 1597. Thus, the ASB ruled that NHA Resolution No. 464 was defective for having no legal basis. Further, the ASB also stated that R.A. 6758 effectively repealed all laws, decrees, executive orders, corporate charters and other issuances or parts thereof that exempted agencies from the coverage of the system.

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

[9] *Id.* at 55-63; issued by Assistant Commissioners Elizabeth S. Zosa, Emma M. Espina, Carmela S. Perez, Jaime P. Naranjo, and Amorsonia B. Escarda.

Dissatisfied with the ASB's Decision, petitioners filed an appeal with the COA proper. On 24 October 2008, the COA issued its Decision No. 2008-102, affirming the disallowance and denying the appeal.

Hence, this Petition.

Petitioners raise the following issues:

1. Whether or not the grant of incentive benefits/ allowances under Board Resolution 464 is incidental to the express power granted by law to the Board of Directors under Presidential Decree 757; rendering the grant of the benefits/allowance[s] couched with legal authority.

2. Whether or not Presidential Decree No. 985 effectively repealed Section 10 of Presidential Decree No. 757 insofar as the determination of rates of allowance, honoraria and such other additional compensation which the [A]uthority is authorized to grant to its officers, technical staff and consultant including the necessary detailed personnel considering the exception provided for in Section 2 of Presidential Decree No. 985 which retained the same power to be exercised by government corporations.

3. Whether or not Presidential Decree No. 1597 repealed the exception contained in Section 2 of Presidential Decree No. 985 which retained for government corporations the power to establish and give additional financial incentives to their employees when the specified coverage of PD 1597 was only with respect to Section 4 of Presidential Decree No. 985.

4. Whether or not the incentive benefits/ allowances granted to the petitioners by virtue of NHA Board Resolution No. 464 is within the contemplation of Republic Act 6758.

5. Assuming without granting that it is within the contemplation of Republic Act 6758, whether or not the incentive benefits/allowances granted under Board Resolution No. 464 fall under the exception of the law in the light of the republished DBM Corporate Compensation Circular No. 10 as well as Corporate Compensation Circular No. 12.

6. Whether or not finally settled accounts [can] be reopened validly without prior authorization of the COA Chairman as required

by the COA rules and regulations.

7. Whether or not the disallowance of the incentive benefits/ allowances [is] an act of injustice, fraud, bad faith and a disorderly conduct after the services were actually rendered and the realization of the purpose for which the services were poured were achieved to the benefit of the government.[10]

On 27 January 2009, this Court issued a Resolution requiring, among others, respondents to file their Comment on the Petition, and petitioners to comply with certain requirements of the Rules of Court with respect to filing a petition for review.

On 21 May 2009, respondents, through the Office of the Solicitor General, filed their Comment on the Petition. They posited the following arguments: (1) Resolution No. 464, granting additional incentive allowances to certain NHA personnel, was not allowed under either P.D. 1597 or R.A. 6758; (2) petitioners' claim that the disallowance of the incentive benefits was harsh and unjust was speculative and gratuitous; (3) COA was not estopped from questioning, in the process of post-audit, the previous acts of its officials. Where there is an express provision of law prohibiting the grant of certain benefits, the law must still be enforced even if it prejudices certain parties because of an error committed by a public official in granting the benefit.

On 9 June 2009, this Court issued a Resolution requiring petitioners' counsel to show cause why he should not be disciplinarily dealt with for his failure to comply with its 27 January 2009 Resolution. On 23 June 2009, it issued another Resolution noting the Comment and requiring petitioners to file their Reply thereto. In its 24 November 2009 Resolution, it imposed a fine of ₱1,000 upon petitioners' counsel for failure to comply with the show-cause Resolution of 9 June 2009.

On 23 March 2010, this Court issued a Resolution which, among others, dismissed the Petition for the failure of petitioners to file a Reply as required under the 23 June 2009 Resolution.

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

On 14 May 2010, petitioners filed a Motion for Reconsideration of the 23 March 2010 Resolution, stating that they had no intention of disobeying this Court, and were instead refraining from filing a Reply to the Comment, as they would just be substantially repeating what they had already previously stated in their Petition. On 1 June 2010, they filed a Supplemental to Petitioners' Motion for Reconsideration.

On 22 June 2010, this Court issued a Resolution granting the Motion for Reconsideration and reinstating the Petition.

The Court's Ruling

We find the Petition to be without merit.

The issuance of Resolution No. 464 by the NHA was without legal basis. At the time of its issuance in 1982, Section 3 of P.D. 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees despite the inconsistency of those allowances with the position classification or rates indicated in the National Compensation and Position Classification Plan.

Petitioners' contention that P.D. 1597 only repealed Section 4 of P.D. 985, but not Section 2 thereof, is without basis. While Section 2 of P.D. 1597 only mentions Section 4 of P.D. 985, Section 3 of P.D. 1597 specifically refers to all inconsistent laws or issuances.

Thereafter, or in 1989, R.A. 6758 further reinforced this policy by expressly decreeing that all allowances not specifically mentioned therein, or as may be determined by the DBM, shall be deemed included in the standardized salary rates prescribed.

Under Section 12 of R.A. 6758, all kinds of allowances are integrated in the standardized salary rates. Below are the exceptions:

1. Representation and transportation allowance (RATA);
2. Clothing and laundry allowance;

3. Subsistence allowance of marine officers and crew on board government vessels;

4. Subsistence allowance of hospital personnel;

5. Hazard pay;

6. Allowances of foreign service personnel stationed abroad; and

7. Such other additional compensation not otherwise specified herein as may be determined by the DBM.

Only those additional compensation benefits being received by incumbents as of 1 July 1989, which were not integrated into the standardized salary rates, shall continue to be authorized.

In this case, the incentive allowances granted under Resolution No. 464 are clearly not among those enumerated under R.A. 6758. Neither has there been any allegation that the allowances were specifically determined by the DBM to be an exception to the standardized salary rates. Hence, such allowances can no longer be granted after the effectivity of R.A. 6758.

Pititioners claim that the grant of incentive allowances is incidental to and necessary for the enforcement of the NHA's powers and duties. However, this contention cannot prevail in the light of express provisions of law that rationalized government salary rates in pursuit of similarly noteworthy objectives.

Further, petitioners' contention that R.A. 6758 does not apply to the incentive allowances, because these are merely temporary in nature and are given only to few employees, does not hold water. A reading of R.A. 6758 shows that it does not distinguish whether allowances are permanent in nature or are provided to an entire class of government employees. In fact, the law itself provides that it is the policy of the state to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities.

Petitioners also argue that the alleged reopening of the settled, audited accounts of petitioners with respect to the incentive allowance paid was contrary to existing audit rules; and that the subsequent disallowance was an act tainted with injustice, fraud, and bad faith. While we commend petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA, the law must stand.

In *Baybay Water District v. Commission on Audit*,[11] this Court stated that public officers' erroneous application and enforcement of the law do not estop the government from making a subsequent correction of those errors. Where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit. Practice, without more – no matter how long continued – cannot give rise to any vested right if it is contrary to law.

WHEREFORE, premises considered, the Petition is **DISMISSED.** Commission on Audit Decision No. 2008-102 dated 24 October 2008 is hereby **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro, J., on official leave.

Brion and *Mendoza, JJ.,* on leave.

Peralta, J., on official business.

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[11] 425 Phil. 326 (2002).

EN BANC

[G.R. No. 193636. July 24, 2012]

MARYNETTE R. GAMBOA, *petitioner, vs.* **P/SSUPT. MARLOU C. CHAN, in his capacity as the PNP-Provincial Director of Ilocos Norte, and P/SUPT. WILLIAM O. FANG, in his capacity as Chief, Intelligence Division, PNP Provincial Office, Ilocos Norte,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY MAY YIELD TO AN OVERRIDING LEGITIMATE STATE INTEREST.—** [T]he right to privacy is considered a fundamental right that must be protected from intrusion or constraint. However, in *Standard Chartered Bank v. Senate Committee on Banks*, this Court underscored that the right to privacy is **not absolute**[.] x x x [W]hen the right to privacy finds tension with a competing state objective, the courts are required to weigh both notions. In these cases, although considered a fundamental right, the right to privacy may nevertheless succumb to an opposing or overriding state interest deemed legitimate and compelling.
2. **REMEDIAL LAW; RULE ON THE WRIT OF *HABEAS DATA*; WRIT OF *HABEAS DATA*, EXPLAINED.—** The writ of *habeas data* is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy. It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends. It must be emphasized that in order for the privilege of the writ to be granted, there must exist a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.
3. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO PRIVACY; THE ACT OF THE**

PHILIPPINE NATIONAL POLICE IN FORWARDING THE INFORMATION TO A COMMISSION TASKED TO INVESTIGATE THE EXISTENCE OF PRIVATE ARMIES WAS NOT A VIOLATION OF THE RIGHT TO PRIVACY.— This Court holds that Gamboa was able to sufficiently establish that the data contained in the Report listing her as a PAG coddler came from the PNP. Contrary to the ruling of the trial court, however, the forwarding of information by the PNP to the Zeñarosa Commission was **not** an unlawful act that violated or threatened her right to privacy in life, liberty or security. The PNP was rationally expected to forward and share intelligence regarding PAGs with the body specifically created for the purpose of investigating the existence of these notorious groups. Moreover, the Zeñarosa Commission was explicitly authorized to deputize the police force in the fulfillment of the former's mandate, and thus had the power to request assistance from the latter. Following the pronouncements of the ECHR in *Leander,* the fact that the PNP released information to the Zeñarosa Commission without prior communication to Gamboa and without affording her the opportunity to refute the same cannot be interpreted as a violation or threat to her right to privacy since that act is an inherent and crucial component of intelligence-gathering and investigation. Additionally, Gamboa herself admitted that the PNP had a validation system, which was used to update information on individuals associated with PAGs and to ensure that the data mirrored the situation on the field. Thus, safeguards were put in place to make sure that the information collected maintained its integrity and accuracy.

4. **REMEDIAL LAW; RULE ON THE WRIT OF *HABEAS DATA*; WHERE THE STATE INTEREST FAR OUTWEIGHS THE ALLEGED INTRUSION ON A PERSON'S PRIVATE LIFE, WRIT OF *HABEAS DATA* MUST BE DENIED.—** It is clear from the foregoing discussion that the state interest of dismantling PAGs far outweighs the alleged intrusion on the private life of Gamboa, especially when the collection and forwarding by the PNP of information against her was pursuant to a lawful mandate. Therefore, the privilege of the writ of *habeas data* must be denied.

APPEARANCES OF COUNSEL

Ferdinand P. Ignacio and *Hidalgo Estepa and Associates Law Offices* for petitioner.

The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

Before this Court is an Appeal by *Certiorari* (Under Rule 45 of the Rules of Court) filed pursuant to Rule 19[1] of the Rule on the Writ of *Habeas Data*,[2] seeking a review of the 9 September 2010 Decision in Special Proc. No. 14979 of the Regional Trial Court, First Judicial Region, Laoag City, Branch 13 (RTC Br. 13).[3] The questioned Decision denied petitioner the privilege of the writ of *habeas data*.[4]

At the time the present Petition was filed, petitioner Marynette R. Gamboa (Gamboa) was the Mayor of Dingras, Ilocos Norte.[5] Meanwhile, respondent Police Senior Superintendent (P/SSUPT.) Marlou C. Chan was the Officer-in-Charge, and respondent Police Superintendent (P/SUPT.) William O. Fang was the Chief of the Provincial Investigation and Detective Management Branch, both of the Ilocos Norte Police Provincial Office.[6]

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[1] Sec. 19. Appeal. - Any party may appeal from the final judgment or order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) working days from the date of notice of the judgment or final order.

The appeal shall be given the same priority as in *habeas corpus* and *amparo* cases.

[2] A.M. No. 08-1-06-SC, 22 January 2008.

[3] *Rollo*, pp. 36-47; Decision dated 9 September 2010.

[4] *Id.* at 47.

[5] *Id.* at 4, Appeal by *Certiorari*.

[6] *Id.* at 39-40, Decision; *id.* at 142-143, Affidavit of P/SSupt. Chan dated 21 July 2010; *id.* at 144-145, Affidavit of P/Supt. Fang dated 21 July 2010.

On 8 December 2009, former President Gloria Macapagal-Arroyo issued Administrative Order No. 275 (A.O. 275), "Creating an Independent Commission to Address the Alleged Existence of Private Armies in the Country."[7] The body, which was later on referred to as the Zeñarosa Commission,[8] was formed to investigate the existence of private army groups (PAGs) in the country with a view to eliminating them before the 10 May 2010 elections and dismantling them permanently in the future.[9] Upon the conclusion of its investigation, the Zeñarosa Commission released and submitted to the Office of the President a confidential report entitled "A Journey Towards H.O.P.E.: The Independent Commission Against Private Armies' Report to the President" (the Report).[10]

Gamboa alleged that the Philippine National Police in Ilocos Norte (PNP–Ilocos Norte) conducted a series of surveillance operations against her and her aides,[11] and classified her as someone who keeps a PAG.[12] Purportedly without the benefit of data verification, PNP–Ilocos Norte forwarded the information gathered on her to the Zeñarosa Commission,[13] thereby causing her inclusion in the Report's enumeration of individuals

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[7] 108 O.G. 310 (Jan., 2010).

[8] Named after the Chairperson, retired Court of Appeals Associate Justice Monina Arevalo-Zeñarosa. The other members of the body included Bishop Juan de Dios Pueblos, D.D., Alleem Mahmod Mala L. Adilao, (Ret.) General Virtus V. Gil, (Ret.) Lieutenant General Edilberto Pardo Adan, (Ret.) Herman Zamora Basbaño, Dante Lazaro Jimenez, and General Jaime Callada Echeverria[(+)]. *Rollo*, pp. 292-299.

[9] *Supra* note 7.

[10] *Rollo*, pp. 287-563; *rollo*, p. 20, Appeal by *Certiorari*; *rollo*, p. 591, Comment.

[11] *Id.* at 6, Appeal by *Certiorari*; *id.* at 51-52, Petition for the Writ of *Habeas Data*.

[12] *Id.* at 20-23, Appeal by *Certiorari*; *id.* at 52, Petition for the Writ of *Habeas Data*.

[13] *Id.*

maintaining PAGs.[14] More specifically, she pointed out the following items reflected therein:

(a) The Report cited the PNP as its source for the portion regarding the status of PAGs in the Philippines.[15]

(b) The Report stated that "x x x the PNP organized one dedicated Special Task Group (STG) for each private armed group (PAG) to monitor and counteract their activities."[16]

(c) Attached as Appendix "F" of the Report is a tabulation generated by the PNP and captioned as "Status of PAGs Monitoring by STGs as of April 19, 2010," which classifies PAGs in the country according to region, indicates their identity, and lists the prominent personalities with whom these groups are associated.[17] The first entry in the table names a PAG, known as the Gamboa Group, linked to herein petitioner Gamboa.[18]

(d) Statistics on the status of PAGs were based on data from the PNP, to wit:

The resolutions were the subject of a national press conference held in Malacañang on March 24, 2010 at which time, the Commission was also asked to comment on the PNP report that out of one hundred seventeen (117) partisan armed groups validated, twenty-four (24) had been dismantled with sixty-seven (67) members apprehended and more than eighty-six (86) firearms confiscated.

Commissioner Herman Basbaño qualified that said statistics were based on PNP data but that the more significant fact from his report is that the PNP has been vigilant in monitoring the activities of these armed groups and this vigilance is largely due to the existence of the Commission which has continued communicating with the [Armed Forces of the Philippines (AFP)] and PNP personnel in the

[14] *Id.* at 20-23, Appeal by *Certiorari*.

[15] *Id.* at 20, Appeal by *Certiorari*; *id.* at 337, Report.

[16] *Id.* at 20-21, Appeal by *Certiorari*; *id.* at 338, Report.

[17] *Id.* at 21, Appeal by *Certiorari*; *id.* at 430-463, Appendix "F" of the Report.

[18] *Id.* at 431, Appendix "F" of the Report.

field to constantly provide data on the activities of the PAGs. Commissioner Basbaño stressed that the Commission's efforts have preempted the formation of the PAGs because now everyone is aware that there is a body monitoring the PAGs['] movement through the PNP. Commissioner [Lieutenant General Edilberto Pardo Adan] also clarified that the PAGs are being destabilized so that their ability to threaten and sow fear during the election has been considerably weakened.[19]

(e) The Report briefly touched upon the validation system of the PNP:

Also, in order to provide the Commission with accurate data which is truly reflective of the situation in the field, the PNP complied with the Commission's recommendation that they revise their validation system to include those PAGs previously listed as dormant. In the most recent briefing provided by the PNP on April 26, 2010, there are one hundred seven (107) existing PAGs. Of these groups, the PNP reported that seven (7) PAGs have been reorganized.[20]

On 6 and 7 July 2010, ABS-CBN broadcasted on its evening news program the portion of the Report naming Gamboa as one of the politicians alleged to be maintaining a PAG.[21] Gamboa averred that her association with a PAG also appeared on print media.[22] Thus, she was publicly tagged as someone who maintains a PAG on the basis of the unverified information that the PNP-Ilocos Norte gathered and forwarded to the Zeñarosa Commission.[23] As a result, she claimed that her malicious or reckless inclusion in the enumeration of personalities maintaining a PAG as published in the Report also made her, as well as her

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[19] *Id.* at 21-22, Appeal by *Certiorari*; *id.* at 348-349, Report.

[20] *Id.* at 22, Appeal by *Certiorari*; *id.* at 364, Report.

[21] The records refer to two different television news programs: the Position Paper indicates TV Patrol World, while the Return of the Writ mentions *Bandila*; *id.* at 6-7, Appeal by *Certiorari*; *id.* at 37, Decision; *id.* at 59, Affidavit of Demijon Castillo dated 9 July 2010; *id.* at 133, Return of the Writ; *id.* at 147-148, Position Paper of Gamboa; *id.* at 591, Comment.

[22] *Id.* at 6-7, Appeal by *Certiorari*; *id.* at 166, Position Paper of Gamboa.

[23] *Id.* at 52-53, Petition for the Writ of *Habeas Data*.

supporters and other people identified with her, susceptible to harassment and police surveillance operations.[24]

Contending that her right to privacy was violated and her reputation maligned and destroyed, Gamboa filed a Petition dated 9 July 2010 for the issuance of a writ of *habeas data* against respondents in their capacities as officials of the PNP-Ilocos Norte.[25] In her Petition, she prayed for the following reliefs: (a) destruction of the unverified reports from the PNP-Ilocos Norte database; (b) withdrawal of all information forwarded to higher PNP officials; (c) rectification of the damage done to her honor; (d) ordering respondents to refrain from forwarding unverified reports against her; and (e) restraining respondents from making baseless reports.[26]

The case was docketed as Special Proc. No. 14979 and was raffled to RTC Br. 13, which issued the corresponding writ on 14 July 2010 after finding the Petition meritorious on its face.[27] Thus, the trial court (a) instructed respondents to submit all information and reports forwarded to and used by the Zeñarosa Commission as basis to include her in the list of persons maintaining PAGs; (b) directed respondents, and any person acting on their behalf, to cease and desist from forwarding to the Zeñarosa Commission, or to any other government entity, information that they may have gathered against her without the approval of the court; (c) ordered respondents to make a written return of the writ together with supporting affidavits; and (d) scheduled the summary hearing of the case on 23 July 2010.[28]

In their Return of the Writ, respondents alleged that they had acted within the bounds of their mandate in conducting the

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

[25] *Id.* at 48-58.

[26] *Id.*

[27] *Id.* at 113-114, Writ of *Habeas Data* dated 14 July 2010; *id.* at 115-117, Order dated 14 July 2010.

[28] *Id.*

investigation and surveillance of Gamboa.[29] The information stored in their database supposedly pertained to two criminal cases in which she was implicated, namely: (a) a Complaint for murder and frustrated murder docketed as NPS DOC No. 1-04-INQ-091-00077, and (b) a Complaint for murder, frustrated murder and direct assault upon a person in authority, as well as indirect assault and multiple attempted murder, docketed as NPS DOCKET No. 1-04-INV-10-A-00009.[30]

Respondents likewise asserted that the Petition was incomplete for failing to comply with the following requisites under the Rule on the Writ of *Habeas Data*: (a) the manner in which the right to privacy was violated or threatened with violation and how it affected the right to life, liberty or security of Gamboa; (b) the actions and recourses she took to secure the data or information; and (c) the location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information.[31] They also contended that the Petition for Writ of *Habeas Data*, being limited to cases of extrajudicial killings and enforced disappearances, was not the proper remedy to address the alleged besmirching of the reputation of Gamboa.[32]

RTC Br. 13, in its assailed Decision dated 9 September 2010, dismissed the Petition.[33] The trial court categorically ruled that the inclusion of Gamboa in the list of persons maintaining PAGs, as published in the Report, constituted a violation of her right to privacy, to wit:

> In this light, it cannot also be disputed that by her inclusion in the list of persons maintaining PAGs, [Gamboa]'s right to privacy indubitably has been violated. The violation understandably affects her life, liberty and security enormously. The untold misery that

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[29] *Id.* at 118-145, Return of the Writ dated 22 July 2010.

[30] *Id.* at 125.

[31] *Id.* at 126-131.

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

[33] *Id.* at 36-47, Decision.

comes with the tag of having a PAG could even be insurmountable. As she essentially alleged in her petition, she fears for her security that at any time of the day the unlimited powers of respondents may likely be exercised to further malign and destroy her reputation and to transgress her right to life.

By her inclusion in the list of persons maintaining PAGs, it is likewise undisputed that there was certainly intrusion into [Gamboa]'s activities. It cannot be denied that information was gathered as basis therefor. After all, under Administrative Order No. 275, the Zeñarosa Commission was tasked to investigate the existence of private armies in the country, with all the powers of an investigative body under Section 37, Chapter 9, Book I of the Administrative Code of 1987.

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By her inclusion in the list of persons maintaining PAGs, [Gamboa] alleged as she accused respondents, who are public officials, of having gathered and provided information that made the Zeñarosa Commission to include her in the list. Obviously, it was this gathering and forwarding of information supposedly by respondents that petitioner barks at as unlawful. x x x.[34]

Despite the foregoing findings, RTC Br. 13 nevertheless dismissed the Petition on the ground that Gamboa failed to prove through substantial evidence that the subject information originated from respondents, and that they forwarded this database to the Zeñarosa Commission without the benefit of prior verification.[35] The trial court also ruled that even before respondents assumed their official positions, information on her may have already been acquired.[36] Finally, it held that the Zeñarosa Commission, as the body tasked to gather information on PAGs and authorized to disclose information on her, should have been impleaded as a necessary if not a compulsory party to the Petition.[37]

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[34] *Id.* at 41-42.

[35] *Id.* at 44.

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

[37] *Id.* at 47.

Gamboa then filed the instant Appeal by *Certiorari* dated 24 September 2010,[38] raising the following assignment of errors:

1. The trial court erred in ruling that the Zeñarosa Commission be impleaded as either a necessary or indispensable party;
2. The trial court erred in declaring that [Gamboa] failed to present sufficient proof to link respondents as the informant to [sic] the Zeñarosa Commission;
3. The trial court failed to satisfy the spirit of *Habeas Data*;
4. The trial court erred in pronouncing that the reliance of the Zeñarosa Commission to [sic] the PNP as alleged by [Gamboa] is an assumption;
5. The trial court erred in making a point that respondents are distinct to PNP as an agency.[39]

On the other hand, respondents maintain the following arguments: (a) Gamboa failed to present substantial evidence to show that her right to privacy in life, liberty or security was violated, and (b) the trial court correctly dismissed the Petition on the ground that she had failed to present sufficient proof showing that respondents were the source of the report naming her as one who maintains a PAG.[40]

Meanwhile, Gamboa argues that although A.O. 275 was a lawful order, fulfilling the mandate to dismantle PAGs in the country should be done in accordance with due process, such that the gathering and forwarding of unverified information on her must be considered unlawful.[41] She also reiterates that she was able to present sufficient evidence showing that the subject information originated from respondents.[42]

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[38] *Id.* at 3-34.

[39] *Id.* at 7-8, Appeal by *Certiorari*.

[40] *Id.* at 589-622, Comment dated 3 January 2011.

[41] *Id.* at 647-656, Reply dated 29 January 2012.

[42] *Id.*

In determining whether Gamboa should be granted the privilege of the writ of *habeas data*, this Court is called upon to, first, unpack the concept of the right to privacy; second, explain the writ of *habeas data* as an extraordinary remedy that seeks to protect the right to informational privacy; and finally, contextualize the right to privacy *vis-à-vis* the state interest involved in the case at bar.

The Right to Privacy

The right to privacy, as an inherent concept of liberty, has long been recognized as a constitutional right. This Court, in *Morfe v. Mutuc*,[43] thus enunciated:

> The due process question touching on an alleged deprivation of liberty as thus resolved goes a long way in disposing of the objections raised by plaintiff that the provision on the periodical submission of a sworn statement of assets and liabilities is violative of the constitutional right to privacy. There is much to be said for this view of Justice Douglas: "**Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom**. The right to be let alone is indeed the beginning of all freedom." As a matter of fact, this right to be let alone is, to quote from Mr. Justice Brandeis "the most comprehensive of rights and the right most valued by civilized men."
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> The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect. xxx.
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> x x x [I]n the leading case of *Griswold v. Connecticut*, Justice Douglas, speaking for five members of the Court, stated: "Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons,

[43] 130 Phil. 415 (1968).

houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." After referring to various American Supreme Court decisions, Justice Douglas continued: "These cases bear witness that the right of privacy which presses for recognition is a legitimate one."

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So it is likewise in our jurisdiction. The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "**The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government**. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government, safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[44] (Emphases supplied)

In *Ople v. Torres,*[45] this Court traced the constitutional and statutory bases of the right to privacy in Philippine jurisdiction, to wit:

Indeed, if we extend our judicial gaze we will find that the right of privacy is recognized and enshrined in several provisions

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[44] *Id.* at 433-436.

[45] 354 Phil. 948 (1998).

of our Constitution. It is expressly recognized in section 3 (1) of the Bill of Rights:

> Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Other facets of the right to privacy are protected in various provisions of the Bill of Rights, *viz*:

> Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
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> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
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> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health as may be provided by law.
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> Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.
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> Sec. 17. No person shall be compelled to be a witness against himself.

Zones of privacy are likewise recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors

and other persons" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act and the Intellectual Property Code. The Rules of Court on privileged communication likewise recognize the privacy of certain information.

Unlike the dissenters, we prescind from the premise that **the right to privacy is a fundamental right guaranteed by the Constitution**, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. xxx.[46] (Emphases supplied)

Clearly, the right to privacy is considered a fundamental right that must be protected from intrusion or constraint. However, in *Standard Chartered Bank v. Senate Committee on Banks*,[47] this Court underscored that the right to privacy is **not absolute**, *viz*:

With respect to the right of privacy which petitioners claim respondent has violated, suffice it to state that privacy is not an absolute right. While it is true that Section 21, Article VI of the Constitution, guarantees respect for the rights of persons affected by the legislative investigation, not every invocation of the right to privacy should be allowed to thwart a legitimate congressional inquiry. In *Sabio v. Gordon*, we have held that the right of the people to access information on matters of public concern generally prevails over the right to privacy of ordinary financial transactions. In that case, we declared that the right to privacy is not absolute where there is an overriding compelling state interest. Employing the rational basis relationship test, as laid down in *Morfe v. Mutuc*, there is no infringement of the individual's right to privacy as the requirement

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[46] *Id.* at 972-975.

[47] G.R. No. 167173, 27 December 2007, 541 SCRA 456.

to disclosure information is for a valid purpose, in this case, to ensure that the government agencies involved in regulating banking transactions adequately protect the public who invest in foreign securities. Suffice it to state that this purpose constitutes a reason compelling enough to proceed with the assailed legislative investigation.[48]

Therefore, when the right to privacy finds tension with a competing state objective, the courts are required to weigh both notions. In these cases, although considered a fundamental right, the right to privacy may nevertheless succumb to an opposing or overriding state interest deemed legitimate and compelling.

***The Writ of* Habeas Data**

The writ of *habeas data* is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy.[49] It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends.[50] It must be emphasized that in order for the privilege of the writ to be granted, there must exist a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Section 1 of the Rule on the Writ of *Habeas Data* reads:

Habeas data. – The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data information regarding the person, family, home and correspondence of the aggrieved party.

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[48] *Id.* at 475-476 [citing *Morfe v. Mutuc*, *supra* note 43; *Gordon v. Sabio*, 535 Phil. 687 (2006)].

[49] *Manila Electric Co. v. Lim,* G.R. No. 184769, 5 October 2010, 632 SCRA 195, 202.

[50] *Roxas v. Arroyo*, G.R. No. 189155, 7 September 2010, 630 SCRA 211, 239.

The notion of informational privacy is still developing in Philippine law and jurisprudence. Considering that even the Latin American *habeas data*, on which our own Rule on the Writ of *Habeas Data* is rooted, finds its origins from the European tradition of data protection,[51] this Court can be guided by cases on the protection of personal data decided by the European Court of Human Rights (ECHR). Of particular note is *Leander v. Sweden,*[52] in which the ECHR balanced the right of citizens to be free from interference in their private affairs with the right of the state to protect its national security. In this case, Torsten Leander (Leander), a Swedish citizen, worked as a temporary replacement museum technician at the Naval Museum, which was adjacent to a restricted military security zone.[53] He was refused employment when the requisite personnel control resulted in an unfavorable outcome on the basis of information in the secret police register, which was kept in accordance with the Personnel Control Ordinance and to which he was prevented access.[54] He claimed, among others, that this procedure of security control violated Article 8 of the European Convention of Human Rights[55] on the right to privacy, as nothing in his personal or political background would warrant his classification in the register as a security risk.[56]

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[51] Guadamuz, A. "*Habeas Data vs the European Data Protection Directive*," 2001 (3) *The Journal of Information, Law and Technology (JILT)*. <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_3/guadamuz/>

[52] 26 March 1987, 9 EHRR 433.

[53] Para. 10.

[54] Paras. 12-13, 15-17, 19.

[55] Article 8. 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[56] Para. 47.

The ECHR ruled that the storage in the secret police register of information relating to the private life of Leander, coupled with the refusal to allow him the opportunity to refute the same, amounted to an interference in his right to respect for private life.[57] However, the ECHR held that the interference was **justified** on the following grounds: (a) the personnel control system had a legitimate aim, which was the protection of national security,[58] and (b) the Personnel Control Ordinance gave the citizens adequate indication as to the scope and the manner of exercising discretion in the collection, recording and release of information by the authorities.[59] The following statements of the ECHR must be emphasized:

> 58**. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued** (see, *inter alia*, the Gillow judgment of 24 November 1986, Series A no. 109, p. 22, § 55).
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> 59. However, the Court recognises that the national authorities enjoy a margin of appreciation, the scope of which will depend not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved. In the instant case, **the interest of the respondent State in protecting its national security must be balanced against the seriousness of the interference with the applicant's right to respect for his private life.**
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> There can be no doubt as to the necessity, for the purpose of protecting national security, for the Contracting States to have laws granting the competent domestic authorities power, firstly, to collect and store in registers not accessible to the public information on persons and, secondly, to use this information when assessing the suitability of candidates for employment in posts of importance for national security.
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> Admittedly, the contested interference adversely affected Mr. Leander's legitimate interests through the consequences it had on

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[57] Para. 48.

[58] Para. 49.

[59] Para. 56.

his possibilities of access to certain sensitive posts within the public service. On the other hand, the right of access to public service is not as such enshrined in the Convention (see, *inter alia*, the Kosiek judgment of 28 August 1986, Series A no. 105, p. 20, §§ 34-35), and, apart from those consequences, the interference did not constitute an obstacle to his leading a private life of his own choosing.

In these circumstances, the Court accepts that the margin of appreciation available to the respondent State in assessing the pressing social need in the present case, and in particular in choosing the means for achieving the legitimate aim of protecting national security, was a wide one.

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66. **The fact that the information released to the military authorities was not communicated to Mr. Leander cannot by itself warrant the conclusion that the interference was not "necessary in a democratic society in the interests of national security", as it is the very absence of such communication which, at least partly, ensures the efficacy of the personnel control procedure** (see, *mutatis mutandis*, the above-mentioned Klass and Others judgment, Series A no. 28, p. 27, § 58).

The Court notes, however, that various authorities consulted before the issue of the Ordinance of 1969, including the Chancellor of Justice and the Parliamentary Ombudsman, considered it desirable that the rule of communication to the person concerned, as contained in section 13 of the Ordinance, should be effectively applied in so far as it did not jeopardise the purpose of the control (see paragraph 31 above).

67. The Court, like the Commission, thus reaches the conclusion that the safeguards contained in the Swedish personnel control system meet the requirements of paragraph 2 of Article 8 (art. 8-2). Having regard to the wide margin of appreciation available to it, the respondent State was entitled to consider that **in the present case the interests of national security prevailed over the individual interests of the applicant** (see paragraph 59 above). **The interference to which Mr. Leander was subjected cannot therefore be said to have been disproportionate to the legitimate aim pursued.** (Emphases supplied)

Leander illustrates how the right to informational privacy, as a specific component of the right to privacy, may yield to an overriding legitimate state interest. In similar fashion, the determination of whether the privilege of the writ of *habeas data*, being an extraordinary remedy, may be granted in this case entails a delicate balancing of the alleged intrusion upon the private life of Gamboa and the relevant state interest involved.

The collection and forwarding of information by the PNP vis-à-vis the interest of the state to dismantle private armies

The Constitution explicitly mandates the dismantling of private armies and other armed groups not recognized by the duly constituted authority.[60] It also provides for the establishment of one police force that is national in scope and civilian in character, and is controlled and administered by a national police commission.[61]

Taking into account these constitutional fiats, it is clear that the issuance of A.O. 275 articulates a legitimate state aim, which is to investigate the existence of PAGs with the ultimate objective of dismantling them permanently.

To enable the Zeñarosa Commission to achieve its goals, A.O. 275 clothed it with the powers of an investigative body, including the power to summon witnesses, administer oaths, take testimony or evidence relevant to the investigation and use compulsory processes to produce documents, books, and records.[62] A.O. 275 likewise authorized the Zeñarosa Commission to deputize the Armed Forces of the Philippines, the National Bureau of Investigation, the Department of Justice, the PNP, and any other law enforcement agency to assist the commission in the performance of its functions.[63]

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[60] Constitution, Art. XVIII, Sec. 24.

[61] Constitution, Art. XVI, Sec. 6.

[62] A.O. 275, Sec. 5(a).

[63] A.O. 275, Sec. 5(f).

Meanwhile, the PNP, as the national police force, is empowered by law to (a) enforce all laws and ordinances relative to the protection of lives and properties; (b) maintain peace and order and take all necessary steps to ensure public safety; and (c) investigate and prevent crimes.[64]

Pursuant to the state interest of dismantling PAGs, as well as the foregoing powers and functions accorded to the Zeñarosa Commission and the PNP, the latter collected information on individuals suspected of maintaining PAGs, monitored them and counteracted their activities.[65] One of those individuals is herein petitioner Gamboa.

This Court holds that Gamboa was able to sufficiently establish that the data contained in the Report listing her as a PAG coddler came from the PNP. Contrary to the ruling of the trial court, however, the forwarding of information by the PNP to the Zeñarosa Commission was **not** an unlawful act that violated or threatened her right to privacy in life, liberty or security. The PNP was rationally expected to forward and share intelligence regarding PAGs with the body specifically created for the purpose of investigating the existence of these notorious groups. Moreover, the Zeñarosa Commission was explicitly authorized to deputize the police force in the fulfillment of the former's mandate, and thus had the power to request assistance from the latter.

Following the pronouncements of the ECHR in *Leander*, the fact that the PNP released information to the Zeñarosa Commission without prior communication to Gamboa and without affording her the opportunity to refute the same cannot be interpreted as a violation or threat to her right to privacy since that act is an inherent and crucial component of intelligence-gathering and investigation. Additionally, Gamboa herself admitted that the PNP had a validation system, which was used to update information on individuals associated with PAGs and to ensure that the data mirrored the situation on the

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[64] Republic Act No. 6975, otherwise known as the Department of Interior and Local Government Act of 1990, Sec. 24(a), (b), (c).

[65] *Rollo*, p. 338; Report.

field.[66] Thus, safeguards were put in place to make sure that the information collected maintained its integrity and accuracy.

Pending the enactment of legislation on data protection, this Court declines to make any further determination as to the propriety of sharing information during specific stages of intelligence gathering. To do otherwise would supplant the discretion of investigative bodies in the accomplishment of their functions, resulting in an undue encroachment on their competence. However, to accord the right to privacy with the kind of protection established in existing law and jurisprudence, this Court nonetheless deems it necessary to caution these investigating entities that information-sharing must observe strict confidentiality. Intelligence gathered must be released exclusively to the authorities empowered to receive the relevant information. After all, inherent to the right to privacy is the freedom from "unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities."[67]

In this case, respondents admitted the existence of the Report, but emphasized its confidential nature. That it was leaked to third parties and the media was regrettable, even warranting reproach. But it must be stressed that Gamboa failed to establish that respondents were responsible for this unintended disclosure. In any event, there are other reliefs available to her to address the purported damage to her reputation, making a resort to the extraordinary remedy of the writ of *habeas data* unnecessary and improper.

Finally, this Court rules that Gamboa was unable to prove through substantial evidence that her inclusion in the list of individuals maintaining PAGs made her and her supporters susceptible to harassment and to increased police surveillance. In this regard, respondents sufficiently explained that the investigations conducted against her were in relation to the

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[66] *Id.* at 21-22, Appeal by *Certiorari*; *id.* at 364, Report.

[67] *Social Justice Society v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 and 161658, 3 November 2008, 570 SCRA 410, 431.

criminal cases in which she was implicated. As public officials, they enjoy the presumption of regularity, which she failed to overcome.

It is clear from the foregoing discussion that the state interest of dismantling PAGs far outweighs the alleged intrusion on the private life of Gamboa, especially when the collection and forwarding by the PNP of information against her was pursuant to a lawful mandate. Therefore, the privilege of the writ of *habeas data* must be denied.

