PHILIPPINE REPORTS

VOL. 692

JULY 30, 2012 TO AUGUST 15, 2012

VOLUME 692

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JULY 30, 2012 TO AUGUST 15, 2012

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-11-2952. July 30, 2012]
(Formerly A.M. OCA I.P.I. No. 10-3502-P)

ANECITA PANALIGAN, *complainant, vs.* **ETHELDA B. VALENTE, Clerk of Court II, 3rd Municipal Circuit Trial Court, Patnoñgon, Antique,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; MUST LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY IN THE PUBLIC SERVICE. — The rule is that those involved in the administration of justice from the highest official to the lowest clerk must live up to the strictest standards of honesty and integrity in the public service. x x x The conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

2. ID.; ID.; ID.; ID.; CLERKS OF COURT; RESPONSIBLE FOR THE EFFICIENT RECORDING, FILING, AND MANAGEMENT OF COURT RECORDS AND ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL.— [A] clerk of court is a role model for other

court employees to emulate in the performance of duties as well as in the conduct and behavior of a public servant. A clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice. Clerks of court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. x x x Clerks of court perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns. Clerks of court are charged not only with the efficient recording, filing, and management of court records but also with administrative supervision over court personnel. A clerk of court is the personnel officer of the court who exercises general supervision over all court personnel, enforces regulations, initiates investigations of erring employees, and recommends appropriate action to the judge. Clerks of Court are chiefly responsible for the shortcomings of subordinates to whom administrative functions normally pertaining to them are delegated.

3. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, DEFINED; PENALTY IN CASE AT BAR.— Valente is guilty of simple neglect of duty, which has been defined as the failure of an employee to give attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Pursuant to Section 52(B) of the same Omnibus Civil Service Rules and Regulations, the penalty of simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. Section 53 of the same Rules enumerates the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances. The Court weighs on one hand the serious consequence of Valente's negligence (Panaligan was deprived of the opportunity to collect the purported unpaid loan from the spouses Tumolin) and on the other the mitigating circumstance in Valente's favor (this is Valente's first offense in her 30 years of service to the judiciary), suspension for two months is appropriate.

4. ID.; ID.; ID.; DISHONESTY; ADMINISTRATIVE LIABILITY FOR DISHONESTY REQUIRES SUBSTANTIAL EVIDENCE OF AN INTENT TO LIE, CHEAT, DECEIVE OR DEFRAUD.— Dishonesty implies a "disposition to lie,

cheat, deceive, or defraud; unworthiness; lack of integrity." Valente, in telling Judge Barte that Panaligan was served with a notice of hearing, may have sincerely but mistakenly remembered and/or believed herself personally handing over such a notice to Panaligan; as well as casually assumed that Magbanua had served the notice of hearing upon Panaligan in the regular performance of Magbanua's duties as Process Server. In the absence of substantial evidence, the Court cannot lightly attribute to Valente an intent to lie, cheat, deceive, or defraud anyone.

APPEARANCES OF COUNSEL

Pepin Joey Q. Marfil for complainant.

D E C I S I O N

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

This is an administrative complaint filed by Anecita Panaligan (Panaligan) against Ethelda B. Valente (Valente), Clerk of Court II of the 3rd Municipal Circuit Trial Court (MCTC) of Patnoñgon, Antique, for dereliction of duty, abuse of authority, and dishonesty, relative to Civil Case No. 2-P, entitled *Anecita Panaligan v. Spouses Reynold and Ailene Tumolin.*

Civil Case No. 2-P is a small claims action for collection of sum of money instituted by Panaligan before the MCTC on July 13, 2010, alleging that Reynold Tumolin obtained a loan in the amount of ₱10,000.00 from Panaligan on July 25, 2009, evidenced by a promissory note, payable on November 30, 2009, and with a monthly interest of 10%; and that Reynold Tumolin left unheeded Panaligan's written request for payment of the loan dated December 1, 2009.[1]

On August 12, 2010, Judge Felixberto P. Barte (Judge Barte), Acting Presiding Judge of 3rd MCTC of Patnoñgon, Antique,

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[*] Acting chairperson per Special Order No. 1226 dated May 30, 2012.

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

issued an Order dismissing Civil Case No. 2-P for the following reasons:

> The case was called for hearing and the Court Interpreter even called the parties for three (3) times but none of them appeared.
>
> For failure of the plaintiff to appear despite due notice, as she was furnished personally by the Clerk of this Court with the copy of the said Notice of Hearing, which was confirmed by the Clerk of Court, is a clear indication that she lacks interest to prosecute her case.
>
> WHEREFORE, due to lack of interest to prosecute for the plaintiff failed to appear despite due notice and pursuant to Section 18 of the Rule of Procedure for Small Claims Cases, this case is DISMISSED.[2]

Panaligan filed the instant complaint[3] against Valente on August 26, 2010, charging the latter with dereliction of duty, abuse of authority, and dishonesty. Panaligan averred that after her receipt on August 18, 2010 of a copy of the MCTC Order dated August 12, 2010 dismissing Civil Case No. 2-P, she went to the MCTC to verify the reason for the issuance of said order; that Valente, the MCTC Clerk of Court, claimed that she personally furnished Panaligan with a copy of the notice of hearing for August 12, 2010 of Civil Case No. 2-P; that in truth and in fact, Panaligan did not receive a copy of said notice of hearing from Valente; that Valente subsequently retracted her previous claim and then blamed Process Server Nelson Magbanua (Magbanua) for the failure to serve the notice of hearing upon Panaligan; and that due to Valente's erroneous statement and dishonesty, Civil Case No. 2-P was dismissed and Panaligan could no longer collect the amount she loaned to Reynold Tumolin.

In her Answer,[4] Valente denied the charges made against her by Panaligan. According to Valente, she issued on July 14, 2010 a notice setting Civil Case No. 2-P for hearing at the MCTC on August 12, 2010 at nine in the morning. Valente insisted

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[2] *Id.* at 17.

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

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

that she personally gave a copy of the notice of hearing to Panaligan when Panaligan went to the MCTC office on an unspecified date; that she explained to Panaligan the importance of the latter's presence at the scheduled hearing; and that Panaligan gave the assurance that she would attend the hearing. However, Valente inadvertently failed to have Panaligan acknowledge her receipt of a copy of the notice of hearing. Although Panaligan already personally received a copy of the notice of hearing for August 12, 2010, Valente avowed that she still instructed Magbanua, the Process Server, to serve copies of the same notice to Panaligan and all other parties involved in Civil Case No. 2-P. Valente even recalled attaching a note on the original copy of the notice of hearing reminding Magbanua to have Panaligan sign said original copy and submit his indorsement after service of the notice. Valente though admitted that Magbanua refused to execute an affidavit supporting Valente's foregoing allegations, but Valente pointed out that this was understandable since it was Magbanua who failed to serve the notice of hearing upon Panaligan despite Valente's repeated reminders to do so. Valente further theorized that Panaligan might have forgotten personally receiving a copy of the notice of hearing because the latter was already 76 years old and did not know how to read and write.

Valente additionally recounted that during the hearing on August 12, 2010, none of the parties in Civil Case No. 2-P appeared before the MCTC. Judge Barte asked Valente whether notice of hearing was served upon Panaligan, and Valente answered in the affirmative. Judge Barte considered the non-appearance of Panaligan as lack of interest, a ground for dismissal of action under the Rule of Procedure on Small Claims Cases, and thus dismissed Civil Case No. 2-P.

Lastly, Valente called attention to her 30 years of unsullied reputation and dedicated, faithful, loyal, and unwavering service in the judiciary as MCTC Clerk of Court, and claimed that the accusations against her were meant to cast aspersion on her reputation and integrity as a loyal public servant. Hence, Valente prayed for the dismissal of Panaligan's complaint against her.

Panaligan filed a Reply[5] refuting the allegations in Valente's Answer. Panaligan maintains that it would have been impossible for Valente to have personally given Panaligan a copy of the notice of hearing for August 12, 2010 as Panaligan had never been to the MCTC office from July 14, 2010 to August 17, 2010. Panaligan only went to the MCTC office on August 18, 2010, a day after receiving the MCTC Order dated August 12, 2010 already dismissing Civil Case No. 2-P.

Panaligan also attached to her Reply the affidavits of several court personnel, namely, Magbanua,[6] the Process Server; Raymunda Imbang,[7] Court Interpreter; Rosemarie Sidayan,[8] Court Stenographer; and Joselinda Febrero,[9] the Clerk of Court of the 1st MCTC, Hamtic, Antique, as well as pages of the MCTC logbook showing entries from July 8, 2010 to September 23, 2010. The aforementioned court personnel affirmed that Valente only endorsed to Magbanua summons for service upon the parties without any notice of hearing; that Panaligan had never visited the MCTC office from July 14, 2010 to August 17, 2010; and that Valente indeed told Judge Barte she was able to personally furnish a copy of the notice of hearing to Panaligan. The pages from the MCTC logbook established that Panaligan visited the MCTC office only on August 18, 2010.

In her Rejoinder,[10] Valente once again denied all of Panaligan's allegations against her. Valente does not have any personal grudge or bad relation with Panaligan, so Valente believed that the filing of the instant complaint against her by Panaligan was instigated by other persons.

Valente contested Magbanua's claim that he received the summons, without any notice of hearing, from Valente on July

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[5] *Id.* at 26-28.

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

[7] *Id.* at 34-37.

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

[9] *Id.* at 49-53.

[10] *Id.* at 78-92.

13, 2010 and served said summons upon the spouses Tumolin on the same day, for such would have been impossible considering that: (1) Panaligan filed her Statement of Claim before the MCTC on July 13, 2010 at 2:30 p.m. and Judge Barte signed the MCTC Order for the issuance of summons and notice of hearing in Civil Case No. 2-P even later that afternoon at Sibalon, Antique; and (2) Magbanua was absent the afternoon of July 13, 2010 as his name could not be found in the employees' logbook for said date.

Valente alleged that the charges of dishonesty imputed against her were fabricated by court personnel in order to cover the anomalies or unwarranted and unlawful transactions in the MCTC, and said court personnel are conspiring to oust her from office in order to prevent her from revealing their misconducts.

Valente finally challenged Panaligan's reliance on the MCTC logbook as proof that the latter had never been to the MCTC office from July 14, 2010 to August 17, 2010. Valente argues that the said logbook is unreliable because not all visitors who enter the MCTC office actually log in and record their names therein.

On April 26, 2011, the Office of the Court Administrator (OCA) submitted its Report[11] with the following recommendations:

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

1. The instant case against respondent Ethelda B. Valente, Clerk of Court II, of the 3rd Municipal Circuit Trial Court, Patnongon, Antique be RE-DOCKETED as a regular administrative matter; and

2. Respondent Valente be found GUILTY of Simple Neglect of Duty, and meted the penalty of one (1) month and one (1) day suspension without pay.[12]

In a Resolution[13] dated July 4, 2011, the Court re-docketed the administrative complaint against Valente as a regular

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[11] *Id.* at 138-144.

[12] *Id.* at 144.

[13] *Id.* at 145.

administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Valente[14] and Panaligan[15] submitted their Manifestations dated September 15, 2011 and January 19, 2012, respectively, stating that they were submitting the case for resolution based on the pleadings filed.

Resultantly, the Court deemed the case already submitted for resolution.

In the meantime, Judge Barte, as the Acting Presiding Judge of the 3rd MCTC of Patnoñgon, Antique, and Presiding Judge of the 1st MCTC of Hamtic, Antique, wrote the OCA a letter[16] dated January 16, 2012 as his Comment to the "innuendos and malicious allegations" in Valente's Rejoinder in the instant administrative matter and "also **ADOPTING this as an Administrative Complaint against Ms. Ethelda B. Valente, Clerk of Court of the said Court for DERELICTION OF DUTY, DISHONESTY, DISRESPECT AND MULTIPLE GROSS VIOLATION OF SUB-PARAGRAPH 4 IN RELATION TO SUB-PARAGRAPH 8, PARAGRAPH B OF SC CIRCULAR NO. 50-95 AND PARAGRAPH 1, SEC. 68 OF P.D. 1445 x x x**."[17] Judge Barte not only defended the court personnel who Valente accused of conspiring against her, but also alleged wrongdoings and/or misdeeds committed by Valente apart from those already charged herein by Panaligan.

The Court focuses herein on Panaligan's complaint against Valente. Judge Barte's letter-complaint against Valente shall be the subject of a separate administrative investigation, wherein Valente shall again be accorded the opportunity to be heard on the new charges against her.

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[14] *Id.* at 157-158.

[15] *Id.* at 163-167.

[16] *Id.* at 168-188.

[17] *Id.* at 168-169.

The Court is presently called upon to determine whether or not Valente can be held liable for (1) neglect of duty, for her failure to furnish a copy of the notice of hearing to Panaligan, and (2) dishonesty, for relaying to Judge Barte that she personally gave a copy of the notice of hearing to Panaligan.

The Court takes note of Panaligan's consistent statement that she did not receive any notice setting Civil Case No. 2-P for hearing on August 12, 2010. Court personnel confirmed that no notice of hearing was served upon the parties in Civil Case No. 2-P. Court records are also totally bereft of any proof of service upon and receipt by Panaligan of such a notice.

In contrast, the Court is faced with Valente's bare allegation that she was able to personally give a copy of the notice of hearing to Panaligan when the latter visited the MCTC office. Mere allegation is not evidence, and is not equivalent to proof.[18] The Court cannot give much weight to Valente's allegation when she cannot even state the exact date of Panaligan's visit nor show acknowledgement receipt by Panaligan. Worse, no other MCTC court personnel substantiated Valente's claim.

While it may be true, as Valente argued, that not everyone who visited the MCTC actually logged in the MCTC logbook, thus making the logbook an unreliable proof that Panaligan had not been to the MCTC office from July 14, 2010 to August 17, 2010, it is still insufficient to absolve Valente of all administrative liability. If indeed Panaligan was at the MCTC office during the said period and was personally furnished a copy of the notice of hearing by Valente herself, then Valente should have required Panaligan to sign the original copy of said notice as proof of receipt. Valente's failure to secure Panaligan's signature as proof of receipt of a copy of the notice of hearing further exhibited lack of due diligence required by her position as Clerk of Court.

The rule is that those involved in the administration of justice from the highest official to the lowest clerk must live up to the strictest standards of honesty and integrity in the public service.

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[18] *Nedia v. Judge Laviña*, 508 Phil. 9, 20 (2005).

As an officer of the court, Valente was duty-bound to use reasonable skill and diligence in the performance of her officially-designated duties as clerk of court.[19] Valente fell short of this standard.

Valente ought to be reminded that a clerk of court is a role model for other court employees to emulate in the performance of duties as well as in the conduct and behavior of a public servant. A clerk of court cannot err without affecting the integrity of the court or the efficient administration of justice. Clerks of court play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. The conduct of all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must at all times be beyond reproach. The Court condemns and cannot countenance any act or omission on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[20]

Valente attempts to shift blame to Magbanua, the Process Server, for the failure to serve a copy of the notice of hearing upon Panaligan. Yet again, there is no evidence when Valente actually endorsed the notice of hearing to Magbanua for service upon the parties. And even granting that Magbanua had been remiss in his duties as process server, for which he should be administratively sanctioned after proper investigation and hearing, Valente is still not off the hook. As Clerk of Court, Valente exercises administrative supervision over Magbanua and it falls upon Valente to ascertain that Magbanua properly performed his duties. This Valente failed to do. There is no showing at all that Valente followed-up with Magbanua and put Magbanua to task when the latter did not submit any report and/or proof of service of the notice of hearing upon the parties.

Clerks of court perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns.

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[19] *Flores v. Conanan,* 415 Phil. 123, 128 (2001).

[20] *Becina v. Vivero,* A.M. No. P-04-1797, March 25, 2004, 426 SCRA 261, 265.

Clerks of court are charged not only with the efficient recording, filing, and management of court records but also with administrative supervision over court personnel. A clerk of court is the personnel officer of the court who exercises general supervision over all court personnel, enforces regulations, initiates investigations of erring employees, and recommends appropriate action to the judge.[21] Clerks of Court are chiefly responsible for the shortcomings of subordinates to whom administrative functions normally pertaining to them are delegated.[22]

Valente is guilty of simple neglect of duty, which has been defined as the failure of an employee to give attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[23]

Pursuant to Section 52(B) of the same Omnibus Civil Service Rules and Regulations, the penalty of simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day to six (6) months for the first violation. Section 53 of the same Rules enumerates the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, or other analogous circumstances. The Court weighs on one hand the serious consequence of Valente's negligence (Panaligan was deprived of the opportunity to collect the purported unpaid loan from the spouses Tumolin) and on the other the mitigating circumstance in Valente's favor (this is Valente's first offense in her 30 years of service to the judiciary), suspension for two months is appropriate.[24]

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[21] *Office of the Court Administrator v. Trocino,* A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 274.

[22] *Yaranon v. Rulloda*, 312 Phil. 614, 623 (1995).

[23] *Dignum v. Diamla*, 522 Phil. 369, 378 (2006).

[24] In *Santiago v. Jovellanos* (391 Phil. 682 [2000]), Clerk of Court Celestina Corpuz (Corpuz) failed to secure a registry return card or, in the absence thereof, a certification from the post office to show that the records of the accused's bail bond were mailed to the Municipal Trial Court (MTC) of San Ildelfonso, Bulacan. The MTC of San Ildefonso, Bulacan, had yet to receive said records. Because of the absence of a registry return card or post office certification, the Court doubted whether Corpuz actually transmitted the

The Court does not hold Valente administratively liable for dishonesty. Dishonesty implies a "disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity."[25] Valente, in telling Judge Barte that Panaligan was served with a notice of hearing, may have sincerely but mistakenly remembered and/or believed herself personally handing over such a notice to Panaligan; as well as casually assumed that Magbanua had served the notice of hearing upon Panaligan in the regular performance of Magbanua's duties as Process Server. In the absence of substantial evidence, the Court cannot lightly attribute to Valente an intent to lie, cheat, deceive, or defraud anyone.

WHEREFORE, Ethelda Valente, Clerk of Court II, MCTC, Patnoñgon, Antique, is found guilty of simple neglect of duty and incompetence in the performance of her official duties. She is hereby **SUSPENDED** for two (2) months without pay and **STERNLY WARNED** that a repetition of similar infractions will be dealt with more severely.

The Office of the Court Administrator is **ORDERED** to docket as a separate administrative matter the letter-complaint dated January 16, 2012 of Judge Felixberto P. Barte, Acting Presiding Judge of 3rd MCTC of Patnoñgon, Antique, and Presiding Judge of the 1st MCTC of Hamtic, Antique, charging Ethelda Valente, Clerk of Court II, MCTC, Patnoñgon, Antique, with dereliction of duty, dishonesty, disrespect, and multiple gross violation of sub-paragraph 4, in relation to sub-paragraph 8, paragraph B of SC Circular No. 50-95 and paragraph 2, Section 68 of Presidential Decree No. 1445.

SO ORDERED.

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

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records to the MTC of San Ildefonso, Bulacan, and more importantly, whether the accused indeed posted a bail bond for the latter's temporary liberty in several criminal cases. For being remiss in the performance of her duties and in the absence of any mitigating circumstance, the Court imposed upon Corpuz the penalty of suspension without pay for four (4) months.

[25] *Concerned Citizen v. Gabral, Jr.,* 514 Phil. 209, 219 (2005).

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

FIRST DIVISION

[A.M. No. MTJ-12-1804. July 30, 2012]
(Formerly A.M. OCA I.P.I. No. 09-2179-MTJ)

CITY PROSECUTOR ARMANDO P. ABANADO, *complainant, vs.* **JUDGE ABRAHAM A. BAYONA, Presiding Judge Municipal Trial Court in Cities, Branch 7, Bacolod City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; CONSIDERED AS AN EXECUTIVE FUNCTION.—** The conduct of a preliminary investigation is primarily an executive function. Thus, the courts must consider the rules of procedure of the Department of Justice in conducting preliminary investigations whenever the actions of a public prosecutor is put in question. An examination of the 2008 Revised Manual for Prosecutors of the Department of Justice-National Prosecution Service (DOJ-NPS Manual), therefore, is necessary.

2. **ID.; ID.; ID.; 2008 REVISED MANUAL FOR PROSECUTORS OF THE DEPARTMENT OF JUSTICE-NATIONAL PROSECUTION SERVICE; DOES NOT REQUIRE THE ATTACHMENT TO AN INFORMATION THE RESOLUTION OF THE INVESTIGATING PROSECUTOR RECOMMENDING THE DISMISSAL OF A CRIMINAL COMPLAINT AFTER IT WAS REVERSED BY THE PROVINCIAL, CITY OR CHIEF STATE PROSECUTOR. —** [T]he guidelines for the documentation of a resolution by an investigating prosecutor, who after conducting preliminary investigation, finds no probable cause and recommends a dismissal of the criminal complaint, can be summed as follows: (1) the investigating prosecutor prepares a resolution recommending the dismissal and containing the following: a. summary of the facts of the case; b. concise statement of the issues therein; and c. his findings and recommendations. (2) within five days from the date of his resolution, the investigating fiscal shall forward his resolution to the provincial, city or chief state prosecutor, as the case may be, for review;

(3) if the resolution of the investigating prosecutor is reversed by the provincial, city or chief state prosecutor, the latter may file the information himself or direct another assistant prosecutor or state prosecutor to do so; (4) the resolution of the investigating prosecutor shall be strictly confidential and may not be released to the parties, their counsels and/or any other unauthorized person until the same shall have been finally acted upon by the provincial, city or chief state prosecutor or his duly authorized assistant and approved for promulgation and release to the parties; and (5) that the resolution of the investigating prosecutor, the complainant's affidavit, the sworn statements of the prosecution's witnesses, the respondent's counter-affidavit and the sworn statements of his witnesses and such other evidence, ***as far as practicable***, shall be attached to the information. We find that there is nothing in the DOJ-NPS Manual requiring the removal of a resolution by an investigating prosecutor recommending the dismissal of a criminal complaint after it was reversed by the provincial, city or chief state prosecutor. Nonetheless, we also note that attaching such a resolution to an information filed in court is optional under the aforementioned manual. The DOJ-NPS Manual states that the resolution of the investigating prosecutor should be attached to the information only "as far as practicable." Thus, such attachment is not mandatory or required under the rules.

3. JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW; A JUDGE'S ACT OF ORDERING THE PRODUCTION OF THE INVESTIGATING PROSECUTOR'S RESOLUTION OF DISMISSAL THAT HAD BEEN REVERSED BY THE CITY PROSECUTOR, NOT A CASE OF.— [N]ot every judicial error is tantamount to ignorance of the law and if it was committed in good faith, the judge need not be subjected to administrative sanction. While complainant admitted that he erred in insisting on the production of the Jarder Resolution despite the provisions of the DOJ-NPS Manual, such error cannot be categorized as gross ignorance of the law as he did not appear to be motivated by bad faith. Indeed, the rules of procedure in the prosecution office were not clear as to whether or not an investigating prosecutor's resolution of dismissal that had been reversed by the city prosecutor should still form part of the records.

4. ID.; ID.; GROSS MISCONDUCT; PRESUPPOSES EVIDENCE OF GRAVE IRREGULARITY IN THE PERFORMANCE OF DUTY.— Neither did respondent's action amount to gross misconduct. Gross misconduct presupposes evidence of grave irregularity in the performance of duty. In the case at bar, respondent's act of requiring complainant to explain why he should not be cited in contempt for his failure to submit the Jarder Resolution in court was in accordance with established rules of procedure. Furthermore, complainant did not abuse his contempt power as he did not pursue the proceedings in view of the May 29, 2009 and June 15, 2009 Gellada orders. Lastly, x x x respondent issued those orders in good faith as he honestly believed that they were necessary in the fair and just issuance of the warrant of arrest in Criminal Case No. 09-03-16474.

5. LEGAL ETHICS; ATTORNEYS; DISBARMENT; COMPLAINTS FOR DISBARMENT AGAINST A LAWYER ARE ORDINARILY REFERRED TO AN INVESTIGATOR.— [U]nder the Rules of Court, complaints for disbarment against a lawyer are ordinarily referred to an investigator who shall look into the allegations contained therein. However, in the interest of expediency and convenience, as the matters necessary for the complete disposition of the counter-complaint are found in the records of the instant case, we dispose of the same here. We find no merit in the countercharges. It appears from the records that complainant's non-submission of the Jarder Resolution was motivated by his honest belief that his action was in accord with the procedures in the prosecution office. It likewise cannot be said that the filing of the present administrative case against Judge Bayona was tainted with improper motive or bad faith.

D E C I S I O N

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

The case now before this Court sprang from Criminal Case No. 09-03-16474, entitled *People of the Philippines v. Cresencio Palo, Sr.*[1] On March 24, 2009, complainant City Prosecutor

[*] Acting chairperson per Special Order No. 1226 dated May 30, 2012.

[1] For Violation of Section 12, Republic Act No. 6539 or the Anti-Carnapping Act of 1972.

Armando P. Abanado filed the Information[2] in the Municipal Trial Court in Cities, Bacolod City, which was eventually raffled to Branch 7 thereof presided by respondent Judge Abraham A. Bayona.

On April 13, 2009, respondent issued the following order in Criminal Case No. 09-03-16474 in connection with the issuance of a warrant of arrest against the accused therein:

> Pursuant to [Section] 6, paragraph (a) in relation to [paragraph] b, Rule 112 of the Revised Rules of Criminal Procedure, the Office of the City Prosecutor of Bacolod City is hereby ordered to present additional evidence, relevant records and documents to enable this Court to evaluate and determine the existence of probable cause, to wit:
>
> 1. Copy of the Memorandum of Preliminary Investigation;
> 2. Resolution of the Investigating Prosecutor on Record, Prosecutor Dennis S. Jarder [Jarder Resolution];
> 3. Memorandum of the transfer of case assignment from designated Investigating Prosecutor to the City Prosecutor; [and]
> 4. Exhibit to the Court, the copies of all documents submitted by the complainant and the respondents [therein] for comparison, authentication and completeness of the photocopies attached to the information.
>
> Compliance is required within five (5) days from receipt of this Order.[3]

On April 29, 2009, the Office of the City Prosecutor submitted a copy of the Memorandum of Preliminary Investigation and informed respondent that the documents submitted by the parties for preliminary investigation were already appended to the complaint, thus, taking care of items 1, 2, and 4 required by the April 13, 2009 Order.

With respect to item 3 thereof, complainant, in a letter also dated April 29, 2009, explained that there was no memorandum

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

[3] *Id.* at 19.

of transfer of the case from the investigating prosecutor, Assistant City Prosecutor (ACP) Dennis S. Jarder, to him.[4] In his aforementioned letter, complainant discussed that the case was initially handled by ACP Jarder who found no probable cause against Cresencio Palo, Sr., accused in Criminal Case No. 09-03-16474. However, complainant, upon review pursuant to Section 4, Rule 112 of the Revised Rules of Criminal Procedure,[5]

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[4] *Id.* at 22. Signed by Associate Prosecution Attorney I Lady Liza Rodrigazo-Placido.

[5] RULES OF COURT, Rule 112, Section 4 provides:

Section 4. *Resolution of investigating prosecutor and its review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss

found otherwise; that is, there was probable cause against Palo. Thus, complainant disapproved ACP Jarder's Resolution and filed the Information in court.[6]

Respondent was nonetheless dissatisfied with the explanation of the Office of the City Prosecutor. In an Order dated May 5, 2009,[7] respondent stated that the Jarder Resolution (dismissing the complaint) was part and parcel of the official records of the case and, for this reason, must form part of the records of the preliminary investigation. He further stated that because there was a conflict between Jarder's and complainant's resolutions, those documents were necessary in the evaluation and appreciation of the evidence to establish probable cause for the issuance of a warrant of arrest against Palo.

> WHEREFORE, in view of the foregoing premises, [complainant] is hereby ordered to complete the records of this case by producing in Court this official and public document (Resolution of the Investigating Prosecutor Dennis S. Jarder), required by the Revised Rules o[f] Criminal Procedure, Rules of Court. Compliance is required within five (5) days from receipt hereof. Fail not under the pain of Contempt.[8]

On May 11, 2009, in view of the foregoing order, the Office of the City Prosecutor again sent a letter[9] explaining the impossibility of submitting the Jarder Resolution to the court. The letter stated that the Jarder Resolution was no longer part of the records of the case as it was disapproved by complainant and it attached a letter of Chief State Prosecutor Jovencito Zuño which reads:

> This refers to your letter dated April 18, 2008. For your information, all resolutions prepared by an Investigating Prosecutor after

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or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied.)

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

[7] *Id.* at 23-25.

[8] *Id.* at 25.

[9] *Id.* at 26.

preliminary investigation shall form part of the record of the case. But if they have been disapproved by the Provincial/City Prosecutor, the same shall not be released to the parties and/or their counsels. Thus, only resolutions approved by the Provincial/City Prosecutor for promulgation and release to the parties shall be made known to the parties and/or their counsel.[10]

Respondent did not accept the explanations made by the Office of the City Prosecutor and insisted instead that the Jarder Resolution should form part of the records of the case. Thus, in an Order[11] dated May 14, 2009, he required complainant to explain within five days from the receipt thereof why he should not be cited for contempt under Section 3, Rule 71 of the Rules of Court.[12]

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[10] *Id.* at 92.

[11] *Id.* at 27-29.

[12] RULE OF COURT, Rule 71, Section 3 provides:

SEC. 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

Complainant received the aforementioned order on May 15, 2009 and requested for a ten-day extension to comply with it.[13]

In an Order[14] dated May 19, 2009, respondent denied the request of a ten-day extension and set the hearing for the contempt charges on May 26, 2009. He likewise ordered the Clerk of Court to issue a *subpoena duces tecum ad testificandum* to ACP Jarder directing him to testify on the existence of his resolution dismissing the case against Palo and to Office of the City Prosecutor's Records Officer Myrna Vañegas to bring the entire record of the preliminary investigation of the Palo case.

Aggrieved, complainant immediately filed a motion for inhibition[15] against respondent on May 20, 2009 claiming:

> 4. That [Complainant] is now in a quandary because despite the fact that the production of the disapproved resolution is not required under Circular Resolution No. 12 for purposes of issuance of warrant of arrest[,] the Court is very much interested in its production and adding insult to injury in foisting to cite in contempt the City Prosecutor for its non-production.
>
> 5. That the issuance of said order is capricious and whimsical and issued with grave abuse of discretion. Because as it appears now, the presiding judge is very much interested in the outcome of this case, thereby showing bias and prejudice against the prosecution.[16]

Complainant likewise filed a petition for *certiorari* with a prayer for the issuance of a temporary restraining order (TRO)

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

[13] *Rollo,* p. 30.

[14] *Id.* at 30-31.

[15] *Id.* at 32-33.

[16] *Id.* at 33.

to restrain respondent from proceeding[17] with the May 26, 2009 hearing of the contempt proceedings. Complainant's prayer for a TRO was granted in an Order dated May 25, 2009 by Presiding Judge Pepito B. Gellada of the Regional Trial Court, Branch 53, Bacolod City.

In an Order[18] dated June 15, 2009, Judge Gellada granted the petition for *certiorari* (Gellada Order) holding that:

> [W]hen a city or provincial prosecutor reverses the investigating assisting city or provincial prosecutor, the resolution finding probable cause replaces the recommendation of the investigating prosecutor recommending the dismissal of the case. The result would be that the resolution of dismissal no longer forms an integral part of the records of the case. It is no longer required that the complaint or entire records of the case during the preliminary investigation be submitted to and be examined by the judge.
>
> The rationale behind this practice is that the rules do not intend to unduly burden trial judges by requiring them to go over the complete records of the cases all the time for the purpose of determining probable cause for the sole purpose of issuing a warrant of arrest against the accused. "**What is required**, **rather**, **is that the judge must have sufficient supporting documents** (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) **upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause**. x x x.[19] (Emphases supplied.)

The records thereafter make no mention of what happened in Criminal Case No. 09-03-16474.

On July 10, 2009, complainant executed the present administrative complaint and the same was received by the Office of the Court Administrator (OCA) on August 20, 2009.[20] Complainant alleged therein that respondent was guilty of gross

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[17] Docketed as Civil Case No. 09-13383.

[18] *Rollo*, pp. 35-42.

[19] *Id.* at 40-41.

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

ignorance of the law or procedure,[21] gross misconduct,[22] and violation of Supreme Court Circular No. 12 dated June 30, 1987.[23] He essentially asserted that respondent unduly burdened himself by obsessing over the production of the records of the preliminary investigation, especially the Jarder Resolution.

Respondent, in his Comment with Counter-Complaint for Disbarment of Prosecutor Abanado,[24] essentially reiterated the importance of the Jarder Resolution in deciding whether to issue a warrant of arrest in Criminal Case No. 09-03-16474. He stated that the document was "material and relevant in the proper conduct of preliminary investigation and the neutral, objective and circumspect appreciation of the Judge of the evidence x x x for a proper and just determination whether probable cause exist[s] or not for [the] possible issuance of a warrant of arrest."[25] As for respondent's countercharge, he claimed complainant should be disbarred for (a) filing a malicious and unfounded administrative complaint; (b) disrespect and disobedience to judicial authority; (c) violation of the sanctity of public records; (d) infidelity in the custody of documents; and (e) misconduct and insubordination.[26]

In a Reply[27] dated October 8, 2009, complainant vehemently denied respondent's charges against him and claimed that they

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[21] RULES OF COURT, Rule 140, Section 8(9).

[22] *Id.*, Section 8(3).

[23] A hearing is not necessary therefor. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge, following the established doctrine and procedure, shall either (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest, or (b) if on the face of the information he finds no probable cause, he may disregard the prosecutor's certification and require the submission of the supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. (*De los Santos-Reyes v. Judge Montesa, Jr.*, 317 Phil. 101, 111 (1995).

[24] *Rollo,* pp. 57-82; dated October 1, 2009.

[25] *Id.* at 61.

[26] *Id.* at 79-80.

[27] *Id.* at 102-107.

were merely meant to discourage him from pursuing his just and valid administrative complaint.

On February 2, 2011, the OCA submitted its report and recommendation.[28] It noted the June 15, 2009 Gellada Order which held that the resolution of the city or provincial prosecutor finding probable cause replaces the recommendation of the investigating prosecutor. In such case, the resolution recommending the dismissal is superseded, and no longer forms an integral part of the records of the case and it need not be annexed to the information filed in court. Thus, the OCA held that complainant cannot be held guilty of contempt. Nevertheless, because there was no showing that respondent was motivated by bad faith and settled is the rule that the acts of a judge in his judicial capacity are not subject to the disciplinary action, it recommended that:

(a) The administrative complaint against [respondent] be **RE-DOCKETED** as a regular administrative case; and,

(b) [Respondent] be **REPRIMANDED** with **STERN WARNING** that a repetition of the same or similar offenses will be dealt with more severely.[29]

We adopt the factual findings of the OCA but find reason not to impose the recommended penalty of reprimand on respondent.

We are tasked to determine whether respondent was administratively liable for gross ignorance of the law, gross misconduct and violation of Supreme Court Circular No. 12 dated June 30, 1987 for requiring the Office of the City Prosecutor to submit the Jarder Resolution to the court despite the reversal thereof.

The conduct of a preliminary investigation is primarily an executive function.[30] Thus, the courts must consider the rules

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[28] *Id.* at 118-121.

[29] *Id.* at 121.

[30] *Metropolitan Bank and Trust Company v. Tobias,* G.R. No. 177780, January 25, 2012; *People v. Court of Appeals and Cerbo*, 361 Phil. 401, 410 (1999).

of procedure of the Department of Justice in conducting preliminary investigations whenever the actions of a public prosecutor is put in question. An examination of the 2008 Revised Manual for Prosecutors of the Department of Justice-National Prosecution Service[31] (DOJ-NPS Manual), therefore, is necessary.

The pertinent provisions of the DOJ-NPS Manual are as follows:

> J. PREPARATION OF THE RESOLUTION
>
> 1. When There is Lack of Probable Cause
>
> **If the investigating prosecutor does not find sufficient basis for the prosecution of the respondent, he shall prepare the resolution recommending the dismissal of the complaint.**
>
> x x x x x x x x x
>
> 3. Form of the Resolution and Number of Copies
>
> The resolution shall be written in the official language, personally and directly prepared and signed by the investigating prosecutor. It shall be prepared in as many copies as there are parties, plus five (5) additional copies.
>
> x x x x x x x x x
>
> e. Contents of the Body of the Resolution
>
> In general, the body of [the] resolution should contain:
>
> 1. a brief summary of the facts of the case;
>
> 2. a concise statement of the issues involved;
>
> 3. applicable laws and jurisprudence; and
>
> 4. the findings, including an enumeration of all the documentary evidence submitted by the parties and recommendations of the investigating prosecutor.
>
> All material details that should be found in the information prepared by the Investigating Prosecutor shall be stated in the resolution.

[31] Superseding Department Order No. 153, s. 1996.

x x x x x x x x x

K. TRANSMITTAL OF THE RECOMMENDATORY RESOLUTION AND INFORMATION TOGETHER WITH THE COMPLETE RECORD OF THE CASE

The investigating prosecutor shall forward his [**recommendation**] **and Information, together with the complete records of the case, to the Chief State/ Regional State/ Provincial/City Prosecutor concerned within five (5) days from the date of his resolution**.

x x x x x x x x x

3. Documents to be Attached to the Information

An information that is filed in court shall, **as far as practicable**, **be accompanied by a copy of the resolution of the investigating prosecutor**, the complainant's affidavit, the sworn statements of the prosecution's witnesses, the respondent's counter-affidavit and the sworn statements of his witnesses and such other evidence as may have been taken into account in arriving at a determination of the existence of probable cause.

4. Confidentiality of Resolutions

All resolutions prepared by an investigating prosecutor after preliminary investigation, whether his recommendation be for the filing or dismissal of the case, **shall be held in strict confidence and shall not be made known to the parties, their counsels and/or to any unauthorized person until the same shall have been finally acted upon by the Chief State/Regional State/Provincial/ City Prosecutor or his duly authorized assistant and approved for promulgation and release to the parties**.

x x x x x x x x x

L. ACTION OF THE CHIEF STATE/REGIONAL STATE/ PROVINCIAL OR CITY PROSECUTOR ON THE RECOMMENDATORY RESOLUTION

The Chief State/Regional State/Provincial or City Prosecutor concerned shall act on all resolutions within a period of thirty (30) days from receipt thereof, extendible

for another thirty (30) days in cases involving complex issues and/or heavy workload of the head of office, by either:

x x x x x x x x x

3. reversing the recommendation of the investigating prosecutor, in which case, the Chief State/Regional State/Provincial or City Prosecutor

   a. may file the corresponding Information in court (except the Regional State Prosecutor); or

   b. direct any other state prosecutor or assistant prosecutor, as the case may be, to do so.

   In both instances, there is no more need for the head of office concerned to conduct another preliminary investigation. (Emphases supplied.)

Based on the foregoing, the guidelines for the documentation of a resolution by an investigating prosecutor, who after conducting preliminary investigation, finds no probable cause and recommends a dismissal of the criminal complaint, can be summed as follows:

(1) the investigating prosecutor prepares a resolution recommending the dismissal and containing the following:

   a. summary of the facts of the case;

   b. concise statement of the issues therein; and

   c. his findings and recommendations.

(2) within five days from the date of his resolution, the investigating fiscal shall forward his resolution to the provincial, city or chief state prosecutor, as the case may be, for review;

(3) if the resolution of the investigating prosecutor is reversed by the provincial, city or chief state prosecutor, the latter may file the information himself or direct another assistant prosecutor or state prosecutor to do so;

(4) the resolution of the investigating prosecutor shall be strictly confidential and may not be released to the parties,

their counsels and/or any other unauthorized person until the same shall have been finally acted upon by the provincial, city or chief state prosecutor or his duly authorized assistant and approved for promulgation and release to the parties; and

(5) that the resolution of the investigating prosecutor, the complainant's affidavit, the sworn statements of the prosecution's witnesses, the respondent's counter-affidavit and the sworn statements of his witnesses and such other evidence, ***as far as practicable***, shall be attached to the information.

We find that there is nothing in the DOJ-NPS Manual requiring the removal of a resolution by an investigating prosecutor recommending the dismissal of a criminal complaint after it was reversed by the provincial, city or chief state prosecutor.

Nonetheless, we also note that attaching such a resolution to an information filed in court is optional under the aforementioned manual. The DOJ-NPS Manual states that the resolution of the investigating prosecutor should be attached to the information only "as far as practicable." Thus, such attachment is not mandatory or required under the rules.

In view of the foregoing, the Court finds that respondent erred in insisting on the production of the Jarder Resolution when all other pertinent documents regarding the preliminary investigation have been submitted to his court, and in going so far as to *motu proprio* initiating a proceeding for contempt against complainant.

However, not every judicial error is tantamount to ignorance of the law and if it was committed in good faith, the judge need not be subjected to administrative sanction.[32] While complainant admitted that he erred in insisting on the production of the Jarder Resolution despite the provisions of the DOJ-NPS Manual, such error cannot be categorized as gross ignorance of the law as he did not appear to be motivated by bad faith. Indeed, the rules

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[32] *Amante-Descallar v. Judge Ramas,* A.M. No. RTJ-08-2142, March 20, 2009, 582 SCRA 22.

of procedure in the prosecution office were not clear as to whether or not an investigating prosecutor's resolution of dismissal that had been reversed by the city prosecutor should still form part of the records.

Neither did respondent's action amount to gross misconduct. Gross misconduct presupposes evidence of grave irregularity in the performance of duty.[33] In the case at bar, respondent's act of requiring complainant to explain why he should not be cited in contempt for his failure to submit the Jarder Resolution in court was in accordance with established rules of procedure. Furthermore, complainant did not abuse his contempt power as he did not pursue the proceedings in view of the May 29, 2009 and June 15, 2009 Gellada orders.[34] Lastly, as previously discussed, respondent issued those orders in good faith as he honestly believed that they were necessary in the fair and just issuance of the warrant of arrest in Criminal Case No. 09-03-16474.

As far as the disbarment charges against complainant are concerned, under the Rules of Court, complaints for disbarment against a lawyer are ordinarily referred to an investigator who shall look into the allegations contained therein.[35] However, in the interest of expediency and convenience, as the matters necessary for the complete disposition of the counter-complaint are found in the records of the instant case, we dispose of the same here. We find no merit in the countercharges. It appears from the records that complainant's non-submission of the Jarder Resolution was motivated by his honest belief that his action was in accord with the procedures in the prosecution office. It likewise cannot be said that the filing of the present administrative case against Judge Bayona was tainted with improper motive or bad faith.

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[33] See *Ocampo v. Arcaya-Chua,* A.M. OCA I.P.I. No. 07-2630-RTJ, April 23, 2010, 619 SCRA 59, 92-93.

[34] *Cf. Tabujara III v. Gonzales-Asdala,* A.M. No. RTJ-08-2126, January 20, 2009, 576 SCRA 404, 413-414.

[35] *See* RULES OF COURT, Rule 139-B.

ACCORDINGLY, the complaint against Judge Abraham A. Bayona of the Municipal Trial Court in Cities, Bacolod City, Branch 7 is **DISMISSED.**

The counter-complaint against City Prosecutor Armando P. Abanado is likewise **DISMISSED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 179265. July 30, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISTINA GUSTAFSSON *Y* NACUA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In the case of *People v. Miguel*, the Court held that for an accused to be convicted of the crime of illegal possession of dangerous drugs, it is necessary that the following elements be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION THEREOF BY THE TRIAL JUDGE GENERALLY DESERVES MUCH WEIGHT AND

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

RESPECT.— [I]n criminal cases the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe said witnesses on the stand and ascertain if they are telling the truth or not. Absent any showing in this case that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses. This is especially so in this case since there is no showing that the prosecution witnesses were moved by ill motives to impute such a serious crime as possession of illegal drugs against the appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

Appellant Cristina Gustafsson *y* Nacua appeals the June 27, 2007 Decision[1] of the Court of Appeals (CA) which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pasay City,

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[1] *Rollo*, pp. 12-28. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso concurring. The dispositive portion reads:

> WHEREFORE, the Decision of the Regional Trial Court of Pasay City, Branch 119 in Criminal Case No. 00-1675, finding accused-appellant Cristina Gustafsson *y* Nacua, guilty beyond reasonable doubt of violation of Section 16, Article III of R.A. 6425, and sentencing her to suffer the penalty of *RECLUSION PERPETUA* and to pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), without subsidiary imprisonment in case of insolvency, is AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.

[2] CA *rollo*, pp. 38-69. Penned by Judge Pedro De Leon Gutierrez in Criminal Case No. 00-1675.

Branch 119 convicting her of Violation of Section 16, Article III of Republic Act (R.A.) No. 6425 or the Dangerous Drugs Act of 1972.

Appellant was charged under the following Information:

That on or about September 19, 2000, at the Ninoy Aquino International Airport, Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously possess methamphetamine hydrochloride, a regulated drug, that is commonly known as "*shabu*" and with an approximate weight of two thousand six hundred twenty[-]six point forty[-]nine (2,626.49) grams without the corresponding license or authority whatsoever.

Contrary to law.[3]

The facts, as summarized by the Office of the Solicitor General (OSG) and adopted by the appellate court, are as follows:

Around [6:00 P.M. on] September 19, 2000, Cabib Tangomay, a Customs Examiner of the Bureau of Customs assigned at the Departure Operation Division of the Ninoy Aquino International Airport (NAIA), Pasay City, received an information from Police Chief Inspector (P/Ins.) Elmer P[e]lobello, the Chief of the Philippine National Police (PNP) Intelligence Unit, that a departing passenger at the airport was suspected of carrying "*shabu*". Tangomay, together with the chief of their office, Customs Examiner Boning Benito, the Duty Non-Uniformed Personnel Supervisor PO2 Paterno Ermino, SPO2 Jerome Cause and action officer Jun Fernandez, proceeded to the departure area[, specifically] near the x-ray machine at the check-in counter situated at the West Lane of the NAIA. About 6:20 P.M. of the same date, a lady passenger bound for Frankfurt, Germany, arrived.

About the same time, Lourdes Macabilin, a member of the Non-Uniformed Personnel of the First Regional Aviation Security Office (RASO), PNP, was assigned as an x-ray operator at the West Check-in area of NAIA, Pasay City. Her duty was to monitor all baggages brought by passengers that pass through the x-ray machine. While she was manning the x-ray machine and screening the luggages

[3] *Id.* at 12-13.

passing through the conveyor at that time, she noticed a black object which appeared on the monitor of the x-ray machine. Macabilin immediately called the attention of her supervisor on duty, PO2 Paterno Ermino, who was about two meters from her, about the black image or object inside a luggage bag appearing in the monitor of the x-ray machine. PO2 Ermino separated said luggage from the other bags in the conveyor. After a few seconds, the owner of the luggage, who had just passed through the walk-thru counter, picked up said luggage. The owner was later identified as appellant Cristina [Gustafsson]. PO2 Ermino then called Mr. Araracap, a baggage inspector, and asked Customs Examiners Tangomay and Benito to open the luggage in the presence of appellant. They checked the luggage but could not find the object inside appearing with the black image. Thus, they returned the luggage to the x-ray machine. For the second time, they saw on the monitor black images on the shoes inside the luggage. Tangomay opened the luggage, got the two pairs of shoes, together with a car air freshener, and put said items on the x-ray machine, where black objects appeared on the monitor. Tangomay then opened the soles of the shoes and found plastic sachets containing white crystalline substance concealed therein. The car air freshener was also opened and found to contain the same white crystalline substance. Thereafter, they brought appellant, together with her luggage (specifically, a bag) containing the plastic sachets with white crystalline substance to the First RASO within the NAIA complex.

Appellant was officially turned over to SPO2 Jerome Cause at the headquarters of the PNP Aviation Security Group Pildera II, Pasay City. An inventory was conducted on the contents of appellant's luggage and her other personal belongings. The authorities placed markings on and signed the plastic sachets found inside appellant's bag. The inventory, however, was not finished on said day and was continued the following day, September 20, 2000. After the inventory of the contents of the subject bag had been finished, SPO2 Cause shook the bag in the presence of appellant, PO2 Samuel Hojilla, Tangomay and Benito to show that there was nothing left inside the bag when its wooden support was accidentally detached, revealing a plastic rubber containing four (4) plastic sachets with white crystalline substance. Another inventory was conducted on the four plastic sachets found at the bottom of the bag's wooden support. Thereafter, SPO2 Cause and PO2 Hojilla executed a joint affidavit [as] to the discovery of the four other plastic sachets containing white crystalline substance. Subsequently, P/Ins. Pelobello, as chief

of the Intelligence Unit, prepared a report addressed to the Drug Interdiction Task Group (DITG)-NAIA, x x x for the turn-over of appellant's custody.

Around 9:16 P.M. on September 20, 2000, PO2 Orlando Tanega brought the specimen confiscated from appellant to the [NBI], with a request that the same be subjected to laboratory examination. Patricia Ann Prollamante, a forensic chemist of the [NBI], x x x asked their office's photographer to take pictures of the specimen. x x x The total weight of all the specimen was 2,626.49 grams. [Her] chemical testing [Marxis and Simons tests] x x x and Thin Layer Chromatographic test x x x revealed the presence of methamphetamine hydrochloride on all the specimen. x x x she reduced her findings into writing and submitted the same to their evidence custodian for safekeeping.[4]

The appellant, on the other hand, gave a different version[5] of the incident.

She claimed that on September 19, 2000, at around 6:00 p.m., she was at the NAIA, particularly at the conveyor of the x-ray machine, preparing to board a flight bound for Germany. While waiting in line, a Muslim-looking man who had been curiously looking at her, greeted her. She deposited her black trolley bag and black shoulder bag on the conveyor, while the same man likewise placed his bags numbering about four to five on the conveyor belt. She noticed that one of the man's bags resembled her black trolley bag. All the while, the Muslim-looking man was behind her.

After she crossed over the walk-through machine, a civilian airport employee accosted her. At that time, she noticed that the Muslim-looking man was already out of sight. After about twenty minutes, she was told that she was carrying drugs taken from two pairs of sandals found inside her trolley. Appellant immediately professed that she had no knowledge about the drugs shown to her. The bag from where the sandals were allegedly taken was not shown to her.

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[4] *Rollo*, pp. 13-16.

[5] *Id.* at 16-19; CA *rollo*, pp. 52-59.

Subsequently, a number of police officers made her sign a document without the assistance of a lawyer. She was told that she could still catch her flight after signing the said document, which she later identified in open court as her purported affidavit. Thereafter, she was brought to the National Bureau of Investigation and to the Department of Justice. In open court, appellant denied that the bag shown to her was her black trolley bag, but admitted that the personal belongings shown in the pictures were hers.

Collaborating appellant's version of the story was Racquell Redondo. Redondo testified that she knew Cristina Gustafsson personally as she was the friend of her siblings who were all based in Germany. Cristina was in fact a fiancée of one of her brothers. Redondo added that Cristina stayed with her at their house at 313 Captain Serino St. Mabolo II, Bacoor, Cavite when she arrived in the Philippines on September 1, 2000. Redondo claimed that she prepared Gustafsson's luggage before the latter left their house for the airport. She denied packing an air freshener canister inside the baggage. When shown of the pictures of the luggage confiscated by authorities, she denied that it was the same black bag that Cristina brought with her to the airport.

After trial, the RTC found appellant guilty beyond reasonable doubt of violation of Section 16, R.A. No. 6425, as amended by R.A. No. 7659. The *fallo* of the Decision promulgated on June 29, 2005 by the RTC reads:

> WHEREFORE, in view of the foregoing, the Court finds the accused Cristina Gustafsson *y* Nacua guilty beyond reasonable doubt for violation of Section 16 of Republic Act [No.] 6425, as amended by RA 7659, and hereby sentences to a prison term of *Reclusion Perpetua*. Likewise, the said accused is ordered to pay a fine of ₱500,000.00, without subsidiary imprisonment, in case of insolvency and to pay the costs.
>
> The *methamphetamine hydrochloride* is forfeited in favor of the government and to be turned over to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED.[6]

The RTC was convinced that the prosecution had adequately proven that the appellant was the one who picked up the baggage and was the one who claimed to be the owner when asked by PO2 Ermino. The charge being *malum prohibitum*, the intent, motive or knowledge of the accused need not be shown. The trial court also noted that the prosecution witnesses' narration of the incident was categorical and free from any serious contradiction. As such, it cannot be overcome by the plain denial of the appellant.

In her appeal before the CA, appellant made the following assignment of errors in her Brief:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES OF PROSECUTION WITNESSES – POLICE OFFICERS AND AIRPORT PERSONNEL.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 16, ARTICLE III, RA NO. 6425.[7]

Summarily, appellant claimed that the RTC erred in its assessment of the credibility of the testimonies of the prosecution witnesses and in applying the principle of regularity in the performance of official duty.

Appellant argued that the testimonies of the prosecution witnesses who were all police officers and/or customs and airport

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[6] CA *rollo*, pp. 68-69.

[7] *Id.* at 80.

personnel, lacked credibility and were self-serving. Likewise, the presumption of regularity in the performance of official duties was wrongly applied considering that the public employees concerned had violated her constitutional right to assistance of counsel and did not apprise her of her right against self-incrimination during her investigation. She also argued that the testimonies of the prosecution witnesses should not have been taken as gospel truth as prosecution witness Cabib Tangomay failed to identify which of the nine plastic packs of *shabu* were confiscated from her luggage.[8]

The plaintiff-appellee, through the OSG, countered that the trial court correctly gave credence to the testimonies of the prosecution witnesses. The OSG noted that when Tangomay, together with P/Ins. Elmer Pelobello, PO2 Ermino, SPO2 Cause and Jun Fernandez, asked appellant if she was the owner of the luggage containing *shabu* concealed inside some of the belongings therein, she replied in the affirmative. Appellant even acceded when they asked her to open the padlock of the bag. The OSG likewise stressed that the prosecution witnesses regularly performed their assigned tasks during the incident on September 19, 2000 and narrated in a consistent, straightforward and categorical manner how they discovered *shabu* in appellant's luggage. The OSG added that in cases involving violations of the Dangerous Drugs Act, appellate courts tend to rely heavily upon the trial court's assessment of the credibility of witnesses, as trial courts have the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination.

As to the failure of prosecution witness Tangomay to identify which of the plastic packs of *shabu* were taken from which pair of appellant's shoes, the OSG considered the failure too trivial an omission to cast doubt on his credibility. The OSG pointed out that Tangomay explained on re-direct examination that despite his failure to identify which of the nine packs of *shabu* came from which of the two shoes, he was very sure that

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[8] *Id.* at 88-92.

the *shabu* came from appellant's bag because he had his signature on the nine plastic packs containing *shabu*.

As aforesaid, the CA affirmed appellant's conviction in the assailed Decision dated June 27, 2007.

According to the CA, contrary to appellant's contention, evidence is self-serving only when the statement is extrajudicially made, not when made in the course of judicial proceedings. The CA noted that in this case, the testimonies of the prosecution witnesses were made before the court *a quo* where the defense had the chance to cross-examine the witnesses. The CA also held that the prosecution witnesses who were police officers enjoy the presumption of regularity in the performance of official duties absent contrary evidence showing ill motive on their part or deviation from the regular performance of their duties.

The appellate court also believed that although the public employees concerned had violated appellant's constitutional rights because she was not given the assistance of counsel when she signed the affidavit nor was she apprised of her right against self-incrimination during the investigation, the modern trend in jurisprudence favors flexibility in believing the testimony of a witness. The appellate court stated that a court may accept or reject portions of a witness' testimony based on its inherent credibility or on the corroborative evidence in the case.

Undaunted, appellant now comes to this Court raising the same issues and arguments she raised in her brief before the CA.[9]

We affirm appellant's conviction.

In the case of *People v. Miguel*,[10] the Court held that for an accused to be convicted of the crime of illegal possession of dangerous drugs, it is necessary that the following elements be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and

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[9] *Id.* at 29, 36.

[10] G.R. No. 180505, June 29, 2010, 622 SCRA 210, 221.

consciously possessed the said drug. In this case, the evidence on record established beyond reasonable doubt that appellant was caught in possession of the *shabu* found in her luggage. Upon examination by Forensic Chemist Patricia Ann Prollamante of the National Bureau of Investigation, the specimen contained in each of the nine plastic sachets confiscated from appellant also yielded positive results for the presence of *methamphetamine hydrochloride* or *shabu*.[11] Thus, all three elements were duly established.

Appellant insists that the prosecution's witnesses lack credibility. However, we see no reason why the Court should overturn the appraisal of the trial court as regards the credibility of the prosecution's witnesses. It has been consistently held that in criminal cases the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect because the judge has the direct opportunity to observe said witnesses on the stand and ascertain if they are telling the truth or not.[12] Absent any showing in this case that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses. This is especially so in this case since there is no showing that the prosecution witnesses were moved by ill motives to impute such a serious crime as possession of illegal drugs against the appellant. Indeed, both courts *a quo* correctly applied the presumption of regularity in the performance of official duty and held the same to prevail over appellant's self-serving and uncorroborated denial.[13] Before the RTC, appellant denied ownership or possession of the luggage and suggested that the baggage which she picked up, or was about to pick up before

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[11] CA *rollo*, pp. 51-52.

[12] See *People v. Sy*, G.R. No. 147348, September 24, 2002, 389 SCRA 594, 605.

[13] See *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 770, citing *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 522-523.

she was caught, might be the one placed on the conveyor by the Muslim-looking man. The RTC correctly gave scant consideration to this contention considering that appellant admitted that some of the personal belongings retrieved from the luggage belong to her. It was highly improbable for a switching of baggage and/or some of the contents of appellant's luggage with that of a fellow passenger to have taken place during the time their luggage passed through the conveyor. Aside from the fact that the prosecution evidence showed that appellant was the one who picked up the baggage and was the one who claimed to be the owner when asked by PO2 Ermino, appellant also has not refuted that she was the one who opened the lock, or gave the key of the luggage inspected by the customs examiners. Given these circumstances, as well as some contradictions in appellant's testimony tending to diminish her credibility, we find that the trial court correctly disbelieved appellant and her defense of denial. Appellant's bare denial simply cannot overthrow the clear and convincing testimonies of the five prosecution witnesses as to her culpability.

Likewise, we find no merit in appellant's other contention that the RTC should not have applied the principle of regularity in the performance of official duty. Appellant claims that her constitutional rights were violated because she was not assisted by a counsel when she signed the affidavit[14] stating that she was carrying the luggage in which the drugs were found nor was she apprised of her right against self-incrimination during investigation. We agree with the trial court that there was indeed violation of the constitutional right of the accused to remain silent as she was made to admit her participation in the commission of the offense without informing her of her constitutional rights. However, the trial court correctly noted that "the prosecution did not, as it was the defense, [who] offered the said unsubscribed affidavit because it is inadmissible."[15]

WHEREFORE, the Decision of the Court of Appeals, in CA-G.R. CR HC No. 01324 is hereby **AFFIRMED** *in toto*.

[14] Records, Vol. I, p. 24; records, Vol. II, p. 715.

[15] CA *rollo*, p. 68.

Costs against appellant.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin, del Castillo,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 181491. July 30, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HENRY ARCILLAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL JUDGE'S EVALUATION THEREON IS GENERALLY BINDING ON THE SUPREME COURT.— With both the RTC and the CA considering AAA as a credible witness whose testimony should be believed, we accord great weight to their assessment. The trial judge was placed in the unique position to discern whether she was telling the truth or inventing it after having personally observed AAA's conduct and demeanor as a witness. The trial judge's evaluation, affirmed by the CA, is binding on the Court, and cannot be disturbed, least of all rejected in its entirety, unless Arcillas successfully showed facts or circumstances of weight that the RTC and the CA might have overlooked, misapprehended, or misinterpreted that, if duly considered,

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[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

would materially affect the disposition of the case differently. Alas, he did not make that showing here.

2. CRIMINAL LAW; QUALIFIED RAPE; SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION AND PROVEN BEYOND REASONABLE DOUBT DURING THE TRIAL.— Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's being over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.

3. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN CASE AT BAR.— As to the civil liability, both lower courts united in ordering Arcillas to pay to AAA ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. They were correct. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of AAA due to the rapes.

4. ID.; ID.; EXEMPLARY DAMAGES; MAY BE IMPOSED IN CRIMINAL CASES AS PART OF THE CIVIL LIABILITY WHEN THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.— Arcillas was liable for exemplary damages. According to the *Civil Code*, exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The law permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Accordingly, the CA

and RTC should have recognized the entitlement of AAA to exemplary damages on account of the attendance of her minority and the common-law relationship between him and her mother. It did not matter that such qualifying circumstances were not taken into consideration in fixing his criminal liability, because the term *aggravating circumstances* as basis for awarding exemplary damages under the *Civil Code* was understood in its generic sense.

5. ID.; ID.; INTERESTS; MAY BE ADJUDICATED AS A PART OF THE DAMAGES IN CRIMES AND QUASI-DELICTS. — [T]he Court deems it appropriate to impose interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this decision to complete the quest for justice and vindication on the part of AAA. This is upon the authority of Article 2211 of the *Civil Code*, which states that in crimes and quasi-delicts interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.

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.*:

The rape of a female over 12 years but under 18 years of age by the common-law spouse of her mother is qualified rape. Yet, the crime is only simple rape, although the State successfully proves the common-law relationship, where the information does not properly allege the qualifying circumstance of relationship between the accused and the female. This is because the right of the accused to be informed of the nature and cause of the accusation against him is inviolable.

Henry Arcillas had been convicted of qualified rape by the Regional Trial Court in Masbate City (RTC) and meted the death penalty, which the law in force at the time prescribed. The Court of Appeals (CA) affirmed the finding of guilt, but

found him guilty only of simple rape due to his common-law relationship with the victim's mother not having been properly alleged in the information and accordingly imposed *reclusion perpetua*. He is now before the Court to make his final plea for exoneration.

Antecedents

AAA,[1] allegedly Arcillas' step-daughter, brought a complaint dated May 22, 2000 for qualified rape against him.[2] After due proceedings, the Office of the Provincial Prosecutor of Masbate ultimately filed on August 29, 2000 an information charging him with qualified rape in the RTC, averring:

> That on or about May 12, 2000 at more or less 11:00 o'clock in the evening thereof, at Brgy. Magsaysay, Municipality of Uson, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the step-father of AAA, with deliberate intent, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own step-daughter, AAA, a 13-year-old girl, against her will.
>
> CONTRARY TO LAW.[3]

The summary of the parties' evidence is rendered by the Court of Appeals (CA) in its decision promulgated June 26, 2007,[4] follows:

> The prosecution presented in evidence the testimonies of five (5) witnesses, namely: CCC, BBB, Dr. Allen Ching, AAA and SPO4

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[1] The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] Original records, pp. 3-4.

[3] Original Records, p. 1.

[4] *Rollo*, pp. 2-18; penned by Associate Justice Mariflor P. Punzalan-Castillo, with Associate Justice Marina L. Buzon (retired) and Associate Justice Rosmari D. Carandang concurring.

Aurora Moran. The trial court summarized their testimonies as follows:

AAA had just graduated from the Emilio S. Boro Elementary School in Cataingan, Masbate, sometime in March 2000. She was then living with her grandmother, DDD, in Alimango, Cataingan, Masbate. Immediately after her graduation, her mother, BBB, fetched her and brought her to Magsaysay, Uson, Masbate, where they lived together along with AAA's siblings and her mother's live-in partner, accused Henry Arcillas.

In the evening of May 12, 2000, AAA, then barely thirteen (13) years old, as evidenced by her certificate of live birth, went to sleep in a room shanty located in Magsaysay, Uson, Masbate, together with her two sisters, CCC and EEE, her mother and the latter's live-in partner, accused Henry Arcillas. The shanty consisted of a single room measuring more or less four (4) square meters. At around 11:00 o'clock in the evening, AAA was awakened when she felt that somebody was lying on top of her. She found out that accused Henry Arcillas was on top of her. She noticed that she had no more short pants and panties and that she felt pain in her vagina. She also noticed that something had been inserted into her vagina and that the accused was making a push and pull movement on top of her. She then pushed away the accused and awakened her mother Josie, who was just asleep near her. BBB then stood up and immediately lighted the gas lamp. She saw the accused beside AAA still naked. AAA told her mother that she was sexually abused by Henry Arcillas. BBB then grabbed an ax and struck the accused with it but the latter was not hit. Before BBB was awakened, CCC, who was at the right side of AAA, was awakened first because she heard the latter crying. She then saw Henry Arcillas already at the post of their hut.

AAA then went out of their shanty and thought of going back to her grandmother in Alimango, Cataingan, Masbate. BBB prevented her from traveling to Cataingan because it was almost midnight, and told her instead that they would have to go to the said place together some other time. Meanwhile, BBB drove Henry Arcillas away. AAA was able to go to her grandmother in Alimango, Cataingan, Masbate only about two weeks after the incident because her mother would not give her money for her fare. BBB explained that she was suffering from fever at that time and no one could tend to her.

Thereafter, BBB complained to Jimmy Lorena, the Barangay Kagawad of Magsaysay, Uson, Masbate. Jimmy Lorena then summoned Henry Arcillas and during the confrontation where AAA was also present, Henry Arcillas was made to sign a statement and was made to promise that he would not do the same act again. Despite the confrontation, however, the victim, with the help of her cousin, Evelyn Daligdig, still lodged a complaint for rape against Henry Arcillas before the Uson Police Station. She was investigated by SPO4 Aurora Moran, who prepared the complaint as well as the victim's statement ("*Deklarasyon*").

The victim was physically examined at the Cataingan District Hospital on May 23, 2000 by Dr. Nerissa A. Deparine, who issued a medical certificate reflecting the following findings:

> "External: Incomplete healed laceration at 5, 7 and 9 o'clock position;
> Internal: Admits 2 fingers without resistance."

It was Dr. Allen Ching, however, who testified on, and interpreted, the findings of Dr. Nerissa Deparine. Dr. Ching claimed that he and Dr. Nerissa Deparine knew each other as both were employed in Cataingan, Masbate, and that he was familiar with the signature of Dr. Nerissa Deparine since the latter usually referred to him some of her patients.

The defense, on the other hand, presented two witnesses, namely: the accused, Henry Arcilla, and Jimmy Lorena, a Barangay Kagawad of Magsaysay, Uson, Masbate. The trial court summarized their testimonies as follows:

Henry Arcillas testified that he was a widower since 1996 although he had a live-in partner, BBB. He admitted that AAA was his step-daughter. In the afternoon of May 12, 2000, Henry Arcillas had a drinking spree in the house of the owner of the thresher where he worked. They started drinking hard liquor (Tanduay) at 4:00 in the afternoon until 6:00, after which he went home very drunk. He then went to sleep together with his live-in partner, BBB, and the latter's three daughters, CCC, EEE and AAA. The house where they slept was a one-room shanty. BBB was on his left side while AAA was on his right. At around 11:00 o'clock in the evening, Henry Arcillas was awakened when AAA complained to her mother that he held her shorts. At that juncture, his live-in partner tried to strike him with an ax. Henry claimed that he was able to touch the body of

AAA but he did not know what part of her body he had touched nor which part of his body had touched AAA. He, however, denied having sexually molested the latter.

During the incident, the complainant's mother got so mad at Henry Arcillas that she drove him away. After almost two weeks, AAA went to the place of her grandmother in Alimango, Cataingan, Masbate. AAA and her relatives then returned to Magsaysay, Uson, Masbate and lodged a complaint before Jimmy Lorena, the Barangay Kagawad of Magsaysay, Uson, Masbate. During the confrontation, a certain Belen complained that Henry Arcillas committed acts of lasciviousness upon her niece AAA, who was also present. When confronted about the incident on May 12, 2000, AAA alleged that the accused touched her short pants prompting her to kick him. Thus, the intention of Henry Arcillas did not materialize.

Jimmy Lorena claimed that he was able to settle the case amicably in his house. In fact, Henry Arcillas executed an affidavit promising that he would not commit the same offense anymore. A certain Francisco Oliva was the one who prepared said affidavit but Jimmy had lost the copy of the same. The defense claimed that what the complainant AAA alleged in that confrontation was that the accused only touched her short pants but she was not raped. Finally, the accused Henry Arcillas claimed that the motive of AAA in filing the case for rape against him was due to the fact that the complainant was against his relationship with her mother and that she wanted to take her mother from him.

Ruling of the RTC

On March 8, 2004, the RTC convicted Arcillas of qualified rape based on the foregoing evidence and meted the death penalty on him,[5] disposing:

WHEREFORE, being convicted of such heinous crime of Qualified Rape, accused Henry Arcillas is hereby sentenced to suffer the capital penalty of DEATH; to indemnify the said victim the sum of FIFTY THOUSAND (PhP50,000.00) PESOS; to pay the latter the sum of FIFTY THOUSAND (PhP50,000.00) PESOS as for moral damages; and to pay the costs.

SO ORDERED.

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[5] Original Records, p. 114.

Ruling of the CA

In his appeal in the CA, Arcillas assigned to the RTC the following errors, namely:

I.

THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE MOTIVE BEHIND THE FILING OF THE INSTANT CASE AGAINST THE ACCUSED-APPELLANT.

II.

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH DESPITE THE DEFECTIVE ALLEGATION OF RELATIONSHIP IN THE INFORMATION.

On June 26, 2007, the CA affirmed the finding of guilt against Arcillas but downgraded the crime to simple rape on the ground that the information did not allege that he was her mother's common-law husband, instead of the victim's step-father, the qualifying circumstance the information alleged.[6] It decreed as follows:

WHEREFORE, premises considered, the March 8, 2005 Decision of the Regional Trial Court of Masbate City, Masbate, Branch 48, is *MODIFIED.* Accused-appellant is found guilty beyond reasonable doubt of the crime of Simple Rape and is hereby sentenced to suffer the penalty of *reclusion perpetua*. In all other respects, the assailed Decision is *AFFIRMED.*

SO ORDERED.

The CA supported its affirmance in this wise:

x x x We agree with the accused-appellant that the trial court erred in convicting him of Qualified Rape and in imposing the death penalty in view of the defective allegation in the information. Indeed, even the Solicitor General agrees with the accused-appellant on this point.

It must be noted that the Information alleged that accused-appellant was the step-father of the rape victim. The evidence shows, however,

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[6] CA *rollo*, pp. 93-108.

that he was merely the common-law husband or live-in partner of the latter's mother. In order that the accused may be convicted of qualified rape, the circumstances of relationship and minority must be jointly **alleged** in the Information and **proved** during trial. Thus, the accused can only be convicted of simple rape where the information alleges that the accused is the step-father of the victim but the evidence shows that he is merely the common-law husband of the natural mother of the victim.

In *People vs. Escultor*, the Supreme Court held:

> Nevertheless, the death penalty is not the correct penalty for the two counts of rape committed by appellant because the two informations in Criminal Case No. CEB-BRL-478 and CEB-BRL-479 failed to correctly state appellant's relationship with Jenelyn. To justify the death penalty, the prosecution must specifically allege in the information and prove during the trial the qualifying circumstances of the minority of the victim and her relationship to the offender. The information must jointly allege these qualifying circumstances to afford the accused his right to be informed of the nature and cause of the accusation against him. Sections 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure expressly mandate that the qualifying circumstance should be alleged in the information.
>
> Although the prosecution proved that appellant was the common-law spouse of (AAA's) mother, what appears in the informations is that the victim is the *stepdaughter* of appellant. A stepdaughter is the daughter of one's spouse by a previous marriage. For appellant to be the stepfather of (AAA), he must be legally married to (AAA's) mother. However, appellant and the victim's mother were not legally married but merely lived in common-law relation. **The two informations failed to allege specifically that appellant was the common-law spouse of the victim's mother. Instead, the two informations erroneously alleged the qualifying circumstance that appellant was the stepfather of the victim.** Hence, appellant is liable only for two counts of simple statutory rape punishable with *reclusion perpetua* for each count. (*Emphasis Ours*)

Thus, accused-appellant should have been convicted of simple rape only, punishable by *reclusion perpetua.* For this reason, We need not disturb anymore the trial court's award of ₱50,000.00 as civil indemnity. The rule is that, if the rape was attended by any

of the qualifying circumstances that require the imposition of the death penalty, the civil indemnity shall be ₱75,000.00. But since accused-appellant should only be convicted of simple rape, the civil indemnity should only be ₱50,000.00 as awarded by the lower court. The award of moral damages in the amount of ₱50,000.00 is also in order, being in consonance with prevailing jurisprudence.

In any event, the imposition of the death penalty is no longer allowed in view of the passage of R.A. No. 9346 which prohibits its imposition and instead mandates, in lieu of the capital punishment, the imposition of the penalty of *reclusion perpetua* or life imprisonment. Thus, even if the lower court was correct in convicting the accused-appellant of qualified rape, the penalty should still be *reclusion perpetua*.[7]

Issues

Arcillas thus assails the CA's decision as contrary to the facts, the law and jurisprudence.

Ruling

The CA correctly affirmed the conviction of Arcillas for simple rape.

The statutory provisions relevant to this review are Article 266-A and Article 266-B of the *Revised Penal Code*, which provide:

Article 266-A. *Rape, When and How Committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[7] *Id.* at 106-107.

x x x x x x x x x

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. **when the victim is under eighteen (18) years of age and the offender is** a parent, ascendant, **step-parent**, guardian, relative by consanguinity or affinity within the third civil degree, **or the common-law-spouse of the parent of the victim.** x x x

x x x x x x x x x

The elements of the offense charged are that: (*a*) the victim is a female over 12 years but under 18 years of age; (*b*) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (*c*) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.

AAA rendered a complete and credible narration of her ordeal at the hands of the accused, whom she positively identified in court. Her testimony was corroborated on material points by BBB and her own sister as well as by the medico-legal evidence adduced. With both the RTC and the CA considering AAA as a credible witness whose testimony should be believed, we accord great weight to their assessment. The trial judge was placed in the unique position to discern whether she was telling the truth or inventing it after having personally observed AAA's conduct and demeanor as a witness.[8] The trial judge's evaluation, affirmed by the CA, is binding on the Court, and cannot be disturbed, least of all rejected in its entirety, unless Arcillas successfully

[8] *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

showed facts or circumstances of weight that the RTC and the CA might have overlooked, misapprehended, or misinterpreted that, if duly considered, would materially affect the disposition of the case differently.[9] Alas, he did not make that showing here.

In his defense, Arcillas denied committing rape against AAA. He insisted that he merely touched her body during a moment of intoxication. The RTC and the CA rejected the denial and explanation. The Court holds that both lower courts rightly did so, considering that AAA's positive declarations of what he had done to her in order to have carnal knowledge of her against her will were far more credible that his denial and explanation that were negative evidence by nature. His explanation lacked weight because it was too convenient and too easy to utter. Worse, the explanation did not stand well in the face of the circumstances that transpired. Of great significance was that AAA roused her mother who was slumbering close by in order to forthwith denounce Arcillas. AAA's spontaneity in doing so entirely belied the explanation. The roused BBB then got up and quickly lighted a lamp, and in that illumination she saw him naked by the side of the victim. Indignant, BBB quickly grabbed an axe and struck him with it, but he was lucky to avoid the blow and to grab the ax away from BBB. Yet, the dispossession of the axe did not deter BBB from angrily banishing him from her home thereafter. To us, BBB's indignant reaction was that of a mother vindicating her young child against his rapacity. Such circumstances reflected the gravity of the crime just perpetrated against her daughter.

The CA disagreed with the RTC's pronouncing Arcillas guilty of qualified rape and imposing the death penalty, and ruled instead that he was liable only for simple rape because the information failed to allege his being the common-law husband of the victim's mother. As to the penalty, the CA punished him with *reclusion perpetua*.

We concur with the CA on both actions.