WHEREFORE, the instant petition for review is **DENIED.** The assailed Decision in Special Proc. No. 14979 dated 9 September 2010 of the Regional Trial Court, Laoag City, Br. 13, insofar as it denies Gamboa the privilege of the writ of *habeas data*, is **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Leonardo-de Castro and *Peralta, JJ.,* on official leave.

Brion and *Mendoza, JJ.,* on leave.

EN BANC

[G.R. No. 196425. July 24, 2012]

PROSPERO A. PICHAY, JR., *petitioner, vs.* **OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS-INVESTIGATIVE AND ADJUDICATORY DIVISION, HON. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary, and HON. CESAR V. PURISIMA, in his capacity as Secretary of Finance, and as an *ex-officio* member of the Monetary Board,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (E.O. 292); THE PRESIDENT HAS CONTINUING AUTHORITY TO REORGANIZE THE EXECUTIVE DEPARTMENT.—** Section 31 of Executive Order No. 292 (E.O. 292), otherwise known as the Administrative Code of 1987, vests in the President the continuing authority to reorganize the offices under him in order to achieve simplicity, economy and efficiency. x x x Generally, this authority to implement organizational changes is limited to transferring either an office or a function from the Office of the President to another Department or Agency, and the other way around. Only Section 31(1) gives the President a virtual freehand in dealing with the internal structure of the Office of the President *Proper* by allowing him to take actions as extreme as abolition, consolidation or merger of units, apart from the less drastic move of transferring functions and offices from one unit to another. x x x The distinction between the allowable organizational actions under Section 31(1) on the one hand and Section 31 (2) and (3) on the other is crucial not only as it affects employees' tenurial security but also insofar as it touches upon the validity of the reorganization, that is, whether the executive actions undertaken fall within the limitations prescribed under E.O. 292.

2. **ID.; ID.; ID.; ID.; THE ABOLITION OF THE PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC) AND THE**

TRANSFER OF ITS FUNCTION TO THE INVESTIGATIVE AND ADJUDICATORY DIVISION OF THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS (IAD-ODESLA) IS WITHIN THE PREROGATIVE OF THE PRESIDENT UNDER E.O. 292.— When the PAGC was created under E.O. 12, it was composed of a Chairman and two (2) Commissioners who held the ranks of Presidential Assistant II and I, respectively, and was placed directly "under the Office of the President." On the other hand, the ODESLA, to which the functions of the PAGC have now been transferred, is an office within the Office of the President *Proper*. Since both of these offices belong to the Office of the President *Proper*, the reorganization by way of *abolishing* the PAGC and *transferring* its functions to the ODESLA is allowable under Section 31 (1) of E.O. 292.

3. **ID.; ID.; ID.; ID.; ID.; THE ALLOTMENT OF OPERATIONAL FUNDS TO IAD-ODESLA WOULD NOT AMOUNT TO ILLEGAL APPROPRIATION BY THE PRESIDENT.—** [The President] is explicitly allowed by law to transfer any fund appropriated for the different departments, bureaus, offices and agencies of the Executive Department which is included in the General Appropriations Act, to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment. Thus, while there may be no specific amount earmarked for the IAD-ODESLA from the total amount appropriated by Congress in the annual budget for the Office of the President, the necessary funds for the IAD-ODESLA may be properly sourced from the President's own office budget without committing any illegal appropriation. After all, there is no usurpation of the legislature's power to appropriate funds when the President simply allocates the existing funds previously appropriated by Congress for his office.

4. **ID.; ID.; ID.; ID.; ID.; IAD-ODESLA IS A FACT FINDING AND RECOMMENDATORY BODY NOT VESTED WITH ADJUDICATORY POWERS.—** As the OSG aptly explained in its Comment, while the term "adjudicatory" appears part of its appellation, the IAD-ODESLA cannot try and resolve cases, its authority being limited to the conduct of investigations, preparation of reports and submission of recommendations.

E.O. 13 explicitly states that the IAD-ODESLA shall "perform powers, functions and duties x x x, of PAGC." Under E.O. 12, the PAGC was given the authority to "investigate or hear administrative cases or complaints against all presidential appointees in the government" and to "submit its report and recommendations to the President." The IAD-ODESLA is a fact-finding and recommendatory body to the President, not having the power to settle controversies and adjudicate cases.

5. **ID.; ID.; ID.; ID.; ID.; IAD-ODESLA DOES NOT ENCROACH UPON THE POWERS AND DUTIES OF THE OMBUDSMAN.—** [T]he IAD-ODESLA did not encroach upon the Ombudsman's primary jurisdiction when it took cognizance of the complaint affidavit filed against him notwithstanding the earlier filing of criminal and administrative cases involving the same charges and allegations before the Office of the Ombudsman. The primary jurisdiction of the Ombudsman to investigate and prosecute cases refers to criminal cases cognizable by the Sandiganbayan and not to administrative cases. It is only in the exercise of its primary jurisdiction that the Ombudsman may, at any time, take over the investigation being conducted by another investigatory agency. x x x Since the case filed before the IAD-ODESLA is an administrative disciplinary case for grave misconduct, petitioner may not invoke the primary jurisdiction of the Ombudsman to prevent the IAD-ODESLA from proceeding with its investigation. In any event, the Ombudsman's authority to investigate both elective and appointive officials in the government, extensive as it may be, is by no means exclusive. It is shared with other similarly authorized government agencies. While the Ombudsman's function goes into the determination of the existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD-ODESLA is limited to that of a fact-finding investigator whose determinations and recommendations remain so until acted upon by the President. As such, it commits no usurpation of the Ombudsman's constitutional duties.

6. **ID.; ID.; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF EXECUTIVE ORDER NO. 13 (E.O. 13); E.O. 13 WHICH ABOLISHED PAGC DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.—** The equal protection clause x x x is not absolute but subject to reasonable

classification so that aggrupations bearing substantial distinctions may be treated differently from each other. x x x Petitioner is a presidential appointee occupying the high-level position of Chairman of the LWUA. Necessarily, he comes under the disciplinary jurisdiction of the President, who is well within his right to order an investigation into matters that require his informed decision. There are substantial distinctions that set apart presidential appointees occupying upper-level positions in government from non-presidential appointees and those that occupy the lower positions in government. In *Salumbides v. Office of the Ombudsman*, we had ruled extensively on the substantial distinctions that exist between elective and appointive public officials, thus: x x x The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, **appointive officials hold their office by virtue of their designation thereto by an appointing authority**. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

7. **ID.; ID.; ID.; E.O. 13 DOES NOT VIOLATE DUE PROCESS OF LAW.—** [P]etitioner's x x x right to due process was not violated when the IAD-ODESLA took cognizance of the administrative complaint against him since he was given sufficient opportunity to oppose the formal complaint filed by Secretary Purisima. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process, which simply means having the opportunity to explain one's side. Hence, as long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard. The records show that petitioner was issued an Order requiring him to submit his written explanation under oath with respect to the charge of grave misconduct filed against him. His own failure to submit his explanation despite notice defeats his subsequent claim of denial of due process.

APPEARANCES OF COUNSEL

Franklin C. Sunga & Althea Barbara E. Acas for petitioner.

The Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Case

This is a Petition for *Certiorari* and Prohibition with a prayer for the issuance of a temporary restraining order, seeking to declare as unconstitutional Executive Order No. 13, entitled, *"Abolishing the Presidential Anti-Graft Commission and Transferring Its Investigative, Adjudicatory and Recommendatory Functions to the Office Of The Deputy Executive Secretary For Legal Affairs, Office of the President,"*[1] and to permanently prohibit respondents from administratively proceeding against petitioner on the strength of the assailed executive order.

The Facts

On April 16, 2001, then President Gloria Macapagal-Arroyo issued Executive Order No. 12 (E.O. 12) creating the Presidential Anti-Graft Commission (PAGC) and vesting it with the power to investigate or hear administrative cases or complaints for possible graft and corruption, among others, against presidential appointees and to submit its report and recommendations to the President. Pertinent portions of E.O. 12 provide:

Section 4. *Jurisdiction, Powers and Functions.* –

(a) xxx xxx xxx

(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against all presidential appointees in the government and any of its agencies or instrumentalities xxx

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[1] *Rollo*, pp. 51-53.

xxx xxx xxx

xxx xxx xxx

Section 8. *Submission of Report and Recommendations*. – After completing its investigation or hearing, the Commission *en banc* shall submit its report and recommendations to the President. The report and recommendations shall state, among others, the factual findings and legal conclusions, as well as the penalty recommend (sic) to be imposed or such other action that may be taken."

On November 15, 2010, President Benigno Simeon Aquino III issued Executive Order No. 13 (E.O. 13), abolishing the PAGC and transferring its functions to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), more particularly to its newly-established Investigative and Adjudicatory Division (IAD). The full text of the assailed executive order reads:

EXECUTIVE ORDER NO. 13

ABOLISHING THE PRESIDENTIAL ANTI-GRAFT COMMISSION AND TRANSFERRING ITS INVESTIGATIVE, ADJUDICATORY AND RECOMMENDATORY FUNCTIONS TO THE OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT

WHEREAS, this administration has a continuing mandate and advocacy to fight and eradicate corruption in the different departments, bureaus, offices and other government agencies and instrumentalities;

WHEREAS, the government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in government;

WHEREAS, Section VII of the 1987 Philippine Constitution provides that the President shall have control of all the executive departments, bureaus and offices;

WHEREAS, Section 31 Chapter 10, Title III, Book III of Executive Order 292 (Administrative Code of 1987) provides for the continuing authority of the President to reorganize the administrative structure of the Office of the President;

WHEREAS, Presidential Decree (PD) No. 1416 (Granting Continuing Authority to the President of the Philippines to Reorganize the National Government), as amended by PD 1722, provides that the President of the Philippines shall have continuing authority to reorganize the administrative structure of the National Government and may, at his discretion, create, abolish, group, consolidate, merge or integrate entities, agencies, instrumentalities and units of the National Government, as well as, expand, amend, change or otherwise modify their powers, functions and authorities;

WHEREAS, Section 78 of the General Provisions of Republic Act No. 9970 (General Appropriations Act of 2010) authorizes the President of the Philippines to direct changes in the organizational units or key positions in any department or agency;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the following:

SECTION 1. Declaration of Policy. It is the policy of the government to fight and eradicate graft and corruption in the different departments, bureaus, offices and other government agencies and instrumentalities.

The government adopted a policy of streamlining the government bureaucracy to promote economy and efficiency in the government.

SECTION 2. Abolition of Presidential Anti-Graft Commission (PAGC). To enable the Office of the President (OP) to directly investigate graft and corrupt cases of Presidential appointees in the Executive Department including heads of government-owned and controlled corporations, the Presidential Anti-Graft Commission (PAGC) is hereby abolished and their vital functions and other powers and functions inherent or incidental thereto, transferred to the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA), OP in accordance with the provisions of this Executive Order.

SECTION 3. Restructuring of the Office of the Deputy Executive Secretary for Legal Affairs, OP. In addition to the Legal and Legislative Divisions of the ODESLA, the Investigative and Adjudicatory Division shall be created.

The newly created Investigative and Adjudicatory Division shall perform powers, functions and duties mentioned in Section 2 hereof, of PAGC.

The Deputy Executive Secretary for Legal Affairs (DESLA) will be the recommending authority to the President, thru the Executive Secretary, for approval, adoption or modification of the report and recommendations of the Investigative and Adjudicatory Division of ODESLA.

SECTION 4. Personnel Who May Be Affected By the Abolition of PAGC. The personnel who may be affected by the abolition of the PAGC shall be allowed to avail of the benefits provided under existing laws if applicable. The Department of Budget and Management (DBM) is hereby ordered to release the necessary funds for the benefits of the employees.

SECTION 5. Winding Up of the Operation and Disposition of the Functions, Positions, Personnel, Assets and Liabilities of PAGC. The winding up of the operations of PAGC including the final disposition or transfer of their functions, positions, personnel, assets and liabilities as may be necessary, shall be in accordance with the applicable provision(s) of the Rules and Regulations Implementing EO 72 (Rationalizing the Agencies Under or Attached to the Office of the President) dated March 15, 2002. The winding up shall be implemented not later than 31 December 2010.

The Office of the Executive Secretary, with the assistance of the Department of Budget and Management, shall ensure the smooth and efficient implementation of the dispositive actions and winding-up of the activities of PAGC.

SECTION 6. Repealing Clause. All executive orders, rules, regulations and other issuances or parts thereof, which are inconsistent with the provisions of this Executive Order, are hereby revoked or modified accordingly.

SECTION 7. Effectivity. This Executive Order shall take effect immediately after its publication in a newspaper of general circulation.

On April 6, 2011, respondent Finance Secretary Cesar V. Purisima filed before the IAD-ODESLA a complaint affidavit[2] for grave misconduct against petitioner Prospero A. Pichay, Jr., Chairman of the Board of Trustees of the Local Water Utilities Administration (LWUA), as well as the incumbent members of

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[2] Docketed as OP-DC Case No. 11-D-008.

the LWUA Board of Trustees, namely, Renato Velasco, Susana Dumlao Vargas, Bonifacio Mario M. Pena, Sr. and Daniel Landingin, which arose from the purchase by the LWUA of Four Hundred Forty-Five Thousand Three Hundred Seventy-Seven (445,377) shares of stock of Express Savings Bank, Inc.

On April 14, 2011, petitioner received an Order[3] signed by Executive Secretary Paquito N. Ochoa, Jr. requiring him and his co-respondents to submit their respective written explanations under oath. In compliance therewith, petitioner filed a Motion to Dismiss *Ex Abundante Ad Cautelam* manifesting that a case involving the same transaction and charge of grave misconduct entitled, *"Rustico B. Tutol, et al. v. Prospero Pichay, et al."*, and docketed as OMB-C-A-10-0426-I, is already pending before the Office of the Ombudsman.

Now alleging that no other plain, speedy and adequate remedy is available to him in the ordinary course of law, petitioner has resorted to the instant petition for *certiorari* and prohibition upon the following grounds:

I. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO CREATE A PUBLIC OFFICE.

II. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF THE LEGISLATURE TO APPROPRIATE FUNDS.

III. E.O. 13 IS UNCONSTITUTIONAL FOR USURPING THE POWER OF CONGRESS TO DELEGATE QUASI-JUDICIAL POWERS TO ADMINISTRATIVE AGENCIES.

IV. E.O. 13 IS UNCONSTITUTIONAL FOR ENCROACHING UPON THE POWERS OF THE OMBUDSMAN.

V. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE GUARANTEE OF DUE PROCESS.

VI. E.O. 13 IS UNCONSTITUTIONAL FOR VIOLATING THE EQUAL PROTECTION CLAUSE.

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[3] *Rollo*, p. 54.

Our Ruling

In assailing the constitutionality of E.O. 13, petitioner asseverates that the President is not authorized under any existing law to create the Investigative and Adjudicatory Division, Office of the Deputy Executive Secretary for Legal Affairs (IAD-ODESLA) and that by creating a new, additional and distinct office tasked with quasi-judicial functions, the President has not only usurped the powers of congress to create a public office, appropriate funds and delegate quasi-judicial functions to administrative agencies but has also encroached upon the powers of the Ombudsman.

Petitioner avers that the unconstitutionality of E.O. 13 is also evident when weighed against the due process requirement and equal protection clause under the 1987 Constitution.

The contentions are unavailing.

The President has Continuing Authority to Reorganize the Executive Department under E.O. 292.

Section 31 of Executive Order No. 292 (E.O. 292), otherwise known as the Administrative Code of 1987, vests in the President the continuing authority to reorganize the offices under him in order to achieve simplicity, economy and efficiency. E.O. 292 sanctions the following actions undertaken for such purpose:

(1) **Restructure the internal organization of the Office of the President Proper**, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, **by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another**;

(2) **Transfer any function under the Office of the President to any other Department or Agency** as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) **Transfer any agency under the Office of the President to any other Department or Agency** as well as transfer agencies to the Office of the President from other departments or agencies.[4]

In the case of *Buklod ng Kawaning EIIB v. Zamora*[5] the Court affirmed that the President's authority to carry out a reorganization in any branch or agency of the executive department is an express grant by the legislature by virtue of E.O. 292, thus:

> But of course, the list of legal basis authorizing the President to reorganize any department or agency in the executive branch does not have to end here. We must not lose sight of the very source of the power – that which constitutes **an express grant of power**. Under Section 31, Book III of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), **"the President,** subject to the policy of the Executive Office and in order to achieve simplicity, economy and efficiency, **shall have the continuing authority to reorganize the administrative structure of the Office of the President."** For this purpose, he may transfer the functions of other Departments or Agencies to the Office of the President. (Emphasis supplied)

And in *Domingo v. Zamora,*[6] the Court gave the rationale behind the President's continuing authority in this wise:

> The law grants the President this power in recognition of the recurring need of every President to reorganize his office "to achieve simplicity, economy and efficiency." The Office of the President is the nerve center of the Executive Branch. **To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies**. After all, the Office of the President is the command post of the President. (Emphasis supplied)

Clearly, the abolition of the PAGC and the transfer of its functions to a division specially created within the ODESLA is properly within the prerogative of the President under his

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[4] Section 31, Chapter 10, Book III of E.O. No. 292.

[5] G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 729.

[6] G.R. No. 142283, February 6, 2003, 397 SCRA 56.

continuing *"delegated legislative authority to reorganize"* his own office pursuant to E.O. 292.

Generally, this authority to implement organizational changes is limited to transferring either an office or a function from the Office of the President to another Department or Agency, and the other way around.[7] Only Section 31(1) gives the President a virtual freehand in dealing with the internal structure of the Office of the President *Proper* by allowing him to take actions as extreme as abolition, consolidation or merger of units, apart from the less drastic move of transferring functions and offices from one unit to another. Again, in *Domingo v. Zamora*[8] the Court noted:

> However, the President's power to reorganize the Office of the President under Section 31 (2) and (3) of EO 292 should be distinguished from his power to reorganize the Office of the President *Proper*. Under Section 31 (1) of EO 292, the President can reorganize the Office of the President Proper by *abolishing, consolidating or merging* units, or by *transferring* functions from one unit to another. In contrast, under Section 31 (2) and (3) of EO 292, the President's power to reorganize offices outside the Office of the President *Proper* but still within the Office of the President is limited to merely *transferring* functions or agencies from the Office of the President to Departments or Agencies, and *vice versa*.

The distinction between the allowable organizational actions under Section 31(1) on the one hand and Section 31 (2) and (3) on the other is crucial not only as it affects employees' tenurial security but also insofar as it touches upon the validity of the reorganization, that is, whether the executive actions undertaken fall within the limitations prescribed under E.O. 292. When the PAGC was created under E.O. 12, it was composed of a Chairman and two (2) Commissioners who held the ranks of Presidential Assistant II and I, respective[9] and was placed directly "under the Office of the President."[10] On the other hand, the ODESLA, to which the functions of the PAGC have now been

[7] Paragraphs (2) and (3) of Section 31.

[8] G.R. No. 142283, February 6, 2003, 397 SCRA 56.

[9] Section 2, E.O. 12.

[10] Section 1, E.O. 12.

transferred, is an office within the Office of the President *Proper*.[11] Since both of these offices belong to the Office of the President *Proper*, the reorganization by way of *abolishing* the PAGC and *transferring* its functions to the ODESLA is allowable under Section 31 (1) of E.O. 292.

Petitioner, however, goes on to assert that the President went beyond the authority granted by E.O. 292 for him to reorganize the executive department since his issuance of E.O. 13 did not merely involve the abolition of an office but the creation of one as well. He argues that nowhere in the legal definition laid down by the Court in several cases does a reorganization include the act of creating an office.

The contention is misplaced.

The Reorganization Did not Entail the Creation of a New, Separate and Distinct Office.

The abolition of the PAGC did not require the creation of a new, additional and distinct office as the duties and functions that pertained to the defunct anti-graft body were simply transferred to the ODESLA, which is an *existing* office within the Office of the President *Proper*. The reorganization required no more than a mere alteration of the administrative structure of the ODESLA through the establishment of a third division – the Investigative and Adjudicatory Division – through which ODESLA could take on the additional functions it has been asked to discharge under E.O. 13. In *Canonizado v. Aguirre,*[12] We ruled that –

> Reorganization takes place when there is an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions.

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[11] Section 22, Chapter 8, Book III, *The Administrative Code of 1987*.

[12] G.R. No. 133132, January 25, 2000, 323 SCRA 312.

The Reorganization was Pursued in Good Faith.

A valid reorganization must not only be exercised through legitimate authority but must also be pursued in good faith. A reorganization is said to be carried out in good faith if it is done for purposes of economy and efficiency.[13] It appears in this case that the streamlining of functions within the Office of the President *Proper* was pursued with such purposes in mind. In its *Whereas* clauses, E.O. 13 cites as bases for the reorganization the policy dictates of *eradicating corruption in the government* and *promoting economy and efficiency in the bureaucracy*. Indeed, the economical effects of the reorganization is shown by the fact that while Congress had initially appropriated ₱22 Million the PAGC's operation in the 2010 annual budget,[14] no separate or added funding of such a considerable amount was ever required after the transfer of the PAGC functions to the IAD-ODESLA.

Apparently, the budgetary requirements that the IAD-ODESLA needed to discharge its functions and maintain its personnel would be sourced from the following year's appropriation for the President's Offices under the General Appropriations Act of 2011.[15] Petitioner asseverates, however, that since Congress did not indicate the manner by which the appropriation for the Office of the President was to be distributed, taking therefrom the operational funds of the IAD-ODESLA would amount to an illegal appropriation by the President. The contention is without legal basis.

There is no usurpation of the legislative power to appropriate public funds.

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[13] *Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Romulo*, G.R. No. 160093, July 31, 2007, 528 SCRA 673, 683.

[14] *General Appropriations Act of 2010* (R.A. No. 9970).

[15] *General Appropriations Act of 2011* (R.A. No. 10147).

In the chief executive dwell the powers to run government. Placed upon him is the power to recommend the budget necessary for the operation of the Government,[16] which implies that he has the necessary authority to evaluate and determine the structure that each government agency in the executive department would need to operate in the most economical and efficient manner.[17] Hence, the express recognition under Section 78 of R.A. 9970 or the General Appropriations Act of 2010 of the President's authority to "direct changes in the organizational units or key positions in any department or agency." The aforecited provision, often and consistently included in the general appropriations laws, recognizes the extent of the President's power to reorganize the executive offices and agencies under him, which is, "even to the extent of modifying and realigning appropriations for that purpose."[18]

And to further enable the President to run the affairs of the executive department, he is likewise given constitutional authority to augment any item in the General Appropriations Law using the savings in other items of the appropriation for his office.[19] In fact, he is explicitly allowed by law to transfer any fund appropriated for the different departments, bureaus, offices and agencies of the Executive Department which is included in the General Appropriations Act, to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment.[20]

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[16] Section 25 (1), Article VI, 1987 Constitution –

The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. x x x.

[17] *Bagaoisan v. National Tobacco Administration*, G.R. No. 152845, August 5, 2003, 408 SCRA 337, 348.

[18] *Banda v. Ermita,* G.R. No. 166620, April 20, 2010, 618 SCRA 488, 513.

[19] Section 25 (5), Article VI, 1987 Constitution –

No law shall be passed authorizing any transfer of appropriations; however, the President, xxx may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

[20] Section 44, P.D. 1177 (Budget Reform Decree of 1977).

Thus, while there may be no specific amount earmarked for the IAD-ODESLA from the total amount appropriated by Congress in the annual budget for the Office of the President, the necessary funds for the IAD-ODESLA may be properly sourced from the President's own office budget without committing any illegal appropriation. After all, there is no usurpation of the legislature's power to appropriate funds when the President simply allocates the existing funds previously appropriated by Congress for his office.

The IAD-ODESLA is a fact-finding and recommendatory body not vested with quasi-judicial powers.

Petitioner next avers that the IAD-ODESLA was illegally vested with judicial power which is reserved to the Judicial Department and, by way of exception through an express grant by the legislature, to administrative agencies. He points out that the name Investigative and *Adjudicatory* Division is proof itself that the IAD-ODESLA wields quasi-judicial power.

The argument is tenuous. As the OSG aptly explained in its Comment,[21] while the term "adjudicatory" appears part of its appellation, the IAD-ODESLA cannot try and resolve cases, its authority being limited to the conduct of investigations, preparation of reports and submission of recommendations. E.O. 13 explicitly states that the IAD-ODESLA shall "perform powers, functions and duties xxx, of PAGC."[22]

Under E.O. 12, the PAGC was given the authority to "investigate or hear administrative cases or complaints against all presidential appointees in the government"[23] and to "submit its report and recommendations to the President."[24] The IAD-ODESLA is a fact-finding and recommendatory body to the

[21] *Rollo*, p. 86.

[22] Section 3, E.O. 13.

[23] Section 4(b), E.O. 12.

[24] Section 8, E.O. 12.

President, not having the power to settle controversies and adjudicate cases. As the Court ruled in *Cariño v. Commission on Human Rights*,[25] and later reiterated in *Biraogo v. The Philippine Truth Commission*:[26]

> Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law.

The President's authority to issue E.O. 13 and constitute the IAD-ODESLA as his fact-finding investigator cannot be doubted. After all, as Chief Executive, he is granted full control over the Executive Department to ensure the enforcement of the laws. Section 17, Article VII of the Constitution provides:

> Section 17. The President shall have control of all the executive departments, bureaus and offices. **He shall ensure that the laws be faithfully executed.**

The obligation to see to it that laws are faithfully executed necessitates the corresponding power in the President to conduct investigations into the conduct of officials and employees in the executive department.[27]

The IAD-ODESLA does not encroach upon the powers and duties of the Ombudsman.

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[25] G.R. No. 96681, December 2, 1991, 204 SCRA 483, 492.

[26] G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 160.

[27] *Department of Health v. Camposano*, G.R. No. 157684, April 27, 2005, 457 SCRA 438, 450; *Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 160.

Contrary to petitioner's contention, the IAD-ODESLA did not encroach upon the Ombudsman's primary jurisdiction when it took cognizance of the complaint affidavit filed against him notwithstanding the earlier filing of criminal and administrative cases involving the same charges and allegations before the Office of the Ombudsman. The primary jurisdiction of the Ombudsman to investigate and prosecute cases refers to criminal cases cognizable by the Sandiganbayan and not to administrative cases. It is only in the exercise of its primary jurisdiction that the Ombudsman may, at any time, take over the investigation being conducted by another investigatory agency. Section 15 (1) of R.A. No. 6770 or the Ombudsman Act of 1989, empowers the Ombudsman to—

> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has **primary jurisdiction** over cases cognizable by the Sandiganbayan and, in the exercise of its primary jurisdiction, **it may take over, at any stage, from any investigatory agency of government, the investigation of such cases**. (Emphasis supplied)

Since the case filed before the IAD-ODESLA is an administrative disciplinary case for grave misconduct, petitioner may not invoke the primary jurisdiction of the Ombudsman to prevent the IAD-ODESLA from proceeding with its investigation. In any event, the Ombudsman's authority to investigate both elective and appointive officials in the government, extensive as it may be, is by no means exclusive. It is shared with other similarly authorized government agencies.[28]

While the Ombudsman's function goes into the determination of the existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD-ODESLA is limited to that of a fact-finding investigator whose determinations and recommendations remain so until acted

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[28] *Flores v. Montemayor*, G.R. No. 170146, June 8, 2011, 651 SCRA 396, 404.

upon by the President. As such, it commits no usurpation of the Ombudsman's constitutional duties.

Executive Order No. 13 Does Not Violate Petitioner's Right to Due Process and the Equal Protection of the Laws.

Petitioner goes on to assail E.O. 13 as violative of the equal protection clause pointing to the arbitrariness of limiting the IAD-ODESLA's investigation only to presidential appointees occupying upper-level positions in the government. The equal protection of the laws is a guaranty against any form of undue favoritism or hostility from the government.[29] It is embraced under the due process concept and simply requires that, in the application of the law, "all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."[30] The equal protection clause, however, is not absolute but subject to reasonable classification so that aggrupations bearing substantial distinctions may be treated differently from each other. This we ruled in *Farinas v. Executive Secretary,*[31] wherein we further stated that—

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. **The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all**

[29] *Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78, 166.

[30] *Ichong v. Hernandez*, 101 Phil. 1155 (1957), cited in *Fariñas v. Executive Secretary*, G.R. No. 147387, December 10, 2003, 417 SCRA 503, 525.

[31] G.R. No. 147387, December 10, 2003, 417 SCRA 503.

persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. (Emphasis supplied)

Presidential appointees come under the direct disciplining authority of the President. This proceeds from the well settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority on which the power to appoint is vested.[32] Having the power to remove and/or discipline presidential appointees, the President has the corollary authority to investigate such public officials and look into their conduct in office.[33] Petitioner is a presidential appointee occupying the high-level position of Chairman of the LWUA. Necessarily, he comes under the disciplinary jurisdiction of the President, who is well within his right to order an investigation into matters that require his informed decision.

There are substantial distinctions that set apart presidential appointees occupying upper-level positions in government from non-presidential appointees and those that occupy the lower positions in government. In *Salumbides v. Office of the Ombudsman,*[34] we had ruled extensively on the substantial distinctions that exist between elective and appointive public officials, thus:

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, **appointive officials hold their office by virtue of their designation thereto by an appointing authority**. Some appointive officials hold their office in a permanent capacity

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[32] *Ambas v. Buenaceda*, G.R. No. 95244, September 4, 1991, 201 SCRA 308, 314, citing *Lacanilao v. De Leon*, No. L-76532, January 26, 1987, 147 SCRA 286, 298; *Aguirre, Jr. v. De Castro*, G.R. No. 127631, December 17, 1999, 321 SCRA 95, 104.

[33] See *Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 135.

[34] G.R. No. 180917, April 23, 2010, 619 SCRA 313.

and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

xxx xxx xxx

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Considering that elected officials are put in office by their constituents for a definite term, x x x complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, **there is no such expectation insofar as appointed officials are concerned**. (Emphasis supplied)

Also, contrary to petitioner's assertions, his right to due process was not violated when the IAD-ODESLA took cognizance of the administrative complaint against him since he was given sufficient opportunity to oppose the formal complaint filed by Secretary Purisima. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process,[35] which simply means having the opportunity to explain one's side.[36] Hence, as long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.[37] The records show that petitioner was issued an Order requiring him to submit his written explanation under oath with respect to the charge of grave misconduct filed against him. His own failure to submit his explanation despite notice defeats his subsequent claim of denial of due process.

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[35] *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29.

[36] *Libres v. NLRC*, G.R. No. 12373, May 28, 1999, 307 SCRA 675.

[37] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264, 269; *AMA Computer College-East Rizal, et al. v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

Finally, petitioner doubts that the IAD-ODESLA can lawfully perform its duties as an impartial tribunal, contending that both the IAD-ODESLA and respondent Secretary Purisima are connected to the President. The mere suspicion of partiality will not suffice to invalidate the actions of the IAD-ODESLA. Mere allegation is not equivalent to proof. Bias and partiality cannot be presumed.[38] Petitioner must present substantial proof to show that the IAD-ODESLA had unjustifiably sided against him in the conduct of the investigation. No such evidence has been presented as to defeat the presumption of regularity in the performance of the fact-finding investigator's duties. The assertion, therefore, deserves scant consideration.

Every law has in its favor the presumption of constitutionality, and to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative one.[39] Petitioner has failed to discharge the burden of proving the illegality of E.O. 13, which is indubitably a valid exercise of the President's continuing authority to reorganize the Office of the President.

WHEREFORE, premises considered, the petition is hereby **DISMISSED.**

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, and *Reyes, JJ.,* concur.

Leonardo-de Castro, and *Peralta, JJ.,* on official leave.

Brion and *Mendoza, JJ.,* on leave.

Peralta, J., on official business.

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[38] *Casimiro v. Tandog*, G.R. No. 146137, June 08, 2005, 459 SCRA 624, 631.

[39] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298, 311.

SECOND DIVISION

[A.M. No. P-11-2983. July 25, 2012]
(Formerly OCA I.P.I. No. 10-3439-P)

RUBY C. CAMPOMANES, *complainant, vs.* **NANCY S. VIOLON, Clerk of Court IV, Municipal Trial Court in Cities, Oroquieta City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WILLFUL FAILURE TO PAY JUST DEBTS WARRANTS THE PENALTY OF REPRIMAND FOR FIRST-TIME VIOLATOR.—** The Revised Uniform Rules on Administrative Cases in the Civil Service penalizes the willful failure to pay just debts or to pay taxes to the government. Section 22, Rule XIV thereof defines just debts as applying only to claims adjudicated by a court of law, or to claims the existence and justness of which are admitted by the debtor. Considering respondent's admission of the loan, the offense in the present case falls under the latter category. A first-time violation of Rule XIV warrants the penalty of reprimand.

2. **ID.; ID.; ID.; ID.; PAYMENT IN FULL DOES NOT EXCULPATE THE EMPLOYEE FROM LIABILITY OR RENDER THE ADMINISTRATIVE CASE MOOT.—** We note with strong displeasure respondent's conduct of reneging on the payments then waiting four years, or *after the administrative Complaint had already been lodged,* before paying in full. The OCA found that her conduct showed lack of a candid and sincere effort to settle the said obligation. Even if she has already paid the obligation in full, full payment does not exculpate her from liability or render the administrative case moot. This Court has long established that "x x x [T]he proceedings are not directed at respondent's private life but at her actuations unbecoming a public employee. Disciplinary actions of this nature do not involve purely private or personal matters. They cannot be made to depend upon the will of the

parties nor are we bound by their unilateral act in a matter that involves the Court's constitutional power to discipline its personnel." As an employee of the judiciary, respondent is held to the highest ethical standards to preserve the integrity of the courts. These standards include the moral and legal duty to settle contractual obligations when they become due. The unsupported averment of financial difficulties does not excuse failure to pay a just debt.

RESOLUTION

SERENO, *J*.:

On 8 July 2010, the Office of the Deputy Court Administrator received a letter from Ruby C. Campomanes, Loan Officer I of the Panguil Bay Rural Bank in Ozamiz City. In the Affidavit of Complaint attached to the letter, Campomanes stated that she was filing an administrative Complaint against Nancy Violon for failure to pay an overdue loan contracted in favor of Panguil Bay Rural Bank.

Respondent Nancy Violon holds the position of Clerk of Court IV, Municipal Trial Court in Cities, Office of the Clerk of Court in Oroquieta City. On 1 February 2005, respondent borrowed ₱50,000 from the bank, payable in 12 monthly installments of ₱3,500 for each installment. The agreement was evidenced in a Disclosure Statement[1] executed between the parties. On the same date, respondent also signed a Promissory Note[2] undertaking to pay the obligation on or before 25 January 2006. Complainant claimed that respondent paid several installments, but left a balance of ₱40,878.09. The latter failed to settle her obligation despite repeated demands, constraining the bank to file the present Complaint.

In her Comment, respondent admitted that she had indeed obtained a loan of ₱50,000 from the bank, but that she had

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[1] Attached to Complainant's letter dated 29 April 2010.

[2] Also attached to the 29 April 2010 letter as evidence.

been regularly paying the installments, leaving a balance of only ₱28,565.89 as of 26 March 2006. She purportedly failed to pay this amount because of financial crises in her family and the hospitalization of her son in 2009. On 8 September 2010, she finally tendered full payment of the loan, as evidenced by a Certification to this effect signed by Winston S. Tiu, vice president of Panguil Bay Rural Bank.

The Office of the Court Administrator (OCA) promulgated its findings on 13 June 2011, recommending that respondent be reprimanded for wilful failure to pay just debts pursuant to the Revised Uniform Rules on Administrative Cases in the Civil Service.

After a careful review of the records, we affirm the findings and recommendations of the OCA.

The Revised Uniform Rules on Administrative Cases in the Civil Service penalizes the willful failure to pay just debts or to pay taxes to the government. Section 22, Rule XIV thereof defines just debts as applying only to claims adjudicated by a court of law, or to claims the existence and justness of which are admitted by the debtor. Considering respondent's admission of the loan, the offense in the present case falls under the latter category. A first-time violation of Rule XIV warrants the penalty of reprimand.

We note with strong displeasure respondent's conduct of reneging on the payments then waiting four years, or *after the administrative Complaint had already been lodged,* before paying in full. The OCA found that her conduct showed lack of a candid and sincere effort to settle the said obligation. Even if she has already paid the obligation in full, full payment does not exculpate her from liability or render the administrative case moot. This Court has long established that "x x x [T]he proceedings are not directed at respondent's private life but at her actuations unbecoming a public employee. Disciplinary actions of this nature do not involve purely private or personal matters. They cannot be made to depend upon the will of the parties nor are we bound

by their unilateral act in a matter that involves the Court's constitutional power to discipline its personnel."[3]

As an employee of the judiciary, respondent is held to the highest ethical standards to preserve the integrity of the courts. These standards include the moral and legal duty to settle contractual obligations when they become due. The unsupported averment of financial difficulties does not excuse failure to pay a just debt. In *In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres*, we held thus:

> The Court cannot overstress the need for circumspect and proper behavior on the part of court employees. While it may be just for an individual to incur indebtedness unrestrained by the fact that he is a public officer or employee, caution should be taken to prevent the occurrence of dubious circumstances that might inevitably impair the image of the public office. Employees of the court should always keep in mind that the court is regarded by the public with respect. Consequently, the conduct of each court personnel should be circumscribed with the heavy burden of onus and must at all times be characterized by, among other things, uprightness, propriety and decorum.[4]

WHEREFORE, respondent Nancy S. Violon, Clerk of Court IV of the Municipal Trial Court in Cities, Oroquieta City, is **REPRIMANDED** for willful failure to pay a just debt.

Additionally, respondent is **WARNED** that a commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

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[3] *Villaseñor v. De Leon,* 447 Phil. 457 (2003).

[4] A.M. No. 2004-40-SC, 1 March 2005, 452 SCRA 654, 664.

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

SECOND DIVISION

[A.M. No. P-12-3062. July 25, 2012]
(Formerly A.M. OCA IPI No. 11-3651-P)

NORMANDY R. BAUTISTA, *complainant, vs.* **MARKING G. CRUZ, Sheriff IV, Regional Trial Court, Branch 53, Rosales, Pangasinan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; MAY NOT BE CHARGED WITH REFUSAL TO PROCEED WITH THE IMPLEMENTATION OF THE WRIT IN THE ABSENCE OF A SPECIAL ORDER OF DEMOLITION FROM THE COURT.—** Neither do we find respondent liable for his initial refusal to proceed with the implementation of the writ, absent a special order of demolition. x x x It is undisputed that a garage was installed on the subject lot covered by the MTC Decision, as modified by the CA. Since complainant did not present evidence to show that he had obtained a special order of demolition from the court, the sheriff was then under the obligation not to destroy, demolish, or remove the said improvement. The latter thus acted consistently with the letter of the Rules of Court when he refused to demolish the garage and to just wait for the issuance of a special order of demolition before proceeding with the full implementation of the Writ of Execution.

2. **ID.; ID.; ID.; ID.; SHERIFF MAY NOT BE HELD LIABLE FOR REFUSING TO RECOVER THE COSTS OF SUIT IN THE ABSENCE OF PROOF THAT COMPLAINANT IS ENTITLED TO IT.—** As regards the charge against respondent that he refused to recover the costs of suit complainant had incurred in his appeals to the CA and to this Court, the dispositive portions of their respective Decisions show that only the MTC and the RTC specifically ordered the payment of costs of suit by the defendants. The CA was silent as to the costs of suit incurred by the plaintiffs as a result of the appeal. As to the costs sustained by the plaintiffs following

their appeal to this Court, we take note that they failed to attach the supposed Resolutions dated 29 July 2009 and 7 December 2009. Nevertheless, our records show that we did not grant the payment of costs of suit in favor of complainant. x x x Since it was complainant Bautista who filed the petitions before the CA and the SC, and both petitions were either dismissed or denied, it is important that he prove that courts have adjudged that the defendants shall pay the costs of the appeal. Contrary to the allegations of complainant, the plaintiffs were not the prevailing parties in the CA or the SC judgment. Consequently, absent any proof that the plaintiffs are entitled to the costs of suit before the CA and the SC, we find that the sheriff cannot be held liable for refusing to recover these expenses from the defendants in the ejectment case.

3. ID.; ID.; ID.; ID.; SHERIFF SHOULD SERVE THE NOTICE TO VACATE TO THE DEFENDANT'S COUNSEL ON RECORD.— We agree, however, with the allegation of complainant that the sheriff committed an error when he served the Notice to Vacate only on the defendants, and not their counsel. x x x Section 10(c), Rule 39 must be read in conjunction with Section 2, Rule 13 of the Rules of Court, which requires that service of pleadings or papers must be made on the counsel if a party is already represented by one. It is a settled rule that notice to the client will only be binding and effective if specifically ordered by the Court. Notice to the client and not to the counsel of record is not notice within the meaning of the law. Consequently, contrary to the recommendation of the OCA that service of the Notice to Vacate on the defendants themselves substantially complied with the essence and spirit of Rule 39, Section 10(c), the sheriff should have served the notice on the defendants' counsel of record and not on the defendants directly.

4. ID.; ID.; ID.; ID.; FAILURE TO SERVE NOTICE TO VACATE TO DEFENDANT'S COUNSEL AND TO SUBMIT PERIODIC REPORTS AMOUNT TO INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; PENALTY.— [W]e adopt the conclusion of the OCA insofar as it found respondent liable for inefficiency and incompetence in the performance of his official duties. Under Section 52(A)(16), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, inefficiency and

incompetence in the performance of official duties is considered a grave offense with the corresponding penalty of six (6) months and one (1) day to one (1) year of suspension. We agree however with the view of the OCA that respondent's acts were not so grave as to merit suspension. We deem it more appropriate to reprimand respondent for his failure to send the Notice to Vacate to the counsel of defendants and to submit periodic reports to the court on the status of the implementation of the Writ of Execution.

R E S O L U T I O N

SERENO, *J.*:

Before the Court is an administrative complaint filed by Normandy R. Bautista (Bautista) against respondent Marking G. Cruz (Cruz), Sheriff IV, Regional Trial Court (RTC), Branch 53, Rosales, Pangasinan. The core issue at bench is whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution issued by the Municipal Trial Court (MTC) of Rosales, Pangasinan.[1]

FACTS

The case stemmed from the Complaint for Ejectment with Prayer for Writ of Demolition and Damages filed by plaintiffs Bautista, Rosamund Posadas (Posadas), and Madonna Ramos (Ramos) against defendants Teresita Vallejos (Vallejos) and Luisa Basconcillo (Basconcillo) (collectively, defendants). Plaintiffs therein alleged that they were the co-owners of the parcel of land situated in Rosales, Pangasinan, occupied by defendants. On 21 March 2007, the MTC rendered a Decision, the dispositive portion of which reads:[2]

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[1] *Rollo*, p. 38; Writ of Execution dated 15 April 2010. The writ was issued by Presiding Judge Charina Imelda A. Casingal-Sazon.

[2] *Rollo*, p. 45; MTC Decision dated 21 March 2007, p. 7. The MTC Decision in Civil Case No. 1178 was penned by Presiding Judge Charina Imelda A. Casingal-Sazon.

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs ordering the defendants to surrender the possession of the subject property to the plaintiffs and to refrain from building additional structures which would impede the passage of light and view to the former's residence. Costs against defendants.

The RTC in its 19 September 2007 Decision sustained that of the MTC Decision.[3] The Court of Appeals (CA) then affirmed the RTC with modification in the former's 20 November 2008 Decision,[4] the *fallo* of which reads:

WHEREFORE, the petition is ***DISMISSED***. The Decision dated September 19, 2007 and the Order dated December 19, 2007 of the RTC of Rosales, Pangasinan, Branch 53, in Civil Case No. 1178 are ***AFFIRMED*** with the MODIFICATION that the area of the subject property ordered to be surrendered by respondents should be ***3.42 square meters***.

In its 29 July 2009 and 7 December 2009 Resolutions, this Court upheld the CA Decision.[5] The Court's Resolutions became final and executory upon the recording thereof in the Book of Entries of Judgments on 3 February 2010. Consequently, the MTC issued a Writ of Execution on 15 April 2010,[6] commanding the sheriff to implement and execute its Decision as modified by the 20 November 2008 Decision of the CA.

Complainant Bautista posits that on 27 April 2010, he contacted respondent Sheriff Cruz to confirm whether the latter had already received the Writ of Execution issued by the MTC.

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[3] *Rollo*, p. 52; RTC Decision dated 19 September 2007, p. 7. The RTC Decision in Civil Case No. 1390-R was penned by Judge Teodorico Alfonso P. Bauzon.

[4] *Rollo*, p. 62; CA Decision dated 20 November 2008, p. 10. The CA Decision in CA-G.R. SP No. 102185 was penned by Justice Hakim S. Abdulwahid and concurred in by Justices Portia Alino-Hormachuelos and Teresita Dy-Liacco Flores.

[5] *Bautista v. Vallejos-Santos*, G.R. No. 188278, 29 July 2009 (unpublished); *Bautista v. Vallejos-Santos*, G.R. No. 188278, 7 December 2009 (unpublished); and Writ of Execution, *supra* note 1.

[6] Writ of Execution, *supra*.

When the sheriff acknowledged receipt of the writ, Bautista then requested the former to implement it right away, as complainant was set to leave for Canada the following month. Further, complainant suggested that the Writ of Execution be satisfied by instead erecting a wall (temporary or permanent) encompassing the property, since the MTC had not issued a writ of demolition. Respondent purportedly agreed to the proposal and noted that the plan would not be contrary to the Decision of the court. He then supposedly assured complainant that the former would put everything in order and implement the writ on 07 May 2010.

On the day the writ was supposed to be implemented, respondent allegedly told complainant that a surveyor was needed to measure the subject area inside the garage. Complainant thus engaged the services of an engineer. Afterwards, respondent ostensibly informed complainant that the writ could not be implemented after all, as the metal door of the garage was locked and the defendants' car was parked inside. Complainant allegedly insisted that the sheriff just employ the services of a locksmith or use a bolt cutter to open the lock and hire a tow truck to take out the car. Complainant argued that a sheriff had the right to use all necessary and legal means, including reasonable force, to be able to implement a writ, but respondent nevertheless continued to refuse to implement the said writ.

Furthermore, complainant discovered that respondent served the Notice to Vacate only on the defendants, and not their counsel. This act allegedly had the effect of preventing the sheriff from executing the writ. Thus, complainant alleges that respondent may have been bribed by the defendants.

Complainant then alleges that respondent refused to recover the costs of suit the former incurred from the appeals to the CA and the Supreme Court (SC). Despite warnings that complainant would file an administrative charge against respondent, the latter was adamant in recovering only the costs of suit as indicated in the MTC Decision.

Respondent refutes all the accusations against him. He claims that he has already fully implemented the writ, as evidenced by complainant's acknowledgment of the Certificate of Possession and by the Officer's Report dated 19 May 2011. He then asserts that any interruption and delay in the implementation of the writ was attributable to complainant. He recounts that complainant at first insisted that there was no need to hire a surveyor, as the subject lot was very small. Allegedly, it was only after respondent maintained that the services of a surveyor were vital to accurately identify the 3.42-square-meter portion that complainant employed one. Furthermore, complainant ostensibly told respondent to just demolish the garage, as the latter was authorized to do so. Respondent then averred that, without a court order authorizing a demolition, he could not place complainant in possession of the subject property. Complainant purportedly refused to listen and then just left respondent, with the threat of filing a case against the latter.

Respondent subsequently learned that complainant had already left for Canada. Thus, the sheriff instead contacted the other plaintiffs – Posadas and Ramos. However, they ostensibly told him that complainant, being their representative, was the one authorized to discuss the matter. Consequently, respondent was "constrained to shelve" the full implementation of the writ, as he needed the services of a surveyor and a representative whom the sheriff could place in possession of the property. Respondent argues that he has already explained in his Initial Report that he "could not just coerce or force the defendants x x x to vacate the garage and remove their car x x x considering that part of the lot where the garage was erected still belongs to the defendants."[7] He then explains that "only 3.42 square meters of the subject parcel [of] lot was ordered by the Court that should be vacated by the defendants and it runs through the garage as per [his] initial measurement."[8] Thus, he reasons that "the destruction of the padlock as per [the] suggestion [of

[7] *Rollo*, p. 94; Respondent's Comment dated 21 June 2011, p. 4.

[8] *Id.*

complainant] and the corresponding removal of the car will not be [a] proper remedy,"[9] since there was no special demolition order issued by the court in relation thereto. They needed a surveyor in order "to know the accurate extent of the boundaries of the subject lot that should be surrendered to [the] possession [of the plaintiffs] by the defendants so that [they] could not [encroach] in their lot."[10]

Respondent then alludes to an MTC Order, which enjoins the parties to an ejectment case to coordinate with the sheriff as regards the latter's recommendation on the matter. It allegedly took a while before complainant communicated with respondent. On 18 May 2011, respondent, accompanied by complainant, implemented the Writ of Execution and returned to the subject lot. They then discussed the execution of the writ with defendant Vallejos, who eventually consented to the demolition of the garage on the subject portion. After the demolition, respondent turned over possession of the property to complainant.

Respondent further asserts that he did not violate any rule when he issued the Notice to Vacate. He explains that he sent the notice to defendants in order for them to peaceably vacate the premises and to avoid a forced eviction therefrom. He maintains that the service thereof on the defendants was not invalid, and that the "notice to counsel rule" is inapplicable. Moreover, this issue has already been rendered moot and academic by the full implementation of the writ.

With respect to the issue of the costs of suit, respondent insists that he did not receive from complainant the receipts for the filing fees paid to the CA and this Court. He also maintains that there was no award of costs of suit mentioned either in the CA or in the SC decision. He also points out that the Clerk of Court only gave him the form for the MTC legal fees for him to implement. Thus, he stresses that the payment by Vallejos of the legal fees paid by the plaintiffs was sufficient.

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[9] *Id.*

[10] *Id.*

Respondent in turn accuses complainant of filing the administrative complaint in bad faith. The sheriff points out that he filed the complaint on 18 May 2011, the same day the Writ of Execution was fully implemented.

ISSUE

Whether respondent should be found guilty of gross ignorance of the law, gross inefficiency, misfeasance of duty, and bias and partiality in the implementation of the Writ of Execution.

DISCUSSION

With respect to the charge that respondent received monetary consideration from the defendants in the ejectment case, this Court agrees with the conclusion of the Office of the Court Administrator (OCA) as follows:

> [T]he same is evidently a mere supposition unsupported by any convincing evidence. The fact that respondent sheriff declared in his Report that he had met the defendants more than once could not be considered even as a speck of evidence to prove that he had been bribed by the defendants. In the absence of any proof to corroborate the allegation, the same would never stand the test of reason, and is bound to fail.[11]

Since complainant failed to establish that respondent received any bribe from the defendants in order to prevent the implementation of the Writ of Execution, we find that there is no basis to hold respondent liable.

Neither do we find respondent liable for his initial refusal to proceed with the implementation of the writ, absent a special order of demolition. Rule 39 of the Rules of Court is clear on the matter:

> **SEC. 10.** *Execution of judgments for specific act.*
>
> xxx xxx xxx
>
> (d) *Removal of improvements on property subject of execution.*

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[11] *Rollo*, p. 446; OCA Report dated 16 February 2012, p. 6.

— **When the property subject of the execution contains improvements constructed** or planted by the judgment obligor or his agent, the **officer shall not destroy, demolish or remove said improvements except upon special order of the court**, issued **upon motion of the judgment obligee after due hearing** and **after the former has failed to remove the same within a reasonable time** fixed by the court. (14a) (Emphasis supplied)

It is undisputed that a garage was installed on the subject lot covered by the MTC Decision, as modified by the CA. Since complainant did not present evidence to show that he had obtained a special order of demolition from the court, the sheriff was then under the obligation not to destroy, demolish, or remove the said improvement. The latter thus acted consistently with the letter of the Rules of Court when he refused to demolish the garage and to just wait for the issuance of a special order of demolition before proceeding with the full implementation of the Writ of Execution.[12]

As regards the charge against respondent that he refused to recover the costs of suit complainant had incurred in his appeals to the CA and to this Court, the dispositive portions of their respective Decisions show that only the MTC and the RTC specifically ordered the payment of costs of suit by the defendants.[13] The CA was silent as to the costs of suit incurred by the plaintiffs as a result of the appeal.[14] As to the costs sustained by the plaintiffs following their appeal to this Court, we take note that they failed to attach the supposed Resolutions dated 29 July 2009 and 7 December 2009. Nevertheless, our records show that we did not grant the payment of costs of suit in favor of complainant.

We quote the following provisions of Rule 142 of the Rules of Court for reference:

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[12] See *Fuentes v. Leviste*, 203 Phil. 313 (1982).

[13] MTC Decision, *supra* note 2; RTC Decision, *supra* note 3.

[14] CA Decision, *supra* note 4.

SECTION 1. *Costs ordinarily follow results of suit*. — Unless otherwise provided in these rules, **costs shall be allowed to the prevailing party as a matter of course**, **but the court shall have power**, **for special reasons, to adjudge that either party shall pay the costs of an action**, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

SEC. 8. *Costs, how taxed*. — In **inferior courts**, the costs shall be **taxed by the municipal or city judge and included in the judgment**. In **superior courts**, costs shall be **taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party**. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. **The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution**. (Emphases supplied)

Since it was complainant Bautista who filed the petitions before the CA and the SC, and both petitions were either dismissed or denied, it is important that he prove that courts have adjudged that the defendants shall pay the costs of the appeal. Contrary to the allegations of complainant, the plaintiffs were not the prevailing parties in the CA or the SC judgment.[15] Consequently, absent any proof that the plaintiffs are entitled to the costs of suit before the CA and the SC, we find that the sheriff cannot be held liable for refusing to recover these expenses from the defendants in the ejectment case.

We agree, however, with the allegation of complainant that the sheriff committed an error when he served the Notice to Vacate only on the defendants, and not their counsel. The pertinent sections of the Rules of Court are cited as follows:

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[15] Writ of Execution, *supra* note 1. The writ states that the Third Division of this Court denied Bautista's Petition for Review on *Certiorari* through its 29 July 2009 and 7 December 2009 Resolutions.

Rule 13

SEC. 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the **act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.** Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (2a)

Rule 39

SEC. 10. *Execution of judgments for specific act.*

xxx xxx xxx

(c) *Delivery or restitution of real property.* — The officer shall **demand of the person against whom the judgment for the delivery** or restitution of **real property** is rendered and all persons claiming rights under him **to peaceably vacate the property within three (3) working days**, and **restore possession thereof to the judgment obligee**; otherwise, the **officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers**, and **employing such means as may be reasonably necessary to retake possession**, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. (13a) (Emphases supplied)

Section 10(c), Rule 39 must be read in conjunction with Section 2, Rule 13 of the Rules of Court, which requires that service of pleadings or papers must be made on the counsel if a party is already represented by one. It is a settled rule that notice to the client will only be binding and effective if specifically ordered by the Court. Notice to the client and not to the counsel of record is not notice within the meaning of the law.[16] Consequently, contrary to the recommendation of the OCA that service of the Notice to Vacate on the defendants themselves

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[16] *Philippine National Bank v. Court of Appeals*, 316 Phil. 371 (1995); and *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 273 Phil. 467 (1991).

substantially complied with the essence and spirit of Rule 39, Section 10(c), the sheriff should have served the notice on the defendants' counsel of record and not on the defendants directly.

Finally, as regards the allegation that respondent failed to continue implementing the writ and to submit a periodic report on his efforts every 30 days, we quote with approval the findings of the OCA, *viz*:

> [R]espondent sheriff made no positive assertion to disprove the claim. xxx In perusing the [Officer's Reports he attached with his Comment], it would appear that from the months of August 2010 to April 2011, respondent sheriff failed to submit his report concerning his attempt to implement the writ of execution. The supposition that he made no effort to submit his monthly report is backed up by respondent sheriff's own admission that he was "constrained to shelve for a while the full implementation of the writ of execution" due to the absence of complainant. Since [respondent] made no effort, during the intervening period, to implement the writ, it is safe to assume that no monthly report was submitted by him during said period since there was nothing really to be reported at all. Such being the case, it becomes an evident disregard on the part of respondent sheriff of Rule 39, Section 14 of the Rules of Court:
>
> > **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.[17] (11a) (Emphasis supplied)

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[17] *Rollo*, pp. 448-449; OCA Report dated 16 February 2012, pp. 8-9.

In *Concerned Citizen v. Torio*,[18] we have explained that it is compulsory for the sheriff to execute and make a return on the writ of execution within the period provided under Section 14, Rule 39 of the Rules of Court. Furthermore, the sheriff must submit periodic reports on partially satisfied or unsatisfied writs, so that the court as well as the parties may be apprised of the actions carried out in relation thereto. As stated under the rules, the periodic reporting must be done regularly and consistently every 30 days until the writ is returned fully satisfied.

For the foregoing reasons, we adopt the conclusion of the OCA insofar as it found respondent liable for inefficiency and incompetence in the performance of his official duties. Under Section 52(A)(16), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, inefficiency and incompetence in the performance of official duties is considered a grave offense with the corresponding penalty of six (6) months and one (1) day to one (1) year of suspension. We agree however with the view of the OCA that respondent's acts were not so grave as to merit suspension. We deem it more appropriate to reprimand respondent for his failure to send the Notice to Vacate to the counsel of defendants and to submit periodic reports to the court on the status of the implementation of the Writ of Execution.

WHEREFORE, respondent sheriff Marking G. Cruz is found guilty of inefficiency and incompetence in the performance of official duties and is hereby **REPRIMANDED,** with a stern **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

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[18] 433 Phil. 649 (2002).

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

SECOND DIVISION

[A.M. No. RTJ-12-2317. July 25, 2012]
(Formerly OCA I.P.I. No. 10-3378-RTJ)

ATTY. FELINO U. BANGALAN, *complainant, vs.* **JUDGE BENJAMIN D. TURGANO, Regional Trial Court, Branch 15, Laoag City,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ERROR OF JUDGMENT MAY NOT BE A PROPER SUBJECT OF AN ADMINISTRATIVE PROCEEDING.—** Complainant was clearly assailing respondent's 12 November 2009 Order, which was unfavorable to his client's interest. He was, in truth, alleging an error of judgment, which may be addressed through the proper judicial remedy. As such, the error may not be the subject of an administrative proceeding.
2. **ID.; ID.; UNDUE DELAY IN RENDERING A DECISION AND AN ORDER, COMMITTED.—** Anent the charge of undue delay, we find respondent guilty. He failed to substantiate his claim that the delay in his acting appropriately on the case pending before him was due to reasonable circumstances. x x x [R]espondent rendered his Decision fifteen months after the case was submitted for decision. Meanwhile, the Notice of Appeal and Motion for Execution Pending Appeal was only resolved almost a year after it was filed. x x x Even if indeed there were reasonable grounds for the delay, respondent could have requested from this Court an extension of time to decide cases pending before the lower courts. This he failed to do.
3. **ID.; ID.; ID.; REPRIMAND, PROPER PENALTY AFTER CONSIDERING A MITIGATING CIRCUMSTANCE.—** Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or an order, or in transmitting the records of a case, is considered as a less serious charge punishable by either suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000, but not exceeding ₱20,000. Nevertheless, considering that this is his first offense,

we find it proper to apply this mitigating circumstance in his favor. Thus, we find reprimand an appropriate penalty, with a warning that the commission of the same or a similar offense will be dealt with more severely.

D E C I S I O N

SERENO, *J.*:

The facts as found by the Office of the Court Administrator (OCA) are as follows:

In a Complaint dated 5 February 2010, complainant Atty. Felino U. Bangalan accused respondent Presiding Judge Benjamin D. Turgano, of undue delay in rendering a decision or order, dishonesty, gross ignorance of the law and partiality.

It appears that complainant is counsel for plaintiff in Civil Case No. 11140-15, *Rosalinda Ver-Fajardo v. Jimmy Espejo*, a case on ownership and recovery of possession.

On the charge of undue delay in rendering a decision or an order, complainant alleged that Civil Case No. 11140-15 was filed on 13 November 1996 and raffled to respondent judge's *sala*. The case was submitted for decision on 4 May 2007 and decided after more than 15 months on 8 August 2008, beyond the 90-day period required by Article VIII, Section 15 of the 1987 Constitution. Further, complainant alleged that the Notice of Appeal and Motion for Execution Pending Appeal filed in October 2008 were resolved only after almost a year on 2 September 2009.

On the charge of dishonesty, he claimed that respondent was dishonest in declaring in his Certificate of Service that he had no unresolved motions submitted for resolution within the reglementary period, as provided by rules and circulars.

Complainant further alleged that respondent committed gross ignorance of the law when the latter reversed his previous Order dated 2 September 2009 granting the former's Motion for Execution Pending Appeal. In that Order dated 12 November

2009, respondent, citing *Universal Far East Corporation v. Court of Appeals*[1] declared that the court lost jurisdiction to grant the motion when it was filed two (2) days after the defendants therein had perfected their appeal. Thus, complainant posited that by relying on an obsolete and abandoned doctrine espoused in the cited case, respondent allowed himself to become an instrument for the interests of the other party and hence showed a badge of partiality.

In answer to the charges of gross ignorance of the law and partiality, respondent maintained that he acted pursuant to Section 2, Rule 30 of the Rules of Court, when he reversed his 2 September 2009 Order. Even if it be shown that he erred in the interpretation or application of the Rules of Court, the proper remedy available to complainant was a petition for *certiorari* at the Court of Appeals (CA). Respondent further insisted that complainant's charge of partiality was baseless, because the assailed Orders were based on the evidence and the law applicable to the matter.

Moreover, respondent explained that the delay in rendering the Decision and resolving the pending motions was largely attributable to a series of transient ischemic attacks coupled with pulmonary problems that ailed him. Further, at the time the case was submitted for decision, his father and his brother died on 16 November 2007 and in the first quarter of 2008, respectively.

After verification, the OCA found that complainant had filed with the CA a Petition for *Certiorari* against respondent docketed as CA-G.R. SP No. 111883. The CA promulgated a Decision on 31 January 2011 reinstating the 2 September 2009 Decision, in which respondent granted the Motion for Execution Pending Appeal.

Furthermore, in its evaluation of the surrounding circumstances, the OCA found that complainant merely questioned the propriety of respondent's Order dated 12 November 2009, an issue that could have been properly settled in a judicial proceeding. It found that the errors attributed to

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[1] 216 Phil. 598 (1984).

respondent pertained to his adjudicatory functions. Thus, an administrative action was not the appropriate remedy available to complainant for the correction of these errors in judgment. Likewise, it opined that the charge of dishonesty was merely speculative.

Nevertheless, the OCA noted that respondent failed to comply with the constitutional mandate for all lower court judges to decide cases within the reglementary period of 90 days from the time they are submitted for decision. Respondent likewise failed to adhere to Canon 3, Rule 3.05 of the Code of Judicial Conduct, which directs judges to dispose of the court's business promptly and decide cases within the required period. However, the OCA found that the reasons cited by respondent were sound. Furthermore, since the present case is his first offense, it recommended that this mitigating circumstance be applied in his favor. Thus, it recommended the penalty of admonition.

THE COURT'S RULING

We find that the recommendation of the OCA is proper.

In *Flores v. Abesamis*, we said:

> As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The *ordinary remedies* against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The *extraordinary remedies* against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc.*) are *inter alia* the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.
>
> **Now the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary.** Resort to and exhaustion of these judicial remedies, as well as the entry of judgment

in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.[2] (Emphasis supplied, italics in the original)

Complainant was clearly assailing respondent's 12 November 2009 Order, which was unfavorable to his client's interest. He was, in truth, alleging an error of judgment, which may be addressed through the proper judicial remedy. As such, the error may not be the subject of an administrative proceeding.

Anent the charge of undue delay, we find respondent guilty. He failed to substantiate his claim that the delay in his acting appropriately on the case pending before him was due to reasonable circumstances.

In *Reyes v. Paderanga*, we held:

The Constitution provides that all lower courts must decide or resolve cases or matters brought before them three months from the time a case or matter is submitted for decision. Canon 6, Sec. 5 of the New Code of Judicial Conduct for the Philippine Judiciary, which became effective on June 1, 2004, also provides that judges shall perform all duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

If a judge is unable to comply with the 90-day reglementary period for deciding cases or matters, he can, for good reasons, ask for an extension, which request is generally granted. Indeed, the Court usually allows reasonable extensions of time to decide cases in recognition of the heavy caseload of the trial courts. As respondent failed to ask for an extension in this case, he is deemed to have incurred delay.

The need to impress upon judges the importance of deciding cases promptly and expeditiously cannot be stressed enough, for delay in the disposition of cases and matters undermines the

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[2] 341 Phil. 299, 312-313 (1997).

people's faith and confidence in the judiciary. As oft stated, justice delayed is justice denied.[3] (Emphases supplied.)

To reiterate, respondent rendered his Decision fifteen months after the case was submitted for decision. Meanwhile, the Notice of Appeal and Motion for Execution Pending Appeal was only resolved almost a year after it was filed.

Respondent claimed that the delays were due to health reasons, and that members of his family passed away at the time the case was submitted for decision and the motions were filed for resolution. However, upon a perusal of the records, we find that respondent did not provide any evidence to prove his alleged ailments. He did not submit any medical certificate to support his claim that he was suffering from transient ischemic attacks.

Even if indeed there were reasonable grounds for the delay, respondent could have requested from this Court an extension of time to decide cases pending before the lower courts. This he failed to do.

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or an order, or in transmitting the records of a case, is considered as a less serious charge punishable by either suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000, but not exceeding ₱20,000.

Nevertheless, considering that this is his first offense, we find it proper to apply this mitigating circumstance in his favor.

Thus, we find reprimand an appropriate penalty, with a warning that the commission of the same or a similar offense will be dealt with more severely.

WHEREFORE, in view of the foregoing, Judge Benjamin D. Turgano is found **GUILTY** of undue delay in the disposition of Civil Case No. 11140-15. He is hereby **REPRIMANDED,** with a **WARNING** that the commission of the same or a similar offense will be dealt with more severely.

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[3] A.M. No. RTJ-06-1973, 14 March 2008, 548 SCRA 244, 262-263.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 132073. July 25, 2012]

REMMAN ENTERPRISES, INC., *petitioner, vs.* **HON. ERNESTO GARILAO, in his capacity as Secretary of the Department of Agrarian Reform and EDUARDO ADRIANO, PABLITO ADRIANO, *ET AL.*,** *respondents.*

[G.R. No. 132361. July 25, 2012]

EDUARDO ADRIANO, *ET AL.*, *petitioners, vs.* **HON. COURT OF APPEALS, REMMAN ENTERPRISES, INC. and HON. ERNESTO D. GARILAO, in his capacity as Secretary of Agrarian Reform,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; APPLICATION FOR EXEMPTION OF CERTAIN PARCELS OF LAND FROM THE CARP COVERAGE; THE COURT DEFERRED THE FINAL ADJUDICATION OF THE CASE; REASON.— [T]his Court deferred the final adjudication of the cases because of the pendency of DARAB case on the validity of the emancipation patents covering the same parcels of land which are also the objects of the application for exemption from

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

the coverage of CARP by Remman. The Court reasoned that a complete resolution of the application for exemption requires a prior final finding that the emancipation patents issued to Eduardo Adriano, *et. al.* are null and void. xxx [T]his Court resolves to remand the case to the PARAD of Cavite for a determination of the validity of the emancipation patents.

APPEARANCES OF COUNSEL

Diosdado P. Peralta for Remman Enterprises, Inc.
Dominguez Delani Dominguez Orsos and *Fortuno* for Eduardo Adriano., *et al.*
Antonio K. Tupaz for C. Ferrer.

R E S O L U T I O N

PEREZ, *J.*:

On 27 September 2006, this Court issued a *Resolution*[1] deferring the complete adjudication of the two (2) Consolidated Petitions for Review on *Certiorari*[2] filed by Remman Enterprises, Inc. (Remman) in G.R. No. 132073 and Eduardo Adriano, *et. al*. (Adriano, *et. al*.) in G.R. No. 132361. We quote the disposition:

IN LIGHT OF THE FOREGOING, we hold in abeyance the Resolution of the consolidated Petitions in G.R. No. 132073 and G.R. No. 132361 until after a final determination as to the validity of the emancipation patents issued to Eduardo Adriano, *et. al* in DARAB Case No. IV-Ca. 0087-92. No pronouncement as to costs.[3]

The background of the case follows:

Parcels of land with an aggregate area of 46.9180 hectares situated in Brgy. San Jose, Dasmariñas, Cavite are owned by

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[1] *Rollo* (G.R. No. 132073), pp. 393-411, *rollo* (G.R. No. 132361), pp. 340-358.

[2] *Id.* at 10-52, *id.* at 14-27.

[3] *Id.* at 410, *id.* at 357.

Nieves Arguelles *Vda. de* Saulog, Marietta A. Saulog, Maura A. Saulog, Virginia A. Saulog, Teodoro A. Saulog, Melquiades A. Saulog, Bernard Raymond T. Saulog, Lilia A. Saulog and Patrocino M. Saulog (Saulogs).

In 1989, the parcels, covered by Operation Land Transfer (OLT), were distributed to farmer-beneficiaries and emancipation patents were given to Eduardo Adriano, Pablito Adriano, Ignacio Villena, Domingo Sayoto, Eduardo Villena, Dominador Mantillas, Pablito R. Mantillas, Graciano Maglian, Leopoldo Calitis, Rene Galang, Francisco Hayag, Franscisco Santarin, Pedro Pastor, Rolando Pastor, Marcos Mendoza and Eusebio Clorina.

On 6 February 1993, the Saulogs filed a Petition for Annulment of Resolution of Department of Agrarian Reform (DAR) Region IV Director, Certificates of Land Transfer, Emancipation Patents and CLOA's against the DAR Regional Director of Region IV Wilfredo B. Leano[4] docketed as DARAB Case No. IV-Ca-0087-92. The subject of the annulment is a 27.8530 ha. portion of the 46.9180 hectares[5] sold by the Saulogs in favor of Remman, a private domestic corporation engaged in the business of housing or subdivision developments.[6]

The matter of annulment arose because the parcels of land are the same parcels distributed to farmer beneficiaries by the DAR pursuant to OLT in 1989 and thereafter issued with corresponding Emancipation Patents.[7]

On 26 April 1993, Presiding Provincial Agrarian Reform Adjudicator (PARAD) of Cavite Glicerio G. Arenal rendered a decision in favor of the Saulogs. However, the Department of Agrarian Reform Adjudication Board (DARAB), upon appeal, vacated the appealed decision and remanded the case to the PARAD for non-joinder of indispensable parties and for further

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[4] *Id.* at 417-426.

[5] *Id.* at 270.

[6] *Id.* at 395.

[7] *Id.* at 271.

reception of evidence. The original petition was amended to include the farmer-beneficiaries Adriano, *et al*. as intervenors being the holders of the Emancipation Patents covering the same land.[8]

On 7 February 1995, while the DARAB case was pending, the Saulogs sold their aggregate land to Remman for a consideration of Fifty-Two Million Pesos (₱52,000,000.00) as evidenced by the Deed of Sale executed by the parties.[9] As a consequence, Remman intervened in the DARAB case as the new owner of the land.

On 17 August 1995, Remman also filed with the DAR an application for exemption from the coverage of CARP of the 46.9180 hectares earlier purchased from the Saulogs. The application was filed through the Socialized Housing One-Stop Processing Center (SHOPC). The lands covered by this application are summarized as follows:

Name of Registered Owner	Title No.	Area (in has.)
Marietta Saulog Vergara	T-231847	3.000
Maura Saulog Aguinaldo	T-231848	3.000
Virginia A. Saulog	T-231849	3.000
Teodoro A. Saulog	T-231850	3.000
Ruben A. Saulog	T-231851	3.000
Lilia Saulog Venturina	T-231852	3.000
Melquiades A. Saulog	T-231853	3.000
Luciana A. Saulog	T-231854	3.000
Nieves Arguelles Saulog	T-240093	1.5124
-do-	T-240094	1.5124
-do-	T-240095	1.5124
-do-	T-240096	1.5124
-do-	T-240097	1.5124

[8] *Id.* at 423.

[9] *Id.* at 218-220.

-do-	T-240098	1.5124
-do-	T-240099	1.5124
-do-	T-240100	2.3322
-do-	T-240101	9.9990[10]

Remman submitted the following documents to support its claim of exemption:

1. HLURB Certification dated February 16, 1995 issued by Engr. Alfredo M. Tan II stating that the subject parcels of land appear to be within the Residential Zone (R-1) based on HSRC (now HLRB) Approved Zoning Map per HSRC Resolution No. R-42-A-3 dated February 9, 1981;

2. NIA Certification dated December 21, 1995 issued by Jose F. Ner, Provincial Irrigation Officer I stating that the properties are not covered by Presidential Administrative Order No. 20 because they are not irrigated nor irrigable land within the areas programmed for irrigation development under the NIA Irrigation Development Program with firm funding commitment;

3. Certification from Engr. Gregorio C. Bermejo of the Office of the Municipal Engineer/Building Official stating that the properties are within the Residential Zone as per Approved Land Use Plan of the Municipality of Dasmariñas dated February 11, 1981 under Resolution No. R-42-A-3 by the then HSRC (now HLRB).[11]

On 5 June 1996, Secretary Ernesto D. Garilao (Secretary Garilao) issued an Order denying the application for exemption of Remman. The dispositive portion reads:

WHEREFORE, premises considered, and after having found that the instant application lacks merit, Order is hereby issued denying the same and placing the herein properties involving seventeen (17)

[10] *Id.* at 223.

[11] *Id.* at 224.

parcels of land with an aggregate of 46.9180 hectares located at Brgy. San Jose, Dasmariñas, Cavite under CARP coverage.[12]

The Order explained that though the deed of sale was submitted, it was not notarized nor registered with the Register of Deeds. Therefore, it is not an official document and does not bind third parties. Hence, DAR still considered the Saulogs as the owners and Remman does not possess personality to file the application.[13]

Another reason for the denial is the Certification dated 3 November 1995 of Municipal Agrarian Reform Council Reform Officer Amelia M. Rolle stating that the subject properties were covered by OLT under P.D. 27.

Also, the National Irrigation Administration (NIA) certified that the parcels of lands are not irrigated was supplanted by the Report of Arturo Lipio, the SHOPC-DAR Desk Officer of Region IV, stating that the subject landholdings are indeed irrigated. This fact was admitted by Remman in the Information Sheet filed before the SHOPC.[14] Since the landholding is irrigated, the application cannot be processed for conversion pursuant to Administrative Order No. 20, Series of 1992.[15]

Remman filed a Motion for Reconsideration[16] on 5 July 1996.

On 4 September 1996, Secretary Garilao issued an Order[17] partially granting the prayer of Remman. The coverage of the exemption was ordered reduced to 15.31915 hectares representing the share of Nieves *Vda. de* Saulog. To quote the dispositive portion:

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[12] *Id.* at 226.

[13] *Id.* at 225.

[14] *Id.* at 226

[15] Interim Guidelines on Agricultural Land Use Conversion, 7 December 1992.

[16] *Id.* at 228-267.

[17] *Id.* at 268-277.

PREMISES CONSIDERED, after having gone through all arguments, this Order is hereby issued:

1. Confirming the coverage of the 15.31915 hectare tenanted rice and corn share of Nieves *vda. de* Saulog under Operation Land Transfer;

2. Granting the retention of the other heirs of 1.39265 hectares of tenanted rice and corn, each, subject to the filing by the applicant of the proper petition in the proper forum;

3. Requiring the Municipal Agrarian Reform Officer to cause the preparation of Contracts of Agricultural Leaseholds between the owners of the lands and the farmer-tenants of the retained areas;

4. Excluding from the coverage of Agrarian Reform the 19.065 hectare land planted to mango by virtue of Section 3(c) of R.A. No. 6657, subject to the payment of disturbance compensation; and

5. Instructing the Regional Director of Region IV and the Provincial Agrarian Reform Officer to cause the proper execution of this Order.[18]

The Order explained that the owners, with the exception of Nieves *vda. de* Saulog, can retain their lands pursuant to the retention limits under P.D. 27. Nieves *vda. de* Saulog is not allowed by the Letter of Instructions No. 474[19] to retain her land.

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[18] *Id.* at 276.