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[9] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent.[10] However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances.[11] As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.[12]

The minority of AAA was sufficiently alleged in the information that stated that she was "a 13-year-old girl." The Prosecution established that her age when the rape was committed on May 12, 2000 was thirteen years and two months by presenting her birth certificate revealing her date of birth as March 15, 1987.[13] As to her relationship with Arcillas, the information averred that he was "then the step-father of AAA." It turned out, however, that he was not her stepfather, being only the common-law husband of BBB. The RTC itself found that he and BBB were only "live-in partners." In addition, AAA's birth certificate disclosed that her father was CCC, who had been married to BBB,[14] who was widowed upon the death of CCC in 1996. No evidence was adduced to establish that BBB and Arcilla legally married after CCC's death.[15]

Arcillas' being the common-law husband of BBB at the time of the commission of the rape, even if established during the

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[10] Article 266-A and Article 266-B, *Revised Penal Code.*

[11] *People v. Ferolino*, 386 Phil. 161 (2000).

[12] *People v. Bayya*, 384 Phil. 519 (2000); *People v. Maglente*, 366 Phil. 221 (1999); *People v. Ilao*, 357 Phil. 656 (1998); *People v. Ramos*, 357 Phil. 559 (1998).

[13] Original records, p. 72.

[14] TSN of August 6, 2001, p. 5.

[15] *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA 307.

trial, could not be appreciated because the information did not specifically allege it as a qualifying circumstance. Otherwise, he would be deprived of his right to be informed of the charge lodged against him.[16]

As to the civil liability, both lower courts united in ordering Arcillas to pay to AAA ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. They were correct. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of AAA due to the rapes.

In addition, Arcillas was liable for exemplary damages. According to the *Civil Code*, exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[17] The law permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[18] Accordingly, the CA and the RTC should have recognized the entitlement of AAA to exemplary damages on account of the attendance of her minority and the common-law relationship between him and her mother. It did not matter that such qualifying circumstances were not taken into consideration in fixing his criminal liability, because the term *aggravating circumstances* as basis for awarding exemplary damages under the *Civil Code* was understood in its generic sense. As the Court well explained in *People v. Catubig*:[19]

> The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings,

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[16] *People v. Negosa*, G.R. Nos. 142856-57, August 25, 2003, 409 SCRA 539, 552-553.

[17] Article 2230, *Civil Code.*

[18] Article 2229, *Civil Code*.

[19] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.**

For exemplary damages, therefore, the Court holds that the amount of ₱25,000.00 is reasonable and proper.

Lastly, the Court deems it appropriate to impose interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this decision to complete the quest for justice and vindication on the part of AAA. This is upon the authority of Article 2211 of the *Civil Code*, which states that in crimes and quasi-delicts interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on June 26, 2007 in all respects, subject to the modifications that **HENRY ARCILLAS** shall pay to AAA the further sum of ₱25,000.00 as exemplary damages; and that he shall be liable for interest of 6% *per annum* on the monetary awards reckoned from the finality of this decision.

Costs of suit to be paid by the accused.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188612. July 30, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIOSDADO CAMAT and MAMERTO DULAY,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS THEREOF, PRESENT IN CASE AT BAR.— Article 248 of the Revised Penal Code [defines the crime of murder x x x.] As encapsulated in jurisprudence, to be liable for Murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide. We uphold the Court of Appeals' finding that all the elements of the crime of murder concur in this instance. With regard to the first element, the prosecution was able to establish the fact of death of Marcelina and Elmer Hidalgo as shown by their death certificates as well as the autopsy reports which clearly indicate that the common cause of their untimely demise is massive hemorrhage secondary to gunshot wounds that they sustained during the shooting incident in question. The fourth element is present as well since both the victims are adults and not related by consanguinity or affinity to appellant Camat which forecloses any possibility of classifying their fatal shooting as either parricide or infanticide. As for the second element, there can be no doubt that the prosecution also proved the participation of appellant Camat in the crimes subject of this case. Appellant Camat's defenses of alibi and denial as well as his attack on the credibility of the prosecution witnesses who positively identified him simply cannot be given credence.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE NARRATION OF FACTS BY THE WITNESSES DO NOT DETRACT FROM THEIR ESSENTIAL CREDIBILITY AS LONG AS THEIR TESTIMONIES ON THE WHOLE ARE COHERENT AND INTRINSICALLY BELIEVABLE.—

Indeed, minor inconsistencies in the narration of facts by the witnesses do not detract from their essential credibility as long as their testimonies on the whole are coherent and intrinsically believable. In fact, this Court had previously held that trivial inconsistencies do not rock the pedestal upon which the credibility of the witnesses rests but enhances credibility as they manifest spontaneity and lack of scheming. Jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were pre-fabricated and rehearsed.

3. ID.; ID.; ALIBI; POSITIVE IDENTIFICATION OF THE ACCUSED, WITHOUT ANY ILL MOTIVE ON THE PART OF EYEWITNESSES PREVAILS OVER ALIBI AND DENIAL.— [A]n examination of the testimonies made by the prosecution witnesses reveals that their identification of appellant Camat as one of the culprits behind the November 3, 1999 massacre was clear and unequivocal. x x x Since the testimonies of the prosecution witnesses were credible, this Court cannot accept appellant Camat's defenses of alibi and denial in light of the positive identification of him as one of the gunmen involved in that dreadful massacre. It bears repeating that this Court has consistently held that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. Moreover, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

4. ID.; ID.; FLIGHT; FLIGHT OF AN ACCUSED IS COMPETENT EVIDENCE TO INDICATE HIS GUILT; CASE AT BAR.— [A]ppellant Camat's sudden flight from his residence right after the November 3, 1999 massacre militated against his protestations of innocence. His reaction upon hearing reports that he was considered a suspect in the Loac massacre, was to leave his house without a word to his relatives on the pretext that he was evading armed men who were purportedly looking for him. He settled in his rest house located in San Fabian, Pangasinan where he stayed for more than a year before police officers managed to arrest him on December 25, 2000 pursuant to an outstanding warrant of arrest. When he testified in open court, he could not provide any plausible reason for his prolonged absence from his hometown

and to his apparent aversion to the thought of voluntarily surrendering to the authorities in order to clear his name. x x x Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings. In one case, this Court had stated that it is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.

5. CRIMINAL LAW; REVISED PENAL CODE ; MURDER; THE KILLING WAS ATTENDED WITH TREACHERY IN CASE AT BAR.— Moreover, the qualifying circumstance of treachery was adequately shown to exist in this case, thus, satisfying the third element of Murder. There is treachery or *alevosia* when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make. For *alevosia* to qualify the crime to Murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack. x x x The testimonial evidence gathered in this case clearly indicates that the victims who were simply engaged in conversation in a private residence were caught entirely by surprise with the assailants' swift, deliberate and unexpected attack using multiple firearms thereby negating the possibility for the victims to escape or defend themselves.

6. ID.; ID.; ID.; USE OF UNLICENSED FIREARM IN KILLING; IN THE CASE AT BAR, NO PROOF PRESENTED SHOWING THAT THE APPELLANT WAS NOT A LICENSED FIREARM HOLDER.— However, contrary to the findings of both the trial and appellate courts, this Court finds that the use of unlicensed firearm was not duly proven by the prosecution. The evidence indicates that none of the firearms used in the November 3, 1999 massacre

were ever recovered and presented in the trial court. Nevertheless, there is jurisprudence which states that the existence of the firearm can be established by testimony, even without the presentation of the firearm. The testimony of the prosecution witnesses had established that appellant Camat used a long firearm of unknown make and caliber to shoot his victims but that would still be insufficient to attribute to his felonious act the qualifying circumstance of use of unlicensed firearm in light of jurisprudence which asserts that in order for the same to be considered, adequate proof, such as written or testimonial evidence, must be presented showing that the appellant was not a licensed firearm holder. There was no such proof in the case at bar.

7. ID.; ID.; ATTEMPTED MURDER; ACTS OF EXECUTION THAT WOULD HAVE BROUGHT ABOUT THE VICTIM'S DEATH NOT ALL PERFORMED; CASE AT BAR.— This Court also upholds appellant Camat's conviction of four counts of Attempted Murder since said charges were satisfactorily proven by the prosecution. The elements of attempted felony are as follows: 1. The offender commences the commission of the felony directly by overt acts; 2. He does not perform all the acts of execution which should produce the felony; 3. The offender's act be not stopped by his own spontaneous desistance; 4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance. It is well-settled that where the wounds inflicted on the victim are not sufficient to cause his death, the crime is only Attempted Murder, as the accused had not performed all the acts of execution that would have brought about the victim's death. In the present case, appellant Camat and his co-accused only committed Attempted Murder because they were not able to kill Juanito, Aurelio, Pedro, and Ricardo by reason of a cause independent of their will, specifically timely medical attention, despite the fact that they already performed all the acts of execution which should have produced the crime of Murder. In addition, the wounds inflicted upon these victims were not considered fatal as evidenced by the documentary and testimonial evidence presented in the trial court.

8. ID.; ID.; MURDER; ATTEMPTED MURDER; DAMAGES THAT MAY BE AWARDED; CASE AT BAR.— Every person criminally liable for a felony is also civilly liable. Thus,

when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. This Court had previously declared that in cases of Murder and Homicide, civil indemnity and moral damages are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of Murder or Homicide. Pursuant to recent jurisprudence, this Court is increasing the award of civil indemnity from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) for each count of Murder as well as decreasing the award of moral damages from Two Hundred Thousand Pesos (₱200,000.00) to Fifty Thousand Pesos (₱50,000.00) for each count of Murder and from Fifty Thousand Pesos (₱50,000.00) to Forty Thousand Pesos (₱40,000.00) for each count of Attempted Murder. Furthermore, in accordance with Article 2230 of the Civil Code, exemplary damages should be awarded in the amount of Thirty Thousand Pesos (₱30,000.00) for each count of Murder as well as for each count of Attempted Murder.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is an appeal from the Decision[1] dated February 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02429, entitled *People of the Philippines v. Diosdado Camat and Mamerto Dulay*, which affirmed with modification the Joint Decision[2]

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[*] Acting Chairperson per Special Order No. 1226 dated May 30, 2012.

[1] *Rollo*, pp. 2-23; penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Myrna Dimaranan Vidal, concurring.

[2] CA *rollo*, pp. 49-159; penned by Executive Judge Joven F. Costales.

dated October 9, 2002 of the Regional Trial Court (RTC) of Urdaneta City, Branch 46 in Criminal Case Nos. U-10498, U-10499, U-10500, U-10501, U-10502 and U-10503. The trial court found herein appellant Diosdado Camat (Camat) guilty beyond reasonable doubt of two (2) counts of the crime of Murder with the Use of Unlicensed Firearm and four (4) counts of Attempted Murder. Prior to this ruling, the same trial court, in a Decision[3] dated December 6, 2000, found appellant Mamerto Dulay (Dulay) guilty beyond reasonable doubt of two (2) counts of Murder with the Use of Unlicensed Firearm and one (1) count of Frustrated Murder.

Contrary to what is implied by the title of this case, the instant appeal merely affects Camat and not Dulay since the subject of this appeal is the October 9, 2002 Joint Decision of the trial court wherein only Camat was convicted. Moreover, in the Appellants' Brief, the relief prayed for was the reversal of only the October 9, 2002 Joint Decision and there was no reference to the December 6, 2000 Decision, containing Dulay's conviction. This is not surprising considering that the case involving Dulay was already resolved with finality by this Court in a Resolution dated October 11, 2007 in G.R. No. 174775, entitled *People of the Philippines v. Mamerto Dulay*.[4]

The present case traces its genesis to the filing of six separate criminal informations charging the appellant Camat *alias* "Boyet" and his other co-accused, the accused Dulay (referred to in the title of this case), John Laurean *alias* "Masong," Rogelio Campos, Ibot Campos, Henry Caoile, Serafin Dulay, and Junior Lopez with the crimes of Murder with the Use of Unlicensed Firearm and Frustrated Murder. The pertinent portions of the aforementioned criminal informations read:

Criminal Case No. U-10498

That on or about November 3, 1999, in the afternoon, at Barangay Anis, Laoac, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with the use

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[3] Records, Vol. III, pp. 73-93; penned by Judge Modesto O. Juanson.

[4] G.R. No. 174775, October 11, 2007, 535 SCRA 656.

of unlicensed long and short firearms, with deliberate intent to kill, treachery, and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot ELMER HIDALGO, inflicting upon him the following injuries:

"- Gunshot wound, left wrist, medial aspect.

- Gunshot wounds, left distal third of the thigh, through and through; Point of Entrance, 1 cm. in diameter, posteriorly, circular in shape; Point of Exit, 1.4 cm. in diameter, medially, circular in shape.

- Gunshot wounds, right distal third of the thigh, through and through:

  1. Point of Entrance, 1 cm. in diameter, laterally, circular in shape; Point of Exit, 1.6 cms. in diameter, medially, circular in shape.

  2. Point of Entrance, 1 cm. in diameter laterally, circular in shape; Point of Exit, 1.7 cms. in diameter, anteriorly circular in shape.

- Gunshot wounds, through and through. Point of entrance, 1 cm. in diameter, circular in shape on the right ear anteriorly beside the right pinna trajecting the esophagus and the upper lobe of the left lung. Point of Exit, 2 cms. in diameter, left mid-axillary line, 5th intercostal space, circular in shape.

- Comminuted Fracture of the distal third of the femur, right.

- Homethorax, 1 liter, left.

CAUSE OF DEATH: Massive hemorrhage secondary to multiple gunshot wounds."

which caused the death of said ELMER HIDALGO, to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code, in relation to R.A. No. 8294, as amended by R.A. 7659.[5]

Criminal Case No. U-10499

That on or about November 3, 1999, in the afternoon, at Barangay Anis, Laoac, Pangasinan and within the jurisdiction of this Honorable

[5] CA *rollo*, pp. 12-13.

Court, the above-named accused, conspiring together, with the use of unlicensed long and short firearms, with deliberate intent to kill, treachery, and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot MARCELINA HIDALGO, inflicting upon her the following injuries:

"External Findings:

- Gunshot wound (point of entrance), 1 cm., circular in shape, parasternal line, 4th inter-costal space, left.
- Gunshot wound (point of exit), 1.5 cm., circular in shape, mid-axillary line, 9th inter-costal space, right.

Internal Findings:

- Gunshot wound, through and through, 1.8 cm., left auricle, heart.
- Gunshot wound, through and through, 2 cm., upper lobe, liver.
- Gunshot wound, through and through, 1.5 cm., upper lobe lung, right.
- Hemothorax, 1.4 liters, right.

CAUSE OF DEATH: Massive hemorrhage, secondary to gunshot wound."

which caused the instantaneous death of said MARCELINA HIDALGO, to the damage and prejudice of her heirs.

CONTRARY to Art. 248, Revised Penal Code, in relation to R.A. No. 8294, as amended by R.A. 7659.[6]

Criminal Case No. U-10500

That on or about November 3, 1999, in the afternoon, at Barangay Anis, Laoac, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with the use of unlicensed long and short firearms, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot JUANITO HIDALGO, inflicting upon him the following injuries:

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

"Gunshot wound with fracture, tibia-fibula right.
Peration performed: Debridement"

the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce the felony by reason of causes independent of the will of the accused and that is due to the timely and adequate medical assistance rendered to said JUANITO HIDALGO, which prevented his death, to his damage and prejudice.

CONTRARY to Art. 248, in relation to Arts. 6 & 50, Revised Penal Code, and R.A. No. 8294.[7]

Criminal Case No. U-10501

That on or about November 3, 1999, in the afternoon, at Barangay Anis, Laoac, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with the use of unlicensed long and short firearms, with deliberate intent to kill, treachery, and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot AURELIO HIDALGO, inflicting upon him the following injuries:

"Open fracture proximal third fibula right.
Operation Performed: Debridement"

the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce the felony by reason of causes independent of the will of the accused and that is due to the timely and adequate medical assistance rendered to said AURELIO HIDALGO, which prevented his death, to his damage and prejudice.

CONTRARY to Art. 248, in relation to Arts. 6 & 50, Revised Penal Code, and R.A. No. 8294.[8]

Criminal Case No. U-10502

That on or about November 3, 1999, in the afternoon, at Barangay Anis, Laoac, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with the use of unlicensed long and short firearms, with deliberate intent to kill,

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

[8] *Id.* at 20-21.

treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shoot PEDRO HIDALGO, inflicting upon him the following injuries:

- Gunshot wound at right buttocks through and through
- Point of entry: Medial aspect of right buttocks
- Point of exit: Lacerated aspect of right buttocks
- Avulsion thenar eminence left hand

the accused having thus performed all the acts of execution which would have produced the crime of MURDER as a consequence but which nevertheless did not produce the felony by reason of causes independent of the will of the accused and that is due to the timely and adequate medical assistance rendered to said PEDRO HIDALGO, which prevented his death, to his damage and prejudice.

CONTRARY to Art. 248, in relation to Arts. 6 & 50, Revised Penal Code, and R.A. No. 8294.[9]

Criminal Case No. U-10503

That on or about November 3, 1999, in the afternoon at Barangay Anis, Laoac, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, with the use of unlicensed long and short firearms, with deliberate intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shoot RICARDO HIDALGO, inflicting upon him the following injuries:

"Gunshot wound perianal area
Fracture superior & inferior ramus pubis
Operation performed: Explor-lap, colostomy"

the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce the felony by reason of causes independent of the will of the accused and that is due to the timely and adequate medical assistance rendered to said RICARDO HIDALGO, which prevented his death, to his damage and prejudice.

CONTRARY to Art. 248, in relation to Arts. 6 & 50, Revised Penal Code, and R.A. No. 8294.[10]

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

[10] *Id.* at 25-26.

At their arraignment, all the accused pleaded "Not Guilty" to the charges with the exception of accused Junior Lopez who eluded arrest and, thus, remained at large.[11] Subsequent to several pre-trial conferences, trial on the merits commenced.

In the Plaintiff-Appellee's Brief,[12] the prosecution narrated its version of the factual backdrop of this case, as follows:

> Between 3:00 o'clock and 5:00 o'clock in the afternoon of November 3, 1999, Aurelio, together with Anastacio, Juanito, Ricardo, Pedro, Marcelina, Abelardo, Elmer, all surnamed Hidalgo, Lydia Flores, some young ladies, their children, and his nephews and nieces were in front of the yard of his brother Anastacio Hidalgo (Anastacio). At that time, they were all seated and talking to each other. The houses of Aurelio and Anastacio were located in the same compound. Aurelio's house is at the back of Anastacio's house.
>
> While engaged in conversation, Aurelio noticed a motorcycle pass by two times. At the first pass, he noticed that only Oning Campos was on board. The second time, both Oning Campos and Pilo Cabangas were on board the motorcycle. After a few minutes, gunfire coming from the back of and directed at Aurelio's group suddenly erupted. The gunfire came from the other side of the road in front of a three feet high concrete fence fronting the house of Anastacio. **Aurelio saw both accused-appellants [Diosdado Camat and Mamerto Dulay] armed with long firearms shoot at his group.** Although there were six other persons armed with short firearms (Henry Caoile, Junior Lopez, John Laurean, Ibot Campos, Rogelio Campos, and Serafin Dulay), standing at the back of accused-appellants, Aurelio, however, only saw accused-appellants firing their guns at his group because he saw them place their long firearms on top of the concrete fence. The gunmen were approximately six meters away from Aurelio's group.
>
> Aurelio said that during the shooting, his aunt Marcelina Hidalgo, and his nephew were hit and Elmer Hidalgo fell down. They died on the spot. Juanito Hidalgo was hit on his right leg. Ricardo Hidalgo was hit on the buttocks. The bullet exited near his anus. Pedro Hidalgo was injured on the buttocks and left arm. Aurelio was himself hit on both legs.

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[11] *Id.* at 57.

[12] *Id.* at 334-357.

After shooting their victims, accused-appellants and their companions left the place going westward.

Immediately thereafter, Aurelio and his other injured relatives were brought to the Region I Medical Center, Dagupan City. Aurelio was confined in the hospital for five days. After leaving the hospital, he was investigated by Investigator Mariano of the Laoac Police Station.

Aurelio recalled that prior to the shooting incident, accused-appellant Mamerto Dulay hacked the house of Juanito Hidalgo, Aurelio's brother[,] with a bolo. Juanito Hidalgo had the hacking incident blottered at the *barangay*.[13] (Citations omitted.) (Emphasis supplied.)

The defense, in the Accused-Appellants' Brief,[14] offered this summation of events:

In the morning of 3 November 1999, JAIME CANDIDO accompanied accused Diosdado Camat in securing a barangay clearance as the latter was applying for a job as security guard. The next time Candido saw accused Camat was around 3:00 o'clock in the afternoon of the same day when he went to the house of accused Camat's brother, Casimiro Camat, to have some snacks. During this time, accused Camat and his brother and two (2) other companions were working on a cabinet and a book shelf. The following day, Candido again saw accused Camat with his brother and another passenger on board a red car heading towards the highway.

On 30 October 1999, CASIMIRO CAMAT went to Sta. Ana, Pampanga to attend the opening of cursillo class of Sto. Nino Brotherhood Crusade since his brother, accused Diosdado Camat, was part of the said graduating class. Casimiro and his brother spent the night in the former's house in San Miguel, Tarlac together with Pedro Caseria who was also one of the graduates. The following day, the three (3) agreed to meet again on 2 November 1999 and proceed to Casimiro's place in Baguio to undertake the construction of his double deck bed, cabinets and bookshelf.

On 2 November 1999, Casimiro, together with his wife and daughter, met his brother and Pedro Caseria at the crossing in

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[13] *Id.* at 343-346.

[14] *Id.* at 189-209.

Binalonan and proceeded thereafter to Baguio. Upon reaching the said place, the witness first unloaded his daughter's baggage at her dormitory before going to Burnham Park for lunch. Afterwards, he left his daughter in her dormitory and then accompanied his wife to the bus terminal for her trip back to Tarlac.

The Camat brothers and Caseria subsequently proceeded to the Kayang Extension to purchase some goods for their consumption during their stay in Baguio before going to Casimiro's house in Asin Road. Upon arriving at the said place, the three began working on the double deck bed. The next day, accused Diosdado Camat left for a while to visit Jaime Candido. When he returned, the Camat brothers and Caseria went to Benguet Electric Cooperative to pay Casimiro's electric bill and subsequently took their lunch at Burnham Park. Thereafter, they bought some materials from the Benguet Lumber Co. and then continued their work in Casimiro's place. In the afternoon of 4 November 1999, the Camat brothers finally left Baguio.

When Casimiro was asked about the accusation against his brother, he firmly maintained that his brother was with him in Baguio from November 2 to 4, contrary to the allegation that the accused participated in a shooting incident on 3 November 1999 in Brgy. Anis, Laoac, Pangasinan.

PEDRO CASERIA corroborated Casimiro Camat's testimony that he was with the accused from November 2 to 4, 1999 to do some carpentries in Baguio.

HERMINIGILDA C. JIMENEA was the proprietress of Apple's Fastfood in Burnham Park where the accused had lunch with his brother and Pedro Caseria on 3 November 1999.

During the graduation of the cursillo class in Tarlac in October 1999, accused DIOSDADO CAMAT was requested by his brother, Casimiro Camat, to do some carpentries at his house in Baguio together with Pedro Caseria. It was agreed upon that Casimiro would meet both of them at the crossing in Binalonan on 2 November 1999. On the said date, Casimiro arrived at the meeting place with his wife and daughter and let the accused and Caseria board in his car. They then proceeded to Baguio. Upon reaching the said place, Casimiro first dropped by his daughter's dormitory to unload her baggage before proceeding to Burnham Park where they ate lunch together. Afterwards, Casimiro left his daughter at her dormitory and his wife at the bus terminal. The Camat brothers and Caseria

went to Casimiro's place in Asin Road for the construction of some woodworks.

On 3 November 1999, the accused left for a while to see Jaime Candido to ask assistance in securing a barangay clearance as he was intending to seek employment as a security guard. When he returned, he went with Casimiro to the city as the latter paid his electric bill. Afterwards, they had lunch at Apple's Fastfood in Burnham Park and then proceeded to Benguet Lumber Co. to purchase some materials before returning to Casimiro's place for the continuation of their work. The next day, the accused left Baguio and went back home to Brgy. Caaringayan in Laoac, Pangasinan where a surprising news awaited him. His sister told him that he was being implicated in a massacre. Consequently, he rushed to the *barangay* captain to clarify the matter. Nonetheless, he was told to go home and just wait for the police to come.

While he was alone in his house at 12:00 midnight, he noticed that a vehicle parked near his gate and five (5) armed men broke into his house. The accused hid under the stairs. When the strangers were gone, the accused immediately left his house and went to Brgy. Tiblong in San Fabian, Pangasinan.

ALFREDO TAPO, the barangay captain of Brgy. Caaringayan, testified that in the evening of 4 November 1999, the accused did go to his house to ask him about the incident in Brgy. Anis.[15] (Citations omitted.)

In a Joint Decision dated October 9, 2002 in Criminal Case Nos. U-10498, U-10499, U-10500, U-10501, U-10502 and U-10503, the trial court found appellant Camat guilty beyond reasonable doubt of two (2) counts of Murder with the Use of Unlicensed Firearm and four (4) counts of Attempted Murder. The dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the Court finds:

IN CRIMINAL CASE NO. U-10503:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of ATTEMPTED

[15] *Id.* at 200-203.

MURDER and applying the Indeterminate Sentence Law, there being no aggravating and mitigating circumstances, hereby sentences him to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* in its medium period as MINIMUM to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* in its medium period, as MAXIMUM and to pay the offended party RICARDO HIDALGO the amount of ₱50,000.00 as moral damages and to pay the cost.

The accused JOHN LAUREAN, ROGELIO CAMPOS, IBOT CAMPOS, HENRY CAOILE and SERAFIN DULAY are all ACQUITTED. The accused JUNIOR LOPEZ is still at-large.

IN CRIMINAL CASE NO. U-10502:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of ATTEMPTED MURDER and applying the Indeterminate Sentence Law, there being no aggravating and mitigating circumstances, hereby sentences him to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* in its medium period as MINIMUM to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* in its medium period, as MAXIMUM and to pay the offended party PEDRO HIDALGO the amount of ₱50,000.00 as moral damages and to pay the cost.

The accused HENRY CAOILE is acquitted of the charge. The accused Junior Lopez is still at-large.

IN CRIMINAL CASE NO. U-10501:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of ATTEMPTED MURDER and applying the Indeterminate Sentence Law, there being no aggravating and mitigating circumstances, hereby sentences him to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* in its medium period as MINIMUM to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* in its medium period, as MAXIMUM and to pay the offended party AURELIO HIDALGO the amount of ₱50,000.00 as moral damages and to pay the cost.

The accused JOHN LAUREAN, ROGELIO CAMPOS, IBOT CAMPOS, HENRY CAOILE and SERAFIN DULAY are all ACQUITTED. The accused JUNIOR LOPEZ is still at-large.

IN CRIMINAL CASE NO. U-10500:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of ATTEMPTED MURDER and applying the Indeterminate Sentence Law, there being no aggravating and mitigating circumstances, hereby sentences him to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* in its medium period as MINIMUM to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* in its medium period, as MAXIMUM and to pay the offended party JUANITO HIDALGO the amount of ₱50,000.00 as moral damages and to pay the cost.

The accused JOHN LAUREAN, ROGELIO CAMPOS, IBOT CAMPOS, HENRY CAOILE and SERAFIN DULAY are all ACQUITTED. The accused JUNIOR LOPEZ is still at-large.

IN CRIMINAL CASE NO. U-10499:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of MURDER WITH THE USE OF UNLICENSED FIREARMS penalized under Republic Act No. 7659 otherwise known as the Heinous Crime Law and the offense having been committed with the aggravating circumstance of with the Use of an Unlicensed Firearm under Republic Act No. 8294, hereby sentences him the ultimum supplicium of DEATH to be executed pursuant to Republic Act No. 8177 known as the Lethal Injection Law; to pay the heirs of the victim MARCELINA HIDALGO in the amount of ₱50,000.00 as indemnity; ₱200,000.00 as moral damages and to pay the cost.

The accused HENRY CAOILE is ACQUITTED of the charge. The accused JUNIOR LOPEZ is still unapprehended.

IN CRIMINAL CASE NO. U-10498:

[T]he accused DIOSDADO CAMAT *y* Sampaga *alias* "Boyet", GUILTY beyond reasonable doubt of the crime of MURDER WITH THE USE OF UNLICENSED FIREARMS penalized under Republic Act No. 7659 otherwise known as the Heinous Crime Law and the offense having been committed with the aggravating circumstance of with the Use of an Unlicensed Firearm under Republic Act No. 8294, hereby sentences him the ultimum supplicium of DEATH to be executed pursuant to Republic Act No. 8177 known as the Lethal Injection Law; to pay the heirs of the victim ELMER HIDALGO in

the amount of ₱50,000.00 as indemnity; ₱20,000.00 as actual damages; ₱200,000.00 as moral damages and to pay the cost.

The accused HENRY CAOILE is ACQUITTED of the charge. The accused JUNIOR LOPEZ is still unapprehended.

FINALLY, it is said: "*Hoc quidem per quam durum est sed ita lex scripta est*," translated as follows: "The law may be exceedingly hard but the law is written."[16]

Since appellant Camat was sentenced to suffer the penalty of DEATH as a consequence of his conviction for two charges of Murder with the Use of Unlicensed Firearm, among others, the case was originally appealed to this Court but in conformity with our decision in *People v. Mateo*,[17] the matter was remanded to the Court of Appeals for intermediate review.

After a thorough evaluation, the appellate court merely affirmed with modification the assailed October 9, 2002 Joint Decision of the trial court in this wise:

IN LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The joint decision dated 9 October 2002 of the Regional Trial Court, Branch 45, Urdaneta City in Criminal Cases Nos. U-10498 to U-10503 is hereby **AFFIRMED WITH MODIFICATION** only on the penalty imposed for murder with the use of unlicensed firearm. **Accused-appellant Diosdado Camat is sentenced to suffer the penalty of *reclusion perpetua* for each count of murder** with the use of unlicensed firearm instead of death in Criminal Cases Nos. U-10498 and U-10499, and the penalty of two (2) years, four (4) months and one (1) day of *prision correccional* in its medium period as MINIMUM to eight (8) years and one (1) day of *prision mayor* in its medium period as MAXIMUM for each count of attempted murder in Criminal Cases Nos. U-10500 to U-10503.[18]

Since the appeal was decided after the passage of Republic Act No. 9346 (An Act Prohibiting the Imposition of Death Penalty

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[16] *Id.* at 157-159.

[17] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[18] *Rollo*, p. 23.

in the Philippines, enacted on June 24, 2006), the appellate court saw fit to modify the penalty to *reclusion perpetua*.

Thus, Camat interposed the present appeal wherein both the prosecution and their defense merely adopted their briefs filed with the Court of Appeals. Before this Court, appellant Camat reiterates the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED NOTWITHSTANDING THE INCONSISTENT AND IMPROBABLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH THEIR IDENTITIES WITH MORAL CERTAINTY.[19]

Essentially, the issues raised by appellant Camat boil down to whether or not his conviction was warranted upon due consideration of the evidence on record.

Appellant Camat argues that his conviction was erroneous because it was based on contradictory and improbable testimonies made by prosecution witnesses who were among the surviving victims of the massacre. He maintains that these witnesses could not have possibly identified him with moral certainty as one of the gunmen because it was unlikely that they were able to see the faces of the assailants firing at them since they were more concerned with taking cover for their safety. Thus, he posits that his defense of alibi must be upheld over the supposedly weak testimonial evidence presented by the prosecution.

After a careful review, we affirm the guilty verdict against appellant Camat.

Article 248 of the Revised Penal Code states that:

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[19] CA *rollo*, p. 203.

Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

As encapsulated in jurisprudence, to be liable for Murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide.[20]

We uphold the Court of Appeals' finding that all the elements of the crime of murder concur in this instance. With regard to the first element, the prosecution was able to establish the fact of death of Marcelina and Elmer Hidalgo as shown by their death certificates[21] as well as the autopsy reports[22] which clearly indicate that the common cause of their untimely demise is massive hemorrhage secondary to gunshot wounds that they sustained

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[20] *People v. Francisco*, G.R. No. 192818, November 17, 2010, 635 SCRA 440, 454.

[21] Records, Vol. I, p. 7.

[22] *Id.*, Vol. IV, pp. 16-17.

during the shooting incident in question. The fourth element is present as well since both the victims are adults and not related by consanguinity or affinity to appellant Camat which forecloses any possibility of classifying their fatal shooting as either parricide or infanticide.

As for the second element, there can be no doubt that the prosecution also proved the participation of appellant Camat in the crimes subject of this case. Appellant Camat's defenses of alibi and denial as well as his attack on the credibility of the prosecution witnesses who positively identified him simply cannot be given credence.

In the previously mentioned companion case of *People v. Dulay*,[23] appellant Camat's co-accused Dulay similarly introduced the issue concerning the credibility of the testimonies made by the witnesses for the prosecution who were among the survivors of the November 3, 1999 massacre, namely, Juanito, Aurelio, Pedro, and Ricardo, all surnamed Hidalgo. Given the identity of the factual circumstances of this case with the *Dulay* case, we see no reason to deviate from the ruling this Court laid down in *Dulay*, to wit:

> A few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details do not impair their credibility. Minor inconsistencies even tend to strengthen the credibility of a witness because they discount the possibility that the testimony was rehearsed. As regards the actuations of the witnesses at the time of the incident, it is settled that there is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling, or frightful occurrence.[24]

Indeed, minor inconsistencies in the narration of facts by the witnesses do not detract from their essential credibility as long as their testimonies on the whole are coherent and intrinsically believable.[25] In fact, this Court had previously held that trivial

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[23] *Supra* note 4.

[24] *Id.* at 661.

[25] *People v. Bi-ay, Jr.*, G.R. No. 192187, December 13, 2010, 637 SCRA 828, 837.

inconsistencies do not rock the pedestal upon which the credibility of the witnesses rests but enhances credibility as they manifest spontaneity and lack of scheming.[26] Jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were pre-fabricated and rehearsed.[27]

Since the testimonies of the prosecution witnesses were credible, this Court cannot accept appellant Camat's defenses of alibi and denial in light of the positive identification of him as one of the gunmen involved in that dreadful massacre.

It bears repeating that this Court has consistently held that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses.[28] Moreover, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[29]

To be sure, an examination of the testimonies made by the prosecution witnesses reveals that their identification of appellant Camat as one of the culprits behind the November 3, 1999 massacre was clear and unequivocal. The relevant portions of the transcripts are quoted here:

[JUANITO HIDALGO]

PROS. TOMBOC: (direct examination)

Q You said a gunfire came from x x x infront of your house, do you know who are firing that gun burst?

A Yes sir, Mamerto Dulay and **Diosdado Camat**, and other companions.

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[26] *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 539.

[27] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 521.

[28] *People v. Villamor*, G.R. No. 187497, October 12, 2011.

[29] *People v. Amatorio*, G.R. No. 175837, August 9, 2010, 627 SCRA 292, 304-305.

x x x x x x x x x

Q You said a burst of gunfire came from Diosdado Camat and Mamerto Dulay and his companion. What kind of firearm [did] **Diosdado Camat** [fire] when you saw him fired?

A A long firearm, but I do not know the caliber, sir.

x x x x x x x x x

Q When you said a burst of gunfire came from these persons. Who among the group actually make or shoot towards your direction?

A The two (2) which were holding long firearm, sir.

Q Who are these two (2) persons?

A Mamerto Dulay and **Diosdado Camat**, sir.[30] (Emphases supplied.)

ATTY CERA: (cross-examination)

Q So, Mamerto Dulay and **Diosdado Camat** came into your place, how far were they from where you sat?

A Not less than six (6) meters, sir.

Q Where was, did the group of Mamerto Dulay come as a group?

A Yes sir.

Q How many shots were fired if you remember?

A Many sir, I cannot remember how many, sir.

Q How long was the duration of the gun burst?

A Successive sir.

Q What particular place **Diosdado Camat** was standing in relation to the place where you sat?

A At the eastern direction, sir.[31] (Emphases supplied.)

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[30] TSN, March 10, 2000, pp. 5-8.

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

ATTY. FLORENDO: (cross-examination)

Q So, the first time that you are able to notice the presence of Mamerto Dulay and **Diosdado Camat** was when they were already running away, am I correct?

A No sir, at the time when they were at the fence.

Q You mentioned a while ago before the actual shooting you did not notice anybody?

A I was able to notice them at the time when they fired their guns, sir.

Q And you are only able to notice Mamerto Dulay and **Diosdado Camat** aiming their guns to your direction?

A Yes sir.[32] (Emphases supplied.)

FISCAL DUMLAO: (direct examination)

Q Mr. Witness, why do you know this Marcelina Hidalgo?

A She is my wife, sir.

Q Where is she now?

A She is dead, sir.

Q Do you know the cause of death of your wife?

A Yes, sir.

Q What was the cause of her death?

A She was shot, sir.

COURT:

Q Who shot her?

A **Camat** and companions, sir.

FISCAL DUMLAO:

Q About this Elmer Hidalgo, do you know him?

A I know him, sir.

Q What happened to him?

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

A He was also shot, sir.

Q Who shot him?

A **Camat** and company, sir.

COURT:

Q Did he die also?

A He died Ma'am.

FISCAL DUMLAO:

Q When you testified, Mr. Witness, on March 10, 2001, before Hon. Judge Modesto Juanson, you were asked to point to Diosdado Camat but he was not around at that time, now, will you please stand up and look inside the courtroom if you can see one **Diosdado Camat** and if he is here please point to him.

A (Witness pointed unto a person inside the courtroom, who, when his name was asked, he answered **Diosdado Camat**).

x x x x x x x x x

ATTY. MAPILI: (cross-examination)

Q You have no grudge against **Diosdado Camat**?

A None, sir.

Q So there is no reason for him to shoot you because you have no grudge against him?

A I do not know x x x but when we were shot he was there.[33] (Emphases supplied.)

[AURELIO HIDALGO]

PROS. TOMBOC: (direct examination)

Q At that time you heard gunfire and directed to you, do you know who are those persons who shot that gunfire?

A Yes sir.

Q Will you please name them, if you know?

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[33] TSN, August 1, 2001, pp. 2-1.

A **Boyet Camat**, Henry Caoile, Mamerto Dulay, Junior Lopez, John Laurean, Ibot Campos, Rogelio Campos and Serafin Dulay, sir.[34] (Emphasis supplied.)

PROS. DUMLAO: (direct examination)

Q Mr. witness, when you are asked to identify **Boyet Camat** inside the courtroom during you testimony on March 13, 2000, your answer was that, he was not here, before, is that correct?

A Yes sir.

Q Is this **Boyet Camat** already inside the courtroom now?

A Yes sir, he is here.

Q Will you please look around the courtroom and scan and point to this **Boyet Camat** if he is inside the courtroom?

A He is here sir. (Witness pointing to a person seated inside the courtroom and when asked his name, answered, **Diosdado Camat**, *alias* **Boyet**.)

Q Since when have you known this **Boyet Camat** before November 3, 1999?

A I know him since his childhood, sir.[35] (Emphases supplied.)

[PEDRO HIDALGO]

PROS. TOMBOC: (direct examination)

Q You said that you were shot, where were you hit, in what part of your body?

A (Witness is pointing at the left palm and right buttock, sir.)

Q While facing east you were hit, how were you able to come to know that the gunshot came from your back?

A I turned my face at my back when I heard gunshot, sir.

Q You said you turned your back what did you see?

A I saw John Laurean, Rogelio Campos, Ibot Campos, Mamerto Dulay, **Boyet Camat**, Henry Caoile, Serafin Dulay and John Lopez, sir.

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[34] TSN, March 13, 2000, pp. 6-7.

[35] TSN, September 24, 2001, p. 4.

x x x x x x x x x

Q **Boyet Camat**?

A A long firearm, sir.

COURT:

Q What is the name of **Camat**?

A **Diosdado Camat**, sir.[36] (Emphases supplied.)

FISCAL DUMLAO: (direct examination)

Q Mr. Witness, when you testified before this Honorable Court before Judge Modesto C. Juanson on April 4, 2000, you were made to identify in the court room the person of **Diosdado Camat** and you said before that he was not here in that hearing, if this **Diosdado Camat** is inside the court room now, will you please stand up and go near him and tap his shoulder?

A (Witness pointed to a person inside the courtroom, who when his name was asked answered **Diosdado Camat**).[37] (Emphases supplied.)

ATTY. MAPILI: (cross-examination)

Q Mr. Witness, do you remember having testified during the hearing on April 4, 2000, that you do not know who among the eight alleged assailants fired their gun?

A Yes, sir, but all of them were holding guns.

Q And you want to impress the Court that you remember the guns that they were carrying even though the shots were only for a few seconds?

A **Boyet Camat** was holding long firearms, Mamerto Dulay was holding a long firearm, and the other six were holding short firearms.[38] (Emphasis supplied.)

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[36] TSN, April 4, 2000, pp. 7-9.

[37] TSN, August 22, 2001, pp. 5-6.

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

[RICARDO HIDALGO]

PROS. DUMLAO: (direct examination)

Q Mr. witness, you testified on April 11, 2000 before this Honorable Court regarding these three (3) cases and you are asked [a] [q]uestion [on] page 6 of the transcript of stenographic notes [TSN] of your testimony that the persons who shot you and your companions were John Laurean, Rogelio Campos, Ibot Campos, Serafin Dulay, **Boyet Camat**, Henry Caoile, Mamerto Dulay and Junior Lopez. If this **Boyet Camat** is in the courtroom, are you now in a position to point him, Mr. witness?

A Before he was not here, but now he is here, sir.

Q Can you point to him?

A Yes sir. (Witness pointing to a person, when asked his name, answered, **Diosdado Camat**.)

COURT:

Q Do you know the exact name of **Boyet Camat**?

A I know they called him in the house, but I do not know the name in the school, sir.

PROS. DUMLAO:

Q Mr. witness, you said that in your testimony on April 11, 2000 particularly on page 10 of the tsn. The question was asked of you Mr. witness, what caliber or firearm was this Boyet holding at that time and you answered, long firearm. My question is, will you describe that long firearm?

A (Witness demonstrating a long firearm of about 2 ½ feet.)

x x x x x x x x x

Q Why do you know **Boyet Camat** who answered by the name of **Diosdado Camat**?

A He is also our former barangaymate, madam.[39] (Emphases supplied.)

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[39] TSN, July 23, 2001, pp. 4-6.

Furthermore, appellant Camat's sudden flight from his residence right after the November 3, 1999 massacre militated against his protestations of innocence. His reaction upon hearing reports that he was considered a suspect in the Loac massacre, was to leave his house without a word to his relatives on the pretext that he was evading armed men who were purportedly looking for him. He settled in his rest house located in San Fabian, Pangasinan where he stayed for more than a year before police officers managed to arrest him on December 25, 2000 pursuant to an outstanding warrant of arrest. When he testified in open court, he could not provide any plausible reason for his prolonged absence from his hometown and to his apparent aversion to the thought of voluntarily surrendering to the authorities in order to clear his name. The following pertinent portions of the transcript show this:

FISCAL DUMLAO:

Q In other words, at about 3:00 o'clock in the morning of November 5, you immediately proceeded to Tiblong, San Fabian, is that what you mean?

A Yes, sir.

Q You did not even talk to your mother anymore or to your sister Monica before you went to Tiblong?

A No more, sir, because I walked at the ricefield.

x x x x x x x x x

COURT:

Q Why did you not proceed to the police station in that early morning?

A I already feared because the relatives of the victims might see me.

Q Why did you not surrender at Manaoag Police Station?

A I did not think about that anymore, sir.

COURT:

Continue Fiscal.

FISCAL DUMLAO:

Q You even passed at Mangaldan in going to Tiblong, is it not?

A Yes, sir.

Q You did not report to the police of Mangaldan?

A I did not think of it anymore, sir.

Q You passed also the Poblacion of San Fabian before going to Tiblong?

A Yes, sir.

Q You did not think of surrendering to the police of San Fabian?

A It did not occur to my mind, sir.

x x x x x x x x x

COURT:

Q Casimiro Camat is a member of the army, why did you not go to him to have you surrendered and tell him that you have nothing to do with the incident?

A It did not occur to my mind, sir.

x x x x x x x x x

COURT:

Q In that span of one year that you are hiding, did you not learn that these cases were being tried and one Mamerto Dulay was already convicted?

A No, sir.

COURT:

Proceed.

FISCAL DUMLAO:

Q Immediately after you were informed that your name was involved in that massacre when you arrived coming from Baguio City on November 4, 1999 and when your sister Monica informed you that your name was involved, so as with your mother, did you not go to the police or some

other police station to give your statement that you have nothing to do in that massacre considering that you were in Baguio City, morning and afternoon of November 3, 1999.

A No, sir.

Q It is only your first time to narrate your version of this tragedy at Laoac, this is your first time to tell the Honorable Court that you were in Baguio City in the morning and afternoon of November 3, 1999?

A Yes, sir.

Q From the time, Mr. Witness, that you left your house in that early morning of November 5 up to December 25 when you were arrested at Villaflor Hospital in Dagupan City, even once or twice, you did not go or visit your *barangay* at Anis, Laoac, Pangasinan, is that correct?

A No more, sir.[40]

In all, the lower courts correctly appreciated appellant Camat's unexplained departure against him. Flight in criminal law is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings.[41] In one case, this Court had stated that it is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.[42]

Moreover, the qualifying circumstance of treachery was adequately shown to exist in this case, thus, satisfying the third element of Murder.

There is treachery or *alevosia* when the offender commits any of the crimes against the person, employing means, methods

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[40] TSN, August 21, 2002, pp. 39-43.

[41] *People v. Lalli*, G.R. No. 195419, October 12, 2011.

[42] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 811.

or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[43] For *alevosia* to qualify the crime to Murder, it must be shown that: (1) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (2) the said means, method and manner of execution were deliberately adopted. Moreover, for treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[44]

In the recent case of *People v. Nugas*,[45] we expounded on the essence of treachery in this manner:

> The essence of treachery lies in the attack that comes without warning, and the attack is swift, deliberate and unexpected, and affords the hapless, unarmed and unsuspecting victim no chance to resist or escape, thereby ensuring its accomplishment without the risk to the aggressor, without the slightest provocation on the part of the victim. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Treachery may also be appreciated when the victim, although warned of the danger to his life, is defenseless and unable to flee at the time of the infliction of the *coup de grace*.

The testimonial evidence gathered in this case clearly indicates that the victims who were simply engaged in conversation in a private residence were caught entirely by surprise with the assailants' swift, deliberate and unexpected attack using multiple firearms thereby negating the possibility for the victims to escape or defend themselves.

However, contrary to the findings of both the trial and appellate courts, this Court finds that the use of unlicensed firearm was not duly proven by the prosecution. The evidence indicates that none of the firearms used in the November 3, 1999 massacre

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[43] *People v. Agacer*, G.R. No. 177751, December 14, 2011.

[44] *People v. Concillado*, G.R. No. 181204, November 28, 2011.

[45] G.R. No. 172606, November 23, 2011.

were ever recovered and presented in the trial court. Nevertheless, there is jurisprudence which states that the existence of the firearm can be established by testimony, even without the presentation of the firearm.[46] The testimony of the prosecution witnesses had established that appellant Camat used a long firearm of unknown make and caliber to shoot his victims but that would still be insufficient to attribute to his felonious act the qualifying circumstance of use of unlicensed firearm in light of jurisprudence which asserts that in order for the same to be considered, adequate proof, such as written or testimonial evidence, must be presented showing that the appellant was not a licensed firearm holder.[47] There was no such proof in the case at bar.

Article 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death for the crime of Murder. If no aggravating or mitigating circumstance attended the commission of the crime, the imposable penalty is *reclusion perpetua*. In this case, the qualifying circumstances of treachery and use of unlicensed firearms were appreciated by both the trial court and the Court of Appeals. However, only the presence of the qualifying circumstance of treachery was clearly proven in the trial of appellant Camat for the killing of Marcelina and Elmer Hidalgo, which nevertheless qualified the felonious act as Murder. There being no other aggravating circumstance, the trial court was incorrect in imposing the death penalty and should have just imposed the penalty of *reclusion perpetua*.

In any case, the Court of Appeals imposed the proper penalty of *reclusion perpetua* after considering the express mandate of Republic Act No. 9346.

This Court also upholds appellant Camat's conviction of four counts of Attempted Murder since said charges were satisfactorily proven by the prosecution.

The elements of attempted felony are as follows:

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[46] *People v. Malinao*, 467 Phil. 432, 443 (2004).

[47] *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 202.

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[48]

It is well-settled that where the wounds inflicted on the victim are not sufficient to cause his death, the crime is only Attempted Murder, as the accused had not performed all the acts of execution that would have brought about the victim's death.[49]

In the present case, appellant Camat and his co-accused only committed Attempted Murder because they were not able to kill Juanito, Aurelio, Pedro, and Ricardo by reason of a cause independent of their will, specifically timely medical attention, despite the fact that they already performed all the acts of execution which should have produced the crime of Murder. In addition, the wounds inflicted upon these victims were not considered fatal as evidenced by the documentary and testimonial evidence presented in the trial court.

Every person criminally liable for a felony is also civilly liable.[50] Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[51]

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[48] *People v. Rellota*, G.R. No. 168103, August 3, 2010, 626 SCRA 422, 445.

[49] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 645.

[50] REVISED PENAL CODE, Art. 100.

[51] *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 542-543.

This Court had previously declared that in cases of Murder and Homicide, civil indemnity and moral damages are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of Murder or Homicide.[52]

Pursuant to recent jurisprudence, this Court is increasing the award of civil indemnity from Fifty Thousand Pesos (₱50,000.00) to Seventy-Five Thousand Pesos (₱75,000.00) for each count of Murder[53] as well as decreasing the award of moral damages from Two Hundred Thousand Pesos (₱200,000.00) to Fifty Thousand Pesos (₱50,000.00) for each count of Murder[54] and from Fifty Thousand Pesos (₱50,000.00) to Forty Thousand Pesos (₱40,000.00) for each count of Attempted Murder.[55] Furthermore, in accordance with Article 2230 of the Civil Code,[56] exemplary damages should be awarded in the amount of Thirty Thousand Pesos (₱30,000.00) for each count of Murder[57] as well as for each count of Attempted Murder.[58]

WHEREFORE, premises considered, the Decision dated February 27, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02429 is hereby **AFFIRMED** with further **MODIFICATIONS** that:

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[52] *People v. Torres, Sr.*, G.R. No. 190317, August 22, 2011, 655 SCRA 720, 732.

[53] *People v. Baroquillo*, G.R. No. 184960, August 24, 2011, 656 SCRA 250, 270; *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 68.

[54] *People v. Agacer*, *supra* note 43.

[55] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 222; *People v. Gutierrez*, *supra* note 49 at 647.

[56] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[57] *People v. Agacer*, *supra* note 43.

[58] *People v. Torres, Sr.*, *supra* note 52 at 733.

(1) Appellant Diosdado Camat is ordered to pay, for each count of MURDER in Criminal Case Nos. U-10498 and U-10499, Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages;

(2) Appellant Diosdado Camat is ordered to pay, for each count of ATTEMPTED MURDER in Criminal Case Nos. U-10500, U-10501, U-10502 and U-10503, Forty Thousand Pesos (₱40,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(3) Appellant Diosdado Camat is further ordered to pay the private offended parties or their heirs interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192591. July 30, 2012]

EFREN L. ALVAREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL OFFENSES; VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT

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

(R.A. NO. 3019); SECTION 3(E); MAY BE COMMITTED EVEN IF BAD FAITH IS NOT ATTENDANT; CASE AT BAR.— It bears stressing that the offense defined under Section 3 (e) of R.A. No. 3019 may be committed even if bad faith is not attendant. Thus, even assuming that petitioner did not act in bad faith, his negligence under the circumstances was not only gross but also inexcusable. Submission of documents such as contractor's license and company profile are minimum legal requirements to enable the government to properly evaluate the qualifications of a BOT proponent. It was unthinkable for a local government official, especially one with several citations and awards as outstanding local executive, to have allowed API to submit a BOT proposal and later award it the contract despite lack of a contractor's license and proof of its financial and technical capabilities, relying merely on a piece of information from a news item about said contractor's ongoing mall construction project in another municipality and verbal representations of its president.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6957, AS AMENDED BY REPUBLIC ACT NO. 7718 (COLLECTIVELY, BOT LAW); BIDDING REQUIREMENTS; TO PROTECT THE INTEGRITY AND INSURE THE VIABILITY OF THE PROJECT BY SEEING TO IT THAT THE PROPONENT HAS THE FINANCIAL CAPABILITY TO CARRY IT OUT.—** To reiterate, we quote from the Decision the purpose of the bidding requirements: "We have held that the Implementing Rules provide for the unyielding standards the PBAC should apply to determine the financial capability of a bidder for pre-qualification purposes: (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources. The evident intent of these standards **is to protect the integrity and insure the viability of the project by seeing to it that the proponent has the financial capability to carry it out.** x x x"

3. **ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONER ADMITTED THAT AFTER THE AWARDING OF THE CONTRACT TO API, THE LATTER DID NOT COMPLY**

WITH THE POSTING OF NOTICES AND SUBMISSION OF REQUIREMENTS.— In his testimony at the trial, petitioner admitted that after the awarding of the contract to API, the latter did not comply with the posting of notices and submission of requirements. He simply cited the reason given by API for such non-compliance, *i.e.*, that the BOT law does not provide for such requirements. This clearly shows petitioner's indifference and utter disregard of the strict requirements of the BOT law and implementing rules, which as local chief executive, he is mandated to follow and uphold. Petitioner's reliance on the representations and statements of the contractor on the compliance with legal requirements is an unacceptable excuse for his gross negligence in the performance of his official duties. He must now face the consequences of his decisions and acts relative to the failed project in violation of the law.

4. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENTS NOT SUBMITTED CONSTITUTE THE "SUBSTANTIAL BASIS" FOR EVALUATING A PROJECT PROPOSAL; CASE AT BAR. — As extensively discussed in our Decision, petitioner was grossly negligent when it glossed over API's failure to submit specified documents showing that it was duly licensed or accredited Filipino contractor, and has the requisite financial capacity and technical expertise or experience, in addition to the complete proposal which includes a feasibility study and company profile. These requirements imposed by the BOT law and implementing rules were intended to serve as competent proof of legal qualifications and therefore constitute the "**substantial basis**" for evaluating a project proposal. Petitioner's theory would allow substitution of less reliable information as basis for the local government unit's determination of a contractor's financial capability and legal qualifications in utter disregard of what the law says and consequences prejudicial to the government, which is precisely what the law seeks to prevent.

5. ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE RULE; IN THE CASE AT BAR, THE ESSENTIAL REQUIREMENTS OF THE BOT LAW WERE NOT AT ALL SATISFIED AS IN FACT THEY WERE SIDESTEPPED TO FAVOR THE LONE BIDDER, API.— The substantial compliance rule is defined as "compliance with the essential requirements, whether

of a contract or of a statute." Contrary to petitioner's submission, his gross negligence in approving API's proposal notwithstanding its failure to comply with the minimum legal requirements prevented the Sangguniang Bayan from properly evaluating said proponent's financial and technical capabilities to undertake the BOT project. Such gross negligence was evident from the taking of shortcuts in the bidding process by shortening the period for submission of comparative proposals, non-observance of Investment Coordinating Committee of the National Economic Development Authority approval for the Wag-wag Shopping Mall Project, publication in a newspaper which is not of general circulation, and accepting an incomplete proposal from API. These forestalled a fair opportunity for other interested parties to submit comparative proposals. Petitioner's argument that there was substantial compliance with the law thus fails. The essential requirements of the BOT law were not at all satisfied as in fact they were sidestepped to favor the lone bidder, API.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE MANNER IN WHICH THE PROSECUTION OF THE CASE IS HANDLED IS WITHIN THE SOUND DISCRETION OF THE PROSECUTOR.— It bears stressing that the manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused. x x x As this Court explained in *Santos v. People*: "x x x The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption."

7. ID.; ID.; ID.; ID.; PROSECUTION OF ONE GUILTY PERSON WHILE OTHERS EQUALLY GUILTY ARE NOT PROSECUTED; NOT A DENIAL OF EQUAL PROTECTION UNLESS THERE IS SHOWN TO BE PRESENT IN IT AN ELEMENT OF INTENTIONAL OR PURPOSEFUL DISCRIMINATION.— But more important, petitioner failed to demonstrate a discriminatory purpose in

prosecuting him alone despite the finding of the Sandiganbayan that the Sangguniang Bayan "has conspired if not abetted all the actions of the Accused in all his dealings with API to the damage and prejudice of the municipality" and said court's declaration that "this is one case where the Ombudsman should have included the entire Municipal Council of Muñoz in the information." As this Court explained in *Santos v. People*: "**The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws.** Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.

APPEARANCES OF COUNSEL

Añover Añover San Diego & Primavera Law Offices for petitioner.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

This resolves the motion for reconsideration of our Decision dated June 29, 2011 affirming the conviction of petitioner for violation of Section 3 (e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act).

Petitioner sets forth the following grounds in his motion:

I

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN COMMITTED MANIFEST ERROR, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO THE PRESUMPTION OF INNOCENCE, AND BLATANTLY DISREGARDED THE PRINCIPLE OF REGULARITY IN THE

PERFORMANCE OF OFFICIAL FUNCTIONS WHEN IT CONVICTED MAYOR ALVAREZ OF VIOLATING R.A. 3019 ON THE BASIS OF HIS FAILURE TO COMPLY WITH THE REQUIREMENTS OF R.A. 7718 ON "SOLICITED PROPOSALS" WHEN IT WAS CLEAR THAT THE CONSTRUCTION OF THE WAG WAG SHOPPING MALL WAS AN UNSOLICITED AND UNCHALLENGED PROPOSAL.

II

THE HONORABLE COURT FAILED TO CONSIDER THE SERIOUS AND MANIFEST ERROR COMMITTED BY THE SANDIGANBAYAN WHEN THE LATTER DISREGARDED MAYOR ALVAREZ' SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF R.A. 7718.

III

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN DISREGARDED THE RIGHT OF MAYOR ALVAREZ TO THE EQUAL PROTECTION OF THE LAWS WHEN HE ALONE AMONG THE NUMEROUS PERSONS WHO APPROVED AND IMPLEMENTED THE UNSOLICITED PROPOSAL WAS CHARGED, TRIED AND CONVICTED.

IV

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN CONVICTED PETITIONER DESPITE THE CLEAR FACT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT, AS SHOWN BY THE FOLLOWING CIRCUMSTANCES:

(A) THE PROSECUTION FAILED TO ESTABLISH ALLEGED GROSS INEXCUSABLE NEGLIGENCE, EVIDENT BAD FAITH OR MANIFEST PARTIALITY OF PETITIONER

(B) THE PROSECUTION FAILED TO ESTABLISH THE ALLEGED DAMAGE OR INJURY PURPORTEDLY SUFFERED BY THE GOVERNMENT

V

THE HONORABLE COURT FAILED TO CONSIDER THE ESTABLISHED FACTS SHOWING THAT PETITIONER:

(A) NEVER ACTED WITH "GROSS INEXCUSABLE NEGLIGENCE" AND/OR "MANIFEST PARTIALITY";

(B) NEVER GAVE ANY "UNWARRANTED BENEFIT", "ADVANTAGE" OR "PREFERENCE" TO API.

VI

THE HONORABLE COURT FAILED TO CONSIDER THAT PETITIONER IS AN OUTSTANDING LOCAL EXECUTIVE WITH UNIMPEACHABLE CHARACTER AND UNQUESTIONED ACCOMPLISHMENT, PETITIONER IS NOT THE KIND OF INDIVIDUAL WHO WOULD ENTER INTO A CONTRACT THAT WOULD PREJUDICE THE GOVERNMENT AND HIS CONSTITUENTS.[1]

Petitioner contends that bad faith, manifest partiality and gross negligence were not proven by the respondent. He stresses that there was substantial compliance with the requirements of R.A. No. 7718, and while it is true that petitioner may have deviated from some of the procedures outlined in the said law, the essential purpose of the law — that a project proposal be properly evaluated and that parties other than the opponent be given opportunity to present their proposal — was accomplished. The Sandiganbayan therefore seriously erred when it immediately concluded that *all* actions of petitioner were illegal and irregular. Petitioner maintains such actions are presumed to be regular and the burden of proving otherwise rests on the respondent. Because all the transactions were done by him *with the authority* of the Sangguniang Bayan, petitioner argues that there can be no dispute that he endeavored *in good faith* to comply with the requirements of R.A No. 7718. Moreover, petitioner asserts that the non-inclusion of all the other members of the Sangguniang Bayan denied him the equal protection of the laws.

In compliance with the directive of this Court, the Solicitor General filed his Comment asserting that petitioner was correctly convicted of Violation of Section 3(e) of R.A. No. 3019. The Solicitor General stressed that the findings of the Sandiganbayan and this Court that the requirements of the Build-Operate-Transfer

[1] *Rollo,* pp. 336-337.

(BOT) law and its implementing rules have not been followed in the bidding and award of the contract to Australian-Professional, Inc. (API) were based on the documents of the project which have not been questioned by petitioner. Thus, despite petitioner's claim of substantial compliance and API's proposal being "complete," it is undisputed that it did not include the required company profile of the contractor and that the publication of the invitation for comparative proposals, as found by this Court, was defective. These findings supported by the evidence on record were shown to have resulted in the failure to assess the actual experience and financial capacity of API to undertake the project, and in contravention of the law foreclosed submission of rival proposals. Finally, the fact that the Sangguniang Bayan members were not included in the charge does not negate the guilt of petitioner who had the power and discretion over the implementation of the Wag-wag Shopping Mall project and not simply to execute the resolutions passed by the Sangguniang Bayan approving the contract award to API. The facts established in the decision of the Sandiganbayan bear great significance on petitioner's role in the bidding and contract award to API, which also clearly showed that petitioner as local chief executive was totally remiss in his duties and functions.

We find no cogent reason for reversal or modification of our decision which exhaustively discussed the afore-cited issues being raised anew by the petitioner.

Notably, petitioner's invocation of good faith deserves scant consideration in the light of established facts, as found by the Sandiganbayan and upheld by this Court, clearly showing that he acted with manifest partiality and gross inexcusable negligence in awarding the BOT project to an unlicensed and financially unqualified contractor.

It bears stressing that the offense defined under Section 3 (e) of R.A. No. 3019 may be committed even if bad faith is not attendant.[2] Thus, even assuming that petitioner did not act in

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[2] *Cruz v. Sandiganbayan*, G.R. No. 134493, August 16, 2005, 467 SCRA 52, 67.

bad faith, his negligence under the circumstances was not only gross but also inexcusable.[3] Submission of documents such as contractor's license and company profile are minimum legal requirements to enable the government to properly evaluate the qualifications of a BOT proponent. It was unthinkable for a local government official, especially one with several citations and awards as outstanding local executive, to have allowed API to submit a BOT proposal and later award it the contract despite lack of a contractor's license and proof of its financial and technical capabilities, relying merely on a piece of information from a news item about said contractor's ongoing mall construction project in another municipality and verbal representations of its president.

In his testimony at the trial, petitioner admitted that after the awarding of the contract to API, the latter did not comply with the posting of notices and submission of requirements. He simply cited the reason given by API for such non-compliance, *i.e.*, that the BOT law does not provide for such requirements. This clearly shows petitioner's indifference and utter disregard of the strict requirements of the BOT law and implementing rules, which as local chief executive, he is mandated to follow and uphold. Petitioner's reliance on the representations and statements of the contractor on the compliance with legal requirements is an unacceptable excuse for his gross negligence in the performance of his official duties. He must now face the consequences of his decisions and acts relative to the failed project in violation of the law.

The substantial compliance rule is defined as "[c]ompliance with the essential requirements, whether of a contract or of a statute."[4] Contrary to petitioner's submission, his gross negligence in approving API's proposal notwithstanding its failure to comply with the minimum legal requirements prevented the Sangguniang Bayan from properly evaluating said proponent's financial and technical capabilities to undertake the BOT project. Such gross

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[3] *Id*.

[4] *BLACK'S LAW DICTIONARY*, 5th Edition (1979), p. 1280.

negligence was evident from the taking of shortcuts in the bidding process by shortening the period for submission of comparative proposals, non-observance of Investment Coordinating Committee of the National Economic Development Authority approval for the Wag-wag Shopping Mall Project, publication in a newspaper which is not of general circulation, and accepting an incomplete proposal from API. These forestalled a fair opportunity for other interested parties to submit comparative proposals. Petitioner's argument that there was substantial compliance with the law thus fails. The essential requirements of the BOT law were not at all satisfied as in fact they were sidestepped to favor the lone bidder, API.

Petitioner nonetheless reiterates his position that he cannot be held liable for such acts in violation of the law since there was "substantial basis" for the Municipal Government of Muñoz to believe that API had the expertise and capability to implement the proposed Wag-wag Shopping Mall project. He points out the time they were negotiating with API, Australian-Professionals Realty, Inc. which is the same entity as API, was involved in two major BOT projects (₱150 million project in Lemery, Batangas and ₱300 million construction project in Calamba, Laguna).

We disagree.

As extensively discussed in our Decision, petitioner was grossly negligent when it glossed over API's failure to submit specified documents showing that it was duly licensed or accredited Filipino contractor, and has the requisite financial capacity and technical expertise or experience, in addition to the complete proposal which includes a feasibility study and company profile. These requirements imposed by the BOT law and implementing rules were intended to serve as competent proof of legal qualifications and therefore constitute the *"substantial basis"* for evaluating a project proposal. Petitioner's theory would allow substitution of less reliable information as basis for the local government unit's determination of a contractor's financial capability and legal qualifications in utter disregard of what the law says and

consequences prejudicial to the government, which is precisely what the law seeks to prevent.

To reiterate, we quote from the Decision the purpose of the bidding requirements:

> We have held that the Implementing Rules provide for the unyielding standards the PBAC should apply to determine the financial capability of a bidder for pre-qualification purposes: (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources. The evident intent of these standards is **to protect the integrity and insure the viability of the project by seeing to it that the proponent has the financial capability to carry it out.** Unfortunately, none of these requirements was submitted by API during the pre-qualification stage.[5] (Emphasis supplied.)

Petitioner further points out that our Decision failed to consider that the Sandiganbayan disregarded his right to the equal protection of the laws when he alone among the numerous persons who approved API's proposal and implemented the project was charged, tried and convicted.

It bears stressing that the manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor, and the non-inclusion of other guilty persons is irrelevant to the case against the accused.[6] But more important, petitioner failed to demonstrate a discriminatory purpose in prosecuting him alone despite the finding of the Sandiganbayan that the Sangguniang Bayan "has conspired if not abetted all the actions of the Accused in all his dealings with API to the damage and prejudice of the municipality" and said court's declaration that "[t]his is one case where the Ombudsman should

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[5] *Rollo*, p. 308.

[6] *People v. Dumlao*, G.R. No. 168918, March 2, 2009, 580 SCRA 409, 433, citing *People v. Nazareno*, 329 Phil. 16, 20-23 (1996).

have included the entire Municipal Council of Muñoz in the information."[7]

As this Court explained in *Santos v. People*:[8]

The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."** Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

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[7] *Rollo*, p. 82.

[8] G.R. No. 173176, August 26, 2008, 563 SCRA 341, 370-371, citing *People v. Dela Piedra*, 403 Phil. 31, 54-56 (2001).

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown.[9] (Emphases supplied.)

Finally, the Court need not delve into the merits of petitioner's assertion that as a local executive official well-recognized for his achievements and public service, he is not the kind of person who would enter into a contract that would prejudice the government. A *non-sequitur,* it has no bearing at all to the factual and legal issues in this case.

WHEREFORE, the present motion for reconsideration is hereby **DENIED with FINALITY.**

No further pleadings shall be entertained in this case.

Let entry of judgment be made in due course.

SO ORDERED.

Leonardo-de Castro,[*] *del Castillo,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

Bersamin, J., respectfully dissents.

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[9] As cited in *People v. Dumlao, supra* note 6 at 434-435.

[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

FIRST DIVISION

[G.R. No. 194945. July 30, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX WATAMAMA *Y* ESIL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; REQUIRES THAT TESTIMONY BE PRESENTED ABOUT EVERY LINK IN THE CHAIN, FROM THE MOMENT THE ITEM WAS SEIZED UP TO THE TIME IT IS OFFERED IN EVIDENCE.— In all prosecutions for the violation of the Comprehensive Dangerous Drugs Act of 2002, the existence of the prohibited drug has to be proved. The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused. x x x Instructive is the case of *People v. Kamad,* where the Court enumerated the different links that the prosecution must endeavor to establish with respect to the chain of custody in a buy-bust operation: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turn over and submission of the marked illegal drug seized by the forensic chemist to the court.

2. ID.; ID.; SUBSTANTIAL ADHERENCE TO THE REQUIREMENTS THEREOF IS RECOGNIZED; CONDITIONS.— While this Court recognizes substantial adherence to the requirements of R.A. No. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases, still, such officers must present justifiable reason for their

imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; 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 TO BE.— We are aware that there is no rule which requires the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor. Nonetheless, as a mode 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. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone 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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the March 5, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 03295, affirming the

[1] *Rollo*, pp. 2-18. Penned by Associate Justice Antonio L. Villamor with Associate Justices Vicente S.E. Veloso and Rodil V. Zalameda concurring.

Decision[2] of the Regional Trial Court (RTC), Branch 103, of Quezon City, finding appellant Alex Watamama *y* Esil guilty of violating Section 5 of Republic Act (R.A.) No. 9165.[3]

The prosecution's version of the facts is as follows:

At around 10 o'clock in the morning of September 25, 2005, an informant reported to SPO2 Dante Nagera in the Quezon City Anti-Drug Action Center, PNP Central Police District, Quezon City Hall Compound, that a certain "Alex" was selling drugs in Barangay Payatas, Quezon City. SPO2 Nagera relayed the information to his superior P/Supt. Gerardo Ratuita who then formed a team consisting of SPO2 Nagera, PO3 Leonardo Ramos, PO1 Teresita Reyes, PO1 Alexander Jimenez, and PO1 Peggy Lynne Vargas to conduct a buy-bust operation. PO1 Vargas was designated as the *poseur* buyer and was given two ₱100 bills which she marked with her initials "PV".[4]

At 12 noon of the same day, the buy-bust team arrived at Area A, Payatas, Quezon City. The informant accompanied PO1 Vargas to a house at No. 14 Rosal Street. Upon seeing appellant, the informant introduced PO1 Vargas to appellant as a *shabu* user. PO1 Vargas asked to buy ₱200 worth of *shabu* from appellant. When asked for payment, PO1 Vargas promptly handed appellant the two marked bills. Appellant pocketed the money then took out a plastic sachet containing 0.18 grams of *shabu* and gave it to PO1 Vargas. PO1 Vargas inspected the contents of the plastic sachet, then gave the pre-arranged signal that the transaction was consummated. Immediately, the other members of the buy-bust team surfaced and arrested appellant. The two marked bills were recovered when SPO2 Nagera ordered appellant to empty his pockets. Appellant was thereafter brought to the police station.[5]

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[2] CA *rollo*, pp. 47-51. Penned by Presiding Judge Jaime N. Salazar, Jr. The decision is dated April 23, 2008.

[3] Comprehensive Dangerous Drugs Act of 2002.

[4] TSN, April 4, 2006, pp. 3-6; TSN, January 15, 2007, pp. 2-5.

[5] *Id.* at 9-18; *id.* at 7-14.

At the police station, PO1 Vargas marked the confiscated *shabu* and turned it over to the station investigator Alex A. Jimenez. Jimenez prepared an inventory receipt which P/Supt. Ratuita signed. Thereafter, PO2 Ortiz brought the plastic sachet to the PNP Crime Laboratory for qualitative examination.[6] Forensic chemist Leonard Jabonillo performed the examination and found that the contents of the heat-sealed transparent plastic sachet with marking PV-09-25-05, weighed 0.18 grams and tested positive for *methylampethamine hydrochloride* or *shabu*.[7]

On the other hand, appellant claimed that three men in civilian attire with handguns tucked at their waist suddenly barged in his house and arrested him. He was not shown any arrest warrant and nothing was found on him when the police frisked him at the police station. He added that PO1 Jimenez told him that if he wanted to be released he must reveal the identity of a big-time *shabu* supplier. He denied knowing any big-time *shabu* supplier and also denied selling *shabu*. He was then charged with illegal sale of *shabu*.[8]

The RTC rendered a decision convicting appellant of illegal sale of 0.18 grams of *shabu* and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.

On appeal to the CA, appellant argued that the arresting police officers failed to comply strictly with Section 21(1) of R.A. No. 9165, since there was no proof that they conducted an inventory of the confiscated items, or even marked the same in his presence, or the presence of his representative or counsel, or a representative from the media and the Department of Justice, or any elected official.

As aforesaid, the CA denied the appeal and affirmed the RTC Decision. The CA found that the prosecution was able to establish every link in the chain of custody of the *shabu* from the moment of seizure to receipt for examination and safekeeping in the

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[6] *Id.* at 21-22; *id.* at 15-16.

[7] Records, p. 9.

[8] TSN, February 21, 2008, pp. 3-8.

PNP Crime Laboratory to safekeeping for presentation in court. The CA further held that the marking and inventory of the *shabu* done at the police station was not fatal to the prosecution's case. Section 21 (a) of the Implementing Rules and Regulations of Republic Act No. 9165 provides that in case of warrantless seizures, the marking, inventory, and photograph may be conducted at the nearest office of the apprehending team as long as the integrity and evidentiary value of the seized items are properly preserved. The CA noted that PO1 Vargas adequately explained why the marking was not made at the place of confiscation since there was a crowd of people forming when appellant was arrested. Also, a photograph was taken but the digital camera was lost. The CA also held that the defect in the pre-operation coordination sheet with PDEA would not affect the entrapment operation. The CA explained that Section 86 of R.A. No. 9165 is explicit only in saying that the PDEA shall be the "lead agency" in investigations and prosecutions of drug-related cases. It held that Section 86 is more of an administrative provision.

Unsatisfied with the CA decision, appellant filed a notice of appeal before this Court, essentially questioning the noncompliance by the police with the procedure for the custody and control of seized prohibited drugs under Section 21 of R.A. No. 9165. He claims that the chain of custody was not established by the prosecution and prays for his acquittal.

We agree with appellant.

In all prosecutions for the violation of the Comprehensive Dangerous Drugs Act of 2002, the existence of the prohibited drug has to be proved.[9] The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.

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[9] *People v. Habana*, G.R. No. 188900, March 5, 2010, 614 SCRA 433, 439, citing *People v. Mendiola*, G.R. No. 110778, August 4, 1994, 235 SCRA 116, 120.

While this Court recognizes substantial adherence to the requirements of R.A. No. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases,[10] still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved. Here, however, they failed to meet these conditions.

The prosecution failed to show how the seized evidence changed hands from the time PO1 Vargas turned it over to the investigator up to the time they were presented in court as evidence. The prosecution did not adduce evidence on how the evidence was handled or stored before its presentation at the trial. It is not enough to rely merely on the testimony of PO1 Vargas who stated that she turned the seized item over to the investigator who then prepared the letter of request for examination. There was no evidence on how PO2 Ortiz came into possession of the *shabu* and how he delivered the seized item for examination to the PNP Crime Laboratory. Neither was there any evidence how it was secured from tampering. Instructive is the case of *People v. Kamad*,[11] where the Court enumerated the different links that the prosecution must endeavor to establish with respect to the chain of custody in a buy-bust operation: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turn over and submission of the marked illegal drug seized by the forensic chemist to the court.

We are aware that there is no rule which requires the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of prohibited drugs from him. The discretion on which

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[10] *Id.* at 440, citing *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304.

[11] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

witness to present in every case belongs to the prosecutor.[12] Nonetheless, as a mode 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. In context, this would ideally include testimony about every link in the chain, from the seizure of the prohibited drug up to the time it is offered into evidence, in such a way that everyone 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.[13]

In this case, the over-reliance on PO1 Vargas' testimony and the failure to present the investigator and PO2 Ortiz are fatal to the prosecution's case. Since the failure to establish every link in the chain of custody of the drug compromised its identity and integrity, which is the *corpus delicti* of the crimes charged against appellant, his acquittal is therefore in order.

WHEREFORE, the appeal is **GRANTED.** The March 5, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03295 is **REVERSED and SET ASIDE.** Accused-appellant Alex Watamama *y* Esil is hereby **ACQUITTED** on the ground of reasonable doubt.

The Director, Bureau of Corrections, Muntinlupa City, is hereby ordered to release the person of accused-appellant ALEX WATAMAMA *y* ESIL from custody unless he is detained for some other lawful cause/s.

The Director, Bureau of Corrections, is hereby further ordered to **REPORT** to this Court his compliance herewith within five (5) days from doing so.

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[12] See *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

[13] *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632, further citing American jurisprudence.

With costs *de oficio*.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin, del Castillo,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 196990. July 30, 2012]

ARTURO DELA CRUZ, SR., *petitioner, vs.* **MARTIN and FLORA FANKHAUSER,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; NO APPEAL MAY BE TAKEN FROM AN ORDER OF EXECUTION EXCEPT WHEN THE WRIT OF EXECUTION VARIES THE JUDGMENT.— Rule 41 of the Revised Rules of Court indeed states that no appeal may be taken from an order of execution. However, in *De Guzman v. Court of Appeals*, the Court stated that there are certain instances when an appeal from an order of execution should be allowed x x x. Recently, the Court *En Banc*, in *Philippine Amusement and Gaming Corporation v. Aumentado, Jr.*, reiterated that there are exceptions to the general rule that an order of execution is not appealable, one of which is when the writ of execution varies judgment.

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[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

APPEARANCES OF COUNSEL

Zoilo C. Cruzat for petitioner.
Evasco Abinales & Evasco Law Offices for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* assails the March 10, 2011[1] and May 16, 2011[2] Resolutions of the Court of Appeals (CA) which dismissed petitioner's appeal on the ground that it was the wrong remedy.

The Factual Antecedents

On March 17, 1988, petitioner Arturo dela Cruz, Sr. and his wife, while then still living, entered into a contract of lease with option to buy with respondents Martin and Flora Fankhauser, over a parcel of residential land in Puerto Princesa City, covered by Transfer Certificate of Title (TCT) No. 5620. The contract stated that the lessee will occupy the leased premises beginning April 1, 1988; that in consideration of the lessee's option to buy, the lessee will advance ₱162,000.00; that from April 1988 to December 1988 rental on the leased premises is considered fully paid, applying therefor the interest of the advanced amount of ₱162,000.00; that in consideration further of the lessee's option to buy, the lessee will advance to the lessor commencing from January 1989 up to April 1990 a monthly amount of ₱18,000.00 and during this period the rentals shall be considered paid by applying therefor the interests on the above-mentioned advances; that after the lessee shall have completely paid all the advances mentioned, a contract of sale over the leased house and lot shall be deemed to have been perfected and consummated and the lessor binds himself to execute in favor of the lessee a deed of absolute sale.

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[1] *Rollo*, pp. 20-23. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Antonio L. Villamor and Amy C. Lazaro-Javier.

[2] *Id.* at 24.

The respondents did not advance the monthly amount of ₱18,000.00. Hence, petitioner sought the rescission of the contract, which was granted by the Regional Trial Court of Palawan, Branch 49 (RTC). On appeal, the CA in CA-G.R. CV No. 80372 found that petitioner's claim for rescission was premature. It ruled that the RTC should have fixed a grace period of 60 days to comply with the notice required in Republic Act (RA) No. 6552. The CA set aside the decision of the RTC and disposed as follows:

> **WHEREFORE,** the foregoing premises considered, the appealed Decision dated May 27, 2003 of Branch 49 of the Regional Trial Court of Palawan and Puerto Princesa City in Civil Case No. 2143 is hereby **SET ASIDE.** A new one is **ENTERED** as follows:
>
> The plaintiff-appellants are **ORDERED** to pay (1) the balance of the purchase price amounting to ₱288,000.00 within 60 days from the finality of this Decision; and (2) rentals in arrears of ₱1,080.00 a month from January 1989 until full payment of balance of purchase price. On the other hand, the defendants-appellees are **ORDERED** to execute a deed of absolute sale in favor of the plaintiffs-appellants upon full payment of purchase price of the subject property and rentals in arrears.
>
> In case of failure to pay the balance of the purchase price with[in] 60 days from finality of this Decision, the plaintiffs-appellants are ordered (1) to vacate the subject property without need of further demand; and (2) to pay after deducting the downpayment of ₱162,000.00, rentals in arrears of ₱1,080.00 a month from January 1989 until possession is surrendered to the defendants-appellees.
>
> SO ORDERED.[3]

The CA Decision became final and executory on December 21, 2007.[4] On January 18, 2008, respondents communicated to petitioner that two (2) checks covering the balance of the price and the rental arrears were already ready for petitioner to claim.

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[3] *Id*. at 71-72. The Decision was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal.

[4] *Id*. at 73.

A manifestation to this effect was also received by the RTC on February 19, 2008.[5] Petitioner did not claim the checks[6] but instead moved, on March 12, 2008, for the execution of the CA Decision, particularly the second part of the dispositive portion ordering the respondents to vacate the subject property and to pay rental arrears.

The RTC Ruling

The RTC, in its October 29, 2008 Order,[7] granted the motion for execution and disposed as follows:

> WHEREFORE, premises considered, the motion for execution filed by defendants-appellees is hereby granted. Accordingly, let a writ issue for the execution of the decision of the Court of Appeals in this case, which the Deputy Sheriff of this Court-Branch is hereby directed to enforce strictly in accordance with the whole dispositive portion of the said decision, with the 60-day period to be counted from herein parties' notice of this order.
>
> x x x x x x x x x
>
> SO ORDERED.

Petitioner elevated the RTC Order of execution to the CA by notice of appeal.[8] He claimed that the order of execution issued by the RTC varied the judgment of the CA.

The CA Ruling

In its assailed Resolution,[9] the CA dismissed the appeal for being the wrong remedy. It quoted Rule 41 of the Rules of Court which states that "[n]o appeal may be taken from . . . (e) An

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

[6] Petitioner contends that "the preparation of the checks intended for payment is not a mode of payment that extinguish[es] their obligation to pay because payment means not only the delivery of money but also the performance, in any other manner of an obligation and . . . the Manifestation filed in court could not be considered as a valid tender of payment[.]"

[7] *Rollo*, pp. 74-95.

[8] *Id*. at 96.

[9] *Id*. at 20-23.

order of execution[.]" It also denied the motion for reconsideration filed by petitioner.

Issues Before the Court

Hence, the instant petition anchored on the following errors: 1) The CA erred in dismissing the appeal on a procedural technicality and not on the merits; and 2) The CA erred in not declaring that the RTC committed an error and varied the terms of the dispositive portion of the CA Decision dated November 29, 2007.

The Court's Ruling

Rule 41 of the Revised Rules of Court indeed states that no appeal may be taken from an order of execution. However, in *De Guzman v. Court of Appeals*,[10] the Court stated that there are certain instances when an appeal from an order of execution should be allowed, to wit:

> It is also a settled rule that an order of execution of judgment is not appealable. However, where such order of execution in the opinion of the defeated party varies the terms of the judgment and does not conform to the essence thereof, or when the terms of the judgment are not clear and there is room for interpretation and the interpretation given by the trial court as contained in its order of execution is wrong in the opinion of the defeated party, the latter should be allowed to appeal from said order so that the Appellate Tribunal may pass upon the legality and correctness of the said order. (Underscoring supplied)

Recently, the Court *En Banc*, in *Philippine Amusement and Gaming Corporation v. Aumentado, Jr.*,[11] reiterated that there are exceptions to the general rule that an order of execution is not appealable, one of which is when the writ of execution varies the judgment.

In view of the foregoing, it is clear that the appeal made by petitioner from the RTC order of execution, on the ground that it varied the judgment, is permissible and the CA should not have perfunctorily dismissed it.

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[10] No. 52733, July 23, 1985, 137 SCRA 730, 730-731.

[11] G.R. No. 173634, July 22, 2010, 625 SCRA 241, 248.

The second issue raised by petitioner regarding the order of execution issued by the RTC, as well as the matters raised in respondents' manifestation dated March 19, 2012, which must also be properly addressed, involves questions of facts that should first be settled. Not being a trier of facts, the Court remands the case to the CA for a thorough examination of the evidence and a judicious disposal of the case.

WHEREFORE, the petition is **GRANTED.** The March 10, 2011 and May 16, 2011 Resolutions of the Court of Appeals in CA-G.R. CV No. 80372 are **SET ASIDE.** Petitioner Arturo dela Cruz, Sr.'s appeal is **REINSTATED** and the instant case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Sereno,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 198554. July 30, 2012]

MAJOR GENERAL CARLOS F. GARCIA, AFP (RET.), *petitioner, vs.* **THE EXECUTIVE SECRETARY, representing the OFFICE OF THE PRESIDENT; THE SECRETARY OF NATIONAL DEFENSE VOLTAIRE T. GAZMIN; THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, GEN. EDUARDO SL. OBAN, JR., and LT. GEN. GAUDENCIO S. PANGILINAN, AFP (RET.), DIRECTOR, BUREAU OF CORRECTIONS,** *respondents.*

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[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1271 dated July 24, 2012.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JURISDICTION; ONCE ACQUIRED, JURISDICTION IS NOT LOST UPON THE INSTANCE OF THE PARTIES BUT CONTINUES UNTIL THE CASE IS TERMINATED; CASE AT BAR.— Article 2 of the Articles of War circumscribes the jurisdiction of military law over persons subject thereto x x x. It is indisputable that petitioner was an officer in the active service of the AFP in March 2003 and 2004, when the alleged violations were committed. The charges were filed on October 27, 2004 and he was arraigned on November 16, 2004. Clearly, from the time the violations were committed until the time petitioner was arraigned, the General Court Martial had jurisdiction over the case. Well-settled is the rule that jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated. Therefore, petitioner's retirement on November 18, 2004 did not divest the General Court Martial of its jurisdiction. x x x It is also apt to mention that under Executive Order No. 178, or the Manual for Courts-Martial, AFP, the jurisdiction of courts-martial over officers, cadets, soldiers, and other military personnel in the event of discharge or other separation from the service, and the exceptions thereto, is defined x x x. [I]n the present case, the continuing military jurisdiction is based on prior attachment of jurisdiction on the military court before petitioner's compulsory retirement. This continuing jurisdiction is provided under Section 1 of P.D. 1850 x x x. Having established the jurisdiction of the General Court Martial over the case and the person of the petitioner, the President, as Commander-in-Chief, therefore acquired the jurisdiction to confirm petitioner's sentence as mandated under Article 47 of the Articles of War x x x.

2. CRIMINAL LAW; ARTICLE 29 OF THE REVISED PENAL CODE; SHALL BE SUPPLEMENTARY TO THE ARTICLES OF WAR IN THE IMPLEMENTATION AND EXECUTION OF THE GENERAL COURT MARTIAL'S DECISION; CASE AT BAR.— In *Marcos v. Chief of Staff, Armed Forces of the Philippines*, this Court ruled that a court-martial case is a criminal case and the General Court Martial is a "court" akin to any other courts. x x x [T]he General Court Martial is a court within the strictest sense of the word and acts as a criminal court. On that premise, certain provisions

of the Revised Penal Code, insofar as those that are not provided in the Articles of War and the Manual for Courts-Martial, can be supplementary. x x x A special law is defined as a penal law which punishes acts not defined and penalized by the Revised Penal Code. In the present case, petitioner was charged with and convicted of Conduct Unbecoming an Officer and Gentleman (96th Article of War) and Violation of the 97th Article of War, or Conduct Prejudicial to Good Order and Military Discipline, both of which are not defined and penalized under the Revised Penal Code. The corresponding penalty imposed by the General Court Martial, which is two (2) years of confinement at hard labor is penal in nature. Therefore, absent any provision as to the application of a criminal concept in the implementation and execution of the General Court Martial's decision, the provisions of the Revised Penal Code, specifically Article 29 should be applied. x x x Nevertheless, the application of Article 29 of the Revised Penal Code in the Articles of War is in accordance with the Equal Protection Clause of the 1987 Constitution x x x [T]he power of the President to confirm, mitigate and remit a sentence of erring military personnel is a clear recognition of the superiority of civilian authority over the military. However, although the law (Articles of War) which conferred those powers to the President is silent as to the deduction of the period of preventive confinement to the penalty imposed, x x x such is also the right of an accused provided for by Article 29 of the RPC.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; CONCEPT.— [E]qual protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective. It, however, does not require the universal application of the laws to all persons or things without

distinction. What it simply requires is equality among equals as determined according to a valid classification.

4. ID.; ID.; ID.; ID.; PERMITS VALID CLASSIFICATION; REQUISITES.— [T]he equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) the classification rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

5. ID.; ID.; ID.; RIGHT TO SPEEDY DISPOSITION OF CASES; VIOLATION THEREOF, HOW DETERMINED.— No less than our Constitution guarantees the right not just to a speedy trial but to the speedy disposition of cases. However, it needs to be underscored that speedy disposition is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

APPEARANCES OF COUNSEL

De Jesus Manimtim & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for *Certiorari* dated September 29, 2011 under Rule 65, Section 1 of the Revised Rules of Civil Procedure which seeks to annul and set aside the Confirmation of Sentence dated September 9, 2011, promulgated by the Office of the President.

The facts, as culled from the records, are the following:

On October 13, 2004, the Provost Martial General of the Armed Forces of the Philippines (AFP), Col. Henry A. Galarpe, by command of Vice-Admiral De Los Reyes, issued a Restriction to Quarters[1] containing the following:

> 1. Pursuant to Article of War 70 and the directive of the Acting Chief of Staff, AFP to the undersigned dtd 12 October 2004, you are hereby placed under Restriction to Quarters under guard pending investigation of your case.
>
> 2. You are further advised that you are not allowed to leave your quarters without the expressed permission from the Acting Chief of Staff, AFP.
>
> 3. In case you need immediate medical attention or required by the circumstance to be confined in a hospital, you shall likewise be under guard.

Thereafter, a Charge Sheet dated October 27, 2004 was filed with the Special General Court Martial NR 2 presided by Maj. Gen. Emmanuel R. Teodosio, AFP, (Ret.), enumerating the following violations allegedly committed by petitioner:

> CHARGE 1: VIOLATION OF THE 96TH ARTICLE OF WAR (CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN).
>
> SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004,

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[1] *Rollo*, p. 73.

knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net [Worth] for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (₱6,500,000.00); cash dividend received from AFPSLAI from June 2003 to December 2003 in the amount of one million three hundred sixty-five thousand pesos (₱1,365,000.00); dollar peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his [wife's] names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843, Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS-195, 1997 Honda Civic Car with Plate Nr. FEC 134, 1997 Mitsubishi L-300 Van with Plate Nr. FDZ 582 and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully fail to disclose/declare all his existing assets in his Sworn Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, such as the following: his cash holdings with the Armed Forces Police Savings and Loans Association, Inc. (AFPSLAI) in the amount of six million five hundred [thousand] pesos (₱6,500,000.00); cash dividend received form AFPSLAI in June 2002 and December 2002 in the total amount of one million four hundred thirty-five thousand pesos (₱1,435,000.00), dollar and peso deposits with Land Bank of the Philippines, Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; motor vehicles registered under his and his wife[']s names such as 1998 Toyota Hilux Utility Vehicle with Plate Nr. WRY-843, Toyota Car with Plate Nr. PEV-665, Toyota Previa with Plate Nr. UDS-195, 1997 Honda Civic Car with Plate Nr. FEC-134, 1997 Mitsubishi L-300 Van with Plate Nr. FDZ-582, and 2001 Toyota RAV 4 Utility Vehicle with Plate Nr. FEV-498, conduct unbecoming an officer and gentleman.

SPECIFICATION 3: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, while in the active military service of the Armed Forces of the Philippines, knowingly, wrongfully and unlawfully violate his solemn oath as a military officer to uphold the Constitution and serve the people with utmost loyalty by acquiring and holding the status of an immigrant/permanent residence of the United States of America in violation of the State policy governing public officers, thereby causing dishonor and disrespect to the military professional and seriously compromises his position as an officer and exhibits him as morally unworthy to remain in the honorable profession of arms.

CHARGE II: VIOLATION OF THE 97TH ARTICLE OF WAR (CONDUCT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE).

SPECIFICATION 1: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 16 March 2004, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assets in his Statement of Assets and Liabilities and Net worth for the year 2003 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

SPECIFICATION NO. 2: In that MAJOR GENERAL CARLOS FLORES GARCIA 0-5820 ARMED FORCES OF THE PHILIPPINES, person subject to military law, did, on or about 11 March 2003, knowingly, wrongfully and unlawfully make untruthful statements under oath of his true assts in his Statement of Assets and Liabilities and Net worth for the year 2002 as required by Republic Act No. 3019, as amended in relation to Republic Act 6713, conduct prejudicial to good order and military discipline.

Petitioner, upon arraignment on November 16, 2004, pleaded *not guilty* on all the charges.

The Office of the Chief of Staff, through a Memorandum[2] dated November 18, 2004, directed the transfer of confinement of petitioner from his quarters at Camp General Emilio Aguinaldo

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[2] *Id.* at 78.

to the ISAFP Detention Center. On the same day, petitioner, having reached the age of fifty-six (56), compulsorily retired from military service after availing of the provisions of Presidential Decree (P.D.) No. 1650,[3] amending Sections 3 and 5 of P.D. 1638, which establishes a system of retirement for military personnel of the Armed Forces of the Philippines.

Pursuant to a Resolution[4] dated June 1, 2005 of the Second Division of the Sandiganbayan, petitioner was transferred from the ISAFP Detention Center to the Camp Crame Custodial Detention Center.

After trial, at the Special General Court Martial No. 2, on December 2, 2005, the findings or the After-Trial Report[5] of the same court was read to the petitioner. The report contains the following verdict and sentence:

MGEN CARLOS FLORES GARCIA 0-5820 AFP the court in closed session upon secret written ballot 2/3 of all the members present at the time the voting was taken concurring the following findings. Finds you:

On Specification 1 of Charge 1 — **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with

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[3] Sec. 2. Section 5 of Presidential Decree No. 1638 is hereby amended to read as follows:

Sec. 5 (a). **Upon attaining fifty-six (56) years of age or upon accumulation of thirty (30) years of satisfactory active service, whichever is later**, an officer or enlisted man shall be **compulsorily retired**; Provided, That such officer or enlisted-man who shall have attained fifty-six (56) years of age with at least twenty (20) years of active service shall be allowed to complete thirty (30) years of service but not beyond his sixtieth (60^{th}) birthday, Provided, however, That such military personnel compulsorily retiring by age shall have at least twenty (20) years of active service: Provided, further, That the compulsory retirement of an officer serving in a statutory position shall be deferred until completion of the tour of duty prescribed by law; and, Provided, finally, That the active service of military personnel may be extended by the President, if in his opinion, such continued military service is for the good of the service. (Emphasis supplied.)

[4] *Rollo*, pp. 80-81.

[5] *Id.* at 82.

Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.

On Specification 2 of Charge 1 — **Guilty except the words dollar deposits** with Land Bank of the Phils, dollar peso deposits with Allied Bank, Banco de Oro, Universal Bank, Bank of the Philippine Island, United Coconut Planters Bank and Planters Development Bank.

On Specification 3 of Charge 1 – **Guilty**

On Specification 1 of Charge 2 – **Guilty**

On Specification 2 of Charge 2 – **Guilty**

And again in closed session upon secret written ballot 2/3 all the members are present at the time the votes was taken concurrently sentences you to be **dishonorably [discharged] from the service, to forfeit all pay and allowances due and to become due and to be confined at hard labor at such place the reviewing authority may direct for a period of two (2) years**. So ordered. (Emphases supplied)

Afterwards, in a document[6] dated March 27, 2006, the Staff Judge Advocate stated the following recommended action:

IV. RECOMMENDED ACTION:

The court, after evaluating the evidence, found accused: GUILTY on Charge 1, GUILTY on Specification 1 on Charge 1 — except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planter's Bank and Planter's Development Bank; GUILTY on Charge 1, Specification 2 except the words dollar deposits with Land Bank of the Philippines, dollar and peso deposits with Allied Banking Corporation, Banco de Oro Universal Bank, Bank of the Philippine Islands, United Coconut Planters Bank and Planter's Development Bank; GUILTY on Specification 3 of Charge 1; GUILTY on Charge 2 and all its specifications. The sentence imposed by the Special GCM is to be dishonorably discharged from the service, to forfeit all pay and allowances due and to become due; and to be confined

[6] Staff Judge Advocate Review, *id.* at 83-98.

at hard labor at such place the reviewing authority may direct for a period of two (2) years. As it is, the sentence is proper and legal. Recommend that the sentence be approved. The PNP custodial facility in Camp Crame, Quezon City, is the appropriate place of confinement. The period of confinement from 18 October 2004 shall be credited in his favor and deducted from the two (2) years to which the accused was sentenced. Thus, confinement will expire on 18 October 2006. Considering that the period left not served is less than one (1) year, confinement at the National Penitentiary is no longer appropriate.

4. To carry this recommendation into effect, a draft "ACTION OF THE REVIEWING AUTHORITY" is hereto attached.

In an undated document,[7] the AFP Board of Military Review recommended the following action:

8. RECOMMENDED ACTION:

A. Only so much of the sentence as provides for the mandatory penalty of dismissal from the military service and forfeiture of pay and allowances due and to become due for the offenses of violation of AW 96 (Conduct Unbecoming an Officer and a Gentleman) and for violation of AW 97 (Conduct Prejudicial to Good Order and Military Discipline) be imposed upon the Accused.

B. The records of the instant case should be forwarded to the President thru the Chief of Staff and the Secretary of National Defense, for final review pursuant to AW 47, the Accused herein being a General Officer whose case needs confirmation by the President.

C. To effectuate the foregoing, attached for CSAFP's signature/ approval is a proposed 1st Indorsement to the President, thru the Secretary of National Defense, recommending approval of the attached prepared "ACTION OF THE PRESIDENT."

After six (6) years and two (2) months of preventive confinement, on December 16, 2010, petitioner was released from the Camp Crame Detention Center.[8]

The Office of the President, or the President as Commander-in-Chief of the AFP and acting as the Confirming Authority

[7] *Rollo,* pp. 102-114.

[8] Order of Discharge dated December 16, 2010 by the Sandiganbayan Second Division, *id.* at 115.

under the Articles of War, confirmed the sentence imposed by the Court Martial against petitioner. The Confirmation of Sentence,[9] reads in part:

> NOW, THEREFORE, I, BENIGNO S. AQUINO III, the President as Commander-in-Chief of the Armed Forces of the Philippines, do hereby confirm the sentence imposed by the Court Martial in the case of *People of the Philippines versus Major General Carlos Flores Garcia AFP*:
>
> a) To be dishonorable discharged from the service;
>
> b) To forfeit all pay and allowances due and to become due; and
>
> c) To be confined for a period of two (2) years in a penitentiary.
>
> FURTHER, pursuant to the 48th and 49th Articles of War, the sentence on Major General Carlos Flores Garcia AFP shall not be remitted/mitigated by any previous confinement. Major General Carlos Flores Garcia AFP shall serve the foregoing sentence effective on this date.
>
> DONE, in the City of Manila, this **9th day of September, in the year of our Lord, Two Thousand and Eleven**.

Consequently, on September 15, 2011, respondent Secretary of National Defense Voltaire T. Gazmin, issued a Memorandum[10] to the Chief of Staff, AFP for strict implementation, the *Confirmation of Sentence in the Court Martial Case of People of the Philippines Versus Major General Carlos Flores Garcia AFP*.

On September 16, 2011, petitioner was arrested and detained, and continues to be detained at the National Penitentiary, Maximum Security, Bureau of Corrections, Muntinlupa City.[11]

Aggrieved, petitioner filed with this Court the present petition for *certiorari* and petition for *habeas corpus*, alternatively.

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[9] *Rollo*, pp. 70-72. (Emphasis supplied.)

[10] *Id.* at 116.

[11] *Id.* at 23.

However, this Court, in its Resolution[12] dated October 10, 2011, denied the petition for *habeas corpus*. Petitioner filed a motion for reconsideration[13] dated November 15, 2011, but was denied[14] by this Court on December 12, 2011.

Petitioner enumerates the following grounds to support his petition:

GROUNDS

A.

THE JURISDICTION OF THE GENERAL COURT MARTIAL CEASED *IPSO FACTO* UPON THE RETIREMENT OF PETITIONER, FOR WHICH REASON THE OFFICE OF THE PRESIDENT ACTED WITHOUT JURISDICTION IN ISSUING THE CONFIRMATION OF SENTENCE, AND PETITIONER'S ARREST AND CONFINEMENT PURSUANT THERETO IS ILLEGAL, THUS WARRANTING THE WRIT OF *HABEAS CORPUS.*

B.

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT PETITIONER REMAINED AMENABLE TO COURT MARTIAL JURISDICTION AFTER HIS RETIREMENT, THE OFFICE OF THE PRESIDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN IMPOSING THE SENTENCE OF TWO (2) YEARS CONFINEMENT WITHOUT ANY LEGAL BASIS, FOR WHICH REASON PETITIONER'S ARREST AND CONFINEMENT IS ILLEGAL, THUS WARRANTING THE WRIT OF *HABEAS CORPUS.*

C.

EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT THE PENALTY OF TWO (2) YEARS CONFINEMENT MAY BE IMPOSED IN ADDITION TO THE PENALTIES OF DISMISSAL AND FORFEITURE, THE SENTENCE HAD BEEN FULLY SERVED IN VIEW OF PETITIONER'S PREVENTIVE CONFINEMENT WHICH EXCEEDED THE 2-YEAR SENTENCE,

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

[13] *Id.* at 215-238.

[14] *Id.* at 239.

AND THE OFFICE OF THE PRESIDENT HAS NO AUTHORITY TO REPUDIATE SAID SERVICE OF SENTENCE, FOR WHICH REASON PETITIONER'S ARREST AND CONFINEMENT DESPITE FULL SERVICE OF SENTENCE IS ILLEGAL, THUS WARRANTING THE WRIT OF *HABEAS CORPUS*.[15]

In view of the earlier resolution of this Court denying petitioner's petition for *habeas corpus*, the above grounds are rendered moot and academic. Thus, the only issue in this petition for *certiorari* under Rule 65 of the Revised Rules of Civil Procedure, which was properly filed with this Court, is whether the Office of the President acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in issuing the Confirmation of Sentence dated September 9, 2011.

In its Comment[16] dated October 27, 2011, the Office of the Solicitor General (OSG) lists the following counter-arguments:

I.

PETITIONER'S DIRECT RECOURSE TO THE HONORABLE COURT VIOLATES THE DOCTRINE OF HIERARCHY OF COURTS; HENCE, THE PETITION SHOULD BE OUTRIGHTLY DISMISSED.

II.

THE GENERAL COURT MARTIAL RETAINED JURISDICTION OVER PETITIONER DESPITE HIS RETIREMENT DURING THE PENDENCY OF THE PROCEEDINGS AGAINST HIM SINCE THE SAID TRIBUNAL'S JURISDICTION HAD ALREADY FULLY ATTACHED PRIOR TO PETITIONER'S RETIREMENT.

III.

THE CONFIRMATION ISSUED BY THE OFFICE OF THE PRESIDENT DIRECTING PETITIONER TO BE CONFINED FOR TWO (2) YEARS IN A PENITENTIARY IS SANCTIONED BY C. A. NO. 408 AND EXECUTIVE ORDER NO. 178, PURSUANT TO THE PRESIDENT'S CONSTITUTIONAL AUTHORITY AS THE COMMANDER-IN-CHIEF OF THE AFP.

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[15] *Id.* at 23-25.

[16] *Id.* at 124- 214.

IV.

PETITIONER'S RIGHT TO A SPEEDY DISPOSITION OF HIS CASE WAS NOT VIOLATED IN THIS CASE.

V.

THE IMPOSITION OF THE PENALTY OF TWO (2) YEARS CONFINEMENT ON PETITIONER BY THE GCM, AND AS CONFIRMED BY THE PRESIDENT OF THE PHILIPPINES, IS VALID.

VI.

ACCORDINGLY, PUBLIC RESPONDENTS DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN ISSUING AND IMPLEMENTING THE CONFIRMATION OF SENTENCE.[17]

Petitioner, in his Reply[18] dated January 20, 2012, disagreed with the arguments raised by the OSG due to the following:

(A)

THE CONFIRMATION OF THE COURT MARTIAL SENTENCE IS AN ACT BY THE PRESIDENT, AS THE COMMANDER-IN-CHIEF, AND NOT MERELY AS THE HEAD OF THE EXECUTIVE BRANCH. THEREFORE, THE HONORABLE COURT IS THE ONLY APPROPRIATE COURT WHERE HIS ACT MAY BE IMPUGNED, AND NOT IN THE LOWER COURTS, *I.E.*, REGIONAL TRIAL COURT ("RTC") OR THE COURT OF APPEALS ("CA"), AS THE OSG ERRONEOUSLY POSTULATES.

(B)

ALTHOUGH THE GENERAL COURT MARTIAL ("GCM") RETAINED JURISDICTION "OVER THE PERSON" OF PETITIONER EVEN AFTER HE RETIRED FROM THE ARMED FORCES OF THE PHILIPPINES ('AFP"), HOWEVER, HIS RETIREMENT, CONTRARY TO THE STAND OF THE OSG, SEVERED HIS "JURAL RELATIONSHIP" WITH THE MILITARY, THEREBY PLACING HIM BEYOND THE SUBSTANTIVE REACH OF THE AFP'S COURT MARTIAL JURISDICTION.

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[17] *Id.* at 137-138.

[18] *Id.* at 240-272.

(C)

UNDER ART. 29, REVISED PENAL CODE ("RPC"), PETITIONER'S COURT MARTIAL SENTENCE OF TWO (2) YEARS INCARCERATION HAD ALREADY BEEN SERVED IN FULL SINCE HE HAD ALREADY SUFFERED PREVENTIVE IMPRISONMENT OF AT LEAST SIX (6) YEARS BEFORE THE SENTENCE COULD BE CONFIRMED, WHICH MEANS THAT THE PRESIDENT HAD NO MORE JURISDICTION WHEN HE CONFIRMED IT, THEREBY RENDERING THE "CONFIRMATION OF SENTENCE" A PATENT NULLITY, AND, CONSEQUENTLY, INVALIDATING THE OSG'S POSITION THAT THE PRESIDENT STILL HAD JURISDICTION WHEN HE CONFIRMED THE SENTENCE.[19]

Petitioner raises the issue of the jurisdiction of the General Court Martial to try his case. According to him, the said jurisdiction ceased *ipso facto* upon his compulsory retirement. Thus, he insists that the Office of the President had acted without jurisdiction in issuing the confirmation of his sentence.

This Court finds the above argument bereft of merit.

Article 2 of the Articles of War[20] circumscribes the jurisdiction of military law over persons subject thereto, to wit:

> Art. 2. Persons Subject to Military Law. — The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law," whenever used in these articles:
>
> (a) All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

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[19] *Id.* at 240-241.

[20] Commonwealth Act No. 408, as amended.

(b) Cadets, flying cadets, and probationary second lieutenants;

(c) All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;

(d) All persons under sentence adjudged by courts-martial.

(As amended by Republic Acts 242 and 516).

It is indisputable that petitioner was an officer in the active service of the AFP in March 2003 and 2004, when the alleged violations were committed. The charges were filed on October 27, 2004 and he was arraigned on November 16, 2004. Clearly, from the time the violations were committed until the time petitioner was arraigned, the General Court Martial had jurisdiction over the case. Well-settled is the rule that jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.[21] Therefore, petitioner's retirement on November 18, 2004 did not divest the General Court Martial of its jurisdiction. In *B/Gen. (Ret.) Francisco V. Gudani, et al. v. Lt./Gen. Generoso Senga, et al.*,[22] this Court ruled that:

This point was settled against Gen. Gudani's position in *Abadilla v. Ramos*, where the Court declared that **an officer whose name was dropped from the roll of officers cannot be considered to be outside the jurisdiction of military authorities when military justice proceedings were initiated against him before the termination of his service**. Once jurisdiction has been acquired over the officer, it continues until his case is terminated. Thus, the Court held:

The military authorities had jurisdiction over the person of Colonel Abadilla at the time of the alleged offenses. This jurisdiction having been vested in the military authorities, it is retained up to the end of the proceedings against Colonel Abadilla. Well-settled is the rule that jurisdiction once acquired

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[21] *Abadilla v. Ramos*, No. 79173, December 7, 1987, 156 SCRA 92, 102.

[22] G.R. No. 170165, August 15, 2006, 498 SCRA 671.

is not lost upon the instance of the parties but continues until the case is terminated.

Citing Colonel Winthrop's treatise on Military Law, the Court further stated:

> We have gone through the treatise of Colonel Winthrop and We find the following passage which goes against the contention of the petitioners, *viz*. —
>
> 3. Offenders in general — Attaching of jurisdiction. It has further been held, and is now settled law, in regard to military offenders in general, that if the military jurisdiction has once duly attached to them previous to the date of the termination of their legal period of service, they may be brought to trial by court-martial after that date, their discharge being meanwhile withheld. This principle has mostly been applied to cases where the offense was committed just prior to the end of the term. In such cases the interests of discipline clearly forbid that the offender should go unpunished. It is held therefore that if before the day on which his service legally terminates and his right to a discharge is complete, proceedings with a view to trial are commenced against him — as by arrest or the service of charges, — the military jurisdiction will fully attach and once attached may be continued by a trial by court-martial ordered and held after the end of the term of the enlistment of the accused x x x
>
> Thus, military jurisdiction has fully attached to Gen. Gudani inasmuch as both the acts complained of and the initiation of the proceedings against him occurred before he compulsorily retired on 4 October 2005. We see no reason to unsettle the Abadilla doctrine. The OSG also points out that under Section 28 of Presidential Decree No. 1638, as amended, "[a]n officer or enlisted man carried in the retired list [of the Armed Forces of the Philippines] shall be subject to the Articles of War x x x" To this citation, petitioners do not offer any response, and in fact have excluded the matter of Gen. Gudani's retirement as an issue in their subsequent memorandum.[23]

It is also apt to mention that under Executive Order No. 178, or the Manual for Courts-Martial, AFP, the jurisdiction of courts-

[23] *Id.* at 692-693. (Citations omitted)

martial over officers, cadets, soldiers, and other military personnel in the event of discharge or other separation from the service, and the exceptions thereto, is defined thus:

> 10. COURT-MARTIAL — Jurisdiction in general — Termination — General Rules – The general rule is that court-martial jurisdiction over officers, cadets, soldiers and others in the military service of the Philippines ceases on discharge or other separation from such service, and that jurisdiction as to any offense committed during a period of service thus terminated is not revived by a reentry into the military service.
>
> Exceptions — To this general rule there are, however, some exceptions, among them the following:
>
> x x x x x x x x x
>
> In certain case, where the person's discharge or other separation does not interrupt his status as a person belonging to the general category of persons subject to military law, court-martial jurisdiction does not terminate. Thus, where an officer holding a reserve commission is discharged from said commission by reason of acceptance of a commission in the Regular Force, there being no interval between services under the respective commissions, **there is no terminating of the officer's military status**, but merely the accomplishment of a change in his status from that of a reserve to that of a regular officer, and that court-martial jurisdiction to try him for an offense (striking enlisted men for example) committed prior to the discharge is not terminated by the discharge. So also, **where a dishonorable discharged general prisoner is tried for an offense committed while a soldier and prior to his dishonorable discharge, such discharge does not terminate his amenability to trial for the offense.** (Emphases supplied.)

Petitioner also asserts that the General Court Martial's continuing jurisdiction over him despite his retirement holds true only if the charge against him involves fraud, embezzlement or misappropriation of public funds citing this Court's ruling in *De la Paz v. Alcaraz,et al.*[24] and *Martin v. Ver.*[25] However,

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[24] 99 Phil. 130 (1956)

[25] G.R. No. L-62810, July 25, 1983, 123 SCRA 745.

this is not true. The OSG is correct in stating that in *De la Paz*,[26] military jurisdiction over the officer who reverted to inactive status was sustained by this Court because the violation involved misappropriation of public funds committed while he was still in the active military service, while in *Martin*,[27] military jurisdiction was affirmed because the violation pertained to illegal disposal of military property. Both cited cases centered on the nature of the offenses committed by the military personnel involved, justifying the exercise of jurisdiction by the courts-martial. On the other hand, in the present case, the continuing military jurisdiction is based on prior attachment of jurisdiction on the military court before petitioner's compulsory retirement. This continuing jurisdiction is provided under Section 1 of P.D. 1850,[28] as amended, thus:

> Section 1. *Court Martial Jurisdiction over Integrated National Police and Members of the Armed Forces*. — Any provision of law to the contrary notwithstanding — (a) uniformed members of the Integrated National Police who commit any crime or offense cognizable by the civil courts shall henceforth be exclusively tried by courts-martial pursuant to and in accordance with Commonwealth Act No. 408, as amended, otherwise known as the Articles of War; (b) all persons subject to military law under Article 2 of the aforecited Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; **Provided, that, in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act Numbered 408, as amended, or court-martial jurisdiction over the person of the accused military or Integrated National Police personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached**

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[26] *Supra* note 24.

[27] *Supra* note 25.

[28] PROVIDING FOR THE TRIAL BY COURTS-MARTIAL OF MEMBERS OF THE INTEGRATED NATIONAL POLICE AND FURTHER DEFINING THE JURISDICTION OF COURTS-MARTIAL OVER MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES.

beforehand unless otherwise provided by law: Provided further, that the President may, in the interest of justice, order or direct, at any time before arraignment, that a particular case be tried by the appropriate civil court. (Emphasis supplied.)

Having established the jurisdiction of the General Court Martial over the case and the person of the petitioner, the President, as Commander-in-Chief, therefore acquired the jurisdiction to confirm petitioner's sentence as mandated under Article 47 of the Articles of War, which states:

> Article 47. *Confirmation — When Required.* — In addition to the approval required by article forty-five, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:
>
> (a) **Any sentence respecting a general officer**;
>
> (b) Any sentence extending to the dismissal of an officer except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field;
>
> (c) Any sentence extending to the suspension or dismissal of a cadet, probationary second lieutenant; and
>
> (d) Any sentence of death, except in the case of persons convicted in time of war, of murder, mutiny, desertion, or as spies, and in such excepted cases of sentence of death may be carried into execution, subject to the provisions of Article 50, upon confirmation by the commanding general of the Army in the said field.
>
> When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary. (As amended by Republic Act No. 242). (Emphasis supplied.)

In connection therewith, petitioner argues that the confirmation issued by the Office of the President directing him to be confined for two (2) years in the penitentiary had already been fully served in view of his preventive confinement which had exceeded two (2) years. Therefore, according to him, the Office of the President

no longer has the authority to order his confinement in a penitentiary. On the other hand, the OSG opines that petitioner cannot legally demand the deduction of his preventive confinement in the service of his imposed two-year confinement in a penitentiary, because unlike our Revised Penal Code[29] which specifically mandates that the period of preventive imprisonment of the accused shall be deducted from the term of his imprisonment, the Articles of War and/or the Manual for Courts-Martial do not provide for the same deduction in the execution of the sentence imposed by the General Court Martial as confirmed by the President in appropriate cases.

On the above matter, this Court finds the argument raised by the OSG unmeritorious and finds logic in the assertion of petitioner that Article 29 of the Revised Penal Code can be made applicable in the present case.

The OSG maintains that military commissions or tribunals are not courts within the Philippine judicial system, citing

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[29] Art. 29. *Period of preventive imprisonment deducted from term of imprisonment*. — Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists or have been convicted previously twice or more times of any crime; and

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment (As amended by Republic Act 6127, June 17, 1970).

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment (As amended by E.O. No. 214, July 10, 1988).

Olaguer, et al. v. Military Commission No. 4,[30] hence, they are not expected to apply criminal law concepts in their implementation and execution of decisions involving the discipline of military personnel. This is misleading. In *Olaguer*, the courts referred to were military commissions created under martial law during the term of former President Ferdinand Marcos and was declared unconstitutional by this Court, while in the present case, the General Court Martial which tried it, was created under Commonwealth Act No. 408, as amended, and remains a valid entity.

In *Marcos v. Chief of Staff, Armed Forces of the Philippines*,[31] this Court ruled that a court-martial case is a criminal case and the General Court Martial is a "court" akin to any other courts. In the same case, this Court clarified as to what constitutes the words "any court" used in Section 17[32] of the 1935 Constitution prohibiting members of Congress to appear as counsel in any criminal case in which an officer or employee of the Government is accused of an offense committed in relation to his office. This Court held:

> We are of the opinion and therefore hold that it is applicable, because t**he words "any court" includes the General Court-Martial, and a court-martial case is a criminal case within the meaning of the above quoted provisions of our Constitution**.
>
> It is obvious that the words "any court," used in prohibiting members of Congress to appear as counsel "in any criminal case in which an officer or employee of the Government is accused of an

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[30] G.R. Nos. 54558 and 69882, May 22, 1987, 150 SCRA 144.

[31] 89 Phil. 246 (1951).

[32] Sec. 17. No Senator or Member of the House of Representatives shall directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof, or in any franchise or special privilege granted by the Congress during his term of office. He shall not appear as counsel before the Electoral Tribunals or before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office. x x x.

offense committed in relation to his office," **refers, not only to a civil, but also to a military court or a Court-Martial**. Because, in construing a Constitution, "it must be taken as established that where words are used which have both a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended." (11 American Jurisprudence, pp. 680-682).

In the case of Ramon Ruffy *vs.* Chief of Staff of the Philippine Army,* 43 Off. Gaz., 855, we did not hold that the word "court" in general used in our Constitution does not include a Court-Martial; what we held is that the words "inferior courts" used in connection with the appellate jurisdiction of the Supreme Court to "review on appeal *certiorari* or writ of error, as the law or rules of court may provide, final judgments of inferior courts in all criminal cases in which the penalty imposed is death or life imprisonment," as provided for in Section 2, Article VIII, of the Constitution, do not refer to Courts-Martial or Military Courts.

Winthrop's Military Law and Precedents, quoted by the petitioners and by this Court in the case of *Ramon Ruffy, et al. vs. Chief of Staff of the Philippine Army, supra*, has to say in this connection the following:

> Notwithstanding that the court-martial is only an instrumentality of the executive power having no relation or connection, in law, with the judicial establishments of the country, it is yet, so far as it is a court at all, and within its field of action, as fully a court of law and justice as is any civil tribunal. As a court of law, it is bound, like any court, by the fundamental principles of law, and, in the absence of special provision of the subject in the military code, it observes in general the rules of evidence as adopted in the common-law courts. As a court of justice, it is required by the terms of its statutory oath, (Art. 84.) to adjudicate between the U.S. and the accused "without partiality, favor, or affection," and according, not only to the laws and customs of the service, but to its "conscience," *i.e.* its sense of substantial right and justice unaffected by technicalities. In the words of the Attorney General, **court-martial are thus, "in the strictest sense courts of justice**. (Winthrop's Military Law and Precedents, Vol. 1 and 2, 2nd Ed., p. 54.)

In re Bogart, 3 Fed. Cas., 796, 801, citing 6 Op. Attys. Gen. 425, with approval, the court said:

> In the language of Attorney General Cushing, **a court-martial is a lawful tribunal existing by the same authority that any other exists by, and the law military is a branch of law as valid as any other, and it differs from the general law of the land in authority only in this: that it applies to officers and soldiers of the army but not to other members of the body politic, and that it is limited to breaches of military duty.**

And in re Davison, 21 F. 618, 620, it was held:

> That court-martial are lawful tribunals existing by the same authority as civil courts of the United States, have the same plenary jurisdiction in offenses by the law military as the latter courts have in controversies within their cognizance, and in their special and more limited sphere are entitled to as untrammelled an exercise of their powers.

And lastly, American Jurisprudence says:

> SEC. 99. *Representation by Counsel*. — It is the general rule that one accused of the crime has the right to be represented before the court by counsel, and this is expressly so declared by the statues controlling the procedure in court-martial. It has been held that a constitutional provision extending that right to one accused in any trial in any court whatever applies to a court-martial and gives the accused the undeniable right to defend by counsel, and that a court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the state. (Citing the case of State ex rel Huffaker vs. Crosby, 24 Nev. 115, 50 Pac. 127; 36 American Jurisprudence 253)

The fact that a judgment of conviction, not of acquittal, rendered by a court-martial must be approved by the reviewing authority before it can be executed (Article of War 46), does not change or affect the character of a court-martial as a court. A judgment of the Court of First Instance imposing death penalty must also be approved by the Supreme Court before it can be executed.

That court-martial cases are criminal cases within the meaning of Section 17, Article VI, of the Constitution is also evident, because

the crimes and misdemeanors forbidden or punished by the Articles of War are offenses against the Republic of the Philippines. According to Section 1, Rule 106, of the Rules of Court, a criminal action or case is one which involves a wrong or injury done to the Republic, for the punishment of which the offender is prosecuted in the name of the People of the Philippines; and pursuant to Article of War 17, "the trial advocate of a general or special court-martial shall prosecute (the accused) in the name of the People of the Philippines."

Winthtrop, in his well known work "Military Law and Precedents' says the following:

> **In regard to the class of courts to which it belongs, it is lastly to be noted that the court-martial is strictly a criminal court.** It has no civil jurisdiction whatever; cannot enforce a contract, collect a debt, or award damages in favor of an individual. . . . **Its judgment is a criminal sentence not a civil verdict; its proper function is to award punishment upon the ascertainment of guilt.** (Winthrop's Military Law and Precedents, Vols. 1 & 2, 2nd Ed., p. 55.)

> In N. Y. it was held that the term "criminal case," used in the clause, must be allowed some meaning, and none can be conceived, other than a prosecution for a criminal offense. *Ex parte* Carter. 66 S. W. 540, 544, 166 No. 604, 57 L.R.A. 654, quoting *People vs. Kelly*, 24 N.Y. 74; Counselman vs. Hitchcock, 12 S. Ct. 195; 142 U.S. 547, L. Ed. 111o. (Words and Phrases, Vol. 10, p. 485.)

Besides, **that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the defendant for the same offense, because the latter would place the accused in jeopardy**, is shown by the decision of the Supreme Court of the United States in the case of *Grafton vs. United States*, 206 U. S. 333; 51 Law. Ed., 1088, 1092, in which the following was held:

> If a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance; x x x and restricting our decision to the above question of double jeopardy, we judge that, consistently with

> the above act of 1902, and for the reasons stated, the plaintiff in error, a soldier in the Army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory.[33] (Emphasis supplied.)

Hence, as extensively discussed above, the General Court Martial is a court within the strictest sense of the word and acts as a criminal court. On that premise, certain provisions of the Revised Penal Code, insofar as those that are not provided in the Articles of War and the Manual for Courts-Martial, can be supplementary. Under Article 10 of the Revised Penal Code:

> Art. 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

A special law is defined as a penal law which punishes acts not defined and penalized by the Revised Penal Code.[34] In the present case, petitioner was charged with and convicted of Conduct Unbecoming an Officer and Gentleman (96th Article of War) and Violation of the 97th Article of War, or Conduct Prejudicial to Good Order and Military Discipline, both of which are not defined and penalized under the Revised Penal Code. The corresponding penalty imposed by the General Court Martial, which is two (2) years of confinement at hard labor is penal in nature. Therefore, absent any provision as to the application of a criminal concept in the implementation and execution of the General Court Martial's decision, the provisions of the Revised Penal Code, specifically Article 29 should be applied. In fact, the deduction of petitioner's period of confinement to his sentence has been recommended in the Staff Judge Advocate Review, thus:

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[33] *Marcos v. Chief of Staff, AFP*, *supra* note 31, at 248-251.

[34] See *U.S. v. Serapio*, 23 Phil. 584, 593 (1912).

x x x Recommend that the sentence be approved. The PNP custodial facility in Camp Crame, Quezon City, is the appropriate place of confinement. **The period of confinement from 18 October 2004 shall be credited in his favor and deducted from the two (2) years to which the accused was sentenced**. Thus, confinement will expire on 18 October 2006. Considering that the period left not served is less than one (1) year, confinement at the National Penitentiary is no longer appropriate.[35] (Emphasis supplied.)

The above was reiterated in the Action of the Reviewing Authority, thus:

In the foregoing General Court-Martial case of People of the Philippines *versus* MGEN. CARLOS F. GARCIA 0-5820 AFP (now Retired), the verdict of GUILTY is hereby approved.

The sentence to be dishonorably discharged from the service; to forfeit all pay and allowances due and to become due; and to be confined at hard labor at such place as the reviewing authority may direct for a period of two (2) years is also approved.

Considering that the Accused has been in confinement since 18 October 2004, the entire period of his confinement since 18 October 2004 will be credited in his favor. Consequently, his two (2) year sentence of confinement will expire on 18 October 2006.

The proper place of confinement during the remaining unserved portion of his sentence is an official military detention facility. However, the Accused is presently undergoing trial before the Sandiganbayan which has directed that custody over him be turned over to the civilian authority and that he be confined in a civilian jail or detention facility pending the disposition of the case(s) before said Court. For this reason, the Accused shall remain confined at the PNP's detention facility in Camp Crame, Quezon City. The Armed Forces of the Philippines defers to the civilian authority on this matter.

Should the Accused be released from confinement upon lawful orders by the Sandiganbayan before the expiration of his sentence adjudged by the military court, the Provost Marshal General shall immediately take custody over the Accused, who shall be transferred

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[35] *Rollo*. p. 98.

to and serve the remaining unserved portion thereof at the ISAFP detention facility in Camp General Emilio Aguinaldo, Quezon City.[36] (Emphasis supplied.)

Nevertheless, the application of Article 29 of the Revised Penal Code in the Articles of War is in accordance with the Equal Protection Clause of the 1987 Constitution. According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[37] It requires public bodies and institutions to treat similarly situated individuals in a similar manner.[38] The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities.[39] In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[40] It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) the classification rests on substantial distinctions; (2) it is

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[36] *Rollo*, p. 100.

[37] *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Sison, Jr. v. Ancheta*, G.R. No. L-59431, July 25, 1984, 130 SCRA 654; *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 375.

[38] *Guino v. Senkowski*, 54 F 3d 1050 (2d. Cir. 1995), cited in Am. Jur. 2d, Vol. 16 (b), p. 302.

[39] *Edward Valves, Inc. v. Wake Country*, 343 N.C. 426, cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[40] *Lehr v. Robertson*, 463 US 248, 103 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.[41] "Superficial differences do not make for a valid classification."[42] In the present case, petitioner belongs to the class of those who have been convicted by any court, thus, he is entitled to the rights accorded to them. Clearly, there is no substantial distinction between those who are convicted of offenses which are criminal in nature under military courts and the civil courts. Furthermore, following the same reasoning, petitioner is also entitled to the basic and time-honored principle that penal statutes are construed strictly against the State and liberally in favor of the accused.[43] It must be remembered that the provisions of the Articles of War which the petitioner violated are penal in nature.

The OSG is correct when it argued that the power to confirm a sentence of the President, as Commander-in-Chief, includes the power to approve or disapprove the entire or any part of the sentence given by the court martial. As provided in Article 48 of the Articles of War:

> Article 48. *Power Incident to Power to Confirm*. — The power to confirm the sentence of a court-martial shall be held to include:
>
> (a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt;
>
> (b) **The power to confirm or disapprove the whole or any part of the sentence**; and
>
> (c) The power to remand a case for rehearing, under the provisions of Article 50. (Emphasis supplied.)

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[41] *Beltran v. Secretary of Health,* 512 Phil. 560, 583 (2005).

[42] Cruz, *Constitutional Law*, 2003 ed., p. 128.

[43] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 303, citing *People v. Ladjaalam*, 395 Phil. 1, 35 (2000).

In addition, the President also has the power to mitigate or remit a sentence. Under Article 49 of the Articles of War:

> Article 49. *Mitigation or Remission of Sentence*. — The power to order the execution of the sentence adjudged by a court-martial shall be held to include, inter alia, the power to mitigate or remit the whole or any part of the sentence.
>
> Any unexpected portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and Disciplinary Barracks of the Armed Forces of the Philippines or Philippine Constabulary, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority, and no approved sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in Article 52.
>
> When empowered by the President to do so, the commanding general of the Army in the field or the area commander may approve or confirm and commute (but not approve or confirm without commuting), mitigate, or remit and then order executed as commuted, mitigated, or remitted any sentence which under those Articles requires the confirmation of the President before the same may be executed. (As amended by Republic Act No. 242).

Thus, the power of the President to confirm, mitigate and remit a sentence of erring military personnel is a clear recognition of the superiority of civilian authority over the military. However, although the law (Articles of War) which conferred those powers to the President is silent as to the deduction of the period of preventive confinement to the penalty imposed, as discussed earlier, such is also the right of an accused provided for by Article 29 of the RPC.

As to petitioner's contention that his right to a speedy disposition of his case was violated, this Court finds the same to be without merit.

No less than our Constitution guarantees the right not just to a speedy trial but to the speedy disposition of cases.[44] However, it needs to be underscored that speedy disposition is a relative and flexible concept. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[45] In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[46]

In this case, there was no allegation, whatsoever of any delay during the trial. What is being questioned by petitioner is the delay in the confirmation of sentence by the President. Basically, the case has already been decided by the General Court Martial and has also been reviewed by the proper reviewing authorities without any delay. The only thing missing then was the confirmation of sentence by the President. The records do not show that, in those six (6) years from the time the decision of the General Court Martial was promulgated until the sentence was finally confirmed by the President, petitioner took any positive action to assert his right to a speedy disposition of his case. This is akin to what happened in *Guerrero v. Court of Appeals*,[47] where, in spite of the lapse of more than ten years of delay, the Court still held that the petitioner could not rightfully complain of delay violative of his right to speedy trial or disposition of his case, since he was part of the reason for the failure of his

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[44] Constitution, Art. III, Sec. 16:

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

[45] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 138-139, citing *Binay v. Sandiganbayan*, G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65, 93.

[46] *Dela Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001, 360 SCRA 478, 485; *Alvizo v. Sandiganbayan*, G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63-64.

[47] G.R. No. 107211, June 28, 1996, 257 SCRA 703.

case to move on towards its ultimate resolution. The Court held, *inter alia*:

In the case before us, the petitioner merely sat and waited after the case was submitted for resolution in 1979. It was only in 1989 when the case below was reraffled from the RTC of Caloocan City to the RTC of Navotas-Malabon and only after respondent trial judge of the latter court ordered on March 14, 1990 the parties to follow-up and complete the transcript of stenographic notes that matters started to get moving towards a resolution of the case. More importantly, it was only after the new trial judge reset the retaking of the testimonies to November 9, 1990 because of petitioner's absence during the original setting on October 24, 1990 that the accused suddenly became zealous of safeguarding his right to speedy trial and disposition.

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In the present case, there is no question that petitioner raised the violation against his own right to speedy disposition only when the respondent trial judge reset the case for rehearing. It is fair to assume that he would have just continued to sleep on his right " a situation amounting to laches " had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was reraffled, the accused showed signs of asserting his right which was granted him in 1987 when the new constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe stenographic notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the

people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises.[48]

Time runs against the slothful and those who neglect their rights.[49] In fact, the delay in the confirmation of his sentence was to his own advantage, because without the confirmation from the President, his sentence cannot be served.

Anent petitioner's other arguments, the same are already rendered moot and academic due to the above discussions.

Grave abuse of discretion means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[50] Thus, applying, the earlier disquisitions, this Court finds that the Office of the President did not commit any grave abuse of discretion in issuing the Confirmation of Sentence in question.

WHEREFORE, the Petition for *Certiorari* dated September 29, 2011 of Major General Carlos F. Garcia, AFP (Ret.) is hereby **DISMISSED.** However, applying the provisions of Article 29 of the Revised Penal Code, the time within which the petitioner was under preventive confinement should be credited to the

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[48] *Id.* at 714-716.

[49] See *Perez v. People*, G.R. No. 164763, February 12, 2008, 544 SCRA 532, 560.

[50] *Barbieto v. CA,* G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840-841, citing *Neri v. Senate Committee on Accountability of Public Officers and Investigations, Senate Committee on Trade and Commerce, and Senate Committee on National Defense and Security*, G.R. No. 180643, March 25, 2008, 549 SCRA 77, 131.

sentence confirmed by the Office of the President, subject to the conditions set forth by the same law.

SO ORDERED.

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

EN BANC

[A.M. No. 11-7-10-SC. July 31, 2012]

RE: COA OPINION ON THE COMPUTATION OF THE APPRAISED VALUE OF THE PROPERTIES PURCHASED BY THE RETIRED CHIEF/ ASSOCIATE JUSTICES OF THE SUPREME COURT

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; HAS THE AUTHORITY TO CONDUCT POST-AUDIT EXAMINATIONS ON CONSTITUTIONAL BODIES GRANTED FISCAL AUTONOMY.— The COA's authority to conduct post-audit examinations on constitutional bodies granted fiscal autonomy is provided under Section 2(1), Article IX-D of the 1987 Constitution x x x. This authority, however, must be read not only in light of the Court's fiscal autonomy, but also in relation with the constitutional provisions on judicial independence and the existing jurisprudence and Court rulings on these matters.

2. ID.; GOVERNMENT; CONCEPT OF INDEPENDENCE; EXPLAINED.— The concept of the independence of the three

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[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1271 dated July 24, 2012.

branches of government x x x extends from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry. To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates; lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.

3. ID.; JUDICIAL DEPARTMENT; JUDICIAL INDEPENDENCE; CONCEPTS.— Under the Judiciary's unique circumstances, independence encompasses the idea that *individual* judges can freely exercise their mandate to resolve justiciable disputes, while the judicial branch, *as a whole*, should work in the discharge of its constitutional functions free of restraints and influence from the other branches, save only for those imposed by the Constitution itself. Thus, judicial independence can be "broken down into two distinct concepts: **decisional independence** and **institutional independence.**" **Decisional independence** "refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law." On the other hand, **institutional independence** "describes the separation of the judicial branch from the executive and legislative branches of government." Simply put, institutional independence refers to the "collective independence of the judiciary as a body."

4. ID.; ID.; ID.; SAFEGUARDS.— Recognizing the vital role that the Judiciary plays in our system of government as the sole repository of judicial power, with the power to determine whether any act of any branch or instrumentality of the government is attended with grave abuse of discretion, no less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained. The Constitution expressly prohibits Congress from depriving the Supreme Court of its jurisdiction, as enumerated in Section 5, Article VII of the Constitution, or from passing a law that undermines the security of tenure of the members of the judiciary. The Constitution also mandates that the judiciary shall enjoy fiscal autonomy, and grants the Supreme Court administrative

supervision over all courts and judicial personnel. Jurisprudence has characterized administrative supervision as exclusive, noting that only the Supreme Court can oversee the judges and court personnel's compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers. The Constitution protects as well the salaries of the Justices and judges by prohibiting any decrease in their salary during their continuance in office, and ensures their security of tenure by providing that "Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office." With these guarantees, justices and judges can administer justice undeterred by any fear of reprisals brought on by their judicial action. They can act inspired solely by their knowledge of the law and by the dictates of their conscience, free from the corrupting influence of base or unworthy motives. All of these constitutional provisions were put in place to strengthen judicial independence, not only by clearly stating the Court's powers, but also by providing express limits on the power of the two other branches of government to interfere with the Court's affairs.

5. ID.; ID.; ID.; FISCAL AUTONOMY; AN ASPECT OF JUDICIAL INDEPENDENCE. — One of the most important aspects of judicial independence is the constitutional grant of fiscal autonomy. Just as the Executive may not prevent a judge from discharging his or her judicial duty (for example, by physically preventing a court from holding its hearings) and just as the Legislature may not enact laws removing all jurisdiction from courts, the courts may not be obstructed from their freedom to use or dispose of their funds for purposes germane to judicial functions. While, as a general proposition, the authority of legislatures to control the purse in the first instance is unquestioned, any form of interference by the Legislative or the Executive on the Judiciary's fiscal autonomy amounts to an improper check on a co-equal branch of government. If the judicial branch is to perform its primary function of adjudication, it must be able to command adequate resources for that purpose. This authority to exercise (or to compel the exercise of) legislative power over the national purse (which at first blush appears to be a violation of concepts of separateness and an invasion of legislative autonomy) is

necessary to maintain judicial independence and is expressly provided for by the Constitution through the grant of fiscal autonomy under Section 3, Article VIII.

6. ID.; ID.; ID.; ID.; COVERS THE GRANT TO THE JUDICIARY OF THE AUTHORITY TO USE AND DISPOSE OF ITS FUNDS AND PROPERTIES AT WILL, FREE FROM ANY OUTSIDE CONTROL OR INTERFERENCE.— In *Bengzon v. Drilon*, we had the opportunity to define the scope and extent of fiscal autonomy x x x. The Court's declarations in *Bengzon* make it clear that the grant of fiscal autonomy to the Judiciary is more extensive than the mere automatic and regular release of its approved annual appropriations; real fiscal autonomy covers the grant to the Judiciary of the authority to use and dispose of its funds and properties at will, free from any outside control or interference.

7. ID.; ID.; ID.; ID.; EXERCISED BY THE CHIEF JUSTICE IN CONSULTATION WITH THE SUPREME COURT *EN BANC*.— The Judiciary's fiscal autonomy is realized through the actions of the Chief Justice, as its head, and of the Supreme Court *En Banc*, in the exercise of administrative control and supervision of the courts and its personnel. As the Court *En Banc*'s Resolution (dated March 23, 2004) in A.M. No. 03-12-01 reflects, the fiscal autonomy of the Judiciary serves as the basis in allowing the sale of the Judiciary's properties to retiring Justices of the Supreme Court and the appellate courts x x x. By way of a long standing tradition, partly based on the intention to reward long and faithful service, the sale to the retired Justices of specifically designated properties *that they used during their incumbency* has been recognized both as a privilege and a benefit. This has become an established practice within the Judiciary that even the COA has previously recognized. The *En Banc* Resolution also deems the grant of the privilege as a form of additional retirement benefit that the Court can grant its officials and employees in the exercise of its power of administrative supervision. Under this administrative authority, the Court has the power to administer the Judiciary's internal affairs, and this includes the authority to handle and manage the retirement applications and entitlements of its personnel as provided by law and by its own grants. Thus, under the guarantees of the Judiciary's fiscal

autonomy and its independence, the Chief Justice and the Court *En Banc* determine and decide the *who, what, where, when* and *how* of the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power; they determine the terms, conditions and restrictions of the grant as grantor. x x x [T]he Government Accounting and Auditing Manual (GAAM), Volume 1, particularly, Section 501 of Title 7, Chapter 3 x x x clearly recognizes that the Chief Justice, as the head of the Judiciary, possesses the ***full and sole authority*** and responsibility to divest and dispose of the properties and assets of the Judiciary; as Head of Office, he determines the ***manner and the conditions of disposition***, which in this case relate to a benefit. As the usual practice of the Court, this authority is exercised by the Chief Justice in consultation with the Court *En Banc*. However, whether exercised by the Chief Justice or by the Supreme Court *En Banc*, the grant of such authority and discretion is unequivocal and leaves no room for interpretations and insertions.

8. ID.; ID.; ID.; ID.; MAY BE VIOLATED WHEN THERE IS INTERFERENCE ON THE SUPREME COURT'S DISCRETIONARY AUTHORITY TO DETERMINE THE MANNER THE GRANTED RETIREMENT PRIVILEGES AND BENEFITS CAN BE AVAILED OF; CASE AT BAR.— In the context of the grant now in issue, the use of the formula provided in CFAG Joint Resolution No. 35 is a part of the Court's exercise of its discretionary authority to determine the manner the granted retirement privileges and benefits can be availed of. Any kind of interference on how these retirement privileges and benefits are exercised and availed of, not only violates the fiscal autonomy and independence of the Judiciary, but also encroaches upon the constitutional duty and privilege of the Chief Justice and the Supreme Court *En Banc* to manage the Judiciary's own affairs.

R E S O L U T I O N

***PER CURIAM*:**

The present administrative matter stems from the two Memoranda, dated July 14, 2011 and August 10, 2010, submitted by Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief

Administrative Officer, Office of Administrative Services, to the Office of the Chief Justice. These Memoranda essentially ask the Court to determine the proper formula to be used in computing the appraisal value that a retired Chief Justice and several Associate Justices of the Supreme Court have to pay to acquire the government properties they used during their tenure.

THE FACTUAL ANTECEDENTS

This issue has its roots in the June 8, 2010 Opinion[1] issued by the Legal Services Sector, Office of the General Counsel of the Commission on Audit (*COA*), which found that an underpayment amounting to ₱221,021.50 resulted when five (5) retired Supreme Court justices purchased from the Supreme Court the personal properties assigned to them during their incumbency in the Court, to wit:

Name of Justice	Items Purchased	Valuation under FAG (in pesos)	Valuation under COA Memorandum No. 98-569A (in pesos)	Difference (in pesos)
Artemio Panganiban (Chief Justice)	Toyota Camry, 2003 model	341,241.10	365,000.00	23,758.90
	Toyota Grandia, 2002 model	136,500.00	151,000.00	14,500.00
	Toyota Camry, 2001 model	115,800.00	156,000.00	40,200.00
Ruben T. Reyes (Associate Justice)	Toyota Camry, 2005 model	579,532.50	580,600.00	1,067.50
	Toyota Grandia, 2003 model	117,300.00	181,200.00	63,900.00

[1] Opinion No. 2010-035.

Angelina S. Gutierrez (Associate Justice)	Toyota Grandia, 2002 model	115,800.00	150,600.00	34,800.00
Adolfo S. Azcuna (Associate Justice)	Toyota Camry, 2005 model	536,105.00	543,300.00	9,195.00
	Toyota Grandia, 2002 model	117,300.00	145,000.00	27,700.00
	Sony TV Set	2,399.90	2,500.00	100.10
Ma. Alicia Austria-Martinez (Associate Justice)				5,800.00[2]
TOTAL				**₱221,021.50**

The COA attributed this underpayment to the use by the Property Division of the Supreme Court of the wrong formula in computing the appraisal value of the purchased vehicles. According to the COA, the Property Division erroneously appraised the subject motor vehicles by applying Constitutional Fiscal Autonomy Group (*CFAG*) Joint Resolution No. 35 dated April 23, 1997 and its guidelines, in compliance with the Resolution of the Court *En Banc* dated March 23, 2004 in A.M. No. 03-12-01,[3] when it should have applied the formula found in COA Memorandum No. 98-569-A[4] dated August 5, 1998.

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[2] The amount of ₱5,800.00 allegedly underpaid by retired Associate Justice Ma. Alicia Austria-Martinez in the purchase of an unspecified item was subsequently included via the COA's letter dated July 6, 2011.

[3] *Resolution Adopting Guidelines on the Purchase of Judiciary Properties by Retiring Members of the Supreme Court and Appellate Courts.*

[4] *Revised Guidelines on Appraisal of Property other than Real Estate, Antique Property and Works of Art.*

Recommendations of the Office of Administrative Services

In her Memorandum dated August 10, 2010, Atty. Candelaria recommended that the Court advise the COA to respect the in-house computation based on the CFAG formula, noting that this was the first time that the COA questioned the authority of the Court in using CFAG Joint Resolution No. 35 and its guidelines in the appraisal and disposal of government property since these were issued in 1997. As a matter of fact, in two previous instances involving two (2) retired Court of Appeals Associate Justices,[5] the COA upheld the in-house appraisal of government property using the formula found in the CFAG guidelines.

More importantly, the Constitution itself grants the Judiciary fiscal autonomy in the handling of its budget and resources. Full autonomy, among others,[6] contemplates the guarantee of full flexibility in the allocation and utilization of the Judiciary's resources, based on its own determination of what it needs. The Court thus has the recognized authority to allocate and disburse such sums as may be provided or required by law in the course of the discharge of its functions.[7] To allow the COA to substitute the Court's policy in the disposal of its property would be tantamount to an encroachment into this judicial prerogative.

OUR RULING

We find Atty. Candelaria's recommendation to be well-taken.

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[5] LAO-N-2003-262 – Request of Retired Justice Oswaldo D. Agcaoili, Court of Appeals, for the reduction in the appraised value of one unit Mazda E2000 Power Van Model 1998 from ₱192,000.00 to ₱52,000.00); and LAO-N-2004-296 – Request of Retired Justice Buenaventura J. Guerrero, Court of Appeals, for reconsideration of the value of one (1) unit Honda Civic, which he intends to purchase from ₱362,999.98 to ₱330,299.12.

[6] Section 3, Article VIII of the 1987 Constitution provides, "The Judiciary shall enjoy fiscal autonomy."

[7] See *Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 150.

The COA's authority to conduct post-audit examinations on constitutional bodies granted fiscal autonomy is provided under Section 2(1), Article IX-D of the 1987 Constitution, which states:

> Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and **on a post-audit basis**: (a) **constitutional bodies**, commissions and offices **that have been granted fiscal autonomy under this Constitution[.] [emphasis ours]**

This authority, however, must be read not only in light of the Court's fiscal autonomy, but also in relation with the constitutional provisions on judicial independence and the existing jurisprudence and Court rulings on these matters.

Separation of Powers and Judicial Independence

In *Angara v. Electoral Commission*,[8] we explained the principle of separation of powers, as follows:

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. x x x And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[9]

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[8] 63 Phil. 139 (1936).

[9] *Id.* at 156-157.

The concept of the independence of the three branches of government, on the other hand, extends from the notion that the powers of government must be divided to avoid concentration of these powers in any one branch; the division, it is hoped, would avoid any single branch from lording its power over the other branches or the citizenry.[10] To achieve this purpose, the divided power must be wielded by co-equal branches of government that are equally capable of independent action in exercising their respective mandates; lack of independence would result in the inability of one branch of government to check the arbitrary or self-interest assertions of another or others.[11]

Under the Judiciary's unique circumstances, independence encompasses the idea that *individual* judges can freely exercise their mandate to resolve justiciable disputes, while the judicial branch, *as a whole*, should work in the discharge of its constitutional functions free of restraints and influence from the other branches, save only for those imposed by the Constitution itself.[12] Thus, judicial independence can be "broken down into two distinct concepts: **decisional independence** and **institutional independence.**"[13] **Decisional independence** "refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law."[14] On the other hand, **institutional independence** "describes the separation of the judicial branch from the executive and legislative branches of government."[15]

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[10] CARL BAAR, *SEPARATE BUT SUBSERVIENT: COURT BUDGETING IN THE AMERICAN STATES* 149-52 (1975), *cited in* Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217 (1993).

[11] Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217 (1993).

[12] Joseph M. Hood, *Judicial Independence*, 23 J. National Association Admin. L. Judges 137, 138 (2003) citing American Judicature Society, What is Judicial Independence? (November 27, 2002), at http://www.ajs.org/cji/cji_whatisji.asp (last visited April 14, 2003).

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

Simply put, institutional independence refers to the "collective independence of the judiciary as a body."[16]

In the case *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*,[17] the Court delineated the distinctions between the two concepts of judicial independence in the following manner:

> One concept is ***individual judicial independence***, which focuses on each particular judge and seeks to insure his or her ability to decide cases with autonomy within the constraints of the law. A judge has this kind of independence when he can do his job without having to hear — or at least without having to take it seriously if he does hear — criticisms of his personal morality and fitness for judicial office. The second concept is ***institutional judicial independence***. It focuses on the independence of the judiciary as a branch of government and protects judges as a class.
>
> A truly independent judiciary is possible only when both concepts of independence are preserved — wherein public confidence in the competence and integrity of the judiciary is maintained, and the public accepts the legitimacy of judicial authority. An erosion of this confidence threatens the maintenance of an independent Third Estate. [italics and emphases ours]

Recognizing the vital role that the Judiciary plays in our system of government as the sole repository of judicial power, with the power to determine whether any act of any branch or instrumentality of the government is attended with grave abuse of discretion,[18] no less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained.

The Constitution expressly prohibits Congress from depriving the Supreme Court of its jurisdiction, as enumerated in Section 5,

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[16] Gerard L. Chan, *Lobbying the Judiciary: Public Opinion and Judicial Independence*, 77 PLJ 73, 76 (2002).

[17] A.M. No. 07-09-13-SC, August 8, 2008, 561 SCRA 395, 436.

[18] CONSTITUTION, Article VIII, Section 1.

Article VII of the Constitution, or from passing a law that undermines the security of tenure of the members of the judiciary.[19] The Constitution also mandates that the judiciary shall enjoy fiscal autonomy,[20] and grants the Supreme Court administrative supervision over all courts and judicial personnel. Jurisprudence[21] has characterized administrative supervision as exclusive, noting that only the Supreme Court can oversee the judges and court personnel's compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[22]

The Constitution protects as well the salaries of the Justices and judges by prohibiting any decrease in their salary during their continuance in office,[23] and ensures their security of tenure by providing that "Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office."[24] With these guarantees, justices and judges can administer justice undeterred by any fear of reprisals brought on by their judicial action. They can act inspired solely by their knowledge of the law and by the dictates of their conscience, free from the corrupting influence of base or unworthy motives.[25]

All of these constitutional provisions were put in place to strengthen judicial independence, not only by clearly stating

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[19] *Id.*, Section 2.

[20] *Id.*, Section 3.

[21] *Garcia v. Miro*, G.R. No. 167409, March 20, 2009, 582 SCRA 127; *Ampong v. Civil Service Commission, CSC-Regional Office No. 11,* G.R. No. 167916, August 26, 2008, 563 SCRA 293; *Judge Caoibes, Jr. v. Hon. Ombudsman,* 413 Phil. 717 (2001); and *Fuentes v. Office of the Ombudsman-Mindanao,* G.R. No. 124295, October 23, 2001, 368 SCRA 36.

[22] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11, supra*, at 303, citing *Maceda v. Vasquez,* G.R. No. 102781, April 22, 1993, 221 SCRA 464.

[23] CONSTITUTION, Article VIII, Section 10.

[24] *Id.*, Section 11.

[25] See *De La Llana, etc., et al. v. Alba, etc., et al.*, 198 Phil. 1, 64 (1982).

the Court's powers, but also by providing express limits on the power of the two other branches of government to interfere with the Court's affairs.

Fiscal Autonomy

One of the most important aspects of judicial independence is the constitutional grant of fiscal autonomy. Just as the Executive may not prevent a judge from discharging his or her judicial duty (for example, by physically preventing a court from holding its hearings) and just as the Legislature may not enact laws removing all jurisdiction from courts,[26] the courts may not be obstructed from their freedom to use or dispose of their funds for purposes germane to judicial functions. While, as a general proposition, the authority of legislatures to control the purse in the first instance is unquestioned, any form of interference by the Legislative or the Executive on the Judiciary's fiscal autonomy amounts to an improper check on a co-equal branch of government. If the judicial branch is to perform its primary function of adjudication, it must be able to command adequate resources for that purpose. This authority to exercise (or to compel the exercise of) legislative power over the national purse (which at first blush appears to be a violation of concepts of separateness and an invasion of legislative autonomy) is necessary to maintain judicial independence[27] and is expressly provided for by the Constitution through the grant of fiscal autonomy under Section 3, Article VIII. This provision states:

> Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

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[26] *See e.g., United States v. Klein,* 80 U.S. (13 Wall.) 128 (1872), *cited in* Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers,* 52 Md. L. Rev. 217 (1993).

[27] *See* Juvenile Director, 522 P.2d at 168; Commonwealth *ex rel. Carroll v. Tate,* 274 A.2d 193, 197 (Pa.) *cert. denied,* 402 U.S. 974 (1971), *cited in* Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers,* 52 Md. L. Rev. 217 (1993).

In *Bengzon v. Drilon*,[28] we had the opportunity to define the scope and extent of fiscal autonomy in the following manner:

> As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates **a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require**. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.
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> **Fiscal autonomy means freedom from outside control**. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.
>
> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. **The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based**. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.[29] (emphases ours)

In this cited case, the Court set aside President Corazon Aquino's veto of particular provisions of the General Appropriations Act for the Fiscal Year 1992 relating to the

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[28] G.R. No. 103524, April 15, 1992, 208 SCRA 133.