[19] LETTER OF INSTRUCTIONS NO. 474

TO : *The Secretary of Agrarian Reform*

WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less that twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural

Not fully satisfied with the ruling of the Secretary, Remman filed a Petition for Review[20] before the Court of Appeals (CA) for a partial review of the 4 September 1996 Order of the DAR Secretary.

The appellate court in CA-G.R. SP No. 42004, affirmed with modification the assailed order. To quote:

> **WHEREFORE,** the appealed decision of the Secretary is hereby AFFIRMED with MODIFICATION only with respect to No. 4 of the dispositive portion, deleting therefrom the payment of disturbance compensation, such that [it] should read this wise:
>
> 4. Excluding from the coverage of Agrarian reform the 19.065 hectare land planted with mango by virtue of Sections 3(c) and 11 of R.A. [No.] 6657.[21]

Thereafter, motions for reconsideration were filed by both Remman and Adriano, *et al*. before the CA, but the appellate court denied both petitions on 8 January 1998.

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lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

2. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.

October 21, 1976.

[20] *Rollo* (G.R. No. 132073), pp. 83-134.

[21] *Id.* at 61.

Remman and Adriano, *et al*. filed their Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court before this Court docketed as G.R. No. 132073 and G.R. No. 132361, respectively.

Remman, in G.R. No. 132073, presented several assignment of errors which it classified as errors of law, mixed questions of facts and law and general assignments.[22]

It alleged that the appellate court erred when:

1. It failed to properly ascertain the real findings on disputed facts which thereafter became the basis of the application of the law;[23]
2. It concluded that the farmer-beneficiaries are full owners of the lands by virtue of E.O. 228 and P.D. 27;[24]
3. It failed to conclude that the lands involved were already effectively converted into residential lands by virtue of the re-zoning of the *Sangguniang Bayan* of Dasmariñas, Cavite and approved by the Housing and Land Use Regulatory Board (HLURB);[25]
4. It failed to conclude that the subject lands are "strip lands," reserved for uses other than agricultural under the provisions of P.D. No. 399;[26]
5. It failed to rule on the validity of the emancipation patents;[27] and

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[22] *Id.* at 24.

[23] First and Second Assignments of Error. *Id.* at 27-28.

[24] Third Assignment of Error. *Id.* at 25

[25] Fourth Assignment of Error. *Id.*

[26] Fifth Assignment of Error. *Id.*

[27] Sixth Assignment of Error. *Id.* at 26.

P.D. No. 399, 28 February 1974 - Limiting The Use of a Strip of One Thousand Meters of a land along any existing, Proposed or On-Going Public Highway or Road, until the Government shall have a competent study and

6. It failed to conclude that the subject lands are urban lands under R.A. 7279 and R.A. 6657.[28]

On the other hand, Adriano, et. al, in G.R. No. 132361 alleged error on the part of the appellate court when it refused to declare as null and void the 4 September 1996 Order of the DAR Secretary and failed to remand the case to the court of origin for further proceedings.[29]

As earlier discussed, this Court deferred the final adjudication of the cases because of the pendency of DARAB case on the validity of the emancipation patents covering the same parcels of land which are also the objects of the application for exemption from the coverage of CARP by Remman. The Court reasoned that a complete resolution of the application for exemption requires a prior final finding that the emancipation patents issued to Eduardo Adriano, *et al*. are null and void.[30]

Accordingly, Atty. Ma. Lourdes C. Perfecto, then Assistant Chief, Judicial Records Office, Supreme Court, wrote a letter addressed to the DAR Secretary to inquire about the status of the DARAB Case No. IV-Ca-0087-92.[31]

In reply to the query, Assistant Secretary Delfin B. Samson informed Atty. Perfecto that the DARAB Case has already been dismissed per Order dated 26 December 1996 issued by Provincial Adjudicator Barbara P. Tan.[32]

However, a reading of the dispositive portion of the Order[33] reveals that the said DARAB case <u>was dismissed without prejudice</u>

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have formulated a Comprehensive and Integrated Land Use and Development Plan.

[28] Eight Assignment of Error. *Id.*

[29] *Rollo* (G.R. No. 132361), pp. 20, 22.

[30] *Rollo* (G.R. No. 132073), pp. 409-410.

[31] Letter dated 2 March 2007. *Id.* at 412.

[32] Letter dated 2 July 2007. *Id.* at 416.

[33] *Id.* at 417-426.

on the basis of prejudicial question.[34] The said prejudicial question, as indicated by the Order, refers to the question about the emancipation patents action on which has also been deferred by this Court. The Order states:

> "Final disposition of said issues [referring to the emancipation patents and exclusion from the land transfer program on the ground of reclassification] shall serve as the basis for the availability or denial of the relief sought for in the instant cases for cancellation of emancipation patents."[35]

To break the cycle, this Court resolves to remand the case to the PARAD of Cavite for a determination of the validity of the emancipation patents.

WHEREFORE, this case is hereby **REMANDED** to the Office of the Provincial Adjudicator of Cavite to determine the validity or invalidity of the emancipation patents of the farmer-beneficiaries affected by the application for exemption from the CARP coverage filed by Remman Enterprises, Inc. The Provincial Agrarian Reform Adjudicator is **ORDERED** to inform this Court about its final decision on the matter within five (5) days from its finality.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Sereno,* and *Reyes, JJ.,* concur.

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[34] Dispositive portion of the Order. *Id.* at 425.

[35] *Id.*

[*] Per Special Order No. 1257 dated 19 July 2012.

SECOND DIVISION

[G.R. No. 168771. July 25, 2012]

ROBERTO DIPAD and SANDRA DIPAD, *petitioners, vs.* **SPOUSES ROLANDO OLIVAN and BRIGIDA OLIVAN, and RUBIO GUIJON MADRIGALLO,** *respondents.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX RETURNS; SECTION 270 CITED BY PETITIONERS DOES NOT ADDRESS THE CONFIDENTIALITY OF ITRs.—** The provision prohibits employees of the Bureau of Internal Revenue (BIR) from divulging the trade secrets of taxpayers. Section 270 obviously does not address the confidentiality of ITRs. Thus, petitioners cannot rely on the inappropriate provision, the Decisions including the cited *Cu Unjieng v. Posadas,* the rulings of the BIR, or issuances of the Department of Finance that apply that provision. Furthermore, in contrast to the interpretation by petitioners of the commentary that ITRs cannot be divulged, their very reference characterizes Section 71 as an exception to the rule on the unlawful divulgence of trade secrets: **Exceptions or acts which do not constitute unlawful divulgence of trade secrets.**–(a) Section 71 of the Tax Code makes income tax returns public records and opens them to inspection upon order of the President of the Philippines xxx.
2. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL NOT KNOWINGLY MISQUOTE OR MISREPRESENT THE CONTENTS OF A PAPER OR THE TEXT OF A DECISION OR AUTHORITY.—** This Court then reminds the counsels of their duty of candor, fairness and good faith when they face the court. Canon 10.02 of the Code of Professional Responsibility instructs that a lawyer shall not knowingly misquote or misrepresent the contents of a paper; the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision

already rendered inoperative by repeal or amendment; or assert as a fact that which has not been proved.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ONLY CORRECTS ERRORS OF JURISDICTION.—** In this regard, we stress that it is basic in our jurisdiction that a petition for *certiorari* under Rule 65 is not a mode of appeal. The remedy, which is narrow in scope, only corrects **errors of jurisdiction**. Thus, if the issue involves an **error of judgment**, the error is correctible by an appeal via a Rule 45 petition, and not by a writ of *certiorari* under Rule 65 of the Rules of Court.

4. **ID.; ID.; ID.; ERRORS OF JURISDICTION; DEFINITION. —** As defined in jurisprudence, errors of jurisdiction occur when the court exercises jurisdiction not conferred upon it by law. They may also occur when the court or tribunal, although it has jurisdiction, acts in excess of it or with grave abuse of discretion amounting to lack of jurisdiction.

5. **ID.; CIVIL ACTIONS; JURISDICTION; ERRORS OF JUDGMENT; DEFINITION. –** On the contrary, errors of judgment are those that the court may commit in the exercise of its jurisdiction. They include errors of procedure or mistakes in the court's findings based on a mistake of law or of fact.

6. **ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE ONLY ERROR PETITIONERS RAISE REFERS TO JUDGE CLAVECILLA'S MISTAKE OF NOT APPLYING SECTION 71.—** Based on the definitions above, we conclude similarly as the RTC that if there is an error to speak of the error relates only to a mistake in the application of law, and not to an error of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction. The only error petitioners raise refers to Judge Clavecilla's mistake of not applying Section 71, which allegedly prohibits the production of ITRs because of confidentiality.

APPEARANCES OF COUNSEL

Eustaquio S. Beltran for petitioners.

Salvador G. Cajot for respondents.

R E S O L U T I O N

SERENO, *J.*:

Before this Court is a Rule 45 Petition, seeking to review the 6 May 2005 Regional Trial Court (RTC) Decision in Special Civil Action No. RTC 2005-0032. In that Decision, the RTC dismissed petitioners' Rule 65 Petition, which assailed the directive of Judge Marvel C. Clavecilla requiring Roberto Dipad to submit the latter's Income Tax Returns (ITRs) for the years 2001 to 2003.

The pertinent facts are as follows: [1]

Due to a collision between the car of petitioner spouses Dipad and the passenger jeep owned by respondents, the former filed a civil action for damages before the *sala* of Municipal Trial Court (MTC) Judge Clavecilla.

During trial, Roberto Dipad mentioned in his direct testimony that because he was not able to make use of his vehicle for his buy-and-sell business, he suffered damages by way of lost income for three months amounting to ₱40,000.[2] Then, during cross-examination, the defense required him **to produce his personal copy of his ITRs for the years 2001, 2002 and 2003**.[3]

Dipad vehemently objected on the ground of confidentiality of the ITRs. He also claimed that the demand therefor was incriminatory and in the nature of a fishing expedition.

By reason of the opposition, Judge Clavecilla suspended the trial and required petitioners to show their basis for invoking the confidentiality of the ITRs. After the parties submitted their respective Comments on the matter, the MTC in its 3 February 2005 Order required the production of the ITRs.

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[1] *Rollo*, pp. 14-17; Verified Petition for Review on *Certiorari* dated 25 July 2005.

[2] *Rollo,* p. 87, Memorandum for the Petitioners dated 12 April 2006.

[3] *Id.* at 15, Verified Petition for Review on *Certiorari* dated 25 July 2005.

Aggrieved, the spouses Dipad filed a Motion for Reconsideration, which was denied by Judge Clavecilla. Thereafter, they instituted a Rule 65 Petition for *Certiorari* and Prohibition before the RTC, assailing the 3 February 2005 Order of the MTC for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. In that Petition, they opposed Judge Clavecilla's ruling in this wise:[4]

x x x [T]he respondent Judge stated in his order dated February 3, 2005 (Annex "G") in Civil Case No. 11884 that the cited provision does not apply, stating that "what is being requested to be produced is plaintiffs' copy of their tax returns for the years 2001 to 2003 x x x," thereby ordering the plaintiffs therein, now the petitioners, "to furnish defendants' counsel within five (5) days from receipt of this order copy of their income tax returns for the years 2001 to 2003, inclusive."

We beg to differ to such holding, because if a copy of a taxpayer's return filed with the Bureau of Internal Revenue can be open to inspection **only** upon the order of the President of the Philippines, such provision presupposes the confidentiality of the document; and with more reason that the taxpayer cannot be compelled to yield his copy of the said document. (Emphasis in the original)

xxx xxx xxx

Thus, it is indubitable that compelling the petitioners to produce petitioner Roberto Dipad's Income Tax Returns and furnish copies thereof to the private respondents would be violative of the provisions of the National Internal Revenue Code on the rule on confidentiality of Income Tax return as discussed above x x x. (Underscoring supplied)

In its 6 May 2005 Decision,[5] the RTC dismissed the Rule 65 Petition for being an inappropriate remedy. According to the trial court, the errors committed by Judge Clavecilla were, if at all, mere errors of judgment correctible not by the extraordinary writ of *certiorari*, but by ordinary appeal. Petitioners moved for reconsideration, but their motion was denied by the RTC.[6]

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[4] *Id.* at 30-32, Petition for *Certiorari* and Prohibition dated 7 March 2005.

[5] *Id.* at 51-52.

[6] *Id.* at 56; Order dated 7 June 2005.

Hence, this appeal.

The issue presented in this case is straightforward. Petitioners insist that that the RTC committed reversible error in dismissing their Rule 65 Petition as an improper appeal, since grave abuse of discretion amounting to excess of jurisdiction was committed by MTC Judge Clavecilla when he required the production of their ITRs.[7]

In support of their claim and to prove the confidentiality of the ITRs they cite Section 71 of the National Internal Revenue Code, which reads:[8]

Section 71. *Disposition of Income Tax Returns, Publication of Lists of Taxpayers and Filers* — After the assessment shall have been made, as provided in this Title, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the Office of the Commissioner and **shall constitute public records** and be **open to inspection** as such upon the order of the President of the Philippines, under rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

The Commissioner may, in each year, cause to be prepared and published in any newspaper the lists containing the names and addresses of persons who have filed income tax returns.

They also quote from *National Internal Revenue Code* (2001) authored by Epifanio G. Gonzales and Celestina M. Robledo-Gonzales:[9]

The general rule is that despite a court order, copies of the income tax returns cannot be furnished in view of the prohibition contained in Section 332 (now Section 286) of the Tax Code.

However, under Section 11 of Regulation 33 of the Department of Finance the Commissioner of Internal Revenue may furnish copies

[7] *Id.* at 19; Verified Petition for Review on *Certiorari* dated 25 July 2005.

[8] *Id.* at 20.

[9] *Id.* at 20-21.

of income tax returns for use as evidence in court litigation "when the government of the Philippine Islands is interested in the result."

Thus, in the case of *Cu Unjieng vs. Posadas*, 58 Phil. 360, which involves the production of income tax returns in a criminal case, the Supreme Court held that copies of the returns can be furnished therein because a criminal case is a sort of a case in which, above all others, the government, as a corporate representative of all society, is highly and immediately interested.

But in a civil case where the government is not interested in the results, no income tax returns or tax census statements may be furnished the courts even if the production thereof is in obedience to the court order (see BIR Ruling No. 4, S. 1971).

RULING OF THE COURT

The appeal is lacking in merit.

Upon perusal of the reference, we find that petitioners inaccurately quoted the commentary.[10] The portions they lifted from the annotation purport to explain Section 270 of the NIRC.[11]

The provision prohibits employees of the Bureau of Internal Revenue (BIR) from divulging the trade secrets of taxpayers. Section 270 obviously does not address the confidentiality of ITRs. Thus, petitioners cannot rely on the inappropriate provision, the Decisions including the cited *Cu Unjieng v. Posadas,*[12] the

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[10] Epifanio G. Gonzales and Celestina M. Robledo-Gonzales, National Internal Revenue Code 664-665 (2001).

[11] SEC. 270. Unlawful Divulgence of Trade Secrets. - Except as provided in Section 71 of this Code and Section 26 of Republic Act No. 6388, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income or estate of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (₱50,000) but not more than One hundred thousand pesos (₱100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both.

[12] 58 Phil. 360 (1933).

rulings of the BIR, or issuances of the Department of Finance that apply that provision.

Furthermore, in contrast to the interpretation by petitioners of the commentary that ITRs cannot be divulged, their very reference characterizes Section 71 as an exception to the rule on the unlawful divulgence of trade secrets:[13]

> **Exceptions or acts which do not constitute unlawful divulgence of trade secrets. –**
>
> (a) Section 71 of the Tax Code makes income tax returns public records and opens them to inspection upon order of the President of the Philippines. x x x.

This Court then reminds the counsels of their duty of candor, fairness and good faith when they face the court. Canon 10.02 of the Code of Professional Responsibility instructs that a lawyer shall not knowingly misquote or misrepresent the contents of a paper; the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment; or assert as a fact that which has not been proved.

Nevertheless, we proceed to the contention of petitioners against the RTC's dismissal of their Rule 65 Petition. In this regard, we stress that it is basic in our jurisdiction that a petition for *certiorari* under Rule 65 is not a mode of appeal.[14] The remedy, which is narrow in scope,[15] only corrects **errors of jurisdiction**.[16] Thus, if the issue involves an **error of judgment,** the error is

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[13] *Supra* note 10.

[14] *Abedes v. Court of Appeals*, G.R. No. 174373, 15 October 2007, 536 SCRA 268; *Camutin v. Sps. Potente,* G.R. No. 181642, 29 January 2009, 577 SCRA 151.

[15] *Republic of the Philippines (University of the Philippines) v. Legaspi, Sr.,* G.R. No. 177611, 18 April 2012.

[16] *Centro Escolar University Faculty and Allied Workers Union-Independent v. Court of Appeals,* 523 Phil. 427 (2006).

correctible by an appeal via a Rule 45 petition, and not by a writ of *certiorari* under Rule 65 of the Rules of Court.[17]

As defined in jurisprudence, errors of jurisdiction occur when the court exercises jurisdiction not conferred upon it by law.[18] They may also occur when the court or tribunal, although it has jurisdiction, acts in excess of it or with grave abuse of discretion amounting to lack of jurisdiction.[19]

On the contrary, errors of judgment are those that the court may commit in the exercise of its jurisdiction. They include errors of procedure or mistakes in the court's findings[20] based on a mistake of law or of fact.[21]

Here, it is patently clear that petitioners do not question whether the MTC has jurisdiction or authority to resolve the issue of confidentiality of ITRs. Rather, they assail the wisdom of the MTC's very judgment and appreciation of the ITR as not confidential. Specifically, they claim that the ruling violated the provisions of the NIRC on the alleged rule on confidentiality of ITRs.

Based on the definitions above, we conclude similarly as the RTC that if there is an error to speak of, the error relates only to a mistake in the application of law, and not to an error of jurisdiction or grave abuse of discretion amounting to excess of jurisdiction. The only error petitioners raise refers to Judge Clavecilla's mistake of not applying Section 71, which allegedly prohibits the production of ITRs because of confidentiality. Certainly, as correctly posited by the court *a quo*, if every error committed by the trial court is subject to *certiorari*, trial would

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[17] *Ysidoro v. Leonardo-De Castro*, G.R. No. 171513, 6 February 2012.

[18] *Cabrera v. Lapid,* G.R. No. 129098, 6 December 2006, 510 SCRA 55.

[19] *GSIS v. Olisa*, 364 Phil. 59 (1999).

[20] *Banco Filipino Savings v. Court of Appeals,* 389 Phil. 644 (2000).

[21] *Lopez v. Alvendia*, G.R. No. L-20697, 120 Phil. 1424 (1964).

never come to an end, and the docket will be clogged *ad infinitum*.[22]

Therefore, given the issues raised by petitioners in their plea for the extraordinary writ of *certiorari*, the RTC did not grievously err in dismissing the Rule 65 Petition as an improper appeal. This ruling is only in keeping with the proper conduct of litigation before the courts and the prompt administration of justice at every level of the judicial hierarchy.[23]

IN VIEW THEREOF, the assailed 6 May 2005 Decision of the Regional Trial Court in Special Civil Action No. RTC 2005-0032 is **AFFIRMED.** The 25 July 2005 Petition for Review filed by petitioners is hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 176251. July 25, 2012]

ALFONSO LAGAYA *y* TAMONDONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and DR. MARILYN MARTINEZ,** *respondents.*

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[22] *Spouses Ampeloquio v. Court of Appeals*, 389 Phil. 13 (2000).

[23] *Id.*

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; CRIMES AND PENALTIES; CRIMES AGAINST HONOR; LIBEL; ELEMENTS.—** A libel is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. "For an imputation to be libelous, the following requisites must concur: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable."
2. **ID.; ID.; ID.; ID.; FIRST ELEMENT (ASCRIBING TO RESPONDENT THE POSSESSION OF A DEFECT WHICH TENDS TO DISCREDIT HER) PRESENT IN THE CASE AT BAR.—** As to the first requisite, we find the subject memorandum defamatory. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. "In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense." In the present case, the subject memorandum dealt more on the supposedly abnormal behavior of the private respondent which to an ordinary reader automatically means a judgment of mental deficiency.
3. **ID.; ID.; ID.; ID.; SECOND ELEMENT (CRIMINAL INDIFFERENCE TO THE RIGHT OF RESPONDENT) PRESENT IN THE CASE AT BAR, EVERY DEFAMATORY IMPUTATION BEING PRESUMED TO BE MALICIOUS.—** The element of malice was also established. "Malice, which is the doing of an act conceived in the spirit of mischief or criminal indifference to the rights of others or which must partake of a criminal or wanton nature, is presumed from any defamatory imputation, particularly when

it injures the reputation of the person defamed." As early on, the Court had perused the second paragraph contained in the subject memorandum and since the same, on its face, shows the injurious nature of the imputations to the private respondent, there is then a presumption that petitioner acted with malice. Under Article 354 of the RPC, every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown. xxx Thus, in *United States v. Prautch,* it was held that "[t]he existence of justifiable motives is a question which has to be decided by taking into consideration not only the intention of the author of the publication but all the other circumstances of each particular case."

4. **ID.; ID.; ID.; ID.; ID.; IF PETITIONER WAS DISSEMINATING INFORMATION TO THE MANAGER AND STAFF OF HPP's UNDER THE ADMINISTRATION OF PITAHC, AS HE CLAIMS, HE COULD HAVE JUST STATED IN PLAIN TERMS THE CURRENT STATUS OF HPP's TO COUNTER THE ALLEGED MISINFORMATION AND JUST STOPPED THERE.—** Certainly, the second paragraph in the memorandum was not encompassed by the subject indicated therein (Disclosure and Misuse of Confidential and Classified Information) and likewise was not even germane to the privatization of PITAHC. At this juncture, the observation of the Court of Appeals (CA) in CA-G.R. SP No. 83622, an Administrative Case filed against herein petitioner based on the same set of facts and circumstances, is worth noting, *viz*: x x x If indeed, petitioner was merely disseminating information to the Manager and Staff of HPP's under the administration of PITAHC, as he claims, he could have just stated in plain terms the current status of HPP's to counter the alleged misinformation such as what plans, recommendations and steps are being considered by the PITAHC about the HPP's, any developments regarding the decision-making process with the assurance that the concerns of those employees involved or will be affected by a possible abolition or reorganization are properly addressed, and similar matters and just stopped there. Casting aspersion on the mental state of private respondent who herself may just be needing plain and simple clarification from a superior like petitioner who is no less the Director of the PITAHC is totally uncalled for and done in poor taste.

x x x Far from discharging his public duties "in good faith" petitioner succeeded only in ruining beyond repair the reputation of private respondent and attack her very person - the condition of her mental faculties and emotional being - not only by circulating the memo in their offices nationwide but even personally distributed and made sure that the Manager and Staff of the HPP in Tuguegarao where private respondent works, have all read the memo in his presence. It is unbelievable that a public official would stoop so low and diminish his stature by such unethical, inconsiderate, and unfair act against a co-worker in the public service.

5. **ID.; ID.; ID.; ID.; ID.; ID.; CA RULING IN THE ADMINISTRATIVE CASE (WITH FINALITY ON NOVEMBER 30, 2004) HAS DECISIVELY DETERMINED ISSUE OF MALICE IN PRESENT PETITION.—** This CA ruling in the Administrative Case which had already attained its finality on November 30, 2004 has effectively and decisively determined the issue of malice in the present petition. We see no cogent reason why this Court should not be bound by it. In *Constantino v. Sandiganbayan (First Division),* the Court ruled: Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude — by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*. and even under the doctrine of "law of the case," — the re-litigation of the same issue in another action.

6. **ID.; ID.; ID.; ID.; THIRD ELEMENT (PETITIONER DISTRIBUTED SUBJECT MEMORANDUM AND READ ITS CONTENTS AT A MEETING ATTENDED BY 24 PARTICIPANTS) PRESENT IN THE CASE AT BAR.—** The element of publication was also proven. "Publication, in the law of libel, means the making of the defamatory matter, after it has been written, known to someone other than the person to whom it has been written." On the basis of the evidence on record and as found by the *Sandiganbayan*, there is no dispute that copies of the memorandum containing the defamatory remarks were circulated to all the regional offices of the HPP. Evidence also shows that petitioner allowed the

distribution of the subject memorandum and even read the contents thereof before a gathering at a meeting attended by more or less 24 participants thereat.

7. **ID.; ID.; ID.; ID.; ID.; ID.; FOURTH ELEMENT (RESPONDENT WAS PARTICULARLY NAMED) PRESENT IN THE CASE AT BAR.—** Anent the last element, that is, the identity of the offended party, there is no doubt that the private respondent was the person referred to by the defamatory remarks as she was in fact, particularly named therein.

8. **ID.; ID.; ID.; ID.; REQUIREMENT OF PUBLICITY; EXCEPTIONS THERETO. —** Article 354 of the RPC provides: Art. 354. *Requirement for publicity*. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases: 1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. Before a statement would come within the ambit of a privileged communication under paragraph No, 1 of the abovequoted Article 354, it must be established that: "(1) the person who made the communication had a legal, moral or social duty to make the communication, or at least, had an interest to protect, which interest may either be his own or of the one to whom it is made; (2) the communication is addressed to an officer or a board, or superior, having some interest or duty in the matter, and who has the power to furnish the protection sought: and (3) the statements in the communication are made in good faith and without malice." All these requisites must concur.

9. **ID.; ID.; ID.; ID.; ID.; ID.; COURT RULING IN *BRILLANTE V. COURT OF APPEALS*, 483 PHIL. 568 APPLICABLE IN CASE AT BAR.—** In the instant case, petitioner addressed the memorandum not only to the Plant Manager but also to the staff of HPP. Undoubtedly, the staff of HPP were not petitioner's superiors vested with the power

of supervision over the private respondent. Neither were they the parties to whom the information should be given for they have no authority to inquire into the veracity of the charges. As aptly observed by the *Sandiganbayan*, the memorandum is not simply addressed to an officer, a board or a superior. Rather, the communication was addressed to all the staff of PITAHC who obviously do not have the power to furnish the protection sought. Substantially, the Court finds no error in the foregoing findings. The irresponsible act of furnishing the staff a copy of the memorandum is enough circumstance which militates against the petitioner's pretension of good faith and performance of a moral and social duty. As further held in *Brillante*, the law requires that for a defamatory imputation made out of a legal, moral or social duty to be privileged, such statement must be communicated only to the person or persons who have some interest or duty in the matter alleged and who have the power to furnish the protection sought by the author of the statement. It may not be amiss to note at this point too that petitioner very well knows that the recommendation of PITAHC's consultant, McGimpers, is a sensitive matter that should be treated with strictest confidentiality.

10. **ID.; ID.; ID.; ID.; ID.; ID.; THE DEFAMATORY REMARKS NOT BEING RELATED TO THE DISCHARGE OF RESPONDENT'S OFFICIAL DUTIES, PETITIONER'S MEMORANDUM IS NOT COVERED BY THE SECOND EXCEPTION.—** Neither does the defamatory statement in the memorandum covered by paragraph No. 2 of the Article 354. Though private respondent is a public officer, certainly, the defamatory remarks are not related or relevant to the discharge of her official duties but was purely an attack on her mental condition which adversely reflect on her reputation and dignity.

APPEARANCES OF COUNSEL

Hilda Sacay-Clave for petitioner.

Jessie B. Usita for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he freedom to express one's sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others."[1]

In this Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court, Dr. Alfonso Lagaya *y* Tamondong (petitioner) seeks to reverse and set aside the Decision[3] dated October 26, 2006 of the *Sandiganbayan* finding him guilty of Libel. He likewise challenges the Resolution[4] of the *Sandiganbayan* dated January 16, 2007 denying his Motion for Reconsideration.[5]

In an Information[6] dated September 4, 2003, petitioner was charged with the crime of libel defined and penalized under Article 355 in relation to Articles 353 and 354 of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about the 5th day of August 2002, or sometime prior or subsequent thereto, in Carig, Tuguegarao City, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, accused ALFONSO LAGAYA *y* TAMONDONG, a public officer, being the Director General with Salary Grade 28 of the Philippine Institute of Traditional and Alternative Health Care (PITAHC), an attached agency of Department of Health, while in the performance of his official functions, taking advantage of his official position and committing the crime herein charged in relation to his office, did then and there, wilfully, unlawfully and feloniously, and by

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[1] *Lucas v. Sps. Royo*, 398 Phil. 400, 411 (2000).

[2] *Rollo*, pp. 3-49.

[3] *Sandiganbayan rollo,* pp. 434-463; penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada.

[4] *Id.* at 511-513.

[5] *Id.* at 470-483.

[6] *Id.* at 1-3.

means of writing, defame and libel one Dr. Marilyn Martinez by including in Memorandum No. 06, S. 2002 entitled "Disclosure and Misuse of Confidential and Classified Information" he issued and disseminated to the Plant Manager and Staff of Cagayan Valley Herbal Processing Plant in discharge of his administrative supervision and control the statement that Dr. Marilyn Martinez's state of mind or psychiatric behavior be submitted for further psychological and/ or psychiatric treatment to prevent further deterioration of her mental and emotional stability, such statement being immaterial and irrelevant, thus causing dishonor, discredit and contempt to the person of Dr. Marilyn Martinez which subjected her to public ridicule.

CONTRARY TO LAW.

When arraigned on May 14, 2004, petitioner, with the assistance of counsel *de parte*, pleaded "Not Guilty" to the charge.[7] After the prosecution and defense made some stipulation of facts, trial on the merits ensued.

Factual Antecedents

Dr. Marilyn Martinez (private respondent) was the Plant Manager of the Cagayan Valley Herbal Processing Plant (HPP) of the Philippine Institute of Traditional and Alternative Health Care (PITAHC), an attached agency of the Department of Health. On July 1 and 2, 2002, she attended the Mid-Year Performance Evaluation Seminar conducted at the Sulo Hotel by McGimpers International Consulting Corporation (McGimpers). The latter was engaged by the PITAHC with the prime objective of developing its marketing arm and the personality of each personnel of the Sales Department.[8] The participants in the seminar were Sales Managers, various Plant Managers, Sales Agents from the different Regional Offices and other staff of PITAHC. It would appear, however, that during the seminar, the private respondent and one of the female resource speakers had a misunderstanding as a result of the alleged abusive remarks made by the latter pertaining to the former's capability as a supervisor.

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[7] *Id.* at 70.

[8] *Supra* note 3 at 443-444.

On August 8, 2002, the private respondent was summoned by Dr. Eriberto Policar (Dr. Policar), the Regional Director of PITAHC to his office. Thereat, Dr. Policar handed her a copy of Memorandum No. 6, Series of 2002 dated August 5, 2002.[9] The Memorandum was signed by petitioner, he being then the Director General of PITAHC, addressed to all the plant managers and staff and was distributed to the different plants all over the country. The subject of the memorandum is "Disclosure and Misuse of Confidential and Classified Information" and a salient portion thereof states that private respondent needs to undergo psychological and psychiatric treatment to prevent deterioration of her mental and emotional stability as recommended by McGimpers.

Memorandum No. 6, series of 2002 reads:

TO	:	HPP's Plant Manager & Staff
SUBJECT	:	Disclosure and Misuse of Confidential and Classified Information

It came into our attention that Dr. MARILYN MARTINEZ, has personally lobbied in a legislature, councils or offices *without authority*, to further her private interest or give undue advantage to anyone or to prejudice the public interest. Please be informed that the *Board of Trustees has no decision made as of date regarding the fate of the HPP's*.

In addition, this office has received official complaint behavior of Dr. Martinez compromising the efficiency of the HPP's and the entire organization. Such [behavior] unbecoming of Dr. Martinez is supported by officials of the HPP's as well as the findings of our Consultant McGimpers International Consulting Corporation during the Mid Year Evaluation at Sulo Hotel last July 1-2, 2002, recommending that *"Dr. Martinez be submitted for further psychological and/or psychiatric treatment to prevent further deterioration of her mental and emotional stability"*.

In view of this, you are hereby directed to submit to this office any incidental report that is affecting the efficiency in the HPP's operation; and/or information related to her psychiatric behavior.

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[9] *Sandiganbayan rollo*, p. 221.

For information and guidance.

(Signed)
ALFONSO T. LAGAYA, MD, MDM
Director General

On account of the issuance of the Memorandum, which according to private respondent exposed her to public ridicule and humiliation, she sought the assistance of a lawyer to file the necessary administrative, civil and criminal charges against petitioner.

Petitioner admitted having signed the memorandum. He claimed that he had been receiving information that private respondent was lobbying against the intended privatization of the Herbal Processing Plants when the Board of Trustees of PITAHC was still in the process of deliberating the same, and of various verbal complaints against her from the employees of the plants who were afraid to come out and voice their grievances formally. He further stressed that the report of McGimpers gave him the opportunity to encourage the employees of PITAHC to submit formal complaints against the private respondent. Petitioner also averred that the issuance of the memorandum was done in the performance of official duty and in good faith considering that his objective is to help the private respondent.

Ruling of the Sandiganbayan

In its Decision[10] promulgated on October 26, 2006, the *Sandiganbayan* held that the prosecution has convincingly established by proof beyond reasonable doubt the existence of all the elements essential to support the charge and thus adjudged petitioner guilty of the crime of libel, *viz*:

WHEREFORE, proceeding from the foregoing, judgment is hereby rendered finding accused ALFONSO LAGAYA *y* TAMONDONG **GUILTY** of the crime of libel defined and penalized under Article 355 in relation to Articles 353 and 354 of the *Revised Penal Code* and, in the absence of any modifying circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment

[10] *Supra* note 3.

of six (6) months of *arresto mayor*, as minimum, to two (2) years, eleven (11) months, and ten (10) days of *prision correccional*, as maximum; (b) suffer all the appropriate accessory penalties consequent thereto, including perpetual special disqualification; and (c) pay the costs.

SO ORDERED.[11]

Petitioner sought reconsideration of the Decision but the *Sandiganbayan* denied the same in the questioned January 16, 2007 Resolution.[12]

Hence, this petition.

Issues

Petitioner ascribes upon the *Sandiganbayan* the following errors:

I

THE HONORABLE SANDIGANBAYAN ERRED IN NOT HOLDING THAT THE CONTENTS OF THE MEMORANDUM ARE NOT DEFAMATORY AS THEY WERE MERELY QUOTED VERBATIM FROM A RECOMMENDATION OF PITAHC CONSULTANT MCGIMPERS INTERNATIONAL CONSULTANCY CORPORATION.

II

GRANTING **ARGUENDO** THAT THE UTTERANCE WAS IN ITSELF DEFAMATORY, NONETHELESS, THE HONORABLE SANDIGANBAYAN ERRED IN NOT HOLDING THAT THE SUBJECT MEMORANDUM WAS NOT ATTENDED WITH MALICE TO THUS FREE PETITIONER OF CRIMINAL LABILITY.

III

IN ANY EVENT, THE SUBJECT MEMORANDUM FALLS WITHIN THE AMBIT OF THE PRIVILEGED COMMUNICATION RULE, HENCE, NOT LIBELOUS.

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[11] *Sandiganbayan rollo*, p. 462.

[12] *Supra* note 4.

IV

THE PROSECUTION'S EVIDENCE TO PROVE THE COMMISSION OF LIBEL FELL SHORT OF THE DEGREE OF PROOF, THAT IS, PROOF BEYOND REASONABLE DOUBT, REQUIRED BY LAW TO BE ESTABLISHED IN ORDER TO OVERCOME THE CONSTITUTIONAL[L]Y ENSHRINED PRESUMPTION OF INNOCENCE IN FAVOR OF ACCUSED-PETITIONER.

V

GRANTING WITHOUT ADMITTING THAT PETITIONER IS LIABLE FOR THE CRIME OF LIBEL, THE PENALTY IMPOSED UPON HIM IS NOT COMMENSURATE TO THE ALLEGED OFFENSE; BEARING IN MIND SEVERAL YEARS OF UNTARNISHED PUBLIC SERVICE AS DIRECTOR GENERAL FOR PITAHC.[13]

Petitioner avers that the contents of the subject memorandum are not defamatory. The memorandum was not only issued in good faith but also in the performance of his official duty as Director General of PITAHC, that is, to make certain that the members of the organization he heads would work together for the accomplishment of the organization's mandate. In fact, he merely quoted in the said memorandum the recommendation of their consultant McGimpers. Petitioner also argues that the subject memorandum falls within the ambit of privileged communication, hence, not actionable. Lastly, assuming that he is liable, a fine instead of imprisonment should be imposed following prevailing jurisprudence.

Private respondent and public respondent People of the Philippines, in their respective comments, pray for the affirmance of the challenged Decision of the *Sandiganbayan* and for the dismissal of the petition.

Our Ruling

The Court finds the petition partly impressed with merit.

[13] *Rollo*, pp. 365-366.

All the requisites of the crime of libel are obtaining in this case.

A libel is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."[14] "For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity; and d) the victim must be identifiable."[15]

The Court finds the four aforementioned requisites to be present in this case.

As to the first requisite, we find the subject memorandum defamatory. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. "In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense."[16]

In the present case, the subject memorandum dealt more on the supposedly abnormal behavior of the private respondent which to an ordinary reader automatically means a judgment of mental deficiency. As the *Sandiganbayan* correctly ruled:

> x x x To stress, the words used could not be interpreted to mean other than what they intend to say – that Martinez has psychiatric problems and needs psychological and/or psychiatric treatment; otherwise her mental and emotional stability would further deteriorate.

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[14] The REVISED PENAL CODE, Article 353.

[15] *Buatis, Jr. v. People*, 520 Phil. 149, 160 (2006).

[16] *Id.*

As the law does not make any distinction whether the imputed defect/condition is real or imaginary, no other conclusion can be reached, except that accused Lagaya, in issuing the Memorandum, ascribes unto Martinez a vice, defect, condition, or circumstance which tends to dishonor, discredit, or put her in ridicule. x x x[17]

The element of malice was also established. "Malice, which is the doing of an act conceived in the spirit of mischief or criminal indifference to the rights of others or which must partake of a criminal or wanton nature, is presumed from any defamatory imputation, particularly when it injures the reputation of the person defamed."[18] As early on, the Court had perused the second paragraph contained in the subject memorandum and since the same, on its face, shows the injurious nature of the imputations to the private respondent, there is then a presumption that petitioner acted with malice. Under Article 354 of the RPC, every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown.