[29] *Id.* at 150-151.

payment of the adjusted pensions of retired justices of the Supreme Court and the Court of Appeals, on the basis of the Judiciary's constitutionally guaranteed independence and fiscal autonomy. The Court ruled:

> In the case at bar, the veto of these specific provisions in the General Appropriations Act is tantamount to dictating to the Judiciary how its funds should be utilized, which is clearly repugnant to fiscal autonomy. The freedom of the Chief Justice to make adjustments in the utilization of the funds appropriated from the expenditures of the judiciary, including the use of any savings from any particular item to cover deficits or shortages in other items of the Judiciary is withheld. Pursuant to the Constitutional mandate, the Judiciary must enjoy freedom in the disposition of the funds allocated to it in the appropriations law. It knows its priorities just as it is aware of the fiscal restraints. The Chief Justice must be given a free hand on how to augment appropriations where augmentation is needed.[30]

The Court's declarations in *Bengzon* make it clear that the grant of fiscal autonomy to the Judiciary is more extensive than the mere automatic and regular release of its approved annual appropriations;[31] real fiscal autonomy covers the grant to the Judiciary of the authority to use and dispose of its funds and properties at will, free from any outside control or interference.

Application to the Present Case

The Judiciary's fiscal autonomy is realized through the actions of the Chief Justice, as its head, and of the Supreme Court *En Banc*, in the exercise of administrative control and supervision of the courts and its personnel. As the Court *En Banc*'s Resolution (dated March 23, 2004) in A.M. No. 03-12-01 reflects, the fiscal autonomy of the Judiciary serves as the basis in allowing the sale of the Judiciary's properties to retiring Justices of the Supreme Court and the appellate courts:

> ***WHEREAS***, by the constitutional mandate of fiscal autonomy as defined in *Bengzon v. Drilon* (G.R. No. 103524, 15 April 1992,

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[30] *Id.* at 151.

[31] *Commission on Human Rights Employees' Association v. Commission on Human Rights*, 528 Phil. 658, 675 (2006).

208 SCRA 133, 150) the Judiciary has "full flexibility to allocate and utilize (its) resources with the wisdom and dispatch that (its) needs require";

WHEREAS, the long-established tradition and practice of Justices or Members of appellate courts of purchasing for sentimental reasons at retirement government properties they used during their tenure has been recognized as a privilege enjoyed only by such government officials; and

WHEREAS, the exercise of such privilege needs regulation to the end that respect for sentiments that a retiring Justice attaches to properties he or she officially used during his or her tenure should be in consonance with the need for restraint in the utilization and disposition of government resources.

By way of a long standing tradition, partly based on the intention to reward long and faithful service, the sale to the retired Justices of specifically designated properties *that they used during their incumbency* has been recognized both as a privilege and a benefit. This has become an established practice within the Judiciary that even the COA has previously recognized.[32] The *En Banc* Resolution also deems the grant of the privilege as a form of additional retirement benefit that the Court can grant its officials and employees in the exercise of its power of administrative supervision. Under this administrative authority, the Court has the power to administer the Judiciary's internal affairs, and this includes the authority to handle and manage the retirement applications and entitlements of its personnel as provided by law and by its own grants.[33]

Thus, under the guarantees of the Judiciary's fiscal autonomy and its independence, the Chief Justice and the Court *En Banc* determine and decide the *who, what, where, when* and *how* of

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[32] *Supra* note 5.

[33] Circular No. 36-97 (*Subject: Reorganization And Strengthening of the Office of the Court Administrator*) pursuant to Presidential Decree No. 828, as amended by Presidential Decree No. 842, created the Office of the Court Administrator to assist the Supreme Court in the exercise of its power of administrative supervision over all courts as prescribed by the Constitution.

the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power; they determine the terms, conditions and restrictions of the grant as grantor.

In the context of the grant now in issue, the use of the formula provided in CFAG Joint Resolution No. 35 is a part of the Court's exercise of its discretionary authority to determine the manner the granted retirement privileges and benefits can be availed of. Any kind of interference on how these retirement privileges and benefits are exercised and availed of, not only violates the fiscal autonomy and independence of the Judiciary, but also encroaches upon the constitutional duty and privilege of the Chief Justice and the Supreme Court *En Banc* to manage the Judiciary's own affairs.

As a final point, we add that this view finds full support in the Government Accounting and Auditing Manual (GAAM), Volume 1, particularly, Section 501 of Title 7, Chapter 3, which states:

> Section 501. *Authority or responsibility for property disposal/ divestment*. — The **full and sole authority and responsibility for the divestment and disposal of property and other assets owned by the national government agencies** or instrumentalities, local government units and government-owned and/or controlled corporations and their subsidiaries **shall be lodged in the heads of the departments, bureaus, and offices of the national government**, the local government units and the governing bodies or managing heads of government-owned or controlled corporations and their subsidiaries conformably to their respective corporate charters or articles of incorporation, who shall constitute the appropriate committee or body to undertake the same**.** [italics supplied; emphases ours]

This provision clearly recognizes that the Chief Justice, as the head of the Judiciary, possesses the ***full and sole authority*** and responsibility to divest and dispose of the properties and assets of the Judiciary; as Head of Office, he determines the ***manner and the conditions of disposition***, which in this case relate to a benefit. As the usual practice of the Court, this authority

is exercised by the Chief Justice in consultation with the Court *En Banc*. However, whether exercised by the Chief Justice or by the Supreme Court *En Banc*, the grant of such authority and discretion is unequivocal and leaves no room for interpretations and insertions.

ACCORDINGLY, premises considered, the in-house computation of the appraisal value made by the Property Division, Office of 'Administrative Services, of the properties purchased by the retired Chief Justice and Associate Justices of the Supreme Court, based on CFAG Joint Resolution No. 35 dated April 23, 1997, as directed under the Court Resolution dated March 23, 2004 in A.M. No. 03-12-01, is **CONFIRMED** to be legal and valid. Let the Commission on Audit be accordingly advised of this Resolution for its guidance.

SO ORDERED.

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

Mendoza, J., on leave.

EN BANC

[A.M. No. P-11-2965. July 31, 2012]
(Formerly OCA I.P.I. No. 08-3029-P)

COMMISSION ON AUDIT, represented by ATTY. FRANCISCO R. VELASCO, *complainant, vs.* **ARLENE B. ASETRE, Clerk of Court, Municipal Trial Court, Ocampo, Camarines Sur,** *respondent.*

[A.M. No. P-10-2752. July 31, 2012]
(Formerly A.M. No. 09-10-173-MTC)

RE: FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT, OCAMPO, CAMARINES SUR.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; FUNCTIONS.—** Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. It is the clerks of court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodian of the court's funds and revenues, records, properties and premises. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to do so makes them liable for any loss, shortage, destruction or impairment of such funds and property.

2. **ID.; ID.; ID.; ID.; ID.; SHOULD DEPOSIT IMMEDIATELY, WITH AUTHORIZED GOVERNMENT DEPOSITORIES, THE VARIOUS FUNDS THEY HAVE COLLECTED.—** It is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

3. **ID.; ID.; ID.; ID.; ID.; DISHONESTY; FAILURE TO REMIT CASH COLLECTIONS CONSTITUTING PUBLIC FUNDS, A CASE OF; PENALTY.—** By failing to properly remit the cash collections constituting public funds, respondent violated the trust reposed in her as disbursement officer of the Judiciary.

Her failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds. Her transgressions and her failure to satisfactorily explain her conduct, leave us no choice but to hold her liable for dishonesty, and to order her dismissal from office. The Court condemns any conduct, act or omission which violates the norm of public accountability or diminishes the faith of the people in the Judiciary. Under Section 22 (a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.

4. ID.; ID.; ID.; ID.; SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS AND HONESTY.— Time and time again, this Court has stressed that those charged with the dispensation of justice — from the presiding judge to the lowliest clerk — are circumscribed with a heavy burden of responsibility. Their conduct, at all times, must not be characterized by propriety and decorum, but above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty. Thus, this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities.

D E C I S I O N

***PER CURIAM*:**

For our resolution are two consolidated cases, namely, (1) Administrative Complaint, docketed as A.M. No. P-11-2965 (OCA I.P.I. No. 08-3029-P), filed by the Commission on Audit (COA), represented by Atty. Francisco R. Velasco against respondent Arlene B. Asetre, Clerk of Court, Municipal Trial Court, Ocampo, Camarines Sur, for malversation of public funds; and (2) Administrative Complaint, docketed as A.M. No. P-10-2752 (OCA I.P.I. No. 09-10-173-MTC) against the same respondent.

A.M. No. P-11-2965 (formerly A.M. OCA I.P.I. No. 08-3029-P)

Commission on Audit, represented by Atty. Francisco R. Velasco v. Arlene B. Asetre, Clerk of Court, Municipal Trial Court, Ocampo, Camarines Sur.

In an Indorsement dated December 3, 2008, the Office of the Deputy Ombudsman for Luzon referred to the Office of the Court Administrator (OCA) for appropriate action the complete records of CPL-L-08-2120 entitled "*COA v. Arlene B. Asetre*" relative to the charges of Malversation of Public Funds, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service against Arlene B. Asetre, Clerk of Court, Municipal Trial Court (MTC), Ocampo, Camarines Sur. The charges originated from the findings of the Audit Team of the Commission on Audit that respondent Asetre incurred cash shortage of One Hundred Fifty Thousand and Four Pesos (₱150,004.00), representing unremitted cash collections from December 8, 2003 to November 13, 2009, to the prejudice of the government.

The shortage was accounted for as follows:

Beginning Balance as of December 8, 2003		₱ 2,006.00
Add: Undep. Collections, Dec. 8, 2003 to Nov. 6, 2009		
Fiduciary Fund	₱89,000.00	
JDF	20,972.90	
GF/SAJ	27,842.10	
VCF	60.00	
MF	10,500.00	148,375.00
Total		₱ 150,381.00
Less: Cash counted		377.00
Total Shortage		**₱ 150,004.00**[1]

The COA report alleged that respondent did not remit/deposit her collections on time to the authorized depository bank, which resulted to the accumulation of the cash in her custody and that she even admitted that she utilized the collections for personal use. The delays incurred in remitting such collections ranged from one (1) day to 866 days.

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[1] *Rollo* (A.M. No. P-11-2965), p. 127.

On January 8, 2009, the OCA directed respondent to comment on the complaint against her.

Respondent admitted that she misappropriated the money for her personal gain due to her financial problems and begged the indulgence of the Court to allow her to restitute the shortages. She likewise pleaded for compassion and clemency, and in the alternative, she be allowed to retire with full benefits to be able to pay all her financial obligations.

In a Memorandum[2] dated October 14, 2009, the OCA recommended that the resolution of the instant case be held in abeyance pending the outcome of the financial audit conducted by the Court Management Office of the OCA (CMO-OCA) in the MTC, Ocampo, Camarines Sur.

In a Resolution[3] dated December 7, 2009, the Court resolved to hold in abeyance the resolution of the administrative case against respondent pending the outcome of the financial audit conducted in the MTC, Ocampo, Camarines Sur by the Fiscal Monitoring Division.

A.M. No. P-10-2752 (formerly A.M. No. 09-10-173-MTC) ***Re: Financial Audit Conducted in the Municipal Trial Court, Ocampo, Camarines Sur.***

Prompted by the audit findings made by the COA which showed shortages in the accountabilities of respondent Asetre, the CMO-OCA conducted a financial audit of the financial accounts of the MTC, Ocampo, Camarines Sur covering the accountability period of Clerk of Court Mrs. Arlene B. Asetre, from March 1, 2004 to July 16, 2009. While the COA examination covered only the period December 8, 2003 to November 13, 2006 and the CMO Audit Team covered the period March 1, 2004 to July 16, 2009, it appeared that the shortages for the period

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[2] *Id.* at 126-129.

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

covered by the COA team on all funds were almost the same as that found by the Audit Team of the CMO.

Based on the available documents, the audit report yielded the following results:

1. SUMMARY OF COLLECTIONS AND DEPOSITS AND ACCOUNTABILITIES ON JUDICIARY DEVELOPMENT FUND (JDF) FOR THE PERIOD COVERED MARCH 1, 2004 TO JULY 16, 2009

Month/Year	Collections	Deposits	(Over)/Under Remittance
Jan.-Dec. 2004	₱ 20,982.60	₱17,640.00	₱ 3,342.60
Jan.-Dec. 2005	₱ 16,977.80	₱ 2,526.00	₱ 14,451.80
Jan.-Dec. 2006	₱ 7,885.10	₱ 3,121.00	₱ 4,764.10
Jan.-Dec. 2007	₱ 25,544.60	₱ 4,377.00	₱ 21,167.60
Jan.-Dec. 2008	₱ 9,365.60	₱ 0.00	₱ 9,365.60
Jan.-July 16, 2009	₱ 7,633.60	₱ 0.00	₱ 7,633.60
Total	₱ 88,389.30	₱ 0.00	₱ 60,725.30

2. SUMMARY OF COLLECTIONS AND DEPOSITS AND ACCOUNTABILITIES ON SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF) FOR THE PERIOD COVERED MARCH 1, 2004 TO JULY 16, 2009

Month/Year	Collections	Deposits	(Over)/Under Remittance
Jan.-Dec. 2004	₱ 4,652.40	₱ 3,227.20	₱ 1,425.20
Jan.-Dec. 2005	₱ 21,659.40	₱ 1,687.60	₱ 19,971.80
Jan.-Dec. 2006	₱ 11,514.90	₱ 4,044.00	₱ 7,470.90
Jan.-Dec. 2007	₱ 44,895.20	₱ 4,500.00	₱ 40,395.20
Jan.-Dec. 2008	₱ 12,364.40	₱ 0.00	₱ 12,364.40
Jan.-July. 16, 2009	₱ 9,971.00	₱ 0.00	₱ 9,971,00
Total	₱105,057.30	₱ 13,458.80	₱ 91,598.50

3. SUMMARY OF COLLECTIONS AND DEPOSITS AND ACCOUNTABILITIES ON MEDIATION FUND (MF) FOR THE PERIOD COVERED JULY 2005 TO JULY 16, 2009

Month/Year	Collections	Deposit	(Over)/Under Remittance
Jan.-Dec. 2005	₱ 8,500.00	₱ 0.00	₱ 8,500.00
Jan.-Dec. 2006	₱ 2,000.00	₱ 0.00	₱ 2,000.00
Jan.-Dec. 2007	₱ 4,000.00	₱ 0.00	₱ 4,000.00
Jan.-Dec. 2008	₱ 2,000.00	₱ 0.00	₱ 2,000.00
Jan.-July. 16, 2009	₱ 3,000.00	₱ 0.00	₱ 3,000.00
Total	₱ 19,500.00	₱ 0.00	₱19,500.00

4. SUMMARY OF COLLECTIONS AND DEPOSITS AND ACCOUNTABILITIES ON VICTIM'S COMPENSATION FUND (VCF) FOR THE PERIOD COVERED MARCH 1, 2007 TO JULY 16, 2009

Month/Year	Collections	Deposit	(Over)/Under Remittance
Jan.-Dec. 2007	₱ 5.00	₱ 0.00	₱ 5.00
Jan.-Dec. 2008	₱ 5.00	₱ 0.00	₱ 5.00
Jan.-July. 16, 2009	₱ 15.00	₱ 0.00	₱ 15.00
Total	₱ 95.00	₱ 0.00	₱ 95.00

5. SUMMARY OF COLLECTIONS/DEPOSITS AND WITHDRAWALS ACCOUNTABILITIES ON FIDUCIARY FUND (FF) FOR THE PERIOD COVERED MARCH 1, 2004 TO JULY 16, 2009

Unwithdrawn Fiduciary Fund, Beginning	₱ 47,800.00
Add: Total Collections for the period March 2004 to July 16, 2009	286,500.00
Total	₱ 334,300.00
Less: Total Withdrawals for the period March 2004 to July 16, 2009	₱ 281,500.00
Unwithdrawn Fiduciary Fund as of July 16, 2009	**₱ 52,800.00**
Unwithdrawn Fiduciary Fund as of July 16, 2009	₱ 52,800.00
Add: Unwithdrawn Interest (net of withholding tax)	1,161.43
Bank Balance, July 16, 2009 (LBP SA No. 0041-1282-67)	0.00
Balance of Accountability/Shortage	**₱ 53,961.43**[4]

Below are the comparative findings of the COA and the undersigned Audit Team from the Fiscal Monitoring Division (FMD) which showed similarities:

Fund Name	Period Covered	Collections		Deposits		Shortages	
		Per COA	Per FMD	Per COA	Per FMD	Per COA	Per FMD
JDF	3/1/04-12/31/04	20,982.60	20,982.60	17,260.00	17,640.00	3,722.60	3,342.60
	1/1/05-12/31/05	16,977.80	16,977.80	2,526.00	2,526.00	14,451.80	14,451.80
	1/1/06-11/13/06	7,577.50	7,577.50	3,121.00	3,121.00	4,456.50	4,456.50

[4] *Rollo* (A.M. No. P-10-2752), pp. 9-10. (Emphasis supplied.)

SAJF	3/1/04-12/31/04	4,652.40	4,652.40	2,546.00	2,546.00	2,106.40	2,106.40
	1/1/05-12/31/05	21,669.00	21,669.00	1,687.60	1,687.60	19,981.40	19,981.40
	1/1/06-11/13/06	11,022.50	11,022.50	4,044.00	4,044.00	6,978.50	6,978.50
MF	7/1/05-12/31/05	8,500.00	8,500.00	0	0	8,500.00	8,500.00
	1/1/06-11/13/06	2,000.00	2,000.00	0	0	2,000.00	2,000.00
TOTAL		**93,381.80**	**93,381.80**	**31,184.60**	**31,564.60**	**62,197.20**	**62,817.20**[5]

The FMD Audit Team discovered that respondent incurred shortages on all legal fees collections of the court. Beginning March 2004 to December 2006, remittances/deposits were not remitted in full which resulted to the shortages uncovered. Respondent's transgressions became very obvious when she failed to remit all her collections from January 2008 to July 2009. Below is the summary of her accountabilities.

FUND	JDF	CASH SHORTAGE
PERIOD COVERED	March 1, 2004 to July 16, 2009	
COLLECTIONS	88,389.30	
DEPOSITS	(27,664.00)	
SHORTAGE	**60,725.30**	
CASH ON HAND PRESENTED DURING OUR CASH COUNT	(4,648.25)	
FINAL SHORTAGE (OVERAGE)	**56,077.05**	**56,077.05**
DATE DEPOSITED	UNSETTLED TO DATE	
DEPOSITORY AGENCY	LBP-JDF Acct. No. 0591-0116-34	

[5] *Id.* at 10-11.

FUND	SAJF	CASH SHORTAGE
PERIOD COVERED	March 1, 2004 to July 16, 2009	
COLLECTIONS	105,057.30	
DEPOSITS	(13,458.80)	
SHORTAGE (OVERAGE)	**91,598.50**	**91,598.50**
DATE DEPOSITED	UNSETTLED TO DATE	
DEPOSITORY AGENCY	LBP-SAJF Acct. No. 0591-1744-28	

FUND	MF	CASH SHORTAGE
PERIOD COVERED	July 2005 to July 16, 2009	
COLLECTIONS	19,500.00	
DEPOSITS	0.00	
SHORTAGE (OVERAGE)	**19,500.00**	**19,500.00**
DATE DEPOSITED	UNSETTLED TO DATE	
DEPOSITORY AGENCY	LBP-PMCF Acct. No. 3472-1000-28	

FUND	VCF	CASH SHORTAGE
PERIOD COVERED	March 2007 to July 16, 2009	
COLLECTIONS	**95.00**	
DEPOSITS	0.00	
SHORTAGE (OVERAGE)	**95.00**	**95.00**
DATE DEPOSITED	UNSETTLED TO DATE	
DEPOSITORY AGENCY	LBP-VCF Acct. No. 0592-1022-42	

FUND	FF	CASH SHORTAGE
PERIOD COVERED	March 1, 2004 to July 16, 2009	
BEGINNING BALANCE	47,800.00	
COLLECTIONS	286,500.00	
WITHDRAWALS	(281,500.00)	
UNWITHDRAWN BALANCE	**52,800.00**	
LBP SA No. 0041-1282-67	0.00	
NET INTEREST PREVIOUSLY EARNED	1,161.43	
SHORTAGE	**53,961.43**	**53,961.43**
DATE DEPOSITED	UNSETTLED TO DATE	

TOTAL CASH SHORTAGES	**221,231.98**[6]

From March 2004 onwards, respondent purposely failed to deposit material portion of her collections on JDF, SAJF, MF, VCF and FF for seemingly personal reason/s, thus, her total undeposited collections went up to Two Hundred Twenty-Five Thousand Eight Hundred Eighty Pesos and 23/100 (₱225,880.23) as against the cash on hand amounting to Four Thousand Six Hundred Forty-Eight Pesos and 25/100 Centavos (₱4,648.25) which she presented during the cash count on July 16, 2009.

It was also discovered that monthly reports of collections, deposits and/or withdrawals on Judiciary Development Fund, Clerk of Court General Fund/Special Allowance for the Judiciary fund, Fiduciary Fund and Mediation Fund were not regularly submitted to the Accounting Division of the OCA.

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[6] *Id.* at 11-12.

In fact, due to respondent's failure to deposit the fiduciary fund collections to Land Bank of the Philippines Savings Account No. 0041-1282-67, it resulted to the account's closure due to bank charges and for failing to meet the required minimum balance.

Likewise, respondent did not collect Sheriff's Trust fund as mandated in Revised Rule 141, Rules of Court in Supreme Court Administrative Matter No. 04-2-04-SC effective August 16, 2004.

In a Resolution[7] dated November 25, 2009, the Court resolved, among other things, to:

1. Direct the Office of the Court Administrator (OCA) to DOCKET the report of the Financial Audit Team as a regular administrative complaint against Mrs. Arelene B. Asetre for violation of the circulars and other issuances of the Court on the proper handling of Judiciary collections which has resulted in the shortages incurred on the different fund accounts of the Court, and consolidate the audit report with OCA IPI No. 08-3029-P;

2. DIRECT Mrs. Arlene B. Asetre, Clerk of Court of the MTC of Ocampo, Camarines Sur to:

   (a) RESTITUTE within ten (10) days from notice, her incurred shortages on the following funds and to deposit the same to their corresponding fund bank accounts, copy furnished the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator (OCA) with the duly validated deposit slips as proof of compliance;

Name of Fund	Period Covered	Amount	Schedule
Judiciary Development Fund	March 1, 2004 to July 16, 2009	₱ 56,077.05	1
Special Allowance for the Judiciary Fund	March 1, 2004 to July 16, 2009	91,598.50	2

[7] *Rollo* (A.M. No. P-10-2752), pp. 43-46.

Mediation Fund	March 1, 2004 to July 16, 2009	19,500.00	3
Victim's Compensation Fund	March 1, 2007 to July 16, 2009	95	4
Fiduciary Fund	March 1, 2004 to July 16, 2009	53,961.43	5
Total		**₱ 221,231.98**	

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

(b.1) she should not be administratively and criminally charged for failure to deposit her collections in their corresponding fund bank accounts which is a clear violation of the circulars and other issuances of the Court on the proper handling of Judiciary funds;

(b.2) she failed to collect the One Thousand Pesos (₱1,000.00) from the plaintiff upon filing of the complaint to defray the annual travel expenses of the Sheriff, Process Server or Court-Authorized Persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case as mandated in A.M. No. 04-2-04-SC, effective August 16, 2004 Re: Proposed Revision of Rule 141 of the Revised Rules of Court on Legal Fees; and

(b.3) she failed to submit regularly Monthly Reports of Collections, Deposits and/or Withdrawals on Judiciary Development Fund, Clerk of Court General Fund/Special Allowance for the Judiciary Fund, Fiduciary Fund and Mediation Fund to the Accounting Division, Financial Management Office of the OCA and to the Financial Management Office, Finance Division of the Philippine Judicial Academy;

3. DIRECT Ms. Editha I. Calupit, designated Officer-in-Charge as Financial Custodian and Collecting Officer of MTC, Ocampo, Camarines Sur to:

a. Collect the One Thousand Pesos, (₱1,000.00) from the plaintiff upon filing of the complaint to defray the actual travel expenses of the Sheriff, Process Server or Court-Authorized

Persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case as mandated in A.M. No. 04-2-04-SC effective August 16, 2004 Re: Proposed Revision of Rule 141 of the Revised Rules of Court on Legal Fees; and;

b. STRICTLY FOLLOW the circulars and other issuances of the Court on the proper handling of Judiciary funds to avoid the occurrence of infractions committed by Asetre.

4. DIRECT Hon. Manuel E. Contreras, Presiding Judge of Municipal Trial Court, Ocampo, Camarines Sur to (a) EXPLAIN in writing, within ten (10) days from notice why he should not be administratively dealt with for failure to comply with the recommendation of the Commission on Audit in their Audit Observation Memorandum No. 2006-036-101 (06) dated 5 January 2007 and letter dated 27 November 2006 for the immediate relief of Mrs. Asetre from collecting functions which could have prevented further shortages incurred with Judiciary funds; and (b) PROPERLY MONITOR the financial transactions of Ms. Editha I. Calupit, designated collecting officer, to ensure strict adherence to circulars and other issuances of the Court regarding the proper handling of Judiciary funds.[8]

In her letter dated January 25, 2010, respondent admitted all the allegations against her except her alleged failure to submit Monthly Reports of Collections, Deposits and/or Withdrawals on Judiciary Development Fund, which she claimed to have complied with.

Respondent absolved Judge Contreras and claimed that the latter had no knowledge that she was not properly remitting all her collections and that she misappropriated her collections for personal use.

Anent her failure to collect ₱1,000.00 from plaintiffs upon filing of a complaint to defray the actual travel expenses of the Sheriff, respondent claimed good faith as she merely followed the practice of the former clerk of court of collecting small sums of money based on the kilometrage fee estimated by the plaintiffs, and further claimed that the settings and notices were

[8] *Id.* at 43-45.

made in open court and sometimes coursed through the municipal police; hence, the services of sheriff are no longer needed.

Respondent apologized to the Court and begged to be given a second chance with a promise not to repeat the same acts and further requested that all her withheld salaries from February 2009 up to the present be applied as payment of her accountabilities and whatever balance remains, she expressed her willingness to settle the same.

Judge Contreras, on the other hand, in his letter dated January 27, 2010, averred that he did not take any action to relieve respondent Asetre from her collecting functions because as Presiding Judge of the first level court, his authority to supervise and monitor the performance of duties of respondent Asetre is limited to her adjudicative and administrative functions. He explained that he has no authority to relieve respondent Asetre in performing her financial functions, unless he is authorized by the Financial Management Office of the OCA (FMO-OCA). Thus, he recommended that the audit findings should be communicated instead to the FMO-OCA and to the Executive Judge of the Regional Trial Court, Pili, Camarines Sur.

In a Resolution dated August 9, 2010, the Court directed the OCA to submit a consolidated evaluation, report and recommendation on the instant cases.

In a Memorandum dated March 8, 2011, the OCA found respondent Arlene B. Asetre guilty of Dishonesty, Conduct Prejudicial to the Best Interest of the Service and recommended her dismissal from the service. The OCA likewise recommended that Judge Manuel E. Contreras be fined in the amount of ₱2,000.00 for simple negligence.

In a Resolution dated August 10, 2011, the Court resolved to re-docket both complaints as a regular administrative matter.

RULING

Clerks of court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer,

accountant, guard and physical plant manager thereof.[9] It is the clerks of court's duty to faithfully perform their duties and responsibilities as such "to the end that there was full compliance with function, that of being the custodian of the court's funds and revenues, records, properties and premises.[10] They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to do so makes them liable for any loss, shortage, destruction or impairment of such funds and property.

Respondent miserably failed to live up to these stringent standards. She consistently incurred delays and shortages in the remittances of funds over long periods of time and offered no satisfactory explanation to justify her transgressions.

In the instant case, respondent's failure to remit court collections was in complete violation of Administrative Circular No. 3-2000, dated June 15, 2000, which commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. The procedural guidelines of this Circular provide:

x x x x x x x x x

II. Procedural Guidelines

A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures.

x x x x x x x x x

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[9] *Re: Misappropriation of the Judiciary Fund Collections by Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan,* 465 Phil. 24, 34 (2004).

[10] *Office of the Court Administrator v. Fortaleza*, A.M. No. P-01-1524, July 29, 2002, 385 SCRA 293, 303, citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, March 24, 1994, 231 SCRA 408 and *Office of the Court Administrator v. Galo*, A.M. P-93-989, September 21, 1999, 314 SCRA 705.

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — **The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila – SAVINGS ACCOUNT NO. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.**

x x x x x x x x x

Collections shall not be used for encashment of personal checks, salary checks, *etc*. x x x

x x x x x x x x x

B. General Fund (GF)

(1) *Duty of the Clerks of Court, Officer-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 representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, **maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund**.

x x x (Emphases and underscoring ours.)

These Circulars are mandatory in nature, designed to promote full accountability for government funds and no protestation of good faith can override such mandatory nature. Failure to observe these Circulars resulting to loss, shortage, destruction or impairment of court funds and properties makes Asetre liable thereto.

It is the duty of clerks of court to perform their responsibilities faithfully, so that they can fully comply with the circulars on deposits of collections. They are reminded to deposit immediately, with authorized government depositaries, the various funds they have collected because they are not authorized to keep those funds in their custody. The unwarranted failure to fulfill these

responsibilities deserves administrative sanction and not even the full payment of the collection shortages will exempt the accountable officer from liability.

By failing to properly remit the cash collections constituting public funds, respondent violated the trust reposed in her as disbursement officer of the Judiciary. Her failure to deposit the said amount upon collection was prejudicial to the court, which did not earn interest income on the said amount or was not able to otherwise use the said funds.[11] Her transgressions and her failure to satisfactorily explain her conduct, leave us no choice but to hold her liable for dishonesty, and to order her dismissal from office. The Court condemns any conduct, act or omission which violates the norm of public accountability or diminishes the faith of the people in the Judiciary.

Under Section 22 (a), (b) and (c) of Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, Dishonesty is classified as a grave offense. The penalty for this offense is dismissal even for the first offense.[12]

On the other hand, we remind Judge Contreras that he is mandated to perform administrative and supervisory functions, effective management of the court's day-to-day operations, including the supervision of their subordinates especially the safekeeping of funds. In this case, there is no doubt that Judge Contreras failed to exercise the required duty of monitoring the financial transactions of MTC, Ocampo, Camarines Sur, in strict compliance with the pertinent issuances and circulars of the court. Considering that the COA had already notified him of certain irregularities committed by respondent, Judge Contreras should have exercised prudence in immediately taking the necessary measures to prevent the latter from further diverting the court's fund.

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[11] See *Report on the Financial Audit Conducted on the Books of Accounts of Mr. Agerico P. Balles, MTCC-OCC. Tacloban City*, A.M. No. P-05-2065, April 2, 2009, 583 SCRA 50, 61.

[12] *Id*.

Time and time again, this Court has stressed that those charged with the dispensation of justice? from the presiding judge to the lowliest clerk? are circumscribed with a heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum, but above all else, must be beyond suspicion. Every employee should be an example of integrity, uprightness and honesty.[13] Thus, this Court has not hesitated to impose the ultimate penalty on those who have fallen short of their accountabilities.

WHEREFORE, respondent **ARLENE B. ASETRE**, Clerk of Court, Municipal Trial Court, Ocampo, Camarines Sur, is hereby found **GUILTY of DISHONESTY.** She is ordered **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations. Respondent is further **ORDERED** to **RESTITUTE** immediately the amount of Two Hundred Twenty-One Thousand Two Hundred Thirty-One Pesos and Ninety-Eight Centavos (**₱221,231.98**),[14] representing the total shortages she incurred during her incumbency.

The Employees Leave Division, Office of Administrative Services, OCA, is **DIRECTED** to compute the balance of respondent Asetre's earned leave credits and forward the same to the Finance Division, Financial Management Office, OCA, which shall compute its monetary value. The resulting amount, as well as other monetary benefits Asetre may still be entitled to, shall be applied as part of the restitution of the shortage.

Judge Manuel E. Contreras is likewise **ADMONISHED** for failure to take the necessary measures to prevent overages in

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[13] *In Re: Report of COA on the Shortage of the Accountabilities of Clerk of Court Lilia S. Buena, MTCC, Naga City*, 348 Phil. 1, 9 (1998); *In Re: Delayed Remittance of Collections of Odtuha*, 445 Phil. 220, 224 (2003); *Office of the Court Administrator v. Galo*, 373 Phil. 483, 490 (1999); *Cosca v. Palaypayon*, A.M. No. MTJ-92-721, September 30, 1994, 273 SCRA 249, 269.

[14] Resolution dated November 25, 2009.

the court's collection with a reminder to closely monitor, strictly implement court policies, circulars and procedures to strengthen internal control over the financial transactions of the Municipal Trial Court, Ocampo, Camarines Sur.

SO ORDERED.

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

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

Mendoza, J., on official leave.

EN BANC

[G.R. No. 189041. July 31, 2012]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **DR. AGNES OUIDA P. YU,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE); DEVOLUTION; DEFINED.— In pursuance of the declared policy under *The Local Government Code of 1991* (R.A. No. 7160) to provide for a more responsive and accountable local government structure through a system of decentralization, national agencies or offices, including the DOH, were mandated to devolve to the local government units the responsibility for the provision of basic services and facilities. As defined, "devolution" is the act by which the national government confers

[*] Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended.

power and authority upon the various local government units to perform specific functions and responsibilities. Specifically, Section 17(i) of the same *Code* prescribes the manner of devolution x x x.

2. ID.; ID.; ID.; ID.; THE ABSORPTION OF THE NATIONAL GOVERNMENT AGENCY PERSONNEL IS MANDATORY; EXCEPTION.— [I]t was **mandatory** for Governor Salapuddin to absorb the position of PHO II, as well as its incumbent, Dr. Fortuna Castillo. Highlighting the absence of discretion is the use of the word "**shall**" both in Section 17 (i) of R.A. No. 7160 and in Section 2(a)(2) of E.O. No. 503, which connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion. The only instance that the LGU concerned may choose not to absorb the NGA personnel is when *absorption is not administratively viable*, meaning, it would result to *duplication of functions*, in which case, the NGA personnel shall be retained by the national government. However, in the absence of the recognized exception, devolved permanent personnel shall be **automatically reappointed** [Section 2(a)(12)] by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992. Webster's Third New International Dictionary defines "automatic" as "involuntary either wholly or to a major extent so that any activity of the will is largely negligible." Being "automatic", thus, connotes something mechanical, spontaneous and perfunctory.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DETAIL; OFFICIALS AND EMPLOYEES ON DETAIL WITH OTHER OFFICES SHALL BE PAID THEIR SALARIES, EMOLUMENTS, ALLOWANCES, FRINGE BENEFITS AND OTHER PERSONAL SERVICES COSTS FROM THE APPROPRIATIONS OF THEIR PARENT AGENCIES.— Officials and employees on detail with other offices shall be paid their salaries, emoluments, allowances, fringe benefits and other personal services costs from the appropriations of their parent agencies and in no case shall such be charged against the appropriations of the agencies where they are assigned or detailed, except when authorized by law. A *detail* is defined and governed by Executive Order 292, Book V, Title I, Subtitle A, Chapter 5, Section 26 (6) x x x.

4. ID.; ID.; ID.; ABANDONMENT OF OFFICE; ELEMENTS. — "Abandonment of an office is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof. In order to constitute abandonment of office, it must be total and under such circumstance as clearly to indicate an absolute relinquishment. There must be a complete abandonment of duties of such continuance that the law will infer a relinquishment. Abandonment of duties is a voluntary act; it springs from and is accompanied by deliberation and freedom of choice. There are, therefore, two essential elements of abandonment: *first*, an intention to abandon and, *second*, an overt or 'external' act by which the intention is carried into effect."

LEONARDO-DE CASTRO, *J.*, *concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ABANDONMENT OF OFFICE; A PERSON HOLDING PUBLIC OFFICE MAY ABANDON SUCH OFFICE BY NON-USER OR ACQUIESCENCE.— In *Canonizado v. Aguirre*, this Court expounded on what constitutes abandonment of an office x x x. In the above-stated case, the Court declared, among others, that, in general, a person holding public office may abandon such office by non-user or ***acquiescence***. Non-user refers to a neglect to use a right or privilege or to exercise an office while acquiescence is a silent appearance of consent by failure to make any objection or by submission to an act of which one had knowledge. It exists where a person knows or ought to know that he is entitled to enforce his right or to impeach a transaction, and neglects to do so for such a length of time as would imply that he intended to waive or abandon his right.

2. ID.; ID.; ID.; ID.; ABANDONMENT BY ACQUIESCENCE; ESTABLISHED IN CASE AT BAR.— Dr. Castillo's manifest inaction to assert a legal right from 1992 up to her retirement from government service in 1996 constituted abandonment by acquiescence, of whatever legal right she had over the devolved position of PHO II. Coupled with her acceptance or consent to her re-absorption by the DOH in the DOH Regional Health Field Office No. IX in Zamboanga City, she effectively abandoned any legal right she had to the PHO II position devolved to the Province, which resulted in a vacancy in the

said position. This paved the way for the valid appointment in 1994 of Dr. Yu who then was a *de jure*, not a *de facto* officer. Having been validly appointed to a vacant position that was mandatorily and automatically devolved to the Province by operation of law, Dr. Yu, as correctly pointed out by the assailed ruling of the Court of Appeals, had a vested right to the position of PHO II that was later re-nationalized and reclassified as Chief of Hospital II by operation of a subsequent law. As such, she is entitled to all the corresponding salaries and benefits pertaining to the said office which she had not received for the period not exceeding the day of her retirement which was on August 24, 2004.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Arnulfo H. Manigos for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, the Civil Service Commission (CSC) assails the Decision[1] dated March 30, 2009 and the Resolution[2] dated July 9, 2009 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 00327-MIN declaring Dr. Agnes Ouida P. Yu to have a vested right in the position of Chief of Hospital II until her retirement on August 24, 2004.

The Facts

In 1992, the national government implemented a devolution program pursuant to Republic Act (R.A.) No. 7160, otherwise known as the "*The Local Government Code of 1991*," which

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[1] *Rollo*, pp. 47-57, penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion, concurring.

[2] *Id.* at 59-60.

affected the Department of Health (DOH) along with other government agencies.

Prior to the devolution, Dr. Fortunata Castillo (hereinafter Dr. Castillo) held the position of Provincial Health Officer II (PHO II) of the Department of Health (DOH) Regional Office No. IX in Zamboanga City and was the head of both the Basilan Provincial Health Hospital and Public Health Services. Respondent Dr. Agnes Ouida P. Yu (Dr. Yu), on the other hand, held the position of Provincial Health Officer I (PHO I). She was assigned, however, at the Integrated Provincial Health Office in Isabela, Basilan.

Upon the implementation of the devolution program, then Basilan Governor Gerry Salapuddin (Governor Salapuddin) refused to accept Dr. Castillo as the incumbent of the PHO II position that was to be devolved to the local government unit of Basilan, prompting the DOH to retain Dr. Castillo at the Regional Office No. IX in Zamboanga City where she would serve the remaining four years of her public service. She retired in 1996.

Meanwhile, in 1994, or two years after the implementation of the devolution program, Governor Salapuddin appointed Dr. Yu to the PHO II position.

On February 23, 1998, Republic Act No. 8543, otherwise known as "*An Act Converting the Basilan Provincial Hospital in the Municipality of Isabela, Province of Basilan, into a Tertiary Hospital Under the Full Administrative and Technical Supervision of the Department of Health, Increasing the Capacity to One Hundred Beds and Appropriating Funds Therefor,*" was passed into law whereby the hospital positions previously devolved to the local government unit of Basilan were re-nationalized and reverted to the DOH. The Basilan Provincial Health Hospital was later renamed the Basilan General Hospital, and the position of PHO II was then re-classified to Chief of Hospital II.

While Dr. Yu was among the personnel reverted to the DOH with the re-nationalization of the Basilan General Hospital, she was made to retain her original item of PHO II instead of being

given the re-classified position of Chief of Hospital II. Subsequently, on August 1, 2003, then DOH Secretary Manuel M. Dayrit (Secretary Dayrit) appointed Dr. Domingo Remus A. Dayrit (Dr. Dayrit) to the position of Chief of Hospital II.

Aggrieved, Dr. Yu filed a letter of protest dated September 30, 2003[3] before the CSC claiming that she has a vested right to the position of Chief of Hospital II. The pertinent portions of said letter read:

> I come before your good office protesting the appointment issued by … DOH Secretary Manuel M. Dayrit in favor of Dr. Domingo Remus A. Dayrit as Chief of Hospital … of the Basilan General Hospital …
>
> x x x x x x x x x
>
> … the position of Chief of Hospital II to which Dr. Dayrit has been appointed is a mere conversion from the item of Provincial Health Officer II previously occupied by the herein protestant.
>
> When what used to be called the Basilan Provincial Hospital was re-nationalized, now called the Basilan General Hospital, the position of Provincial Health Officer II, then occupied by the undersigned, was refused re-nationalized (*sic*) by DOH alleging the same position to be an LGU-created position, that is, that the Local Government of Basilan created the position. Thus, instead of the undersigned being automatically re-appointed Provincial Health Officer II of the Hospital, later to be renamed Chief of Hospital II, pursuant to the Re-Nationalization Law, she was instead given an appointment still as Provincial Health Officer II but under a co-terminous status at the Center for Health and Development, DOH … which position the undersigned refused to accept...

On June 7, 2004, the CSC issued Resolution[4] No. 040655 granting Dr. Yu's protest and revoking the appointment of Dr. Dayrit as Chief of Hospital II of Basilan General Hospital. Further, Secretary Dayrit was directed to appoint Dr. Yu to said position. Upon motion for reconsideration, however, the

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[3] *See* Resolution No. 040655, *id.* at 68.

[4] *Id.* at 68-71.

CSC reversed itself and issued Resolution[5] No. 040967 dated September 1, 2004 declaring that the position of PHO II was never devolved to the Provincial Government of Basilan but was retained by the DOH; that the PHO II position held by Dr. Yu was a newly-created position; and that, therefore, she did not have a vested right to the Chief of Hospital II position that was created by virtue of R.A No. 8543.

Dr. Yu then filed a motion for reconsideration which was denied by the CSC in its Resolution[6] No. 050287 dated February 28, 2005. She then elevated her case to the CA on petition for review raising the sole issue of whether the item of PHO II she previously occupied was a devolved position or a locally created one.

On March 30, 2009, the CA rendered the assailed Decision in favor of Dr. Yu, disposing as follows:

> **FOR REASONS STATED**, the Petition for Review is GRANTED and CSC Resolutions Nos. 040967 and 050287 are REVERSED and SET ASIDE. Petitioner is declared to have a vested right in the Chief of Hospital II position up to her retirement in August 24, 2004 and should receive her corresponding salaries and benefits.
>
> **SO ORDERED**.[7]

In ruling that the PHO II position was devolved to the Basilan Provincial Government, the appellate court ratiocinated in this wise:

> x x x The CSC's ruling that there are two PHO II positions is not implausible but contrary to the evidence on hand.
>
> A perusal of the pleadings and attachments reveal that the PHO II position was devolved to the Basilan Provincial Government. In a letter dated May 19, 1994, Ms. Vivian L. Young, Officer-in-Charge of the Department of Health, Local Government Assistance &

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[5] *Id.* at 61-64.

[6] *Id.* at 73-76.

[7] *Id.* at 57.

Monitoring Service informed former Governor Salapuddin that the PHO II position was devolved to the local government, *viz*:

> Dear Gov. Salapuddin,
>
> This will refer to your letter relative to the item position of Dr. Fortunata C. Castillo which has been devolved to the provincial government of BASILAN.
>
> Please be informed that only the devolved health personnel who were not accepted by their Local Chief Executive have been retained by DOH, the item positions per se remained in the respective LGU's. x x x The LGU's have the option to retain the items vacated or to collapse the same for financial reasons.
>
> x x x x x x x x x

Based on the foregoing letter, Dr. Milagros L. Fernandez, Director IV of the DOH – Regional Field Office No. IX, Zamboanga City, wrote a letter to petitioner, to wit:

> x x x x x x x x x
>
> Madam:
>
> The letter dated May 19, 1994 of Ms. Vivian L. Young, Office-in-Charge (*sic*), LGAMS, Department of Health, clarifies the issue raised by the Provincial Governor, in his letter dated April 14, 1994, insofar as the retention of the Provincial Health Officer II of the province, in the person of Dr. Fortunata Castillo by the DOH in view of the non-acceptance by the Governor consistent with the provisions of law on devolution.
>
> 1. Dr. Fortunata A. Castillo, who was holding the position of Provincial Health Officer II of the province, and a devolved health personnel, was retained by the DOH for reason above-mentioned.
>
> 2. While she, the occupant, was retained, the item position remained as among those items in the Plantilla of Personnel of the Integrated Provincial Health Office devolved to the Office of the Provincial Governor.
>
> 3. The Governor, in such a case, may or may not retain her item in his Plantilla, or abolish it for reason therein stated. The position herewith (*sic*) was left vacant with the retention of Dr. Castillo in this office.

4. The funds for salary and other benefits of the devolved item position of Provincial Health Officer II remained devolved with the Office of the Governor.

In other words, with the retention of Dr. Castillo hereto, she never carried with her the item position and the funds appropriated for salary and other benefits accruing to the position of Provincial Health Officer II.

x x x x x x x x x

In a letter dated October 26, 2001, Director Macybel Alfaro-Sashi of the Civil Service Commission Regional Office IX informed the petitioner that:

At the outset, it is apparent that the position you presently occupy is one which should be included in the list of renationalized positions notwithstanding the fact that the said position carries a position item number different from that carried by the previous holder thereof. Hence, the contention of the DOH Regional Office that your position is not the same as that of the previous holder simply because they bear different position item numbers deserves very scant consideration. The position item numbers are immaterial in case of renationalization as such a system is merely adopted for purposes of proper and systematic coding of all positions in the government, particularly in the budgeting process. Thus, the position you are presently holding should be considered as one belonging to the national government prior to its devolution, regardless of the position item number attached to the position of the previous holder thereof.

Thus, it is apparent that the PHO II position occupied by petitioner is one and the same position which was previously occupied by Dr. Castillo before the devolution. When the latter was not accepted by Gov. Salapuddin, Dr. Castillo was retained by the DOH but the PHO II item was devolved to the Provincial Government of Basilan. Consequently, the position of PHO II became vacant. This is obvious by the fact that the salaries of Dr. Castillo were taken from a special fund and not from the appropriation for the PHO II position.

The motion for reconsideration of the foregoing Decision filed by the CSC was denied by the CA in its Resolution[8] dated July

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

9, 2009. Hence, in this petition for review on *certiorari*, the CSC alleged that —

The Issue

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PHO II POSITION PREVIOUSLY OCCUPIED BY RESPONDENT YU IS A DEVOLVED POSITION.[9]

The Ruling of the Court

In pursuance of the declared policy under *The Local Government Code of 1991* (R.A. No. 7160) to provide for a more responsive and accountable local government structure through a system of decentralization,[10] national agencies or offices, including the DOH, were mandated to devolve to the local government units the responsibility for the provision of basic services and facilities.[11]

As defined, "devolution" is the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.[12] Specifically, Section 17(i) of the same *Code* prescribes the manner of devolution, as follows:

(i) The devolution contemplated in this Code shall include the transfer to local government units of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions and responsibilities.

Personnel of said national agencies or offices shall be absorbed by the local government units to which they belong or in whose areas they are assigned to the extent that it is administratively viable as determined by the said oversight committee: *Provided, further,* That regional directors who are career executive service officers and other officers of similar rank in the said regional offices who

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[9] Petition, *id.* at 31.

[10] Section 2, R.A. No. 7160.

[11] Section 17(e), R.A. No. 7160.

[12] *Id.*

cannot be absorbed by the local government unit shall be retained by the national government, without any diminution of rank, salary or tenure.

To ensure the proper implementation of the devolution process, then President Corazon C. Aquino issued Executive Order (E.O.) No. 503, otherwise known as the "*Rules and Regulations Implementing the Transfer of Personnel and Assets, Liabilities and Records of National Government Agencies Whose Functions Are To Be Devolved To The Local Government Units And For Other Related Purposes,*" which laid down the following pertinent guidelines with respect to the transfer of personnel:

> Section 2. *Principles and Policies Governing Transfer of Personnel.* —
>
> a. Coverage, Tenure, Compensation and Career Development. —
>
> x x x x x x x x x
>
> 2. The absorption of the NGA personnel by the LGU shall be mandatory, in which case, the LGUs shall create the equivalent positions of the affected personnel except when it is not administratively viable.
>
> 3. Absorption is not administratively viable when there is a duplication of functions unless the LGU opts to absorb the personnel concerned.
>
> 4. The national personnel who are not absorbed by the LGUs under no. 3 above, shall be retained by the NGA concerned, subject to civil service law, rules and regulations.
>
> x x x x x x x x x
>
> 12. Except as herein otherwise provided, devolved permanent personnel shall be automatically reappointed by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992. x x x

On the basis of the foregoing, it was **mandatory** for Governor Salapuddin to absorb the position of PHO II, as well as its incumbent, Dr. Fortunata Castillo. Highlighting the absence of discretion is the use of the word "**shall**" both in Section 17 (i) of R.A. No. 7160 and in Section 2(a)(2) of E.O. No. 503,

which connotes a mandatory order. Its use in a statute denotes an imperative obligation and is inconsistent with the idea of discretion.[13] The only instance that the LGU concerned may choose not to absorb the NGA personnel is when *absorption is not administratively viable*, meaning, it would result to *duplication of functions*, in which case, the NGA personnel shall be retained by the national government. However, in the absence of the recognized exception, devolved permanent personnel shall be **automatically reappointed** [Section 2(a)(12)] by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992. Webster's Third New International Dictionary defines "automatic" as "involuntary either wholly or to a major extent so that any activity of the will is largely negligible." Being "automatic", thus, connotes something mechanical, spontaneous and perfunctory.[14]

There is no dearth of evidence showing that the item position of PHO II was, in fact, devolved to the Provincial Government of Basilan. Governor Salapuddin himself certified[15] that said position was included in the 1992 OSCAS[16] received from the Department of Budget and Management (DBM) with its corresponding budget appropriation. He further declared that during the formal turn over program in 1993 attended by Dr. Milagros Fernandez, representing the DOH Regional Office, the item position of PHO II was among the positions turned over to the Provincial Government of Basilan. Thus, the argument[17] of petitioner CSC that only 53 plantilla positions, not 54, were devolved to the local government of Basilan does not hold water. It cannot be disputed that Dr. Castillo's PHO II position was devolved.

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[13] *Alternative Center for Organizational Reforms and Development, Inc., et al. v. Hon. Ronaldo Zamora*, G.R. No. 144256, June 8, 2005, 459 SCRA 578, 600.

[14] *Id.* at 599.

[15] Certification dated April 30, 2002, *rollo*, p. 66.

[16] Organization, Staffing and Compensation Action.

[17] Petition, *id.* at 35.

However, Governor Salapuddin refused to reappoint Dr. Castillo to her devolved position in the LGU for no other reason than that he "wanted to accept only the item position of PHO II."[18] It was not shown, and no attempt was ever made on the part of the LGU to show, that the absorption of Dr. Castillo was not administratively viable. There being no valid and legal basis therefor, Governor Salapuddin's refusal to accept Dr. Castillo was, plainly and simply, *whimsical.*

Be that as it may, Governor Salapuddin's refusal did not prevent the devolution of Dr. Castillo which, together with that of the PHO II position, took effect by operation of law. In order to solve his dilemma, Governor Salapuddin requested that Dr. Castillo be detailed instead at the DOH, which was confirmed by then Secretary of Health Juan M. Flavier in his Department Order[19] No. 228, series of 1993, signed on July 9, 1993, reproduced hereunder as follows:

> This will officially confirm the detail of Dr. Fortunata A. Castillo PHO-II – Basilan at the Regional Health Field Office No. IX, Zamboanga City per request of the Governor of Basilan, the Honorable Jerry (*sic*) Salapuddin in his letter to Dr. Castillo, **provided that the provincial government of Basilan will continue to pay her salary and other benefits** she's entitled thereto until further notice or order. (Emphasis added)

Clearly therefore, the drawing of Dr. Castillo's salary from the LGU of Basilan which Governor Salapuddin claimed to have allowed simply "to accommodate her (Dr. Castillo)"[20] was, in fact, a necessary consequence of her devolution to the LGU and subsequent detail to the DOH. Officials and employees on detail with other offices shall be paid their salaries, emoluments, allowances, fringe benefits and other personal services costs from the appropriations of their parent agencies and in no case shall such be charged against the appropriations of the agencies

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[18] *Supra* note 15.

[19] *Id.*, p. 65.

[20] *Supra* note 15.

where they are assigned or detailed, except when authorized by law.[21]

A *detail* is defined and governed by Executive Order 292, Book V, Title 1, Subtitle A, Chapter 5, Section 26 (6), thus:[22]

> (6) *Detail*. A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed, only for a **limited period** in the case of employees occupying professional, technical and scientific positions. If the employee believes that there is no justification for the detail, he may **appeal his case to the Commission**. Pending appeal, the decision to detail the employee shall be executory unless otherwise ordered by the Commission. (Emphasis added)

Had Dr. Castillo felt aggrieved by her detail to the DOH Regional Office, she was not without recourse. The law afforded her the right to appeal her case to the CSC, but she had not seen fit to question the justification for her detail. We could only surmise that, since Dr. Castillo was looking at only three more years from the time of her detail until her retirement in 1996, and considering that she obviously would not suffer any diminution in salary and rank, she found it pointless to pursue the matter.

Neither did Dr. Castillo find need to raise a howl when, at the behest of Governor Salapuddin who was determined to replace her, DOH officials categorized her as a devolution non-viable employee, along with 216 others nationwide, by the mere fact that she was not accepted by the LGU of Basilan and not because of an actual non-viability. Hence, in 1994, when Governor Salapuddin formally manifested his intention to stop the drawing of Dr. Castillo's salary from the LGU in anticipation of his appointment of Dr. Yu to the PHO II position, Dr. Castillo ceased to be a detailed employee at the DOH Regional Office but was re-absorbed by the DOH as a devolution non-viable

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[21] Section 33, Republic Act No. 7645, *General Appropriations Act of 1993*.

[22] *Republic of the Philippines, represented by the Civil Service Commission v. Minerva M.P. Pacheo*, G.R. No. 178021, January 25, 2012.

employee and, consequently, paid salaries and benefits from the Miscellaneous Personnel Benefits Fund that had been set aside under the Office of the Secretary of Health precisely for such employees.

Ms. Vivian L. Young, Officer-In-Charge of the DOH Local Government Assistance and Monitoring Service, assured[23] Governor Salapuddin that, while Dr. Castillo was "retained" by the DOH, her item position remained with the LGU of Basilan. Moreover, Dr. Milagros L. Fernandez, Director IV of the DOH Regional Field Office No. IX in Zamboanga City, clarified[24] that Dr. Castillo "never carried with her the item position and the funds appropriated for salary and other benefits accruing to the position of Provincial Health Officer II."

Hence, the appointment of Dr. Yu to the position **PHO II**.

The next question to be answered is — *may Dr. Castillo be considered to have abandoned her position for consistently failing to assert her rights thereto?*

We certainly do not believe so.

"Abandonment of an office is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof. In order to constitute abandonment of office, it must be total and under such circumstance as clearly to indicate an absolute relinquishment. There must be a complete abandonment of duties of such continuance that the law will infer a relinquishment. Abandonment of duties is a voluntary act; it springs from and is accompanied by deliberation and freedom of choice. There are, therefore, two essential elements of abandonment: *first*, an intention to abandon and, *second*, an overt or 'external' act by which the intention is carried into effect."[25]

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[23] In a letter dated May 19, 1994 addressed to Governor Salapuddin, *see* CA Decision dated March 30, 2009, *rollo*, p. 12.

[24] In a letter dated October 3, 1994 addressed to Dr. Agnes P. Yu, *id.* at 13.

[25] *Canonizado vs. Aguirre*, G.R. No. 133132, February 15, 2001, 351 SCRA 659, 665-666.

By no stretch of the imagination can Dr. Castillo's seeming lackadaisical attitude towards protecting her rights be construed as an abandonment of her position resulting in her having intentionally and voluntarily vacated the same. Governor Salapuddin's tenacious refusal to accept Dr. Castillo negates any and all voluntariness on the part of the latter to let go of her position. The risk of incurring the ire of a powerful politician effectively tied Dr. Castillo's hands, and it was quite understandable that she could not don her gloves and fight, even if she wanted to. Considering, however, that Governor Salapuddin's clear infraction of the law is not in issue before us, we need not make any pronouncement on this matter.

We rule, therefore, under the attendant circumstances of the case, that with Dr. Castillo's re-absorption by the DOH which appears to bear the former's approval, her devolved position with the LGU of Basilan was left vacant. In her May 19, 1994 letter to Governor Salapuddin, Ms. Vivian L. Young informed the local chief executive that he had the "option to retain the item vacated or to collapse the same for financial reasons."[26] Thus, we hold that Dr. Yu was validly appointed to the position of PHO II in 1994 and, consequently, acquired a vested right to its re-classified designation — Chief of Hospital II. As such, Dr. Yu should have been automatically re-appointed by Secretary Dayrit in accordance with the *Guidelines for the Re-Nationalization of Personnel, Assets and Appropriations of Basilan Provincial Hospital*,[27] the pertinent portion of which provides, as follows:

Item III. Principles and Policies Governing the Transfer of Basilan Provincial Hospital

A) x x x

3) The DOH shall assure that the re-nationalized personnel of the hospital shall:

3.i) Not be involuntarily separated, terminated or laid off;
3.ii) Continue to enjoy security of tenure;

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[26] As quoted in the CA Decision dated March 30, 2009, *rollo*, p. 12.

[27] As quoted in the CSC Resolution No. 040655, *id.* at 70-71.

3.iii) Be **automatically re-appointed** by the Secretary immediately upon their transfer;
3.iv) Retain their pay or benefits without diminution. (Emphasis supplied)

Considering, however, that Dr. Yu had already retired on August 24, 2004, we uphold the following findings of the appellate court, *to wit*:

x x x Inasmuch as a re-appointment is no longer feasible due to her retirement, petitioner should at least recover her salaries for the services she had rendered. However, petitioner admitted that she received her salary as PHO II converted to Chief of Hospital for the period August to November 2001. Therefore, she should receive her salary and benefits as Chief of Hospital from December 2001 up to her retirement in August 24, 2004.[28]

WHEREFORE, the instant petition is hereby **DENIED** for lack of merit. The assailed Decision dated March 30, 2009 in **CA-G.R. SP No. 00327-MIN** is **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, and *Reyes, JJ.,* concur.

Leonardo-de Castro, J., please see my separate concurring opinion.

Mendoza, J., on leave.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I fully concur with the factual and legal basis of the conclusion reached by the *ponencia* of the Honorable Justice Estela M. Perlas-Bernabe, save with respect to her opinion that Dr. Fortunata A. Castillo (Dr. Castillo) **did not abandon** the devolved position of Public Health Officer II (PHO II). With due respect,

[28] *Supra* note 26, p. 19.

I maintain the contrary view that **Dr. Castillo did indeed abandon her statutory right to the said position by acquiescence**. Otherwise, there would have been no vacancy in the said devolved position to which Dr. Agnes Ouida P. Yu (Dr. Yu) could be validly appointed.

In *Canonizado v. Aguirre*,[1] this Court expounded on what constitutes abandonment of an office in this wise:

> Abandonment of an office is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof. In order to constitute abandonment of office, it must be total and under such circumstance as clearly to indicate an absolute relinquishment. There must be a complete abandonment of duties of such continuance that the law will infer a relinquishment. Abandonment of duties is a voluntary act; it springs from and is accompanied by deliberation and freedom of choice. There are, therefore, two essential elements of abandonment; *first*, an intention to abandon and, *second*, an overt or 'external' act by which the intention is carried into effect.
>
> Generally speaking, a person holding a public office may abandon such office by nonuser or **acquiescence**. Non-user refers to a neglect to use a right or privilege or to exercise an office. However, non-performance of the duties of an office does not constitute abandonment where such non-performance results from temporary disability or from involuntary failure to perform. **Abandonment may also result from an acquiescence by the officer in his wrongful removal or discharge**, for instance, after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate his right may constitute an abandonment of the office. Where while desiring and intending to hold the office, and with no wilful desire or intention to abandon it, the public officer vacates it in deference to the requirements of a statute which is afterwards declared unconstitutional, such a surrender will not be deemed an abandonment and the officer may recover the office.[2] (Emphases supplied & citations omitted.)

In the above-stated case, the Court declared, among others, that, in general, a person holding public office may abandon

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[1] G.R. No. 133132, February 15, 2001, 351 SCRA 659.

[2] *Id*.

such office by non-user or ***acquiescence***.[3] Non-user refers to a neglect to use a right or privilege or to exercise an office[4] while acquiescence is a silent appearance of consent by failure to make any objection or by submission to an act of which one had knowledge. It exists where a person knows or ought to know that he is entitled to enforce his right or to impeach a transaction, and neglects to do so for such a length of time as would imply that he intended to waive or abandon his right.[5]

The *ponencia* insists that Dr. Castillo did not abandon the devolved PHO II position by ratiocinating in this wise:

> By no stretch of the imagination can Dr. Castillo's seeming lackadaisical attitude towards protecting her rights be construed as an abandonment of her position resulting in her having intentionally and voluntarily vacated the same. Governor Salapuddin's tenacious refusal to accept Dr. Castillo negates any and all voluntariness on the part of the latter to let go of her position. The risk of incurring the ire of a powerful politician effectively tied Dr. Castillo's hands, and it was quite understandable that she could not don her gloves and fight, even if she wanted to. Considering, however, that Governor Salapuddin's clear infraction of the law is not in issue before us, we need not make any pronouncement on this matter.

The *ponencia*'s reasoning, although plausible, is speculative at best. In fact, we can also surmise that Dr. Castillo's failure to object or assert her right could also be an indication that she preferred to stay in her original station at the Department of Health Regional Office No. IX in Zamboanga City and where she in fact continued to serve from the time she was re-absorbed until she retired four (4) years hence.

The conduct of Dr. Castillo after Governor Salapuddin's expressed preference to appoint another person in her stead is consistent with her abandonment or relinquishment by

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[3] *Id.*

[4] *Sangguniang Bayan of San Andres, Catanduanes v. Court of Appeals*, G.R. No. 118883, January 16, 1998, 284 SCRA 276.

[5] *Black's Law Dictionary* (6th ed.), citing *Yench v. Stockmar, C.A. Colo.*, 483 F.2d 820, 834.

acquiescence of the position to which by law she should be automatically appointed.

Pursuant to her own letter dated May 14, 1993[6] to Governor Salapuddin, Dr. Castillo requested to draw her salary from the Provincial Government until she could be absorbed by her mother unit, the DOH. Governor Salapuddin and the DOH acceded to her request. Hence, Dr. Castillo was allowed to assume the devolved PHO II position from the start of the devolution until her acceptance of assignment in the DOH Regional Health Field Office No. IX in Zamboanga City. If Dr. Castillo wished to keep her position, in the face of her non-acceptance by the Provincial Governor and of the subsequent pronouncements made by DOH officials in support of the position of the Provincial Governor, then she should have instituted a proper judicial or administrative proceeding to question Dr. Yu's appointment to the devolved PHO II position or, at the very least, formally made known her objection at the earliest opportunity. Instead, Dr. Castillo did not object to the appointment of Dr. Yu to her position. Moreover, it was by her own request and with her consent that she was re-absorbed by her mother unit in the DOH where she served until her retirement. Consequently, Dr. Castillo effectively vacated the devolved PHO II position. Hence, her salary was paid from the Project: Miscellaneous Personnel Benefits Funds, set aside for salaries and benefits of officials and employees not absorbed by the local government units. As the *ponencia* of Justice Bernabe states:

> With Dr. Castillo's re-absorption by the DOH which appears to bear the former's **approval**, her devolved position with the LGU of Basilan was left **vacant**. (Emphases supplied.)

To summarize, Dr. Castillo's manifest inaction to assert a legal right from 1992 up to her retirement from government service in 1996 constituted abandonment by acquiescence, of whatever legal right she had over the devolved position of PHO II. Coupled with her acceptance or consent to her re-absorption by the DOH in the DOH Regional Health Field Office No. IX

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[6] *Rollo*, p. 77.

in Zamboanga City, she effectively abandoned any legal right she had to the PHO II position devolved to the Province, which resulted in a vacancy in the said position. This paved the way for the valid appointment in 1994 of Dr. Yu who then was a *de jure*, not a *de facto* officer. Having been validly appointed to a vacant position that was mandatorily and automatically devolved to the Province by operation of law, Dr. Yu, as correctly pointed out by the assailed ruling of the Court of Appeals, had a vested right to the position of PHO II that was later re-nationalized and reclassified as Chief of Hospital II by operation of a subsequent law. As such, she is entitled to all the corresponding salaries and benefits pertaining to the said office which she had not received for the period not exceeding the day of her retirement which was on August 24, 2004.

In light of the foregoing, I reiterate my concurrence to the affirmance of the assailed Decision of the Court of Appeals dated March 30, 2009 in CA-G.R. SP No. 00327-MIN.

THIRD DIVISION

[A.C. No. 6116. August 1, 2012]

ENGR. GILBERT TUMBOKON, *complainant, vs.* **ATTY. MARIANO R. PEFIANCO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE EXPECTED TO MAINTAIN AT ALL TIMES A HIGH STANDARD OF LEGAL PROFICIENCY, MORALITY, HONESTY, INTEGRITY AND FAIR DEALING, AND MUST PERFORM THEIR FOUR-FOLD DUTY TO SOCIETY, THE LEGAL PROFESSION, THE COURTS AND THEIR

CLIENTS, IN ACCORDANCE WITH THE VALUES AND NORMS EMBODIES IN THE CODE OF PROFESSIONAL RESPONSIBILITY.— The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code. Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity.

2. **ID.; ID.; ID.; A LAWYER IS PROHIBITED FROM DIVIDING OR STIPULATING TO DIVIDE A FEE FOR LEGAL SERVICES WITH PERSONS NOT LICENSED TO PRACTICE LAW; VIOLATED BY THE RESPONDENT.—** [R]espondent's defense that forgery had attended the execution of the August 11, 1995 letter was belied by his July 16, 1997 letter admitting to have undertaken the payment of complainant's commission but passing on the responsibility to Sps. Yap. Clearly, respondent has violated Rule 9.02, Canon 9 of the Code which prohibits a lawyer from dividing or stipulating to divide a fee for legal services with persons not licensed to practice law, except in certain cases which do not obtain in the case at bar.

3. **ID.; ID.; ID.; ABANDONMENT OF LEGAL FAMILY TO COHABIT WITH A MISTRESS CONSTITUTES A VIOLATION OF THE LAWYER'S OATH; BETRAYAL OF THE MARITAL VOW OF FIDELITY OR SEXUAL RELATIONS OUTSIDE MARRIAGE IS CONSIDERED DISGRACEFUL AND IMMORAL AS IT MANIFESTS DELIBERATE DISREGARD OF THE SANCTITY OF MARRIAGE AND THE MARITAL VOWS PROTECTED BY THE CONSTITUTION AND AFFIRMED BY OUR LAWS.—** [R]espondent did not deny the accusation that he abandoned his legal family to cohabit with his mistress with whom he begot four children notwithstanding that his moral character as well as his moral fitness to be retained in the Roll of Attorneys has been assailed. The settled rule is that betrayal of the marital vow of fidelity or sexual relations outside

marriage is considered disgraceful and immoral as it manifests deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws. Consequently, We find no reason to disturb the IBP's finding that respondent violated the Lawyer's Oath and Rule 1.01, Canon 1 of the Code which proscribes a lawyer from engaging in "unlawful, dishonest, immoral or deceitful conduct."

4. ID.; ID.; ID.; THE LENDING OF MONEY FOR A SINGLE PERSON WITHOUT SHOWING THAT SUCH SERVICE IS MADE AVAILABLE TO OTHER PERSONS ON A CONSISTENT BASIS CANNOT BE CONSTRUED AS INDICIA THAT RESPONDENT IS ENGAGED ON THE BUSINESS OF LENDING.— [W]e find the charge of engaging in illegal money lending not to have been sufficiently established. A "business" requires some form of investment and a sufficient number of customers to whom its output can be sold at profit on a consistent basis. The lending of money to a single person without showing that such service is made available to other persons on a consistent basis cannot be construed as *indicia* that respondent is engaged in the business of lending.

5. ID.; ID.; DISBARMENT; THE POWER TO DISBAR SHOULD BE EXERCISED WITH GREAT CAUTION AND ONLY IN CLEAR CASES OF MISCONDUCT THAT SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND AS MEMBER OF THE BAR, OR THE MISCONDUCT BORDERS ON THE CRIMINAL, OR COMMITTED UNDER SCANDALOUS CIRCUMSTANCE; PENALTY OF SUSPENSION IMPOSED FOR VIOLATION OF THE LAWYER'S OATH AND RULE 9.02, CANON 9 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [W]hile We rule that respondent should be sanctioned for his actions, We are minded that the power to disbar should be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstance, which do not obtain here. Considering the circumstances of the case, We deem it appropriate that

respondent be suspended from the practice of law for a period of one (1) year as recommended.

APPEARANCES OF COUNSEL

Florencio D. Gonzales for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint for disbarment filed by complainant Engr. Gilbert Tumbokon against respondent Atty. Mariano R. Pefianco for grave dishonesty, gross misconduct constituting deceit and grossly immoral conduct.

In his Complaint,[1] complainant narrated that respondent undertook to give him 20% commission, later reduced to 10%, of the attorney's fees the latter would receive in representing Spouses Amable and Rosalinda Yap (Sps. Yap), whom he referred, in an action for partition of the estate of the late Benjamin Yap (Civil Case No. 4986 before the Regional Trial Court of Aklan). Their agreement was reflected in a letter[2] dated August 11, 1995. However, respondent failed to pay him the agreed commission notwithstanding receipt of attorney's fees amounting to 17% of the total estate or about ₱40 million. Instead, he was informed through a letter[3] dated July 16, 1997 that Sps. Yap assumed to pay the same after respondent had agreed to reduce his attorney's fees from 25% to 17%. He then demanded the payment of his commission[4] which respondent ignored.

Complainant further alleged that respondent has not lived up to the high moral standards required of his profession for having abandoned his legal wife, Milagros Hilado, with whom

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[1] *Rollo,* pp. 23-27.

[2] *Id.* at 8.

[3] *Id.* at 14.

[4] Letter dated October 25, 2002, *id.* at 38.

he has two children, and cohabited with Mae Flor Galido, with whom he has four children. He also accused respondent of engaging in money-lending business[5] without the required authorization from the Bangko Sentral ng Pilipinas.

In his defense, respondent explained that he accepted Sps. Yap's case on a 25% contingent fee basis, and advanced all the expenses. He disputed the August 11, 1995 letter for being a forgery and claimed that Sps. Yap assumed to pay complainant's commission which he clarified in his July 16, 1997 letter. He, thus, prayed for the dismissal of the complaint and for the corresponding sanction against complainant's counsel, Atty. Florencio B. Gonzales, for filing a baseless complaint.[6]

In the Resolution[7] dated February 16, 2004, the Court resolved to refer this administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In his Report and Recommendation[8] dated October 10, 2008, the Investigating IBP Commissioner recommended that respondent be suspended for one (1) year from the active practice of law, for violation of the Lawyer's Oath, Rule 1.01, Canon 1; Rule 7.03, Canon 7 and Rule 9.02, Canon 9 of the Code of Professional Responsibility (Code). The IBP Board of Governors adopted and approved the same in its Resolution No. XIX-2010-453[9] dated August 28, 2010. Respondent moved for reconsideration[10] which was denied in Resolution No. XIX-2011-141 dated October 28, 2011.

After due consideration, We adopt the findings and recommendation of the IBP Board of Governors.

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[5] Evidenced by the Affidavit of Jose E. Autajay dated April 19, 2003, *id.* at 41.

[6] Comment, *id.* at 44-51.

[7] *Id.* at 90.

[8] IBP *rollo*, Vol. IV, pp. 2-10.

[9] *Id.* at 1.

[10] *Id.* at 11-12.

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code.[11] Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity.

In the present case, respondent's defense that forgery had attended the execution of the August 11, 1995 letter was belied by his July 16, 1997 letter admitting to have undertaken the payment of complainant's commission but passing on the responsibility to Sps. Yap. Clearly, respondent has violated Rule 9.02,[12] Canon 9 of the Code which prohibits a lawyer from dividing or stipulating to divide a fee for legal services with persons not licensed to practice law, except in certain cases which do not obtain in the case at bar.

Furthermore, respondent did not deny the accusation that he abandoned his legal family to cohabit with his mistress with whom he begot four children notwithstanding that his moral character as well as his moral fitness to be retained in the Roll of Attorneys has been assailed. The settled rule is that betrayal

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[11] *Molina v. Magat,* A.C. No. 1900, June 13, 2012.

[12] Rule 9.02, Canon 9 of the Code of Professional Responsibility reads in full:

"Rule 9.02 — A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the persons specified in the agreement; or

b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part, on a profit-sharing arrangement."

of the marital vow of fidelity or sexual relations outside marriage is considered disgraceful and immoral as it manifests deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws.[13] Consequently, We find no reason to disturb the IBP's finding that respondent violated the Lawyer's Oath[14] and Rule 1.01, Canon 1 of the Code which proscribes a lawyer from engaging in "unlawful, dishonest, immoral or deceitful conduct."

However, We find the charge of engaging in illegal money lending not to have been sufficiently established. A "business" requires some form of investment and a sufficient number of customers to whom its output can be sold at profit on a consistent basis.[15] The lending of money to a single person without showing that such service is made available to other persons on a consistent basis cannot be construed as *indicia* that respondent is engaged in the business of lending.

Nonetheless, while We rule that respondent should be sanctioned for his actions, We are minded that the power to disbar should be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar,[16]

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[13] *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 16.

[14] I _____ having been permitted to continue in the practice of law in the Philippines, do solemnly swear that I recognize the supreme authority of the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well as to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

[15] http://www.businessdictionary.com/definition/business.html.

[16] *Tan v. Gumba*, A.C. No. 9000, October 5, 2011; *Conlu v. Aredonia, Jr.*, A.C. No. 4955, September 12, 2011, 657 SCRA 367; *Garrido vs. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508.

or the misconduct borders on the criminal, or committed under scandalous circumstance,[17] which do not obtain here. Considering the circumstances of the case, We deem it appropriate that respondent be suspended from the practice of law for a period of one (1) year as recommended.

WHEREFORE, respondent **ATTY. MARIANO R. PEFIANCO** is found **GUILTY** of violation of the Lawyer's Oath, Rule 1.01, Canon 1 of the Code of Professional Responsibility and Rule 9.02, Canon 9 of the same Code and **SUSPENDED** from the active practice of law for **ONE (1) YEAR** effective upon notice hereof.

Let copies of this Resolution be entered in the personal record of respondent as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.,* concur.

THIRD DIVISION

[A.C. No. 9390. August 1, 2012]

EMILIA O. DHALIWAL, *complainant, vs.* **ATTY. ABELARDO B. DUMAGUING,** *respondent.*

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[17] *Nevada v. Casuga,* A.C. No. 7591, March 20, 2012.

[*] Designated member in lieu of Justice Jose C. Mendoza, per Special Order No. 1282 dated August 1, 2012.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE FAILURE OF THE LAWYER TO RETURN UPON DEMAND THE FUNDS HELD BY HIM ON BEHALF OF HIS CLIENT GIVES RISE TO THE PRESUMPTION THAT HE HAS APPROPRIATED THE SAME FOR HIS OWN USE IN VIOLATION OF THE TRUST REPOSED IN HIM BY HIS CLIENT AND CONSTITUTES GROSS VIOLATION OF THE GENERAL MORALITY AS WELL AS OF PROFESSIONAL ETHICS.— Money entrusted to a lawyer for a specific purpose, such as payment for the balance of the purchase price of a parcel of land as in the present case, but not used for the purpose, should be immediately returned. "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment."