To buttress his defense of lack of malice, petitioner claimed that when he issued the memorandum, he was motivated by good intention to help private respondent and improve PITAHC. Such goodness, however, is not sufficient justification considering the details of the entire contents of the memorandum. Thus, in *United States v. Prautch*,[19] it was held that "[t]he existence of justifiable motives is a question which has to be decided by taking into consideration not only the intention of the author of the publication but all the other circumstances of each particular case."[20] Certainly, the second paragraph in the memorandum was not encompassed by the subject indicated therein (Disclosure and Misuse of Confidential and Classified Information) and likewise was not even germane to the privatization of PITAHC. At this juncture, the observation of the Court of Appeals (CA) in CA-G.R. SP No. 83622, an Administrative Case filed against

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[17] *Sandiganbayan rollo*, p. 456.

[18] *Lucas v. Sps. Royo*, *supra* note 1 at 411-412.

[19] 10 Phil. 562 (1908).

[20] *Id.* at 565.

herein petitioner based on the same set of facts and circumstances, is worth noting, *viz*:

x x x If, indeed, petitioner was merely disseminating information to the Manager and Staff of HPP's under the administration of PITAHC, as he claims, he could have just stated in plain terms the current status of HPP's to counter the alleged misinformation such as what plans, recommendations and steps are being considered by the PITAHC about the HPP's, any developments regarding the decision-making process with the assurance that the concerns of those employees involved or will be affected by a possible abolition or reorganization are properly addressed, and similar matters and just stopped there. Casting aspersion on the mental state of private respondent who herself may just be needing plain and simple clarification from a superior like petitioner who is no less the Director of the PITAHC, is totally uncalled for and done in poor taste.

x x x Far from discharging his public duties "in good faith" petitioner succeeded only in ruining beyond repair the reputation of private respondent and attack her very person — the condition of her mental faculties and emotional being — not only by circulating the memo in their offices nationwide but even personally distributed and made sure that the Manager and Staff of the HPP in Tuguegarao where private respondent works, have all read the memo in his presence. It is unbelievable that a public official would stoop so low and diminish his stature by such unethical, inconsiderate, and unfair act against a co-worker in the public service.

xxx xxx xxx

We fully concur with the Ombudsman's declaration that short of using the word "insane," the statements in the memo unmistakably imply that the alleged unauthorized disclosure by private respondent of supposedly classified information regarding the fate of the HPP's is simply an external manifestation of her deteriorating mental and emotional condition. Petitioner thereby announced to all the employees of the agency that such alleged infraction by private respondent only confirms the findings of their consultant that private respondent is suffering from mental and emotional imbalance, even instructing them to report any information related to private respondent's "psychiatric behavior."[21]

[21] See CA Decision promulgated on July 29, 2004; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred

This CA ruling in the Administrative Case which had already attained its finality on November 30, 2004[22] has effectively and decisively determined the issue of malice in the present petition. We see no cogent reason why this Court should not be bound by it. In *Constantino v. Sandiganbayan (First Division)*,[23] the Court ruled:

> Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude – by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," – the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment. (Citations omitted.)

The element of publication was also proven. "Publication, in the law of libel, means the making of the defamatory matter, after it has been written, known to someone other than the person to whom it has been written."[24] On the basis of the evidence on record and as found by the *Sandiganbayan*, there is no dispute that copies of the memorandum containing the defamatory remarks

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in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao; *rollo*, pp. 165-177 at 174-176.

[22] Per Entry of Judgment, *id.* at 164.

[23] G.R. Nos. 140656 and 154482, September 13, 2007, 533 SCRA 205, 228-229.

[24] *Magno v. People*, 516 Phil. 72, 84 (2006).

were circulated to all the regional offices of the HPP. Evidence also shows that petitioner allowed the distribution of the subject memorandum and even read the contents thereof before a gathering at a meeting attended by more or less 24 participants thereat.

Anent the last element, that is, the identity of the offended party, there is no doubt that the private respondent was the person referred to by the defamatory remarks as she was in fact, particularly named therein.

Privileged Communication Rule is not applicable in this case.

Petitioner tenaciously argues that the disputed memorandum is not libelous since it is covered by the privileged communication rule. He avers that the memorandum is an official act done in good faith, an honest innocent statement arising from a moral and legal obligation.

Petitioner's invocation of the rule on privileged communication is misplaced.

Article 354 of the RPC provides:

> Article 354: *Requirement for publicity.* – Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
>
> 1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and
>
> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Before a statement would come within the ambit of a privileged communication under paragraph No. 1 of the abovequoted Article 354, it must be established that: "1) the person who made the communication had a legal, moral or social duty to make the communication, or at least, had an interest to protect, which interest may either be his own or of the one to whom it is made;

2) the communication is addressed to an officer or a board, or superior, having some interest or duty in the matter, and who has the power to furnish the protection sought; and 3) the statements in the communication are made in good faith and without malice."[25] All these requisites must concur.

In the instant case, petitioner addressed the memorandum not only to the Plant Manager but also to the staff of HPP. Undoubtedly, the staff of HPP were not petitioner's superiors vested with the power of supervision over the private respondent. Neither were they the parties to whom the information should be given for they have no authority to inquire into the veracity of the charges. As aptly observed by the *Sandiganbayan*, the memorandum is not simply addressed to an officer, a board or a superior. Rather, the communication was addressed to all the staff of PITAHC who obviously do not have the power to furnish the protection sought.[26] Substantially, the Court finds no error in the foregoing findings. The irresponsible act of furnishing the staff a copy of the memorandum is enough circumstance which militates against the petitioner's pretension of good faith and performance of a moral and social duty. As further held in *Brillante*,[27] the law requires that for a defamatory imputation made out of a legal, moral or social duty to be privileged, such statement must be communicated only to the person or persons who have some interest or duty in the matter alleged and who have the power to furnish the protection sought by the author of the statement. It may not be amiss to note at this point too that petitioner very well knows that the recommendation of PITAHC's consultant, McGimpers, is a sensitive matter that should be treated with strictest confidentiality.[28]

Neither does the defamatory statement in the memorandum covered by paragraph No. 2 of the Article 354. Though private

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[25] *Brillante v. Court of Appeals*, 483 Phil. 568, 593 (2004).

[26] *Supra* note 3 at 459.

[27] *Supra* note 25.

[28] See Counter-Affidavit dated November 18, 2002 of Nellie S. Kadava, *Sandiganbayan rollo*, pp. 31-35.

respondent is a public officer, certainly, the defamatory remarks are not related or relevant to the discharge of her official duties but was purely an attack on her mental condition which adversely reflect on her reputation and dignity.

Imposition of the penalty of fine instead of imprisonment.

Notwithstanding the guilt of the petitioner, still the Court finds favorable consideration on his argument that instead of imprisonment a fine should be imposed on him.

Following precedents[29] and considering that the records do not show that petitioner has previously violated any provision of the penal laws, the Court, in the exercise of its judicious discretion, imposes upon him a penalty of fine instead of imprisonment.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED.** The Decision of the *Sandiganbayan* finding petitioner Alfonso Lagaya *y* Tamondong guilty beyond reasonable doubt of the crime of libel is **AFFIRMED** in all respects except that in lieu of imprisonment, petitioner is sentenced to pay a fine of ₱6,000.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.

Carpio, (Senior Associate Justice),[*] *Bersamin (Acting Chairperson),*[**] *Abad,*[***] and *Perlas-Bernabe,*[****] *JJ.,* concur.

[29] *Sazon v. Court of Appeals*, 325 Phil. 1053 (1996); *Mari v. Court of Appeals*, 388 Phil. 269 (2000); *Brillante v. Court of Appeals*, *supra* note 25; *Buatis, Jr. v. People*, *supra* note 15; *Fermin v. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132.

[*] Per Special Order No. 1270 dated July 24, 2012.

[**] Per Special Order No. 1251 dated July 12, 2012.

[***] Per raffle dated July 23, 2012.

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

SECOND DIVISION

[G.R. No. 180036. July 25, 2012]

SITUS DEVELOPMENT CORPORATION, DAILY SUPERMARKET, INC. and COLOR LITHOGRAPHIC PRESS, INC., *petitioners, vs.* **ASIATRUST BANK, ALLIED BANKING CORPORATION, METROPOLITAN BANK AND TRUST COMPANY, and CAMERON GRANVILLE II ASSET MANAGEMENT, INC. (CAMERON),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; INTERIM RULES ON CORPORATE REHABILITATION; PETITION FOR REHABILITATION; SHALL BE DISMISSED IF NO REHABILITATION PLAN IS APPROVED BY THE COURT UPON THE LAPSE OF ONE HUNDRED EIGHTY DAYS FROM THE DATE OF INITIAL HEARING.—** The Rules provide that "[t]he petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing." While the Rules expressly provide that the 180-day period may be extended, such extension may be granted only "if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated."

2. **MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; A CORPORATION IS A JURIDICAL ENTITY WITH A LEGAL PERSONALITY SEPARATE AND DISTINCT FROM THE PEOPLE COMPRISING IT.—** It is a fundamental principle in corporate law that a corporation is a juridical entity with a legal personality separate and distinct from the people comprising it. Hence, the rule is that assets of stockholders may not be considered as assets of the corporation, and vice-versa. The mere fact that one is a majority stockholder of a corporation does not make one's property that of the corporation, since the stockholder and the corporation are separate entities.

3. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; WHEN A DEBTOR MORTGAGES HIS PROPERTY, HE MERELY SUBJECTS IT TO A LIEN BUT OWNERSHIP THEREOF IS NOT PARTED WITH.—** A mortgage is an accessory undertaking to secure the fulfillment of a principal obligation. In a third-party mortgage, the mortgaged property stands as security for the loan obtained by the principal debtor; but until the mortgaged property is foreclosed, ownership thereof remains with the third-party mortgagor. x x x We have ruled that "when a debtor mortgages his property, he merely subjects it to a lien but ownership thereof is not parted with."

4. **REMEDIAL LAW; INTERIM RULES ON CORPORATE REHABILITATION; REHABILITATION PROCEEDINGS; PURPOSE.—** [R]ehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. However, if the continued existence of the corporation is no longer viable, rehabilitation can no longer be an option. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life, and not to prolong its inevitable demise.

5. **ID.; ID.; STAY ORDER; CANNOT SUSPEND THE FORECLOSURE OF PROPERTIES OWNED BY ACCOMMODATION MORTGAGORS.—** Under the Rules, one of the effects of a Stay Order is the stay of the "enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, **against the debtor, its guarantors and sureties not solidarily liable with the debtor.**" x x x In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, we ruled that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages, because the Stay Order may only cover the suspension of the enforcement of all claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor. Thus, the suspension of enforcement of claims does not extend to the foreclosure of accommodation mortgages. Moreover, the intent of the Rules is to exclude from the scope of the Stay Order the foreclosure of properties owned by accommodation mortgagors.

6. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; REAL ESTATE MORTGAGE; NATURE.—** The Civil Code provides that the property upon which a mortgage is imposed directly and immediately subjected to the fulfillment of the obligation for whose security the mortgage was constituted. As such, a real estate mortgage is a lien on the property itself, inseparable from the property upon which it was constituted.

7. **ID.; ID.; ID.; THIRD-PARTY MORTGAGOR OR ACCOMMODATION MORTGAGOR; DEFINED.—** [W]e find that the undertaking of spouses Chua with respect to the loans of petitioner corporations is the sale at public auction of certain real properties belonging to them to satisfy the indebtedness of petitioner corporations in case of a default by the latter. This undertaking is properly that of a third-party mortgagor or an accommodation mortgagor, whereby one mortgages one's property to stand as security for the indebtedness of another.

8. **ID.; ID.; SALES; ASSIGNMENT OF CREDITS AND OTHER INCORPORATED RIGHTS ; ARTICLE 1634 OF THE CIVIL CODE; REQUISITES.—** For the debtor to be entitled to extinguish his credit by reimbursing the assignee under Art. 1634, the following requisites must concur: (a) there must be a credit or other incorporeal right; (b) the credit or other incorporeal right must be in litigation; (c) the credit or other incorporeal right must be sold to an assignee pending litigation; (d) the assignee must have demanded payment from the debtor; (e) the debtor must reimburse the assignee for the price paid by the latter, the judicial costs incurred by the latter and the interest on the price from the day on which the same was paid; and (f) the reimbursement must be done within 30 days from the date of the assignee's demand.

9. **ID.; ID.; ID.; THE PROVISIONS ON SUBROGATION AND ASSIGNMENT OF CREDITS ONLY APPLY TO NON-PERFORMING LOANS.—** [T]he provisions of the Civil Code on subrogation and assignment of credits are only applicable to NPLs, defined in the SPV Act of 2002 x x x.

10. **ID.; ID.; ID.; ARTICLE 1634 OF THE CIVIL CODE IS INAPPLICABLE IN CASE AT BAR.—** What is involved

> in this case is more properly a real property acquired by a financial institution in settlement of a loan (ROPOA). x x x The Implementing Rules and Regulations of the SPV Act of 2002 provide that, in case of extrajudicial foreclosure, a property is deemed acquired by a financial institution on the date of notarization of the Sheriff's Certificate. In this case, a Certificate of Sale has not been executed in favor of Metrobank in deference to the Stay Order issued by the rehabilitation court. However, we reiterate that the rehabilitation court has no jurisdiction to suspend foreclosure proceedings over a third-party mortgage. Much less can it restrain the issuance of a Certificate of Sale after the subject properties have been sold at public auction more than a year before the Petition for Rehabilitation was filed. The property foreclosed by Metrobank was clearly beyond the ambit of the Stay Order. Consequently, there was no valid ground for the Sheriff to withhold the issuance and execution of the Certificate of Sale. The parcel of land mortgaged to Metrobank and subsequently transferred to Cameron should be treated as a ROPOA as provided for by law. Hence, the application of Art. 1634 finds no basis in law.

APPEARANCES OF COUNSEL

Cagampang Law Offices and *Tabalingcos & Associates Law Offices* for petitioners.

*Bernas Law Offi*ce for Asiatrust Bank.

Mendoza Navarro Mendoza & Partners Law Offices for Metrobank.

Francisco Gerardo C. Llamas and Bienvenido C. Alde, Jr. for Allied Bank.

DECISION

SERENO, *J.*:

The instant Rule 45 Petition assails the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 80223. The CA reversed and set aside the Adjudication[3] of the Regional Trial Court (RTC), Branch 93, Quezon City (the Rehabilitation Court) in Civil Case No. Q-02-010, which had approved the Second Amended Rehabilitation Plan of petitioners Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc. (collectively, petitioners or petitioner corporations) over the objections of respondents Asiatrust Bank (Asiatrust), Allied Banking Corporation (Allied Bank) and Metropolitan Bank and Trust Company (Metrobank). Respondent Cameron Granville II Asset Management, Inc. (Cameron), a Special Purpose Vehicle, was the transferee of Metrobank's rights, title and interest in the instant case.

The facts are not in issue, and we quote with favor the narration of the appellate court:

In 1972, the Chua Family, headed by its patriarch, Cua Yong Hu, *a.k.a.* Tony Chua, started a printing business and put up Color Lithographic Press, Inc. (COLOR). On June 6, 1995, the Chua Family ventured into real estate development/leasing by organizing Situs Development Corporation (SITUS) in order to build a shopping mall complex, known as Metrolane Complex (COMPLEX) at 20th Avenue corner P. Tuazon, Cubao, Quezon City. To finance the construction of the COMPLEX, SITUS, COLOR and Tony Chua and his wife, Siok Lu Chua, obtained several loans from (1) ALLIED secured by

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[1] *Rollo*, pp. 405-428; CA Decision dated 25 April 2007, penned by Associate Justice Marina L. Buzon and concurred in by then Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe (the last two now members of this Court).

[2] *Id.* at 459-460, CA Resolution on petitioners' Motion for Reconsideration dated 9 October 2007.

[3] *Id.* at 396-398, Adjudication dated 14 August 2003, penned by Presiding Judge Apolinario D. Bruselas, Jr.

real estate mortgages over two lots covered by TCT Nos. RT-13620 and RT-13621; (2) ASIATRUST secured by a real estate mortgage over a lot covered by TCT No. 79915; and (3) Global Banking Corporation, now METROBANK, secured by a real estate mortgage over a lot covered by TCT No. 79916. The COMPLEX was built on said four (4) lots, all of which are registered in the names of Tony Chua and his wife, Siok Lu Chua. On March 21, 1996, the Chua Family expanded into retail merchandising and organized Daily Supermarket, Inc. (DAILY). All three (3) corporations have interlocking directors and are all housed in the COMPLEX. The Chua Family also resides in the COMPLEX, while the other units are being leased to tenants. SITUS, COLOR and DAILY obtained additional loans from ALLIED, ASIATRUST and METROBANK and their real estate mortgages were updated and/or amended. Spouses Chua likewise executed five (5) Continuing Guarantee/Comprehensive Surety in favor of ALLIED to guarantee the payment of the loans of SITUS and DAILY.

SITUS, COLOR, DAILY and the spouses Chua failed to pay their obligations as they fell due, despite demands.

On November 22, 2000, ALLIED filed with the Office of the Clerk of Court and *Ex-Officio* Sheriff of Quezon City an application for extrajudicial foreclosure of the mortgage on the properties of spouses Chua covered by TCT Nos. RT-13620 and RT-13621. The auction sale was scheduled on February 6, 2001. However, on February 5, 2001, SITUS, COLOR and spouses Chua filed a complaint for nullification of foreclosure proceedings, with prayer for temporary restraining order/injunction, with the Regional Trial Court, Branch 87, Quezon City, docketed as Civil Case No. Q-01-43280. As no temporary restraining order was issued, the scheduled auction sale proceeded wherein ALLIED emerged as the highest bidder in the amount of ₱88,958,700.00. The Certificate of Sale dated March 9, 2001 in favor of ALLIED was approved by the Executive Judge of the Regional Trial Court of Quezon City on September 9, 2002 and the same was annotated on TCT Nos. RT-13620 and RT-13621 on September 23, 2002.

On July 26, 2001, METROBANK likewise filed an application for extrajudicial foreclosure of the mortgage on the property of spouses Chua covered by TCT No. 79916. The auction sale was conducted on September 18, 2001, with METROBANK as the highest bidder in the amount of ₱95,282,563.86.

On May 16, 2002, ASIATRUST sent a demand letter to DAILY and COLOR for the payment of their outstanding obligations.

On June 11, 2002, SITUS, DAILY and COLOR, herein petitioners, filed a petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan, docketed as Civil Case No. Q-02-010, with the Regional Trial Court, Branch 93, Quezon City. Petitioners alleged that due to the 1997 Asian financial crisis, peso devaluation and high interest rate, their loan obligations ballooned and they foresee their inability to meet their obligations as they fall due; that their loan obligations are secured by the real properties of their major stockholder, Tony Chua; that ALLIED has already initiated foreclosure proceedings; that Global Banking Corporation, now METROBANK, and ASIATRUST made final demands for payment of their obligations; that they foresee a very good future ahead of them if they would be given a "breathing spell" from their obligations as they fall due; and that their assets are more than sufficient to pay off their debts. Petitioners submitted a program of rehabilitation for the approval of creditors and the court *a quo*.

A Stay Order dated June 17, 2002, was issued by the court *a quo* directing as follows:

a.) a stay in the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioners Situs Development Corporation, Daily Supermarket, Inc., & Color Lithographic Press, Inc., their guarantors and sureties not solidarily liable with them;

b.) prohibiting Situs Development Corporation, Daily Supermarket, Inc., & Color Lithographic Press, Inc., from selling, encumbering, transferring or disposing in any manner any of their properties except in the ordinary course of business;

c.) prohibiting Situs Development Corporation, Daily Supermarket, Inc. & Color Lithographic Press, Inc., from making any payment of their liabilities outstanding as of the filing of the instant petition;

d.) prohibiting Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc.'s

suppliers of goods and services from withholding supply of goods and services in the ordinary course of business for as long as Situs Development Corporation, Daily Supermarket, Inc. & Color Lithographic Press, Inc., make payments for the goods and services supplied after the issuance of this stay order; and

e.) directing the payment in full of all administrative expenses incurred after the issuance of this stay order.

The court *a quo* appointed Mr. Antonio B. Garcia as the Rehabilitation Receiver, set the initial hearing on the petition on August 2, 2002 and directed all creditors and interested parties, including the Securities and Exchange Commission (SEC), to file their comment on or opposition to the petition.

ALLIED filed its opposition and comment praying for the dismissal of the petition and the lifting of the Stay Order on the grounds that it is defective in form and substance; that it contains substantial inaccuracies and inconsistencies; and that it does not contain a viable rehabilitation plan.

ASIATRUST filed its comment with partial opposition praying likewise for the dismissal of the petition on the grounds that it is not in due form and lacks substantial allegations on its debt obligations with its various creditors; that petitioners do not have a viable rehabilitation plan; and that petitioners do not have a clear source of repayment of their obligations.

No comment or opposition was filed by SEC.

In an Order dated August 2, 2002, the court *a quo* found *prima facie* merit in the petition and gave due course thereto. The Rehabilitation Receiver was given forty-five (45) days within which to submit his report on the proposed rehabilitation plan.

On October 15, 2002, METROBANK filed a Manifestation stating that it was participating in the proceedings as a mere observer inasmuch as the mortgage executed in its favor by spouses Chua on the property covered by TCT No. 79916 was foreclosed by it on September 18, 2001, so that it ceased to be a creditor of COLOR as its claim was already fully satisfied.

On October 9, 2002, petitioners filed a motion for the cancellation of the certificate of sale approved on September 9, 2002 by the

Executive Judge of the RTC of Quezon City and the annotation thereof on TCT Nos. RT-13620 and RT-13621, as the same were done in violation of the Stay Order dated June 17, 2002. A vehement opposition was filed by ALLIED arguing that the foreclosure proceedings cannot be considered as a "claim", as understood under Section 1, Rule 2 of the Interim Rules of Procedure on Corporate Rehabilitation, since the issuance of the Certificate of Sale and annotation thereof on the certificates of titles do not constitute demands for payment of debt or enforcement of pecuniary liabilities; that the auction sale was conducted more than one year before the filing of the petition for rehabilitation; and that TCT Nos. RT-13620 and RT-13621 are registered in the names of "Cua Yong Hu/Tony Chua and Siok Lu Chua", hence, should not have been included in the Inventory of Assets of petitioners.

On October 21, 2002, ASIATRUST filed an urgent manifestation praying for the outright dismissal of the petition inasmuch as METROBANK and ALLIED had already foreclosed the mortgages on the properties that stood as securities for petitioners' obligations, as well as the lifting of the Stay Order.

On October 19, 2002, the Rehabilitation Receiver submitted his Report on petitioners' proposed Rehabilitation Plan, to which oppositions were filed by ALLIED and METROBANK.

On November 21, 2002, petitioners proposed to amend their Rehabilitation Plan. On December 2, 2002, petitioners filed and submitted an Amended Rehabilitation Plan, which was opposed by ALLIED and ASIATRUST.

On January 8, 2003, petitioners filed a motion to admit Second Amended Rehabilitation Program of Situs Development Corporation, the pertinent provisions of which read:

1. Situs will assume the outstanding obligations of its non-profiting affiliate companies: Daily Supermarket, Inc. and Color Lithographic Press, Inc.;

2. Situs will convert all its debts to equity;

3. Situs will lease the properties from the new owners at ₱50.00 per square meter for a period of 25 years or at ₱555,200.00 a month, with a yearly escalation of 5%;

4. The annual lease income will be distributed among the new owners according to their percentage ownership and, in the event that the property is sold, any profit will be shared accordingly;

5. The new owners are Asiatrust with 21% ownership, Metrobank with 17% ownership, Allied with 30% ownership, and Tony Chua with 32% ownership;

6. The two properties in Cavite which were mortgaged to ASIATRUST will be returned to its registered owner since the properties where the Complex sits is enough to cover the loan obligations; and

7. All unpaid interests, penalties and other charges are waived.

Comments on and oppositions to the Second Amended Rehabilitation Plan were filed by ALLIED, ASIATRUST and METROBANK.

On August 15, 2003, ALLIED filed a motion praying for the dismissal of the petition as no Rehabilitation Plan was approved upon the lapse of 180 days from the date of the initial hearing on August 2, 2002, as mandated in Section 11 of the Interim Rules of Procedure on Corporate Rehabilitation.

On August 14, 2003, the court *a quo* rendered an ADJUDICATION approving the Second Amended Rehabilitation Program as SITUS deserves a sporting chance at rehabilitation, subject to the following conditions:

1. The first phase of implementation shall cover immediately the payment of the appurtenant shares to the creditors/new owners out of the monthly rental income of ₱555,200.00 as outlined in paragraph D.1 of the plan;

2. An automatic review of the progress of implementation shall be undertaken six (6) months from and after the initial payment described in condition no. 1 above;

3. The rehabilitation receiver, petitioner and creditors/new owners to file written reports on the sixth month of implementation and to seasonably prompt the court to set up the matter for a monitoring hearing thereon;

4. At the end of one year from and after the initial implementation of the plan, the court shall undertake a review of the entire rehabilitation program for the purpose of determining the desirability of terminating or continuing with the rehabilitation;

5. The rehabilitation receiver, petitioner and creditors/new owners to file written reports conformably with condition no. 4 above and to seasonably prompt the court accordingly.

In approving the Second Amended Rehabilitation Program, the court *a quo* held:

> From the original rehabilitation proposal which simply involved a condoning and restructuring of the loan obligations, the petitioners came out with an amended rehabilitation plan that calls for, among others, a concentration into the business of commercial leasing coupled with the consolidation of the debts of Daily and Color with that of Situs; a conversion of debt to equity in proportionate terms; a reduction of the principal stockholder's control of Situs Development; a proportionate share in the monthly rental income of Situs by creditors/new owners.
>
> The creditor banks have consistently opposed the rehabilitation plans submitted by the petitioners. To the creditor banks, they would be [better-off] if the businesses of the petitioners would be simply liquidated. A most simple view indeed, except that such a view totally ignores the susceptibility of petitioner Situs to rehabilitation. The creditor banks are fully aware that the real property on which the building structure of Situs Development [sits] is more than sufficient to answer for all the outstanding obligations of petitioners. This fact alone should be enough to afford the petitioners a sporting chance at business resuscitation. That the realties are titled in the name of Mr. Tony Chua is of no moment insofar as the rehabilitation is concerned, after all, the creditor banks were fully aware of the real facts when they willingly extended loans to the petitioners.
>
> To the court the 2nd Amended Rehabilitation Program of Situs Development Corporation Inc., a copy of which is enclosed and made an integral part of this adjudication, deserves due

> consideration. Although said plan is opposed by the creditor banks, the court notes that it bears the approval of the rehabilitation receiver who had the opportunity to peruse it. Moreover, under the plan, the shareholders of Situs Development will lose controlling interest in the corporation. There is also no clear showing that the properties of the debtor will be readily sold by a liquidator within a three-month period from termination of the herein proceedings and that the creditors would get more from said sale than what they would get under the plan. The court thus considers the creditors' opposition to be unreasonable.

In an Order dated August 25, 2003, the court *a quo* declared that the motion to dismiss filed by ALLIED was mooted with the issuance of the Adjudication.

Aggrieved, ALLIED, ASIATRUST and METROBANK filed their separate notices of appeal.

On November 10, 2003, petitioners filed with the court *a quo* a motion for declaration of nullity of the certificate of sale in favor of ALLIED alleging that the issuance thereof was in violation of the Stay Order, as well as a motion to direct the Register of Deeds to annotate the Adjudication on TCT Nos. RT-13620, RT-13621, TCT Nos. 79915 and 79916. Said motions were opposed by ALLIED on the grounds that the properties foreclosed by it belonged to spouses Chua and not to petitioners; that the auction sale was conducted on February 6, 2001, or more than a year prior to the filing of the petition for rehabilitation; and that the issuance of the Certificate of Sale and its annotation on the certificates of title are merely incidental to the foreclosure proceedings; and that the Stay Order does not cover the issuance of the Certificate of Sale and the registration thereof on the certificates of title as they do not in any way refer to its enforcement of a monetary claim against petitioners.

In Separate Orders dated January 9, 2004, the court *a quo* granted both motions of petitioners. The court *a quo* held that while the foreclosure was conducted prior to the issuance of the Stay Order, however, the foreclosure does not fully and effectively terminate until after the issuance of the title in the name of the creditor, such that until a new title is issued, any action in the interregnum, judicial or not, is deemed an enforcement of the claim arising from such

foreclosure, which in this case will be in patent violation of the Stay Order.[4]

On 25 April 2007, the appellate court rendered the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, the appeals are ***GRANTED*.** The ***ADJUDICATION*** dated August 14, 2003 is ***REVERSED*** and ***SET ASIDE*,** the petition for the declaration of state of suspension of payments with approval of proposed rehabilitation plan is ***DISMISSED*** and the Stay Order dated June 17, 2002 is ***LIFTED***.
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> The twin Orders dated January 9, 2004 declaring the Certificate of Sale issued in favor of Allied Banking Corporation null and void, with respect to the properties covered by TCT No. RT-13620 and RT-13621, and directing the Register of Deeds of Quezon City to cancel the annotation of the Certificate of Sale on said titles, as well as to annotate said ***ADJUDICATION*** thereon, are likewise ***REVERSED*** and ***SET ASIDE***.
>
> ***SO ORDERED***.[5]

In so concluding, the CA reasoned that the Stay Order did not affect the claims of Allied Bank and Metrobank, because these claims were not directed against the properties of petitioners, but against those of spouses Chua.

The CA also reasoned that when the Stay Order was issued, Allied Bank and Metrobank were already the owners of the foreclosed properties, subject only to the right of redemption of Spouses Tony and Siok Lu Chua (spouses Chua), because the extrajudicial foreclosure proceedings had taken place prior to the filing of the Petition for Rehabilitation and the issuance of the Stay Order.

Furthermore, the CA agreed with the contention of respondents that the Petition was insufficient in form and in substance. Among the reasons cited by the appellate court was the fact that the inventory of assets of petitioner corporations included properties

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[4] Id at 406-416.

[5] *Id.* at 427.

that were not owned by them, but registered in the names of spouses Chua and already acquired by Allied Bank and Metrobank; and that the financial statements submitted by petitioner corporations showed that their total liabilities exceeded their total assets.

Finally, the CA ruled that the Petition for Rehabilitation should be dismissed, because the rehabilitation plan was approved by the court more than 180 days from the date of the initial hearing, contrary to the directive of Section 11, Rule 4 of the Interim Rules on Corporate Rehabilitation.[6]

Aggrieved by the ruling of the appellate court, petitioners then filed the instant Rule 45 Petition before this court and prayed for the issuance of a *status quo* order.

On 10 December 2007, we resolved to direct the parties to maintain the *status quo* as of the date of the issuance of the Stay Order of the trial court.

On 17 March 2008, petitioners filed a "Manifestation and Motion to Substitute Metro Bank with Cameron Granville II Asset Management, Inc.,"[7] alleging that since Metrobank had sold, transferred and conveyed all its rights, title and interest over the loans of petitioners to Cameron, Metrobank was no longer a real party-in-interest in this case. Furthermore, petitioners prayed that Metrobank and Cameron be directed to disclose the transfer price or discounted value of the sale allegedly because, under Art. 1634 of the Civil Code, they had the right of redemption

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[6] Sec. 11. *Period of the Stay Order*. – The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.

The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.

[7] *Rollo*, pp. 725-734.

of the sold credits by paying only the transfer price to the transferee.

THE ISSUES

The resolution of this case hinges on the following issues:

1. Whether the dismissal of the Petition for Rehabilitation is in order;
2. Whether the Stay Order affects foreclosure proceedings involving properties mortgaged by stockholders to secure corporate debts; and
3. Whether petitioners can redeem the credit transferred by Metrobank to Cameron by paying only the price paid by the transferee.

THE COURT'S RULING

We lift the *status quo* order and affirm the Decision of the appellate court.

I

The dismissal of the Petition for Rehabilitation is in order

We find no reversible error on the part of the appellate court when it dismissed the Petition for Rehabilitation.

The Rules provide that "[t]he petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing."[8] While the Rules expressly provide that the 180-day period may be extended, such extension may be granted only "if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated."[9]

In this case, the Second Amended Rehabilitation Program was approved by the trial court beyond the 180-day period counted

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[8] 2000 Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 11.

[9] *Id.*

from the date of the initial hearing. However, the evidence on record does not support the lower court's finding that the debtor corporations may still be successfully rehabilitated.

The trial court's only justification for approving the Second Amended Rehabilitation Program is that "[t]he creditor banks are fully aware that the real property on which the building structure of Situs Development [sits] is more than sufficient to answer for all the outstanding obligations of the petitioners."[10] It then went on to conclude that "[t]his fact alone should be enough to afford the petitioners a sporting chance at business resuscitation."[11]

We do not agree.

It is a fundamental principle in corporate law that a corporation is a juridical entity with a legal personality separate and distinct from the people comprising it.[12] Hence, the rule is that assets of stockholders may not be considered as assets of the corporation, and vice-versa. The mere fact that one is a majority stockholder of a corporation does not make one's property that of the corporation, since the stockholder and the corporation are separate entities.[13]

In this case, the parcels of land mortgaged to respondent banks are owned not by petitioners, but by spouses Chua.[14] Applying the doctrine of separate juridical personality, these properties cannot be considered as part of the corporate assets.

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[10] *Rollo*, p. 397.

[11] *Id.*

[12] *Siochi Fishery Enterprises, Inc. v. Bank of the Philippine Islands*, G.R. No. 193872, 19 October 2011, 659 SCRA 817.

[13] *Traders Royal Bank v. Court of Appeals*, 258 Phil. 584 (1989); *Cruz v. Dalisay*, 236 Phil. 520 (1987).

[14] *Rollo*, pp. 177-180. TCT Nos. 79915 and 79916 are registered in the name of Tony Chua, married to Siok Lu Chua; TCT No. RT-13620, in the name of Chua Yong Hu/Tony Chua, married to Siok Lu Cu Chua; and TCT No. RT-13621, in the name of Chua Yong Hu & Tony Chua, married to Siok Lu Cu Chua.

Even if spouses Chua are the majority stockholders in petitioner corporations, they own these properties in their individual capacities. Thus, the parcels of land in question cannot be included in the inventory of assets of petitioner corporations.

The fact that these properties were mortgaged to secure corporate debts is of no moment. A mortgage is an accessory undertaking to secure the fulfillment of a principal obligation.[15] In a third-party mortgage, the mortgaged property stands as security for the loan obtained by the principal debtor; but until the mortgaged property is foreclosed, ownership thereof remains with the third-party mortgagor.

Here, the properties owned by spouses Chua were mortgaged as security for the debts contracted by petitioner corporations. However, ownership of these properties remained with the spouses notwithstanding the fact that these were mortgaged to secure corporate debts. We have ruled that "when a debtor mortgages his property, he merely subjects it to a lien but ownership thereof is not parted with."[16] This leads to no other conclusion than that, notwithstanding the mortgage, the real properties in question belong to spouses Chua; hence, these properties should not be considered as assets of petitioner corporations.

Since the real properties in question cannot be considered as corporate assets, the trial court's pronouncement that petitioners were susceptible of rehabilitation was bereft of any basis. Based on the rehabilitation court's narration of facts, Situs Development Corporation has total assets of ₱54,176,149.22 with total liabilities of ₱74,304,188.01; Daily Supermarket, Inc. has total assets of ₱43,986,412.33 with total liabilities of ₱114,219,462.00; and Color Lithographic Press, Inc. has total assets of ₱7,618,006.69 and total liabilities of ₱6,588,534.99.[17] Clearly, the aggregate total liabilities of petitioner corporations far exceed their aggregate total assets.

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[15] *Isaguirre v. De Lara*, 388 Phil. 607 (2000).

[16] *Sps. Lee v. Bangkok Bank Public Co., Ltd.*, G.R. No. 173349, 9 February 2011, 642 SCRA 447.

[17] *Rollo*, p. 396.

We take this opportunity to point out that rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency.[18] However, if the continued existence of the corporation is no longer viable, rehabilitation can no longer be an option. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life,[19] and not to prolong its inevitable demise.

II
The Stay Order does not suspend the foreclosure of a mortgage constituted over the property of a third-party mortgagor

Petitioners insist that the Stay Order covers the mortgaged properties, citing the Interim Rules on Corporate Rehabilitation (the Rules). Under the Rules, one of the effects of a Stay Order is the stay of the "enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, **against the debtor, its guarantors and sureties not solidarily liable with the debtor.**"[20]

Based on a reading of the Rules, we rule that the Stay Order cannot suspend foreclosure proceedings already commenced over properties belonging to spouses Chua. The Stay Order can only cover those claims directed against petitioner corporations or their properties, against petitioners' guarantors, or against petitioners' sureties who are not solidarily liable with them.

Spouses Chua may not be considered as "debtors." The Interim Rules on Corporate Rehabilitation (the Rules) define the term "debtor" as follows:

"Debtor" shall mean any corporation, partnership, or association, whether supervised or regulated by the Securities and Exchange

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[18] *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, 25 November 2009, 605 SCRA 503.

[19] *Id.*

[20] 2000 Interim Rules of Procedure on Corporate Rehabilitation, Rule 4, Sec. 6.

Commission or other government agencies, on whose behalf a petition for rehabilitation has been filed under these Rules.

Likewise, the enforcement of the mortgage lien cannot be considered as a claim against a guarantor or a surety not solidarily liable with the debtor corporations. While spouses Chua executed Continuing Guaranty and Comprehensive Surety undertakings in favor of Allied Bank, the bank did not proceed against them as individual guarantors or sureties. Rather, by initiating extrajudicial foreclosure proceedings, the bank was directly proceeding against the property mortgaged to them by the spouses as security. The Civil Code provides that the property upon which a mortgage is imposed directly and immediately subjected to the fulfillment of the obligation for whose security the mortgage was constituted.[21] As such, a real estate mortgage is a lien on the property itself, inseparable from the property upon which it was constituted.