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY, CANON 16 THEREOF; FAILURE OF THE LAWYER TO RETURN AND ACCOUNT TO HIS CLIENT THE AMOUNT PREVIOUSLY CONSIGNED TO THE HLURB DESPITE DEMAND CONSTITUTE A VIOLATION THEREOF; THE USE OF DISHONEST MEANS TO EVADE OBLIGATION UNDERLINES THE LAWYER'S FAILURE TO MEET THE HIGH MORAL STANDARDS REQUIRED OF MEMBERS OF THE LEGAL PROFESSION VIOLATED BY THE RESPONDENT.— Since respondent withdrew the consignation of the BPI manager's checks in the total amount of ₱311,891.94 from the HLURB and the same was not used to settle the balance of the purchase price of the parcel of land purchased by complainant from Fil-Estate, then reimbursement with legal interest was properly ordered by the IBP. Respondent's proffered excuse of having to await the HLURB action on his alleged motion — the filing of which he miserably failed to prove — as a condition to the return of the sum of ₱311,891.94 to complainant compounds his liability and even bolstered his attitude to use dishonest means if only to evade his obligation.

It underlines his failure to meet the high moral standards required of members of the legal profession.

APPEARANCES OF COUNSEL

Charlie Juloya for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Emilia O. Dhaliwal filed a complaint for violation of Canon 16 of the Code of Professional Responsibility against Atty. Abelardo B. Dumaguing.

In her sworn statement, complainant alleged that she engaged the services of respondent in connection with the purchase of a parcel of land from Fil-Estate Development, Inc. (Fil-Estate). On June 13, 2000, upon the instruction of respondent, complainant's daughter and son-in-law withdrew ₱342,000.00 from the Philippine National Bank (PNB) and handed the cash over to respondent. They then proceeded to BPI Family Bank Malcolm Square Branch where respondent purchased two manager's checks in the amounts of ₱58,631.94 and ₱253,188.00 both payable to the order of Fil-Estate Inc. When asked why the manager's checks were not purchased at PNB, respondent explained that he has friends at the BPI Family Bank and that is where he maintains an account. These manager's checks were subsequently consigned with the Housing and Land Use Regulatory Board (HLURB) after complainant's request to suspend payments to Fil-Estate had been granted. On September 22, 2000, respondent, on behalf of complainant, filed with the HLURB a complaint for delivery of title and damages against Fil-Estate. A week after or on September 29, 2000, he withdrew the two manager's checks that were previously consigned. On March 3, 2003, complainant informed the HLURB through a letter that respondent was no longer representing her. On March 11, 2003, the HLURB promulgated its Decision, adverse to complainant, finding the case for delivery of title and damages

premature as there was no evidence of full payment of the purchase price. Thereafter, complainant made demands upon respondent to return and account to her the amounts previously consigned with the HLURB. Respondent did not comply. Thus, complainant prays that respondent be disbarred.

In his answer, respondent admitted substantially all of the allegations in the complaint. In defense, he claims that the amount of ₱311,819.94 was consigned to the HLURB to cover the full payment of the balance of the purchase price of the lot with Fil-Estate. Fil-Estate, however, did not accept the same as it wanted complainant to also pay interests and surcharges totalling more than ₱800,000.00. Because the amount was formally consigned with the HLURB, he allegedly filed a motion[1] to verify if the judgment in the case was already satisfied. He claimed that his motion has not yet been acted upon; hence, he did not deem it proper as yet to return the consigned amount.

Following the submission by complainant of her verified position paper and the failure of respondent to submit his, despite having been given ample opportunity to do so, the Commission on Bar Discipline, through Attorney Gerely C. Rico, submitted its Report and Recommendation finding complainant to have sufficiently established that respondent violated Canon 16 of the Code of Professional Responsibility. It also found respondent to have submitted a false and fabricated piece of documentary evidence, as the January 2004 Motion attached to his answer as Annex A did not bear any proof of service upon the opposing party and proof of filing with the HLURB. The Commission recommended that respondent be suspended from the practice of law for a period of one (1) year. On September 19, 2007, the IBP Board of Governors passed Resolution No. XVIII-2007-93, adopting with modification the Commission's Report and Recommendation, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein*

[1] Dated January 19, 2004.

made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Canon 16 of the Code of Professional Responsibility by his failure to return and account to complainant the amount previously consigned with the HLURB despite demand, Atty. Abelardo B. Dumaguing is hereby ***SUSPENDED*** *from the practice of law for six (6) months and* ***Ordered to Return*** *the amount of ₱311,819.94 to complainant within thirty (30) days from receipt of notice.*

Respondent's motion for reconsideration was denied by the IBP Board of Governors in Resolution No. XX-2012-42.

The Court adopts the IBP's findings of fact and conclusions of law.

The Code of Professional Responsibility provides:

Canon 16-A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01-A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02-A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03-A lawyer shall deliver the funds and property of his client when due or upon demand.

Money entrusted to a lawyer for a specific purpose, such as payment for the balance of the purchase price of a parcel of land as in the present case, but not used for the purpose, should be immediately returned.[2] "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment."[3]

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[2] *Rhodora B. Yutuc v. Atty. Daniel Rafael B. Penuela,* A.C. No. 7904, September 22, 2008, citing *Adrimisin v. Javier,* A.C. No. 2591, September 8, 2006, 501 SCRA 192, 199.

[3] *Adrimisin v. Javier, Id.* at 199-200.

Since respondent withdrew the consignation of the BPI manager's checks in the total amount of ₱311,891.94 from the HLURB and the same was not used to settle the balance of the purchase price of the parcel of land purchased by complainant from Fil-Estate, then reimbursement with legal interest[4] was properly ordered by the IBP.

Respondent's proffered excuse of having to await the HLURB action on his alleged motion — the filing of which he miserably failed to prove — as a condition to the return of the sum of ₱311,891.94 to complainant compounds his liability and even bolstered his attitude to use dishonest means if only to evade his obligation. It underlines his failure to meet the high moral standards required of members of the legal profession.

WHEREFORE, Atty. Abelardo B. Dumaguing is adjudged **GUILTY** of violating Canon 16 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of six (6) months effective upon receipt of this Resolution. He is also ordered to return to complainant Emilia O. Dhaliwal, the amount of ₱311,819.94 with legal interest of six percent (6%) per annum from the time of his receipt of the money on September 29, 2000 up to the finality of this Resolution and twelve percent (12%) per annum from finality thereof until paid.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered into respondent's personal record as attorney. Copies shall likewise be furnished the IBP and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.,* concur.

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[4] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[*] Designated member in lieu of Justice Jose C. Mendoza, per Special Order No. 1282 dated August 1, 2012.

FIRST DIVISION

[G.R. No. 171076. August 1, 2012]

GOLDLOOP PROPERTIES, INC., *petitioner, vs.* **GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; RECIPROCAL OBLIGATIONS; EXPLAINED.— "Reciprocal obligations are those which arise from the same cause, and which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other." Here, the parties' reciprocal obligations are embodied in Article I of the MOA, x x x. Goldloop's obligation is to pay for the portion of the property on which the second tower shall stand and to construct and develop thereon a condominium building. On the other hand, GSIS is obliged to deliver to Goldloop the property free from all liens and encumbrances and to execute a deed of absolute sale in Goldloop's favor.

2. ID.; ID.; CONTRACTS; A CONTRACT IS THE LAW BETWEEN THE PARTIES, AND THE STIPULATIONS THEREIN —PROVIDED THEY ARE NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY — SHALL BE BINDING AS BETWEEN THE PARTIES, AND THE COURTS ARE OBLIGED TO GIVE EFFECT TO THE AGREEMENT AND ENFORCE THE CONTRACT TO THE LETTER; PETITIONER HAS BREACHED ITS COMMITMENT AND OBLIGATION UNDER THE MEMORANDUM OF AGREEMENT (MOA) AND THE ADDENDUM WHEN IT FAILED TO COMPLETE THE PAYMENT OF THE GUARANTEED AMOUNT OR SOUGHT FOR AN EXTENTION.— While the Court is inclined to agree with the RTC that the non-issuance of permits indeed affected Goldloop's ability to pay, it cannot, however, ignore the fact that Goldloop itself failed to avail of the protection granted to it by the MOA in case of failure to obtain the necessary permits

and licenses. Under the circumstances, Goldloop could have applied for an extension within which to pay the installments of the guaranteed amount as clearly provided for under the second and third paragraphs of said Sec. 1.1. Yet again, the records are bereft of any showing that it ever availed of such extension. x x x Be that as it may, it would be too late in the day for Goldloop to request for an extension. As may be recalled, such request must be made not only prior to the expiration of the contract but *also* within 15 calendar days after the event leading to such claim for extension has arisen. And since the problem with the non-issuance of permits had long arisen during that time, Goldloop cannot anymore avail of the extension even if by then the contract has not yet expired. At this point, it bears to stress that: It is basic that a contract is the law between the parties, and the stipulations therein — provided that they are not contrary to law, morals, good customs, public order or public policy — shall be binding as between the parties. In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because 'courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts.' The courts are obliged to give effect to the agreement and enforce the contract to the letter. Here, as the parties voluntarily and freely executed the MOA and the Addendum, the terms contained therein are the law between them. Hence, Goldloop should have completed its payment of the guaranteed amount in the manner prescribed by the contract. When it could not do so as a consequence of the non-issuance of permits, it should have asked for an extension within which to pay the same. However, since Goldloop neither completed the payment nor sought for an extension, it is considered to have breached its commitment and obligation under Sec. 1.1 of the MOA.

3. ID.; ID.; ID.; RESCISSION; PARTIES MAY VALIDLY STIPULATE THE UNILATERAL RESCISSION OF THEIR CONTRACT UPON BREACH OF ANY OF ITS OBLIGATIONS AND COMMITMENTS; RIGHT TO UNILATERALLY RESCIND THE MEMORANDUM OF AGREEMENT (MOA) CONFERRED UPON THE GSIS. — Concededly, parties may validly stipulate the unilateral rescission of a contract." Such is the case here since the parties conferred upon GSIS the right to unilaterally rescind the MOA

x x x. Under [Sec. 24 of the MOA], one of the grounds under which GSIS may validly rescind the MOA is if at any given time, Goldloop abandons the construction or otherwise commit any breach of its obligations and commitments thereunder. The February 23, 2000 notice clearly specified that GSIS is rescinding the contract for failure of Goldloop to pay the guaranteed amount of ₱140,890,000.00 under Sec. 1.1 of the MOA. This falls under the said ground, it being a breach of an obligation and commitment under the said agreement. Because of said breach, Sec. 1.3 of the MOA which provides for the consequence of the nonpayment thereof should be read in relation to Sec. 2.4. Under Sec. 1.3, Goldloop's failure to pay the guaranteed amount within the periods provided for in Sec. 1.1 of the MOA shall entitle GSIS to interest, *without prejudice to its other rights and remedies under the agreement and applicable laws.* This right referred to is the right of rescission under Sec. 2.4 authorizing GSIS to exercise the same upon Goldloop's breach of any of its obligations and commitments. Clearly therefore, when GSIS rescinded the MOA and the Addendum, it merely exercised its right to rescind under Sec. 2.4 in relation to Sec. 1.3 of the MOA.

4. ID.; ID.; ID.; ID.; THE RESPONDENT-GSIS IS NOT ENTIRELY FAULTLESS FOR IT FAILED TO COMPLY WITH ITS OBLIGATIONS TO DELIVER THE PROPERTY FREE FROM BURDEN.— GSIS is, however, not entirely faultless. It also failed to comply with its obligation, although it cannot be conclusively determined when it actually begun as the same only became apparent to Goldloop after the execution of the MOA and the Addendum. This was when the City of Pasig formally notified GSIS that it was holding in abeyance any action on the latter's application for building permits due to its outstanding real estate taxes in the amount of ₱54 million. The fact that GSIS disputes such tax liability because of its firm stand that it was tax exempt is beside the point. What is plain is that the property was by then not free from burden since real estate taxes were imposed upon it and these taxes remained unpaid. There was, therefore, on the part of GSIS, a failure to comply with its obligation to deliver the property free from burden.

5. ID.; ID.; ID.; ID.; WHEN A DECREE OF RESCISSION IS HANDED DOWN, IT IS THE DUTY OF THE COURT TO

REQUIRE BOTH PARTIES TO SURRENDER THAT WHICH THEY HAVE RESPECTIVELY RECEIVED AND TO PLACE EACH OTHER AS FAR AS PRACTICABLE IN THEIR ORIGINAL SITUATION.— As correctly observed by the RTC, the rescissory action taken by GSIS is pursuant to Article 1191 of the Civil Code. In cases involving rescission under the said provision, mutual restitution is required. The parties should be brought back to their original position prior to the inception of the contract. "Accordingly, when a decree of rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in [their] original situation." Pursuant to this, Goldloop should return to GSIS the possession and control of the property subject of their agreements while GSIS should reimburse Goldloop whatever amount it had received from the latter by reason of the MOA and the Addendum. x x x. [G]SIS must also return to Goldloop all equipment, machineries and other properties of the latter which may be found in the premises of the subject property.

6. ID.; DAMAGES; WHERE IT CANNOT BE DETERMINED WITH CERTAINTY WHICH BETWEEN THE PARTIES IS THE FIRST INFRACTOR, THE RESPECTIVE CLAIMS OF THE PARTIES FOR DAMAGES SHALL BE DEEMED EXTINGUISHED AND EACH OF THEM SHALL BEAR ITS OWN DAMAGE.— [B]oth parties failed to comply with their respective obligations under their agreements. Hence, relevant is the provision of Article 1192 of the Civil Code which reads: Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. **If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages**. In this case, it cannot be determined with certainty which between the parties is the first infractor. It could be GSIS because of the high probability that even before the execution of the agreements, real property taxes were already imposed and unpaid such that when GSIS applied for building permits, the tax liability was already in the substantial amount of ₱54 million. It was just that GSIS could not have been mindful of the same because of its stand that it is tax exempt. But as this cannot be conclusively presumed, there exists an uncertainty

as to which between the failure to comply on the part of each party came first; hence, the last portion of Article 1192 finds application. Pursuant thereto, the parties' respective claims for damages are thus deemed extinguished and each of them shall bear its own damage.

APPEARANCES OF COUNSEL

Advocates Circle Lawyers for petitioner.
GSIS Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This protracted legal battle revolves around the unilateral rescission of the parties' contracts.

In this Petition for Review on *Certiorari*, petitioner Goldloop Properties Inc. (Goldloop) assails the September 26, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 80135 which reversed and set aside the June 23, 2003 Decision[2] of the Regional Trial Court (RTC) of Pasay City, Branch 111 in Civil Case No. 00-0149 for Specific Performance and Damages. Likewise assailed is the January 11, 2006 Resolution[3] of the CA which denied Goldloop's Motion for Reconsideration thereto.

Factual Antecedents

The Government Service Insurance System (GSIS) owns a 2,411-square meter (sq. m.) parcel of land located in ADB Avenue cor. Sapphire St., Ortigas Center, Pasig City as well as the Philcomcen Building standing on a portion thereof. On June 16, 1995, GSIS and Goldloop executed a Memorandum of

[1] CA *rollo*, pp. 196-207; penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Jose C. Reyes, Jr.

[2] Records, Vol. III, pp. 1333-1351; penned by Judge Ernesto A. Reyes.

[3] CA *rollo*, p. 242; penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Renato C. Dacudao and Jose C. Reyes, Jr.

Agreement (MOA)[4] whereby Goldloop, at its own expense and account, would renovate the façade of the Philcomcen Building as well as construct a condominium building on the 1,195 sq. m. portion of said land. Goldloop also undertook to pay GSIS the amount of ₱140,890,000.00 for the portion of the land on which the condominium building shall stand to be remitted in eight installments within the four-year period following the execution of the MOA. Said amount is apart from the guaranteed revenue of ₱1,428.28 million[5] that the parties would share when the project is already completed and the condominium units sold. It was further agreed that should the gross sales of the condominium project exceed the said guaranteed revenue, GSIS would be entitled to 9.86% of the amount in excess of ₱1,428.28 million and Goldloop, to the balance of 0.14%.[6]

On June 18, 1996, the parties executed an Addendum to the Memorandum of Agreement[7] (Addendum) to include in the project the relocation of an existing powerhouse and cistern tank within the site of the proposed condominium building. And since by then Goldloop had yet to remit to GSIS the first and second installment payments of the guaranteed amount, the Addendum also contained stipulations relative thereto, to wit:

> 2. The parties agree that the expense items identified in Annex "C" [8] as A.1, A.2.1, A.2.2., A.2.3., A.3.1., B.1 and B.2 are

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[4] Records, Vol. I, pp. 12-21.

[5] *Id.* at 14.

[6] *Id.*

[7] *Id.* at 22-25.

[8] Unfortunately, Annex "C" of the Addendum to the Memorandum of Agreement is not part of the records of this case. However, GSIS quoted in its Answer (Records, Vol. II, pp. 413-423) the relevant portion thereof showing the alleged expense items for its account as follows:

ITEM	DESCRIPTION	AMOUNT
	CHANGE ORDER NO. 1-POWER HOUSE	
	A.1 Construction of 3-storey structure	₱ 5,601,820.22
	A.2 Mechanical Works	

for the account of GSIS; while expense items A.3.2. and B.3 are for the account of GOLDLOOP.

3. As a gesture of goodwill and in consideration for the waiver by GSIS of the interest due from GOLDLOOP by reason of late payment of the first guaranteed amount under Section 1.1. of the MOA, GOLDLOOP hereby agrees to absorb expense Item C of Annex "C" hereof;

4. GOLDLOOP shall advance the payments of all the expense items due from GSIS which shall, however be credited as full payment of its first guaranteed installment and partial payment of the second guaranteed installment under Section 1.1. of the MOA;

5. As further gesture of goodwill and as additional consideration for the waiver by GSIS of the interest due from GOLDLOOP by reason of late payment of the first guaranteed amount under Section 1.1 of the MOA, GOLDLOOP hereby agrees not to charge the GSIS any interest for the amounts to be advanced by GOLDLOOP in excess of the amount due as its first guaranteed installment;

6. In consideration of the undertakings of GOLDLOOP under Sections 3 and 5 hereof, the GSIS hereby waives in favor of GOLDLOOP the interest due from the latter by reason of its late payment of the first guaranteed amount under Section 1.1 of the MOA[.][9]

	A.2.1 Purchase of New pumps for chiller	492,735.00
	A.2.2 Purchase of Air-cooled chillers	6,783,131.25
	A.2.3 Installation of New Air-cooled chillers	1,789,879.29
	A.3 Electrical Work	
	A.3.1 Relocation of transformers from existing basement to new 3-storey structure	2,435,812.13
	CHANGE ORDER No. 2-CISTERN TANK	
	B.1 Construction of reinforced concrete underground water tank	3,129,655.78
	B.2 Relocation/Installation of Booster Pumps and piping installation of new piping layout	992,477.41
	TOTAL	₱ 21,225,521.08 (*Id.* at 414)

[9] Records, Vol. I, pp. 23-24.

Goldloop then performed the necessary preparatory works.[10] It also formally launched the project[11] and conducted the pre-selling of the condominium units.[12]

Unfortunately, construction could not proceed because Mayor Vicente P. Eusebio (Mayor Eusebio) of Pasig City refused to act on the applications for building permits filed in November 1996[13] and July 1997,[14] claiming that GSIS owed Pasig City ₱54 million in unpaid real estate taxes. The GSIS, for its part, through its then President and General Manager, Mr. Cesar Sarino (Sarino), claimed that GSIS is exempt from payment thereof by virtue of Republic Act (R.A.) No. 8291.[15] Because of this impasse, Mayor Eusebio opted to hold in abeyance any action on the applications for building permit until the issue on the tax exemption provisions of R.A. No. 8291 shall have been settled by the court through a petition for declaratory relief that Pasig City intended to file.[16]

When Mr. Federico C. Pascual (Pascual) was subsequently appointed as the new President and General Manager of GSIS, Goldloop's President, Mr. Emmanuel R. Zapanta (Zapanta), apprised him of the situation. Later, however, Goldloop received from GSIS a letter dated November 23, 1998 informing it of a recommendation[17] to rescind the MOA.[18] Zapanta thus wrote

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[10] TSN dated July 6, 2000, pp. 12-15.

[11] *Id.* at 15; See also Exhibits "S" to "S-2", Records, Vol. I, pp. 135-136.

[12] *Id.* at 18.

[13] See GSIS's letter dated April 28, 1997 to Mayor Eusebio, *id.* at 26.

[14] See GSIS's letter dated September 30, 1997 to Mayor Eusebio, *id.* at 27.

[15] See Mayor Eusebio's letter dated October 8, 1997, *id.* at 28-29; R.A. No. 8291 is otherwise known as "The Government Service Insurance Act of 1997."

[16] *Id.*

[17] This recommendation was made by GSIS's Senior Vice President of the Housing and Real Property Development Group, Senior Vice President of the Legal Services Group and the General Counsel; see GSIS's Board Resolution No. 79, *id.* at 33.

[18] As mentioned in Goldloop's letter dated December 2, 1998 to GSIS, *id.* at 37-38.

GSIS on December 2, 1998 and reiterated that the work stoppage due to non-issuance of permit was not Goldloop's fault. Assuring GSIS that it would commence the project as soon as the issue on building permits is resolved, Zapanta urged GSIS to reconsider its position.[19] Despite this, GSIS still sent Goldloop a notice of rescission[20] dated February 23, 2000 stating that 30 days from the latter's receipt thereof, the MOA shall be deemed rescinded for Goldloop's breach of its obligations and commitments thereunder, specifically for failure to pay the guaranteed amount of ₱140,890,000.00 under Section 1.1 and pursuant to Sections 1.3 and 2.4 of the MOA, *viz*:

> In view of your failure to abide by the provisions of the Memorandum of Agreement, please be informed that effective upon the expiration of thirty (30) days from receipt of this notice, the aforesaid Agreement is deemed rescinded and terminated for breach of obligations and commitments pursuant to the following provisions of the Contract:
>
> Section 1.1 That GOLDLOOP PROPERTIES, INC. will pay the GSIS a guaranteed amount of ONE HUNDRED FORTY MILLION EIGHT HUNDRED NINETY THOUSAND PESOS (₱140,890,000.00) as payment for the 1,195 sq. m. portion of the lot on which the second tower will stand in accordance with the following schedule:

Period from signing of the Agreement	Percentage of Total Amount	Amount to be Remitted
Six Months	10%	₱ 14,089,000.00
Twelve Months	15%	21,133,500.00
Eighteen Months	15%	21,133,500.00
Twenty-four Months	15%	21,133,500.00
Thirty Months	15%	21,133,500.00
Thirty-Six Months	10%	14,089,000.00
Forty-Two Months	10%	14,089,000.00
Forty-Eight Months	10%	14,089,000.00
	100%	₱ 140,890,000.00

[19] *Id.*

[20] *Id.* at 31-33; served upon Goldloop on March 22, 2000 as mentioned in GSIS's letter of April 27, 2000, *id.* at 39.

> Section 1.3 Payment to GSIS of the amounts provided for in the preceding paragraphs shall be remitted by GOLDLOOP within the periods stated therein without need of prior demand; and failure to so pay within said periods shall entitle the GSIS to an interest of 18% per annum, compounded monthly, *without prejudice to the other rights and remedies of the GSIS under this Agreement and under applicable laws.*
>
> x x x x x x x x x
>
> Section 2.4. Should GOLDLOOP fail to start the construction works within thirty (30) working days from the date all the relevant permits and licenses from the concerned agencies are obtained, or within six (6) months from the date of the execution of this Agreement, whichever is earlier, *or at any given time abandon the same or otherwise commit any breach of their obligations and commitments under this Agreement*, this agreement shall be deemed terminated and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to GOLDLOOP [which] hereby agrees to abide by the decision of the GSIS.[21] (Underscoring and Emphasis in the original.)

Subsequently, GSIS sent Goldloop a letter[22] dated April 27, 2000 informing it that the MOA was already officially rescinded. It thus ordered Goldloop to vacate the premises and clear the same of all debris, machineries and equipment within five days from receipt thereof. Failing which, GSIS warned that it would undertake the same on Goldloop's account without responsibility on its part for any resulting loss or damage. Because of this, Goldloop filed on May 17, 2000 a Complaint[23] for Specific Performance with Damages before the RTC of Pasay City against GSIS. The case was docketed as Civil Case No. 00-0149 and raffled to Branch 111 of said court.

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

[22] *Id.* at 39.

[23] *Id.* at 2-11.

Proceedings in the Regional Trial Court

In its complaint, Goldloop belied GSIS's claim that it has not paid the guaranteed amount. It asserted that aside from the amount it expended for the preparatory works undertaken, it already paid GSIS the sum of ₱24,824,683.00 in terms of charges on change order items. This amount was advanced by Goldloop in favor of GSIS, with the understanding, per the Addendum, that the same shall be credited as full payment of the first installment and as partial payment of the second installment of the guaranteed amount. Goldloop also claimed to have spent a total of ₱44,075,910.70 for design, marketing fees, project launching, title annotation, waiver, advances of contractors and other expenses. All in all, Goldloop already shelled out the amount of ₱68,890,593.70.[24]

Goldloop also averred that it was ready, willing and able to perform all of its obligations under the MOA as shown by the preparatory works it had undertaken. However, because of the non-issuance of building permits by Mayor Eusebio, the project could not push thru. Goldloop further alleged that GSIS made assurances that it would secure the necessary permits but GSIS still failed to obtain the same. Goldloop also alleged that GSIS delayed the issuance of notice to proceed despite repeated reminders from Goldloop.

Goldloop also claimed that during Zapanta's courtesy call to Pascual, the latter allegedly advised the former to just wait for the resolution of the problem and even remarked that *"at any rate the real estate market is still depressed in view of the Asian financial crisis*." On the same day, Zapanta even handed to Pascual a letter[25] dated July 20, 1998 which also spoke of the same problem.

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[24] During trial, Goldloop submitted in evidence its Consolidated Financial Statements for the Years Ended December 31, 1995, 1996, 1997, 1998, 1999 and 2000 and Auditor's Report (Records, Vol. II, pp. 731-740) which reflected its investments or exposure for the project as ₱83,082.749.

[25] Records, Vol. I, p. 30.

Hence, Goldloop asserted that the rescission was without basis and clearly made in bad faith. It therefore asked the RTC to declare the same as null and void, to direct GSIS to comply with the provisions of the MOA and the Addendum, and to secure all the necessary permits from Pasig City. It also prayed for actual damages of still undetermined amount due to its alleged continuing character, exemplary damages of ₱10 million, attorney's fees of ₱500,000.00 and costs of suit.

On June 15, 2000, Goldloop applied for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.[26] This was on account of its receipt of a letter[27] dated May 29, 2000 from GSIS wherein it was given a final notice to vacate the premises and to clear it from all debris, machineries and equipment within five days from receipt thereof, otherwise, GSIS would undertake the same on Goldloop's account. Goldloop also alleged that GSIS had already leased the premises to the Department of Interior and Local Government without its knowledge and consent.[28] Claiming lawful possession and occupancy of the premises on the strength of the MOA as well as grave and irreparable damage to it should GSIS take over the property, Goldloop prayed that GSIS be restrained from disturbing or interfering with its possession and occupancy of the premises.

Notwithstanding GSIS's opposition,[29] the RTC granted Goldloop's application for TRO and accordingly ordered GSIS to cease and desist from doing acts which would in any manner

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[26] See Goldloop's Petition/Application For Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, *id.* at 40-45.

[27] *Id.* at 47.

[28] See the Contract of Lease entered into by and between GSIS and Department of Interior and Local Government (DILG) on May 11, 2000, *id.* at 48-55. The DILG subsequently sought the permission of the trial court to intervene in the case (See DILG's Motion to Admit Intervention, *id.* at 325-329 and Motion in Intervention to Modify Order of Preliminary Injunction dated July 10, 2000, *id.* at 365-369) but was denied intervention by the RTC in its Order dated December 20, 2000, Records, Vol. II, pp. 403-405.

[29] See GSIS's Opposition to the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, Records, Vol. I, pp. 63-68.

tend to disturb Goldloop's peaceful possession and occupation of the subject premises.[30] Upon the expiration of the said TRO, Goldloop applied for the issuance of a writ of preliminary injunction[31] which was likewise granted by the trial court.[32] GSIS moved for reconsideration[33] but was denied by the RTC.[34]

In its Answer with Affirmative Defenses and Compulsory Counterclaims,[35] GSIS contested Goldloop's claim that it had already advanced ₱24,824,683.00 in expense items supposed to be for GSIS's account. It averred that if at all, the amount should only be ₱21,225,521.08 per the agreed valuation of said expense items as listed in Annex "C" of the Addendum and provided further that the works for which said items were intended were indeed completed. GSIS likewise denied for lack of knowledge and information Goldloop's allegation that it incurred ₱44,075,910.70 for other expenses; that it delayed the issuance of the notice to proceed with the construction; and that Goldloop apprised Pascual of the situation, both personally and in writing.

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[30] See RTC Order dated June 16, 2000, *id.* at 69-71.

[31] See Goldloop's Petition/Application for Issuance of Writ of Preliminary Injunction filed on June 29, 2000, *id.* at 101-105.

[32] See RTC Orders dated July 10, 2000, *id.* at 157-160, and July 17, 2000, *id.* at 198; and the Writ of Preliminary Injunction, *id.* at 201.

[33] See GSIS's Urgent Motion for Reconsideration, *id.* at 203-213 and Supplement to Defendant's Motion for Reconsideration, *id.* at 215-218.

[34] See RTC Order dated December 20, 2000, Records, Vol. II, pp. 403-405. GSIS assailed the issuance of said Writ of Preliminary Injunction through a Petition for *Certiorari* filed with the CA docketed as CA-G.R. No. 63458. However, during the pendency of said petition, the RTC resolved the main case and promulgated its Decision dated June 23, 2003 where Goldloop emerged as the prevailing party. The RTC also made permanent the writ of preliminary injunction it earlier issued. This RTC Decision became the subject of the September 26, 2005 CA Decision now under review. In view of these events and of the fact of reversal by the CA of the RTC Decision, the Special Tenth Division of the same court dismissed CA-G.R. SP No. 63458 for being moot and academic, through a Resolution dated September 15, 2011. Said court likewise pronounced therein that the injunction issued by the RTC was automatically dissolved upon the CA's reversal of its decision.

[35] *Id.* at 413-423.

Regarding the issue on tax liability, GSIS denied that it acted in bad faith in not informing Goldloop of the same as it was within its right to invoke tax exemption pursuant to its charter.

In gist, GSIS insisted that the rescission of the MOA and the Addendum was a valid and legitimate exercise of its right under the provisions thereof; hence, the complaint against it must be dismissed.

By way of compulsory counterclaims, GSIS prayed for Goldloop to pay it actual damages for lost income/unrealized revenues in the amount of ₱68,922,360.73, ₱10 million exemplary damages, and ₱1 million attorney's fees.

Ruling of the Regional Trial Court

In a Decision[36] dated June 23, 2003, the RTC found GSIS's rescission without valid basis. It ruled that the failure to proceed with the construction was not due to Goldloop's fault and that GSIS was well aware of this. In fact, Sarino's January 16, 1998 letter[37] to Goldloop would show that GSIS recognized that the continuing stand-off between it and the City of Pasig on the issue of permits was the only stumbling block for Goldloop to proceed with the construction.

As to Goldloop's failure to fully pay the guaranteed amount, the RTC ruled that the same is likewise attributable to the non-

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[36] Records, Vol. III, pp. 1333-1351.

[37] Records, Vol. II, p.724. Said letter, as quoted in the RTC decision reads:

'We acknowledge your letter dated December 10, 1997, where you brought to our attention the continued refusal of Pasig Mayor Vicente Eusebio to approve the application for the Demolition permit as well as the Building permit of the PHILCOMCEN Joint Venture Project – "ONE ADB CENTER"[.]

x x x I have referred this matter to our [L]egal Group for appropriate action x x x. At this point, prudence dictates that <u>we defer the implementation of the project until this issue is fully resolved</u>.

Your offer to advance the tax payment is appreciated, however, the proposed compromise agreement where GSIS pays part of the assessed tax, is unacceptable to GSIS as this would set a bad precedent which other local government units might invoke. Besides the law is very clear on the tax exemption of the GSIS.'

issuance of permits. The RTC noted that when the construction failed to proceed due to said non-issuance, would-be buyers who made initial deposits and/or reservation fees for the condominium units backed out. Goldloop was thus constrained to return their deposits, some with interest, in the amount of ₱80 million. Said amount was apart from the ₱11 million that it already paid to agents and brokers as commissions. These hindered Goldloop from complying with its obligation to pay the guaranteed amount.

Consequently, the RTC adjudged GSIS liable to Goldloop for damages.

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [Goldloop] and against defendant [GSIS].
>
> Accordingly, the unilateral cancellation or rescission of the Memorandum of Agreement and the Addendum to the MOA is hereby declared INVALID for lack of valid basis. Hence, defendant GSIS is hereby directed to comply with the Memorandum of Agreement dated June 16, 1995 and Addendum dated June 20, 1995.
>
> Congruently, and pending compliance by defendant GSIS, the injunction issued on July 10, 2000 is hereby made permanent.
>
> Consistent with the court's finding, defendant GSIS is hereby directed to pay to plaintiff the following:
>
> 1. Actual damages in the amount of ₱83,082,749.00;
> 2. Exemplary Damages in the amount of ₱5,000,000.00;
> 3. Attorney's Fees – ₱500,000.00;
> 4. Reimbursement of Filing Fees or Cost of litigation – ₱104,953.50.
>
> SO ORDERED.[38]

GSIS filed a Notice of Appeal[39] which was approved by the RTC in its Order[40] of August 8, 2003.

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[38] Records, Vol. III, pp. 1350-1351.

[39] *Id.* at 1363-1365.

[40] *Id.* at 1369.

Ruling of the Court of Appeals

In resolving GSIS's appeal, the CA noted that under Section 2.4, Article II of the MOA, GSIS may exercise its right to rescind, to wit: (1) upon Goldloop's failure to start the construction works within 30 working days from the date all relevant permits and licenses from concerned agencies are obtained; (2) or within six months from the date of execution of the agreement, whichever is earlier; or (3) at any given time, should Goldloop abandon the project or otherwise commit any breach of its obligations and commitments.

The CA concluded that GSIS cannot rescind the agreement based on the first two circumstances considering that Goldloop's failure to proceed with the construction works within the said periods was the necessary consequence of the non-issuance of permits which, however, cannot be attributed to Goldloop's fault. Nevertheless, since nine years had already passed since the execution of the MOA and the Addendum, Goldloop is deemed to have abandoned the project under the third circumstance, even if the same be due to a justifiable cause, that is, the non-issuance of permits. The CA declared that the delay in the implementation of the project has been detrimental to the interest of GSIS and its members but not on the part of Goldloop, which, on the contrary, had been benefiting from the same because it had been using the property free of charge. To the appellate court, this amounts to unjust enrichment and, hence, the MOA must be equitably rescinded under this ground. The CA also extinguished the obligations of the parties relative thereto and ordered each of them to bear its own damage. The dispositive portion of the CA's September 26, 2005 Decision[41] reads:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. The June 23, 2003 Decision of the trial court is REVERSED and SET ASIDE. A new judgment is entered RESCINDING the MOA and its Addendum, the obligations of the parties relative thereto are deemed extinguished, and each to bear its own damages.

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[41] CA *rollo*, pp. 196-207.

SO ORDERED.[42]

Goldloop filed a Motion for Reconsideration,[43] but the same was denied in the Resolution[44] dated January 11, 2006.

Hence, the present Petition for Review on *Certiorari*.

Issues

Goldloop faults the CA in rescinding the MOA and the Addendum, in extinguishing the obligations of the parties relative thereto, in declaring that each party should bear its own damage and, in discarding the findings of facts and conclusions of the RTC.[45]

Our Ruling

The Court upholds the rescission but for a reason different from that upon which the CA based its conclusion.

Reciprocal obligations of the parties under the MOA.

"Reciprocal obligations are those which arise from the same cause, and which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other."[46] Here, the parties' reciprocal obligations are embodied in Article I of the MOA, *viz*:

ARTICLE I
ABSOLUTE SALE

Section 1.1 **That GOLDLOOP PROPERTIES INC. will pay the GSIS a guaranteed amount of ONE HUNDRED FORTY MILLION EIGHT HUNDRED NINETY THOUSAND PESOS (₱140,890,000.00) as payment for**

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[42] *Id.* at 206.

[43] *Id.* at 214-226.

[44] *Id.* at 242.

[45] *Rollo*, p. 15.

[46] *Cortes v. Court of Appeals*, G.R. No. 126083, July 12, 2006, 494 SCRA 570, 576.

the 1,195 sq. m. portion of the lot on which the second tower will stand in accordance with the following schedule:

Period from signing of the Agreement	Percentage of Total Amount	Amount to be Remitted
Six Months	10%	₱ 14,089,000.00
Twelve Months	15%	21,133,500.00
Eighteen Months	15%	21,133,500.00
Twenty-four Months	15%	21,133,500.00
Thirty Months	15%	21,133,500.00
Thirty-Six Months	10%	14,089,000.00
Forty-Two Months	10%	14,089,000.00
Forty-Eight Months	10%	14,089,000.00
	100%	₱ 140,890,000.00

Without prejudice to the right of GSIS to collect the interest provided for in Section 1.3 hereof, the aforesaid periods may be extended in the event that GOLDLOOP PROPERTIES INC. fails to obtain all the necessary permits and [licenses] for causes beyond the control of GOLDLOOP or by reason of *force majeure*.

It is expressly agreed that extension of time[/]period provided for herein may not be claimed unless GOLDLOOP has, prior to the expiration of the contract time and within fifteen (15) calendar days after the circumstances leading to such claim have arisen, delivered an appropriate written notice to the GSIS to enable the latter to have [the] reason for extension investigated. The GSIS shall, on the basis of the facts and circumstances and of the merits or lack of merit of the request, grant or deny the request for extension, as it may deem proper. The decision of the GSIS on this matter shall be final and binding. Failure to provide such notice constitutes a waiver by x x x GOLDLOOP of any claim for extension.

Section 1.2 That after the project has been completed and sold but not later than six (6) months after the 48[-month] period, in reference to the schedule of payment in Item 1 above, a calculation of the gross sales net of the 8% marketing fee will be made. The GSIS will be entitled (in addition to the guaranteed amount in excess of ₱140.89 Million) to 9.86% of the amount in excess of the ₱1,428.28 Million (the guaranteed revenue for sharing) while GOLDLOOP will be entitled to the balance of 90.14% in case the gross sales net of the 8% marketing fee does not exceed ₱1,428.28

> Million, the GSIS will not be entitled to any additional amount.
>
> GSIS has the right to full information as to all matters requisite in the determination of the gross sales relative to this project that may be in its possession and a full disclosure of any information that it may deem material and relevant for the purpose.
>
> Section 1.3 Payment to GSIS of the amounts provided for in the preceding paragraphs shall be remitted by GOLDLOOP within the periods stated therein without need of prior notice or demand; and failure to so pay within said periods shall entitle the GSIS to an interest of 18% per annum, compounded monthly, without prejudice to the other rights and remedies of the GSIS under the Agreement and under applicable laws.
>
> Section 1.4 **GSIS warrants that it has title over the subject [p]roperty and subject to the obligation of GOLDLOOP to undertake the conversion of the same to a condominium property and the identification of the 1,195 sq. m. of vacant lot as a unit thereof capable of being legally sold by GSIS to GOLDLOOP, that same is transferable, free from all liens and encumbrances whatsoever**.
>
> Section 1.5 After full compliance by GOLDLOOP of its obligations under the preceding Section, **GSIS shall execute [in] its favor, or in favor of its nominee a Deed of Absolute Sale for the 1,195 sq. m. portion of the subject property**.[47] (Emphasis supplied.)

Clearly, Goldloop's obligation is to pay for the portion of the property on which the second tower shall stand and to construct and develop thereon a condominium building. On the other hand, GSIS is obliged to deliver to Goldloop the property free from all liens and encumbrances and to execute a deed of absolute sale in Goldloop's favor.

Goldloop failed to complete its payment of the guaranteed amount in the manner prescribed in the contract.

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[47] Records, Vol. I, pp. 13-15.

Under Sec. 1.1 of the MOA, Goldloop undertook to pay GSIS the guaranteed amount of ₱140,890,000.00, in eight installments, the first installment of which would fall due on December 16, 1995 and the subsequent payments every six months thereafter until June 16, 1999. The dates of payment may be extended if Goldloop fails to obtain all the necessary permits and licenses for causes beyond its control or by reason of *force majeure*. However, such request for extension must be in writing and made prior to the expiration of the contract *and* within 15 calendar days after the circumstances leading to such claim for extension have arisen.

Sec. 1.3, on the other hand, provides for the remittance to GSIS of such payments without need of demand as well as for the consequence of nonpayment.

Admittedly, Goldloop failed to pay the first installment on time; hence, the parties stipulated in the Addendum that Goldloop shall advance the payment for expense items which were for GSIS's account. The money advanced shall then be credited as full payment of the first installment and the excess therefrom, as partial payment of the second. By way of said expense items, Goldloop claimed to have already advanced in favor of GSIS the sum of ₱24,824,683.00.[48]

Assuming said figure is correct for purposes of this discussion, the same only covers the full payment of the first installment which is ₱14,089,000.00 and the excess therefrom, the partial payment for the ₱21,133,500.00 second installment. However, we note that the Addendum was executed on June 18, 1996 or two days after the second installment payment was supposed to be remitted (June 16, 1996). Hence, by that time, Goldloop's duty to complete the payment for the second installment had already arisen. However, the records fail to show that Goldloop, from that time on, endeavored to at least complete such second installment. Worse, it totally failed to remit the other subsequent installments. This was confirmed by Zapanta during the hearing on the application for writ of preliminary injunction, *viz*:

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[48] See Complaint, *supra* note 23; TSN dated July 6, 2000, pp. 16-17, 37.

[ATTY. SILVERA]

q So [is it] not true that under Art. 1, Sec. 1.1 of the MOA[,] that is, there is in effect a transaction of sale?

WITNESS [Zapanta]
a I don't know what is the meaning of sale.

ATTY. SILVERA
[q] [Okay], let's put it [this] way, did you review or did you have an opportunity to review this MOA prior to signing?
a Well, frankly, GSIS we were all in good faith.

q You [mean] you were obligated to pay a guarantee[d] amount of 140 million and merely…is that your position?
a That was the agreement, when we say in good faith we agreed to the 140 million without even foreseeing the problem.

COURT
q Of the 140 million provided for, I'm speaking only not [of] your advances but of the 140 million you are supposed to pay the GSIS, how many times did you pay, and how much?
a I cannot say Your Honor, because the addendum to the contract it says there in the advances…

q [Okay], according to you the advances are there, it is clear, 24 million.

x x x x x x x x x

I'm asking you whether or not pursuant to the schedule of payment you are obligated to pay 140 million, right?

[Okay], how much have you paid the GSIS in connection with the schedule of payments?

a **Nothing on this project.** (Emphasis supplied.)
q In other words, you are trying to tell this Court [that] there were advances which are covered by the MOA?

a Yes.
q And this is for the account of GSIS[?]

a Yes[,] Your Honor.

ATTY. SILVERA
q And there were advances when [you were] suppose[d] to start paying this amount?

a It's already in the agreement.

ATTY. SILVERA
q If [based] in this Addendum which is the guiding provision here, it say[s] here the advances of [G]oldloop shall be credited as full payment of the first [guaranteed] installment and partial payment of the [second] installment under Sec. 1.1 of the MOA?

COURT
For the information of the Court, how much is supposed to be the payment, per month?

a Per six (6) months Your Honor.

COURT
q Under the scheduled payment?
a The first payment is [14] million Your Honor.
And then after 6 months it['s] 21 million.

q So far according to you[,] you have advance[d] [….]
a 24 million Your Honor.

ATTY. SILVERA
That covers the whole payment for the first installment. And there had been no subsequent payment pursuant to Sec. 1.1 of the MOA [?].

a. **No sir, we were already up to our neck in our expenses.**[49] (Emphasis supplied.)

The RTC ratiocinated that Goldloop's failure to comply with the said obligation was due to the non-issuance of permits. According to it, Goldloop experienced financial difficulty when the construction did not push thru since it had to return the deposits, some with interest, of would-be buyers and had already paid the commission of brokers and agents of the condominium units, and these amounted to millions of pesos. Hence, its failure to pay was justified.

While the Court is inclined to agree with the RTC that the non-issuance of permits indeed affected Goldloop's ability to pay, it cannot, however, ignore the fact that Goldloop itself

[49] TSN dated July 6, 2000, pp. 34-37.

failed to avail of the protection granted to it by the MOA in case of failure to obtain the necessary permits and licenses. Under the circumstances, Goldloop could have applied for an extension within which to pay the installments of the guaranteed amount as clearly provided for under the second and third paragraphs of said Sec. 1.1. Yet again, the records are bereft of any showing that it ever availed of such extension. When asked regarding this, Zapanta evaded the question and instead answered that the contract has not yet expired, *viz*:

> ATTY. SILVERA
>
> q Would you agree with me in case that those permits could not be secured Goldloop could ask for an extension of time subject only to the conditions cited in the second paragraph and 3rd paragraph of Sec. 1.1, Art. 1 of the MOA on page 3?
>
> a Yes[,] it says here.
>
> q And would you please tell us if Goldloop ever availed of this option afforded by the MOA?
>
> a Well, insofar as advising the GSIS of the refusal of the Pasig City we have voluminous paper…of that, now with regard to the filing of an extension of time prior to the expiration of the contracts, we are contending that the contract is not expired.[50]

Apparently, Zapanta would want to impress that Goldloop could still avail of the said extension had not GSIS untimely rescinded the agreements on February 23, 2000. This was because of Goldloop's belief that on said date, the four-year period within which to pay the guaranteed amount had not yet lapsed considering that the same should have been reckoned from the date of the execution of the Addendum on June 18, 1996 and not from the date of the execution of the MOA on June 16, 1995.[51] The Court, however, thinks otherwise. Sec. 9 of the Addendum reads:

> **9. GOLDLOOP shall start the renovation of the façade of the existing tower and construction of the condominium**

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[50] *Id.* at 34.

[51] See Goldloop's allegations in par. 5 of its Opposition (to Urgent Motion for Reconsideration) filed with the RTC, Records, Vol. I, p. 223.

> **building on the vacant lot within thirty (30) working days from date all relevant permits and licenses from concerned agencies are obtained, or within six (6) months from date of execution of this Addendum to Memorandum of Agreement, whichever is earlier**. Failure of GOLDLOOP in this respect shall entitle GSIS to exercise its right provided for under Section 2.4, Article II of the Memorandum of Agreement.[52]

From the above, it is clear that said section did not extend the four-year period within which to pay the guaranteed amount. In fact, no mention was made regarding this. What was extended was the period within which Goldloop should have started the construction, which was changed from six months from the date of the execution of the MOA to six months from the date of execution of the Addendum. This is very plain from the said provision.

Be that as it may, it would be too late in the day for Goldloop to request for an extension. As may be recalled, such request must be made not only prior to the expiration of the contract but *also* within 15 calendar days after the event leading to such claim for extension has arisen. And since the problem with the non-issuance of permits had long arisen during that time, Goldloop cannot anymore avail of the extension even if by then the contract has not yet expired.

At this point, it bears to stress that:

> It is basic that a contract is the law between the parties, and the stipulations therein — provided that they are not contrary to law, morals, good customs, public order or public policy — shall be binding as between the parties. In contractual relations, the law allows the parties much leeway and considers their agreement to be the law between them. This is because 'courts cannot follow one every step of his life and extricate him from bad bargains x x x relieve him from one-sided contracts, or annul the effects of foolish acts.' The courts are obliged to give effect to the agreement and enforce the contract to the letter.[53]

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[52] *Id.* at 24.

[53] *National Power Corporation v. Premier Shipping Lines*, G.R. Nos. 179103 & 180209, September 17, 2009, 600 SCRA 153, 175-176.

Here, as the parties voluntarily and freely executed the MOA and the Addendum, the terms contained therein are the law between them.[54] Hence, Goldloop should have completed its payment of the guaranteed amount in the manner prescribed by the contract. When it could not do so as a consequence of the non-issuance of permits, it should have asked for an extension within which to pay the same. However, since Goldloop neither completed the payment nor sought for an extension, it is considered to have breached its commitment and obligation under Sec. 1.1 of the MOA.

GSIS rescinded the contract pursuant to its right to rescind under the relevant provisions of the MOA.

"Concededly, parties may validly stipulate the unilateral rescission of a contract."[55] Such is the case here since the parties conferred upon GSIS the right to unilaterally rescind the MOA in the earlier quoted Sec. 2.4 and hereinafter reproduced:

> Section 2.4. **Should GOLDLOOP** fail to start the construction works within the thirty (30) working days from date all relevant permits and licenses from concerned agencies are obtained, or within six (6) months from the date of the execution of this Agreement, whichever is earlier, or **at any given time abandon the same or otherwise commit any breach of their obligations and commitments under this Agreement, this agreement shall be deemed terminated and cancelled without need of judicial action by giving thirty (30) days written notice to that effect to GOLDLOOP who hereby agrees to abide by the decision of the GSIS**. x x x[56] (Emphasis supplied.)

Under the above-quoted provision, one of the grounds under which GSIS may validly rescind the MOA is if at any given

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[54] *Id.*

[55] *Associated Bank v. Pronstroller*, G.R. No. 148444, July 14, 2008, 558 SCRA 113, 131.

[56] Records, Vol. I, pp. 15-16.

time, Goldloop abandons the construction or otherwise commit any breach of its obligations and commitments thereunder.

The February 23, 2000 notice clearly specified that GSIS is rescinding the contract for failure of Goldloop to pay the guaranteed amount of ₱140,890,000.00 under Sec. 1.1 of the MOA. This falls under the said ground, it being a breach of an obligation and commitment under the said agreement. Because of said breach, Sec. 1.3 of the MOA which provides for the consequence of the nonpayment thereof should be read in relation to Sec. 2.4.

Under Sec. 1.3, Goldloop's failure to pay the guaranteed amount within the periods provided for in Sec. 1.1 of the MOA shall entitle GSIS to interest, *without prejudice to its other rights and remedies under the agreement and applicable laws.* This right referred to is the right of rescission under Sec. 2.4 authorizing GSIS to exercise the same upon Goldloop's breach of any of its obligations and commitments. Clearly therefore, when GSIS rescinded the MOA and the Addendum, it merely exercised its right to rescind under Sec. 2.4 in relation to Sec. 1.3 of the MOA.

However, GSIS is not entirely faultless since it likewise failed in its obligation to deliver the property free from burden.

GSIS is, however, not entirely faultless. It also failed to comply with its obligation, although it cannot be conclusively determined when it actually begun as the same only became apparent to Goldloop after the execution of the MOA and the Addendum. This was when the City of Pasig formally notified GSIS that it was holding in abeyance any action on the latter's application for building permits due to its outstanding real estate taxes in the amount of ₱54 million. The fact that GSIS disputes such tax liability because of its firm stand that it was tax exempt is beside the point. What is plain is that the property was by then not free from burden since real estate taxes were imposed upon it and these taxes remained unpaid. There was, therefore, on the part of GSIS, a failure to comply with its obligation to deliver the property free from burden.

This is not to say, however, that Goldloop's obligation to pay the guaranteed amount, as discussed above, did not arise considering that GSIS could not comply with its concurrent obligation to deliver the property free from burden. It is well to note that even before Goldloop became aware of GSIS's supposed tax liability with the City of Pasig through the latter's October 8, 1997 letter, Goldloop was already in default in its payment of the guaranteed amount. As can be recalled and again under the assumption that Goldloop advanced ₱24,824,683.00 on behalf of GSIS which amount was credited as full and partial payment of the first and second installments, the remaining balance for the second installment should have been paid as early as June 16, 1996. No such payment was, however, made. The same thing is true with respect to the third and fourth installments which respectively became due on December 16, 1996 and June 16, 1997. Clearly, Goldloop had already defaulted in its payments even before it became aware of GSIS's tax issues. In short, even before such failure of GSIS became apparent to Goldloop, the latter had already committed a breach of its own obligation.

As to when GSIS actually committed its breach of failing to deliver the property free from any burden, the same is a different matter which will be discussed later.

In view of the rescission, mutual restitution is required.

As correctly observed by the RTC, the rescissory action taken by GSIS is pursuant to Article 1191[57] of the Civil Code. In cases involving rescission under the said provision, mutual

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[57] Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

restitution is required.[58] The parties should be brought back to their original position prior to the inception of the contract.[59] "Accordingly, when a decree of rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in [their] original situation."[60] Pursuant to this, Goldloop should return to GSIS the possession and control of the property subject of their agreements while GSIS should reimburse Goldloop whatever amount it had received from the latter by reason of the MOA and the Addendum.

Here, out of the total amount of expenses which Goldloop claims to have incurred for the project, it appears that the only sum it paid to GSIS was that amount it expended by way of change order of expense items supposed to be for GSIS's account and, which under the Addendum was to be credited as full payment and partial payment of the first and second installments of the guaranteed amount, respectively. The figure, however, remains disputed. Goldloop alleges that the same amounts to ₱24,824,683.00. Yet, there is nothing in the records to support the same. Said amount was not clearly specified in Goldloop's Consolidated Financial Statements for years 1995 to 2000 and Auditor's Report.[61] What is in the records is a mere self-serving list of expenses that it submitted and which indicates the said figure as "Expenses/Charges on Change Orders."[62] GSIS, on the other hand, asserts that the expense items for its account, per Annex "C" of the Addendum, is only ₱21,225,521.08 and provided that the works for which the items were supposed to be used, that is, the relocation of the powerhouse and cistern tank, were indeed completed. Unfortunately, said Annex "C" is likewise not part of the records of this case and GSIS merely

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[58] *Unlad Resources Development Corporation v. Dragon*, G.R. No. 149338, July 28, 2008, 560 SCRA 63, 78.

[59] *Id.*

[60] *Id.* at 79.

[61] Records, Vol. II, pp. 731-740.

[62] Exhibit "T", Records, Vol. I, p. 137.

quoted the relevant portion of the same in its Answer. Be that as it may, Zapanta testified that the installation of the cistern tank was already 100% complete,[63] although there was no mention regarding the status of the powerhouse. In view of this, the Court can only consider the sum spent with respect to the completed installation of the cistern tank which the GSIS admitted in its Answer as amounting to ₱4,122,133.19.[64] Aside from the said amount, GSIS must also return to Goldloop all equipment, machineries and other properties of the latter which may be found in the premises of the subject property.

Damages

As discussed, both parties failed to comply with their respective obligations under their agreements. Hence, relevant is the provision of Article 1192 of the Civil Code which reads:

> Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. **If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages**. (Emphasis suppied.)

In this case, it cannot be determined with certainty which between the parties is the first infractor. It could be GSIS because of the high probability that even before the execution of the agreements, real property taxes were already imposed and unpaid such that when GSIS applied for building permits, the tax liability was already in the substantial amount of ₱54 million. It was just that GSIS could not have been mindful of the same because of its stand that it is tax exempt. But as this cannot be conclusively presumed, there exists an uncertainty as to which between the failure to comply on the part of each party came first; hence, the last portion of Article 1192 finds application. Pursuant thereto, the parties' respective claims for damages are thus deemed extinguished and each of them shall bear its own damage.

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[63] TSN dated July 6, 2000, pp. 40-41.

[64] See note 8.

WHEREFORE, finding the rescission of the Memorandum of Agreement and the Addendum to the Memorandum of Agreement by the Government Service Insurance System to be proper, the Petition for Review on *Certiorari* is **DENIED.** The Decision dated September 26, 2005 and Resolution dated January 11, 2006 of the Court of Appeals in CA-G.R. CV No. 80135 are hereby **AFFIRMED with MODIFICATIONS.**

Goldloop Properties Inc. is **DIRECTED** to immediately surrender to the Government Service Insurance System the control and possession of the 2,411-square meter property located in ADB Avenue cor. Sapphire St., Ortigas Center, Pasig City including the Philcomcen Building standing thereon. The Government Service Insurance System is **ORDERED** to reimburse Goldloop Properties Inc. the amount of ₱4,122,133.19 and return to the latter all its equipment, machineries and other materials which may be found in the premises of the subject property. The parties' respective claims for damages are deemed **EXTINGUISHED** and each of them shall bear its own damage.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), Villarama, Jr., Reyes,*[**] and *Perlas-Bernabe,*[***] *JJ.,* concur.

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

[**] Per raffle dated June 25, 2012.

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

FIRST DIVISION

[G.R. No. 172008. August 1, 2012]

HEIRS OF ROGELIO ISIP, SR., namely: CELEDONIA, ROLANDO, ROGELIO, JR., all surnamed ISIP, and IRENE ISIP-SILVESTRE, represented by their Attorney-in-Fact ROLANDO ISIP, *petitioners, vs.* **RODOLFO QUINTOS, RODOLFO DE GUZMAN and ISAGANI ISIP, doing business under the name RONIRO ENTERPRISES COMPANY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE POSSESSION IS ILLEGAL FROM THE BEGINNING AND THE BASIC INQUIRY CENTERS ON WHO HAS THE PRIOR POSSESSION *DE FACTO*.— Under Section 1, Rule 70 of the Rules of Court, a case of forcible entry may be filed by, "a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth x x x." In cases of forcible entry, "the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*." In the case at bench, petitioners argue that respondents deprived them of the possession of their lot through deceit, strategy, and stealth. x x x For their part, respondents claim that they have in their favor prior possession of the land dating back to 1984. They stake their claim of possession upon the right of title and possession of Pontino. The respondents posit that through a series of various transfers originating from Pontino, they now legally occupy the subject premises and do their business therein under the name Roniro Enterprises. It is clear that respondents have prior possession *de facto*. While petitioners allege that their predecessor-in-interest Rogelio Sr. was in possession of the subject lot in 1986, evidence on record supports the respondents' claim that as early as 1984, Pontino not only possessed and occupied the lot but also had a title over the disputed property. And by virtue of a Deed of Assignment between Pontino and Jedco Corporation, which the latter relinquished in favor of De Guzman, respondents enjoy the

right of prior possession *de facto*. In addition, the possession of respondents was lawful from the beginning since it was acquired through lawful means and thus no forcible entry was committed.

2. REMEDIAL LAW; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED SUBJECT TO CERTAIN EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— As correctly found by the RTC and affirmed by the CA, "the point raised by the [petitioners] x x x in respect of the identity of the property subject of the controversy may not be considered anymore at this point since it was never raised as an issue in their appeal, nay even when the case was heard by the court *a quo*." Moreover, the resolution of the issue raised by petitioners requires us to inquire into the evidence presented during trial. It has been consistently held that the Supreme Court is not a trier of facts. Only questions of law may be entertained subject only to certain exceptions, none of which are present in the instant petition.

3. ID.; ID.; FINDINGS OF THE TRIAL COURT ON FACTUAL ISSUES ARE ACCORDED RESPECT AND BINDING BY THE SUPREME COURT ESPECIALLY WHEN SUCH FINDINGS HAVE BEEN AFFIRMED BY THE COURT OF APPEALS.— It is the function of trial courts to resolve factual issues whose findings on these matters are accorded respect and considered binding by the Supreme Court especially when there is no conflict in the factual findings of both the trial court and the appellate court. In this case, the MeTC, the RTC and the CA are one in their findings that respondents did not forcibly enter the subject premises. All three tribunals found that respondents' possession is lawful and legal from the beginning. x x x To conclude and to finally put this case to rest, forcible entry being an ejectment case is summary in nature. When the findings of facts of the trial court have been affirmed by the CA, such are binding and deemed conclusive upon the Supreme Court.

4. CIVIL LAW; POSSESSION; POSSESSION MAY BE EXERCISED IN ONE'S OWN NAME OR IN THE NAME OF ANOTHER; A MERE CARETAKER OF A LAND HAS NO RIGHT OF POSSESSION OVER SUCH LAND.— It

is clear from the facts that when the rights over the subject lot was relinquished in favor of De Guzman, Rogelio Sr. was employed in order to help the respondents run the water distribution system. Hence, it was actually through the respondents that the petitioners' predecessor-in-interest was able to enter the disputed lot. And although Rogelio Sr. was able to occupy the lot, he was in fact possessing the same in the name of the respondents. Verily, whatever right to possess petitioners have in this case cannot be superior to that of the respondents since it was from the latter that their predecessor-in-interest derived his claim of possession. In *Reyes v. Court of Appeals,* we held thus: Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as those a party would naturally exercise over his own property. It is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy. This declaration is [in conformity] with Art. 524 of the Civil Code providing that possession may be exercised in one's own name or in the name [of] another. The CA therefore correctly cited the case of *Dalida v. Court of Appeals,* where it was held that a mere caretaker of a land has no right of possession over such land.

APPEARANCES OF COUNSEL

A.D. Corvera & Associates for petitioners.
Hipolito F. Sañez for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In forcible entry cases, the only issue is who has the better right of possession over the subject property.

This petition for review on *certiorari* assails the Decision[1] dated June 18, 2003 and Resolution[2] dated March 21, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 74178. The CA affirmed the Order[3] dated July 31, 2002 of the Regional Trial Court (RTC) of Pasig City, Branch 154, in SCA No. 2146 which reconsidered and set aside its own Decision[4] dated March 25, 2002 and in effect affirmed *in toto* the Decision[5] dated May 22, 2001 of the Metropolitan Trial Court (MeTC) of Taguig City, Branch 74, in Civil Case No. 1715 which dismissed herein petitioners' complaint for forcible entry against the respondents.

Factual Antecedents

In 1986, Rogelio Isip, Sr. (Rogelio Sr.) occupied and took possession of a parcel of land known as Lot 69, Block 169 Psd-13-002680. Located at No. 2 Barrameda Street, Upper Bicutan, Taguig, Metro Manila, the said parcel of land contains an area of 292 square meters, more or less, where Rogelio Sr. constructed a small house to serve as his place of residence.

A year later, Toyo Keiki Philippines, Inc. (Toyo Keiki) requested Rogelio Sr. that it be allowed to dig a deep well on the subject property and to put up thereon a water distribution system. Since Rogelio Sr. was a stockholder of Toyo Keiki, he allowed the corporation to build the water distribution system. Thus, Toyo Keiki tore down Rogelio Sr.'s house and replaced it with a bigger structure with a room for the latter and an office in front. The water distribution project, however, did not become fully operational.

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[1] CA *rollo*, pp. 167-185; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine.

[2] *Id.* at 235-238; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Arturo D. Brion (also a member of this Court) and Mariflor Punzalan Castillo.

[3] *Id.* at 39-43; penned by Judge Abraham B. Borreta.

[4] *Id.* at 58-76.

[5] *Id.* at 47-57; penned by Judge Benjamin T. Pozon.

In January 1991, the deep well was rehabilitated with funding from Sunrise Management Corporation and Jiro Yamashita. Upon the completion of the rehabilitation work, Sunrise Management Corporation operated the water distribution system with Rogelio Sr. as General Manager, assisted by his two sons Rolando Isip (Rolando) and Rogelio Isip, Jr. (Rogelio Jr.) and brother-in-law Alfredo Lobo.

In 1997, Rodolfo Quintos (Quintos) proposed to Rogelio Sr. to operate a car repair shop in the compound. Since Quintos is a former claims manager in an insurance company and is familiar with running a business, Rogelio Sr. agreed and, hence, a car repair shop was constructed in the compound. However, despite the completion of the repair shop, they were not able to start the business due to Rogelio Sr.'s illness.

On February 5, 1998, Rogelio Sr. died. Six months later, his son Rolando was appointed General Manager of the water distribution system of Sunrise Management Corporation. Quintos then revived to Rolando the proposal to establish the car repair shop.

Quintos allegedly told Rolando that there was a need for accreditation from the insurance companies before the car repair shop could commence operation. In line with such accreditation, Quintos told Rolando that inspectors from the insurance companies will conduct ocular inspection to see if the building is being used for commercial or business purposes and not for residential use. Hence, Rolando had to temporarily vacate the premises. Relying on the representations of Quintos, who was their legal counsel and the godfather of Rogelio Jr., Rolando and Rogelio Jr. agreed to temporarily vacate the compound.

When Rolando returned to the compound, however, he was refused entry by three armed security guards allegedly upon the instructions of Quintos, Rodolfo De Guzman (De Guzman), and Isagani Isip (Isip). A notice was also posted at the gates of the compound that Sunrise Management Corporation had been dissolved and that the deep well compound was already under the management of Roniro Enterprises Company (Roniro Enterpises).

Thus, on January 4, 1999, petitioners Celedonia Isip, Rolando, Rogelio Jr. and Irene Isip-Silvestre, claiming to be the legitimate children and legal heirs of Rogelio Sr., filed before the MeTC of Taguig City a complaint for forcible entry against respondents Quintos, De Guzman, and Isip, all doing business under the name Roniro Enterprises. Petitioners claimed that respondents, through deceit, strategy, and stealth, succeeded in entering the deep well compound and once inside the premises, prevented the petitioners from re-entering the same through the use of force, intimidation, and threat.

Respondents vehemently denied the charge. They asserted that Eddie Dizal Pontino (Pontino) formerly owned and occupied the disputed lot. On May 12, 1984, he executed a Deed of Absolute Sale of Rights in favor of Pendatun Hadji Datu (Hadji Datu) for the sum of ₱60,000.00. However, on May 19, 1984, Pontino rescinded the said contract of sale on the ground that Hadji Datu failed to pay the purchase price of the lot after repeated demands to do so.[6]

Despite the rescission of the contract of sale, Hadji Datu sold the lot to Toyo Keiki, through its President Michael S. Sagara (Sagara), the latter being unaware of the said rescission. Subsequently Pontino wrote a letter[7] to Toyo Keiki through Sagara informing the latter that Hadji Datu never became the owner of the subject lot. Thus, when Hadji Datu tried to claim the balance of the purchase price, Sagara told him that he cannot release the said amount because Pontino claimed to be the true owner and possessor of the subject lot.

In 1988, Pontino and Jedco Corporation entered into a Deed of Assignment concerning the water distribution system and the subject lot. Jedco Corporation then acquired the right of possession over the premises in question and the control over the operation of the water distribution system.

It was not long thereafter when Jedco Corporation decided to withdraw and relinquish its rights over the premises in question

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[6] See letter of even date, *rollo*, p. 230.

[7] *Id.* at 226.

in favor of De Guzman. De Guzman then took over the premises and summoned the late Ireneo Isip (Ireneo) and Quintos to help him in the operation of the water distribution business. Ireneo then recommended his brother Rogelio Sr. to manage the said business under the umbrella of Sunrise Management Corporation.

Respondents claimed that Rogelio Sr., the petitioners' predecessor-in-interest, was an employee of Sunrise Management Corporation. After the death of Rogelio Sr., De Guzman wrote a letter dated August 14, 1998 addressed to the president and chairman of the board of Sunrise Management Corporation stating that he is terminating the services of the said corporation because of the unfortunate death of Rogelio Sr. In the same letter, De Guzman likewise held Sunrise Management Corporation, together with the sons of Rogelio Sr., responsible to render an accounting relative to the operation of the said deep well.

Respondents prayed that judgment be rendered dismissing the complaint for lack of merit; ordering petitioners to jointly and severally pay moral damages and exemplary damages, attorney's fees, plus other litigation expenses as may be proven, and the costs of the suit.

Ruling of the Metropolitan Trial Court

After summary proceedings, the MeTC rendered a Decision on May 22, 2001 dismissing the complaint for lack of cause of action. It held that no forcible entry was committed since Roniro Enterprises was merely exercising its right over the premises.

Ruling of the Regional Trial Court

Upon appeal, the RTC initially reversed and set aside the MeTC's Decision. On respondents' motion for reconsideration, however, the RTC issued an Order[8] reversing its earlier Decision and affirming the MeTC's May 22, 2001 Decision. Thus:

WHEREFORE, the Decision dated March 25, 2002, of this Court is hereby RECONSIDERED and SET ASIDE and the Decision of the Metropolitan Trial Court of Taguig, Metro Manila, in Civil

[8] CA *rollo*, pp. 39-43.

Case No. 1715, which was appealed to this Court, is hereby affirmed *in toto*.

SO ORDERED.[9]

Ruling of the Court of Appeals

Aggrieved, petitioners filed a petition for review before the CA. On June 18, 2003, the CA rendered the herein assailed Decision[10] dismissing the petition and affirming the Order of the RTC. Undeterred, petitioners filed a motion for reconsideration[11] but it was likewise denied.[12] Despite having been thrice rebuffed, petitioners remain unfazed and are now before this Court *via* this petition for review on *certiorari*.

Issue

The only issue to be determined in this case is whether the respondents committed forcible entry.

Our Ruling

The petition lacks merit.

Under Section 1, Rule 70 of the Rules of Court, a case of forcible entry may be filed by, "a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth x x x." In cases of forcible entry, "the possession is illegal from the beginning and the basic inquiry centers on who has the prior possession *de facto*."[13]

In the case at bench, petitioners argue that respondents deprived them of the possession of their lot through deceit, strategy, and stealth. They aver that respondents deceived them to temporarily vacate the premises on the pretext that they must convince the insurance inspectors that the premises are being

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[9] *Id.* at 43.

[10] *Id.* at 167-185.

[11] *Id.* at 189-201.

[12] *Id.* at 235-238.

[13] *Sarmiento v. Court of Appeals*, 320 Phil. 146, 153 (1995).

used solely for commercial purposes. They were thus allegedly tricked to move out and once the respondents achieved their goal, they were prevented from entering the premises by posting security guards at the gates.

For their part, respondents claim that they have in their favor prior possession of the land dating back to 1984. They stake their claim of possession upon the right of title and possession of Pontino. The respondents posit that through a series of various transfers originating from Pontino, they now legally occupy the subject premises and do their business therein under the name Roniro Enterprises.

It is clear that respondents have prior possession *de facto*. While petitioners allege that their predecessor-in-interest Rogelio Sr. was in possession of the subject lot in 1986, evidence on record supports the respondents' claim that as early as 1984, Pontino not only possessed and occupied the lot but also had a title over the disputed property. And by virtue of a Deed of Assignment between Pontino and Jedco Corporation, which the latter relinquished in favor of De Guzman, respondents enjoy the right of prior possession *de facto*. In addition, the possession of respondents was lawful from the beginning since it was acquired through lawful means and thus no forcible entry was committed.

Petitioners further assert that the lot they occupy is different from the lot occupied by the respondents. They claim that their lot is located at No. 2, Barrameda St., Upper Bicutan, Taguig while the lot occupied by the respondents is located in Lower Bicutan. This, according to the petitioners, is enough reason to reverse the Decision of the CA as the same "does not conform to the truth."[14]

However, and as correctly found by the RTC and affirmed by the CA, "the point raised by the [petitioners] x x x in respect of the identity of the property subject of the controversy may not be considered anymore at this point since it was never raised

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[14] *Rollo*, pp. 28-39.

as an issue in their appeal, nay even when the case was heard by the court *a quo*."[15]

Moreover, the resolution of the issue raised by petitioners requires us to inquire into the evidence presented during trial. It has been consistently held that the Supreme Court is not a trier of facts. Only questions of law may be entertained subject only to certain exceptions, none of which are present in the instant petition. It is the function of trial courts to resolve factual issues whose findings on these matters are accorded respect and considered binding by the Supreme Court especially when there is no conflict in the factual findings of both the trial court and the appellate court. In this case, the MeTC, the RTC and the CA are one in their findings that respondents did not forcibly enter the subject premises. All three tribunals found that respondents' possession is lawful and legal from the beginning.

The petitioners also want us to reverse the findings of the court *a quo* that their predecessor-in-interest was an employee of Roniro Enterprises.

We find no reason to do so.

It is clear from the facts that when the rights over the subject lot was relinquished in favor of De Guzman, Rogelio Sr. was employed in order to help the respondents run the water distribution system. Hence, it was actually through the respondents that the petitioners' predecessor-in-interest was able to enter the disputed lot. And although Rogelio Sr. was able to occupy the lot, he was in fact possessing the same in the name of the respondents. Verily, whatever right to possess petitioners have in this case cannot be superior to that of the respondents since it was from the latter that their predecessor-in-interest derived his claim of possession.

In *Reyes v. Court of Appeals*,[16] we held thus:

Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as those a party would naturally

[15] *CA rollo*, p. 184.

[16] 374 Phil. 236, 242-243 (1999).

exercise over his own property. It is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy. This declaration is [in conformity] with Art. 524 of the Civil Code providing that possession may be exercised in one's own name or in the name [of] another.

The CA therefore correctly cited the case of *Dalida v. Court of Appeals*,[17] where it was held that a mere caretaker of a land has no right of possession over such land.

To conclude and to finally put this case to rest, forcible entry being an ejectment case is summary in nature. When the findings of facts of the trial court have been affirmed by the CA, such are binding and deemed conclusive upon the Supreme Court.

WHEREFORE, premises considered, the petition is hereby **DENIED.** The Decision dated June 18, 2003 and Resolution dated March 21, 2006 of the Court of Appeals in CA-G.R. SP No. 74178 are hereby **AFFIRMED.**

SO ORDERED.

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

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[17] 202 Phil. 804 (1982).

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

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

FIRST DIVISION

[G.R. No. 175969. August 1, 2012]

JARL CONSTRUCTION and ARMANDO K. TEJADA, *petitioners, vs.* **SIMEON A. ATENCIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS REQUIREMENTS; PURPOSES OF THE TWO-NOTICE RULE; TWO NOTICE REQUIREMENTS, NOT COMPLIED WITH.— Article 277(b) of Presidential Decree No. 442 or the Labor Code of the Philippines requires according the employee both notice and hearing x x x. Section 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code expounds on the procedural due process requirements that every employer must observe in a termination of employment based on a just cause x x x. The Court explained the purposes of the two notices: The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative, if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions *sine qua non* before dismissal may be validly effected. The Court agrees with the shared conclusions of the Labor Arbiter and the appellate court that petitioners' evidence fails to prove their contention that they afforded Atencio with due process.

2. ID.; ID.; ID.; ID.; FAILURE TO OBSERVE THE TWO-NOTICE RULE ENTITLES THE DISMISSED EMPLOYEE TO NOMINAL DAMAGES.— The Court x x x affirms the appellate court's ruling that petitioners' failure to observe the

two-notice rule under Article 277(b) of the Labor Code entitles the respondent to nominal damages, in accordance with *Agabon v. National Labor Relations Commission.*

3. ID.; ID.; ID.; THE BURDEN OF PROVING PAYMENT OF THE EMPLOYEE'S SALARIES AND OTHER MONETARY BENEFITS RESTS WITH THE EMPLOYER; REASON. — With respect to the issue of unpaid salaries and 13th month pay, the Court agrees with the appellate court that petitioners' evidence does not support their contention of payment. When there is an allegation of nonpayment of salaries and other monetary benefits, it is the employer's burden to prove its payment to its employee. The employer's evidence must show, with a reasonable degree of certainty, that it paid and that the workers actually received the payment. "The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents x x x are not in the possession of the worker but [are] in the custody and absolute control of the employer." In the case at bar, the two official receipts issued by Safemark, and offered as JARL's evidence, only prove that JARL made a total partial payment of ₱1,891,509.50 to the said company for its "professional services." Since JARL admits that the said company actually rendered services for JARL on its Caltex project, the payment can only be assumed as covering for the said services. There is nothing on the face of the receipts to support the conclusion that Atencio (and not his company) received it as payment for his service as a JARL employee.

APPEARANCES OF COUNSEL

Eduardo M. Arriba for petitioners.
Recto Javier Liwag & Refrean for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In dismissing an employee from service, the employer has the burden of proving its observance of the two-notice requirement and its accordance to the employee of a real opportunity to be heard.

Before the Court is a Petition for Review[1] assailing the November 29, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 80517, which contained the following disposition:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. Accordingly, [JARL Construction and Armando K. Tejada] are ordered to pay the unpaid salaries of [Simeon A. Atencio] in the amount of ₱165,000.00, pro-rated 13th month pay of ₱12,500.00 and ₱30,000.00 nominal damages. No pronouncement as to costs.
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> SO ORDERED.[3]

Factual Antecedents

This case stems from a complaint for illegal dismissal, nonpayment of salaries, and 13th month pay filed by respondent Simeon A. Atencio (Atencio) with the National Labor Relations Commission (NLRC) against petitioners JARL Construction (JARL) and its general manager, Armando K. Tejada (Tejada).[4]

On December 16, 1998, JARL, through its general manager, Tejada, hired Atencio as its chief operating manager, whose primary function was to direct and manage JARL's construction projects in accordance with its company policies and contracts. Atencio's employment contract agreement[5] states that, when the execution of a project requires a contract modification, the chief operating manager has the duty to report the needed changes to the company President, for the latter's approval. Further, as chief operating manager, he is the recommending authority with respect to the award of subcontracts and purchase orders. The agreement provides for a monthly salary of ₱30,000.00.

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[1] *Rollo*, pp. 9-21.

[2] CA *rollo*, pp. 175-186; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Vicente S.E. Veloso.

[3] *Id.* at 185.

[4] *Id.* at 38.

[5] *Id.* at 32-36.

During Atencio's tenure as chief operating manager, his employer JARL had an existing contract with Caltex Philippines (Caltex) to construct a Caltex service station in Quezon City (Caltex project). The contract with Caltex prohibited JARL from subcontracting the project.

According to Atencio, he discovered during his employment that JARL did not have the proper facilities, personnel, and equipment to undertake the Caltex project, hence he and Tejada discussed the need for hiring subcontractors. It was during these meetings that Tejada agreed to hire Atencio's construction company, Safemark Construction and Development Corporation (Safemark), to perform works for the Caltex project.[6] This arrangement is proven by Safemark's contract proposal dated February 2, 1999, to which Tejada signed his conformity,[7] and two official receipts of Safemark, which were issued to acknowledge receipt of JARL's payments for Safemark's professional services. The first receipt is dated May 12, 1999, which states that Safemark received from JARL a partial payment of ₱1,074,173.50 for professional services. The second receipt dated June 4, 1999 acknowledges JARL's partial payment of ₱817,336.00,[8] for Safemark's billing for June 2, 1999, which demanded the amount of ₱1,702,051.81 from JARL.[9]

Further, Tejada allegedly gave Atencio full authority as JARL's chief operating manager to hire other subcontractors if necessary.[10] Pursuant to his blanket authority, Atencio hired DDK Steel Construction and Building Multi-Technology (DDK Steel) for the electrical installations of the Caltex project.[11]

On May 24, 1999, Tejada informed Atencio and Safemark that JARL was terminating Atencio's management and supervision

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[6] *Id.* at 51.

[7] *Id.* at 91.

[8] *Id.* at 116.

[9] *Id.* at 118.

[10] *Id.* at 51.

[11] *Id.* at 51-52.

works for the Caltex project effective May 20, 1999. JARL assured Atencio and Safemark that it will pay for the rendered services, save for a 15% portion thereof, which JARL will retain until Caltex has accepted the project.[12]

Atencio construed the above letter as a termination of the subcontract between his company and JARL. Thus, he threatened JARL and Tejada that he will report their unethical conduct with the Philippine Accreditation Board for possible sanctions.[13]

Believing, however, that his employment as JARL's chief operating manager was separate from their subcontracting agreement, Atencio allegedly continued reporting for work to the Caltex project site until, sometime in June 1999,[14] when he was barred from entering the said premises.[15]

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[12] *Id.* at 115.

[13] *Id.* at 117. The letter reads:

31 May 1999

JARL CONSTRUCTION
1773 Guizon Street,
Makati City
Attention : MR. ARMAN K. TEJADA
Subject : CSS Construction
Commonwealth Avenue, Matandang Balara, Quezon City

Dear Mr. Tejada,

Please be informed that we will soon submit your name and Company to the Philippine Accreditation Board for Sanction of unbecoming and unethical contractor at the expense of another contractor.

We will soon send to Caltex our Contract Agreement for their proper information [illegible] you have subcontracted the job to us.

Because of this action re: NOTICE OF TERMINATION without first clearing this from us, you have just created a grave abuse of confidence.

Unless you can come up with any acceptable explanation and compromise to this serious action, this may reach beyond the halls of our respective offices.

May I await your response? Thank you.

(signed)
Simeon Atencio

[14] *Id.* at 49-54.

[15] *Id.* at 41.

On July 20, 1999, Atencio filed his complaint for illegal dismissal, nonpayment of salaries, and 13th month pay with the NLRC.[16] He maintained that JARL did not inform him of the charges leveled against him and of his termination from employment. He claimed learning of his termination only through the letter that JARL sent to Caltex Philippines[17] (he did not explain, however, how he came to see this letter), which reads:[18]

31 May 1999

CALTEX (Philippines)
6760 Ayala Avenue
Makati City

Attention : MR. EDUARDO S. MAXIMO
Manager, Retail Engineering

Subject : NOTICE OF TERMINATION

Dear Mr. Maximo,

This is to formally inform you that Mr. Simeon A. Atencio is no longer connected with JARL CONSTRUCTION effective May 20, 1999. Any transaction made and entered into by him in behalf of JARL CONSTRUCTION will not be honored by our company.
Thank you very much.

Very truly yours,

(signed)
ARMANDO K. TEJADA
General Manager

He maintained that JARL never paid him his monthly salary and 13th month pay as chief operating manager.[19]

JARL and Tejada admitted hiring Atencio as chief operating manager and terminating his services on May 20, 1999, but

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[16] *Id.* at 38.

[17] *Id.* at 40-41.

[18] *Id.* at 37.

[19] *Id.* at 41.

asserted that it was done for just causes and with substantial compliance with the procedural requirements.[20]

They allegedly lost confidence in Atencio after the latter entered into a Subcontract Agreement with DDK Steel in the Caltex project, without the consent of the top management of JARL and in violation of JARL's contract with Caltex. He even sent letters to Caltex that jeopardized JARL's relationship with its client. Further, he instigated JARL's project engineer to fabricate the project accomplishment report and he habitually defied company policies and procedures.[21]

They maintained having apprised Atencio of the foregoing charges against him but the latter refused to explain himself and chose not to report for work beginning May 20, 1999.[22]

Lastly, they maintained that they have adequately compensated Atencio for his services as evidenced by Safemark's two official receipts, which total ₱1,891,509.50.[23]

Atencio denied the truth of petitioners' explanations.[24] He maintained that the amounts that JARL paid to Safemark were payments for the company's services as subcontractor, not payment of Atencio's salaries as chief operating manager.

Ruling of the Labor Arbiter[25]

Labor Arbiter Ariel Cadiente Santos found just cause for Atencio's removal[26] but found the dismissal ineffectual because of petitioners' failure to observe the twin requirements of due process.[27] For this violation, he ordered petitioners to pay

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

[21] *Id.* at 45-46.

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

[23] *Id.* at 46.

[24] *Id.* at 49-54.

[25] *Id.* at 63-70; penned by Labor Arbiter Ariel Cadiente Santos.

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

[27] *Id.* at 69.

Atencio's backwages from the date of ineffectual dismissal until rendition of the judgment.[28]

The Labor Arbiter also found in Atencio's favor the issue of nonpayment of salaries and 13th month pay.[29] He did not accept petitioners' contention that the receipts that Atencio's construction company issued were proof of payment of Atencio's salaries and other benefits. The Labor Arbiter held that an employer can easily present its own payrolls and vouchers, if indeed payments for salaries and other benefits were made but JARL failed to do so.[30]

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED. However, for non-observance of due process, respondents are jointly and severally liable to pay complainan[t] his backwages from date of dismissal until rendition of this judgment which to date is ₱810,225.00. (₱30,000.00 x 24.93 mos. = ₱747,900.00 plus ₱62,325.00 as 13th month pay)

Further, respondents are liable to pay complainant his salaries amounting to ₱165,000.00.

Finally, complainant should be paid his pro-rata 13th month pay in the sum of ₱12,500.00.

SO ORDERED.[31]

JARL and Tejada appealed the monetary awards to the NLRC.[32] They maintained affording Atencio his procedural due process, but the latter chose to waive his right to be heard by refusing to talk to them.[33] They also insisted that the payments they gave to Safemark covered Atencio's salaries and 13th month

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[28] *Id.* at 70.

[29] *Id.*

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

[31] *Id.* at 70.

[32] *Id.* at 72-80.

[33] *Id.* at 77.

pay.[34] They asked for the reversal of the Labor Arbiter's Decision and the dismissal of Atencio's complaint.[35]

Ruling of the National Labor Relations Commission[36]

The NLRC reversed the Labor Arbiter's Decision.

In finding that the employer observed the procedural requirements for a valid dismissal, the NLRC gave emphasis to two letters adduced in evidence. The first is Atencio's letter to JARL dated June 21, 1999, which reads:

Dear Mr. Tejada,

Thank you very much for making everything clear. I agree, 100% that you are right on your letter of June 16, 1999,[37] as faxed on June 18, 1999 to our office for having hired me as your MANAGING DIRECTOR.

I am very sorry, and therefore please accept my apology for initially entertaining the impression that the construction of the NEW CSS (El Mavic Property) has been under a Sub-contract Agreement between JARL Construction and SAFEMARK CONSTRUCTION AND DEVELOPMENT CORPORATION, wherein I am the President and Chief Executive Officer.

I also regret that I may have cause[d] you any inconvenience about the Sub-contract Agreement affair. It was my mistake for that wrong assumption. The proof of the existing duly signed said appointment and non-existing Sub-contract Agreement has now settled everything in an unmistakable manner.

Relative to this, we are enclosing herewith the official receipts acknowledging payment of the Professional Service Fee amounting to ₱1,074,173.50 and ₱817,336.00, dated May 12, 1999 and June 4, 1999, respectively. It may also interest you to know that we have

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[34] *Id.* at 77-78.

[35] *Id.* at 79.

[36] *Id.* at 18-29; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Victoriano R. Calaycay.

[37] This letter does not appear in the available records and was not attached by the parties to their respective pleadings before this Court.

the SEC and BIR registration documents, herewith attached for reference.

Please rest assured that we will completely forget the idea, and any thought regarding the obfuscating Sub-contract Agreement that never exists between your company and mine. Thank you.

Very truly yours,

(signed)
Simeon Atencio
President and CEO[38]

The NLRC held that the above letter, wherein Atencio acknowledges his mistakes and apologizes for them, constitutes proof that Atencio was aware of the charges leveled against him, that he had the opportunity to explain himself.

The *second* letter is JARL's earlier letter dated May 24, 1999, which reads:

May 24, 1999

Safemark Construction & Dev. Corp.
298 Roosevelt Ave. San Francisco Del Monte
Quezon City

Attention : Mr. Simeon A. Atencio

Subject : EL MAVIC INVEST. CO., INC. PROPERTY NEW CSS CONSTRUCTION

Dear Mr. Atencio:

Per your letter dated May 22, 1999,[39] we are officially terminating your management and supervision works for the abovementioned subject effective May 20, 1999.

We are committed to pay for the services you have rendered, however fifteen percent of your contract will be on hold for retention and a certain percentage amount for liquidated damages if any, our client

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[38] CA *rollo*, p. 113.

[39] Neither of the parties attached this particular letter to the records of the case, nor discussed its contents in any of their pleadings.

required [sic] us to pay. We will release this on hold payment as soon as we received [sic] the final acceptance from our client.

Thank you for your services and assistance regarding this project.

Very truly yours,

(signed)
Armando K. Tejada
General Manager[40]

The NLRC held that JARL, through this letter, clearly informed Atencio of its decision to terminate his employment as its chief operating manager. Having been accorded due process, Atencio is not entitled to backwages.[41]

The NLRC further held that Atencio admitted in the above letter receiving the total amount of ₱1,891,509.50 from JARL. Since the amount he admittedly received from JARL exceeds Safemark's demand in the letter dated June 2, 1999 (wherein Atencio's company demanded from JARL the amount of ₱1,702,051.84 only), the excess payment already covers the alleged unpaid salaries and 13th month pay. Thus, Atencio is not entitled to further monetary awards.[42]

The NLRC dismissed Atencio's complaint thus:

WHEREFORE, premises considered, the decision appealed from is hereby SET ASIDE and a new one entered dismissing this case for lack of merit.

SO ORDERED.[43]

Atencio sought a reconsideration[44] of the NLRC Decision, which it denied for lack of merit.[45]

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[40] CA *rollo*, p. 115.

[41] *Id.* at 26-27.

[42] *Id.* at 27-28.

[43] *Id.* at 28.

[44] *Id.* at 85-90.

[45] *Id.* at 30-31.

Atencio then appealed to the CA, seeking the reinstatement of the Labor Arbiter's Decision.[46]

Ruling of the Court of Appeals[47]

The appellate court clarified that the parties do not dispute the finding that JARL terminated Atencio's employment for a just cause. The only issue before it is the propriety of the monetary awards granted by the Labor Arbiter but deleted by the NLRC.

The CA held that Atencio's dismissal was ineffectual for the employer's failure to observe the procedural requirements for a proper termination of employment. *First,* the law requires the employer to inform the employee in writing of the charges against him, which notice should be served at the employee's last address. No such notice is extant on the records. *Second*, the law requires the employer to give the employee an opportunity to explain his or her side before the employer terminates the employment. The CA found no evidence that JARL gave Atencio such an opportunity ***before*** it dismissed him as its chief operating manager. The letter that the NLRC highlighted was written on June 16, 1999, which is *after* Atencio's termination from employment on May 20, 1999. The CA determined that according the employee an opportunity to be heard after he has already been terminated does not comply with the requirement of law. *Third*, the law requires a written notice of termination duly served on the dismissed employee. Contrary to the NLRC's findings, the May 24, 1999 letter does not terminate Atencio's employment from JARL, but only the services of Atencio's construction company from the Caltex project.[48] Due to the violations of the procedural requirements, the CA determined that Atencio is entitled to nominal damages in the amount of ₱30,000.00.[49]

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[46] *Id.* at 15; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[47] *Id.* at 175-186.

[48] *Id.* at 180-183.

[49] *Id.* at 183.

The appellate court also reversed the NLRC with respect to the issue of the unpaid salaries and 13th month pay. It held that the party who pleads payment has the burden of proving his allegation.[50] The employer should have presented the pertinent personnel files, payrolls, records, remittances, and other similar documents, which are in its custody and control. JARL did not present any of these relevant documents in support of its contention that it has duly paid Atencio for his services as chief operating manager.[51] JARL's failure to produce said evidence gives the impression that Atencio had not been paid.

Contrary to the NLRC's findings, the CA held that Safemark's official receipts are not sufficient proof of payment of Atencio's salaries. These receipts do not manifest that the amounts received by Safemark, or any portion thereof, is intended as payment of Atencio's salaries.[52] Thus, it ordered JARL and Tejada to pay Atencio's unpaid salaries amounting to ₱165,000.00 and pro-rated 13th month pay of ₱12,500.00.

The appellate court denied the employer's motion for reconsideration[53] in its Resolution dated December 8, 2006.[54]

Petitioners filed the instant petition seeking the reinstatement of the NLRC Decision, which dismissed Atencio's complaint.[55]

Issues

Whether petitioners were able to prove their substantial compliance with the procedural due process requirements

Whether the receipts issued by Safemark evidencing JARL's payment for "Professional Services" suffice as proof of payment of salaries and 13th month pay

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[50] *Id.* at 184.

[51] *Id.*

[52] *Id.* at 184-185.

[53] *Id.* at 187-193.

[54] *Id.* at 197-198.

[55] Petition, p. 10; *rollo*, p. 18.

Our Ruling

Compliance with procedural due process requirements

Article 277(b) of Presidential Decree No. 442 or the Labor Code of the Philippines requires according the employee both notice and hearing, thus:

> Art. 277 — *MISCELLANEOUS PROVISIONS*
>
> x x x x x x x x x
>
> (b) x x x, [T]he employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations x x x.

Section 2(d), Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code expounds on the procedural due process requirements that every employer must observe in a termination of employment based on a just cause:

> Section 2. *Security of Tenure.* — x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
>
> (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.
>
> (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The Court explained the purposes of the two notices:

The first notice, which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge and ample opportunity to be heard and defend himself with the assistance of a representative, if he so desires. This is in consonance with the express provision of the law on the protection to labor and the broader dictates of procedural due process. Non-compliance therewith is fatal because these requirements are conditions *sine qua non* before dismissal may be validly effected.[56]

The Court agrees with the shared conclusions of the Labor Arbiter and the appellate court that petitioners' evidence fails to prove their contention that they afforded Atencio with due process. The June 21, 1999 letter, which allegedly proves Atencio's knowledge of the charges against him, and which allegedly constitutes Atencio's explanation, clearly discusses an entirely different topic — which is the removal of his construction company from the Caltex project. In the letter, Atencio states that he was wrong for assuming that there was a subcontracting agreement between his firm and JARL. He took responsibility for the misunderstanding between them and apologized. Nowhere in the said letter does Atencio refer to the charges, which JARL mentioned before the Labor Arbiter as the causes for his dismissal. Logically, he did not also explain himself as regards the said charges.

As for the May 24, 1999 letter, which allegedly constitutes the notice of termination of Atencio's employment as JARL's chief operating manager, the Court agrees with the CA's appreciation that the said letter involves the termination of the subcontracting agreement between JARL and Atencio's company,

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[56] *Austria v. National Labor Relations Commission,* 371 Phil. 340, 357 (1999).

and not the termination of Atencio's employment. This is bolstered by the fact that the said letter is not addressed solely to Atencio, which should have been the case if it were a letter terminating his employment. Instead, it is addressed to Safemark, with Atencio in the attention byline, which supports the conclusion that this letter involves a contract of *the* corporation, and not of Atencio only. Moreover, petitioners' reservation in the May 24, 1999 letter, which states that JARL will retain a 15% portion of the contract price until Caltex has accepted the project, is expected in a subcontract agreement, but not in employment contracts. Clearly, the letter does not meet the statutory requirement of notice of termination of employment.

The Court thus affirms the appellate court's ruling that petitioners' failure to observe the two-notice rule under Article 277(b) of the Labor Code entitles the respondent to nominal damages, in accordance with *Agabon v. National Labor Relations Commission*.[57]

Payment of salaries and 13th month pay

With respect to the issue of unpaid salaries and 13th month pay, the Court agrees with the appellate court that petitioners' evidence does not support their contention of payment.

When there is an allegation of nonpayment of salaries and other monetary benefits, it is the employer's burden to prove its payment to its employee.[58] The employer's evidence must show, with a reasonable degree of certainty, that it paid and that the workers actually received the payment. "The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents x x x are not in the possession of the worker but [are] in the custody and absolute control of the employer."[59]

In the case at bar, the two official receipts issued by Safemark, and offered as JARL's evidence, only prove that JARL made

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[57] 485 Phil. 248, 288 (2004).

[58] *Id.* at 289.

[59] *Id.*

a total partial payment of ₱1,891,509.50 to the said company for its "professional services." Since JARL admits that the said company actually rendered services for JARL on its Caltex project, the payment can only be assumed as covering for the said services. There is nothing on the face of the receipts to support the conclusion that Atencio (and not his company) received it as payment for his service as a JARL employee.

Moreover, JARL's contention that out of the ₱1,891,509.50 payment, only ₱1,702,051.81 thereof pertains to Safemark, while the balance of ₱189,457.69 pertains to Atencio's salaries is not supported by the attending circumstances. It will be remembered that JARL made the first payment of ₱1,074,173.50 to Safemark on May 12, 1999.[60] After such payment, Atencio sent to JARL on June 2, 1999 a summary of cost of materials, labor and equipment rental totaling ₱1,702,051.81.[61] Two days later, JARL paid Safemark the amount of ₱817,336.00 as partial payment for Professional Services.[62] Naturally, the last payment of ₱817,336.00 should be deducted from the last demand, which was for ₱1,702,051.81. Thus, the attending facts reveal that, instead of an overpayment, JARL still owed Safemark the amount of ₱884,715.81. Without proof of the alleged excess payment, JARL's contention has no leg to stand on. The CA was therefore correct in awarding Atencio his unpaid salaries and pro-rated 13th month pay.

WHEREFORE, premises considered, the Petition is **DENIED.** The assailed November 29, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 80517 is **AFFIRMED.**

SO ORDERED.

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

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[60] CA *rollo,* p. 116.

[61] *Id.* at 118.

[62] *Id.* at 116.

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

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

SECOND DIVISION

[G.R. No. 186169. August 1, 2012]

MYLENE CARVAJAL, *petitioner, vs.* **LUZON DEVELOPMENT BANK and/or OSCAR Z. RAMIREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW CAN BE RAISED THEREIN; EXCEPTIONS; PRESENT.— Petitioner seeks to limit the issues to her employment status and backwages, her basis being that the illegality of her dismissal has already been finally determined by the Labor Arbiter. We disagree. As We noted, the facts show that the illegality of petitioner's dismissal was an issue that was squarely before the NLRC. When the NLRC decision was reversed by the Court of Appeals, from which the issue was elevated to us, we had a situation where "the findings of facts are conflicting." Thus, we find applicable the rule that while generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the rule admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The petition comes within the purview of exception (5) and by analogy, exception (7). Hence, the Court resolves to scour the records of this case.

2. ID.; ID.; AN APPEAL ONCE ACCEPTED BY THE SUPREME COURT, THROWS THE ENTIRE CASE OPEN TO REVIEW.— Truly, it is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYEE; GROUNDS FOR TERMINATION OF EMPLOYMENT.— A probationary employee, like a regular employee, enjoys security of tenure. However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, *i.e.,* the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

4. ID.; ID.; ID.; THE RULE ON REASONABLE STANDARDS MADE KNOWN TO THE EMPLOYEE PRIOR TO ENGAGEMENT SHOULD NOT BE USED TO EXCULPATE A PROBATIONARY EMPLOYEE WHO ACTS IN A MANNER CONTRARY TO BASIC KNOWLEDGE AND COMMON SENSE, IN REGARD TO WHICH THERE IS NO NEED TO SPELL OUT A POLICY OR STANDARD TO BE MET.— It is evident that the primary cause of respondent's dismissal from her probationary employment was her "chronic tardiness." At the very start of her employment, petitioner already exhibited poor working habits. Even during her first month on the job, she already incurred eight (8) tardiness. In a Memorandum dated 11 December 2003, petitioner was warned that her tardiness might affect her opportunity to become a permanent or regular employee. And petitioner did not provide a satisfactory explanation for the cause of her tardiness. Punctuality is a reasonable standard imposed on every employee, whether in

government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the bank. As we have aptly stated in *Aberdeen Court, Inc. v. Agustin, Jr.*, the rule on reasonable standards made known to the employee prior to engagement should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met.

5. ID.; ID.; ID.; CONCEPT OF PROBATIONARY EMPLOYMENT. — Satisfactory performance is and should be one of the basic standards for regularization. Naturally, before an employer hires an employee, the former can require the employee, upon his engagement, to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement. This is the concept of probationary employment which is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the satisfaction of the employer that he has the qualifications to meet the reasonable standards for permanent employment.

6. ID.; ID.; TERMINATION OF PROBATIONARY EMPLOYMENT; GROUNDS; FAILURE TO QUALIFY IN ACCORDANCE WITH THE STANDARDS PRESCRIBED BY EMPLOYER; DOES NOT REQUIRE NOTICE AND HEARING; BASIC REQUIREMENTS OF DUE PROCESS, COMPLIED WITH EMPLOYMENT.— In finding for illegal dismissal, the Labor Arbiter held that the dismissal was without due process. We hold otherwise. As elucidated by this Court in *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.:* Unlike under the first ground for the valid termination of probationary employment which is for just cause, the second ground [failure to qualify in accordance with the

standards prescribed by employer] does not require notice and hearing. Due process of law for this second ground consists of making the reasonable standards expected of the employee during his probationary period known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process regarding the second ground lies, and not in notice and hearing as in the case of the first ground. As we have underscored, respondent complied with the basic requirements of due process as defined in *Magtibay, Jr.* Petitioner had more than sufficient knowledge of the standards her job entails. Respondent had not been remiss in reminding petitioner, through memoranda, of the standards that should be observed in aspiring for regularization. Petitioner was even notified in two (2) memoranda regarding the bank's displeasure over her chronic tardiness. Every memorandum directed petitioner to explain in writing why she should not be subjected to disciplinary action. Each time, petitioner acknowledged her fault and assured the bank that she would, in her daily schedules, make adjustments to make amends. This certainly is compliance with due process. Taken together with her low performance rating and other infractions, petitioner was called by the head of Human Resources who discussed with her the reasons for the discontinuance of her probationary appointment before she was formally served the termination letter on that very same day. There was, in this case, full accordance to petitioner of the opportunity to be heard.

7. ID.; ID.; ID.; IF THE TERMINATION IS FOR CAUSE, THE PROBATIONARY EMPLOYEE MAY BE TERMINATED ANYTIME DURING THE PROBATION AND THE EMPLOYER DOES NOT HAVE TO WAIT UNTIL THE PROBATION PERIOD IS OVER; CLAIM FOR BACKWAGES MUST FAIL WHERE THE DISMISSAL WAS FOR A VALID REASON.— Petitioner was validly dismissed from probationary employment before the expiration of her 6-month probationary employment contract. If the termination is for cause, it may be done anytime during the probation; the employer does not have to wait until the probation

period is over. With a valid reason for petitioner's dismissal coupled with the proper observance of due process, the claim for backwages must necessarily fail.

APPEARANCES OF COUNSEL

Banzuela Velandrez & Associates for petitioner.
De Jesus & Associates Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

In this Petition for Review on *Certiorari*, petitioner Mylene Carvajal assails the Decision[1] of the Court of Appeals, Second Division, dated 20 August 2008 which dismissed her complaint for illegal dismissal. The Court of Appeals reversed and set aside the Resolution[2] of the National Labor Relations Commission (NLRC) affirming with modification the Labor Arbiter's Decision[3] finding petitioner's dismissal as illegal and ordering reinstatement or payment of backwages and attorney's fees.

The facts are as follows:

Petitioner Mylene Carvajal was employed as a trainee-teller by respondent Luzon Development Bank (Bank) on 28 October 2003 under a six-month probationary employment contract, with a monthly salary of ₱5,175.00. Respondent Oscar Ramirez is the President and Chief Executive Officer of the Bank.

On 10 December 2003, the Bank sent petitioner a Memorandum[4] directing her to explain in writing why she should

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[1] Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Portia Alino-Hormachuelos and Hakim S. Abdulwahid, concurring. *Rollo*, pp. 168-183.

[2] Penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring. *Id.* at 64-70.

[3] Presided by Labor Arbiter Clarito D. Demaala, Jr. *Id.* at 112-117.

[4] *Id.* at 102.

not be subjected to disciplinary action for "chronic tardiness" on November 3, 5, 6, 14, 18, 20, 21 and 28 2003 or for a total of eight (8) times. Petitioner apologized in writing and explained that she was in the process of making adjustments regarding her work and house chores.[5] She was thus reprimanded in writing and reminded of her status as a probationary employee.[6] Still, on 6 January 2004, a second Memorandum was sent to petitioner directing her to explain why she should not be suspended for "chronic tardiness" on 13 occasions or on December 2, 3, 4, 5, 8, 10, 11, 12, 15, 16, 18, 22, and 23 2003. On 7 January 2004, petitioner submitted her written explanation and manifested her acceptance of the consequences of her actions.[7] On 12 January 2004, petitioner was informed, through a Memorandum,[8] of her suspension for three (3) working days without pay effective 21 January 2004. Finally, in a Memorandum dated 22 January 2004, petitioner's suspension was lifted but in the same breath, her employment was terminated effective 23 January 2004.[9]

Hence, petitioner's filing of the Complaint for illegal dismissal before the Labor Arbiter. Petitioner alleged, in her position paper, that the following were the reasons for her termination: 1) she is not an effective frontliner; 2) she has mistakenly cleared a check; 3) tardiness; 4) absenteeism; and 5) shortage.[10]

In their position paper, respondents averred that petitioner was terminated as a probationary employee on three grounds, namely: 1) chronic tardiness; 2) unauthorized absence; and 3) failure to perform satisfactorily as a probationary employee. Respondents explained that petitioner was a chronic violator of the bank's rules and regulations on tardiness and absenteeism. Aside from her numerous tardiness, petitioner was absent without

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[5] *Id.* at 103.

[6] *Id.* at 104.

[7] *Id.* at 106.

[8] *Id.* at 107.

[9] *Id.* at 110.

[10] Records, pp. 3-4.

leave for 2 days. She also cleared a check which later turned out to be a bounced check. Finally, petitioner garnered only a rating of 2.17, with 4 being the highest and 1 the lowest, in her performance evaluation.

On 9 June 2005, the Labor Arbiter ruled that petitioner was illegally dismissed. Respondents were held solidarily liable for payment of money claims. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is rendered declaring that complainant as probationary employee was illegally dismissed. Respondents are ordered to immediately reinstate complainant to her former position, without loss of any seniority rights and other monetary benefits. However, if reinstatement is no longer feasible due to strained relationship between the parties, respondents are further ordered to pay complainant, jointly and severally the amount of ₱20,070.38, representing full backwages of complainant from the time of her illegal dismissal up to the end of her probationary contract of employment with respondent bank. Plus, 10% of the monetary award as attorney's fee.[11]

The Labor Arbiter found that petitioner was dismissed without due process because "she was not afforded the notice in writing informing her of what respondent (the Bank) would like to bring out to her for the latter to answer in writing." The Labor Arbiter also did not consider "unsatisfactory performance" as a valid ground to shorten the six-month contract of petitioner with the Bank.[12]

The decision of the Labor Arbiter was partially appealed to the NLRC by petitioner. Petitioner contended that she should be considered a regular employee and that the computation by the Labor Arbiter of backwages up to the end of her probationary contract is without basis. In its Comment, respondent argued against the illegality of petitioner's dismissal and their joint and solidary liability to pay complainant's monetary claims. On 31 May 2006, the NLRC affirmed with modification the

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[11] *Rollo*, p. 117.

[12] *Id.* at 116.

Labor Arbiter's Decision and ordered for petitioner's reinstatement, to wit:

> WHEREFORE, premises considered, the assailed decision is hereby affirmed with MODIFICATION ordering the respondents to reinstate the complainant to her former position, without loss of any seniority rights and other monetary benefits and to pay her full backwages from the date of her dismissal to the date of her reinstatement, actual or in payroll.
>
> All other aspect[s] of the assailed decision stands.[13]

Respondents filed a motion for reconsideration but the NLRC denied the same in a Resolution[14] dated 20 July 2006.

In a petition for *certiorari* filed by respondents, the Court of Appeals rendered the 20 August 2008 Decision reversing the NLRC ruling, thus:

> IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED. The assailed NLRC Resolution in NLRC CA No. 046866-05 dated May 31, 2006 which affirmed with modification the Decision of the Labor Arbiter in NLRC Case No. RAB IV-2-18910-04-L dated June 9, 2005 is hereby REVERSED and SET ASIDE. All monetary liabilities decreed in the Labor Arbiter's Decision against petitioners are hereby SET ASIDE. The Complaint for illegal dismissal, money claims and damages is ORDERED DISMISSED.[15]

The Court of Appeals found that petitioner is not entitled to backwages because she was rightfully dismissed for failure to meet the employment standards.

The motion for reconsideration filed by petitioner was likewise dismissed.

Petitioner elevated the case to this Court *via* petition for review on *certiorari*, raising the following errors allegedly committed by the Court of Appeals:

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[13] *Id.* at 69.

[14] *Id.* at 72-73.

[15] *Id.* at 183.

THE HON. COURT OF APPEALS COMMITTED ERRORS IN LAW IN DECIDING THE ISSUE ON PETITIONER'S VALIDITY OF DISMISSAL DESPITE SUCH ISSUE HAD LONG BEC[O]ME FINAL AND EXECUTORY FOR FAILURE OF PRIVATE RESPONDENT LUZON DEVELOPMENT BANK TO APPEAL THE DECISION OF THE LABOR ARBITER FINDING PETITIONER'S DISMISSAL ILLEGAL.

THE HON. COURT OF APPEALS COMMITTED ERROR IN LAW IN DECIDING ISSUES WHICH WERE NOT RAISED BEFORE THE NLRC ON APPEAL.[16]

Petitioner harps on the finality of the Labor Arbiter's ruling on illegal dismissal and questions the judgment of the Court of Appeals in discussing and upholding the validity of her dismissal.

Indeed, respondents did not assail the ruling of the Labor Arbiter. It was in fact petitioner who partially appealed the Labor Arbiter's computation of backwages. Provided with the opportunity, respondents assailed the Labor Arbiter's Decision in their Comment to the Partial Appeal. Upon affirmance of the Labor Arbiter's Decision by the NLRC, respondent filed a petition for *certiorari* with the Court of Appeals insisting on the validity of the dismissal.

Petitioner seeks to limit the issues to her employment status and backwages, her basis being that the illegality of her dismissal has already been finally determined by the Labor Arbiter.

We disagree. As We noted, the facts show that the illegality of petitioner's dismissal was an issue that was squarely before the NLRC. When the NLRC decision was reversed by the Court of Appeals, from which the issue was elevated to us, we had a situation where "the findings of facts are conflicting." Thus, we find applicable the rule that while generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the rule admits of certain exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference

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[16] *Id.* at 18.

made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[17]

The petition comes within the purview of exception (5) and by analogy, exception (7). Hence, the Court resolves to scour the records of this case.

Truly, it is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.[18]

Petitioner premised her appeal on Article 279 of the Labor Code which provides:

> Art. 279. Security of Tenure — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full

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[17] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, 30 January 2009, 577 SCRA 500, 504 citing *Uy v. Villanueva*, G.R. No. 157851, 29 June 2007, 526 SCRA 73, 83-84.

[18] *Aliling v. Feliciano*, G.R. No. 185829, 25 April 2012; *Maricalum Mining Corporation v. Hon. Brion*, 517 Phil. 309, 320 (2006) citing *Sociedad Europea De Financiacion, S.A v. Court of Appeals*, 271 Phil. 101, 110-111 (1991) citing further *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, 118 Phil. 150, 156 (1963); *Miguel v. Court of Appeals*, 140 Phil. 304, 312 (1969).

backwages, inclusive of allowances, and to his other benefits or other monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Petitioner maintained that she became a regular employee by virtue of Book VI, Rule 1, Section 6(d) of the Implementing Rules of the Labor Code which states:

> (d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

It is beyond dispute that petitioner was hired as a probationary employee. Whether her employment status ripened into a regular one is the point of contention.

Under the very provision cited by petitioner, we cannot, by any hermeneutics, see petitioner's employment status as regular. At the time of her engagement and as mandated by law, petitioner was informed in writing of the standards necessary to qualify her as a regular employee. Her appointment letter[19] reads:

Dear Ms. Carvajal:

We are pleased to confirm your appointment as follows:

Position	: Trainee- Teller
Assignment	: Main Branch
Status	: Probationary (6 months)
Effectivity	: October 28, 2003
Remuneration	: ₱5,175.00 (262)

Possible extension of this contract will depend on the job requirements of the Bank and your overall performance. Performance review will be conducted before possible renewal can take effect.

The Bank reserves the right to immediately terminate this contract in the event of a below satisfactory performance, serious disregard of company rules and policies and other reasons critical to its interests.

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[19] *Rollo*, p. 101.

Kindly sign below if the above conditions are acceptable. We look forward to a performance commensurate to your presented capabilities.

Very truly yours,

[sgd]
Oscar S. Ramirez
Vice President

CONFORME:

[sgd]
Mylene T. Carvajal [Emphasis Supplied]

Petitioner knew, at the time of her engagement, that she must comply with the standards set forth by respondent and perform satisfactorily in order to attain regular status. She was apprised of her functions and duties as a trainee-teller. Respondent released to petitioner its evaluation[20] of her performance. Petitioner was found wanting. Even the NLRC upheld petitioner's probationary status, thus:

> During the time that the complainant was dismissed by respondents, she was holding the position of a trainee-teller on probationary status. Thus, with the Labor Arbiter's finding of illegal dismissal, which the respondent left unchallenged, **the complainant is entitled to be reinstated to resume the functions of a trainee-teller, no more no less. Reinstatement is not synonymous with regularization. The determination of whether the complainant can qualify to become one of respondent bank's regular employees is still within the well recognized management's prerogative.**[21] [Emphasis Supplied]

A probationary employee, like a regular employee, enjoys security of tenure. However, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 281 of the Labor Code, *i.e.*, the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable

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[20] *Id.* at 108-109.

[21] *Id.* at 68.

standards made known by the employer to the employee at the time of the engagement. Thus, the services of an employee who has been engaged on probationary basis may be terminated for any of the following: (1) a just or (2) an authorized cause and (3) when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[22]

It is evident that the primary cause of respondent's dismissal from her probationary employment was her "chronic tardiness." At the very start of her employment, petitioner already exhibited poor working habits. Even during her first month on the job, she already incurred eight (8) tardiness. In a Memorandum dated 11 December 2003, petitioner was warned that her tardiness might affect her opportunity to become a permanent or regular employee. And petitioner did not provide a satisfactory explanation for the cause of her tardiness.

Punctuality is a reasonable standard imposed on every employee, whether in government or private sector. As a matter of fact, habitual tardiness is a serious offense that may very well constitute gross or habitual neglect of duty, a just cause to dismiss a regular employee. Assuming that petitioner was not apprised of the standards concomitant to her job, it is but common sense that she must abide by the work hours imposed by the bank. As we have aptly stated in *Aberdeen Court, Inc. v. Agustin, Jr.*,[23] the rule on reasonable standards made known to the employee prior to engagement should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met.

Respondent also cited other infractions such as unauthorized leaves of absence, mistake in clearing of a check, and underperformance. All of these infractions were not refuted by petitioner. The Labor Arbiter failed to discuss the veracity of

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[22] *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, 19 January 2011, 640 SCRA 135, 142 citing *Omnibus Rules Implementing the Labor Code*, Book VI, Rule I, Sec. 6 and 6(c).

[23] 495 Phil. 706, 716-717 (2005).

these grounds. It focused on unsatisfactory performance and concluded that such is not a sufficient ground to terminate the probationary employment. The Labor Arbiter relied on its own misappreciation of facts for a finding that, resultingly, is contradicted by the evidence on record.

More importantly, satisfactory performance is and should be one of the basic standards for regularization. Naturally, before an employer hires an employee, the former can require the employee, upon his engagement, to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement. This is the concept of probationary employment which is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the satisfaction of the employer that he has the qualifications to meet the reasonable standards for permanent employment.[24]

Moreover, in the letter of appointment, respondents reserved the right to "immediately terminate this contract in the event of a below satisfactory performance, serious disregard of company rules and policies and other reasons critical to its interests."

In finding for illegal dismissal, the Labor Arbiter held that the dismissal was without due process. We hold otherwise. As elucidated by this Court in *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.:*[25]

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[24] *Tamson's Enterprises, Inc. v. Court of Appeals*, G.R. No. 192881, 16 November 2011 citing *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez, supra* note 22 at 142 citing further *Omnibus Rules Implementing the Labor Code,* Book VI, Rule I, Sec. 6; *Magis Young Achievers' Learning Center v. Manalo*, G.R. No. 178835, 13 February 2009, 579 SCRA 421, 431-432 citing *International Catholic Migration Commission v. National Labor Relations Commission*, 251 Phil. 560, 567 (1989).

[25] G.R. No. 164532, 24 July 2007, 528 SCRA 355.

> Unlike under the first ground for the valid termination of probationary employment which is for just cause, the second ground [failure to qualify in accordance with the standards prescribed by employer] does not require notice and hearing. Due process of law for this second ground consists of making the reasonable standards expected of the employee during his probationary period known to him at the time of his probationary employment. By the very nature of a probationary employment, the employee knows from the very start that he will be under close observation and his performance of his assigned duties and functions would be under continuous scrutiny by his superiors. It is in apprising him of the standards against which his performance shall be continuously assessed where due process regarding the second ground lies, and not in notice and hearing as in the case of the first ground.[26]

As we have underscored, respondent complied with the basic requirements of due process as defined in *Magtibay, Jr.* Petitioner had more than sufficient knowledge of the standards her job entails. Respondent had not been remiss in reminding petitioner, through memoranda, of the standards that should be observed in aspiring for regularization.

Petitioner was even notified in two (2) memoranda regarding the bank's displeasure over her chronic tardiness. Every memorandum directed petitioner to explain in writing why she should not be subjected to disciplinary action. Each time, petitioner acknowledged her fault and assured the bank that she would, in her daily schedules, make adjustments to make amends. This certainly is compliance with due process. Taken together with her low performance rating and other infractions, petitioner was called by the head of Human Resources who discussed with her the reasons for the discontinuance of her probationary appointment before she was formally served the termination letter on that very same day. There was, in this case, full accordance to petitioner of the opportunity to be heard.

In sum, petitioner was validly dismissed from probationary employment before the expiration of her 6-month probationary employment contract. If the termination is for cause, it may be

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[26] *Id.* at 364.

done anytime during the probation; the employer does not have to wait until the probation period is over.[27]

With a valid reason for petitioner's dismissal coupled with the proper observance of due process, the claim for backwages must necessarily fail.

In view of the foregoing, we find no reason to disturb the findings and conclusions of the Court of Appeals.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Abad,[*] *Villarama, Jr.,*[**] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 187713. August 1, 2012]

RADIO PHILIPPINES NETWORK, INC., and/or MIA CONCIO, President, LEONOR LINAO, General Manager, LOURDES ANGELES, HRD Manager, and IDA BARRAMEDA, AGM-Finance, *petitioners, vs.* **RUTH F. YAP, MA. FE DAYON, MINETTE BAPTISTA, BANNIE EDSEL SAN MIGUEL, and MARISA LEMINA,** *respondents.*

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[27] Azucena, Jr., *EVERYONE'S LABOR CODE*, p. 325 citing *International Catholic Migration Commission v. National Labor Relations Commission*, *supra* note 24 at 568-569.

[*] Per S.O. No. 1278 dated 1 August 2012.

[**] Per S.O. No. 1274 dated 30 July 2012.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FAILURE TO COMPLY WITH ANY OF THE DOCUMENTARY REQUIREMENTS, SUCH AS ATTACHMENT OF RELEVANT PLEADINGS, SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION. —** The requirement in Section 1 of Rule 65 of the Rules of Court to attach relevant pleadings to the petition is read in relation to Section 3, Rule 46, which states that failure to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground for the dismissal of the petition."

2. **ID.; RULES OF PROCEDURE; THE SUPREME COURT SETS ASIDE PROCEDURAL DEFECTS TO CORRECT A PATENT INJUSTICE, PROVIDED THAT CONCOMITANT TO A LIBERAL APPLICATION OF THE RULES OF PROCEDURE IS AN EFFORT ON THE PART OF THE PARTY INVOKING LIBERALITY TO AT LEAST EXPLAIN ITS FAILURE TO COMPLY WITH THE RULES.—** This Court invariably sustains the appellate court's dismissal of a petition on technical grounds, unless considerations of equity and substantial justice present cogent reasons to hold otherwise. Leniency cannot be accorded absent valid and compelling reasons for such procedural lapse. We are not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice, provided that concomitant to a liberal application of the rules of procedure is an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules. We find that an adequate justification has been proffered by the petitioners for their supposed procedural shortcoming.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT ORDER IS IMMEDIATELY SELF-EXECUTORY WITHOUT NEED OF A WRIT OF EXECUTION; REPORTORIAL REQUIREMENT; THE OPTION OF PAYROLL REINSTATEMENT BELONGS TO THE EMPLOYER.—** In the case of *Pioneer Texturizing Corp. v. NLRC*, it was held that an order reinstating a dismissed employee is immediately self-executory without need of a writ of execution, in accordance with the third paragraph of Article 223 of the

Labor Code. The article states that the employee entitled to reinstatement "shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll." Thus, even if the employee is able and raring to return to work, the option of payroll reinstatement belongs to the employer The new NLRC Rules of Procedure, which took effect on January 7, 2006, now requires the employer to submit a report of compliance within ten (10) calendar days from receipt of the LA's decision, disobedience to which clearly denotes a refusal to reinstate. The employee need no longer file a motion for issuance of a writ of execution, since the LA shall thereafter *motu proprio* issue the writ. With the new rules, there will be no difficulty in determining the employer's intransigence in immediately complying with the order.

4. ID.; ID.; ID.; THE EXERCISE OF MANAGEMENT PREROGATIVES WILL BE UPHELD PROVIDED IT IS NOT DONE IN BAD FAITH OR WITH ABUSE OF DISCRETION.— The general policy of labor law is to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld. Neither does labor law authorize the substitution of judgment of the employer in the conduct of his business, unless it is shown to be contrary to law, morals, or public policy. The only condition is that the exercise of management prerogatives should not be done in bad faith or with abuse of discretion.

5. ID.; ID.; ID.; ID.; IN CASE OF STRAINED RELATIONS OR NON-AVAILABILITY OF POSITIONS, THE EMPLOYER IS GIVEN THE OPTION TO REINSTATE THE EMPLOYEE MERELY IN THE PAYROLL IN ORDER TO AVOID THE INTOLERABLE PRESENCE IN THE WORKPLACE OF THE UNWANTED EMPLOYEE.— It has been held that in case of strained relations or non-availability of positions, the employer is given the option to reinstate the employee merely in the payroll,

precisely in order to avoid the intolerable presence in the workplace of the unwanted employee. The Court explained in *Maranaw Hotel Resort Corporation v. NLRC*, thus: This option [to reinstate a dismissed employee in the payroll] is based on practical considerations. The employer may insist that the dismissal of the employee was for a just and valid cause and the latter's presence within its premises is intolerable by any standard; or such presence would be inimical to its interest or would demoralize the co-employees. Thus, while payroll reinstatement would in fact be unacceptable because it sanctions the payment of salaries to one not rendering service, it may still be the lesser evil compared to the intolerable presence in the workplace of an unwanted employee. The circumstances of the present case have more than amply shown that the physical restoration of the respondents to their former positions would be impractical and would hardly promote the best interest of both parties. Respondents have accused the petitioners of being directly complicit in the plot to expel them from the union and to terminate their employment, while petitioners have charged the respondents with trying to sabotage the peace of the workplace in "furthering their dispute with the union." The resentment and enmity between the parties have so strained their relationship and even provoked antipathy and antagonism, as amply borne out by the physical clashes that had ensued every time the respondents attempted to enter the RPN compound, that respondents' presence in the workplace will not only be distracting but even disruptive, to say the least.

6. ID.; ID.; ID.; ID.; THE MANAGEMENT'S RIGHT TO FORMULATE REASONABLE RULES TO REGULATE THE CONDUCT OF ITS EMPLOYEES FOR THE PROTECTION OF ITS INTERESTS IS RECOGNIZED BY THE COURT.— This Court has long recognized the management's right to formulate reasonable rules to regulate the conduct of its employees for the protection of its interests. *Maranaw Hotel* recognizes that the management's option to reinstate a dismissed employee in the payroll is precisely so that the intolerable presence of an unwanted employee in the workplace can be avoided or prevented. The records have shown how violent incidents have attended the respondents' every attempt to enter the company compound. While security guards were posted at the gate with strict orders to bar their entry, there is no belittling what provocation the respondents unleashed

by their militant persistence to enter, and even willingness to engage the guards in physical tussle. It can hardly be considered unreasonable and arbitrary, therefore, for the company to allow respondents go nearer than at the gate.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; EXPLAINED.— Indirect contempt refers to contumacious or stubbornly disobedient acts perpetrated outside of the court or tribunal and may include misbehaviour of an officer of a court in the performance of his official duties or in his official transactions; disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or a judge; any abuse or any unlawful interference with the process or proceedings of a court not constituting direct contempt; or any improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is *clearly and exactly defined*, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.

8. ID.; ID.; ID.; CONTEMPT POWER SHOULD BE EXERCISED ON THE PRESERVATIVE AND ONLY IN CASES OF CLEAR AND CONTUMACIOUS REFUSAL TO OBEY; CHARGE OF INDIRECT CONTEMPT FOUND WITHOUT BASIS.— The power to punish for contempt should be exercised on the preservative, not on the vindictive, principle. Only occasionally should a court invoke this inherent power in order to retain that respect, without which the administration of justice will falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice. It is not denied that after the order of reinstatement of the respondents, RPN forthwith restored them in its payroll without diminution of their benefits and privileges, or loss of seniority rights. They retained their entitlement to the benefits under the CBA. Respondents regularly received their salaries and benefits, notwithstanding that the company has been in financial straits. Any delays appear to have been due to misunderstandings

as to the exact place and time of the fortnightly payments, or because the respondents were tardy in collecting them from the Bank of Commerce at Broadcast City Branch or from the NLRC cashier. The petitioners tried proposing opening an ATM accounts for them, but the respondents rejected the idea. We are convinced under the circumstances that there was no sufficient basis for the charge of indirect contempt against the petitioners, and that the same was made without due regard for their right to exercise their management prerogatives to preserve the viability of the company and the harmony of the workplace. Indeed, the LA in the Order dated January 12, 2010 found no more legal basis to execute his Order dated May 3, 2007, and declared that the said order has been mooted by the petitioners' compliance.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioners.
Jose P. Calinao for Ruth Yap, *et al.*
Maria Luisa Ylagan Cortez for Marisa S. Lemina.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review of the Resolutions of the Court of Appeals (CA) dated November 14, 2008[1] and March 9, 2009,[2] respectively, dismissing the petition for *certiorari* and denying the motion for reconsideration thereof for petitioners' failure to attach certain pleadings in CA-G.R. SP No. 105945.

The Antecedent Facts

Petitioner Radio Philippines Network, Inc. (RPN), represented by the Office of the Government Corporate Counsel (OGCC),

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring, *rollo*, pp. 33-35.

[2] *Id.* at 38-41.

is a government sequestered corporation with address at Broadcast City, Capitol Hills Drive, Quezon City, while petitioners Mia Concio (Concio), Leonor Linao (Linao), Ida Barrameda (Barrameda) and Lourdes Angeles (Angeles) were the President, General Manager, Assistant General Manager (AGM) for Finance, and Human Resources Manager, respectively, of RPN who were impleaded and charged with indirect contempt, the subject matter of the present petition. Respondents Ruth F. Yap (Yap), Bannie Edsel B. San Miguel (San Miguel), Ma. Fe G. Dayon (Dayon), Marisa Lemina (Lemina) and Minette Baptista (Baptista) were employees of RPN and former members of the Radio Philippines Network Employees Union (RPNEU), the bargaining agent of the rank-and-file employees of the said company.

On November 26, 2004, RPN and RPNEU entered into a Collective Bargaining Agreement (CBA) with a union security clause providing that a member who has been expelled from the union shall also be terminated from the company. The CBA had a term of five (5) years, commencing on July 1, 2004 and expiring on June 30, 2009.

A conflict arose between the respondents and other members of RPNEU. On November 9, 2005, the RPNEU's Grievance and Investigation Committee recommended to the union's board of directors the expulsion of the respondents from the union. On January 24, 2006, the union wrote to RPN President Concio demanding the termination of the respondents' employment from the company.

On February 17, 2006, RPN notified the respondents that their employment would be terminated effective March 20, 2006,[3] whereupon the respondents filed with the Labor Arbiter (LA) a complaint for illegal dismissal and non-payment of benefits.

On September 27, 2006, the LA rendered a decision[4] ordering the reinstatement of the respondents with payment of backwages

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[3] *Id.* at 43.

[4] Under LA Eduardo G. Magno; *id.* at 42-47.

and full benefits and without loss of seniority rights after finding that the petitioners failed to establish the legal basis of the termination of respondents' employment. The LA also directed the company to pay the respondents certain aggregate monetary benefits.

On October 27, 2006, the petitioner, through counsel submitted a Manifestation and Compliance dated October 25, 2006 to the LA stating that:

"In compliance with the decision of the Labor Arbiter dated September 27, 2006, Respondent RPN9 most respectfully manifests that **it has complied** with the reinstatement of the complainants, namely: Ruth Yap, Ma. Fe Dayon, Bannie Edsel San Miguel, Marisa Lemina and Minette Baptista by way of payroll reinstatement."[5]

A copy of the said Manifestation was sent to the respondents by registered mail on even date.[6]

Alleging that there was no compliance yet as aforestated and that no notice was received, respondents filed with the LA a Manifestation and Urgent Motion to Cite for Contempt[7] dated November 3, 2006.

Therein, they narrated that on October 27, 2006, they went to RPN to present themselves to the petitioners for actual reinstatement to their former positions. They arrived while a mass was being celebrated at the lobby, at which they were allowed to attend while waiting for RPN General Manager Linao to meet them. Linao informed them that they had been reinstated, but only in the payroll, and that the company would endeavour to pay their salaries regularly despite its precarious financial condition. Four (4) days later, on October 31, 2006 at 11 a.m., the respondents returned to RPN to collect their salaries, it being a payday; but they were barred entry upon strict orders of Concio and Linao. The respondents returned in the afternoon but were likewise stopped by eight (8) guards now manning the gate.

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[5] *Id.* at 49.

[6] *Id.*

[7] *Id.* at 49-57.

Respondents nonetheless tried to push their way in, but the guards manhandled them, pulled them by the hair and arms and pushed them back to the street. Some even endured having their breasts mashed, their blouses pulled up and their bags grabbed away. This incident was reported to the police for the filing of charges. Later that afternoon, the respondents somehow managed to enter the RPN lobby. It was AGM for Finance Barrameda who came out, but instead of meeting them, Barrameda ordered the guards to take them back outside the gate, where she said they would be paid their salaries. Their removal was so forcible and violent that they sustained physical injuries and had to be medically treated. Claiming that RPNEU President Reynato Sioson also assisted the guards in physically evicting them, they concluded from their violent ouster that Concio and Linao played a direct role in their expulsion from RPNEU.

The respondents prayed that the LA issue an order finding Concio and Linao liable for contempt after hearing; that the respondents be reinstated with full benefits, or in case of payroll reinstatement, that they be paid every 15th and 30th of the month as with all regular employees; that their salaries shall be paid at the Cashier's Office, and finally, that the respondents shall not be prevented from entering the premises of RPN.[8]

On November 14, 2006, the respondents filed a Motion for the Issuance of Writ of Execution/Garnishment,[9] alleging that in addition to the violent events of October 31, 2006, the respondents were again forcibly denied entry into RPN to collect their 13th month pay on November 10, 2006. They prayed that a writ of execution/garnishment be issued in order to implement the decision of the LA.[10]

In their joint Opposition[11] to the respondents' Manifestation and Urgent Motion to Cite for Contempt, as well as the Motion

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[8] *Id.* at 55.

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

[10] *Id.* at 60.

[11] *Id.* at 61-67.

for the Issuance of Writ of Execution/Garnishment, the petitioners denied any liability for the narrated incidents, insisting that the respondents had been duly informed through a letter dated November 10, 2006 of their payroll reinstatement. The petitioners explained that because of the intra-union dispute between the respondents and the union leaders, they deemed it wise not to allow the respondents inside the company premises to prevent any more untoward incidents, and to release their salaries only at the gate. For this reason, the respondents were asked to open an ATM account with the Land Bank, Quezon City Circle Branch, where their salaries would be deposited every 5th and 20th day of the month, rather than on the 15th and 30th along with the other employees. "This measure was for the protection not only of complainants [herein respondents] but also for the other employees of RPN9 as well," according to the petitioners.[12]

On January 19, 2007, the respondents moved for the issuance of an *alias* writ of execution[13] covering their unpaid salaries for January 1-15, 2007, claiming that the petitioners did not show up at the agreed place of payment, and reiterating their demand to be paid on the 15th and 30th of the month at RPN, along with the rest of the employees. In their Opposition[14] dated January 30, 2007, the petitioners insisted that they could only pay the respondents' salaries on the 5th and 20th of the month, conformably with the company's cash flows.

On February 20, 2007, the petitioners manifested to the LA that the respondents could collect their salaries at the Bank of Commerce in Broadcast City Branch, Quezon City.[15] On March 9, 2007, the petitioners manifested that the respondents' salaries for the second half of February 2007 were ready for pick-up since March 5, 2007.[16] On March 15, 2007, the petitioners

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[12] *Id.* at 63.

[13] *Id.* at 68.

[14] *Id.* at 69-73.

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

[16] *Id.* at 76-77.

informed the LA that the respondents refused to collect their salaries. To prove their good faith, they stated that the respondents' salaries shall, henceforth, be deposited at the National Labor Relations Commission (NLRC)-Cashier on the 5th and 20th of every month.

Unswayed by these manifestations, the LA in his assailed Order[17] dated May 3, 2007, cited the petitioners for indirect contempt for "committing disobedience to lawful order." The *fallo* reads as follows:

> **WHEREFORE,** let a writ of execution be issued. [RPN] is ordered to reinstate the [respondents] in the payroll, pay their unpaid salaries computed above with deductions for SSS, income tax, union dues and other statutory deductions. [RPN] is also ordered to have the payment of the salaries of the [respondents] at the company's premises. [RPN] are (sic) also guilty of committing disobedience to the lawful order of this court and are (sic) therefore cited for indirect contempt and hereby ordered to pay the amount of [₱]700 for committing indirect contempt in every payroll period.
>
> **SO ORDERED.**[18]

On appeal, the NLRC dismissed the same in a Resolution dated May 27, 2008, and on August 15, 2008 it also denied the petitioners' motion for reconsideration.[19]

Thus, on November 3, 2008, the petitioners filed with the CA a petition for *certiorari* with prayer for a temporary restraining order and/or writ of preliminary injunction, docketed as CA-G.R. SP No. 105945. In its Resolution[20] dated November 14, 2008, the CA dismissed the petition for failure to attach copies of pertinent pleadings mentioned in the petition, namely: (a) respondents' Motion for the Issuance of an *Alias* Writ of Execution (Annex "H"); (b) petitioners' Opposition to said motion

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[17] *Id.* at 92-96.

[18] *Id.* at 95.

[19] *Id.* at 113-115.

[20] *Id.* at 33-35.

(Annex "I"); (c) petitioners' Manifestation dated February 20, 2007 (Annex "J"); (d) petitioners' Manifestation dated March 9, 2007 (Annex "K"); and (e) petitioners' Manifestation dated March 15, 2007 (Annex "L").

In their motion for reconsideration,[21] the petitioners pleaded with the CA not to "intertwine" the LA's contempt order with the main case for illegal dismissal, now subject of a separate petition for *certiorari* in the said court. They contended that the respondents' Urgent Motion to Cite for Contempt[22] and Motion for the Issuance of Writ of Execution/Garnishment,[23] and the petitioners' Opposition[24] thereto, suffice to resolve the charge of indirect contempt against the petitioners.

On March 9, 2009,[25] the CA denied the petitioners' motion for reconsideration, citing again the failure to submit the documents it enumerated in its Resolution dated November 14, 2008. The CA stated that the petitioners should have attached these supporting documents to the petition for *certiorari*. Without them, the allegations contained in the petition are nothing but bare assertions.[26]

Issues

Hence, this petition for review, upon the following grounds:

I

THE HONORABLE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND SETTLED JURISPRUDENCE WHEN IT DISMISSED THE PETITION *A QUO* ON A MERE TECHNICALITY, CONSIDERING THAT:

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[21] *Id.* at 130-133.

[22] *Id.* at 49-57.

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

[24] *Id.* at 61-67.

[25] *Id.* at 38-41.

[26] *Id.* at 41.

A.

PETITIONER HAS SUBSTANTIALLY COMPLIED AND INTENDS TO FULLY COMPLY WITH THE RULES CONCERNING THE ATTACHMENT OF PERTINENT DOCUMENTS AND PLEADINGS TO A PETITION FOR *CERTIORARI*.

B.

PETITIONER HAS A MERITORIOUS CASE AS PETITIONER HAS ACTUALLY FULLY COMPLIED WITH THE DECISION OF THE LABOR ARBITER. HENCE, THERE IS NO CAUSE OF ACTION TO HOLD PETITIONER IN INDIRECT CONTEMPT FOR ALLEGED NON-COMPLIANCE WITH THE AFORESAID DECISION.[27]

Discussion

Section 3 of Rule 46 of the Rules of Court authorizes the dismissal of a petition for failure to attach relevant, not merely incidental, pleadings.

The requirement in Section 1 of Rule 65 of the Rules of Court to attach relevant pleadings to the petition is read in relation to Section 3, Rule 46, which states that failure to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground for the dismissal of the petition."[28] Section 3 of Rule 46 provides:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* —

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[The petition] shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and

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

[28] *Phil. Agila Satellite, Inc. v. Usec. Trinidad-Lichauco*, 522 Phil. 565, 582 (2006).

shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x x x x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

In relation to the above section, Section 1 of Rule 65 provides:

SECTION 1. *Petition for certiorari.* —

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non forum shopping as provided in the third paragraph of Section 3, Rule 46.

The court is given discretion to dismiss the petition outright for failure of the petitioner to comply with the requirement to attach relevant pleadings, and generally such action cannot be assailed as constituting either grave abuse of discretion or reversible error of law. But if the court takes cognizance of the petition despite such lapses, the phrasing of Section 3, Rule 46 sufficiently justifies such adjudicative recourse.[29]

In their Comment[30] to the petition, the respondents harp on the technicalities invoked by the CA. Invoking the third paragraph of Section 3 of Rule 46, they insist that the petitioners failed to comply with Section 1 of Rule 65, giving sufficient ground for the dismissal of their petition. They cite the Resolution of the CA dated November 14, 2008 stating that "a careful perusal of the instant petition reveals that copies of pertinent and relevant

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[29] *Id.*

[30] *Rollo,* pp. 222-233.

pleadings and documents x x x were not attached therein in violation of Section 1, Rule 65 of the Rules of Court, as amended."[31] The court specifically enumerated the five (5) documents described below, all mentioned in the petition for *certiorari*, without which "the allegations in the petition are nothing but bare assertions":

a. In their Motion for the Issuance of An *Alias* Writ of Execution (Annex "H") filed with the Labor Arbiter, respondents alleged that they were unpaid of their salaries for January 1-15, 2007 because the petitioners' representatives failed to appear at the place and time for the payment which the parties agreed on at the conciliation proceedings.

b. In the petitioners' Opposition (Annex "I") to the above motion, they claimed that the respondents lied concerning the payment of their salaries for January 1-15, 2007, since they were in fact paid on January 19, 2007, as agreed to at the conference held on January 5, 2007, and as attested to by the Labor Arbiter. They also asserted that releasing respondents' salaries on the 5th and 20th of the month is the most feasible for the company in view of its "financial limitations and near distress as a sequestered corporation."

c. In the petitioners' Manifestation dated February 20, 2007 (Annex "J"), they claimed that the respondents' salaries for the first half of February 2007 were ready for pick-up at the Bank of Commerce, Broadcast City branch.

d. In the petitioners' Manifestation dated March 9, 2007 (Annex "K"), they claimed that the respondents' salaries for the second half of February were ready for pick-up at the Bank of Commerce, Broadcast City branch.

e. Lastly, in the petitioners' Manifestation dated March 15, 2007 (Annex "L"), they informed the LA that the respondents' paychecks for March 1-15, 2007 would be deposited with the NLRC's cashier, and that thenceforth, their fortnightly salaries would be deposited with the NLRC on the 5th and 20th of the month.

The motion to cite the petitioners for indirect contempt was filed on November 3, 2006, but a cursory perusal of the above

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[31] *Id.* at 226.

documents reveals that they deal with events which are at best merely incidental to the complaint, since they pertain to salaries which fell due after the alleged contumacious acts first complained of, which the LA even said should be the subject of separate complaints. The petitioners cannot, therefore, be faulted for insisting that they have submitted to the appellate court in good faith those documents which were "relevant and pertinent" to the resolution of the issue of indirect contempt. Moreover, we agree that the respondents' Urgent Motion to Cite for Contempt[32] and Motion for the Issuance of Writ of Execution/Garnishment,[33] and the petitioners' joint Opposition[34] thereto, suffice to resolve the issue of indirect contempt.

This Court invariably sustains the appellate court's dismissal of a petition on technical grounds, unless considerations of equity and substantial justice present cogent reasons to hold otherwise.[35] Leniency cannot be accorded absent valid and compelling reasons for such procedural lapse.[36] We are not unmindful of exceptional cases where this Court has set aside procedural defects to correct a patent injustice, provided that concomitant to a liberal application of the rules of procedure is an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[37] We find that an adequate justification has been proffered by the petitioners for their supposed procedural shortcoming.

The manner of reinstating a dismissed employee in the payroll generally involves an exercise of management prerogative.

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[32] *Id.* at 49-57.

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

[34] *Id.* at 61-67.

[35] *Villamor v. Heirs of Tolang*, 499 Phil. 24, 32 (2005).

[36] *Daikoku Electronics Phils., Inc. v. Raza*, G.R. No. 181688, June 5, 2009, 588 SCRA 788, 795.

[37] *Ramirez v. Court of Appeals*, G.R. No. 182626, December 4, 2009, 607 SCRA 752, 769.

In the case of *Pioneer Texturizing Corp. v. NLRC*,[38] it was held that an order reinstating a dismissed employee is immediately self-executory without need of a writ of execution, in accordance with the third paragraph of Article 223 of the Labor Code.[39] The article states that the employee entitled to reinstatement "shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll." Thus, even if the employee is able and raring to return to work, the option of payroll reinstatement belongs to the employer.[40]

The new NLRC Rules of Procedure, which took effect on January 7, 2006, now requires the employer to submit a report of compliance within ten (10) calendar days from receipt of the LA's decision, disobedience to which clearly denotes a refusal to reinstate.[41] The employee need no longer file a motion for issuance of a writ of execution, since the LA shall thereafter *motu proprio* issue the writ. With the new rules, there will be no difficulty in determining the employer's intransigence in immediately complying with the order.[42]

The general policy of labor law is to discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what

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[38] 345 Phil. 1057 (1997), cited in *Pfizer, Inc. v. Velasco*, G.R. No. 177467, March 9, 2011, 645 SCRA 135, 144.

[39] Article 223. In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

[40] *Id.*

[41] *Revised Rules of Procedure of the NLRC*, Rule V, Sec. 14 and Rule XI, Sec. 6.

[42] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, January 20, 2009, 576 SCRA 479, 495.

are clearly management prerogatives. As long as the company's exercise of judgment is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[43] Neither does labor law authorize the substitution of judgment of the employer in the conduct of his business, unless it is shown to be contrary to law, morals, or public policy.[44] The only condition is that the exercise of management prerogatives should not be done in bad faith or with abuse of discretion.[45]

It has been held that in case of strained relations or non-availability of positions, the employer is given the option to reinstate the employee merely in the payroll, precisely in order to avoid the intolerable presence in the workplace of the unwanted employee.[46] The Court explained in *Maranaw Hotel Resort Corporation v. NLRC*,[47] thus:

> This option [to reinstate a dismissed employee in the payroll] is based on practical considerations. The employer may insist that the dismissal of the employee was for a just and valid cause and the latter's presence within its premises is intolerable by any standard; or such presence would be inimical to its interest or would demoralize the co-employees. Thus, while payroll reinstatement would in fact be unacceptable because it sanctions the payment of salaries to one not rendering service, it may still be the lesser evil compared to the intolerable presence in the workplace of an unwanted employee.[48]

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[43] *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals*, 505 Phil. 10, 25 (2005); *San Miguel Corporation v. Layoc, Jr.*, G.R. No. 149640, October 19, 2007, 537 SCRA 77, 95, citing *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople*, 252 Phil. 27, 31 (1989).

[44] *Abbot Laboratories (Phils.), Inc. v. NLRC*, 238 Phil. 699 (1987). See also *PNOC-EDC v. Abella*, 489 Phil. 515, 537 (2005).

[45] *Sagales v. Rustan's Commercial Corporation*, G.R. No. 166554, November 27, 2008, 572 SCRA 89, 103, citing *Aparente, Sr. v. NLRC*, 387 Phil. 96 (2000).

[46] Supreme Court Resolution dated July 12, 2006 in G.R. No. 144885 entitled *Kimberly Clark (Phils.), Inc. v. Facundo*.

[47] G.R. No. 110027, November 16, 1994, 238 SCRA 190.

[48] *Id.* at 199-200.

The circumstances of the present case have more than amply shown that the physical restoration of the respondents to their former positions would be impractical and would hardly promote the best interest of both parties. Respondents have accused the petitioners of being directly complicit in the plot to expel them from the union and to terminate their employment, while petitioners have charged the respondents with trying to sabotage the peace of the workplace in "furthering their dispute with the union." The resentment and enmity between the parties have so strained their relationship and even provoked antipathy and antagonism, as amply borne out by the physical clashes that had ensued every time the respondents attempted to enter the RPN compound, that respondents' presence in the workplace will not only be distracting but even disruptive, to say the least.

This Court has long recognized the management's right to formulate reasonable rules to regulate the conduct of its employees for the protection of its interests.[49] *Maranaw Hotel* recognizes that the management's option to reinstate a dismissed employee in the payroll is precisely so that the intolerable presence of an unwanted employee in the workplace can be avoided or prevented. The records have shown how violent incidents have attended the respondents' every attempt to enter the company compound. While security guards were posted at the gate with strict orders to bar their entry, there is no belittling what provocation the respondents unleashed by their militant persistence to enter, and even willingness to engage the guards in physical tussle. It can hardly be considered unreasonable and arbitrary, therefore, for the company to allow respondents go nearer than at the gate.

The proposal to pay the respondents' salaries through ATM cards, now a wide practice cannot be said to be prejudicial or oppressive since it would not entail any unusual effort by the respondents to collect their money. As to the respondents' demand to be paid their salaries on the 15th and 30th of the month along

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[49] *San Miguel Brewery Sales Force Union (PTGWO) v. Hon. Ople*, 252 Phil. 27 (1989); *San Miguel Corporation v. NLRC*, 255 Phil. 302 (1989). See also *First Dominion Resources Corp. v. Peñaranda*, 516 Phil. 291, 297 (2006).

with the other employees, instead of on the 5th and 20th days, petitioners reason that the salaries must be staggered due to RPN's erratic cash flows. The law only requires that the fortnightly intervals be observed.

Petitioners have substantially complied in good faith with the terms of payroll reinstatement.

The petitioners insist that the respondents were immediately reinstated, albeit in the payroll, in compliance with the order of the LA, and their salaries have since been regularly paid without fail. And granting that there were occasional delays, the petitioners assert that the respondents in their combative hostility toward the petitioners were partly to blame for their recalcitrant demands as to the place and schedule of payment, and their refusal to cooperate in the opening of their ATM accounts.

In its Consolidated Reply[50] dated September 7, 2010 to the respondents' comments, RPN noted that the LA, in its Order[51] dated January 12, 2010, denied the respondents' motion to execute the Order dated May 3, 2007, for the reason that *there was no more legal basis to execute his order* because the matter had been mooted by the petitioners' compliance therewith by paying the respondents' salaries from September 2008 to April 2009, including all benefits in arrears. The LA clarified that any subsequent violations of RPN's obligation to pay the respondents' salaries would have to be the subject of a new complaint for indirect contempt, and concluded that "the judgment award has been fully paid."[52]

The LA mentioned another motion for execution by the respondents dated July 23, 2009, which he also denied for lack of merit. It was also mentioned in the subsequent Order dated January 12, 2010 that the question of whether the respondents

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[50] *Rollo*, pp. 366-370.

[51] *Id.* at 373-377.

[52] *Id.* at 375.

were still members of the RPNEU was still pending with the Supreme Court.

On April 22, 2009, the respondents executed a quitclaim and release covering the period from March to September 2006.[53] It also appears that the salaries for October 2006 to January 2007 were already delivered, as stated in the Order of the LA dated May 3, 2007.[54] As also claimed by the petitioners, the salary checks for February to May 15, 2007 were deposited with the NLRC's cashier.[55] Meanwhile, RPN has been asking the respondents to open ATM accounts to facilitate the deposit of their salaries, but they have refused.

RPN also attached to its petition photocopies of the biweekly cash vouchers for the individual salaries of the respondents from January to August 2010.[56] The vouchers show in detail their gross individual monthly salaries, withholdings for income tax and member's premiums for SSS, Pag-IBIG and Philhealth, and net salaries for the period September 2008 to April 2009.[57] The salaries were also shown to have been ready for release on the 15th and 30th of the month.

All these clearly show that the petitioners have substantially complied with the LA's Decision dated September 27, 2006 ordering the respondents' payroll reinstatement.

Petitioners are not guilty of indirect contempt.

Indirect contempt[58] refers to contumacious or stubbornly disobedient acts perpetrated outside of the court or tribunal and may include misbehaviour of an officer of a court in the

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[53] *Id.* at 210-211.

[54] *Id.* at 92.

[55] *Id.* at 98-99.

[56] *Id.* at 379-454.

[57] *Id.* at 135-209.

[58] See 1997 Rules of Civil Procedure, Rule 71, Section 3.

performance of his official duties or in his official transactions; disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or a judge; any abuse or any unlawful interference with the process or proceedings of a court not constituting direct contempt; or any improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice.[59] To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court or tribunal. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is *clearly and exactly defined*, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[60]

The power to punish for contempt should be exercised on the preservative, not on the vindictive, principle. Only occasionally should a court invoke this inherent power in order to retain that respect, without which the administration of justice will falter or fail. Only in cases of clear and contumacious refusal to obey should the power be exercised. Such power, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[61]

It is not denied that after the order of reinstatement of the respondents, RPN forthwith restored them in its payroll without diminution of their benefits and privileges, or loss of seniority rights. They retained their entitlement to the benefits under the CBA. Respondents regularly received their salaries and benefits, notwithstanding that the company has been in financial straits. Any delays appear to have been due to misunderstandings as to the exact place and time of the fortnightly payments, or because

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[59] *Id.*; see also *Patricio v. Hon. Suplico*, 273 Phil. 353, 363 (1991); *Tokio Marine Malayan Insurance Company, Incorporated v. Valdez*, G.R. No. 150107, January 28, 2008, 542 SCRA 455, 467.

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

[61] *Inonog v. Ibay*, A.M. No. RTC-09-2175, July 28, 2009, 594 SCRA 168, 177-178; *Lu Ym v. Atty. Mahinay*, 524 Phil. 564, 572-573 (2006).

the respondents were tardy in collecting them from the Bank of Commerce at Broadcast City Branch or from the NLRC cashier. The petitioners tried proposing opening an ATM accounts for them, but the respondents rejected the idea.

We are convinced under the circumstances that there was no sufficient basis for the charge of indirect contempt against the petitioners, and that the same was made without due regard for their right to exercise their management prerogatives to preserve the viability of the company and the harmony of the workplace. Indeed, the LA in the Order dated January 12, 2010 found no more legal basis to execute his Order dated May 3, 2007, and declared that the said order has been mooted by the petitioners' compliance.

WHEREFORE, premises considered, the petition is **GRANTED.** The Resolutions of the Court of Appeals dated November 14, 2008 and March 9, 2009 in CA-G.R. SP No. 105945 are **SET ASIDE.** The Order dated May 3, 2007 of the Labor Arbiter in NLRC-NCR Case Nos. 00-03-01908-06, 00-04-03488-06, 00-03-02042-06, 00-03-01920-06 and 00-03-01922-06, finding petitioners Mia Concio, Leonor Linao, Ida Barrameda and Lourdes Angeles, guilty of indirect contempt is **REVERSED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Abad,[*] *Villarama, Jr.,*[**] and *Perez, JJ.,* concur.

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[*] Additional member per Special Order No. 1278 dated August 1, 2012 *vice* Associate Justice Arturo B. Brion.

[**] Additional member per Special Order No. 1274 dated July 30, 2012 *vice* Associate Justice Maria Lourdes P. A. Sereno.