In this case, we find that the undertaking of spouses Chua with respect to the loans of petitioner corporations is the sale at public auction of certain real properties belonging to them to satisfy the indebtedness of petitioner corporations in case of a default by the latter. This undertaking is properly that of a third-party mortgagor or an accommodation mortgagor, whereby one mortgages one's property to stand as security for the indebtedness of another.[22]

In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*,[23] we ruled that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages, because the Stay Order may only cover the suspension of the enforcement of all claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor.[24] Thus, the

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[21] CIVIL CODE, Art. 2126.

[22] See *New Sampaguita Builders Construction v. Philippine National Bank*, 479 Phil. 483 (2004).

[23] *Supra* note 18.

[24] *Id.*

suspension of enforcement of claims does not extend to the foreclosure of accommodation mortgages.

Moreover, the intent of the Rules is to exclude from the scope of the Stay Order the foreclosure of properties owned by accommodation mortgagors. The newly adopted Rules of Procedure on Corporate Rehabilitation provides for one of the effects of a Stay Order:

SEC. 7. Stay Order. –

(b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; **provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation;** provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of excussion as such guarantor[.][25] (Emphasis supplied)

From the foregoing, we therefore hold that foreclosure proceedings over the properties in question are not suspended by the trial court's issuance of the Stay Order.

Furthermore, even assuming that the properties in question fall under the ambit of the Stay Order, the issuance thereof should not affect the execution of the Certificate of Sale.

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court and BF Homes, Inc.*,[26] the debtor corporation filed a Petition for Rehabilitation and Declaration of Suspension of Payments before the Securities and Exchange Commission (SEC). Prior to the SEC's appointment of a management

[25] A.M. No. 00-8-10-SC, Rules of Procedure on Corporate Rehabilitation, 2 December 2008.

[26] 378 Phil. 10 (1999).

committee and during the pendency of the case, the mortgagee-bank foreclosed on the real estate mortgage over some of the corporation's mortgaged properties. An auction sale was conducted, and the mortgagee-bank emerged as the highest bidder. However, because of the pendency of the rehabilitation case before the SEC, the Sheriff withheld the delivery of the Certificate of Sale. Ruling on the validity of the foreclosure proceedings, we held that the conduct of the foreclosure sale was valid, because it was carried out prior to the issuance of the SEC's order appointing a management committee. We held that the appointment of a management committee, rehabilitation receiver, board or body pursuant to Presidential Decree No. 902-A is the operative act that suspends all actions or claims against a distressed corporation.

In the case at bar, the auction sale for the parcels of land covered by TCT Nos. RT-13620 and RT-13621 and mortgaged to respondent Allied Bank was conducted on 6 February 2001, while the foreclosure sale for the parcel of land covered by TCT No. 79916 and mortgaged to Metrobank was conducted on 18 September 2001. Clearly, the foreclosure proceedings commenced and the auction sale was conducted before the issuance of the Stay Order and the appointment of the Rehabilitation Receiver on 17 June 2002. In fact, the public auctions took place almost a year before petitioner corporations filed the Petition for Rehabilitation with the court *a quo* on 11 June 2002. Therefore, the execution of the Certificate of Sale may no longer be suspended by the trial court's issuance of the Stay Order, even if the questioned properties are assumed to fall under the ambit of the Stay Order, since the foreclosure proceedings and the auction sale were conducted prior to the appointment of the Rehabilitation Receiver.

III

Petitioners cannot redeem the credit transferred by Metrobank to Cameron by reimbursing the transferee

Petitioners claim that, based on Republic Act (R.A.) No. 9182 or the Special Purpose Vehicle (SPV) Act of 2002, they have

the right of legal redemption by paying Cameron the transfer price plus the cost of money up to the time of redemption and the judicial costs in case of sale or transfer of Non-Performing Loans (NPLs) under litigation.[27]

Petitioners' claim is anchored on Section 13 of the SPV Act, which provides:

> Sec. 13. *Nature of Transfer*. – All sales or transfers of [Non-Performing Assets] to an SPV shall be in the nature of a true sale after proper notice in accordance with the procedures as provided for in section 12: *Provided*, That GFIs and GOCCs shall be subject to existing law on the disposition of assets: *Provided, further*, That in the transfer of the NPLs, the provisions on subrogation and assignment of credits under the New Civil Code shall apply.

In turn, Art. 1634 of the Civil Code on Assignment of Credits and Other Incorporeal Rights provides:

> Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.
>
> A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.
>
> The debtor may exercise his right within thirty days from the date the assignee demands payment from him.

At the outset, we find that the issue is only belatedly raised in the instant Petition[28] and was never threshed out in the proceedings below. Fundamental considerations of fair play, justice and due process dictate that this Court should not pass upon this question.[29] "Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised

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[27] *Rollo*, p. 727.

[28] *Id.* at 987-989.

[29] *Department of Health v. HTMC Engineers Company*, 516 Phil. 94 (2006).

before the trial court cannot be raised for the first time on appeal."[30]

As early as 21 December 2005, Metrobank notified petitioners that the credit had been transferred to Cameron. However, petitioners only raised the issue of their alleged equitable right of redemption in their "Manifestation and Motion to Substitute Metro Bank with Cameron Granville II Asset Management, Inc." dated 17 March 2008.[31] They have not even raised this issue in the instant Petition for Review filed on 26 November 2007. This being so, the argument should not be considered, having been belatedly raised on appeal.

Moreover, even if we were to consider the foregoing issue, petitioners cannot take refuge in the provisions of the SPV Act of 2004 in conjunction with Art. 1634 of the Civil Code.

For the debtor to be entitled to extinguish his credit by reimbursing the assignee under Art. 1634, the following requisites must concur:

(a) there must be a credit or other incorporeal right;

(b) the credit or other incorporeal right must be in litigation;

(c) the credit or other incorporeal right must be sold to an assignee pending litigation;

(d) the assignee must have demanded payment from the debtor;

(e) the debtor must reimburse the assignee for the price paid by the latter, the judicial costs incurred by the latter and the interest on the price from the day on which the same was paid; and

(f) the reimbursement must be done within 30 days from the date of the assignee's demand.

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[30] *Id.* at 108-109.

[31] *Rollo*, pp. 725-734.

In this case, the credit owed by petitioner corporations to Metrobank had already been extinguished when the bank foreclosed upon the parcel of land mortgaged to it by the spouses Chua as security for petitioners' debts, in full satisfaction of the loan the bank had extended. Therefore, during the pendency of these proceedings, what was transferred by Metrobank to Cameron was ownership over the foreclosed property, subject only to the right of redemption by the proper party within one year reckoned from the date of registration of the Certificate of Sale.

Moreover, the provisions of the Civil Code on subrogation and assignment of credits are only applicable to NPLs,[32] defined in the SPV Act of 2002 as follows:

"Non-Performing Loans or NPLs" refers to loans and receivables such as mortgage loans, unsecured loans, consumption loans, trade receivables, lease receivables, credit card receivables and all registered and unregistered security and collateral instruments, including but not limited to, real estate mortgages, chattel mortgages, pledges, and antichresis, whose principal and/or interest have remained unpaid for at least one hundred eighty (180) days after they have become past due or any of the events of default under the loan agreement has occurred.[33]

What is involved in this case is more properly a real property acquired by a financial institution in settlement of a loan (ROPOA). Under the law, ROPOAs are defined in this manner:

"ROPOAs" refers to real and other properties owned or acquired by an [financial institution] in settlement of loans and receivables, including real properties, shares of stocks, and chattels formerly constituting collaterals for secured loans which have been acquired by way of dation in payment (*dacion en pago*) or judicial or extra-judicial foreclosure or execution of judgment.[34]

May the subject property be considered as one acquired by Metrobank pursuant to an extrajudicial foreclosure sale?

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[32] R.A. No. 9182, Sec. 13.

[33] *Id.* at Sec. 3 (h).

[34] *Id.* at Sec. 3 (i).

The Implementing Rules and Regulations of the SPV Act of 2002 provide that, in case of extrajudicial foreclosure, a property is deemed acquired by a financial institution on the date of notarization of the Sheriff's Certificate.[35]

In this case, a Certificate of Sale has not been executed in favor of Metrobank in deference to the Stay Order issued by the rehabilitation court. However, we reiterate that the rehabilitation court has no jurisdiction to suspend foreclosure proceedings over a third-party mortgage. Much less can it restrain the issuance of a Certificate of Sale after the subject properties have been sold at public auction more than a year before the Petition for Rehabilitation was filed. The property foreclosed by Metrobank was clearly beyond the ambit of the Stay Order. Consequently, there was no valid ground for the Sheriff to withhold the issuance and execution of the Certificate of Sale.

The parcel of land mortgaged to Metrobank and subsequently transferred to Cameron should be treated as a ROPOA as provided for by law. Hence, the application of Art. 1634 finds no basis in law.

WHEREFORE, in view of the foregoing, the instant Rule 45 Petition for Review is **DENIED.** The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 80223 are **AFFIRMED.** The *Status Quo* Order issued by this Court on 10 December 2007 is **LIFTED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

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[35] Implementing Rules and Regulations of the Special Purpose Vehicle Act of 2002, Rule 3 (r).

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

SECOND DIVISION

[G.R. No. 183987. July 25, 2012]

ASIATRUST DEVELOPMENT BANK, *petitioner, vs.* **CARMELO H. TUBLE,** *respondent.*

SYLLABUS

1. **MERCANTILE LAW; THE GENERAL BANKING ACT; DETERMINES THE REDEMPTION PRICE IN THE EVENT OF JUDICIAL OR EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE WHERE THE MORTGAGEE IS A BANK.—** We have already established in *Union Bank of the Philippines v. Court of Appeals*, citing *Ponce de Leon v. Rehabilitation Finance Corporation* and *Sy v. Court of Appeals,* that the General Banking Act – being a special and subsequent legislation – has the effect of amending Section 6 of Act No. 3135, **insofar as the redemption price is concerned, when the mortgagee is a bank**. Thus, the amount to be paid in redeeming the property is determined by the General Banking Act, and not by the Rules of Court in Relation to Act 3135.
2. **REMEDIAL LAW; ACTIONS; FORECLOSURES; NATURE.—** In foreclosures, the mortgaged property is subjected to the proceedings for the satisfaction of the obligation. As a result, payment is effected by abnormal means whereby the debtor is forced by a judicial proceeding to comply with the presentation or to pay indemnity. Once the proceeds from the sale of the property are applied to the payment of the obligation, the obligation is already extinguished. Thus, in *Spouses Romero v. Court of Appeals*, we held that the mortgage indebtedness was extinguished with the foreclosure and sale of the mortgaged property, and that what remained was the right of redemption granted by law.
3. **MERCANTILE LAW; THE GENERAL BANKING ACT; RIGHT OF REDEMPTION; TERMS.—** Redemption is by force of law, and the purchaser at public auction is bound to accept it. Thus, it is the law that provides the terms of the

right; the mortgagee cannot dictate them. The terms of this right, based on Section 47 of the General Banking Law, are as follows: "1. The redemptioner shall have the right within one year after the sale of the real estate, to redeem the property. 2. The redemptioner shall pay the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. 3. In case of redemptioners who are considered by law as juridical persons, they shall have the right to redeem not after the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier." Consequently, the bank cannot alter that right by imposing additional charges and including other loans. Verily, the freedom to stipulate the terms and conditions of an agreement is limited by law. Thus, we held in *Rural Bank of San Mateo, Inc. v. Intermediate Appellate Court* that the power to decide whether or not to foreclose is the prerogative of the mortgagee; however, once it has made the decision by filing a petition with the sheriff, the acts of the latter shall thereafter be governed by the provisions of the mortgage laws, **and not by the instructions of the mortgagee.**

4. **CIVIL LAW; SPECIAL CONTRACTS; REAL ESTATE MORTGAGE CONTRACTS; DRAGNET CLAUSE; NOT EXTENDED TO COVER FUTURE ADVANCES WHEN THE DOCUMENT EVIDENCING THE SUBSEQUENT ADVANCE DOES NOT REFER TO THE MORTGAGE AS PROVIDING SECURITY THEREFOR.—** This Court has recognized that, through a dragnet clause, a real estate mortgage contract may **exceptionally** secure future loans or advancements. But an obligation is not secured by a mortgage, unless, that mortgage comes fairly within the terms of the mortgage contract. x x x As we have held in *Prudential Bank v. Alviar*, in the absence of clear and supportive evidence of a contrary intention, a mortgage containing a dragnet clause will not be extended to cover future advances, unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor.

5. **ID.; ID.; ID.; STRICTLY CONSTRUED AGAINST THE PARTY THAT PREPARED THE AGREEMENT.—** We have also emphasized that the mortgage agreement, being a contract of adhesion, is to be carefully scrutinized and strictly construed against the bank, the party that prepared the agreement. x x x In *Philippine Banking Communications v. Court of Appeals*, we have construed such silence or omission of additional charges **strictly against the bank**.

6. **ID.; CONTRACTS; INTERPRETATIONS OF CONTRACTS; ANY AMBIGUITY IS CONSTRUED AGAINST THE PARTY WHO CAUSED IT.—** "[A]ny ambiguity is to be taken *contra proferent[e]m*, that is, construed against the party who caused the ambiguity which could have avoided it by the exercise of a little more care." Therefore, the ambiguity in the mortgage deed whose terms are susceptible of different interpretations must be read against the bank that drafted it.

7. **ID.; DAMAGES; INTERESTS; MONETARY INTEREST AND COMPENSATORY INTEREST, DISTINGUISHED.—** Monetary interest refers to the compensation set by the parties for the use or forbearance of money. On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts. Compensatory interest, as a form of damages, is due only if the obligor is proven to have **defaulted** in paying the loan. Thus, a default must exist before the bank can collect the compensatory legal interest of 12% *per annum*.

8. **ID.; OBLIGATIONS; EXTINGUISHMENT OF OBLIGATIONS; LEGAL COMPENSATION; REQUISITES.—** [I]n order for legal compensation to take effect, Article 1279 of the Civil Code requires that the debts be liquidated and demandable. This provision reads: "(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; **(4) That they be liquidated and demandable;** (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor." Liquidated debts are those whose exact amount has already been determined.

9. **ID.; DAMAGES; MORAL DAMAGES; AWARDED IN CASES OF BESMIRCHED REPUTATION, MORAL SHOCK, SOCIAL HUMILIATION AND SIMILAR INJURY; CASE AT BAR.—** This Court affirms the dispositions of the RTC and the CA. They correctly ruled that the award of moral damages also includes cases of besmirched reputation, moral shock, social humiliation and similar injury. In this regard, the social and financial standings of the parties are additional elements that should be taken into account in the determination of the amount of moral damages. Based on their findings that Tuble suffered undue embarrassment, given his social standing, the courts *a quo* had factual basis to justify the award of moral damages and, consequently, exemplary damages in his favor.

APPEARANCES OF COUNSEL

Isabela G. Ching-Sales and Alexander Sales for petitioner.
Gonzaga Law Office for respondent.

D E C I S I O N

SERENO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking to review the Court of Appeals (CA) 28 March 2008 Decision and 30 July 2008 Resolution in CA-G.R. CV No. 87410. The CA affirmed the Regional Trial Court (RTC) Decision of 15 May 2006 in Civil Case No. 67973, which granted to respondent the refund of ₱845,805.49[1] representing the amount he had paid in excess of the redemption price.

The antecedent facts are as follows:[2]

Respondent Carmelo H. Tuble, who served as the vice-president of petitioner Asiatrust Development Bank, availed himself of

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[1] RTC Decision penned by Judge Briccio C. Ygaña, *rollo*, p. 66.

[2] CA Decision, penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Ramon M. Bato, Jr., concurring; *id.* at 32-40.

the car incentive plan and **loan privileges** offered by the bank. He was also entitled to the bank's Senior Managers Deferred Incentive Plan (DIP).

Respondent acquired a Nissan Vanette through the company's car incentive plan. The arrangement was made to appear as a lease agreement requiring only the payment of monthly rentals. Accordingly, the lease would be terminated in case of the employee's resignation or retirement prior to full payment of the price.

As regards the loan privileges, Tuble obtained three separate loans. The **first**, a real estate loan evidenced by the 18 January 1993 Promissory Note No. 0142[3] with maturity date of 1 January 1999, was secured by a mortgage over his property covered by Transfer Certificate of Title No. T-145794. No interest on this loan was indicated.

The **second** was a consumption loan, evidenced by the 10 January 1994 Promissory Note No. 0143[4] with the maturity date of 31 January 1995 and interest at 18% per annum. Aside from the said indebtedness, Tuble allegedly obtained a salary loan, his **third** loan.

On 30 March 1995, he resigned. Subsequently, he was given the option to either return the vehicle without any further obligation or retain the unit and pay its remaining book value.

Respondent had the following obligations to the bank after his retirement: (1) the purchase or return of the Nissan Vanette; (2) ₱100,000 as consumption loan; (3) ₱421,800 as real estate loan; and (4) ₱16,250 as salary loan.[5]

In turn, petitioner owed Tuble (1) his pro-rata share in the DIP, which was to be issued after the bank had given the resigned employee's clearance; and (2) ₱25,797.35 representing his final salary and corresponding 13th month pay.

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[3] Records, Vol. I, p. 35.

[4] *Id.* at 34.

[5] *Rollo*, p. 36.

Respondent claimed that since he and the bank were debtors and creditors of each other, the offsetting of loans could legally take place. He then asked the bank to simply compute his DIP and apply his receivables to his outstanding loans.[6] However, instead of heeding his request, the bank sent him a 1 June 1995 demand letter[7] obliging him to pay his debts. The bank also required him to return the Nissan Vanette. Despite this demand, the vehicle was not surrendered.

On 14 August 1995, Tuble wrote the bank again to follow up his request to offset the loans. This letter was not immediately acted upon. It was only on 13 October 1995 that the bank finally allowed the offsetting of his various claims and liabilities. As a result, his liabilities were reduced to ₱970,691.46 plus the unreturned value of the vehicle.

In order to recover the Nissan Vanette, the bank filed a Complaint for replevin against Tuble. Petitioner obtained a favorable judgment. Then, to collect the liabilities of respondent, it also filed a Petition for Extra-judicial Foreclosure of real estate mortgage over his property. The Petition was based only on his real estate loan, which at that time amounted to **₱421,800**. His other liabilities to the bank were excluded. The foreclosure proceedings terminated, with the bank emerging as the purchaser of the secured property.

Thereafter, Tuble timely redeemed the property on 17 March 1997 for ₱1,318,401.91.[8] Notably, the redemption price increased to this figure, because the bank had unilaterally imposed additional interest and other charges.

With the payment of ₱1,318,401.91, Tuble was deemed to have fully paid his accountabilities. Thus, three years after his payment, the bank issued him a Clearance necessary for the release of his DIP share. Subsequently, he received a Manager's

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[6] Records, Vol. I, p. 103.

[7] *Id.* at 107.

[8] *Id.* at 303.

Check in the amount of ₱166,049.73 representing his share in the DIP funds.

Despite his payment of the redemption price, Tuble questioned how the foreclosure basis of ₱421,800 ballooned to ₱1,318,401.91 in a matter of one year. Belatedly, the bank explained that this redemption price included the Nissan Vanette's book value, the salary loan, car insurance, **18% annual interest on the bank's redemption price of ₱421,800**, penalty and **interest charges on Promissory Note No. 0142**, and litigation expenses.[9] By way of note, from these items, the amounts that remained to be collected as stated in the Petition before us, are (1) the 18% annual interest on the redemption price and (2) the interest charge on Promissory Note No. 0142.

Because Tuble disputed the redemption price, he filed a Complaint for recovery of a sum of money and damages before the RTC. He specifically sought to collect ₱896,602.02[10] representing the excess charges on the redemption price. Additionally, he prayed for moral and exemplary damages.

The RTC ruled in favor of Tuble. The trial court characterized the redemption price as excessive and arbitrary, because the correct redemption price should not have included the above-mentioned charges. Moral and exemplary damages were also awarded to him.

According to the trial court,[11] the **value of the car** should not have been included, considering that the bank had already recovered the Nissan Vanette. The obligations arising from the **salary loan** and **car insurance** should have also been excluded, for there was no proof that these debts existed. The **interest and penalty charges** should have been deleted, too, because Promissory Note No. 0142 did not indicate any interest or penalty charges. Neither should **litigation expenses** have been added, since there was no proof that the bank incurred those expenses.

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[9] *Rollo,* p. 61.

[10] *Id.* at 35.

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

As for the 18% annual interest on the bid price of ₱421,800, the RTC agreed with Tuble that this charge was unlawful. Act 3135[12] as amended, in relation to Section 28 of Rule 39 of the Rules of Court,[13] only allows the mortgagee to charge an interest of 1% per month if the foreclosed property is redeemed. Ultimately, under the principle of *solutio indebiti*, the trial court required the refund of these amounts charged in excess of the correct redemption price.

On appeal, the CA affirmed the findings of the RTC.[14] The appellate court only expounded the rule that, at the time of redemption, the one who redeemed is liable to pay only 1% monthly interest plus taxes. Thus, the CA also concluded that there was practically no basis to impose the additional charges.

Before this Court, petitioner reiterates its claims regarding the inclusion in the redemption price of the 18% annual interest on the bid price of ₱421,800 and the interest charges on Promissory Note No. 0142.

Petitioner emphasizes that an 18% interest rate allegedly referred to in the mortgage deed is the proper basis of the interest. Pointing to the Real Estate Mortgage Contract, the bank highlights the blanket security clause or "dragnet clause" that purports to cover all obligations owed by Tuble:[15]

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[12] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.

[13] Sec. 28, Rule 39, provides: The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, **with one per centum per month interest** thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. (Emphasis supplied)

[14] *Rollo*, p. 52.

[15] Records, Vol. I, pp. 44-45.

All obligations of the Borrower and/or Mortgagor, its renewal, extension, amendment or novation irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations;

All other obligations of the Borrower and/or Mortgagor in favor of the Mortgagee, executed before or after the execution of this document whether presently owing or hereinafter incurred and whether or not arising from or connection with the aforesaid loan/Credit accommodation; x x x.

Tuble's obligations are defined in Promissory Note Nos. 0142 and 0143. By way of recap, Promissory Note No. 0142 refers to the real estate loan; it does not contain any stipulation on interest. On the other hand, Promissory Note No. 0143 refers to the consumption loan; it charges an 18% annual interest rate. Petitioner uses this latter rate to impose an interest over the bid price of ₱421,800.

Further, the bank sees the inclusion in the redemption price of an addition 12% annual interest on Tuble's real estate loan.

On top of these claims, the bank raises a new item – the **car's rental fee** – to be included in the redemption price. In dealing with this argument raised for the first time on *certiorari*, this Court dismisses the contention based on the well-entrenched prohibition on raising new issues, especially factual ones, on appeal.[16]

Thus, the pertinent issue in the instant appeal is whether or not the bank is entitled to include these items in the redemption price: (1) the interest charges on Promissory Note No. 0142; and (2) the 18% annual interest on the bid price of ₱421,800.

RULING OF THE COURT

The 18% Annual Interest on the Bid Price of ₱421,800

The Applicable Law

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[16] *Canada v. All Commodities Marketing Corporation,* G.R. No. 146141, 17 October 2008, 569 SCRA 321.

The bank argues that instead of referring to the Rules of Court to compute the redemption price, the courts *a quo* should have applied the General Banking Law,[17] considering that petitioner is a banking institution.

The statute referred to requires that in the event of judicial or extrajudicial foreclosure of any mortgage on real estate that is used as security for an obligation to any bank, banking institution, or credit institution, the mortgagor can redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the **rate specified in the mortgage**.[18]

Petitioner is correct. We have already established in *Union Bank of the Philippines v. Court of Appeals*,[19] citing *Ponce de Leon v. Rehabilitation Finance Corporation*[20] and *Sy v. Court of Appeals,*[21] that the General Banking Act – being a special and subsequent legislation – has the effect of amending Section 6 of Act No. 3135, **insofar as the redemption price is concerned, when the mortgagee is a bank**. Thus, the amount to be paid in redeeming the property is determined by the General Banking Act, and not by the Rules of Court in Relation to Act 3135.

The Remedy of Foreclosure

In reviewing the bank's additional charges on the redemption price as a result of the foreclosure, this Court will first clarify certain vital points of fact and law that both parties and the courts *a quo* seem to have missed.

Firstly, at the time respondent resigned, which was chronologically before the foreclosure proceedings, he had several

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[17] It should properly be Republic Act No. 337 or the General Banking Act, as amended; Republic Act No. 8791, or the General Banking Law, took effect only in June 2000.

[18] General Banking Act, Sec. 78.

[19] G.R. No. 134068, 412 Phil. 64 (2001).

[20] G.R. No. L-24571, 146 Phil. 862 (1970).

[21] G.R. No. 83139, 254 Phil. 120 (1989).

liabilities to the bank. Secondly, when the bank later on instituted the foreclosure proceedings, it foreclosed only **the mortgage secured by the real estate loan of ₱421,800**.[22] It did not seek to include, in the foreclosure, the consumption loan under Promissory Note No. 0143 or the other alleged obligations of respondent. Thirdly, on 28 February 1996, the bank availed itself of the remedy of foreclosure and, in doing so, effectively gained the property.

As a result of these established facts, one evident conclusion surfaces: the Real Estate Mortgage Contract on the secured property is already extinguished.

In foreclosures, the mortgaged property is subjected to the proceedings for the satisfaction of the obligation.[23] As a result, payment is effected by abnormal means whereby the debtor is forced by a judicial proceeding to comply with the presentation or to pay indemnity.[24]

Once the proceeds from the sale of the property are applied to the payment of the obligation, the obligation is already extinguished.[25] Thus, in *Spouses Romero v. Court of Appeals*,[26] we held that the mortgage indebtedness was extinguished with the foreclosure and sale of the mortgaged property, and that what remained was the right of redemption granted by law.

Consequently, since the Real Estate Mortgage Contract is already extinguished, petitioner can no longer rely on it or invoke its provisions, including the dragnet clause stipulated therein. It follows that the bank cannot refer to the 18% annual interest charged in Promissory Note No. 0143, an obligation allegedly covered by the terms of the Contract.

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[22] Records, Vol. I, p. 289.

[23] *Spouses Caviles v. Court of Appeals,* 438 Phil.13 (2002).

[24] ARTURO M. TOLENTINO, **CIVIL CODE OF THE PHILIPPINES**,Vol. IV, 274 (1991).

[25] *State Investment House, Inc. v. Seventeenth Div., CA*, G.R. No. 99308, 13 November 1992, 215 SCRA 734.

[26] *Spouses De Robles v. CA,* G.R. No. 128503, 10 June 2004, 431 SCRA 566.

Neither can the bank use the consummated contract to collect on the rest of the obligations, which were not included when it earlier instituted the foreclosure proceedings. It cannot be allowed to use the same security to collect on the other loans. To do so would be akin to foreclosing an already foreclosed property.

Rather than relying on an expired contract, the bank should have collected on the excluded loans by instituting the proper actions for recovery of sums of money. Simply put, petitioner should have run after Tuble separately, instead of hostaging the same property to cover all of his liabilities.

The Right of Redemption

Despite the extinguishment of the Real Estate Mortgage Contract, Tuble had the right to redeem the security by paying the redemption price. The right of redemption of foreclosed properties was a statutory privilege[27] he enjoyed. Redemption is by force of law, and the purchaser at public auction is bound to accept it.[28] Thus, it is the law that provides the terms of the right; the mortgagee cannot dictate them. The terms of this right, based on Section 47 of the General Banking Law, are as follows:

1. The redemptioner shall have the right within one year after the sale of the real estate, to redeem the property.
2. The redemptioner shall pay the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom.
3. In case of redemptioners who are considered by law as juridical persons, they shall have the right to redeem not after the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier.

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[27] *Mateo v. Court of Appeals,* 99 Phil. 1042 (1956).

[28] *Spouses De Robles v. CA, supra*, citing *Natino v. Intermediate Appellate Court,* 274 Phil. 602 (1991).

Consequently, the bank cannot alter that right by imposing additional charges and including other loans. Verily, the freedom to stipulate the terms and conditions of an agreement is limited by law.[29]

Thus, we held in *Rural Bank of San Mateo, Inc. v. Intermediate Appellate Court*[30] that the power to decide whether or not to foreclose is the prerogative of the mortgagee; however, once it has made the decision by filing a petition with the sheriff, the acts of the latter shall thereafter be governed by the provisions of the mortgage laws, **and not by the instructions of the mortgagee.** In direct contravention of this ruling, though, the bank included numerous charges and loans in the redemption price, which inexplicably ballooned to ₱1,318,401.91. On this error alone, the claims of petitioner covering all the additional charges should be denied. Thus, considering the undue inclusions of the additional charges, the bank cannot impose the 18% annual interest on the redemption price.

The Dragnet Clause

In any event, assuming that the Real Estate Mortgage Contract subsists, we rule that **the dragnet clause therein does not justify the imposition of an 18% annual interest on the redemption price.**

This Court has recognized that, through a dragnet clause, a real estate mortgage contract may **exceptionally** secure future loans or advancements.[31] But an obligation is not secured by a

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[29] CIVIL CODE OF THE PHILIPPINES, Art. 1306. The article provides that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[30] 230 Phil. 293 (1986).

[31] *Traders Royal Bank v. Castañares*, G.R. No. 172020, 6 December 2010, 636 SCRA 519.

mortgage, unless, that mortgage comes fairly within the terms of the mortgage contract.[32]

We have also emphasized that the mortgage agreement, being a contract of adhesion, is to be carefully scrutinized and strictly construed against the bank, the party that prepared the agreement.[33]

Here, after reviewing the entire deed, this Court finds that **there is no specific mention of interest to be added in case of either default or redemption.** The Real Estate Mortgage Contract itself is silent on the computation of the redemption price. Although it refers to the Promissory Notes as constitutive of Tuble's secured obligations, the said contract does not state that the interest to be charged in case of redemption should be what is specified in the Promissory Notes.

In *Philippine Banking Communications v. Court of Appeals*,[34] we have construed such silence or omission of additional charges **strictly against the bank**. In that case, we affirmed the findings of the courts *a quo* that penalties and charges are not due for want of stipulation in the mortgage contract.

Worse, when petitioner invites us to look at the Promissory Notes in determining the interest, these loan agreements offer different interest charges: Promissory Note No. 0142, which corresponds exactly to the real estate loan, contains no stipulation on interest; while Promissory Note No. 0143, which in turn corresponds to the consumption loan, provides a charge of 18% interest *per annum*.

Thus, an ambiguity results as to which interest shall be applied, for to apply an 18% interest per annum based on Promissory Note No. 0143 will negate the existence of the 0% interest charged by Promissory Note No. 0142. Notably, it is this latter Promissory

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[32] *Id.*

[33] *Philippine Bank of Communications v. Court of Appeals*, 323 Phil. 297 (1996).

[34] *Id.*

Note that refers to the principal agreement to which the security attaches.

In resolving this ambiguity, we refer to a basic principle in the law of contracts: "[A]ny ambiguity is to be taken *contra proferent[e]m*, that is, construed against the party who caused the ambiguity which could have avoided it by the exercise of a little more care."[35] Therefore, the ambiguity in the mortgage deed whose terms are susceptible of different interpretations must be read against the bank that drafted it. Consequently, we cannot impute grave error on the part of the courts *a quo* for not appreciating a charge of 18% interest *per annum*.

Furthermore, this Court refuses to be blindsided by the dragnet clause in the Real Estate Mortgage Contract to automatically include the consumption loan, and its corresponding interest, in computing the redemption price.

As we have held in *Prudential Bank v. Alviar*,[36] in the absence of clear and supportive evidence of a contrary intention, a mortgage containing a dragnet clause will not be extended to cover future advances, unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor.

In this regard, this Court adopted the "reliance on the security test" used in the above-mentioned cases, *Prudential Bank*[37] and *Philippine Bank of Communications*.[38] In these Decisions, we elucidated the test as follows:

> x x x [A] mortgage with a "dragnet clause" is an "offer" by the mortgagor to the bank to provide the security of the mortgage for advances of and when they were made. Thus, it was concluded that the "offer" was not accepted by the bank when a subsequent advance was made because (1) the second note was secured by a chattel

[35] *Prudential Bank v. Alviar*, 502 Phil. 595 (2005).

[36] *Id.*

[37] *Id.*

[38] *Philippine Bank of Communications v. Court of Appeals*, *supra*.

mortgage on certain vehicles, and the clause therein stated that the note was secured by such chattel mortgage; (2) **there was no reference in the second note or chattel mortgage indicating a connection between the real estate mortgage and the advance;** (3) the mortgagor signed the real estate mortgage by her name alone, whereas the second note and chattel mortgage were signed by the mortgagor doing business under an assumed name; and (4) **there was no allegation by the bank, and apparently no proof, that it relied on the security of the real estate mortgage in making the advance.**[39] (Emphasis supplied)

Here, the second loan agreement, or Promissory Note No. 0143, referring to the consumption loan makes no reference to the earlier loan with a real estate mortgage. Neither does the bank make any allegation that it relied on the security of the real estate mortgage in issuing the consumption loan to Tuble.

It must be remembered that Tuble was petitioner's previous vice-president. Hence, as one of the senior officers, the consumption loan was given to him not as an ordinary loan, but as a form of accommodation or privilege.[40] The bank's grant of the salary loan to Tuble was apparently not motivated by the creation of a security in favor of the bank, but by the fact that he was a top executive of petitioner.

Thus, the bank cannot claim that it relied on the previous security in granting the consumption loan to Tuble. For this reason, the dragnet clause will not be extended to cover the consumption loan. It follows, therefore, that its corresponding interest – 18% per annum – is inapplicable. Consequently, the courts *a quo* did not gravely abuse their discretion in refusing to apply an annual interest of 18% in computing the redemption price. A finding of grave abuse of discretion necessitates that the judgment must have been exercised arbitrarily and without basis in fact and in law.[41]

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[39] *Prudential Bank v. Alviar*, *supra*, at 609.

[40] *Supra* note 2, at 32.

[41] *Jinalinan Technical School, Inc. v. NLRC*, 530 Phil. 77 (2006).

The Interest Charges on Promissory Note No. 0142

In addition to the 18% annual interest, the bank also claims a 12% interest *per annum* on the consumption loan. Notwithstanding that Promissory Note No. 0142 contains no stipulation on interest payments, the bank still claims that Tuble is liable to pay the legal interest. This interest is currently at 12% *per annum*, pursuant to Central Bank Circular No. 416 and Article 2209 of the Civil Code, which provides:

If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, **there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation,** the legal interest, which is six per cent per annum. (Emphasis supplied)

While Article 2209 allows the recovery of interest sans stipulation, this charge is provided not as a form of monetary interest, but as one of **compensatory interest**.[42]

Monetary interest refers to the compensation set by the parties for the use or forbearance of money.[43] On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts.[44] Compensatory interest, as a form of damages, is due only if the obligor is proven to have **defaulted** in paying the loan.[45]

Thus, a default must exist before the bank can collect the compensatory legal interest of 12% *per annum*. In this regard, Tuble denies being in default since, by way of **legal compensation**, he effectively paid his liabilities on time.

This argument is flawed. The bank correctly explains in its Petition that in order for legal compensation to take effect, Article

[42] *Siga-An v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696.

[43] *Id.*

[44] *Id.*

[45] *Id.*

1279 of the Civil Code requires that the debts be liquidated and demandable. This provision reads:

> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
>
> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
>
> (3) That the two debts be due;
>
> **(4) That they be liquidated and demandable;**
>
> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (Emphasis supplied)

Liquidated debts are those whose exact amount has already been determined.[46] In this case, the receivable of Tuble, including his DIP share, was not yet determined; it was the petitioner's policy to compute and issue the computation only after the retired employee had been cleared by the bank. Thus, Tuble incorrectly invoked legal compensation in addressing this issue of default.

Nevertheless, based on the findings of the RTC and the CA, the obligation of Tuble as evidenced by Promissory Note No. 0142, was set to mature on **1 January 1999.** But then, he had already settled his liabilities on **17 March 1997** by paying ₱1,318,401.91 as redemption price. Then, in 1999, the bank issued his Clearance and share in the DIP in view of the full settlement of his obligations. Thus, there being no substantial delay on his part, the CA did not grievously err in not declaring him to be in default.

The Award of Moral and Exemplary Damages

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[46] EDGARDO L. PARAS, *CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 469 (2008), citing *Compania General de Tabacos v. French and Unson*, 39 Phil. 34 (1918).

The courts *a quo* awarded Tuble 200,000 as moral damages and 50,000 as exemplary damages. As appreciated by the RTC, which had the opportunity to examine the parties,[47] the bank treated Tuble unfairly and unreasonably by refusing to lend even a little charity and human consideration when it immediately foreclosed the loans of its previous vice-president instead of heeding his request to make a straightforward calculation of his receivables and offset them against his liabilities.[48]

To the mind of the trial court, this was such a simple request within the control of the bank to grant; and if petitioner had only acceded, the troubles of the lawsuit would have been avoided.

Moreover, the RTC found that the bank caused Tuble severe humiliation when the Nissan Vannette was seized from his new office at Kuok Properties Philippines. The trial court also highlighted the fact that respondent as the previous vice-president of petitioner was no ordinary employee – he was a man of good professional standing, and one who actively participated in civic organizations. The RTC then concluded that a man of his standing deserved fair treatment from his employer, especially since they served common goals.

This Court affirms the dispositions of the RTC and the CA. They correctly ruled that the award of moral damages also includes cases of besmirched reputation, moral shock, social humiliation and similar injury. In this regard, the social and financial standings of the parties are additional elements that should be taken into account in the determination of the amount of moral damages.[49] Based on their findings that Tuble suffered undue embarrassment, given his social standing, the courts *a quo* had factual basis[50] to justify the award of moral damages and, consequently, exemplary damages[51] in his favor.

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[47] *Domingding and Arañas v. Ng*, 103 Phil. 111 (1958).

[48] *Rollo,* p. 65.

[49] *Prudential Bank v. Alviar*, *supra*.

[50] *Makabali v. Court of Appeals*, 241 Phil. 260 (1988).

[51] *De Leon v. Court of Appeals*, 247-A Phil. 255 (1988).

From all the foregoing, we rule that the appellate court correctly deleted the 18% annual interest charges, albeit for different reasons. First, the interest cannot be imposed, because any reference to it under the Real Estate Mortgage Contract is misplaced, as the contract is already extinguished. Second, the said interest cannot be collected without any basis in terms of Tuble's redemption rights. Third, assuming that the Real Estate Mortgage Contract subsists, the bank cannot collect the interest because of the contract's ambiguity. Fourth, the dragnet clause referred to in the contract cannot be presumed to include the 18% annual interest specified in the consumption loan. Fifth, with respect to the compensatory interest claimed by the bank, we hold that neither is the interest due, because Tuble cannot be deemed to be in default of his obligations.

IN VIEW THEREOF, the assailed 28 March 2008 Decision and 30 July 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 87410 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1257 dated 19 July 2012.

SECOND DIVISION

[G.R. No. 185460. July 25, 2012]

EDWIN FAJARDO and REYNALDO CORALDE, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL POSSESSION OF A DANGEROUS DRUG; REQUISITES.—** In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.

2. **ID.; ID.; THE NARCOTIC SUBSTANCE ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE AND ITS EXISTENCE IS VITAL TO SUSTAIN A JUDGMENT OF CONVICTION BEYOND REASONABLE DOUBT.—** In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. The rule seeks to settle definitively whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY; ARISES IN THE ABSENCE OF CONTRADICTING DETAILS THAT WOULD RISE DOUBTS ON THE REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES.—** It bears stressing that the presumption of regularity only arises in the absence of contradicting details that would raise doubts on

the regularity in the performance of official duties. Where the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.

The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J*.:

For consideration is the petition for review on *certiorari* filed by petitioners Edwin Fajardo (Fajardo) and Reynaldo Coralde (Coralde) from the Decision[1](dated 15 September 2008 of the Court of Appeals in CA-G.R. CR No. 30451, affirming the 25 September 2006 Joint Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 103, which found them guilty beyond reasonable doubt of the crime of illegal possession of *shabu*.

On 26 December 2002, petitioners were charged with violation of Section 11, Article II, Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, in two (2) separate Informations, which read as follow:

INFORMATION

The undersigned accuses EDWIN FAJARDO *Y* DADULA of Violation of Section 11, Art. II, R.A. 9165, Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That on or about the 21st day of December, 2002 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there,

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Regalado E. Maambong and Marlene Gonzales-Sison, concurring. *Rollo,* pp. 121-134.

[2] Presided by Judge Jaime N. Salazar, Jr. Records, pp. 183-191.

> wilfully, unlawfully and knowingly have in her/his/their possession and control, one (1) disposable lighter and four (4) transparent plastic sachet containing traces of Methylamphetamine Hydrochloride known as *Shabu*, the content of which does not exceed one gram.[3]

INFORMATION

The undersigned accuses REYNALDO CORALDE *Y* FERNANDEZ of Violation of Section 11, Art. II, R.A. 9165, Comprehensive Dangerous Drugs Act of 2002, committed as follows:

> That on or about the 21st day of December, 2002 in Quezon City, Philippines, the said accused not being authorized by law to possess or use any dangerous drug, did then and there, wilfully, unlawfully and knowingly have in her/his/their possession and control, zero point zero two (0.02) grams of Methylamphetamine Hydrochloride known as *Shabu*; one (1) rolled aluminum foil and one (1) improvised tooter a dangerous drug.[4]

Petitioners pleaded not guilty on the charges. A joint trial then proceeded.

The facts, as narrated by two prosecution witnesses, follow.

Acting on a tip from a *barangay* official of an ongoing pot session, a certain SPO4 Cilieto immediately dispatched six (6) police officers including PO1 Joel Tuscano (PO1 Tuscano) and PO1 Pedro Bernardo (PO1 Bernardo) to a house in 26 *Mabilis* Street, *Barangay* Piñahan, Quezon City at around 3 to 4 o'clock in the afternoon of 21 December 2002. The house is reportedly owned by Coralde.[5]

Upon arriving at the house, the door was slightly open. From the small opening, PO1 Tuscano saw one male person, whom he called as Gerald or Gerry Malabanan, lighting up an aluminum foil. When asked by the court to identify Malabanan, PO1 Tuscano

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[3] Records, p. 2.

[4] *Id.* at 4.

[5] Testimony of PO1 Pedro Bernardo. TSN, 21 August 2003, pp. 3-4.

mistakenly pointed to Fajardo. PO1 Tuscano then identified Malabanan as the other male person he saw inside the house.[6] PO1 Bernardo saw through the partial opening Malabanan with a lighter, while Coralde was holding a lighter and a *tooter*, and Fajardo, an aluminum foil.[7] PO1 Tuscano then explained that he and the other police officers introduced themselves and confiscated the drug paraphernalia consisting of one lighter, scissors, aluminum foil and empty plastic sachet. PO1 Tuscano confiscated the aluminum foil from Fajardo. These items were brought to the police station, turned over to the investigator, PO2 Merlito Tugo (PO2 Tugo), who in turn, brought them to the crime laboratory.[8]

The three accused and two other witnesses testified for the defense. Fajardo said that he went to the house of Coralde to retrieve his *cellphone* which he pawned to Coralde's wife.[9] Malabanan, on the other hand, alleged that the wife of Coralde had asked him to go to her house to take her to the hospital. Malabanan and Coralde's two (2) sons were also inside the house. They were asked to wait for Coralde's wife, who was then taking a bath. While waiting, the three accused watched the television. Malabanan said he heard someone called out to a *Paring Coring*.[10] Fajardo heard someone knocking at the door and looking for a *Pareng Buboy*[11] while Coralde heard a voice from outside calling a certain *Pareng Boyong*.[12] Before anyone could open the door, a group of men barged into the house. Coralde and Fajardo scampered to a connecting bathroom which leads to another room owned by Remia Ruanto (Ruanto). Coralde explained that he ran towards the other house when some strangers

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[6] Testimony of PO1 Joel Tuscano. TSN, 25 April 2003, pp. 5-8.

[7] Testimony of PO1 Pedro Bernardo. TSN, 21 August 2003, pp. 5-8.

[8] Testimony of PO1 Joel Tuscano. TSN, 25 April 2003, pp. 9-10.

[9] Testimony of Edwin Fajardo. TSN, 6 December 2004, pp. 4-5.

[10] Testimony of Gerry Malabanan. TSN, 16 March 2005, pp. 4-8.

[11] Testimony of Edwin Fajardo. TSN, 6 December 2004, p. 6.

[12] Testimony of Reynaldo Coralde. TSN, 27 April 2005, pp. 9-10.

came barging into his house because he was caught by surprise.[13] Fajardo followed Coralde because he got scared.[14] They were eventually caught inside Ruanto's room. Meanwhile, Malabanan stayed seated. He got shocked by the events that transpired and he immediately introduced himself as an employee of East Avenue Medical Center. The police officers took the identification card and ₱400.00 cash from his wallet.

The three accused were handcuffed, boarded to a car, and brought to the police station. They were brought to Caloocan City for inquest. They all denied that they were having a pot session. Fajardo claims that he saw the confiscated drug paraphernalia for the first time during their inquest.[15]

Chemistry Report No. D-1498-02 shows the qualitative examination that was conducted on the following specimens and with the following results:

SPECIMEN SUBMITTED:

1. One (1) heat-sealed transparent plastic sachet, marked A (JT-A 12-21-02) containing 0.02 gram of white crystalline substance.
2. One (1) strip of aluminum foil, marked B (JT-B 12-21-02) with traces of white crystalline substance.
3. Four (4) unsealed transparent plastic sachets, each with markings JT-D 12-21-02 containing traces of white crystalline substance and collectively marked as "C."
4. One (1) piece glass pipe, marked D (JT-F 12-21-02).
5. Three (3) disposable lighters, marked E (JT-E1 12-21-02) F(JT-E2 12-21-02) and G (JT-E3 12-21-02) respectively.
6. One (1) pair of scissor, marked H (JT-6 12-21-02).
7. One (1) rolled aluminum foil, marked I (JT-C 12-21-02).

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[13] Testimony of Reynaldo Coralde. TSN, 26 September 2005, p. 14.

[14] Testimony of Edwin Fajardo. TSN, 6 December 2004, p. 7.

[15] *Id.* at 12.

xxx xxx xxx.

FINDINGS:

Qualitative examination conducted on the specimen A through D gave the following results:

Specimens A and C – POSITIVE to the tests for Methylamphetamine hydrochloride, a dangerous drug.

Specimens B and D – NEGATIVE to the tests for the presence of any dangerous drugs.[16]

Noticeably, Specimens E to I were not examined.

Finding the testimonies of the 2 police officers credible, the trial court rendered a decision finding petitioners guilty as charged. Malabanan was acquitted. The dispositive portion of the Decision reads:

ACCORDINGLY, judgment is hereby rendered finding accused EDWIN FAJARDO *y* Dadula in Criminal Case No. Q-02-114130 and REYNALDO CORALDE *y* Fernandez in Criminal Case No. Q-02-114131 GUILTY each of the offense of Section 11, Art. II, R.A. 9165 violation and each accused is hereby sentenced to imprisonment of Twelve (12) Years and One (1) Day as Minimum to Twelve (12) Years and Six (6) Months as Maximum and each to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

As for GERRY MALABANAN *y* Nitural, he is hereby ACQUITTED in Criminal Case No. Q-02-114132 of the offense of Section 12, Art. II, R.A. 9165 as it was not established by the arresting policemen that indeed drugs or paraphernalia were recovered from his possession, and moreover, he appears to be a mere visitor there to help Mrs. Coralde in her scheduling of operation at EAMC where he works.

The drugs involved in these cases are hereby ordered transmitted to the PDEA thru the Dangerous Drugs Board for proper disposition upon finality of this judgment. The PDEA is requested to take good care in the storage of these *shabus* within its premises.[17]

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[16] Records, p. 9 and its dorsal part.

[17] *Rollo,* p. 98.

The Court of Appeals, on appeal, affirmed the RTC decision. The Court of Appeals sustained the conviction of petitioners. It found the prosecution's version more credible and relied on the presumption of regularity on the part of the police officers and on the absence of any ill-motive on their part. The Court of Appeals justified the validity of the warrantless arrest under the "plain view" doctrine. Petitioners moved for reconsideration but the same was denied by the appellate court.

The instant petition raises the lone issue of whether the prosecution was able to prove beyond reasonable doubt the guilt of petitioners. Petitioners primarily assail the identity of the *shabu* as evidence of the *corpus delicti* in light of non-compliance with the chain of custody rule. Petitioners argue that they were not in possession of the plastic sachets apparently containing *shabu*. The prosecution merely sought to establish that petitioners were caught in possession of a lighter, *tooter* and aluminum foil, all of which were neither examined by the forensic chemist nor found to be positive for traces of *shabu*.

On the other hand, the Office of the Solicitor General relied on the straightforward and positive testimony of the prosecution witnesses that petitioners were caught in possession of *shabu*.

In view of the interrelated issues presented, a joint discussion is in order.

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that

unnecessary doubts concerning the identity of the evidence are removed.[18] The rule seeks to settle definitively whether the object evidence subjected to laboratory examination and presented in court is the same object allegedly seized from appellant.[19]

In *Malillin v. People*, the Court elucidated on the chain of custody rule, thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.**[20] **[Emphasis Supplied]**

The prosecution failed to prove the crucial first link in the chain of custody. The prosecution witnesses, both arresting officers, testified on how the plastic sachets containing traces of *shabu* were seized from petitioners. PO1 Tuscano, who even made a mistake in identifying Fajardo as Malabanan, gave a rather vague account, thus:

A: When we arrived [at] the house we saw the door opened [sic] and we entered.

Q: After entering the house, what did you see?

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[18] *People v. Gutierrez*, G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101 citing *People v. Simbahon*, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 99; *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632; *People v. Kimura*, 471 Phil. 895, 919 (2004).

[19] *People v. Gutierrez*, *id.* at 102.

[20] *Supra* note 18 at 632-633.

A: We saw one male person with a lighter and *gumagamit ng shabu*.

Q: Who was that person?

A: Gerard, sir.

Q: And how was he using *shabu*?

A: He was lighting up an aluminum foil.

Q: And what else did you see?

A: The other one was waiting.

Q: And who was the other one waiting?

A: I could not remember who was that person but there were 3 of them.

Q: Would you be able to indentify Gerry if he is inside the courtroom?

A: That man, sir.

INTERPRETER

Witness pointed to a person inside the courtroom who identified himself as EDWIN FAJARDO.

COURT

The person pointed to by the witness as Gerry Malabanan is Edwin Fajardo.

FISCAL JURADO

Q: How about the other person if inside the courtroom?

A: I could not remember.

Q: How many persons did you see inside?

A: Three (3) sir.

Q: Do you know the identity of the 3rd person?

A: I could not remember. I can recognize them by face.

Q: If he is inside the courtroom, the 2nd person?

COURT

Q: Tap his shoulder.

WITNESS

A: That man.

INTERPRETER

Witness pointed to a person inside the courtroom who identified themselves as Gerry Malabanan and Edwin Fajardo.

FISCAL JURADO

Q: And after that, what did you do [to] the 3 of them?

WITNESS

A: We introduced ourselves as police officers and we confiscated the paraphernalia.

Q: What were the paraphernalia confiscated?

A: One lighter, scissor, aluminum foil, **empty plastic sachet**.

Q: What else?

A: Only those.

Q: And after you confiscated it, what happened next?

A: We brought them to the police station.

Q: What happened next?

A: We turned them over to the investigator.

Q: How about the item you confiscated?

A: We brought it to the crime lab.

Q: Who brought that to the crime lab.

A: Our investigator.

Q: What is his name?

A: PO2 Merlito Tugo.

Q: What is the result of that?

A: Positive, sir.

Q: What were the items positive?

A: Aluminum foil.

Q: What else?

A: I could not remember.[21] (Emphasis supplied).

On cross-examination, the defense lawyer inquired about the plastic sachet:

Q: Those empty plastic sachet[s] that you mentioned, those were scattered when you entered the house?

A: Yes, but they [were] just beside them.

Q: How about the aluminum foil, where did you get that?

A: The person was holding it.

COURT

Q: You pointed 2 persons here, who was the one holding it.

ATTY. MOSING

May we state from the record that the witness said "*parang si ano*."

COURT

The witness tapped the shoulder of Edwin Fajardo.[22]

First, PO1 Tuscano stated that he saw one of the accused using *shabu*. Unfortunately, he was not able to identify which one, from Malabanan and Fajardo, was committing the crime. Second, PO1 Tuscano stated that an empty plastic sachet was confiscated. But he did not identify from whom it was seized. Third, the other plastic sachets only cropped up during the cross-examination where PO1 Tuscano declared that he "found those beside them," apparently referring to all of the accused. Gauging from PO1 Tuscano's statement, he did not pinpoint from whom he specifically seized the empty plastic sachets. He did not explain, nor was it asked of him, how many sachets were seized. Fourth

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[21] Testimony of PO1 Joel Tuscano. TSN, 25 April 2003, pp. 5-11.

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

and more importantly, the Chemistry Report yielded negative results upon examination of Specimens B and D which were the glass pipe or *tooter* and the aluminum foil, respectively.[23] This finding readily engenders doubt on whether Fajardo was actually sniffing *shabu* through a *tooter* at that time he was caught by the police officers.

PO1 Bernardo identified the drug paraphernalia held by the accused when they were allegedly caught:

Q: When you and PO3 Tuscano arrived on that place, what happened, what did you do, if any?

A: We joined the team that was already there.

Q: And then what happened?

A: We saw the door was half opened.

Q: When your group saw that the door was half opened at the time, what happened next?

A: I saw two persons holding lighter and paraphernalia.

Q: Can you tell this court who were the two persons you saw inside that house?

A: Gerry Malabanan and Reynaldo Coralde.

Q: If those persons are inside the courtroom, can you identify these persons?

A: Yes, sir.

INTERPRETER

Witness pointed to a person inside the courtroom who identified himself as Gerry Malabanan

A: Turalde [sic] is not around.

FISCAL ARAULA

Q: You said that you saw two persons holding a lighter and drug paraphernalia, can you tell this Honorable Court who was holding a lighter at the time?

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[23] Chemistry Report No. D-1498-02. Records, p. 9 and its dorsal part.

WITNESS

A: Gerry Malabanan, sir.

Q: How about the drug paraphernalia?

A: Reynaldo was holding [a] tooter.

Q: When you said that Coralde was holding a drug paraphernalia, what was that[?]

A: Lighter, sir.

Q: When you said that Coralde was holding drug paraphernalia, what do you mean by that, what are those drug paraphernalia?

A: lighter, tooter[24]

xxx xxx xxx.

Q: After you confiscated these items as you mentioned the drug paraphernalia and the lighter from accused Malabanan and Coralde, how about Fajardo, what was he doing?

A: Holding an aluminum foil.

Q: Can you describe that aluminum foil, how big was that?

A: About 5 inches.

Q: If you['re] shown that item, can you identify that?

A: Yes, sir.

Q: How about the lighter?

A: Yes, sir.

Q: How about the tooter as you mentioned?

A: Yes, sir.

Q: What can you say on those items in front of you?

A: These are the drug paraphernalia.

Q: Paraphernalia as what?

A: Drugs paraphernalia.

[24] Testimony of PO1 Pedro Bernardo. TSN, 21 August 2003, pp. 4-5.

COURT

Q: What is the connection of that drug paraphernalia to this case?

WITNESS

A: Yes, there is.

FISCAL ARAULA

Q: What is the connection of the item shown to you in this case.

WITNESS

A: This lighter came from Malabanan.

Q: How about the two lighters?

A: These particular lighters are not included.

COURT

According to the witness these two lighters colored pink and green are not included.

FISCAL ARAULA

Q: How about the aluminum foil, what can you say to this aluminum foil?

WITNESS

A: This is the aluminum foil.

Q: Who used that aluminum foil?

A: The three, sir.

Q: Who was holding this aluminum foil?

A: Fajardo, sir.

Q: How about these two plastic sachet, do you know where it came from?

A: These were also part of paraphernalia taken from them.

Q: How about the scissor?

A: Also the scissor and the aluminum foil, tooter.[25]

PO1 Bernardo had apparently seen Coralde in the act of sniffing from the *tooter*, Fajardo holding an aluminum foil and Malabanan holding the lighter. Again, the aluminum foil and the *tooter* were found negative for traces of *shabu*. Noticeably, PO1 Bernardo did not initially mention the plastic sachets until he was asked. It was the public prosecutor who brought up the question where the plastic sachets came from, to which PO1 Bernardo replied indistinctly: "These were also part of paraphernalia taken from them."

The testimonies of the prosecution witnesses merely established the possession of drug paraphernalia, *i.e.*, aluminum foil, lighter, and *tooter* by petitioners. Petitioners were however charged for violation of Article II, Section 11, Republic Act No. 9165 or for possession of illegal drugs which reads:

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 (₱10,000,000.00) 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:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA),

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[25] *Id.* at 6-8.

lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

None of the dangerous drugs enumerated above and more specifically, *shabu*, were convincingly proven to have been in possession of petitioners. On the other hand, possession of drug paraphernalia is dealt with in Section 12 of Republic Act No. 9165, which reads:

Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. -The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

Notably, a case for possession of drug paraphernalia was filed but only against Malabanan, who was later on acquitted by the trial court.

Another phase of the first link to the chain of custody is the marking of seized items. The rule requires that it should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.[26] Evidently, the marking was not done at the scene of the crime.

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[26] *People v. Alcuizar*, G.R. No. 189980, 6 April 2011, 647 SCRA 431, 437-438 citing *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 218.

In fact, PO1 Bernardo testified that it was an investigator of the crime laboratory, whose name he cannot recall, who made the markings. Indeed, PO1 Bernardo could not explain the actual markings.[27]

The prosecution miserably failed to establish the crucial first link in the chain of custody. The plastic sachets, while tested positive for *shabu*, could not be considered as the primary proof of the *corpus delicti* because the persons from whom they were seized were not positively and categorically identified by prosecution witnesses. The prosecution likewise failed to show how the integrity and evidentiary value of the item seized had been preserved when it was not explained who made the markings, how and where they were made.

The second link in the chain of custody constitutes custody and possession of the *shabu* prior, during and immediately after the police investigation and how the *shabu* was stored, preserved, labeled and recorded from the time of its seizure up to its receipt by the crime laboratory.[28] PO1 Tuscano merely identified PO2 Tugo as the one who brought the confiscated items to the crime laboratory. But it was not clear whether it was PO2 Tugo who received the seized items from the police officers who arrived at the police station. In the Joint Affidavit of Arrest, the police officers stated "that all the recovered evidence were confiscated and properly handled and transported to this Station for safekeeping"[29] without stating the particulars. Moreover, no details were given as to who was in custody of the seized items while in transit. Thus, the reliability, nay existence of the second link, had clearly been compromised.

The third link in the chain should detail who brought the seized *shabu* to the crime laboratory, who received the *shabu* at the crime laboratory and, who exercised custody and possession

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[27] Testimony of PO1 Pedro Bernardo. TSN, 21 August 2003, p. 16.

[28] *People v. Kamad*, G.R. No. 174198, 19 January 2010, 610 SCRA 295, 308.

[29] Records, p. 8.

of the *shabu* after it was examined and before it was presented in court.[30] Once again, these crucial details were nowhere to be found in the records. PO2 Tugo allegedly brought them to the crime laboratory but he was not presented to affirm and corroborate PO1 Tuscano's statement, nor was any document shown to evidence the turnover of the seized items. The Request for Laboratory Examination was signed by a certain Police Senior Inspector Rodolfo Tababan. But his participation in the custody and handling of the seized items were never mentioned by the prosecution witnesses.

Considering these huge discrepancies in the chain of custody, the claim of regularity in the conduct of police operation will certainly not hold water. It bears stressing that the presumption of regularity only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. Where the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.[31]

Given that the prosecution failed to prove the indispensable element of the *corpus delicti*, there is no necessity to discuss the alleged procedural infirmities that may have attended the arrest of petitioners. This Court is thus constrained to acquit petitioners on reasonable doubt.

WHEREFORE, in view of the foregoing, the Decision dated 15 September 2008 of the Court of Appeals affirming the judgment of conviction by the Regional Trial Court of Quezon City, Branch 103, is hereby **REVERSED and SET ASIDE.** Petitioners Edwin Fajardo and Reynaldo Coralde are **ACQUITTED** based on reasonable doubt and are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

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[30] *Id.* at 9 and its dorsal part.

[31] *Lopez v. People*, G.R. No. 184037, 29 September 2009, 601 SCRA 316, 328.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Sereno,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192377. July 25, 2012]

CESAR V. MADRIAGA, JR., *petitioner, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; LEGISLATIVE DEPARTMENT; JUDICIAL POWER; CANNOT BE EXERCISED IN THE ABSENCE OF ACTUAL CONTROVERSIES; EXCEPTIONS.—** Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement. Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review x x x.
2. **MERCANTILE LAW; ACT 3135 (THE REAL ESTATE MORTGAGE LAW); WRIT OF POSSESSION; A PETITION FOR WRIT OF POSSESSION IS *EX PARTE***

[*] Per Special Order No. 1257 dated 19 July 2012.

AND SUMMARY IN NATURE.— Section 7 of Act 3135 expressly allows the buyer at the auction to file a verified petition in the form of an *ex parte* motion for issuance of a writ of possession. This connotes that it is for the benefit of one party, without notice to or challenge by an adverse party. Being summary in nature, it cannot be said to be a judgment on the merits, but is simply an incident in the transfer of title. As pointed out in *Philippine National Bank v. Court of Appeals*, an *ex parte* petition for writ of possession under Act 3135 is, strictly speaking, not a judicial, or litigious, proceeding, for the reason that an extrajudicial foreclosure of mortgage is accomplished by filing a petition, not with any court of justice, but with the office of the sheriff of the place where the sale is to be made. Indeed, the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adversely interested. It is a proceeding wherein relief is granted without affording the person against whom the relief is sought the opportunity to be heard. No notice is needed to be served upon persons interested in the subject property. And as held in *Carlos v. Court of Appeals*, the *ex parte* nature of the proceeding does not deny due process to the petitioners because the issuance of the writ of possession does not bar a separate case for annulment of mortgage and foreclosure sale.

3. **ID.; ID.; ID.; THE ISSUANCE THEREOF BY THE COURT IN FAVOR OF THE PURCHASER OF THE FORECLOSED REAL PROPERTY IS A MERE MINISTERIAL FUNCTION; EXCEPTION.—** A writ of possession of real property may be issued in cases of extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118. x x x The right of the owner to the possession of a property is an essential attribute of ownership. In extrajudicial foreclosures, the purchaser becomes the absolute owner when no redemption is made. Thus, after consolidation of ownership and issuance of a new transfer certificate of title in the name of the purchaser, he is entitled to possession of the property as a matter of right under Section 7, and its issuance by the RTC is a mere ministerial function. The rule, however, admits of an exception. Thus, it is specifically provided in Section 33, Rule 39 of the Rules of Court that the possession

of the extrajudicially foreclosed property shall be withheld from the purchaser if a third-party is actually holding the same adversely to the mortgagor/debtor. x x x In an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third-party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. **For the exception to apply, however, the property need not only be possessed by a third-party, but also held by the third-party adversely to the debtor/ mortgagor**. In *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, the Court discussed the meaning of a "third-party who is actually holding the property adversely to the judgment obligor" – "The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property."

APPEARANCES OF COUNSEL

Cleto D. Del Valle for petitioner.

Lim Vigilia Alcala Dunlao Alamaeda & Casiding for respondent.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review of the Decision[1] dated January 27, 2010 of the Court of Appeals (CA) dismissing the petition for *certiorari* and the Resolution[2] dated May 26, 2010

[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Ricardo R. Rosario and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 37-48.

[2] *Id.* at 49.

denying the motion for reconsideration thereof in CA-G.R. SP No. 96640.

The CA upheld the Order[3] dated August 11, 2006 of the Regional Trial Court (RTC), Branch 17 of Malolos, in Civil Case No. P-167-2002 denying herein petitioner Cesar V. Madriaga, Jr.'s (petitioner) motion to quash the *ex parte* writ of possession issued in favor of herein respondent China Banking Corporation (China Bank).

Factual Antecedents

The spouses Rolando and Norma Trajano (Spouses Trajano) were the original registered owners of the properties in dispute – two residential properties located in Ibayo, Marilao, Bulacan, covered by TCT Nos. 114853(M) and 114854(M). Sometime in 1991, they agreed to sell the properties to the petitioner's father, Cesar Madriaga, Sr. (Madriaga, Sr.) for ₱1,300,000.00 payable on installment basis. Upon completion of payment,[4] Spouses Trajano executed in Madriaga, Sr.'s favor a Deed of Absolute Sale dated September 2, 1992.[5]

Spouses Trajano, however, failed to deliver the lot titles, so Madriaga, Sr. sued for specific performance with the RTC Branch 19 of Malolos City, and docketed as Civil Case No. 521-M-93. The parties later entered into a compromise agreement, which the court approved on June 13, 1994.[6] It was agreed that Spouses Trajano will take out a loan with Asia Trust Bank secured by a mortgage over the properties, and from the proceeds, settle the ₱1,225,000.00 they owed Madriaga, Sr.. It also appears from the agreement that the titles to the properties were retained by a certain Mariano and Florentino Blanco as security for a loan received by both Spouses Trajano and Madriaga, Sr..[7] It

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[3] Under the *sala* of Presiding Judge Ma. Theresa V. Mendoza-Arcega; *id.* at 67-71.

[4] *Id.* at 86.

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

[6] *Id.* at 87-88.

[7] *Id.* at 87.

was also agreed that the notice of *lis pendens* previously caused by Madriaga, Sr. to be annotated on the titles will be cancelled.[8]

Spouses Trajano, however, failed to comply with their obligation under the compromise judgment. On motion of Madriaga, Sr., the RTC issued a writ of execution on September 6, 1994, and several properties of Spouses Trajano were levied upon, including the disputed properties. A notice of levy dated January 18, 1995 was also given to the Register of Deeds.[9] At the auction held on February 22, 1995, Madriaga, Sr. was declared the winning bidder, and a certificate of sale was issued to him on March 22, 1995. After the lapse of the one-year redemption period, he was issued a final deed of sale; consequently, TCT Nos. 114853(M) and 114854(M) were cancelled and replaced by TCT Nos. T-284713(M) and T-284714 in his name. On January 27, 1997, he secured an *ex parte* writ of possession.[10]

Meanwhile, on January 2, 1995, Spouses Trajano obtained a loan from China Bank in the amount of ₱700,000.00, payable in one year and secured by a mortgage over TCT Nos. 114853(M) and 114854(M). They defaulted on their loan, and on October 20, 1997, China Bank foreclosed the mortgage and was declared the highest bidder at the foreclosure sale held on November 24, 1997. After consolidation of its titles, TCT Nos. T-346239(M) and T-346240(M) were issued to China Bank to replace, for the second time, TCT Nos. 114853(M) and 114854(M).[11]

On April 2, 2002, China Bank filed with the RTC Branch 17 of Malolos, an *ex parte* petition for writ of possession, docketed

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[8] *Id.*

[9] *Id.* at 114.

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

[11] Atty. Domingo Paguia, the new Registrar of Deeds of Meycauayan, Bulacan, *vice* Atty. Alfredo Santos, in his testimony in Civil Case No. 406-M-2002, could not explain why two sets of titles were issued to replace TCT Nos. 114853(M) and 114854(M), both during the term of Atty. Santos, although he pointed out that Spouses Trajano's titles bore no annotations on the sale to Madriaga, Sr., but only the transfer to China Bank. (*Id.* at 118-119.)

as Civil Case No. P-167-2002. It impleaded as respondents the "*Sps. Trajano and/or all persons claiming rights under their name*." The writ was granted on July 12, 2002, and a copy served upon Madriaga, Sr. on August 2, 2002.

On November 1, 2002, Madriaga, Sr. filed an opposition to the writ wherein he asserted that he was the true owner of the properties, having obtained them at an earlier execution sale, and that his titles were subsisting. The RTC dismissed his opposition and denied his motion for reconsideration.

Undeterred, on April 13, 2005, the petitioner filed a "Motion to Quash/Abate the Writ of Possession,"[12] which was denied by the RTC in its Order[13] dated February 6, 2006. The RTC ruled that it had no jurisdiction over the parties' contending claims of ownership which was already pending before RTC Branch 12 of Malolos, docketed as Civil Case No. 406-M-2002 (specific performance case), entitled "*Cesar Madriaga v. China Banking Corporation, Register of Deeds of Meycauayan and Spouses Rolando and Norma Trajano.*" The RTC also noted that the petitioner's motion had been mooted by the satisfaction of the writ on April 15, 2005, per the Sheriff's return.[14]

On March 6, 2006, the petitioner moved for reconsideration of the Order dated February 6, 2006 in Civil Case No. P-167-2002 (writ of possession case),[15] insisting that he was deprived of due process because he was not served with notice of China Bank's *ex parte* petition for writ of possession, and that he came to know of its separate titles only when he was served the writ of possession.

Unmoved, the RTC denied his motion for reconsideration in its Order[16] dated August 11, 2006, reasoning that it was merely

[12] *Id.* at 50-61.

[13] *Id.* at 81-83.

[14] *Id.* at 83.

[15] *Id.* at 72-80.

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

performing a ministerial duty to issue the writ of possession to China Bank.

The petitioner, who succeeded to his father's properties then filed a petition for *certiorari* to the CA averring that the RTC gravely and seriously abused its discretion in denying the motion to abate/quash the writ of possession; in considering the issuance of the writ as ministerial; and in not declaring China Bank in bad faith, hence, not entitled to possession of the properties.[17]

In the Decision dated January 27, 2010, the CA ruled that the RTC did not commit grave abuse of discretion in denying Madriaga, Sr.'s motion to quash or abate the *ex parte* writ of possession for the reason that the motion had already been rendered moot and academic after the writ was satisfied on April 15, 2005 with the physical removal of Madriaga, Sr. from the premises. On May 26, 2010, the CA denied the petitioner's motion for reconsideration.[18]

Hence, the present petition.

The petitioner avers that the writ of possession was directed, not against his father, but against Spouses Trajano and "all persons claiming rights under them." He insists that his father derived his titles not through a voluntary transaction with Spouses Trajano, but by purchase in an execution sale. He also maintains that China Bank's titles are void because they came from a void mortgage.

The petitioner also asserts that the RTC gravely erred in not finding that China Bank failed to investigate the titles of Spouses Trajano before approving their loan, in view of the *lis pendens* annotation thereon. The petitioner adverts to the decision of the RTC in Civil Case No. 406-M-2002 (specific performance case)[19] charging China Bank with notice of a serious flaw in Spouses Trajano's titles, whereas the petitioner's titles came

[17] *Id.* at 41.

[18] *Id.* at 49.

[19] *Id.* at 112-130.

from an earlier execution sale, and he and his father had been in open, uninterrupted and adverse possession since 1991.

The petitioner also insists that an *ex parte* writ of possession can be attacked either directly or collaterally for being null and void *ab initio* due to lack of due process, notwithstanding that in the meantime it has even been satisfied.

The petitioner, thus, maintains that his restoration to possession must be ordered because his eviction by a mere *ex parte* writ of possession violated his right to due process, since his father was unable to participate in the said proceedings due to lack of notice.

Our Ruling

We deny the petition.

The case has been rendered moot and academic by the full implementation/satisfaction of the writ of possession.

The trial court in its Order dated February 6, 2006 took note of the Sheriff's return stating that the writ of possession it issued to China Bank had been satisfied on April 15, 2005 after the petitioner had been successfully removed from the subject premises, prompting the court to declare that the petitioner's Motion to Quash/Abate the Writ of Possession has been rendered moot and academic.

Indeed, with the writ of possession having been served and satisfied, the said motions had ceased to present a justiciable controversy, and a declaration thereon would be of no practical use or value.[20]

Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any

[20] See *Sps. de Vera v. Hon. Agloro*, 489 Phil. 185 (2005).

ruling or make any pronouncement.[21] Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review,[22] which are not extant in this case.

The issuance of the *ex parte* writ of possession did not violate Madriaga, Sr.'s right to due process.

Section 7 of Act 3135 expressly allows the buyer at the auction to file a verified petition in the form of an *ex parte* motion for issuance of a writ of possession. This connotes that it is for the benefit of one party, without notice to or challenge by an adverse party. Being summary in nature, it cannot be said to be a judgment on the merits, but is simply an incident in the transfer of title.[23] As pointed out in *Philippine National Bank v. Court of Appeals*,[24] an *ex parte* petition for writ of possession under Act 3135 is, strictly speaking, not a judicial, or litigious, proceeding, for the reason that an extrajudicial foreclosure of mortgage is accomplished by filing a petition, not with any court of justice, but with the office of the sheriff of the place where the sale is to be made.

Indeed, the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adversely interested. It is a proceeding wherein relief is granted without affording the person against whom the relief is sought the opportunity to be heard.[25] No

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[21] *Suplico v. National Economic and Development Authority,* G.R. No. 178830, July 14, 2008, 558 SCRA 329, 354.

[22] *Osmeña III v. Social Security System of the Philippines,* G.R. No. 165272, September 13, 2007, 533 SCRA 313, 327.

[23] *Sps. Ong v. Court of Appeals,* 388 Phil. 857, 867 (2000).

[24] 424 Phil. 757 (2002).

[25] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 150.

notice is needed to be served upon persons interested in the subject property.[26] And as held in *Carlos v. Court of Appeals*,[27] the *ex parte* nature of the proceeding does not deny due process to the petitioners because the issuance of the writ of possession does not bar a separate case for annulment of mortgage and foreclosure sale. Hence, the RTC may grant the petition even in the absence of Madriaga, Sr.'s participation.

Moreover, records show that Madriaga, Sr. was able to air his side when he filed: on November 1, 2002 an opposition to the writ; on April 13, 2005, a "Motion to Quash/Abate the Writ of Possession"; and on March 6, 2006, a motion for reconsideration of the Order dated February 6, 2006 denying his motion to quash/abate the writ of possession. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[28]

The petitioner's predecessor is not a third-party whose possession of the disputed properties is adverse to that of Spouses Trajano.

A writ of possession of real property may be issued in cases of extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118.[29] Sec. 7 provides:

Sec. 7. *Possession during redemption period*. – In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify

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[26] *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, July 23, 2009, 593 SCRA 645, 653.

[27] G.R. No. 164036, October 19, 2007, 537 SCRA 247.

[28] *Dayrit v. Phil. Bank of Communications*, 435 Phil. 120, 126 (2002).

[29] *Idolor v. Court of Appeals*, 490 Phil. 808, 812 (2005), citing *Chailease Finance, Corp. v. Spouses Ma*, 456 Phil. 498, 502 (2003) and *Sps. Ong v. Court of Appeals, supra* note 23.

the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Sec. 194 of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in par. 11 of Sec. 114 of Act No. 496, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The right of the owner to the possession of a property is an essential attribute of ownership.[30] In extrajudicial foreclosures, the purchaser becomes the absolute owner when no redemption is made. Thus, after consolidation of ownership and issuance of a new transfer certificate of title in the name of the purchaser, he is entitled to possession of the property[31] as a matter of right under Section 7, and its issuance by the RTC is a mere ministerial function.[32]

The rule, however, admits of an exception. Thus, it is specifically provided in Section 33, Rule 39 of the Rules of Court[33] that the possession of the extrajudicially foreclosed property shall be withheld from the purchaser if a third-party is actually holding the same adversely to the mortgagor/debtor.[34]

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[30] CIVIL CODE OF THE PHILIPPINES, Articles 428-430.

[31] *Samson v. Rivera,* G.R. No. 154355, May 20, 2004, 428 SCRA 759.

[32] *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234, citing *Sps. Yulienco v. Court of Appeals*, 441 Phil. 397 (2002); *A.G. Development Corp. v. CA,* 346 Phil. 136 (1997); *Navarra v. Court of Appeals,* G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[33] *IFC Service Leasing and Acceptance Corp. v. Nera,* G.R. No. L-21720, January 30, 1967, 125 Phil. 595, 598 (1967).

[34] *China Banking Corporation v. Lozada,* G.R. No. 164919, July 4, 2008, 557 SCRA 177, 202.

"Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – x x x

x x x The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor**."