THIRD DIVISION

[G.R. No. 190144. August 1, 2012]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **CARLITO LEE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ORDERS; INTERLOCUTORY ORDER; DOES NOT FINALLY DISPOSE OF THE CASE, AND DOES NOT END THE COURT'S TASK OF ADJUDICATING THE PARTIES' CONTENTIONS AND DETERMINING THEIR RIGHTS AND LIABILITIES AS REGARDS EACH OTHER, BUT OBVIOUSLY INDICATES THAT OTHER THINGS REMAIN TO BE DONE; AN ORDER INVOLVING THE IMPLEMENTATION OF A WRIT OF EXECUTION IS INTERLOCUTORY IN NATURE; REMEDY OF THE PARTY IS *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.— A punctilious examination of the records will reveal that Lee had previously sought the execution of the final and executory decision of the RTC dated August 8, 1989 which was granted and had resulted in the issuance of the corresponding writ of execution. However, having garnished the deposits of Trendline with Citytrust in the amount of ₱700,962.10 by virtue of a writ of preliminary attachment, Lee filed anew a Motion for Execution and/or Enforcement of Garnishment before the RTC on December 16, 2002. While the RTC denied the motion in its March 1, 2004 Order, the denial was clearly with respect only to the *enforcement of the garnishment* x x x. Consequently, the x x x Order merely involved the implementation of a writ of execution, hence, *interlocutory* in nature. An interlocutory order is one that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done. Conformably with the provisions of Section 1, Rule 41 of the Revised Rules of Court above-quoted, the remedy from such interlocutory order is *certiorari* under Rule 65. Thus, contrary to the contention of BPI, the CA did not err in assuming jurisdiction over the petition for *certiorari.*

2. ID.; PROVISIONAL REMEDIES; ATTACHMENT AND GARNISHMENT; A GARNISHEE BECOMES A VIRTUAL PARTY OR FORCE INTERVENOR TO THE CASE AND THE TRIAL COURT THEREBY ACQUIRES JURISDICTION TO BIND THE GARNISHEE TO COMPLY WITH ITS ORDERS AND PROCESSES.— Section 5, Rule 65 of the Revised Rules of Court requires that persons interested in sustaining the proceedings in court must be impleaded as private respondents. Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case. It is a settled rule that upon service of the writ of garnishment, the garnishee becomes a "virtual party" or "forced intervenor" to the case and the trial court thereby acquires jurisdiction to bind the garnishee to comply with its orders and processes. In *Perla Compania de Seguros, Inc. v. Ramolete*, the Court ruled: In order that the trial court may validly acquire jurisdiction to bind the person of the garnishee, it is not necessary that summons be served upon him. The garnishee need not be impleaded as a party to the case. All that is necessary for the trial court lawfully to bind the person of the garnishee or any person who has in his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment. The Rules of Court themselves do not require that the garnishee be served with summons or impleaded in the case in order to make him liable. x x x Through the service of the writ of garnishment, the garnishee becomes a "virtual party" to, or a "forced intervenor" in, the case and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court with a view to the complete satisfaction of the judgment of the court. Citytrust, therefore, upon service of the notice of garnishment and its acknowledgment that it was in possession of defendants' deposit accounts in its letter-reply dated June 28, 1988, became a "virtual party" to or a "forced intervenor" in the civil case. As such, it became bound by the orders and processes issued by the trial court despite not having been properly impleaded therein. Consequently, by virtue of its merger with BPI on October 4,

1996, BPI, as the surviving corporation, effectively became the garnishee, thus the "virtual party" to the civil case.

3. COMMERCIAL LAW; CORPORATIONS; MERGER AND CONSOLIDATION; EFFECTS OF MERGER.— It should be emphasized that a merger of two corporations produces, among others, the following effects: 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation x x x The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation. In sum, although Citytrust was dissolved, no winding up of its affairs or liquidation of its assets, privileges, powers and liabilities took place. As the surviving corporation, BPI simply continued the combined businesses of the two banks and absorbed all the rights, privileges, assets, liabilities and obligations of Citytrust, including the latter's obligation over the garnished deposits of the defendants.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT AND GARNISHMENT; GARNISHMENT, DEFINED; A WRIT OF ATTACHMENT; PLACES THE ATTACHED PROPERTIES IN *CUSTODIA LEGIS,* OBTAINING *PENDENTE LITE* A LIEN UNTIL THE JUDGMENT OF THE PROPER TRIBUNAL ON THE PLAINTIFF'S CLAIM IS ESTABLISHED' WHEN THE LIEN BECOMES EFFECTIVE AS OF THE DATE OF THE LEVY.— Garnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. A writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente*

lite a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy. By virtue of the writ of garnishment, the deposits of the defendants with Citytrust were placed in *custodia legis* of the court. From that time onwards, their deposits were under the sole control of the RTC and Citytrust holds them subject to its orders until such time that the attachment or garnishment is discharged, or the judgment in favor of Lee is satisfied or the credit or deposit is delivered to the proper officer of the court. Thus, Citytrust, and thereafter BPI, which automatically assumed the former's liabilities and obligations upon the approval of their Articles of Merger, is obliged to keep the deposit intact and to deliver the same to the proper officer upon order of the court.

5. ID.; ID.; ID.; DISSOLUTION OF GARNISHMENT, GROUNDS; THE LOSS OF BANK RECORDS OF A GARNISHED DEPOSIT IS NOT A GROUND FOR THE DISSOLUTION OF GARNISHMENT.— The RTC is not permitted to dissolve or discharge a preliminary attachment or garnishment except on grounds specifically provided in the Revised Rules of Court, namely, (a) the debtor has posted a counter-bond or has made the requisite cash deposit; (b) the attachment was improperly or irregularly issued as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess; (d) the property attachment is exempt from preliminary attachment; or (e) the judgment is rendered against the attaching creditor. Evidently, the loss of bank records of a garnished deposit is not a ground for the dissolution of garnishment. Consequently, the obligation to satisfy the writ stands.

6. ID.; ID.; ID.; BY VIRTUE OF THE ARTICLES OF MERGER, THE SURVIVING CORPORATION CANNOT AVOID THE OBLIGATION ATTACHED TO THE WRIT OF GARNISHMENT ISSUED AGAINST THE CONSTITUENT CORPORATION PETITIONER WHICH IS LIABLE TO DELIVER THE FUND SUBJECT OF THE WRIT OF GARNISHMENT.— BPI cannot avoid the obligation attached to the writ of garnishment by claiming that the fund was not transferred to it, in light of the Articles of Merger which provides that "[a]ll liabilities and obligations

of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations, and in order that the rights and interest of creditors of Citytrust or liens upon the property of Citytrust shall not be impaired by merger." Indubitably, BPI is liable to deliver the fund subject of the writ of garnishment.

APPEARANCES OF COUNSEL

Benedicto Verzosa & Burkley Law Offices for petitioner.
Gonzales Batiller David Leabres & Reyes for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioner Bank of the Philippine Islands (BPI) seeks to reverse and set aside the February 11, 2009 Decision[2] and October 29, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. No. 87911 which annulled the March 1, 2004[3] and September 16, 2004[4] Orders of the Regional Trial Court (RTC) of Makati City, Branch 61 and instead, entered a new one directing the RTC to issue a writ of execution and/or enforce garnishment against the bank deposit of Trendline Resources & Commodities Exponent, Inc. (Trendline) and Leonarda Buelva (Buelva) with the defunct Citytrust Banking Corporation (Citytrust), now merged with BPI.

The Facts

On April 26, 1988, respondent Carlito Lee (Lee) filed a complaint for sum of money with damages and application for

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[1] *Rollo,* pp. 26-41.

[2] *Id.* at 8-17.

[3] *Id.* at 81.

[4] *Id.* at 83.

the issuance of a writ of attachment against Trendline and Buelva (collectively called "defendants") before the RTC, docketed as Civil Case No. 88-702, seeking to recover his total investment in the amount of ₱5.8 million. Lee alleged that he was enticed to invest his money with Trendline upon Buelva's misrepresentation that she was its duly licensed investment consultant or commodity saleswoman. His investments, however, were lost without any explanation from the defendants.

On May 4, 1988, the RTC issued a writ of preliminary attachment whereby the Check-O-Matic Savings Accounts of Trendline with Citytrust Banking Corporation, Ayala Branch, in the total amount of ₱700,962.10 were garnished. Subsequently, the RTC rendered a decision on August 8, 1989 finding defendants jointly and severally liable to Lee for the full amount of his investment plus legal interest, attorney's fees and costs of suit. The defendants appealed the RTC decision to the CA, docketed as CA-G.R. CV No. 23166.

Meanwhile, on April 13, 1994, Citytrust filed before the RTC an Urgent Motion and Manifestation[5] seeking a ruling on defendants' request to release the amount of ₱591,748.99 out of the garnished amount for the purpose of paying Trendline's tax obligations. Having been denied for lack of jurisdiction, Trendline filed a similar motion[6] with the CA which the latter denied for failure to prove that defendants had no other assets to answer for its tax obligations.

On October 4, 1996, Citytrust and BPI merged, with the latter as the surviving corporation. The Articles of Merger provide, among others, that "all liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations."[7]

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[5] *Id.* at 149-151.

[6] *Id.* at 152-156.

[7] Court of Appeals Decision dated February 11, 2009, *Id.* at 14.

On December 22, 1998, the CA denied the appeal in CA-G.R. CV No. 23166 and affirmed *in toto* the decision of the RTC, which had become final and executory on January 24, 1999.

Hence, Lee filed a Motion for Execution[8] before the RTC on July 29, 1999, which was granted. Upon issuance of the corresponding writ, he sought the release of the garnished deposits of Trendline. When the writ was implemented, however, BPI Manager Samuel Mendoza, Jr. denied having possession, control and custody of any deposits or properties belonging to defendants, prompting Lee to seek the production of their records of accounts with BPI. However, on the manifestation of BPI that it cannot locate the defendants' bank records with Citytrust, the RTC denied the motion on September 6, 2002.

On December 16, 2002, Lee filed a Motion for Execution and/or Enforcement of Garnishment[9] before the RTC seeking to enforce against BPI the garnishment of Trendline's deposit in the amount of ₱700,962.10 and other deposits it may have had with Citytrust. The RTC denied the motion for dearth of evidence showing that BPI took over the subject accounts from Citytrust and the fact that BPI was not a party to the case. Lee's motion for reconsideration was likewise denied.[10]

Lee elevated the matter to the CA on a petition for *certiorari*. In its February 11, 2009 Decision, the CA annulled the questioned orders, finding grave abuse of discretion on the part of the RTC in denying Lee's motion to enforce the garnishment against Trendline's attached bank deposits with Citytrust, which have been transferred to BPI by virtue of their merger. It found BPI liable to deliver to the RTC the garnished bank deposit of Trendline in the amount of ₱700,962.10, which Citytrust withheld pursuant to the RTC's previously-issued writ of attachment.

The CA refused to give credence to BPI's defense that it can no longer locate Trendline's bank records with the defunct

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[8] *Id.* at 161-162.

[9] *Id.* at 69-77.

[10] *Id.* at 83.

Citytrust, as its existence was supported by evidence and by the latter's admission. Neither did it consider BPI a stranger to the case, holding it to have become a party-in-interest upon the approval by the Securities and Exchange Commission (SEC) of the parties' Articles of Merger. BPI's Motion for Reconsideration[11] was denied in the CA's October 29, 2009 Resolution.

The Issues

In this petition, BPI ascribes the following errors to the CA:

A.

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING CA-G.R. SP No. 87911, THE PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE REVISED RULES OF COURT, FILED BY RESPONDENT CARLITO LEE BEING [AN] IMPROPER REMEDY.

B.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI BECAME PARTY-IN-INTEREST IN THE CASE FILED BY RESPONDENT CARLITO LEE UPON THE APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF ITS MERGER WITH CITYTRUST BANKING CORPORATION.

C.

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE MOTION FOR EXECUTION AND/OR ENFORCEMENT OF GARNISHMENT IS NOT THE APPROPRIATE REMEDY IN THE EVENT THERE IS A THIRD PARTY INVOLVED DURING THE EXECUTION PROCESS OF A FINAL AND EXECUTORY JUDGMENT.

D.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI SHOULD BE HELD ACCOUNTABLE FOR THE AMOUNT OF PHP700,962.10.[12]

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[11] *Id.* at 103-110.

[12] *Id.* at 32-33.

The Ruling of the Court

Section 1, Rule 41 of the Revised Rules of Court provides:

> SECTION 1. *Subject of appeal.* - x x x
>
> No appeal may be taken from:
>
> x x x x x x x x x
>
> (b) *An interlocutory order;*
>
> x x x x x x x x x
>
> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.[13]

A punctilious examination of the records will reveal that Lee had previously sought the execution of the final and executory decision of the RTC dated August 8, 1989 which was granted and had resulted in the issuance of the corresponding writ of execution. However, having garnished the deposits of Trendline with Citytrust in the amount of ₱700,962.10 by virtue of a writ of preliminary attachment, Lee filed anew a Motion for Execution and/or Enforcement of Garnishment before the RTC on December 16, 2002. While the RTC denied the motion in its March 1, 2004 Order, the denial was clearly with respect only to the *enforcement of the garnishment,* to wit:

> Acting on the Motion for Execution and/or Enforcement of Garnishment filed by plaintiff Carlito Lee, and there being no evidence shown that the accounts subject of the motion were taken over by the Bank of the Philippine Islands from Citytrust Bank and considering further that Bank of Philippine Islands is not a party to this case, the instant Motion is DENIED for lack of merit.
>
> SO ORDERED.[14]

Consequently, the foregoing Order merely involved the implementation of a writ of execution, hence, *interlocutory* in nature. An interlocutory order is one that does not finally dispose

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[13] As amended by A.M. No. 07-7-12-SC, December 1, 2007.

[14] *Supra* note 3.

of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done.[15]

Conformably with the provisions of Section 1, Rule 41 of the Revised Rules of Court above-quoted, the remedy from such interlocutory order is *certiorari* under Rule 65. Thus, contrary to the contention of BPI, the CA did not err in assuming jurisdiction over the petition for *certiorari*.

BPI likewise insists that the CA erred in considering it a party to the case by virtue of its merger with Citytrust, the garnishee of defendants' deposits.

The Court is not convinced.

Section 5, Rule 65 of the Revised Rules of Court requires that persons interested in sustaining the proceedings in court must be impleaded as private respondents. Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case.

It is a settled rule that upon service of the writ of garnishment, the garnishee becomes a "virtual party" or "forced intervenor" to the case and the trial court thereby acquires jurisdiction to bind the garnishee to comply with its orders and processes. In *Perla Compania de Seguros, Inc. v. Ramolete*,[16] the Court ruled:

> In order that the trial court may validly acquire jurisdiction to bind the person of the garnishee, it is not necessary that summons be served upon him. The garnishee need not be impleaded as a party to the case. All that is necessary for the trial court lawfully to bind the person of the garnishee or any person who has in his possession

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[15] *Investments, Inc. v. Court of Appeals*, No. 60036, January 27, 1987, 147 SCRA 334, 340.

[16] G.R. No. 60887, November 13, 1991, 203 SCRA 487.

credits belonging to the judgment debtor is service upon him of the writ of garnishment.

The Rules of Court themselves do not require that the garnishee be served with summons or impleaded in the case in order to make him liable.

x x x x x x x x x

Through the service of the writ of garnishment, the garnishee becomes a "virtual party" to, or a "forced intervenor" in, the case and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court with a view to the complete satisfaction of the judgment of the court.[17]

Citytrust, therefore, upon service of the notice of garnishment and its acknowledgment that it was in possession of defendants' deposit accounts in its letter-reply dated June 28, 1988, became a "virtual party" to or a "forced intervenor" in the civil case. As such, it became bound by the orders and processes issued by the trial court despite not having been properly impleaded therein. Consequently, by virtue of its merger with BPI on October 4, 1996, BPI, as the surviving corporation, effectively became the garnishee, thus the "virtual party" to the civil case.

Corollarily, it should be emphasized that a merger of two corporations produces, among others, the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporation shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and

[17] *Id.* at 491-492.

franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.[18] (Underscoring supplied)

In sum, although Citytrust was dissolved, no winding up of its affairs or liquidation of its assets, privileges, powers and liabilities took place. As the surviving corporation, BPI simply continued the combined businesses of the two banks and absorbed all the rights, privileges, assets, liabilities and obligations of Citytrust, including the latter's obligation over the garnished deposits of the defendants.

Adopting another tack, BPI claims that Lee should have instead availed himself of the remedy provided under Section 43, Rule 39 of the Revised Rules of Court because he is a third party to the case who denies possession of the property.

The argument is specious.

Section 43, Rule 39 of the Revised Rules of Court states:

SECTION 43. *Proceedings when indebtedness denied or another person claims the property*. — If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to

[18] Corporation Code, Sec. 80.

him or denies the debt, the court may authorize, by an order made to that effect, the judgment oblige to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court which issued it, or by the court in which the action is brought, upon such terms as may be just. (Underscoring supplied).

The institution of a separate action against a garnishee contemplates a situation where the garnishee (third person) "claims an interest in the property adverse to him (judgment debtor) or denies the debt."[19] Neither of these situations exists in this case. The garnishee does not claim any interest in the deposit accounts of the defendants, nor does it deny the existence of the deposit accounts. In fact, Citytrust admitted in its letter dated June 28, 1988 that it is in possession of the deposit accounts.

Considering the foregoing disquisitions, BPI's liability for the garnished deposits of defendants has been clearly established.

Garnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation.[20] A writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente lite* a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy.[21]

By virtue of the writ of garnishment, the deposits of the defendants with Citytrust were placed in *custodia legis* of the

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[19] *PNB Management and Development Corporation v. R&R Metal Casting and Fabricating, Inc.*, G.R. No. 132245, January 2, 2002, 373 SCRA 1, 10.

[20] *National Power Corporation v. Philippine Commercial and Industrial Bank*, G.R. No. 171176, September 4, 2009, 598 SCRA 326, 336.

[21] *Santos v. Aquino, Jr.*, G.R. Nos. 86181-82, January 13, 1992, 205 SCRA 127, 133-134.

court. From that time onwards, their deposits were under the sole control of the RTC and Citytrust holds them subject to its orders until such time that the attachment or garnishment is discharged, or the judgment in favor of Lee is satisfied or the credit or deposit is delivered to the proper officer of the court.[22] Thus, Citytrust, and thereafter BPI, which automatically assumed the former's liabilities and obligations upon the approval of their Articles of Merger, is obliged to keep the deposit intact and to deliver the same to the proper officer upon order of the court.

However, the RTC is not permitted to dissolve or discharge a preliminary attachment or garnishment except on grounds specifically provided[23] in the Revised Rules of Court, namely,[24] (a) the debtor has posted a counter-bond or has made the requisite cash deposit;[25] (b) the attachment was improperly or irregularly issued[26] as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess;[27] (d) the property attachment is exempt from preliminary attachment;[28] or (e) the judgment is rendered against the attaching creditor.[29]

Evidently, the loss of bank records of a garnished deposit is not a ground for the dissolution of garnishment. Consequently, the obligation to satisfy the writ stands.

Moreover, BPI cannot avoid the obligation attached to the writ of garnishment by claiming that the fund was not transferred

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[22] Rules of Court, Rule 57, Sec. 8.

[23] *Santos v. Aquino, Jr., supra* note 18, at 135.

[24] Florenz Regalado, *I Remedial Law Compendium* 695-696 (2005).

[25] Rules of Court, Rule 57, Sec. 12.

[26] Rules of Court, Rule 57, Sec. 13.

[27] Rules of Court, Rule 57, Sec. 13.

[28] Rules of Court, Rule 57, Secs. 2, 5.

[29] Rules of Court, Rule 57, Sec. 19.

to it, in light of the Articles of Merger which provides that "[a]ll liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations, and in order that the rights and interest of creditors of Citytrust or liens upon the property of Citytrust shall not be impaired by merger."[30] Indubitably, BPI is liable to deliver the fund subject of the writ of garnishment.

With regard to the amount of the garnished fund, the Court concurs with the finding of the CA that the total amount of garnished deposit of Trendline as of January 27, 1994 is ₱700,962.10,[31] extant in its motion for partial lifting of the writ of preliminary attachment[32] and which amount, as correctly observed by the CA, remains undisputed[33] throughout the proceedings relative to this case.

WHEREFORE, the instant petition is **DENIED** and the assailed February 11, 2009 Decision and October 29, 2009 Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.,* concur.

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[30] Court of Appeals Decision dated February 11, 2009, *rollo*, pp. 14-15.

[31] *Id.* at 152.

[32] *Id.* at 152-156.

[33] *Id.* at 21.

[*] Designated member in lieu of Justice Jose C. Mendoza, per Special Order No. 1282 dated August 1, 2012.

SECOND DIVISION

[G.R. No. 191606. August 1, 2012]

DAMASO R. CASOMO, *petitioner, vs.* **CAREER PHILIPPINES SHIPMANAGEMENT, INC. and/or COLUMBIA SHIPMANAGEMENT LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION COMPENSABILITY OF OCCUPATIONAL DISEASES; AWARDS OF COMPENSATION CANNOT REST ENTIRELY ON BARE ASSERTIONS AND PRESUMPTIONS; THE CLAIMANT MUST PRESENT EVIDENCE TO PROVE WORK-CAUSATION.— Casomo's bare allegation, with nary a linkage of his work as Ableseaman to his contraction of *Ameloblastoma* during his term of employment, hardly constitutes substantial evidence, *i.e.*, such evidence as a reasonable mind might accept as adequate to support a conclusion. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent. Contrary to the posturing of Casomo, the disputable presumption found in Section 20(B)(4) of the POEA Standard Employment Contract, that illnesses not listed in Section 32 thereof are work-related, did not dispense with the required burden of proof imposed on him as claimant. It remained incumbent upon Casomo to discharge the required quantum of proof of compensability. Awards of compensation cannot rest entirely on bare assertions and presumptions. The claimant must present evidence to prove a positive proposition.

2. ID.; ID.; ID.; WORK-RELATED ILLNESS, DEFINED; AMELOBLASTOMA IS NOT LISTED AS AN OCCUPATIONAL DISEASE.— In the POEA Standard Employment Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." *Ameloblastoma* is not listed under Section 32-A on Occupational Diseases. On this score, Casomo's claim is without stanchion.

3. ID.; ID.; ID.; CONDITIONS FOR COMPENSABILITY OF OCCUPATIONAL DISEASE AND THE RESULTING DEATH OR DISABILITY THEREFROM; THE SEAFARER MUST DEMONSTRATE THAT HIS WORK INVOLVED RISKS AND WITHIN A PERIOD OF EXPOSURE THERETO RESULTED IN HIS CONTRACTION OF THE DISEASE AND THAT HE WAS NOT GUILTY OF NOTORIOUS NEGLIGENCE IN CONTRACTING THE DISEASE.— As regards compensability of occupational diseases, Section 32-A of the same Standard Employment Contract lists the conditions before an occupational disease, and the resulting death or disability therefrom, may be compensated: SEC. 32-A. Occupational Diseases. — For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; (4) There was no notorious negligence on the part of the seafarer. Clearly, it is not enough that a seafarer contracts the illness during his term of employment or such illness renders him or her permanently disabled: The seafarer must demonstrate that his work as such involved risks and within a period of exposure thereto resulted in his contraction of the disease. Moreover, the seafarer should not be guilty of notorious negligence in contracting the disease.

4. ID.; ID.; ID.; A DISPUTABLY PRESUMED WORK-RELATED ILLNESS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT MUST STILL BE PROVEN BY THE SEAFARER CLAIMING PERMANENT DISABILITY BENEFITS.— Section 20(B), in relation to Section 32-A [of the POEA standard employment contract] covers various situations and requires the concurrence of several conditions before a disease, and the resultant disability of a seafarer, ought to be compensated by the employer. The text of the foregoing sections mandates that the seafarer, in this instance, Casomo, prove his claim of a work-related illness resulting in his permanent disability. Along the same vein, a disputably presumed work-related illness under the very same POEA Standard Employment Contract must still be proven by the seafarer claiming permanent disability benefits. In the

recent case of *Quizora v. Denholm Crew Management (Phil.), Inc.*, we categorically declared, thus: [P]etitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the 2000 POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief. [T]he disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, **he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.** x x x. In the case at bar, Casomo simply asserts that: (1) he contracted his *Ameloblastoma* during his term of employment, (2) which illness is disputably presumed work-related, and (3) the *Ameloblastoma* has resulted in his permanent disability. Casomo does not elaborate on the nature of his work as an Ableseaman and his consequent exposure, if any, to certain risks which resulted in, or aggravated, his *Ameloblastoma*. Even if we were to subscribe to Casomo's arguments, his misplaced reliance that his illness is disputably presumed work-related, does not amply link his first and third assertions and lead us to the conclusion that his *Ameloblastoma* is compensably work-related.

5. ID.; ID.; ID.; TO ESTABLISH WHETHER THE ILLNESS IS WORK-RELATED, PROBABILITY NOT CERTAINTY IS THE TOUCHSTONE; A SEAFARER SUFFERING FROM AN OCCUPATIONAL DISEASE WOULD STILL HAVE TO SATISFY THE FOUR CONDITIONS FOR COMPENSABILITY BEFORE HIS DISEASE MAY BE COMPENSABLE.— Indeed, we have held on more than one occasion that to establish whether the illness is work-related, probability–not certainty—is the touchstone. The probability referred to must be founded on facts and reason. Nowhere in Casomo's petition before us, or even his position paper before the NLRC, does he attempt to demonstrate a causal connection between his work as an Ableseaman and his *Ameloblastoma*. x x x. A quick perusal of Section 32 of the POEA Standard Employment Contract, in particular the *Schedule of Disability*

or Impediment for Injuries Suffered and Diseases including Occupational Diseases, easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified. We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the POEA Standard Employment Contract which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the POEA Standard Employment Contract. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

6. ID.; ID.; ID.; THE BURDEN OF PROVING THE CAUSAL LINK BETWEEN A CLAIMANT'S WORK AND THE AILMENT RESTS ON A CLAIMANT'S SHOULDER.— [W]e note that Casomo's pleadings merely lift general medical summaries from the internet to explain the recurrence and cause of *Ameloblastoma* x x x. By his own research, Casomo highlights his claim for permanent and disability benefits as a shot in the dark. The probable causes of *Ameloblastoma* mentioned in Casomo's research make no reference whatsoever to a seafarer's work. *Government Service Insurance System (GSIS) v. Cuntapay* iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder: The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. **Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.** Plainly, there is simply no probable causal connection between Casomo's work as Ableseaman and his contraction of *Ameloblastoma*.

7. ID.; ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) IS NOT INDICATIVE OF A SEAFARER'S

COMPLETE AND WHOLE MEDICAL CONDITION WHICH RENDERS THE SUBSEQUENT CONTRACTION OF ILLNESSES BY THE SEAFARER AS WORK-RELATED.— Neither is Casomo's cause bolstered by the medical certificate issued by a certain Dr. Amado San Luis on his current medical condition. The medical certificate was confined to the doctor's finding that Casomo "is not physically and mentally fit to face the rigorous tasks expected of an able sea man." It is likewise of no moment that prior to his employment, Casomo had been declared "Fit for Sea Service" after undergoing a PEME. As we have previously ruled, a PEME is not exploratory in nature. It is not indicative of a seafarer's complete and whole medical condition which renders the subsequent contraction of illnesses by the seafarer as work-related. Ultimately, while there is no quarrel that Casomo contracted his illness during his term of employment, and it remains arguable that such illness has led to his permanent disability, he made no showing that the illness is causally connected to his work as an Ableseaman, which could have lead us to the conclusion that his *Ameloblastoma* was work-related.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PEREZ, *J.*:

Challenged in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 102925 reversing and setting aside the Resolution[2] of the National Labor

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Jose L. Sabio, Jr. and Sixto C. Marella, Jr., concurring. *Rollo,* pp. 26-35.

[2] Penned by Commissioner Tito F. Genilo with Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog, III, concurring. *Id.* at 60-66.

Relations Commission (NLRC) which, in turn, reversed and set aside the Decision[3] of the Labor Arbiter. The Labor Arbiter ruled against petitioner Damaso R. Casomo (Casomo), dismissing his complaint for permanent total disability benefits, reimbursement of medical and hospital expenses, damages and attorney's fees.

Pursuant to a Philippine Overseas Employment Agency (POEA) approved contract of employment dated 7 October 2005, Casomo was hired by respondent Career Philippines Shipmanagement, Inc. (Career Shipmanagement), for and in behalf of its foreign principal Columbia Shipmanagement, Ltd., as Ableseaman on board the vessel "YM DA NANG," for a period of nine (9) months with a basic monthly salary of US$495.00. Prior to his employment, Casomo underwent a Pre-Employment Medical Examination (PEME) and was pronounced "Fit to Work" on board a vessel; he departed from the Philippines on 17 November 2005.

Sometime in January 2006, Casomo felt a lump forming on his right face. On 21 March 2006, when the vessel reached Nagoya, Japan, Casomo informed the captain of his condition who then ordered Casomo to undergo a medical check-up. The examining physician diagnosed Casomo to be suffering from "tumor of right lower jaw and secondary cystic infection" and recommended Casomo's disembarkation and repatriation to the Philippines for further medical examination.

In Manila, Dr. Nicomedes G. Cruz (Dr. Cruz), respondent Career Shipmanagement's physician, examined Casomo and ordered the latter to undergo a battery of tests. Results thereof indicated Casomo's condition as a case of *Ameloblastoma*. In layman's terms, Casomo had a serious case of an impacted wisdom tooth. Thereafter, Casomo went under the knife *via* a right *hemimandibulectomy* with mandibular reconstruction at the Medical Center Manila.

Significantly, Dr. Cruz declared Casomo's illness as not work-related. Nonetheless, even after the operation, Casomo was no

[3] Penned by Labor Arbiter Napoleon M. Menese. *Id.* at 57-59-A.

longer hired by Career Shipmanagement, nor by any other ship company, as seafarer, specifically, an Ableseaman. Thus, Casomo claimed for permanent disability with Career Shipmanagement.

Career Shipmanagement denied Casomo's claim based on Dr. Cruz's finding that Casomo's illness was not work-related.

Not unexpectedly, Casomo filed a complaint before the NLRC for permanent disability benefits, reimbursement of medical and hospital expenses, moral and exemplary damages, attorney's fees and legal interest.

After the exchange of pleadings, Labor Arbiter Napoleon M. Menese dismissed Casomo's complaint for lack of merit. The Labor Arbiter did not find evidence to show that Casomo's *Ameloblastoma* was in any way connected to his work as an Ableseaman, much less the cause thereof.

As previously adverted to, the NLRC reversed the Labor Arbiter and ordered Career Shipmanagement to pay Casomo permanent disability benefits in the amount of US$60,000.00. The NLRC zeroed in on the fact that Casomo contracted the illness during his term of employment. More to the point for the NLRC, Casomo was found by Career Shipmanagement's designated physician as "Fit for Sea Service" during the PEME. In all, the NLRC ruled that considering Casomo fell ill during his term of employment, with illnesses not listed in Section 32 of the POEA Standard Employment Contract being disputably presumed as work-related,[4] the burden of proving that Casomo's *Ameloblastoma* was not work-related rested with Career Shipmanagement.

In yet another ruling reversal, the Court of Appeals granted the petition for *certiorari* filed by Career Shipmanagement and found grave abuse of discretion in the NLRC's decision.

The appellate court held that Casomo failed to make a showing that his illness was work-related; Casomo did not establish a causal connection between his *Ameloblastoma* and his work as

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[4] Section 20(B)(4) of the POEA Standard Employment Contract.

an Ableseaman, performing all operations connected with the launching of life-saving equipment and making security inspections of the ship.

Hence, this petition for review on *certiorari* positing the following issues:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN REVERSING THE DECISION OF THE NLRC AND IN IGNORING THE OVERWHELMING EVIDENCE THAT SUPPORTS PETITIONER'S ENTITLEMENT TO MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF USD60,000.00.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S DISABILITY BENEFITS SOLELY BECAUSE THE COMPANY-DESIGNATED PHYSICIAN HAS DECLARED HIS ILLNESS AS NOT WORK RELATED.[5]

We deny the petition. Casomo is not entitled to disability benefits since he failed to demonstrate that his illness, *Ameloblastoma,* was work-related.

Casomo insists that his illness is disputably presumed work-related as specified in Section 20(B)(4) of the POEA Standard Employment Contract. He lays the burden of proving otherwise on Career Shipmanagement. For Casomo, whose reasoning was favored by the NLRC, the fact that he fell ill during his employment coupled with the disputable presumption that his illness was work-related definitively trumps the declaration of Dr. Cruz that Casomo's illness was not work-related. Lastly, Casomo points out that Dr. Cruz's medical certification is self-serving and biased in favor of Career Shipmanagement, and thus, carries no evidentiary weight and value.

We are not persuaded.

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[5] *Rollo,* p. 9.

To begin with, Casomo's bare allegation, with nary a linkage of his work as Ableseaman to his contraction of *Ameloblastoma* during his term of employment, hardly constitutes substantial evidence, *i.e.*, such evidence as a reasonable mind might accept as adequate to support a conclusion.[6]

The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.[7]

Contrary to the posturing of Casomo, the disputable presumption found in Section 20(B)(4) of the POEA Standard Employment Contract, that illnesses not listed in Section 32 thereof are work-related, did not dispense with the required burden of proof imposed on him as claimant. It remained incumbent upon Casomo to discharge the required quantum of proof of compensability. Awards of compensation cannot rest entirely on bare assertions and presumptions. The claimant must present evidence to prove a positive proposition.[8]

In the POEA Standard Employment Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." *Ameloblastoma* is not listed under Section 32-A on Occupational Diseases. On this score, Casomo's claim is without stanchion.

As regards compensability of occupational diseases, Section 32-A of the same Standard Employment Contract lists the conditions before an occupational disease, and the resulting death or disability therefrom, may be compensated:

SEC. 32-A. Occupational Diseases. —

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

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[6] Section 5, Rule 133 of the RULES OF COURT.

[7] *Aya-ay, Sr. v. Arpaphil Shipping Corp.*, G.R. No. 155359, 31 January 2006, 481 SCRA 282, 294-295.

[8] *Id.* at 296.

(1) The seafarer's work must involve the risks described herein;

(2) The disease was contracted as a result of the seafarer's exposure to the described risks;

(3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

(4) There was no notorious negligence on the part of the seafarer.

Clearly, it is not enough that a seafarer contracts the illness during his term of employment or such illness renders him or her permanently disabled: The seafarer must demonstrate that his work as such involved risks and within a period of exposure thereto resulted in his contraction of the disease. Moreover, the seafarer should not be guilty of notorious negligence in contracting the disease.

Section 20(B) of the POEA Standard Employment Contract maps out the compensation and benefits for injury or illness, to wit:

SECTION 20. COMPENSATION AND BENEFITS

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:

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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

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 enumerated in Section 32 of his Contract. Computation of his 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.

Section 20(B), in relation to Section 32-A, covers various situations and requires the concurrence of several conditions before a disease, and the resultant disability of a seafarer, ought to be compensated by the employer. The text of the foregoing sections mandates that the seafarer, in this instance, Casomo, prove his claim of a work-related illness resulting in his permanent disability.

Along the same vein, a disputably presumed work-related illness under the very same POEA Standard Employment Contract must still be proven by the seafarer claiming permanent disability benefits.

In the recent case of *Quizora v. Denholm Crew Management (Phil.), Inc.*,[9] we categorically declared, thus:

> [P]etitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the 2000 POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.
>
> [T]he disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, **he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.** (Emphasis supplied)

Magsaysay Maritime Corporation v. National Labor Relations Commission[10] schools us, thus:

> For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. **In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.** (Emphasis supplied)

In the case at bar, Casomo simply asserts that: (1) he contracted his *Ameloblastoma* during his term of employment, (2) which illness is disputably presumed work-related, and (3) the

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[9] G.R. No. 185412, 16 November 2011.

[10] G.R. No. 186180, 22 March 2010, 616 SCRA 362, 373-374.

Ameloblastoma has resulted in his permanent disability. Casomo does not elaborate on the nature of his work as an Ableseaman and his consequent exposure, if any, to certain risks which resulted in, or aggravated, his *Ameloblastoma*. Even if we were to subscribe to Casomo's arguments, his misplaced reliance that his illness is disputably presumed work-related, does not amply link his first and third assertions and lead us to the conclusion that his *Ameloblastoma* is compensably work-related.

Indeed, we have held on more than one occasion that to establish whether the illness is work-related, probability–not certainty—is the touchstone.[11] The probability referred to must be founded on facts and reason.

Nowhere in Casomo's petition before us, or even his position paper before the NLRC, does he attempt to demonstrate a causal connection between his work as an Ableseaman and his *Ameloblastoma*. In the two pleadings, Casomo asseverates:

> 21. The symptoms of [Casomo's] disease (ameloblastoma) were seen only during the course of the third contract while he was on board the vessel.
>
> 22. Dr. Nicomedes Cruz, the company-designated physician, failed to discuss what could have caused the illness. While Dr. Cruz himself admitted the illness is a rare disorder, he merely stated that [Casomo's] illness is not work-related, without showing any proof or studies or the reasons for the said findings.
>
> 23. **The truth is nobody knows yet what the cause of ameloblastoma is.** Hence, it could not be determined in the present case whether it is work-related or not.[12] (Emphasis supplied)
>
> x x x x x x x x x
>
> Before embarking, [petitioner] was in perfect health. x x x [Petitioner] was given a clean bill of health by the doctor when a

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[11] *Gabunas, Sr. v. Scanmar Maritime Services, Inc.*, G.R. No. 188637, 15 December 2010, 638 SCRA 770, 780 citing *Government Service Insurance System (GSIS) v. Cuntapay*, G.R. No. 168862, 30 April 2008, 553 SCRA 520, 530.

[12] *Rollo*, p. 16.

medical clearance was issued certifying him as "fit to work[.]" There was never any indication or symptom that he is suffering from such illness. It was only on January 2006 or barely three (3) months from date of departure or a total of almost four (4) years from the time [petitioner] was first employed as seafarer by [r]espondents that he started feeling the symptoms of Amenoblastoma *(sic)*.

[I]t is very apparent from the physical condition of [petitioner] that the chance for him to go back to his former profession is very remote. The medical treatment must be on continuous basis as he is required to receive maintenance and medications. In addition thereto, his engagement in a strenuous physical activity would certainly endanger his life he having suffered continuous pain at any time of the day. It is even advisable that his place of work must be accessible to medical facilities.[13]

A quick perusal of Section 32 of the POEA Standard Employment Contract, in particular the *Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted*,[14] and the *List*

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[13] CA *rollo*, pp. 109 and 114.

[14] SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

HEAD

Traumatic head injuries that result to:

1. Apperture unfilled with bone not over three (3) inches without brain injury	Gr. 9
2. Apperture unfilled with bone over three (3) inches without brain injury	Gr. 3
3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity	Gr. 1
4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities	Gr. 6
5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities	Gr.10
6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require aid and attendance as to render worker permanently unable to perform any work	Gr. 1
7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance	Gr. 6

8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant Gr.10
9. Incurable imbecility ..... Gr. 1

FACE

1. Severe disfigurement of the face or head as to make the worker so repulsive as to greatly handicap him in securing or retaining employment, thereby being no permanent functional disorder ..... Gr. 2
2. Moderate facial disfigurement involving partial ablation of the nose with big scars on face or head..... Gr. 5
3. Partial ablation of the nose or partial avulsion of the scalp ..... Gr. 9
4. Complete loss of the power of mastication and speech function... Gr. 1
5. Moderate constriction of the jaw resulting in moderate degree of difficulty in chewing and moderate loss of the power or the expression of speech ..... Gr. 6
6. Slight disorder of mastication and speech function due to traumatic injuries to jaw or cheek bone Gr.12

EYES

1. Blindness or total and permanent loss of vision of both eyes ..... Gr. 1
2. Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye ..... Gr. 5
3. Loss of one eye or total blindness of one eye ..... Gr. 7
4. Fifty percent (50%) loss of vision of one eye Gr.10
5. Lagopthalmos, one eye Gr.12
6. Ectropion, one eye Gr.12
7. Ephiphora, one eye Gr.12
8. Ptosis, one eye Gr.12

NOTE: (Smeller's Chart –used to grade for near and distant vision)

NOSE AND MOUTH

1. Considerable stricture of the nose (both sides) hindering breathing.. Gr.11
2. Loss of the sense of hearing in one ear..... Gr.11
3. Injuries to the tongue (partial amputation or adhesion) or palate-causing defective speech Gr.10
4. Loss of three (3) teeth restored by prosthesis Gr.14

EARS

1. For the complete loss of the sense of hearing on both ears..... Gr. 3
2. Loss of two (2) external ears ..... Gr. 8
3. Complete loss of the sense of hearing in one ear..... Gr.11
4. Loss of one external ear Gr.12
5. Loss of one half (1/2) of an external ear Gr.14

NECK

1. Such injury to the throat as necessitates the wearing of a tracheal tube ..... Gr. 6
2. Loss of speech due to injury to the vocal cord ..... Gr. 9

3. Total stiffness of neck due to fracture or dislocation of the cervical pines	Gr. 8
4. Moderate stiffness or two thirds (2/3) loss of motion of the neck.....	Gr.10
5. Slight stiffness of neck or one third (1/3) loss of motion	Gr.12
CHEST-TRUNK-SPINE	
1. Fracture of four (4) or more ribs resulting to severe limitation of chest expansion	Gr. 6
2. Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion	Gr. 9
3. Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia	Gr.12
4. Fracture of the dorsal or lumber spines resulting to severe or total rigidity of the trunk or total loss of lifting power of heavy objects	Gr. 6
5. Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk	Gr. 8
6. Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk	Gr.11
7. Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches	Gr. 4
8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches	Gr. 1
9. Injury to the spinal cord resulting to incontinence of urine and feces	Gr. 1
ABDOMEN	
1. Loss of the spleen	Gr. 8
2. Loss of one kidney	Gr. 7
3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment	Gr. 1
4. Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea	Gr. 7
5. Slight residuals or disorder of the intra-abdominal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea	Gr.12
6. Inguinal hernia secondary to trauma or strain	Gr.12
PELVIS	
1. Fracture of the pelvic rings as to totally incapacitate worker to work	Gr. 1
2. Fracture of the pelvic ring resulting to deformity and lameness	Gr. 6
URINARY AND GENERATIVE ORGANS	
1. Total loss of penis	Gr. 7
2. Total loss of both testicles	Gr. 7
3. Total loss of one testicle	Gr.11

4. Scars on the penis or destruction of the parts of the cavernous body or urethra interfering with erection or markedly affecting coitus ..... Gr. 9
5. Loss of one breast Gr.11
6. Prolapse of the uterus ..... Gr. 6
7. Great difficulty in urinating Gr.13
8. Incontinence of urine Gr.10

THUMBS AND FINGERS

1. Total loss of one thumb including metacarpal bone ..... Gr. 9
2. Total loss of one thumb Gr.10
3. Total loss on one index finger including metacarpal bone Gr.10
4. Total loss of one index finger Gr.11
5. Total loss of one middle finger including metacarpal bone Gr.11
6. Total loss of one middle finger Gr.12
7. Total loss of one ring finger including metacarpal bone Gr.12
8. Total loss of one ring finger Gr.13
9. Total loss of one small finger including metacarpal bone Gr.13
10. Total loss of one small finger Gr.14
11. Loss of two (2) or more fingers: Compensation for the loss or loss of use of two (2) or more fingers or one (1) or more phalanges of two or more digits of a hand must be proportioned to the loss of the hand occasioned thereby but shall not exceed the compensation for the loss of a hand:
a. Loss of five (5) fingers of one hand ..... Gr. 6
b. Loss of thumb, index fingers and any of 2 or more fingers of the same hand ..... Gr. 6
c. Loss of the thumb, index finger and any one of the remaining fingers of the same hand ..... Gr. 7
d. Loss of thumb and index finger ..... Gr. 8
e. Loss of three (3) fingers of one hand not including thumb and index finger ..... Gr. 9
f. Loss of the index finger and any one of the other fingers of the same hand excluding thumb ..... Gr. 9
g. Loss of two (2) digits of one hand not including thumb and index finger Gr.10
12. Loss of ten (10) fingers of both hand ..... Gr. 3

HANDS

1. Total loss of use of both hands or amputation of both hands at wrist joints or above ..... Gr. 1
2. Amputation of a hand at carpo-metacarpal joints ..... Gr. 5
3. Amputation between wrist and elbow joint ..... Gr. 5
4. Loss of grasping power for small objects between the fold of the finger of one hand Gr.10
5. Loss of grasping power for large objects between fingers and palm of one hand Gr.10

6. Loss of opposition between the thumb and tips of the fingers of one hand	Gr. 9
7. Ankyclosed wrist in normal position	Gr.10
8. Ankyclosed wrist in position one third (1/3) flexed or half extended and/or severe limited action of a wrist	Gr.11
SHOULDER AND ARM	
1. Inability to turn forearm (forearm in normal position-supination)..	Gr.11
2. Inability to turn forearm (forearm in abnormal position-pronation)	Gr.10
3. Disturbance of the normal carrying angle or weakness of an arm or a forearm due to deformity of moderate atrophy of muscles	Gr.11
4. Stiff elbow at full flexion or extension (one side)	Gr. 7
5. Stiff elbow at right angle flexion	Gr. 8
6. Flail elbow joint	Gr. 9
7. Pseudoarthrosis of the humerus with musculospiral or radial paralysis	Gr. 6
8. Ankylosis of one (1) shoulder, the shoulder blade remaining mobile	Gr. 9
9. Ankylosis of one shoulder, the shoulder blade remaining rigid ...	Gr. 8
10. Unreduced dislocation of one (1) shoulder	Gr. 8
11. Ruptured biceps or pseudoarthrosis of the humerus, close (one side)	Gr.11
12. nability to raise arm more than halfway from horizontal to perpendicular	Gr.11
13. Ankylosis of the shoulder joint not permitting arm to be raised above a level with a shoulder and/or irreducible fracture or faulty union collar bone	Gr.10
14. Total paralysis of both upper extremities	Gr. 1
15. Total paralysis of one upper extremity	Gr. 3
16. Amputation of one (1) upper extremity at or above the elbow ...	Gr. 4
17. Scar the size of the palm in one extremity	Gr.14
LOWER EXTREMITIES	
1. Loss of a big toe	Gr.12
2. Loss of a toe other than the big one	Gr.14
3. Loss of ten (10) digits of both feet	Gr. 5
4. Loss of a great toe of one foot + one toe	Gr.10
5. Loss of two toes not including great toe or toe next to it	Gr.12
6. Loss of three (3) toes excluding great toe of a foot	Gr.10
7. Loss of four (4) excluding great toe of a foot	Gr. 9
8. Loss of great toe and two (2) other toes of the same foot	Gr. 9
9. Loss of five digits of a foot	Gr. 8
10. Loss of both feet at ankle joint or above	Gr. 1
11. Loss of one foot at ankle joint or above	Gr. 6
12. Depression of the arch of a foot resulting in weak foot	Gr.12
13. Loss of one half (1/2) metatarsus of one (1) foot	Gr. 8

14 Loss of whole metatarsus or forepart of foot ..... Gr. 7
15. Tearing of achilles tendon resulting in the impairment of active flexion and extension of a foot Gr.12
16. Malleolar fracture with displacement of the foot inward or outward Gr.10
17. Complete immobility of an ankle joint in abnormal position Gr.10
18. Complete immobility of an ankle joint in normal position Gr.11
19. Total loss of a leg or amputation at or above the knee ..... Gr. 3
20. Stretching leg of the ligaments of a knee resulting in instability of the joint Gr.10
21. Ankylosis of a knee in genuvalgum of varum Gr.10
22. Pseudoarthrosis of a knee cap Gr.10
23. Complete immobility of a knee joint in full extension Gr.10
24. Complete immobility of a knee joint in strong flexion ..... Gr. 7
25. Complete immobility of a hip joint in flexion of the thigh ..... Gr. 5
26. Complete immobility of a hip joint in full extension of the thigh ..... Gr. 9
27. Slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line Gr.13
28. Shortening of a lower extremity from one to three centimeters with either joint lesion or disturbance of weight-bearing joint Gr.13
29. Shortening of 3 to 6 cm. with slight atrophy of calf or thigh muscles Gr.12
30. Shortening of 3 to 6 cm. with either joint lesion or disturbance of weight-bearing joint Gr.11
31. Irregular union of fracture with joint stiffness and with shortening of 6 to 9 cm. producing permanent lameness ..... Gr. 9
32. Irregular union of fracture in a thigh or leg with shortening of 6 to 9 cms. Gr.10
33. Failure of fracture of both hips to unite ..... Gr. 1
34. Failure of fracture of a hip to unite ..... Gr. 3
35. Paralysis of both lower extremites ..... Gr. 1
36. Paralysis of one lower extremity ..... Gr. 3
37. Scar the size of a palm or larger left on an extremity Gr.14

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

SCHEDULE OF DISABILITY ALLOWANCES

Impediment Grade			Impediment
1.	US$50,000	x	120.00%
2.	US$50,000	x	88.81%
3.	US$50,000	x	78.36%
4.	US$50,000	x	68.66%
5.	US$50,000	x	58.96%
6.	US$50,000	x	50.00%
7.	US$50,000	x	41.80%

of Occupational Diseases,[15] easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

8.	US$50,000	x	33.59%
9.	US$50,000	x	26.12%
10.	US$50,000	x	20.15%
11.	US$50,000	x	14.93%
12.	US$50,000	x	10.45%
13.	US$50,000	x	6.72%
14.	US$50,000	x	3.74%

To be paid in Philippine currency equivalent at the exchange rate prevailing during the time of payment.

[15] The following diseases are considered as occupational when contracted under working conditions involving the risks described therein:

OCCUPATIONAL DISEASES	NATURE OF EMPLOYMENT
1. Cancer of the epithelial lining of the bladder. (Papilloma of the bladder)	Work involving exposure to alphanaphthylamine, beta-naphthylamin or benzidine or any part of the salts; and auramine or magenta.
2. Cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product.	The use or handling of, exposure to tar, pitch, bitumen, mineral oil (including paraffin) soot or any compound product or residue of any of these substances.
3. Deafness	Any industrial operation having excessive noise particularly in the higher frequencies.
4. Decompression sickness	Any process carried on in compressed or rarefied air.
(a) Caissons disease	
(b) Aeroembolism	Any process carried on in rarefied air.
5. Dermatitis due to irritants and sensitizers	The use or handling of chemical agents which are skin irritants and sensitizers.
6. Infection (Brucellosis)	Any occupation involving the handling of contaminated food and drink particularly milk, butter and cheese of infected goats and cows.
7. Ionizing radiation disease, inflammation, ulceration or malignant disease of skin or subcutaneous tissues of the bones or leukemia, or anemia of the aplastic type due to X-rays, ionizing particle, radium or radioactive substances.	Exposure to X-rays, ionizing particles of radium or other radioactive substance or other forms of radiant energy.

8. Poisoning and its sequelae caused by;	
(a) Ammonia	All work involving exposure to the risk concerned.
(b) Arsenic or its toxic compound	All work involving exposure to the risk concerned.
(c) Benzene or its toxic homologues; nitro and aminotoxic derivatives of benzene or its homologue	All work involving exposure to the risk concerned.
(d) Beryllium or its toxic compounds	All work involving exposure to the risk concerned.
(e) Brass, zinc or nickel	All work involving exposure to the risk concerned.
(f) Carbon Dioxide	All work involving exposure to the risk concerned.
(g) Carbon bisulfide	All work involving exposure to the risk concerned.
(h) Carbon monoxide	All work involving exposure to the risk concerned.
(i) Chlorine	All work involving exposure to the risk concerned.
(j) Chrome of its toxic compounds	All work involving exposure to the risk concerned.
(k) Dinitrophenol or its homologue	All work involving exposure to the risk concerned.
(l) Halogen derivatives of hydrocarbon of the aliphatic series	All work involving exposure to the risk concerned.
(m) Lead or its toxic compounds	All work involving exposure to the risk concerned.
(n) Manganese or its toxic compounds	All work involving exposure to the risk concerned.
(o) Mercury or its toxic compounds	All work involving exposure to the risk concerned.
(p) Nitrous fumes	All work involving exposure to the risk concerned.
(q) Phosgene	All work involving exposure to the risk concerned.
(r) Phosphorous or its toxic compounds	All work involving exposure to the risk concerned.
(s) Sulfur dioxide	All work involving exposure to the risk concerned.
9. Diseases caused by abnormalities in temperature and humidity.	All work involving exposure to the risk concerned to excessive heat or cold.
(a) Heat stroke/cramps/exhaustion	All work involving exposure to the risk concerned.

(b) Chilblanin/frostbite/freezing	All work involving exposure to the risk concerned.
(c) Immersion foot/general hypothermia	All work involving exposure to the risk concerned.
10. Vascular disturbance in the upper extremities due to continuous vibration from pneumatic tools or power drills, riveting machines or hammers.	Any occupation causing repeated motions, vibrations and pressure of upper extremities.

11. Cardio-Vascular Diseases. Any of following conditions must be met:
(a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
(b) The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute casual relationship.
(c) If a person who was apparently asymptomatic before being subjected to strain at 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 casual relationship.
12. Cerebro-Vascular Accidents. All of the following conditions must be met:
(a) There must be a history, which should be proved, or trauma at work (to the head specially) due to unusual and extraordinary physical or mental strain or event, or undue exposure to noxious gases in industry.
(b) There must be a direct connection between the trauma or exertion in the course of employment and the worker's collapse.
(c) If the trauma or exertion then and there caused a brain hemorrhage, the injury may be considered as arising from work.
13. Pneumonia. All of the following conditions must be met:
a. There must be an honest and definite history of wetting and chilling during the course of employment and also, of injury to the chest wall with or without rib fracture, or inhalation of noxious gases, fumes and other deleterious substances in the place of work.
b. There must be direct connection between the offending agent or event and the seafarer's illness.
c. The signs of consolidation should appear soon (within a few hours) and the symptoms of initial chilling and fever should at least be 24 hours after the injury or exposure.
d. The patient must manifest any of the following symptoms within a few days of the accident: (1) severe chill and fever; (2) headache and pain, agonizing in character, in the side of the body; (3) short, dry, painful cough with blood-tinged expectoration; and (4) physical signs of consolidation, with fine rales
14. Hernia. All of the following conditions must be met:
a. The hernia should be of recent origin.
b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues.

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment.
d. A protrusion of mass should appear in the area immediately following the alleged strain.
15. Bronchial Asthma. All of the following conditions must be met.
a. There is no evidence of history of asthma before employment.
b. The allergen is present in the working conditions.
c. Sensitivity test to allergens in the working environment should yield positive results;
d. A provocative test should show positive results.
16. Osteoarthritis
17. Peptic Ulcer.
Any occupation involving prolonged emotional or physical stress, as among professional people, transport workers and the like.
18. Pulmonary Tuberculosis.
In addition to working conditions already listed under Philippine Decree No. 626, as amended, any occupation involving constant exposure to harmful substances in the working environment, in the form of gases, fumes, vapors and dust, as in chemical and textile factories; overwork or fatigue; and exposure to rapid variations in temperature, high degree of humidity, and bad weather conditions.
19. Viral Hepatitis.
In addition to working conditions already listed under Philippine Decree No. 626, as amended, any occupation involving exposure to a source of infection through ingestion of water, milk, or other foods contaminated with hepatitis virus; Provided that the physician determining the causal relationship between the employment and the illness should be able to indicate whether the disease of the afflicted worker manifested itself while he was so employed, knowing the incubation period thereof.
20. Essential Hypertension.
Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.
21. Asbestosis. All of the following conditions must be met:
a. The seafarer must have been exposed to Asbestos dust in the work place, as duly certified to by the employer, or by a medical institution, or competent medical practitioner acceptable to or accredited by the System;
b. The chest X-ray report of the employee must show findings of asbestos or asbestos-related disease, *e.g.* pleural plaques, pleural thickening, effusion, neoplasm and interstitial fibrosis; and
c. In case of ailment is discovered after the seafarer's retirement/separation from the company, the claim must be filed with the System within three (3) years from discovery.

We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the POEA Standard Employment Contract which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the POEA Standard Employment Contract. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

Moreover, we note that Casomo's pleadings merely lift general medical summaries from the internet to explain the recurrence and cause of *Ameloblastoma*:

General Discussion

Ameloblastoma is a rare disorder of the jaw involving abnormal tissue growth. The resulting tumors or cysts are usually not malignant (benign) but the tissue growth may be aggressive in the involved area. On occasion, tissue near the jaws, such as around the sinuses and eye sockets, may become involved as well. The tissues involved are most often those that give rise to the teeth so that *ameloblastoma* may cause facial distortion. Malignancy is uncommon as are metastases, but they do occur.

Causes

The cause of *Ameloblastoma* is not understood. It has been suggested that it may be caused by dental irritation during the growth of teeth, the pulling of teeth or in some cases by cavities in the teeth. Other causes may include injury to the mouth or jaw, infections of the teeth or gums, or inflammation of these same areas. Infections by viruses or lack of protein or minerals in the persons diet are also suspected of causing the growth or development of these tumors. In general, however, scientists do not understand the cause of cysts and tumors, nor the reasons why they can become malignant.[16] (Emphasis supplied)

By his own research, Casomo highlights his claim for permanent and disability benefits as a shot in the dark. The

[16] *Rollo*, p. 16.

probable causes of *Ameloblastoma* mentioned in Casomo's research make no reference whatsoever to a seafarer's work.

Government Service Insurance System (GSIS) v. Cuntapay[17] iterates that the burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder:

> The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. P**robability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.** (Emphasis supplied)

Plainly, there is simply no probable causal connection between Casomo's work as Ableseaman and his contraction of *Ameloblastoma*.

Neither is Casomo's cause bolstered by the medical certificate issued by a certain Dr. Amado San Luis on his current medical condition. The medical certificate was confined to the doctor's finding that Casomo "is not physically and mentally fit to face the rigorous tasks expected of an able sea man."[18]

It is likewise of no moment that prior to his employment, Casomo had been declared "Fit for Sea Service" after undergoing a PEME. As we have previously ruled, a PEME is not exploratory in nature.[19] It is not indicative of a seafarer's complete and whole medical condition which renders the subsequent contraction of illnesses by the seafarer as work-related.

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[17] *Supra* note 11 at 530.

[18] CA *rollo*, p. 132.

[19] *NYK-FIL Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, 27 September 2006, 503 SCRA 595, 609.

Ultimately, while there is no quarrel that Casomo contracted his illness during his term of employment, and it remains arguable that such illness has led to his permanent disability, he made no showing that the illness is causally connected to his work as an Ableseaman, which could have lead us to the conclusion that his *Ameloblastoma* was work-related.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. SP No. 102925 is **AFFIRMED.** No costs.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Abad,[*] *Villarama, Jr.,*[**] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174431. August 6, 2012]

The Heirs of JOLLY R. BUGARIN, namely MA. AILEEN H. BUGARIN, MA. LINDA B. ABIOG and MA. ANNETTE B. SUMULONG, *petitioners, vs.* **REPUBLIC of the PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; FORFEITURE OF ILL-GOTTEN WEALTH (RA NO. 1379); ELEMENTS; MUST BE PROVED BY THE GOVERNMENT; THE BURDEN TO DEBUNK THE PRESUMPTION THAT THE PROPERTIES HAVE BEEN UNLAWFULLY ACQUIRED

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[*] Per S.O. No. 1278 dated 1 August 2012.

[**] Per S.O. No. 1274 dated 30 July 2012.

SHIFTS TO THE ACCUSED AFTER THE GOVERNMENT HAD ESTABLISHED THE ELEMENTS OF THE OFFENSE.— Section 2 of R.A. No. 1379, or the *"Act declaring forfeiture in favor of the state any property found to have been unlawfully acquired by any public officer or employee providing for the proceedings therefor,"* provides: SEC 2. *Filing of Petition*. Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. x x x. Thus, when the government, through the PCGG, filed forfeiture proceedings against Bugarin, it took on the burden of proving the following: 1. The public official or employee acquired personal or real properties during his/her incumbency; 2. This acquisition is manifestly disproportionate to his/her salary or other legitimate income; and 3. The existence of which gives rise to a presumption that these same properties were acquired *prima facie* unlawfully. After the government had established these, the burden to debunk the presumption was shifted to Bugarin. He had to explain and adequately show that his acquisitions, even though they might appear disproportionate, were nonetheless lawfully acquired.

2. ID.; ID.; DUE PROCESS; ESSENCE THEREOF; WHEN THE PARTY SEEKING DUE PROCESS WAS IN FACT GIVEN SEVERAL OPPORTUNITIES TO BE HEARD AND AIR HIS SIDE, BUT IT IS BY HIS OWN FAULT OR CHOICE HE SQUANDERS THESE CHANCES, THEN HIS CRY FOR DUE PROCESS MUST FAIL. — The x x x summary of the *Republic case*, readily shows that Bugarin was accorded due process. He was given his day in court to prove that his acquired properties were lawfully attained. A review of the full text of the said case will reveal that the summary of properties acquired by Bugarin during his tenure as NBI Director was based on his very own exhibits. From this enumeration, the Court set aside those properties that had been liquidated or those that had been obtained in 1981 onwards. Even those properties whose acquisition dates could no longer be determined were also excluded, all to the benefit of Bugarin. What remained was a trimmed down listing of properties, from which the Sandiganbayan may choose in executing the order of forfeiture

of the Court. Moreover, in arriving at the amount representing his lawful income or disposable income during his incumbency as NBI Director, the Court subtracted from Bugarin's income as stated in "Exhibit 38", the personal expenses of his family, which according to the Court was quite conservative, again redounding to the benefit of Bugarin. The essence of due process is the right to be heard. Based on the foregoing, Bugarin or his heirs were certainly not denied that right. Petitioners cannot now claim a different right over the reduced list of properties in order to prevent forfeiture, or at the least, justify another round of proceedings. This Court continues to emphasize that due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Thus, when the party seeking due process was in fact given several opportunities to be heard and air his side, but it is by his own fault or choice he squanders these chances, then his cry for due process must fail.

3. ID.; ID.; ID.; ELUCIDATED; NO DENIAL OF DUE PROCESS IN CASE AT BAR.— In the case of *Philippine Guardian's Brotherhood, Inc. v. COMELEC*, this Court elucidated on this all too important right to due process, On the due process issue, we agree with the COMELEC that PGBI's right to due process was not violated for PGBI was given an opportunity to seek, as it did seek, a reconsideration of Resolution No. 8679. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is **the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing x x x. We find it obvious under the attendant circumstances that PGBI was not denied due process. x x x.

4. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; ELUCIDATED.— Petitioners should have realized in the *fallo*, as well as in the body of the *Republic decision*, that the properties listed by this Court were all candidates for forfeiture. At that point, no additional proof or evidence was required. All that was needed

was for the Sandiganbayan, as the court of origin, to make sure that the aggregate sum of the *acquisition costs* of the properties chosen remained within the *amount which was disproportionate* to the income of Bugarin during his tenure as NBI Director. To reiterate, the case was only remanded to the Sandiganbayan to implement the Court's ruling in the *Republic case*. This cannot be permitted. x x x The immutability of judgment that has long become final and executory is the core, the very essence of an effective and efficient administration of justice. Thus, in *Labao v. Flores*, this Court reiterated the importance of the doctrine: Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; FORFEITURE OF ILL-GOTTEN WEALTH (R.A. NO. 1379); THE PROCEDURAL ASPECT OF THE FORFEITURE PROCEEDINGS IS CIVIL IN NATURE BECAUSE THE PROCEEDING DOES NOT TERMINATE IN THE IMPOSITION OF A PENALTY BUT MERELY IN THE FORFEITURE OF THE PROPERTIES ILLEGALLY ACQUIRED IN FAVOR OF THE GOVERNMENT, BUT THE FORFEITURE OF THE PROPERTY FOUND TO BE UNLAFULLY ACQUIRED IS IN THE NATURE OF A PENALTY.— Categorizing forfeiture proceedings as civil rather than criminal is all too simple. Petitioners, who at one point already took the opposite view, should know better. Forfeiture proceedings under R.A.

No. 1379 is a peculiarity. In the *Republic case*, this Court held that it is civil in nature because the proceeding does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the government. In addition, the procedure followed was that provided for in a civil action. Yet, in the case of *Cabal v. Kapunan*, the Court also declared that forfeiture partakes the nature of a penalty. Thus, while the procedural aspect of these proceedings remain civil in form, the very forfeiture of property found to be unlawfully acquired is inescapably in the nature of a penalty. Necessarily, petitioners' position must fail. In forfeiting the properties of Bugarin enumerated in the list, the ultimate end was to abandon and surrender the properties unlawfully acquired in favor of the government. It is not to simply satisfy some certain or specific amount which can be done by merely proceeding with the personal properties first and real properties next. More than the amount, it is the property, whether real or personal, that is illegally acquired that is being sought to be seized or taken in favor of the government. The properties of Bugarin in the list have been found unlawfully acquired. The same have been ordered forfeited in favor of the government a decade ago. It is high time that the *Republic decision* be finally carried out.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for petitioners.

The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to annul and set aside the April 3, 2006 Resolution[1] of the Sandiganbayan which ordered the forfeiture of some of the

[1] *Rollo*, pp. 47-52. Penned by Justice Norberto Y. Geraldez with Associate Justice Godofredo L. Legaspi and Associate Justice Efren N. De La Cruz, concurring.

properties of the late NBI Director, Jolly R. Bugarin *(Bugarin)*, pursuant to the January 30, 2002 Decision of this Court in *Republic of the Philippines v. Sandiganbayan*,[2] and its August 30, 2006 Resolution which denied the motion for reconsideration.

This petition, filed by the heirs of Bugarin *(petitioners)* prays that the Sandiganbayan be compelled to conduct hearings "for the purpose of properly determining the properties of the late Jolly R. Bugarin that should be forfeited in favor of the respondent, Republic of the Philippines."[3]

The Facts:

The late Bugarin was the Director of the National Bureau of Investigation *(NBI)* when the late Ferdinand E. Marcos was still the president of the country from 1965-1986. After the latter's downfall in 1986, the new administration, through the Presidential Commission on Good Government *(PCGG)*, filed a petition for forfeiture of properties under Republic Act *(R.A.)* No. 1379 against him with the Sandiganbayan. The latter dismissed the petition for insufficiency of evidence in its August 13, 1991 Decision.

After the Sandiganbayan denied its motion for reconsideration, the PCGG sought a review of the dismissal before the Court on December 18, 1991. Sitting *En Banc*, the Court found manifest errors and misapprehension of facts leading it "to pore over the evidence extant from the records," including Bugarin's very own summary of his property acquisitions. Thereafter, the Court found Bugarin to have amassed wealth totaling *₱2,170,163.00* from 1968 to 1980 against his total income for the period 1967 to 1980 totaling only 766,548.00. With this, the Court held that Bugarin's properties, which were visibly out of proportion to his lawful income from 1968 to 1980, should be forfeited in favor of the government.[4] The *fallo* of the January 30, 2002 Decision of this Court in the *Republic case*,[5] reads:

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[2] 425 Phil. 752, 761 (2002).

[3] *Rollo*, p. 42.

[4] *Republic v. Sandiganbayan*, *supra* note 2 at 757-761.

[5] *Id.* at 752.

WHEREFORE, the appealed decision of the Sandiganbayan is hereby REVERSED and SET ASIDE. The petition is GRANTED, and the properties of respondent JOLLY BUGARIN acquired from 1968 to 1980 which were disproportionate to his lawful income during the said period are ordered forfeited in favor of petitioner Republic of the Philippines. Let this case be REMANDED to the Sandiganbayan for proper determination of properties to be forfeited in petitioner's favor.[6]

Bugarin moved for a reconsideration and while his motion was pending, he passed away in September 2002. With this development, his heirs, the petitioners herein, moved to have the case dismissed. The Court denied both Bugarin's Motion for Reconsideration and petitioners' Motion to Dismiss. Petitioners sought reconsideration but the same was likewise denied. Still, they filed their Motion for Leave to File a Second Motion for Reconsideration and its Admission with the attached Second Motion for Reconsideration, but it was likewise denied on July 27, 2004 for being a prohibited pleading while the attached motion was merely noted without action.[7] On June 25, 2004, the January 30, 2002 Decision of the Court became final and executory and was entered in the Entry of Judgment.[8]

With the case back at the Sandiganbayan, hearing was set for January 12, 2005 to determine which properties of the late Bugarin would be forfeited in favor of the government. On the said date, only the counsels of the PCGG appeared. Upon motion, the Sandiganbayan gave the PCGG thirty (30) days within which to submit "a list of properties more or less equivalent to the amount of ~~P~~*1,403,615.00* and still remaining in the name of defendant Bugarin."[9]

Pursuant to this order, the PCGG filed its Partial Compliance, dated March 3, 2005, and Amended Partial Compliance, dated

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[6] *Id.* at 771.

[7] *Rollo*, pp. 165-166, 508-509.

[8] *Id.* at 509.

[9] *Id.* at 138.

April 4, 2005. The latter contained a list of properties and investments found by the Court in the *Republic* case to have been acquired by Bugarin from 1968 to 1980 at 1,697,333.00. The PCCG, in a manifestation, informed the Sandiganbayan of its earnest efforts in verifying the status of Bugarin's other business investments not included in their Amended Partial Compliance but only one replied to inform them that Bugarin was "not a stockholder of nor has he any investment in this company." Thus, in the same manifestation, the PCGG prayed that its latest compliance be considered sufficient conformity to the Sandiganbayan's Order of January 12, 2005.[10] No comment was filed by petitioners.

In the hearing of May 5, 2005, petitioners moved to cancel the hearings on the ground that they had filed a motion for leave to file a motion to dismiss. The Sandiganbayan, thus, reset the hearing to August 29 and 30, 2005 and gave the PCGG time to comment on the motion and petitioners corresponding time to reply.

On May 10, 2005, instead of a copy of their motion for leave to file motion to dismiss, petitioners served upon PCGG their Manifestation and Ad Cautelam Motion to Dismiss dated May 5, 2005, to which PCGG filed a comment/opposition. On August 8, 2005, the Sandiganbayan denied petitioners' Motion for Leave to File Motion to Dismiss, on the ground that the case sought to be dismissed had already been decided by the Court and which decision has, in fact, attained finality on June 25, 2004. As a result, the Manifestation and Ad Cautelam Motion to Dismiss subsequently filed by petitioners was ordered stricken off the record by the Sandiganbayan on September 1, 2005.[11]

Two days prior to the next hearing date on September 29, 2005, petitioners moved for a reconsideration of the denial of the motion for leave of court. With this development, the hearing on the motion was set for September 30, 2005, while the hearing

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[10] *Id.* at 510-511, 595-596.

[11] *Id.* at 225, 513-514.

to determine the properties for forfeiture was reset to a later date. On March 21, 2006, petitioners' motion for reconsideration was eventually denied and the hearing to determine the properties for forfeiture was held.[12] The Sandiganbayan ruled,

> At the hearing this afternoon, only Attys. Crisostomo A Quizon and Joshua Gilbert F. Paraiso, counsels for the heirs of Jolly Bugarin, appeared. There was no appearance for the plaintiff (respondent Republic of the Philippines).
>
> WHEREFORE, let this case be considered submitted for resolution and the Court shall determine which properties shall be forfeited in favor of the plaintiff, pursuant to the decision of the Supreme Court dated January 30, 2002.
>
> SO ORDERED.[13]

Petitioners moved for the reconsideration of this order arguing that the Sandiganbayan could not determine the properties to be forfeited on its own, and further prayed that the parties be allowed to present evidence to determine what properties of Bugarin would be subject to forfeiture.[14]

Finally, on April 3, 2006, the Sandiganbayan issued its assailed Resolution ordering the forfeiture of certain properties of Bugarin. Thus,

> WHEREFORE, this Court RESOLVES to:
>
> 1. ORDER the forfeiture of the properties listed in page 3 hereof;
> 2. ORDER the immediate issuance of a Writ of Execution pertinent to the Honorable Supreme Court's Decision, dated January 30, 2002, and the instant Resolution;
> 3. ORDER the concerned Register of Deeds to effect the immediate transfer of the titles of the forfeited real properties of Bugarin and/or his transferees in favor of the Republic of the Philippines; and,

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[12] *Id.* at 235.

[13] *Id.* at 239.

[14] *Id.* at 241 and 243.

4. ORDER the Corporate Secretary of Makati Sports Club and of Manila Polo Club to effect the transfer of forfeited shares of Bugarin and/ or his transferees in favor of the Republic of the Philippines.

SO ORDERED.[15]

Page 3[16] referred to in the above dispositive portion of the assailed Resolution is reproduced below:

Honorable Supreme Court's Decision dated January 30, 2002			
REAL PROPERTY	**YEAR ACQUIRED**	**ACQUISITION COST**	**TO BE FORFEITED PROPERTIES**
1.Residential lot in Damarinas Village, Makati [TCT No. 247560]	1968	91,140.00	
2.Nine (9) Residential lots, Tagaytay City [TCT No. 8695-8703]	1968	9,340.00	9,340.00
3.Residential House, Dasmarinas Village, Makati	1969	175,900.00	
4.Residential Lot, Greenhills, San Juan, MM [TCT No. 7765]	1973	87,288.00	87,288.00
5.Residential lot, Capitol District, Quezon City [TCT No. 189558]	1972	72,750.00	72,750.00
6.Condominium Unit, Montepino Condominium, Baguio City	1973	100,000.00	
7.Residential lot, Valle Verde, Pasig City, MM [TCT No. (491374)10848]	1976	263,165.00	263,165.00
8.Residential House, Valle Verde, Pasig City	1978	250,000.00	250,000.00
9.Residential lot, Calapan, Oriental Mindoro [TCT No. 2887]	1978	5,000.00	5,000.00
10.Orchard and Cocoland, Puerto Galera, Oriental Mindoro [TCT No. 10926]	1978	1,000.00	1,000.00
11.Residential House, Greenhills, San Juan	1980	650,000.00	650,000.00

[15] *Id.* at 52.

[16] *Id.* at 49.

OTHER INVESTMENTS			
A.Philippine Columbian Club	1968-75	24,750.00	
B.Makati Sports Club [Stock Certificate No. A-2271]	1975	25,000.00	25,000.00
C.Manila Polo Club [Membership Certificate No. 0125]	1978	32,000.00	32,000.00
D.Baguio Country Club	1985	60,000.00	
TOTAL			1,395,543.00

On April 6, 2006, a writ of execution was issued by the Sandiganbayan pursuant to the above resolution.[17]

On August 30, 2006, the Sandiganbayan denied petitioners' motion for reconsideration of the April 3 Resolution.[18]

Meanwhile, during the pendency of this petition before this Court, the Sandiganbayan issued its December 11, 2006 Resolution granting petitioners' Motion To Quash Writ on the ground that its April 3, 2006 Resolution, executing this Court's Judgment, had not yet attained finality due to the timely filing by petitioners of a motion for reconsideration. Accordingly, it ordered the Writ of Execution, dated April 6, 2006, quashed.[19]

In this present petition for review on *certiorari*, petitioners present the following:

STATEMENT OF ISSUES

A

WHETHER OR NOT BUGARIN'S HEIRS SHOULD BE ACCORDED THEIR RIGHT TO DUE PROCESS.

B

WHETHER OR NOT THE ASSAILED RESOLUTIONS ARE IN ACCORDANCE WITH THE DECISION OF THE SUPREME COURT IN THE REPUBLIC CASE.

[17] *Id.* at 518.

[18] *Id.* at 58.

[19] *Id.* at 519, 656-657, 718-719.

C

WHETHER OR NOT THE REPUBLIC CASE SHOULD BE SATISFIED BY FIRST EXHAUSTING ALL OF THE JUDGMENT DEBTOR'S PERSONAL PROPERTIES BEFORE PROCEEDING AGAINST ANY REAL PROPERTY PURSUANT TO SECTION 8(D), RULE 39 OF THE RULES OF COURT.[20]

Foremost in petitioners' arguments is their claim that they have been deprived of their right to due process of law when the Sandiganbayan, in its April 3, 2006 Resolution, ordered for the forfeiture of Bugarin's properties pursuant to the January 30, 2002 Decision of this Court in the *Republic* case. They fault the selection process laid down in the said case which purportedly denied them the opportunity to show that "not all of the late Bugarin's properties may be forfeited."[21] Petitioners accuse the Sandiganbayan of allegedly reducing their rights to a simple mathematical equation of subtracting the late Bugarin's amassed wealth against his lawful income for the same period and using the difference as basis for choosing the properties to be forfeited for the sole reason that their total acquisition cost was closest to said difference.[22] They, thus, want that another round of trial or hearing be conducted for "further reception of evidence"[23] to determine which among the properties enumerated in the *Republic* case[24] are ill-gotten wealth.

The Court finds no merit in the petition.

Section 2 of R.A. No. 1379, or the "*Act declaring forfeiture in favor of the state any property found to have been unlawfully acquired by any public officer or employee providing for the proceedings therefor*," provides:

SEC 2. *Filing of Petition*. Whenever any public officer or employee has acquired during his incumbency an amount of property which

[20] *Id.* at 692.