In an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third-party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. **For the exception to apply, however, the property need not only be possessed by a third-party, but also held by the third-party adversely to the debtor/mortgagor**.[35]

In *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,[36] the Court discussed the meaning of a "third-party who is actually holding the property adversely to the judgment obligor" –

"The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property."[37]

It is not disputed that Madriaga, Sr. was in actual possession of the disputed properties at the time the writ of possession was issued by the RTC. China Bank, on the other hand, has in its favor TCT Nos. T-346239(M) and T-346240(M) issued pursuant to the extrajudicial foreclosure sale. The RTC, at that juncture, had no alternative but to issue the writ of possession.

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[35] *Id.* at 198.

[36] G.R. No. 176019, January 12, 2011, 639 SCRA 405.

[37] *Id.* at 417-418, citing *China Banking Corporation v. Lozada*, *supra* note 34.

As it stated in its Order dated February 6, 2006," x x x [a]t the time it rendered its Decision on July 12, [2002] (granting the *ex parte* petition for the issuance of the writ of possession), the evidence obtaining herein overwhelmingly warranted the issuance of the possessory writ in favor of petitioner Bank."[38]

Moreover, it must be emphasized that Madriaga, Sr.'s possession was by virtue of the 1991 agreement between him and Spouses Trajano for the sale of the properties. As it turned out, Spouses Trajano reneged on their original contractual undertaking to deliver the titles thereby prompting the petitioner to pursue his claim over the disputed properties. The writ of execution and execution sale referred to by the petitioner as basis of their alleged adverse possession was issued by the RTC, as a matter of course in Civil Case No. 521-M-93, which was the initial civil case filed by them to compel Spouses Trajano to deliver the title to the properties pursuant to the sale. The filing of Civil Case No. 521-M-93, the compromise agreement subsequently entered into by the parties, and the judgment and orders issued by the RTC in said case, in fact, confirmed the existence of the previous transaction between Madriaga, Sr. and Spouses Trajano, *i.e.*, the transfer of the disputed properties to Madriaga, Sr. by way of sale. Evidently, Madriaga, Sr.'s interest from the properties sprung from his supposed right as the successor or transferee of Spouses Trajano. It cannot be gainsaid, therefore, that their claim of possession was acquired from Spouses Trajano, which cannot be considered adverse or contrary, and the RTC had all the authority to issue the *ex parte* writ of possession.

In any event, as we have previously noted, the petitioner has already pursued Civil Case No. 406-M-2002 for "Specific Performance, Nullification of Title, Reconveyance and Damages," a plenary action to recover possession or an *acción reivindicatoria*."[39] It is in said forum that the contending ownership claims of the parties, and resultantly the right of possession, can be best ventilated and resolved with definiteness.

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[38] *Rollo*, pp. 82-83.

[39] *Id.* at 112-130.

WHEREFORE, the petition for review is **DENIED** for lack of merit.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 198589. July 25, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, FOURTH DIVISION and JULIETA G. ANDO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; A DECISION FOR ACQUITTAL IS IMMEDIATELY FINAL AND CANNOT BE APPEALED ON THE GROUND OF DOUBLE JEOPARDY; EXCEPTION.— The mere fact that the decision being brought for this Court's review is one for acquittal alerts one's attention to a possible violation of the rule against double jeopardy. In *People v. Hon. Tria-Tirona*, this Court reiterated that mistrial is the only exception to the well-settled, even axiomatic, principle that acquittal is immediately final and cannot be appealed on the ground of double jeopardy. This Court was categorical in stating that a re-examination of the evidence without a finding of mistrial will violate the right to repose of an accused, which is what is protected by the rule against double jeopardy. This petition

[*] Additional member per Special Order No. 1257 dated July 19, 2012, in view of the leave of absence of Associate Justice Arturo D. Brion.

does not allege a mistrial and the sole challenge posed by Tee and the OSG against the validity of the CA's disposition is the latter's supposed misappreciation of the evidence, which is an error of judgment and not of jurisdiction or a manifestation of grave abuse of discretion, hence, not correctible by a writ of *certiorari*. In *People of the Philippines v. Hon. Sandiganbayan (Third Division)*, this Court clarified that for an acquittal to be considered tainted with grave abuse of discretion, there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Arquillo Dela Cruz & Albao Law Office for respondent.

Kapunan Lotilla Gracia & Castillo Law Offices for Willie Tee.

R E S O L U T I O N

REYES, *J*.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by private complainant Willie Tee (Tee) from the Decision[1] dated July 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32680, the dispositive portion of which states:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The November 6, 2008 and May 2, 2008 Decisions of the Regional Trial Court of Manila, Branch 34, and the Metropolitan Trial Court of Manila, Branch 26, respectively, are **REVERSED** and **SET ASIDE**, and the petitioner is **ACQUITTED** of the offenses charged.

SO ORDERED.[2]

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; *rollo*, pp. 660-672.

[2] *Id.* at 671.

Respondent Julieta G. Ando (Ando) was convicted by the Metropolitan Trial Court of Manila (MeTC), Branch 26 of three (3) counts of Falsification of Public Documents under Article 172(1) in relation to Article 171(2) of the Revised Penal Code (RPC). In a Decision[3] rendered on May 2, 2008, the MeTC found Ando guilty beyond reasonable doubt of making it appear that Tee's father, Tee Ong, who was the owner of To Suy Hardware, signed, executed and sworn a Deed of Sale, an Affidavit, and a Transfer of Rights on January 31, 1996. Ando's conviction was premised on the following factual findings: (i) Tee Ong was already dead at the time the allegedly falsified documents were executed and notarized on January 31, 1996; (ii) Ando was in possession of the allegedly falsified documents, giving rise to the presumption that she was responsible therefor; and (iii) Ando used the allegedly falsified documents to cause the transfer in her favor of the rights to the business name "TO SUY HARDWARE".[4]

On appeal, Branch 34 of the Regional Trial Court (RTC) of Manila affirmed the MeTC's findings. In a Decision[5] dated November 6, 2008, the RTC predicated Ando's guilt on the falsity of the subject documents as being undisputed and stipulated upon by the parties.[6]

The CA gave due course to Ando's appeal and reversed the RTC Decision dated November 6, 2008. According to the CA, Ando deserves to be acquitted of the charges against her in view of the prosecution's failure to prove that the subject documents were indeed falsified. Specifically, the prosecution did not present any expert witness or caused the examination of the subject documents to determine whether Tee Ong's thumb mark and signature were indeed forged. The CA found the lower

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[3] Under the *sala* of Presiding Judge Jorge Emmanuel M. Lorredo; *id.* at 400-409.

[4] *Id.*

[5] Under the *sala* of Judge Romulo A. Lopez; *id.* at 490-495.

[6] *Id.*

courts to have erred in sweepingly concluding that the signatures on the Deed of Sale, Affidavit, and Transfer of Rights were forged on the basis of the undisputed fact that Tee Ong was already dead at the time that such documents were notarized on January 31, 1996. According to the CA the prosecution did not eliminate the possibility that Tee Ong may have signed the said documents before he died on December 15, 1995, thus, clouding Ando's supposed guilt with moral uncertainty. What the CA found as certain from the evidence of the prosecution is the notarization of the subject documents after Tee Ong's death and not the impossibility of Tee Ong's voluntary execution thereof before his death. Accordingly, it is the notary public who notarized the subject documents, not Ando, who should be held liable for any irregularities that may have attended the notarization. The execution and notarization of the subject documents are two (2) different acts and the irregularities attending their notarization do not necessarily affect the validity of their execution.

In this petition, Tee attributes grave abuse of discretion on the part of the CA, alleging that the latter has no reason to reverse the MeTC's and RTC's finding of guilt as the inconsistencies in Ando's statements and her possession and use of the subject documents prove beyond reasonable doubt that she was the one who forged Tee Ong's thumb mark and signature. There was likewise no necessity to produce an expert witness to determine if Tee Ong's thumb mark and signature were forged. That Tee Ong was already dead at the time the subject documents were executed and notarized coupled with Ando's use thereof to her benefit sufficed to conclude that there was forgery and that Ando was responsible therefor.[7]

Tee claimed that he filed this Petition under the authority and supervision of the Office of the Solicitor General (OSG).[8] Tee had also dispensed with the filing of a motion for reconsideration, claiming that the same has been rendered futile

[7] *Id.* at 28-44.

[8] *Id.* at 3.

by the immediately executory nature and finality of an acquittal.[9]

The OSG filed a Manifestation and Motion[10] dated October 6, 2011, stating that it is adopting Tee's petition as its own.

Dismissal of this petition is inevitable in view of the principle of double jeopardy, making it unnecessary to address and extrapolate on the numerous factual issues raised by Tee against the CA's Decision dated July 28, 2011 and the procedural lapses Ando attributes to Tee. The mere fact that the decision being brought for this Court's review is one for acquittal alerts one's attention to a possible violation of the rule against double jeopardy.

In *People v. Hon. Tria-Tirona*,[11] this Court reiterated that mistrial is the only exception to the well-settled, even axiomatic, principle that acquittal is immediately final and cannot be appealed on the ground of double jeopardy. This Court was categorical in stating that a re-examination of the evidence without a finding of mistrial will violate the right to repose of an accused, which is what is protected by the rule against double jeopardy.[12]

This petition does not allege a mistrial and the sole challenge posed by Tee and the OSG against the validity of the CA's disposition is the latter's supposed misappreciation of the evidence, which is an error of judgment and not of jurisdiction or a manifestation of grave abuse of discretion, hence, not correctible by a writ of *certiorari*.[13]

In *People of the Philippines v. Hon. Sandiganbayan (Third Division)*,[14] this Court clarified that for an acquittal to be

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

[10] *Id.* at 744-748.

[11] 502 Phil. 31 (2005).

[12] *People v. Hon. Velasco*, 394 Phil. 517, 558.

[13] *People v. Sandiganbayan (Fifth Division)*, G.R. No. 173396, September 22, 2010, 631 SCRA 128, 133.

[14] G.R. No. 174504, March 21, 2011, 645 SCRA 726.

considered tainted with grave abuse of discretion, there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham.

> Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void. The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[15] (Citations omitted)

The petition is bereft of any allegation, much less, evidence that the prosecution's right to due process was violated or the proceedings before the CA were a mockery such that Ando's acquittal was a foregone conclusion. Accordingly, notwithstanding the alleged errors in the interpretation of the applicable law or appreciation of evidence that the CA may have committed in ordering Ando's acquittal, absent any showing that the CA acted with caprice or without regard to the rudiments of due process, the CA's findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy. As ruled in the above-cited *Sandiganbayan* case:

> Nonetheless, even if the *Sandiganbayan* proceeded from an erroneous interpretation of the law and its implementing rules, the error committed was an error of judgment and not of jurisdiction. Petitioner failed to establish that the dismissal order was tainted with grave abuse of discretion such as the denial of the prosecution's right to due process or the conduct of a sham trial. In fine, the error committed by the *Sandiganbayan* is of such a nature that can no longer be rectified on appeal by the prosecution because it would place the accused in double jeopardy.[16] (Citation omitted)

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[15] *Id.* at 731-732.

[16] *Id.* at 735-736.

In fine, this petition cannot be given due course without running afoul of the principle against double jeopardy.

WHEREFORE, premises considered, the petition is **DISMISSED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Sereno, JJ.,* concur.

[*] Additional member per Special Order No. 1257 dated July 19, 2012, in view of the leave of absence of Associate Justice Arturo D. Brion.

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Interpretation of — Any ambiguity is construed against the party who caused it. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

— Strictly construed against the party that prepared the agreement. *(Id.)*

CORPORATE REHABILITATION

Petition for rehabilitation — Shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty days from the date of initial hearing. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, July 25, 2012) p. 707

Rehabilitation proceedings — In determining whether the objections to the approval of a rehabilitation plan are reasonable or otherwise, the court has the following to consider: (a) that the opposing creditors would receive greater compensation under the plan than if the corporate assets would be sold; (b) that the shareholders would lose their controlling interest as a result of the plan; and (c) that the receiver has recommended approval. (Wonder Book Corp. *vs*. Phil. Bank of Communications, G.R. No. 187316, July 16, 2012) p. 83

— Purpose is to enable the company to gain a new lease on life, and not to prolong its inevitable demise. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G. R. No. 180036, July 25, 2012) p. 707

— Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency; the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. (Wonder Book Corp. *vs*. Phil. Bank of Communications, G.R. No. 187316, July 16, 2012) p. 83

— When objections to the approval of a rehabilitation plan may be considered. *(Id.)*

CORPORATIONS

Actions of corporate officers — Authority to act must be established by proof to bind the corporation. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Brion, J., separate concurring opinion*) p. 395

— Bears the implied authority of the board of directors. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Carpio, J., dissenting opinion*) p. 395

— May be ratified by subsequent acts of approval as well as acceptance and retention of the benefits flowing from such act. *(Id.)*

Authority of corporate officers — Can be derived from law, the corporate by-laws, or from authorization from the board expressly or impliedly by habit, custom or acquiescence in the general course of business. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Carpio, J., dissenting opinion*) p. 395

Nature of — The stockholder and the corporation are separate entities. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, July 25, 2012) p. 707

COURT PERSONNEL

Conduct of — The demand for moral uprightness is more pronounced for the members and personnel of the Judiciary who are involved in the dispensation of justice. (OCA *vs*. Peradilla, A.M. No. P-09-2647, July 17, 2012) p. 102

Grave misconduct and dishonesty — Acts of stealing the ₱45,000 and saying that the employee used the amount for the alleged repair of the ceiling and toilet of the trial court constitute grave misconduct and dishonesty. (OCA vs. Musngi, A.M. No. P-11-3024, July 17, 2012) p. 117

OCA Circular No. 49-2003 — Does not restrict the right to travel but merely regulates by providing guidelines to be complied by judges and court personnel before they could go on leave to travel abroad; the circular will ensure management of court dockets and to avoid disruption in the administration of justice; requirements. (OAS-OCAD *vs*. Judge Macarine, A.M. No. MTJ-10-1770 [formerly A.M. OCA IPI No. 10-2255-MTJ], July 18, 2012) p. 217

— Requiring judges and personnel prior submission of request for travel authority impairs their right to travel, a constitutional right that cannot be unduly curtailed. (OAS-OCAD *vs*. Judge Macarine, A.M. No. MTJ-10-1770 [formerly A.M. OCA IPI No. 10-2255-MTJ], July 18, 2012; *Sereno, C.J., dissenting and concurring opinion*) p. 217

Willful failure to pay just debts — Financial difficulties does not excuse failure to pay a just debt. (Campomanes *vs*. Violon, A.M. No. P-11-2983 [formerly OCA I.P.I. No. 10-3439-P], July 25, 2012) p. 646

— Payment in full does not exculpate the employee from liability or render the administrative case moot. *(Id.)*

— Warrants the penalty of reprimand for a first-time violator. *(Id.)*

DAMAGES

Moral damages — Awarded in cases of besmirched reputation, moral shock, social humiliation and similar injury. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

DISBARMENT

Concept — A conviction for the crime of bribery is a ground therefor. (Atty. Catalan, Jr. *vs*. Atty. Silvosa, A.C. No. 7360, July 24, 2012) p. 572

DOUBLE JEOPARDY

Right against — Mere fact that the decision being brought for review is one for acquittal alerts one's attention to a possible violation of the rule against double jeopardy; exception. (People of the Phils. *vs*. Hon. CA, 4th Div., G.R. No. 198589, July 25, 2012) p. 783

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — Any competent and relevant evidence to prove the relationship may be admitted; a finding that the relationship exists must nonetheless rest on substantial evidence, which is the amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. (Legend Hotel (Mla.), owned by Titanium Corp., and/or Nelson Napud *vs*. Realuyo, G.R. No. 153511, July 18, 2012) p. 226

EMPLOYMENT, TERMINATION OF

Retirement — The determining factor in choosing which retirement scheme to apply is still superiority in terms of benefits provided. (Elegir *vs*. Phil. Airlines, Inc., G.R. No. 181995, July 16, 2012) p. 58

Retrenchment — The Court has laid down the following standards that an employer should meet to justify retrenchment and to foil abuse, namely: (a) The expected losses should be substantial and not merely *de minimis* in extent; (b) The substantial losses apprehended must be reasonably imminent; (c) The retrenchment must be reasonably

necessary and likely to effectively prevent the expected losses; and (d) The alleged losses, if already incurred, and the expected imminent losses sought to be forestalled must be proved by sufficient and convincing evidence. (Legend Hotel [Mla.], owned by Titanium Corp., and/or Nelson Napud *vs*. Realuyo, G.R. No. 153511, July 18, 2012) p. 226

Rights of illegally dismissed employees — Respondent is entitled to separation pay in lieu of reinstatement and full backwages from the time his compensation was withheld until the finality of the decision. (Legend Hotel [Mla.], owned by Titanium Corp., and/or Nelson Napud *vs*. Realuyo, G.R. No. 153511, July 18, 2012) p. 226

EVIDENCE

Documentary evidence — Requirement for proof of due execution and authenticity applies only to private documents; rationale. (Heirs of Jose Marcial K. Ochoa vs. G & S Transport Corp., G.R. No. 170071, July 16, 1012) p. 35

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (ACT NO. 3135)

Writ of possession — A petition for writ of possession is ex parte and summary in nature; strictly speaking, not a judicial, or litigious, proceeding. (Madriaga, Jr. *vs*. China Banking Corp., G.R. No. 192377, July 25, 2012) p. 770

— Issuance thereof by the court in favor of the purchaser of the foreclosed real property is a mere ministerial function; exception. *(Id.)*

— The issuance thereof in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done ex parte when the foreclosed property is in the possession of a third-party holding the same adversely to the defaulting debtor/mortgagor. *(Id.)*

FORECLOSURE OF REAL ESTATE MORTGAGE

Nature of proceedings — In foreclosures, the mortgaged property is subjected to the proceedings for the satisfaction of the obligation; as a result, payment is effected by abnormal means whereby the debtor is forced by a judicial proceeding to comply with the presentation or to pay indemnity; once the proceeds from the sale of the property are applied to the payment of the obligation, the obligation is already extinguished. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

Right of redemption — By force of law, and the purchaser at public auction is bound to accept it. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

— The amount to be paid in redeeming the property is determined by the General Banking Act, and not by the Rules of Court in relation to Act No. 3135. *(Id.)*

Stay order — Cannot suspend the foreclosure of properties owned by accommodation mortgagors. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G. R. No. 180036, July 25, 2012) p. 707

HABEAS DATA

Writ of — Explained. (Gamboa *vs*. P/SSupt. Marlou C. Chan, G.R. No. 193636, July 24, 2012) p. 602

— Where the state interest far outweighs the alleged intrusion on a person's private life, writ of habeas data must be denied. *(Id.)*

INTERESTS

Monetary interest — Distinguished from compensatory interest. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

INTERVENTION

Application in land registration cases — Period for filing motion for intervention should be strictly applied in land registration cases. (Ongco *vs*. Ungco Dalisay, G.R. No. 190810, July 18, 2012) p. 462

Intervention on appeal — Cannot be allowed where the party sought to intervene is not an indispensable party. (Ongco *vs*. Ungco Dalisay, G.R. No. 190810, July 18, 2012) p. 462

Nature — Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings; intervention is not a matter of right, but is left to the trial court's sound discretion. (Ongco *vs*. Ungco Dalisay, G.R. No. 190810, July 18, 2012) p. 462

JUDGES

Errors committed in the exercise of their adjudicative function — A judge cannot be held administratively liable for every erroneous decision; the error must be gross and deliberate, a product of a perverted judicial mind, or a result of gross ignorance of the law. (Atty. Bangalan *vs*. Judge Turgano, A.M. RTJ-12-2317 [formerly OCA I.P.I. No. 10-3378-RTJ], July 25, 2012) p. 663

Gross ignorance of the law — Committed when a judge conducted bail hearings without a petition for bail being filed by the accused and without affording the prosecution an opportunity to prove that the guilt of the accused is strong; the act of the judge is not a mere deficiency in prudence, discretion and judgment but a patent disregard of well-known rules; when an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law. (Gacad *vs*. Judge Clapis, Jr., A.M. No. RTJ-10-2257, July 17, 2012) p. 126

Gross misconduct — The acts of a judge in meeting a litigant in a case pending before his sala constitute gross misconduct. (Gacad vs. Judge Clapis, Jr., A.M. No. RTJ-10-2257, July 17, 2012) p. 126

Undue delay in the disposition of cases — Judges should always be mindful of their duty to render justice within the period prescribed by law. (Murphy Chu/Atgas Traders *vs*. Hon. Capellan, A.M. No. MTJ-11-1779 [formerly A.M. OCA IPI No. 09-2191-MTJ], July 16, 2012) p. 1

— When committed. (Atty. Bangalan *vs*. Judge Turgano, A.M. RTJ-12-2317 [formerly OCA I.P.I. No. 10-3378-RTJ], July 25, 2012) p. 663

JUDGMENTS

Immutability and inalterability of a final judgment — Applicability. (Commissioner of Customs *vs*. Agfha Incorporated, G.R. No. 187525, July 18, 2012) p. 458

Summary judgments — A procedural device resorted to in order to avoid long drawn out litigations and useless delays; such judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties. (Sps. Villuga *vs*. Kelly Hardware and Construction Supply Inc., G.R. No. 176570, July 18, 2012) p. 353

— Not proper when the answer filed by the defendant does not tender a genuine issue as to any material fact and that one party is entitled to a judgment as a matter of law. (Sps. Soller *vs*. Heirs of Jeremias Ulayao, G.R. No. 175552, July 18, 2012) p. 348

JUDICIAL AND BAR COUNCIL

Composition of — The Constitution mandates that the JBC be composed of seven (7) members only and any inclusion of another member, whether with one vote or half (1/2) of it, goes against that mandate. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012) p. 173

— The seven-member composition of the JBC serves a practical purpose, that is, to provide a solution should there be a stalemate in voting. *(Id.)*

— To allow the legislature to have more quantitative influence in the JBC by having more than one voice speak, whether with one full vote or one-half (1/2) a vote each would negate the principle of equality among the three branches of government enshrined in the Constitution. *(Id.)*

JBC representation — Allowing a Senator and a Congressman to sit alternately at any one time cannot be a solution since each of them would actually be representing only his half of Congress; allowing both, on the other hand, with half a vote each is also absurd since that would diminish their standing and make them second class members of JBC; when a literal translation would result to absurdity, the same should be utterly rejected. (Chavez *vs.* Judicial and Bar Council, G.R. No. 202242, July 17, 2012; *Abad, J., dissenting opinion*) p. 173

— If the Court were to stick to the literal reading of Section 8 (1), Article 8 of the 1987 Constitution, which restricts JBC representation to just one person holding office in Congress and working under both houses, no one will qualify as "ex officio" member of the JBC. *(Id.)*

— The presence of an elected senator and an elected member of the House of Representatives in the JBC is more consistent with the republican nature of our government where all government authority emanates from the people and is exercised by representatives chosen by them. *(Id.)*

— To insist that only members of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that while these two houses of Congress are involved in the common task of making laws, they are separate and distinct; neither the Senate nor the House of Representatives can by itself claim to represent Congress. *(Id.)*

JUDICIAL DEPARTMENT

Impeachment — Given their concededly political character, the precise role of the Judiciary in impeachment cases is a matter of utmost importance to ensure the effective functioning of the separate branches while preserving the

structure of checks and balance in our government; in this jurisdiction, the acts of any branch or instrumentality of the government, including those traditionally entrusted to the political departments, are proper subjects of judicial review if tainted with grave abuse or arbitrariness. (CJ Renato C. Corona *vs*. Senate of the Phils., G.R. No. 200242, July 17, 2012) p. 156

Judicial power — Presupposes actual controversies, the very antithesis of mootness; exceptions. (Madriaga, Jr. *vs*. China Banking Corp., G.R. No. 192377, July 25, 2012) p. 770

JUDICIAL REVIEW

Locus standi — Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met: (1) cases involve constitutional issues; (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; (3) for voters, there must be a showing of obvious interest in the validity of the election law in question; (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012) p. 173

— The claim that the composition of the Judicial and Bar Council (JBC) is illegal and unconstitutional is an object of concern, not just for a nominee to a judicial post, but for all citizens who have the right to seek judicial intervention for rectification of legal blunders. *(Id.)*

Power of judicial review — An action for declaratory relief is not among those within the original jurisdiction of this Court as provided in Section 5, Article 8 of the Constitution. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012) p. 173

— The Court's power of judicial review, like almost all other powers conferred by the Constitution, is subject to several limitations, namely: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. *(Id.)*

Question of transcendental importance — The determinants thereof established in jurisprudence are: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012) p. 173

LEGISLATIVE DEPARTMENT

Impeachment — Refers to the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution. (CJ Renato C. Corona *vs*. Senate of the Phils., G.R. No. 200242, July 17, 2012) p. 156

LIBEL

Commission of — A memorandum that deals more on the supposedly abnormal behavior of a person which to an ordinary reader automatically means that a judgment of mental deficiency is defamatory. (Lagaya *y* Tamondong *vs*. People of the Phils., G.R. No. 176251, July 25, 2012) p. 688

— Definition; requisites that must concur for an imputation to be considered libelous. *(Id.)*

— Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown. *(Id.)*

— Proven by distribution of a defamatory memorandum at a meeting attended by 24 participants who read its contents. *(Id.)*

— Requirement of publicity; exceptions thereto. *(Id.)*

— The defamatory remarks not being related to the discharge of respondent's official duties, petitioner's memorandum is not covered by the second exception. *(Id.)*

— The irresponsible act of furnishing the staff a copy of the defamatory memorandum is enough circumstance which militates against the pretension of good faith and performance of a moral and social duty. *(Id.)*

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Local government units (LGUs) — In order to fully secure to the LGUs, the genuine and meaningful autonomy that would develop them into self-reliant communities and effective partners in the attainment of national goals, the Local Government Code vested upon LGUs with the duties and functions pertaining to the delivery of basic services and facilities; exceptions. (Pimentel, Jr. *vs.* Exec. Sec. Paquito N. Ochoa, G.R. No. 195770, July 17, 2012) p. 143

LOCAL GOVERNMENTS

Local autonomy — The Court defined the extent of the local government's autonomy in terms of its partnership with the national government in the pursuit of common national goals, referring to such key concepts as integration and coordination. (Pimentel, Jr. *vs.* Exec. Sec. Paquito N. Ochoa, G.R. No. 195770, July 17, 2012) p. 143

— While it is through a system of decentralization that the State shall promote a more responsive and accountable local government structure, the concept of local autonomy does not imply the conversion of local government units into "mini-states." *(Id.)*

MANDAMUS

Petition for — Mandamus to compel a mayor to issue a business permit becomes moot and academic upon expiration of the period covered by the permit. (Rimando *vs*. Naguilian Emission Testing Center, Inc., G.R. No. 198860, July 23, 2012) p. 564

Writ of — A mayor cannot be compelled by mandamus to issue a business permit since the exercise of the same is a delegated police power, hence, discretionary in nature. (Rimando *vs*. Naguilian Emission Testing Center, Inc., G.R. No. 198860, July 23, 2012) p. 564

MINING

Mineral production sharing agreements (MPSA) — A new innovation of mineral agreements under the 1987 Constitution by which the State takes on a broader and more dynamic role in the exploration, development and utilization of the country's mineral resources. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012) p. 395

Mineral Resources Development Decree of 1974 (P.D. No. 463) — Governed mining operations in the country in 1975. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012) p. 395

Philippine Mining Act of 1995 (R.A. No. 7942) — Provides for only three modes of mineral agreements between the government and a qualified contractor: mineral production-sharing agreement, co-production agreement, and joint venture agreement. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Brion, J., separate concurring opinion*) p. 395

Preferential rights over mining claims — Deemed abandoned if application is not filed before the mandatory deadline provided by law. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012) p. 395

MORTGAGES

Contract of — When a debtor mortgages his property, he merely subjects it to a lien but ownership thereof is not parted with. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, July 25, 2012) p. 707

Real estate mortgage — A lien on the property itself, inseparable from the property upon which it was constituted. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, July 25, 2012) p. 707

Third-party mortgagor or accommodation mortgagor — Defined. (Situs Dev't. Corp. *vs*. Asiatrust Bank, G. R. No. 180036, July 25, 2012) p. 707

NATIONAL ECONOMY AND PATRIMONY

Jura Regalia or Regalian doctrine — *Jura Regalia* simply means that the State is the original proprietor of all lands and, as such, is the general source of all private titles; pursuant to this principle, all claims of private title to land, save those acquired from native title, must be traced from some grant, whether express or implied, from the State; absent a clear showing that land had been let into private ownership through the State's imprimatur, such land is presumed to belong to the State. (Rep. of the Phils. *vs*. Santos, G.R. No. 180027, July 18, 2012) p. 367

OBLIGATIONS

Interest — Imposition of interest requires breach of obligation. (Elegir *vs*. Phil. Airlines, Inc., G.R. No. 181995, July 16, 2012) p. 58

OBLIGATIONS, EXTINGUISHMENT OF

Legal compensation — Requisites. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

OVERSEAS EMPLOYMENT

Disability benefits — A seafarer is not entitled to sickness wages after he filed a complaint for total and permanent disability benefits. (C.F. Sharp Crew Management, Inc. *vs*. Taok, G. R. No. 193679, July 18, 2012) p. 521

— A seafarer who is in a state of temporary total disability cannot claim for total and permanent disability benefits. *(Id.)*

— Instances where a seafarer may pursue an action for total and permanent disability benefits, cited. *(Id.)*

PARTIES TO CIVIL ACTIONS

Real party-in-interest — Where the case was for declaration of nullity of free patent and title, the State was not a real party-in-interest. (Soquillo *vs*. Tortola, G.R. No. 192450, July 23, 2012) p. 552

PHILIPPINE MINING ACT OF 1995 (R.A. NO. 7942)

Approval of mineral agreements — The Secretary of the Department of Environment and Natural Resources (DENR) has the exclusive and primary jurisdiction to approve mineral agreements, such as MPSAs. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012) p. 395

Mineral agreement applications — Any application filed by any entity involving areas covered by mining lease contracts filed on or before January 31, 2005, is premature and should be denied. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Brion, J., separate concurring opinion*) p. 395

Mineral production sharing agreements (MPSA) — Entering into an MPSA with the government could not have been among those contemplated under the Operating Agreement that was executed in 1975 when the mining laws provided

only minimal participation by the State in mining activities. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Brion, J., separate concurring opinion*) p. 395

Repealing clause — Notwithstanding the repeal of previous laws on mining that were inconsistent with R.A. No. 7942, the law recognized and respected previously issued valid and still existing mining licenses under the old mining laws. (Dizon Copper Silver Mines, Inc. *vs*. Dr. Luis D. Dizon, G.R. No. 183573, July 18, 2012; *Brion, J., separate concurring opinion*) p. 395

PLEADINGS

Amended and supplemental pleadings — Respondent's request for admission is not deemed abandoned or withdrawn by the filing of the second amended complaint. (Sps. Villuga *vs*. Kelly Hardware and Construction Supply Inc., G.R. No. 176570, July 18, 2012) p. 353

Counterclaim — The four tests to determine whether a counterclaim is compulsory or not are the following, to wit: (a) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (b) Would res judicata bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (d) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court? (Sps. Mendiola *vs*. Hon. CA, G.R. No. 159746, July 18, 2012) p. 244

— When considered compulsory. *(Id.)*

Memorandum — No new issues may be raised by a party in his memorandum; rationale. (Heirs of Ramon B. Gayares *vs*. Pacific Asia Overseas Shipping Corp., G.R. No. 178477, July 16, 2012) p. 46

PRESIDENT

Transfer of funds — The allotment of operational funds to an agency under the Office of the President with existing funds previously appropriated by Congress for the office would not amount to illegal appropriation by the President. (Pichay, Jr. *vs*. Office of the Deputy Exec. Sec. for Legal Affairs - Investigative and Adjudicatory Div., G.R. No. 196425, July 24, 2012) p. 624

PRESUMPTIONS

Presumption of regularity in the performance of official duty — Arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. (Fajardo *vs.* People of the Phils., G.R. No. 185460, July 25, 2012) p. 752

PROBABLE CAUSE

Existence of — The fact that an expert witness already found that the questioned signatures were not written by one and the same person already creates probable cause to indict petitioners for the crime of falsification of public document. (Fenequito *vs*. Vergara, Jr., G.R. No. 172829, July 18, 2012) p. 335

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application — Being clear that it is Section 14 (2) of P.D. No. 1529 that should apply, it follows that the subject property being supposedly alienable and disposable will not suffice; there must be an official declaration to that effect before the property may be rendered susceptible to prescription; for prescription to run against the state, there must be proof that there was an official declaration that the subject property is no longer earmarked for public service or the development of national wealth. (Rep. of the Phils. *vs*. Espinosa, G.R. No. 171514, July 18, 2012) p. 314

— Requirements for judicial confirmation of imperfect titles, cited. (Rep. of the Phils. *vs*. Santos, G.R. No. 180027, July 18, 2012) p. 367

— There must be an express declaration from the State, attesting to the patrimonial character of the land applied for; a mere certification or report classifying the subject land as alienable and disposable is not sufficient. *(Id.)*

PROSECUTION OF OFFENSES

Criminal prosecutions — Examination of witness for the prosecution under Section 15, Rule 119 of the Rules of Court; procedure covers the examination of an unavailable prosecution witness. (Go *vs*. People of the Phils., G.R. No. 185527, July 18, 2012) p. 440

— The conditional examination of a prosecution witness cannot defeat the rights of the accused to public trial and confrontation of witnesses. *(Id.)*

— The conditional examination of a prosecution witness must take place at no other place than the court where the case is pending; reason for the rule. *(Id.)*

— The modes of discovery under Rule 23 to 28 of the Rules of Court are also available in criminal proceedings for the benefit of the defense and the prosecution. *(Id.)*

— The right of confrontation is viewed as a guarantee against the use of unreliable testimony in criminal trials. *(Id.)*

— The State must resort to deposition, taken sparingly if it is to guard against accusations of violating the right of the accused to meet the witnesses against him face to face. *(Id.)*

PUBLIC LAND ACT (C.A. NO. 141)

Application — For one to invoke Section 48 (b) and claim an imperfect title over an alienable and disposable land of the public domain on the basis of a thirty (30)-year possession and occupation, it must be demonstrated that such possession and occupation commenced on January 24, 1947 and the thirty (30)-year period was completed prior to the effectivity of P.D. No. 1073. (Rep. of the Phils. *vs*. Espinosa, G.R. No. 171514, July 18, 2012) p. 314

REAL ESTATE MORTGAGE

Contract of — Dragnet clause, not extended to cover future advances when the document evidencing the subsequent advance does not refer to the mortgage as providing security therefor. (Asiatrust Dev't. Bank *vs*. Tuble, G.R. No. 183987, July 25, 2012) p. 732

RES JUDICATA

Bar by prior judgment — The Court of Appeals' ruling in the administrative case which had already attained finality has effectively and decisively determined that the issue of malice binds the Court. (Lagaya *y* Tamondong *vs*. People of the Phils., G.R. No. 176251, July 25, 2012) p. 688

ROBBERY

Commission of — Distinguished from theft. (People of the Phils. *vs*. Concepcion *y* Bulanio, G.R. No. 200922, July 18, 2012) p. 542

SHERIFFS

Duties — Should serve the notice to vacate to the defendant's counsel on record. (Bautista *vs*. Cruz, A.M. No. P-12-3062 [formerly A.M. OCA IPI No. 11-3651-P], July 25, 2012) p. 650

Inefficiency and incompetence — Failure to serve notice to vacate to defendant's counsel and to submit periodic reports amount to inefficiency and incompetence in the performance of official duties. (Bautista *vs*. Cruz, A.M. No. P-12-3062 [formerly A.M. OCA IPI No. 11-3651-P], July 25, 2012) p. 650

Refusal to implement writ — Justified in the absence of a special order of demolition from the court. (Bautista *vs*. Cruz, A.M. No. P-12-3062 [formerly A.M. OCA IPI No. 11-3651-P], July 25, 2012) p. 650

Refusal to recover costs of suit — Sheriff is not liable for refusing to recover costs of suit in the absence of proof that complainant is entitled to it. (Bautista *vs*. Cruz, A.M. No. P-12-3062 [formerly A.M. OCA IPI No. 11-3651-P], July 25, 2012) p. 650

STATE POLICIES

Autonomy of local governments — The Constitution declares it a policy of the State to ensure the autonomy of local governments and even devotes a full article on the subject of local governance. (Pimentel, Jr. *vs*. Exec. Sec. Paquito N. Ochoa, G.R. No. 195770, July 17, 2012) p. 143

STATUTORY CONSTRUCTION

Principles of Constitutional construction — Applying a *verba legis* or strictly literal interpretation of the Constitution may render its provisions meaningless and lead to inconvenience, an absurb situation or an injustice. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012; *Abad, J., dissenting opin*ion) p. 173

— From the words of a statute there should be no departure; two-fold *raison d' etre* for the rule. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, July 17, 2012) p. 173

— Where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. *(Id.)*

TAXATION

Unlawful divulgence of trade secrets of taxpayers — Section 270 of the National Internal Revenue Code does not address the confidentiality of income tax returns. (Dipad *vs*. Sps. Olivan, G.R. No. 168771, July 25, 2012) p. 680

THEFT

Commission of — Distinguished from robbery. (People of the Phils. *vs*. Concepcion *y* Bulanio, G.R. No. 200922, July 18, 2012) p. 542

— Where the prosecution failed to establish the use of violence, intimidation or force, only theft is committed. *(Id.)*

UNJUST ENRICHMENT

Principle of —The main objective of the principle is to prevent one from enriching oneself at the expense of another; construed. (Elegir *vs*. Phil. Airlines, Inc., G.R. No. 181995, July 16, 2012) p. 58

UNLAWFUL DETAINER

Preliminary conference — No need to issue notice for the preliminary conference since the court order constituted sufficient notice to the parties. (Murphy Chu/Atgas Traders *vs*. Hon. Capellan, A.M. No. MTJ-11-1779 [formerly A.M. OCA IPI No. 09-2191-MTJ], July 16, 2012) p. 1

WAGES

Talent fees — Respondent's remuneration, even though denominated as talent fees, is still considered as included in the term wage in the sense and context of the Labor Code, regardless of how petitioner chose to designate the remuneration. (Legend Hotel [Mla.], owned by Titanium Corp., and/or Nelson Napud *vs*. Realuyo, G.R. No. 153511, July 18, 2012) p. 226

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