[21] *Id.* at 693.

[22] *Id.* at 693-694.

[23] *Id.* at 694.

[24] *Supra* note 2.

is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. x x x.

Thus, when the government, through the PCGG, filed forfeiture proceedings against Bugarin, it took on the burden of proving the following:

1. The public official or employee acquired personal or real properties during his/her incumbency;
2. This acquisition is manifestly disproportionate to his/her salary or other legitimate income; and
3. The existence of which gives rise to a presumption that these same properties were acquired *prima facie* unlawfully.

After the government had established these, the burden to debunk the presumption was shifted to Bugarin. He had to explain and adequately show that his acquisitions, even though they might appear disproportionate, were nonetheless lawfully acquired. Section 6 of RA No. 1379 reads:

SEC.6. *Judgment*. If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State, x x x.

It is evident in the case of *Republic* that upon filing the petition for forfeiture before the Sandiganbayan, the government through the PCGG offered evidence to establish that the properties acquired by Bugarin during his incumbency as NBI Director were manifestly disproportionate to the income he derived for the same period establishing that presumption of *prima facie* unlawful acquisitions. For his part, Bugarin also offered his evidence. This included no less than 15 witnesses and documentary evidence consisting of 48 exhibits. As earlier stated, the Sandiganbayan dismissed the petition for insufficiency of evidence. On review, this Court assessed that the dismissal was

plagued with manifest errors and misapprehension of facts, thus, impelling this Court to once more "pore over the evidence." In the end, it concluded that "respondent's (Bugarin's) properties acquired from 1968 to 1980 which were out of proportion to his lawful income for the said period should be forfeited in favor of the government for failure of the respondent to show, to the Court's satisfaction, that the same were lawfully acquired."[25]

In this case, petitioners point out that "realizing that it did not have the power to receive evidence and to try facts, this Honorable Court remanded the case to the Sandiganbayan for further reception of evidence as to what properties should be forfeited in favor of the State."[26]

Nothing can be farther from the truth. In the *Republic case*, the Court already made a determination of what properties were to be ordered forfeited. There were tables showing summaries of Bugarin's real property acquisitions, business investments, as well as shares in exclusive clubs, which were laid out and evaluated. Proceeds of sales, rentals, fees and pensions were likewise enumerated and studied. The case was ordered remanded to the Sandiganbayan to determine which properties, among those enumerated as forfeited, were to be actually seized or taken in favor of the government and which were to remain with petitioners.

The Court pored over the evidence adduced during the hearing at the Sandiganbayan. In the *Republic case,* Bugarin argued that some of the properties that were subject of the forfeiture proceedings were acquired by him and his wife before he became the NBI Director; that the acquisition cost of the properties he acquired during his incumbency was only 2.79 million; that in addition to his salaries as NBI Director, he received allowances from both government and private entities; and lastly, that his income was also derived from his and his wife's investments.[27]

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[25] *Id.*

[26] *Rollo,* p. 37.

[27] *Republic v. Sandiganbayan, supra* note 2 at 758.

The Court then took account of, and then valuated, all of Bugarin's claims regarding his income from several sources. The professional fee Bugarin received from a private law firm, although such act could have earned him an administrative sanction, was nonetheless included but not the proceeds of his GSIS loan granted sometime in 1983. Some rentals were similarly excluded from his lawful income because these were earned from 1981 to 1986, which was beyond the period in question (1968 to 1980). The Court reasoned that the income from these rentals could not have been used to finance the purchase of real properties and shareholdings prior to 1981. Besides, the legality of said rentals is in itself of serious doubt since the source (the real property) from where it was derived was not wholly acquired from lawful income.[28] From the incomes that remained or were not excluded, the Court proceeded to deduct the total personal expenses of Bugarin and his family based on an "extremely" conservative computation by the Sandiganbayan in order to arrive at the difference which represented Bugarin's lawful or disposable income that, in turn, could have been used in acquiring his properties. Against this amount, the Court then compared his acquired properties, and to quote:

> From the summary of Bugarin's assets, it can readily be seen that all of his real properties were purchased or constructed, as the case may be, from 1968 to 1980. The total acquisition cost thereof was ₱1,705,583.00. With the exception of those that had been liquidated, those acquired from 1981 onward, and those whose year of acquisition could not be determined, his shareholdings in various corporations and other investments amounted to ₱464,580.00 Hence, for the period from 1968 to 1980, he amassed wealth in the amount of ₱2,170,163.00.
>
> On the other hand, his total income from 1967 to 1980 amounted only to ₱766,548.00, broken down as follows:
>
> | | |
> |---|---|
> | Professional fees reflected in his Statement of Assets and Liabilities for December 1969 | ₱ 55,000.00 |
> | Professional fees from the Law Firm of San Juan, Africa, Gonzales and San Agustin from 1978 to 1980 at the rate of — ₱70,000 per annum | 210,000.00 |

[28] *Id.* at 767-769.

Proceeds from the sale of his lot in Iloilo City in 1968	15,000.00
Salaries and Allowances from the NBI as reflected in his Income Statement (assuming that this is accurate)[29]	486,548.00
Total	₱ 766,548.00

It bears repeating that the proceeds of the loan granted to him by the GSIS in 1983 and the rental income from 1981 to 1986, as well as the proceeds of the sale of his real property in 1984, could not have been utilized by him as his funds for the real properties and investment he acquired in 1980 and in the preceding years. His lawful income for the said period being only ₱766,548.00, the same was grossly insufficient to finance the acquisition of his assets for the said period whose aggregate cost was ₱2,170,163.00. This gross disparity would all the more be emphasized had there been evidence of his actual family and personal expenses and tax payments.

Premises considered, respondent's (Bugarin's) properties acquired from 1968 to 1980 which were out of proportion to his lawful income for the said period should be forfeited in favor of the government for failure of the respondent to show, to the Court's satisfaction, that the same was lawfully acquired.[30]

Based on the assiduous reassessment of evidence in the *Republic case*, and after finding that Bugarin's properties acquired during the period in question were grossly disproportionate to his lawful income during the same period without any satisfactory explanation as to how this came to be, the Court *granted* the petition, *reversed and set aside* the Sandiganbayan's dismissal of the forfeiture proceedings, and *ordered forfeited* in favor of the government Bugarin's properties acquired from 1968 to 1980 that were disproportionate to his lawful income earned during the same period. The case was then remanded to the Sandiganbayan "for proper determination of properties to be forfeited" [31] in favor of the government.

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[29] The said Income Statement is based on Bugarin's "Exhibit 38".

[30] *Republic v. Sandiganbayan*, *supra* note 2 at 770-771.

[31] *Id.* at 771.

The preceding summary of the *Republic case,* readily shows that Bugarin was accorded due process. He was given his day in court to prove that his acquired properties were lawfully attained. A review of the full text of the said case will reveal that the summary of properties acquired by Bugarin during his tenure as NBI Director was based on his very own exhibits. From this enumeration, the Court set aside those properties that had been liquidated or those that had been obtained in 1981 onwards. Even those properties whose acquisition dates could no longer be determined were also excluded, all to the benefit of Bugarin. What remained was a trimmed down listing of properties, from which the Sandiganbayan may choose in executing the order of forfeiture of the Court.

Moreover, in arriving at the amount representing his lawful income or disposable income during his incumbency as NBI Director, the Court subtracted from Bugarin's income as stated in "Exhibit 38", the personal expenses of his family, which according to the Court was quite conservative, again redounding to the benefit of Bugarin.

The essence of due process is the right to be heard.[32] Based on the foregoing, Bugarin or his heirs were certainly not denied that right. Petitioners cannot now claim a different right over the reduced list of properties in order to prevent forfeiture, or at the least, justify another round of proceedings.

This Court continues to emphasize that due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.[33] Thus, when the party seeking due process was in fact given several opportunities to be heard and air his side, but it is by his own fault or choice he squanders these chances, then his cry for due process must fail.[34]

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[32] *Lacson v. Executive Secretary*, G.R. Nos. 165399, 165475, 165404 and 165489, May 30, 2011, 649 SCRA 142, 155.

[33] *Estrada v. People*, 505 Phil. 339, 353 (2005).

[34] *Id.* at 354.

When the case was remanded to the Sandiganbayan for execution, petitioners were likewise accorded due process. Records of this case reveal that every motion by petitioners for resetting of hearing dates was granted, and every motion filed, either for reconsideration or leave of court, was heard. Although their counsel claimed that he did not receive the notice for the first hearing set on January 12, 2005 because it seemed that it was "sent to the wrong address,"[35] the fact remains that by March 3, 2005, he had informed the Sandiganbayan of the mistake and, in fact, provided it with the correct address.[36] More importantly though, after the January 12, 2005 setting, five (5) more hearings were set — May 5 and 6, September 29 and 30, and November 10, 2005.[37] This time, petitioners were represented. Instead of questioning the order of January 12, 2005, which required the government to submit its list of properties to be forfeited from the delimited list found in the *Republic decision*, or seek leave to provide that court with their own alternative list of properties from the same delimited list, petitioners chose to pursue the course of seeking for the nth time the dismissal of the case altogether, an issue that had long been resolved and settled by this Court in *Republic*.

In that hearing set on May 5, 2005, petitioners' collaborating counsel, in open court, sought leave to file a motion to dismiss. Necessarily, the hearing for that day and the following day were cancelled. On May 10, petitioners filed a Manifestation and *Ad Cautelam* Motion to Dismiss, dated May 5, 2005.[38] The OSG pointed out that, save for the caption and the appellation of the parties, the above motion to dismiss was an exact replica of motion to dismiss filed and eventually dismissed by the Court in *Republic*.[39] Eventually petitioners' motion for leave to file a motion to dismiss was denied on August 8, 2005.[40] The said

[35] *Rollo*, p. 139.

[36] *Id.* at 290.

[37] *Id.* at 695.

[38] *Id.* at 513.

[39] *Id.* at 742.

[40] *Id.* at 225, 514.

Manifestation and *Ad Cautelam* Motion to Dismiss was subsequently ordered stricken off the record by the Sandiganbayan on September 1, 2005.[41] Unrelenting, petitioners sought reconsideration which again resulted in the cancellation of the September 29 and 30 settings. Hearing was next reset to November 10, 2005 but this also did not push through because petitioners' motion for reconsideration had not been resolved at that point. Hearing was eventually held on March 21, 2006. With petitioners duly represented and despite the absence of the counsels for the government, the Sandiganbayan issued an order declaring the case submitted for resolution and that it would determine which properties shall be forfeited.[42] And as expected, petitioners also sought reconsideration for this.

In the case of *Philippine Guardian's Brotherhood, Inc. v. COMELEC*,[43] this Court elucidated on this all too important right to due process,

> On the due process issue, we agree with the COMELEC that PGBI's right to due process was not violated for PGBI was given an opportunity to seek, as it did seek, a reconsideration of Resolution No. 8679. The essence of due process, we have consistently held, is simply the opportunity to be heard; as applied to administrative proceedings, due process is **the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** A formal or trial-type hearing is not at all times and in all instances essential. The requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing x x x. We find it obvious under the attendant circumstances that PGBI was not denied due process. x x x. (Emphasis supplied)

Petitioners should have realized in the *fallo*, as well as in the body of the *Republic decision*, that the properties listed by this

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[41] *Id.* at 227, 514.

[42] *Id.* at 733-734.

[43] *Philippine Guardian's Brotherhood, Inc. v. COMELEC*, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 596-597.

Court were all candidates for forfeiture. At that point, no additional proof or evidence was required. All that was needed was for the Sandiganbayan, as the court of origin, to make sure that the aggregate sum of the *acquisition costs* of the properties chosen remained within the *amount which was disproportionate* to the income of Bugarin during his tenure as NBI Director. To reiterate, the case was only remanded to the Sandiganbayan to implement the Court's ruling in the *Republic case*.

To grant the petition and order the Sandiganbayan to receive evidence once again would be tantamount to resurrecting the long-settled disposition in the *Republic case*. This cannot be permitted. In settling this once and for all, Section 10 of R.A. No. 1379 is instructive.

> SEC. 10. *Effect of Record of Title*. The fact that any real property has been recorded in the Registry of Property or office of the Registry of Deeds in the name of respondent or of any person mentioned in paragraph (1) and (2) of subsection (b) of section one hereof shall not prevent the rendering of the judgment referred to in section six of this Act.

And paragraphs (1) and (2) referred to provide,

> 1. Property unlawfully acquired by the respondent, but its ownership is concealed by its being recorded in the name of, or held by, the respondent's spouse, ascendants, descendants, relatives, or any other person.
>
> 2. Property unlawfully acquired by the respondent, but transferred by him to another person or persons on or after the effectivity of this Act.

It is equally clear in the earlier quoted *fallo* of the *Republic* that this Court had already made a determination, nay, a declaration that the properties of the late Bugarin acquired from 1968 to 1980 which were disproportionate to his lawful income were ordered forfeited in favor of the State. Following Section 6 of R.A. No. 1379, this means that the late Bugarin, now being represented by the petitioners, failed to convince the Court that the delimited list of properties were lawfully acquired. With this failure, the said properties have been ordered forfeited to

the extent or up to that which is disproportionate to his lawful or disposable income which was likewise determined by the Court in that case.

The properties, consisting of real and other investments, acquired within the subject period were identified and listed down in the case of *Republic*. Both the acquisition dates which were likewise indicated there were reckoned. Still in *Republic*, the lawful income of Bugarin during the same period was also determined by the Court based on his very own "Exhibit '38'" minus that tempered amount representing his as well as his family's personal expenses. Therefore, when the case was returned to the Sandiganbayan, it was not, as petitioners ardently claim — to conduct another full blown trial or proceeding to determine or establish the very same things that this Court had long decided in *Republic*. Rather, it was to choose from among the Court's identified and declared reduced list of properties that would approximate the amount which was beyond or out of proportion to Bugarin's lawful income also identified and declared by the High Tribunal in the same case.

The immutability of judgment that has long become final and executory is the core, the very essence of an effective and efficient administration of justice. Thus, in *Labao v. Flores*,[44] this Court reiterated the importance of the doctrine:

> Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will

[44] G.R. No. 187984, November 15, 2010, 634 SCRA 723, 734-735.

set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.

As regards the third issue, petitioners argue that since proceedings in the *Republic case* are civil in nature, the Sandiganbayan, in executing the *Republic decision*, the late Bugarin's personal properties should have been exhausted before resorting to the forfeiture of real properties following Section 8, Rule 39 of the Rules of Court.

Once again, petitioners are mistaken. Categorizing forfeiture proceedings as civil rather than criminal is all too simple. Petitioners, who at one point already took the opposite view, should know better. Forfeiture proceedings under R.A. No. 1379 is a peculiarity.

In the *Republic case*, this Court held that it is civil in nature because the proceeding does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the government. In addition, the procedure followed was that provided for in a civil action. Yet, in the case of *Cabal v. Kapunan*,[45] the Court also declared that forfeiture partakes the nature of a penalty. Thus, while the procedural aspect of these proceedings remain civil in form, the very forfeiture of property found to be unlawfully acquired is inescapably in the nature of a penalty.[46]

Necessarily, petitioners' position must fail. In forfeiting the properties of Bugarin enumerated in the list, the ultimate end was to abandon and surrender the properties unlawfully acquired in favor of the government. It is not to simply satisfy some certain or specific amount which can be done by merely proceeding with the personal properties first and real properties next. More than the amount, it is the property, whether real or personal, that is illegally acquired that is being sought to be seized or taken in favor of the government.

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[45] *Cabal v. Kapunan*, 116 Phil. 1361, 1366 (1962).

[46] *Ong v. Sandiganbayan*, 507 Phil. 6, 21-23 (2005).

The properties of Bugarin in the list have been found unlawfully acquired. The same have been ordered forfeited in favor of the government a decade ago. It is high time that the *Republic decision* be finally carried out.

WHEREFORE, the petition is **DENIED.** The Resolutions of the Sandiganbayan dated April 3, 2006 and August 30, 2006, implementing the January 30, 2002 Decision of the Court in *Republic v. Sandiganbayan*, are hereby **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 195307. August 6, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALSHER BERMEJO *Y* LUMPAYAO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION FOR RAPE; GUIDING PRINCIPLES.— In the review of rape cases, this Court is guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand

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[*] Designated Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE GENERAL RULE THAT THE FINDING OF THE TRIAL COURT REGARDING THE CREDIBILITY OF WITNESSES ARE ACCORDED GREAT RESFECT DOES NOT PRECLUDE A REEVALUATION OF THE EVIDENCE TO DETERMINE WHETHER MATERIAL FACTS OR CIRCUMSTANCES HAVE BEEN OVERLOOKED OR MISINTERPRETED BY THE TRIAL COURT.— This Court is not unmindful of the general rule that the findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal. However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court. In the past, this Court has not hesitated to reverse judgments of conviction, where there were strong indications pointing to the possibility that the rape charge was false.

3. ID.; ID.; ID.; THE ACCUSED MAY BE CONVICTED OF RAPE SIMPLY ON THE BASIS OF THE COMPLAINANT'S TESTIMONY ONLY IF SUCH TESTIMONY MEETS THE TEST OF CREDIBILITY.— Although it is settled that the accused may be convicted of rape simply on the basis of the complainant's testimony, this principle holds true only if such testimony meets the test of credibility. This requires that the testimony be straightforward, clear, positive and convincing. However, this Court finds the opposite.

4. ID.; ID.; ID.; THE FAILURE OF THE COMPLAINANT TO RESIST THE ALLEGED ASSAULT INDUBITABLY CASTS DOUBT ON HER CREDIBILITY AND THE VERACITY OF HER NARRATION OF THE INCIDENT.— The Information alleges that the carnal knowledge was attended by force, threat or intimidation, but the testimony of AAA does not indicate the presence of those circumstances. AAA merely mentioned that the unarmed appellant threatened to kill her if she made a noise. To be intimidated by the said threat is highly suspicious for a 20-year-old woman whose brother was sleeping on the floor of the same room where she was alleged to have been defiled. While it has been held that

lust is no respecter of time and place and rape can be committed in the unlikeliest of places such as in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping, those cases mostly involve minors whose rapists are those who have moral ascendancy over them. In the present case, it is unbelievable that a 20-year-old woman would easily succumb to a simple threat from someone who does not have any moral ascendancy over her when she could have easily shouted for help and aroused he brother who was sleeping nearby. x x x. This Court recognizes that rape victims have no uniform reaction to the sexual assault; while some may offer strong resistance, others may be too intimidated to offer any at all. It must be stressed though, that AAA's failure to resist the alleged assault indubitably casts doubt on her credibility and the veracity of her narration of the incident. Her behavior after the incident, also contributes to the said doubt.

5. ID.; ID.; ID.; THE COMPLAINANT'S INDIFFERENCE ON THE LINGERING PRESENCE OF THE ACCUSED AT THE SCENE OF THE ALLEGED CRIME AFTER THE SAME HAPPENED, INSTEAD OF IMMEDIATELY REPORTING THE INCIDENT NATURALLY MAKES HER TESTIMONY TAINTED WITH UNCERTAINTY.— The conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape. In the present case, the acts of AAA after the alleged rape are totally uncharacteristic of one who has been raped. Her indifference on the lingering presence of the appellant at the scene of the alleged crime after the same happened instead of immediately reporting the incident naturally makes her testimony tainted with uncertainty.

6. ID.; ID.; ID.; IT IS TO BE EXPECTED THAT ONE WHO IS GUILTY OF A CRIME WOULD WANT TO DISSOCIATE HIMSELF FROM THE PERSON OF THE VICTIM, THE SCENE OF THE CRIME, AND FROM ALL OTHER THINGS AND CIRCUMSTANCES RELATED TO THE OFFENSE WHICH COULD POSSIBLY IMPICATE HIM OR GIVE RISE TO EVEN THE SLIGHTEST SUSPICION AS TO HIS GUILT; NOT APPLICABLE.— [T]he actuations of appellant after the alleged rape also create

a doubt as to his guilt. As testified by AAA, appellant even went to mass with AAA's brother and cousin and stayed at the house until the evening of that day having a drink with his co-workers. It is to be expected that one who is guilty of a crime would want to dissociate himself from the person of his victim, the scene of the crime, and from all other things and circumstances related to the offense which could possibly implicate him or give rise to even the slightest suspicion as to his guilt. However, such did not happen in this case.

7. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF INNOCENCE; WHERE TWO CONFLICTING PROBABILITIES ARISE FROM THE EVIDENCE, THE ONE COMPATIBLE WITH THE PRESUMPTION OF INNOCENCE WILL BE ADOPTED.— Appellant explains that the rape charge was motivated by a grudge on the part of AAA for his failure to give her the money that the latter was asking from him. Nevertheless, even if the assertion is too trite to merit consideration in order to constitute a valid defense, of utmost importance is that there are grounds for reasonable doubt and that all doubts should be resolved in favor of the accused. Clearly, taking into consideration the evidence presented by the prosecution, this Court finds that doubt naturally arises as to the guilt of the appellant and where two conflicting probabilities arise from the evidence; the one compatible with the presumption of innocence will be adopted. It is better to set a guilty man free than to imprison an innocent man.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

D E C I S I O N

PERALTA, *J.*:

This is to resolve an appeal from the Decision[1] dated May 12, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring, *rollo*, pp. 2-20.

No. 03494, affirming the Decision[2] dated April 15, 2008 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Criminal Case No. 07-3124, finding appellant Alsher Bermejo *y* Lumpayao, guilty beyond reasonable doubt of the crime of Rape.

The antecedent facts are:

Private complainant, AAA,[3] a twenty (20) year-old, single and unemployed woman, knew appellant as her neighbor in Misamis Occidental. They later lived in a house, which is actually a room around 12 square meters in size, in Makati City with AAA's brothers BBB and CCC, and her cousin DDD. AAA resided temporarily in the said house while looking for work. Appellant, on the other hand, a construction worker, was allowed by AAA's brothers to live in the house. She had been staying in the room for four (4) months while appellant had been living there for two (2) months on November 4, 2007.

Around 9:00 p.m. of November 3, 2007, the appellant, CCC and DDD had a drinking spree just outside their house. AAA stayed inside the house while the group drank, and around 1:00 a.m. of November 4, 2007, she went to her bed to sleep. Thereafter, the group finished their drinking session and went inside the house. DDD and appellant watched a pornographic movie which awakened AAA, but the latter tried to go back to sleep.

While AAA was lying asleep on the wooden bed and CCC and the appellant were asleep on the floor, around 3:00 a.m., appellant went beside her and kissed her. At that time, only she, her brother CCC, who was fast asleep, and appellant were

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[2] Penned by Judge Oscar B. Pimentel.

[3] In line with this Court's ruling in *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real names of the rape victims will not be disclosed. This Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

in the room. Appellant kissed AAA on the lips and on her belly while threatening to kill her if she made any noise. AAA was shocked and she didn't know what to do.

Afterwards, appellant undressed her and kissed her breast before he spread AAA's legs and held her hands. While AAA was in a lying position, appellant inserted his private part in AAA's private part and proceeded to penetrate her for fifteen (15) minutes. AAA was not able to do anything and was crying while she was being penetrated. Appellant then ejaculated inside AAA's private part. Suddenly, appellant, before falling asleep, offered to marry AAA, to which the latter said nothing and merely cried. AAA did not report the incident immediately because of fear.

AAA saw appellant, CCC and DDD go to mass around 6 or 7:00 a.m., after which, she, too went to mass. Eventually, she told her cousin DDD about the incident around 7 p.m. of the same day. DDD informed AAA's brother CCC, who then informed her other brother BBB who was then in Laguna. AAA, CCC and DDD then proceeded to a *barangay* hall in Makati City to report the rape. Later on, AAA went to the police authorities and the latter had her examined at the Philippine National Police Crime Laboratory. The following day, November 5, 2007, appellant was arrested.

An Information was then filed against appellant which reads as follows:

> That on or about the 4th day of November 2007, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously through force, threat or intimidation, have carnal knowledge of the complainant, [AAA].
>
> CONTRARY TO LAW.[4]

During arraignment, with the assistance of counsel *de oficio*, appellant pleaded not guilty. The trial on the merits ensued.

The prosecutor presented the testimony of AAA as to the matters earlier narrated. The testimony of the Medico-Legal

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

Officer, Jesille Baluyot, who examined AAA was also presented. According to her, upon her examination, she found that there was a deep-healed laceration at 3 and 9 o'clock positions in the hymen of AAA. She testified that the deep-healed laceration meant that it may have been caused more than 21 days earlier. She also added that she did not find any spermatozoa inside AAA's private part. She also did not find any wound or contusions on AAA.

For his defense, appellant testified as to the following:

He and AAA were lovers and that their relationship lasted from 2003 to 2004 because he had another girlfriend. He said that during the period that they had a relationship, he and AAA had sexual intercourse. He also claimed that when they were staying at the room in Makati City or after their relationship ended, they had two sexual encounters; first was on October 31, 2007 and second was on November 4, 2007, the latter being the date when AAA claimed that she was raped.

On November 3, 2007, after his drinking spree with CCC and DDD, they all went inside the house and saw AAA watching a pornographic movie. CCC scolded AAA but the latter merely replied that they should all go to sleep because they were drunk. DDD proceeded to sleep on the floor of the room while AAA and appellant continued to watch the movie. After watching the said movie, AAA "challenged" appellant to repeat their sexual encounter on October 31, 2007 which the latter accepted. After having consensual sex, he fell asleep and did not wake up until 5:00 a.m. On that day, he went to mass with CCC and DDD. After the mass, he, CCC, DDD, JS and AAA's other cousin NS had another drinking session. Meanwhile, AAA went to a restaurant. Later, on the same day, AAA asked money from appellant in the amount of ₱500.00 which the latter failed to give. According to appellant, AAA became angry and shouted invectives at him in front of everybody present in the drinking session. That night, appellant slept at the house of NS located just next to the room where he, AAA, CCC and DDD stayed. The following day, on his way to work, he was arrested by two *barangay tanods* and found out that he was being accused of raping AAA.

The RTC, on April 15, 2008, found appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, Par. 1 of the Revised Penal Code. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, and finding the accused guilty beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1 and penalized under Article 266-B, par. 1 of the Revised Penal Code, said accused ALSHER BERMEJO *Y* LUMPAYAO . . . is hereby sentenced to suffer the penalty of *Reclusion Perpetua.*
>
> With all the accessories of the law.
>
> The aforesaid accused is further ordered to pay the amount of ₱50,000.00 as indemnity; the amount of ₱50,000.00 for and as moral damages.
>
> With costs against the accused.
>
> SO ORDERED.[5]

Aggrieved, appellant elevated the case to the CA. However, the latter, on May 12, 2010, affirmed the decision of the RTC, thus:

> WHEREFORE, the appealed decision is AFFIRMED *in toto*.
>
> SO ORDERED.[6]

Hence, the present appeal.

In his Supplemental Brief[7] dated May 16, 2011, appellant repeats the argument he presented before the CA and contends that the prosecution failed to prove his guilt beyond reasonable doubt. According to him, no force and intimidation happened during the sexual act, thus, a clear indication that what transpired was consensual. He further argues that had AAA really felt fear, she could have easily shouted for help from her brother who was sleeping on the floor of the same room.

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[5] *Id.* at 73-90.

[6] *Rollo*, p. 19.

[7] *Id.* at 35-43.

This Court finds the appeal meritorious.

In the review of rape cases, this Court is guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[8]

This Court is not unmindful of the general rule that the findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal.[9] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.[10] In the past, this Court has not hesitated to reverse judgments of conviction, where there were strong indications pointing to the possibility that the rape charge was false.[11]

Although it is settled that the accused may be convicted of rape simply on the basis of the complainant's testimony,[12] this

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[8] *People v. Molleda*, G.R. No. 153219, December 1, 2003, 417 SCRA 53, 57.

[9] *People v. Plana*, G.R. No. 128285, November 27, 2001, 370 SCRA 542, 555; *People v. Villanos*, G.R. No. 126648, August 1, 2000, 337 SCRA 78, 87; *People v. De Guzman*, G.R. No. 124368, June 8, 2000, 333 SCRA 269, 280; *People v. Palma*, G.R. Nos. 130206-08, June 17, 1999, 308 SCRA 466, 476.

[10] *People v. De la Cruz*, G.R. No. 137967, April 19, 2001, 356 SCRA 704, 714-715; *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75, 86-87.

[11] *People v. De la Cruz*, *supra*, at 715; *People v. Domogoy*, *supra*, at 89; *People v. Medel*, G.R. No. 123803, February 26, 1998, 286 SCRA 567, 582.

[12] *People v. Taño*, G.R. No. 133872, May 5, 2000, 331 SCRA 449, 464; *People v. Ambray*, G.R. No. 127177, February 25, 1999, 303 SCRA 697, 705; *People v. Garcia*, G.R. No. 120093, November 6, 1997, 281 SCRA

principle holds true only if such testimony meets the test of credibility.[13] This requires that the testimony be straightforward, clear, positive and convincing. However, this Court finds the opposite.

AAA gave the following testimony:

Q So you were awaken when the accused kissed you. Where did he kiss you?
A He was kissing my lips going down to my belly.

Q While kissing you, did he say something to you or just kissed (sic) you?
A Yes, sir. He was threatening me.

Q How were you threatened by the accused?
A He was telling me that if I will make a noise he will kill me.

Q This he was doing while at the same time kissing you?
A Yes, sir.

Q And what did you feel when the accused was kissing you, your lips down to your belly while threatening you.
A I was shocked, sir, and I don't know what to do and I cannot do anything.

Q You did not offer any resistance?
A No, sir, because I was already afraid and I don't know what to do.

Q Why did you say that it was Alsher Bermejo who was kissing you and was attacking you?
A Because I saw him, sir, approached me and laid beside me.

Q For how long was the accused kissed (*sic*) you?
A I do not know, sir, but I think it is quite long.

Q So he kissed you in the lips. You did not bite him?
A No, sir.

463, 476; *People v. Abad*, G.R. No. 114144, February 13, 1997, 268 SCRA 246, 250; *People v. Rosare*, G.R. No. 118823, November 19, 1996, 264 SCRA 398, 412.

[13] *Id.*

Q Why did you not bite him?
A Because I was already afraid, sir, I don't know what to do.
Q After kissing your lips, he proceeded in kissing you where?
A In my breast, sir.

Q After kissing you in (*sic*) your breast, what else did he do?
A He entered his organ into my organ.

x x x x x x x x x

Q How long was the accused mounted on you — how long did the accused placed himself on top of you while his [private part] was inserted in your [private part]?
A Long time, sir.

Q Can you approximate how long is that *matagal*?
A About 15 minutes.

Q During all this time, what were you doing?
A Nothing, sir, I just cried.

x x x x x x x x x

Q During all this time what was DDD, your brother doing?
A He was just sleeping. He was not able to wake up.

Q Did you not try to shout during this time of the attack?
A No more, sir, because I was already in fear, I'm afraid and I don't know what to do.[14]

The Information alleges that the carnal knowledge was attended by force, threat or intimidation, but the testimony of AAA does not indicate the presence of those circumstances. AAA merely mentioned that the unarmed appellant threatened to kill her if she made a noise. To be intimidated by the said threat is highly suspicious for a 20-year-old woman whose brother was sleeping on the floor of the same room where she was alleged to have been defiled. While it has been held that lust is no respecter of time and place and rape can be committed in the unlikeliest of places such as in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members

[14] TSN, January 22, 2008, pp. 18-28. (Emphases supplied.)

of the family are also sleeping,[15] those cases mostly involve minors whose rapists are those who have moral ascendancy over them. In the present case, it is unbelievable that a 20-year-old woman would easily succumb to a simple threat from someone who does not have any moral ascendancy over her when she could have easily shouted for help and aroused her brother who was sleeping nearby. As ruled in *People v. Castro*:[16]

> Complainant's failure to resist gives rise to the reasonable doubt whether, as she claimed, she was forced to have sexual intercourse with accused-appellant. She could have shouted for help. She could have kicked accused-appellant or pushed him to prevent him from forcing himself on her. But, she did none of these.
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> It has been held that the offended party in a rape case must put up some resistance or struggle to protect her chastity, not only at the initial stage of its commission but during all the time that the dastardly act is perpetuated upon her. Indeed, a woman's most precious asset is the purity of her womanhood. She will resist to the last ounce of her strength any attempt to defile it.
>
> It is true that any physical overt act manifesting resistance against the act of rape in any degree from the offended party may be accepted as evidence in the prosecution of the acts punished under Art. 266-A par. 1(a) of the Revised Penal Code. Still, however, this provision requires physical overt act that manifests resistance from the offended party. In the case at bar, there is no such overt act but, if at all, a mere initial reluctance.[17]

Also, in *People v. Gavina*,[18] this Court ruled that:

> x x x A man may lay no hand on a woman, yet if by the array of physical forces he so overpowers her mind that she does not resist or she ceases resistance through fear of greater harm, the consummation of unlawful intercourse by the man would still be rape. Here, we find no showing of such compelling fear. x x x

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[15] *People v. Evina*, 453 Phil. 25, 41 (2003), citing *People v. Perez*, G.R. No. 122764, September 24, 1998, 296 SCRA 17; *People v. Alcartado*, G.R. Nos. 132379-82, June 29, 2000, 334 SCRA 701.

[16] G.R. Nos. 146297-304, August 22, 2002, 387 SCRA 663.

[17] *People v. Castro, supra*, at 681-682. (Citations omitted.)

[18] 439 Phil. 898 (2002).

Appellant had no weapon with him and used none in the commission of the alleged crime. Nowhere in complainant's testimony do we find such degree of intimidation as to cause her to believe that appellant was at that time capable of harming her or killing her had she refused him. We find absent here the element of force or intimidation to support a charge for rape. Where the accused raises doubt as to any material element, but the prosecution is unable to overcome such doubt, we must find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the accused, now appellant, must be acquitted.

In rape committed by force or intimidation, it is imperative that the prosecution should establish that voluntariness on the part of the offended party was absolutely lacking. In the present case, complainant's conduct before, during, and after the alleged rape, as gleaned from her testimony, tells a different story. x x x

x x x x x x x x x

x x x A presumption indicating guilt does not by itself destroy the presumption of innocence unless the inculpating presumption, together with all the evidence adduced, suffices to overcome the presumption of innocence by proof of guilt beyond reasonable doubt. Until the appellant's guilt is shown in this manner, the presumption of innocence continues and must prevail.[19]

This Court recognizes that rape victims have no uniform reaction to the sexual assault; while some may offer strong resistance, others may be too intimidated to offer any at all.[20] It must be stressed though, that AAA's failure to resist the alleged assault indubitably casts doubt on her credibility and the veracity of her narration of the incident. Her behavior after the incident, also contributes to the said doubt, thus:

Q So in the morning after the attack, did you go out in that house of yours?

A Yes, sir. I went out and attend a mass.

Q At what time did you go out in that residence and attend the mass?

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[19] *People v. Gavina, supra*, at 906-909. (Citations omitted.)

[20] *People v. Rabosa*, G.R. Nos. 119362 and 120269, June 9, 1997, 273 SCRA 142, 150-151.

A At 7 o'clock in the morning.

Q Did you still see the accused in this case inside your residence at the house in that morning after the attack?
A Yes, sir, I saw him.

Q What was Alsher doing at that time?
A While I was still inside the house at about 6 o'clock in the morning, they attend also the mass together with my cousin.

x x x x x x x x x

Q So Alsher went to mass at 6 o'clock in the morning of that day together with your brother and your cousin, the same persons he was drinking with the night before?
A Yes, sir.

Q So from 6:00 to 7:00 in the morning, you were alone inside your residence?
A Yes, sir.

Q What were you doing inside your house during that time?
A I was just lying, crying and thinking what to do.

Q So at 7 o'clock you decided to go to church?
A Yes, sir.

x x x x x x x x x

Q How long did you stay in the church?
A At 9:00 I returned to the house and then I left and went to the mall because I don't want to see him there, sir.

x x x x x x x x x

Q When you returned at 9 o'clock, did you still see the accused?
A Yes, sir. They were drinking together with his co-workers.[21]

The conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape.[22] In the present case, the acts

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[21] TSN, January 22, 2008, pp. 26-36.

[22] *People v. Sapinoso*, G.R. No. 122540, March 22, 2000, 328 SCRA 649, 657; *People v. Moreno*, G.R. No. 115191, December 21, 1999, 321 SCRA 334, 351-352.

of AAA after the alleged rape are totally uncharacteristic of one who has been raped. Her indifference on the lingering presence of the appellant at the scene of the alleged crime after the same happened instead of immediately reporting the incident naturally makes her testimony tainted with uncertainty. On the other hand, the actuations of appellant after the alleged rape also create a doubt as to his guilt. As testified by AAA, appellant even went to mass with AAA's brother and cousin and stayed at the house until the evening of that day having a drink with his co-workers. It is to be expected that one who is guilty of a crime would want to dissociate himself from the person of his victim, the scene of the crime, and from all other things and circumstances related to the offense which could possibly implicate him or give rise to even the slightest suspicion as to his guilt.[23] However, such did not happen in this case.

Appellant explains that the rape charge was motivated by a grudge on the part of AAA for his failure to give her the money that the latter was asking from him. Nevertheless, even if the assertion is too trite to merit consideration[24] in order to constitute a valid defense, of utmost importance is that there are grounds for reasonable doubt and that all doubts should be resolved in favor of the accused.

Clearly, taking into consideration the evidence presented by the prosecution, this Court finds that doubt naturally arises as to the guilt of the appellant and where two conflicting probabilities arise from the evidence; the one compatible with the presumption of innocence will be adopted.[25] It is better to set a guilty man free than to imprison an innocent man.[26]

WHEREFORE, under these premises, this Court **ACQUITS** appellant Alsher Bermejo *y* Lumpayao on grounds of reasonable

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[23] *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676, 705.

[24] See *People v. Lou*, G.R. No. 146803, January 14, 2004, 419 SCRA 345, 351.

[25] See *People v. Agoncillo*, 80 Phil. 33, 86 (1948).

[26] *People v. Capili*, G.R. No. 130588, June 8, 2000, 333 SCRA 354, 366.

doubt. Consequently, this Court **REVERSES** and **SETS ASIDE** the Decision dated May 12, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03494, affirming the Decision dated April 15, 2008 of the Regional Trial Court of Makati City, Branch 148.

Unless confined for any other lawful cause, Alsher Bermejo *y* Lumpayao is hereby immediately ordered **RELEASED** from detention. The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken thereon within five (5) days from receipt.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Reyes,*[*] *JJ.*, concur.

EN BANC

[A.M. No. P-10-2809. August 10, 2012]

MANOLITO C. VILLORDON, *complainant, vs.* **MARILYN C. AVILA, Court Interpreter I, Municipal Trial Court in Cities, Branch 3, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY; MAKING A FALSE STATEMENT IN ONE'S PERSONAL DATA SHEET (PDS) AMOUNTS TO DISHONESTY AND FALSIFICATION OF AN OFFICIAL DOCUMENT.— This Court has already ruled in the past that willful concealment of facts in the PDS constitutes mental dishonesty amounting to misconduct. Likewise, making

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[*] Designated Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

a false statement in one's PDS amounts to dishonesty and falsification of an official document. The omission of the names of her children in her PDS is an act of dishonesty, which merits the imposition of penalties provided for under the law. Further, even as respondent knowingly provided incomplete information in her PDS, she signed the undertaking attesting that the same was true, correct and complete.

2. **ID.; ID.; ID.; ID.; DEFINED.—** Dishonesty has been defined as "intentionally making a false statement on any material fact." Dishonesty evinces "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

3. **ID.; ID.; ID.; ID.; MAKING FALSE STATEMENTS IN ONE'S PDS IS CONNECTED WITH ONE'S EMPLOYMENT IN THE GOVERNMENT; TO BE METED THE PENALTY OF DISMISSAL, THE EMPLOYEE'S DISHONESTY NEED NOT BE COMMITTED IN THE PERFORMANCE OF OFFICIAL DUTY; RATIONALE.—** Civil service rules mandate the accomplishment of the PDS as a requirement for employment in the government. Hence, making false statements in one's PDS is ultimately connected with one's employment in the government. The employee making false statements in his or her PDS becomes liable for falsification. Moreover, for respondent to be meted the penalty of dismissal, her dishonesty need not be committed in the performance of official duty. As the Court has previously ruled: The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.

4. ID.; ID.; ID.; ID.; A GOVERNMENT OFFICER'S DISHONESTY AFFECTS THE MORALE OF THE SERVICE, EVEN WHEN IT STEMS FROM THE EMPLOYEE'S PERSONAL DEALINGS AND IT SHOULD NOT BE TOLERATED, EVEN WHEN OFFICIAL DUTIES ARE PERFORMED WELL.— The declarations that every government personnel makes in accomplishing and signing the PDS are not empty statements. Duly accomplished forms of the Civil Service Commission are considered official documents, which, by their very nature are in the same category as public documents, and become admissible in evidence without need of further proof. As an official document made in the course of official duty, its contents are *prima facie* evidence of the facts stated therein. Respondent's argument that her failure to indicate the names of her children in her PDS did not prejudice the government is incorrect. When official documents are falsified, respondent's intent to injure a third person is irrelevant because the principal thing punished is the violation of public faith and the destruction of the truth as claimed in that document. The act of respondent undermines the integrity of government records and therein lies the prejudice to public service. Respondent's act need not result in disruption of service or loss to the government. It is the act of dishonesty itself that taints the integrity of government service. A government officer's dishonesty affects the morale of the service, even when it stems from the employee's personal dealings. Such conduct should not be tolerated from government officials, even when official duties are performed well.

5. ID.; ID.; ID.; ID.; DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT ARE BOTH GRAVE OFFENSES PUNISHABLE BY DISMISSAL FROM THE SERVICE, EVEN FOR A FIRST OFFENSE, WITHOUT PREJUDICE TO CRIMINAL OR CIVIL LIABILITY.— Under Rule IV, Section 52(A)(1) of the *Uniform Rules in Administrative Cases in the Civil Service*, dishonesty and falsification of official document are both grave offenses punishable by dismissal from government service, even for a first offense, without prejudice to criminal or civil liability. The penalty also carries with it the cancellation of respondent's eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

6. ID.; ID.; ID.; ALL JUDICIARY EMPLOYEES ARE EXPECTED TO CONDUCT THEMSELVES WITH PROPRIETY AND DECORUM AT ALL TIMES.— Employment in the judiciary demands the highest degree of responsibility, integrity, loyalty and efficiency from its personnel. All judiciary employees are expected to conduct themselves with propriety and decorum at all times. An act that falls short of the exacting standards set for public officers, especially those in the judiciary, shall not be countenanced. By her acts of dishonesty and falsification of an official document, respondent has failed to measure up to the high and exacting standards set for judicial employees and must, therefore, be dismissed from the service.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint for Dishonesty and Falsification of Official Document against respondent Marilyn C. Avila (respondent), Court Interpreter I, Municipal Trial Court in Cities (MTCC), Branch 3, Cebu City.

In a letter[1] to the Office of the Court Administrator (OCA) dated 27 October 2008, complainant Manolito C. Villordon (complainant) called the OCA's attention to certain false entries in respondent's Personal Data Sheet (PDS). Complainant alleged that respondent failed to declare her correct marital status and the fact that she has three illegitimate children. Further, complainant claimed that respondent submitted a falsified income tax return.

Then Court Administrator Jose P. Perez[2] referred the complaint to Judge Oscar D. Andrino (Judge Andrino), Executive Judge of the MTCC, Cebu City, for discreet investigation and report.[3]

In his Investigation Report[4] dated 10 March 2009, Judge Andrino narrated the factual backdrop that led to the filing of the complaint.

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[1] *Rollo*, p. 5.

[2] Now Associate Justice of this Court.

[3] *Rollo*, p. 4.

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

Complainant, an employee of the Bureau of Jail Management and Penology (BJMP) in Minglanilla, Cebu, is married but separated from his wife, while respondent, a Court Interpreter of MTCC, Branch 3, Cebu City, was the common-law wife of a certain Junie Balacabas. Respondent and Balacabas have three daughters.

In 2001, complainant met respondent. Soon after, they started living together as husband and wife. Respondent was later appointed as Court Interpreter, the position vacated by complainant's father. Complainant and respondent parted ways in 2008, and both subsequently found other partners. After their break-up, respondent filed an administrative case against complainant before the BJMP.

On 29 January 2009, at about 6 o'clock in the evening, complainant and his partner, Maribel Caballero (Caballero), met respondent at the parking area of the Minglanilla Sports Complex. The three had an altercation. As a result, respondent filed a case against complainant for violation of Republic Act No. 9262 (RA 9262), or the *Anti-Violence Against Women and Children Act*. Meanwhile, Caballero filed a complaint for physical injuries against respondent before the Office of the Provincial Prosecutor.

Judge Andrino also examined respondent's PDS. He found that respondent did not indicate that she has three daughters and failed to disclose that there was a physical injuries complaint filed against her.

In her comment,[5] respondent said that complainant has an axe to grind against her because they had an illicit affair, which she broke off when she entered government service. As to the information she omitted from her PDS, respondent admitted having left out the names of her three children. She argued, however, that she did so because they were never her dependents and were in the custody of her parents. She also claimed that she has never claimed tax exemptions for her children. Respondent also denied that she falsified her civil status, as she is in fact single. She claimed that the omission of her children's names

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

did not mean that she was not acknowledging them or that she was concealing their existence from family and friends, and neither did it jeopardize the interest or violate any right of complainant.

Respondent pointed out that she has complied with the requirements of her employment, she possesses all the necessary qualifications, and she has performed her duties in accordance with the mandate of her position. She prayed that the charges against her be dismissed.

In a manifestation[6] received by the Court on 14 March 2011, respondent further argued that, when she filled out her PDS, the birth certificates of her children were not available so she heeded a co-worker's advice to leave the names blank. She reiterated that when she applied as court interpreter, she was qualified for the position. She insisted that all the information in her PDS are true and only the names of her three children were omitted.

In its report[7] dated 15 February 2010, the OCA made the following recommendation:

> Respondent wants this Office to believe that she is not liable for Dishonesty for her failure to state that she has three (3) children and had been charged with a criminal offense, as she has the necessary qualifications for the position of Court Interpreter and has been performing her functions efficiently and effectively.
>
> This Office finds no merit on (sic) respondent's contention.
>
> x x x x x x x x x
>
> It must be remembered that the accomplishment of the Personal Data Sheets is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. As such, it is well settled that the accomplishment of untruthful statements therein is intimately connected with such employment[.] x x x
>
> Notwithstanding that the making of untruthful statement in official documents is ultimately connected with one's employment, it bears stressing that dishonesty, to warrant the penalty of dismissal, need

[6] *Id*. at 43.

[7] *Id*. at 31-35.

not be committed in the course of the performance of duty by the person charged.

x x x x x x x x x

This Office cannot sustain respondent's attempt to escape liability by advancing the flimsy excuse that she did not list the names of her three children in her Personal Data Sheet because they always had been in the custody of her parents. The Personal Data Sheet requires the listing of the full names of a government employee's child/children and their corresponding dates of birth. x x x Well entrenched is the rule that when official documents are falsified, the intent to injure a third person need not be present, because the principal thing punished is the violation of the public faith and the destruction of the truth as therein proclaimed x x x

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, are the following recommendations that (sic):

1. that the instant case be RE-DOCKETED as a regular administrative matter;

2. that respondent MARILYN C. AVILA, Court Interpreter I, Municipal Trial Court in Cities, Branch 3, Cebu City, be found GUILTY of Dishonesty and Falsification of Official [ ] Document; and

3. that respondent MARILYN C. AVILA be meted the penalty of DISMISSAL from the service with forfeiture of all benefits, except accrued leave credits, with disqualification from employment in any government agency, including government owned and controlled corporations.[8]

In March 2011, the Court received an undated letter[9] from complainant, who manifested that he was no longer interested in pursuing the case against respondent. He said he realized that he filed the case out of anger, that he was not a proper party affected by respondent's omission, and respondent's dismissal from work would be inhuman and unjust since

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[8] *Id*. at 35.

[9] *Id*. at 40.

respondent's civil status does not affect her performance as a court employee. Thus, complainant asked the Court to dismiss the case against respondent.

The Court finds respondent guilty of dishonesty and falsification of official documents.

Respondent herself admits that she failed to indicate the names of her children on her PDS, albeit proffering the argument that they were not in her custody, and that she does not claim them as her dependents or claim tax exemption for them.

Respondent proffers mere excuses that should not be given credence.

Respondent's intent to commit the dishonest act is evident. She made the same omission twice. She submitted two accomplished PDS forms within one year, both times omitting the names of her children.

When respondent signed and submitted her PDS, she made the following declaration:

> I declare under oath that this Personal Data Sheet has been accomplished by me, and is a **true, correct and *complete*** statement pursuant to the provisions of pertinent laws, rules and regulations of the Republic of the Philippines.
>
> I also authorize the agency head/authorized representative to verify/validate the contents stated herein. I trust that this information shall remain confidential. (Emphasis supplied)

Note that the information required of government personnel must not only be true and correct, it must also be **complete**.

Whatever respondent's reasons may be, the fact remains that respondent filled out and signed her PDS fully aware that she had omitted the names of her three children. She was fully aware that the information she supplied was not "true, correct and complete," and yet she declared under oath that it is.

This Court has already ruled in the past that willful concealment of facts in the PDS constitutes mental dishonesty amounting to

misconduct.[10] Likewise, making a false statement in one's PDS amounts to dishonesty and falsification of an official document.[11] The omission of the names of her children in her PDS is an act of dishonesty, which merits the imposition of penalties provided for under the law. Further, even as respondent knowingly provided incomplete information in her PDS, she signed the undertaking attesting that the same was true, correct and complete.

Dishonesty has been defined as "intentionally making a false statement on any material fact."[12] Dishonesty evinces "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[13]

Civil service rules mandate the accomplishment of the PDS as a requirement for employment in the government. Hence, making false statements in one's PDS is ultimately connected with one's employment in the government.[14] The employee making false statements in his or her PDS becomes liable for falsification.[15]

Moreover, for respondent to be meted the penalty of dismissal, her dishonesty need not be committed in the performance of official duty.[16] As the Court has previously ruled:

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[10] *Administrative Case for Dishonesty and Falsification against Luna*, 463 Phil. 878, 888 (2003).

[11] *Civil Service Commission v. Bumogas*, G.R. No. 174693, 31 August 2007, 531 SCRA 780, 786.

[12] *Judge Aldecoa-Delorino v. Remigio-Versoza*, A.M. No. P-08-2433, 25 September 2009, 601 SCRA 27, 41.

[13] *Retired Employee, MTC, Sibonga, Cebu v. Manubag*, A.M. No. P-10-2833, 14 December 2010, 638 SCRA 86, 91 citing *Bulalat v. Adil*, A.M. No. SCC-05-10-P, 19 October 2007, 537 SCRA 44, 48.

[14] *Retired Employee, MTC, Sibonga, Cebu v. Manubag, supra* at 93.

[15] *Re: Spurious Certificate of Eligibility of Tessie G. Quires*, 523 Phil. 21, 29 (2006).

[16] *Faelnar v. Palabrica*, A.M. No. P-06-2251, 20 January 2009, 576 SCRA 392, 400.

The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.[17]

The declarations that every government personnel makes in accomplishing and signing the PDS are not empty statements. Duly accomplished forms of the Civil Service Commission are considered official documents, which, by their very nature are in the same category as public documents, and become admissible in evidence without need of further proof. As an official document made in the course of official duty, its contents are *prima facie* evidence of the facts stated therein.[18]

Respondent's argument that her failure to indicate the names of her children in her PDS did not prejudice the government is incorrect. When official documents are falsified, respondent's intent to injure a third person is irrelevant because the principal thing punished is the violation of public faith and the destruction of the truth as claimed in that document.[19] The act of respondent undermines the integrity of government records and therein lies the prejudice to public service. Respondent's act need not result

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[17] *Id*. citing *Remolona v. CSC*, 414 Phil. 590, 600 (2001).

[18] *Re: Complaint of the Civil Service Commission, Cordillera Administrative Region, Baguio City against Rita S. Chulyao, Clerk of Court, MCTC-Barlig, Mountain Province*, A.M. No. P-07-2292, 28 September 2010, 631 SCRA 413, 423 citing *Donato, Jr. v. Civil Service Commission Regional Office 1*, G.R. No. 165788, 7 February 2007, 515 SCRA 48, 61-62.

[19] *Supra* note 16 at 402 citing *Ratti v. Mendoza-De Castro*, 478 Phil. 871, 883 (2004).

in disruption of service or loss to the government. It is the act of dishonesty itself that taints the integrity of government service. A government officer's dishonesty affects the morale of the service, even when it stems from the employee's personal dealings. Such conduct should not be tolerated from government officials, even when official duties are performed well.[20]

Under Rule IV, Section 52 (A) (1) of the *Uniform Rules in Administrative Cases in the Civil Service*,[21] dishonesty and falsification of official document are both grave offenses punishable by dismissal from government service, even for a first offense, without prejudice to criminal or civil liability.[22] The penalty also carries with it the cancellation of respondent's eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.[23]

Employment in the judiciary demands the highest degree of responsibility, integrity, loyalty and efficiency from its personnel. All judiciary employees are expected to conduct themselves with propriety and decorum at all times.[24] An act that falls short of the exacting standards set for public officers, especially those in the judiciary, shall not be countenanced.[25] By her acts of dishonesty and falsification of an official document, respondent has failed to measure up to the high and exacting standards set for judicial employees and must, therefore, be dismissed from the service.

WHEREFORE, the Court finds respondent Marilyn C. Avila **GUILTY** of dishonesty and falsification of official document.

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[20] *Anonymous v. Curamen*, A.M. No. P-08-2549, 18 June 2010, 621 SCRA 212, 219.

[21] CSC Memorandum Circular No. 19-99, 14 September 1999.

[22] CSC Memorandum Circular No. 19-99, 14 September 1999, Section 56.

[23] CSC Memorandum Circular No. 19-99, 14 September 1999, Section 58.

[24] *Disapproved Appointment of Limgas*, 491 Phil. 160 (2005).

[25] *Lorenzo v. Spouses Lopez*, A.M. No. 2006-02-SC, 15 October 2007, 536 SCRA 11, 19.

She is forthwith **DISMISSED** from the service, with cancellation of eligibility, forfeiture of all benefits, except accrued leave credits, and disqualification for reemployment in the government service, including in government-owned or controlled corporations.

SO ORDERED.

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

Sereno and *Perlas-Bernabe, JJ.,* on official leave.

EN BANC

[G.R. No. 189529. August 10, 2012]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) and WINSTON F. GARCIA, in his capacity as President and General Manager of the GSIS, *petitioners, vs.* **MARICAR B. BUENVIAJE-CARREON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *STARE DECISIS* RULE; APPLICABLE.— The very case cited by the Court of Appeals to support its findings and conclusions was elevated to the Court *via* a petition for review and We decided it last 27 July 2010. That petition was entitled *GSIS v. Villaviza,* docketed as G.R. No. 180291. The issues raised by GSIS herein have been settled by our ruling in *Villaviza.* The respondents therein, like herein respondent, were all charged under one Formal Charge for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. *Villaviza* and the instant case have the same factual antecedents and both went through the

same procedure before reaching this Court. The issues raised in both cases are substantially the same. The rule of *stare decisis* is applicable.

2. ID.; ID.; ID.; WHERE THE SAME QUESTION RELATING TO THE SAME EVENT IS BROUGHT BY PARTIES SIMILARLY SITUATED AS IN A PREVIOUS CASE ALREADY LITIGATED AND DECIDED BY A COMPETENT COURT, THE RULE OF *STARE DECISIS* IS A BAR TO ANY ATTEMPT TO RELITIGATE THE SAME ISSUE.— The principle of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of its Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. Considering that the facts, issues, causes of action, evidence and the applicable laws are exactly the same as those in the decided case of *Villaviza*, we shall adopt the latter's ruling. More pertinently, we reiterate the *ratio decidendi* in that case — respondents' actuations did not amount to a prohibited concerted activity or mass action as defined in CSC's Resolution No. 02-1316.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioners.

Loveria-Salazar Astive Mejia Del Rosario and Velasco Law Offices for respondent.

R E S O L U T I O N

PEREZ, *J.*:

This petition for review on *certiorari* seeks the reversal of the Decision[1] dated 20 February 2009 of the Court of Appeals in CA-G.R. SP No. 103539, which affirmed Resolution No. 07-1350 of the Civil Service Commission (CSC) finding respondent Maricar B. Buenviaje-Carreon not guilty of Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service, but only of Violation of Reasonable Office Rules and Regulations.

Respondent was holding the position of Social Insurance Specialist of the Claims Department of Government Service Insurance System (GSIS) when she was administratively charged with Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service for the following acts:

1. Wearing red shirt and marching to or appearing at the office of the Investigation Unit in protest and to support Atty. Mario Molina (Atty. Molina) and Atty. Albert Velasco (Atty. Velasco);

2. Conspiring with other employees and temporarily leaving her workplace, and abandoning her post and duties;

3. Badmouthing the security guards and the GSIS management and defiantly raising clenched fists; and

4. Causing alarm, frightening some employees, and disrupting the work at the Investigation Unit during office hours.[2]

The GSIS Investigation Unit issued a Memorandum dated 31 May 2005 concerning the alleged unauthorized concerted activity and requiring respondent to explain in writing why she should not be administratively dealt with.[3]

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[1] Penned by Associate Justice Arturo G. Tayag with Associate Justices Hakim S. Abdulwahid and Sixto C. Marella, Jr., concurring. *Rollo*, pp. 340-371.

[2] As contained in the Formal Charge. *Id.* at 90-91.

[3] *Id.* at 89.

In the Formal Charge dated 4 June 2005 signed by the GSIS President and General Manager Winston F. Garcia (Garcia), respondent was directed to submit her written answer and was placed under preventive suspension for ninety (90) days.[4]

Instead of answering the Formal Charge, respondent, together with eight (8) other charged employees,[5] chose to respond to the 31 May 2005 Memorandum. Respondent essentially admitted that her presence outside the office of the Investigation Unit was to show support for Atty. Velasco, the Union President and to witness the case hearing of Atty. Velasco and Atty. Molina.[6]

In a Decision dated 29 June 2005 for Administrative Case No. 05-004, respondent was found guilty of the charges against her and penalized as follow:

> WHEREFORE, PREMISES CONSIDERED, finding herein respondent guilty of the charges against her, she is hereby penalized with ONE (1) YEAR SUSPENSION with all the accessory penalties appurtenant thereto pursuant to Section 5 and 6 Rule V of the Amended Policy and Procedural Guidelines No. 178-04 otherwise known as Rules of Procedure in Administrative Investigations (RPAI) of GSIS Employees and Officials in relation to Sections 56(d) and 58(d) of the Uniform Rules on Administrative Cases in the Civil Service (URACCS). The period however of her preventive suspension shall be deducted therefrom.[7]

The GSIS noted that respondent has not filed any Answer nor submitted any responsive pleading to the Formal Charge. Respondent was found to have participated in a concerted mass action prohibited by law and staged on 27 May 2005 at the Investigation Unit Office to show support for Atty. Molina who had a scheduled hearing during that time.[8]

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[4] *Id.* at 91.

[5] Adronico Echavez, Frederick Faustino Madriaga III, Rowena Therese Gracia, Voltaire Balbanida, Elizabeth Duque, Robel Rubio, Pilar Layco, and Antonio Jose Legarda.

[6] *Rollo*, pp. 92-93.

[7] *Id.* at 99.

[8] *Id.* at 98.

On appeal, the respondent asserted that her right to due process was violated when GSIS proceeded to render judgment on the case after she failed to submit her answer to the Formal Charge. Moreover, she averred that Garcia acted as the complainant, prosecutor and judge at the same time in the GSIS resolution. She insisted that no substantial evidence exist to hold her guilty of Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service.

On 18 July 2007, the CSC rendered judgment partially granting the appeal, to wit:

> WHEREFORE, the appeal of Maricar Buenviaje-Carreon, Social Insurance Specialist, Claims Department, Government Service Insurance System (GSIS) is PARTIALLY GRANTED. Accordingly, the Decision dated June 29, 2005 of Winston F. Garcia, President and General Manager, GSIS, finding her guilty of Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service and imposing upon her the penalty of suspension from the service for one (1) year, is MODIFIED. Carreon is found guilty only of the lesser offense of Violation of Reasonable Office Rules and Regulations and is imposed the penalty of reprimand.[9]

GSIS filed a motion for reconsideration of the CSC Resolution but it was denied by the CSC on 31 March 2008.

GSIS elevated the case to the Court of Appeals *via* Petition for *Certiorari*. On 20 February 2009, the Court of Appeals denied the petition and adopted the ruling of the Court of Appeals Seventh Division dated 31 August 2007 in the case entitled *GSIS v. Dinna Villariza*, which according to the appellate court, has substantially the same facts and issues raised with the instant case.

Undaunted, GSIS filed the instant petition raising the following grounds for its appeal:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE GSIS CANNOT APPLY SUPPLETORILY

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[9] *Id.* at 261.

THE PROVISIONS OF THE RULES OF COURT ON THE EFFECT OF FAILURE TO DENY THE ALLEGATIONS IN THE COMPLAINT AND FAILURE TO FILE AN ANSWER, WHERE THE RESPONDENT IN AN ADMINISTRATIVE CASE DID NOT FILE AN ANSWER TO THE FORMAL CHARGE OR ANY RESPONSIVE PLEADING.

II.

THE HONORABLE COURT OF APPEALS' FINDING THAT THE CIVIL SERVICE COMMISSION CAN VALIDLY CONSIDER AND GIVE FULL PROBATIVE VALUE TO AN UNNOTARIZED LETTER THAT DID NOT FORM PART OF THE CASE RECORD, SUPPOSEDLY IN LINE WITH THE RULE THAT ADMINISTRATIVE DUE PROCESS CANNOT BE EQUATED WITH DUE PROCESS IN JUDICIAL SENSE, IS CONTRARY TO THE SETTLED JURISPRUDENCE ON ADMINISTRATIVE DUE PROCESS.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN SUSTAINING A DECISION THAT, ON ONE HAND, MAKES CONCLUSIONS OF FACTS BASED ON EVIDENCE ON RECORD AND, ON THE OTHER HAND, MAKES A CONCLUSION OF LAW BASED ON A DOCUMENT THAT DID NOT FORM PART OF THE CASE RECORD.

IV.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT PROOF OF SUBSTANTIAL REDUCTION OF THE OPERATIONAL CAPACITY OF AN AGENCY, DUE TO UNRULY MASS GATHERING OF GOVERNMENT EMPLOYEES INSIDE OFFICE PREMISES AND WITHIN OFFICE HOURS, IS REQUIRED TO JUSTIFY A FINDING THAT SAID EMPLOYEES ARE LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE PURSUANT TO CSC RESOLUTION NO. 021316.

V.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT AN UNRULY MASS GATHERING OF TWENTY EMPLOYEES, LASTING FOR MORE THAN AN HOUR, INSIDE OFFICE PREMISES, TO PROTEST A VALID

PROHIBITION ON THEIR LEADER'S APPEARANCE AS COUNSEL IS A VALID EXERCISE OF THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY.

VI.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN SUSTAINING THE CIVIL SERVICE COMMISSION'S FINDING THAT THE CONCERTED ABANDONMENT OF EMPLOYEES OF THEIR POSTS FOR MORE THAN AN HOUR TO HOLD AN UNRULY PROTEST INSIDE OFFICE PREMISES IS ONLY A VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS.[10]

The very case cited by the Court of Appeals to support its findings and conclusions was elevated to the Court *via* a petition for review and We decided it last 27 July 2010. That petition was entitled *GSIS v. Villaviza*, docketed as G.R. No. 180291.[11] The issues raised by GSIS herein have been settled by our ruling in *Villaviza*. The respondents therein, like herein respondent, were all charged under one Formal Charge for Grave Misconduct and/or Conduct Prejudicial to the Best Interest of the Service. *Villaviza* and the instant case have the same factual antecedents and both went through the same procedure before reaching this Court. The issues raised in both cases are substantially the same.[12] The rule of *stare decisis* is applicable.

The principle of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of its Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[13]

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

[11] 625 SCRA 669.

[12] *Id.* at 675-677.

[13] *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, 29 April 2010, 619 SCRA 585, 594-595 citing

Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[14]

Considering that the facts, issues, causes of action, evidence and the applicable laws are exactly the same as those in the decided case of *Villaviza*, we shall adopt the latter's ruling. More pertinently, we reiterate the *ratio decidendi* in that case — respondents' actuations did not amount to a prohibited concerted activity or mass action as defined in CSC's Resolution No. 02-1316.[15]

Following the principle of *stare decisis*, the present petition must be denied.

WHEREFORE, the petition is **DENIED** and the 20 February 2009 Decision of the Court of Appeals is **AFFIRMED.**

SO ORDERED.

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

Sereno and *Perlas-Bernabe, JJ.,* on official leave.

Lazatin v. Desierto, G.R. No. 147097, 5 June 2009, 588 SCRA 285, 293-294 citing further *Fermin v. People*, G.R. No. 157643, 28 March 2008, 550 SCRA 132, 145.

[14] *PEPSICO, Inc. v. Lacanilao*, 524 Phil. 147, 154-155 (2006) citing *Ty v. Banco Filipino Savings & Mortgage Bank*, 511 Phil. 510, 520-521 (2005).

[15] **Section 5.** As used in this Omnibus Rules, the phrase "prohibited concerted activity or mass action" shall be understood to refer to any collective activity undertaken by government employees, by themselves or through their employees organizations, with intent of effecting work stoppage or service disruption in order to realize their demands of force concession, economic or otherwise, from their respective agencies or the government. It shall include mass leaves, walkouts, pickets and acts of similar nature.

EN BANC

[G.R. No. 198742. August 10, 2012]

TEODORA SOBEJANA-CONDON, *petitioner, vs.* **COMMISSION ON ELECTIONS, LUIS M. BAUTISTA, ROBELITO V. PICAR and WILMA P. PAGADUAN,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; THE COMMISSION ON ELECTIONS; POWER TO DECIDE MOTIONS FOR RECONSIDERATION IN ELECTION CASES, UPHELD.—** The power to decide motions for reconsideration in election cases is arrogated unto the COMELEC *en banc* by Section 3, Article IX-C of the Constitution. x x x A complementary provision is present in Section 5(c), Rule 3 of the COMELEC Rules of Procedure. x x x Considering that the above cited provisos do not set any limits to the COMELEC *en banc's* prerogative in resolving a motion for reconsideration, there is nothing to prevent the body from directly adjudicating the substantive merits of an appeal after ruling for its reinstatement instead of remanding the same to the division that initially dismissed it. We thus see no impropriety much more grave abuse of discretion on the part of the COMELEC *en banc* when it proceeded to decide the substantive merits of the petitioner's appeal after ruling for its reinstatement.

2. **ID.; ID.; ID.; AUTHORITY TO ORDER DISCRETIONARY EXECUTION OF JUDGMENT, WARRANTED.—** There is no reason to dispute the COMELEC's authority to order discretionary execution of judgment in view of the fact that the suppletory application of the Rules of Court is expressly sanctioned by Section 1, Rule 41 of the COMELEC Rules of Procedure. Under Section 2, Rule 39 of the Rules of Court, execution pending appeal may be issued by an appellate court after the trial court has lost jurisdiction. In *Batul v. Bayron*, we stressed the import of the provision vis-à-vis election cases when we held that judgments in election cases which may be executed pending appeal includes those decided by trial courts

and those rendered by the COMELEC whether in the exercise of its original or appellate jurisdiction.

3. ID.; ELECTION LAWS; OMNIBUS ELECTION CODE; (BATAS PAMBANSA BILANG 881); QUALIFICATION OF CANDIDATES; TWO INSTANCES WHEN QUESTION THEREOF MAY BE RAISED; EXPLAINED.— Under the Batas Pambansa Bilang 881 (Omnibus Election Code), there are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised, to wit: (1) Before election, pursuant to Section 78 thereof x x x (2) After election, pursuant to Section 253 thereof. x x x Hence, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the twenty-five (25)-day period prescribed by Section 78 of the Omnibus Election Code for whatever reasons, the elections laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for *quo warranto* within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Omnibus Election Code. The above remedies were both available to the private respondents and their failure to utilize Section 78 of the Omnibus Election Code cannot serve to bar them should they opt to file, as they did so file, a *quo warranto* petition under Section 253.

4. ID.; ID.; REPUBLIC ACT NO. 8225; SWORN RENUNCIATION OF FOREIGN CITIZENSHIP; EXECUTION THEREOF PRIOR TO OR SIMULTANEOUS TO THE FILING OF THE CERTIFICATE OF CANDIDACY IS REQUIRED TO QUALIFY AS CANDIDATE FOR PHILIPPINE ELECTIONS, SUSTAINED.— R.A. No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship by taking an oath of allegiance to the Republic, x x x The oath is an abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5, viz: x x x At the outset, it bears stressing that the Court's duty to interpret the law according to its true intent is exercised only when the law is ambiguous or of doubtful meaning. The first and fundamental duty of the Court is to apply the law. As such, when the law is clear and free from

any doubt, there is no occasion for construction or interpretation; there is only room for application. Section 5(2) of R.A. No. 9225 is one such instance. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. For a statute to be considered ambiguous, it must admit of two or more possible meanings. The language of Section 5(2) is free from any ambiguity. In *Lopez v. COMELEC*, we declared its categorical and single meaning: a Filipino American or any dual citizen cannot run for any elective public position in the Philippines unless he or she personally swears to a renunciation of all foreign citizenship at the time of filing the certificate of candidacy. We also expounded on the form of the renunciation and held that to be valid, the renunciation must be contained in an affidavit duly executed before an officer of the law who is authorized to administer an oath stating in clear and unequivocal terms that affiant is renouncing all foreign citizenship. x x x The language of the provision is plain and unambiguous. It expresses a single, definite, and sensible meaning and must thus be read literally. **The foreign citizenship must be formally rejected through an affidavit duly sworn before an officer authorized to administer oath**. x x x The "sworn renunciation of foreign citizenship" must be deemed a formal requirement only with respect to the re-acquisition of one's status as a natural-born Filipino so as to override the effect of the principle that natural-born citizens need not perform any act to perfect their citizenship. Never was it mentioned or even alluded to that, as the petitioner wants this Court to believe, those who re-acquire their Filipino citizenship and thereafter run for public office has the option of executing an unsworn affidavit of renunciation. It is also palpable in the above records that Section 5 was intended to complement Section 18, Article XI of the Constitution on public officers' primary accountability of allegiance and loyalty. x x x In fine, R.A. No. 9225 categorically demands natural-born Filipinos who re-acquire their citizenship and seek elective office, to execute a personal and sworn renunciation of any and all foreign citizenships before an authorized public officer prior to or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections. The rule applies to all those who have re-acquired their Filipino citizenship, like petitioner, without regard as to whether they are still dual citizens or

not. It is a pre-requisite imposed for the exercise of the right to run for public office.

5. REMEDIAL LAW; EVIDENCE; PROOF OF OFFICIAL RECORD; FOREIGN LAWS MUST BE ALLEGED AND PROVEN IN ACCORDANCE WITH THE RULES; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court. x x x If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The Court has admitted certain exceptions to the above rules and held that the existence of a foreign law may also be established through: (1) a testimony under oath of an expert witness such as an attorney-at-law in the country where the foreign law operates wherein he quotes verbatim a section of the law and states that the same was in force at the time material to the facts at hand; and (2) likewise, in several naturalization cases, it was held by the Court that evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice, may be allowed and used as basis for favorable action, if, in the light of all the circumstances, the Court is "satisfied of the authenticity of the written proof offered." Thus, in a number of decisions, mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila was held to be a competent proof of that law. The petitioner failed to prove the Australian Citizenship Act of 1948 through any of the above methods. As uniformly observed by the RTC and COMELEC, the petitioner failed to show proof of the existence of the law during trial. Also, the letter issued by the Australian government showing that petitioner already renounced her Australian citizenship was unauthenticated hence, the courts a quo acted judiciously in disregarding the same.

APPEARANCES OF COUNSEL

Dexter A. Francisco and Salvador B. Belaro, Jr. for petitioner.
Quadra Pastor-Quadra Law Offices for private respondents.

D E C I S I O N

REYES, *J.*:

Failure to renounce foreign citizenship in accordance with the exact tenor of Section 5(2) of Republic Act (R.A.) No. 9225 renders a dual citizen ineligible to run for and thus hold any elective public office.

The Case

At bar is a special civil action for *certiorari*[1] under Rule 64 of the Rules of Court seeking to nullify Resolution[2] dated September 6, 2011 of the Commission on Elections (COMELEC) *en banc* in EAC (AE) No. A-44-2010. The assailed resolution (a) reversed the Order[3] dated November 30, 2010 of COMELEC Second Division dismissing petitioner's appeal; and (b) affirmed the consolidated Decision[4] dated October 22, 2010 of the Regional Trial Court (RTC), Bauang, La Union, Branch 33, declaring petitioner Teodora Sobejana-Condon (petitioner) disqualified and ineligible to her position as Vice-Mayor of Caba, La Union.

The Undisputed Facts

The petitioner is a natural-born Filipino citizen having been born of Filipino parents on August 8, 1944. On December 13, 1984, she became a naturalized Australian citizen owing to her marriage to a certain Kevin Thomas Condon.

On December 2, 2005, she filed an application to re-acquire Philippine citizenship before the Philippine Embassy in Canberra,

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[1] *Rollo*, pp. 3-54.

[2] *Id.* at 59-72.

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

[4] Under the sala of Judge Rose Mary R. Molina-Alim; *id.* at 76-86.

Australia pursuant to Section 3 of R.A. No. 9225 otherwise known as the "Citizenship Retention and Re-Acquisition Act of 2003."[5] The application was approved and the petitioner took her oath of allegiance to the Republic of the Philippines on December 5, 2005.

On September 18, 2006, the petitioner filed an unsworn *Declaration of Renunciation of Australian Citizenship* before the Department of Immigration and Indigenous Affairs, Canberra, Australia, which in turn issued the Order dated September 27, 2006 certifying that she has ceased to be an Australian citizen.[6]

The petitioner ran for Mayor in her hometown of Caba, La Union in the 2007 elections. She lost in her bid. She again sought elective office during the May 10, 2010 elections this time for the position of Vice-Mayor. She obtained the highest numbers of votes and was proclaimed as the winning candidate. She took her oath of office on May 13, 2010.

Soon thereafter, private respondents Robelito V. Picar, Wilma P. Pagaduan[7] and Luis M. Bautista,[8] (private respondents) all registered voters of Caba, La Union, filed separate petitions for *quo warranto* questioning the petitioner's eligibility before the RTC. The petitions similarly sought the petitioner's disqualification from holding her elective post on the ground that she is a dual citizen and that she failed to execute a "*personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath*" as imposed by Section 5(2) of R.A. No. 9225.

The petitioner denied being a dual citizen and averred that since September 27, 2006, she ceased to be an Australian citizen.

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[5] AN ACT MAKING THE CITIZENSHIP OF PHILIPPINE CITIZENS WHO ACQUIRE FOREIGN CITIZENSHIP PERMANENT. AMENDING FOR THE PURPOSE COMMONWEALTH ACT NO. 63, AS AMENDED AND FOR OTHER PURPOSES. Enacted August 29, 2003.

[6] *Rollo*, p. 79.

[7] Docketed as SPL. CV. ACTION CASE No. 78-BG.

[8] Docketed as SPL. CV. ACTION CASE No. 76-BG.

She claimed that the *Declaration of Renunciation of Australian Citizenship* she executed in Australia sufficiently complied with Section 5(2), R.A. No. 9225 and that her act of running for public office is a clear abandonment of her Australian citizenship.

Ruling of the RTC

In its consolidated Decision dated October 22, 2010, the trial court held that the petitioner's failure to comply with Section 5(2) of R.A. No. 9225 rendered her ineligible to run and hold public office. As admitted by the petitioner herself during trial, the personal declaration of renunciation she filed in Australia was not under oath. The law clearly mandates that the document containing the renunciation of foreign citizenship must be sworn before any public officer authorized to administer oath. Consequently, the RTC's decision disposed as follows:

> WHEREFORE, premises considered, the Court renders judgment in FAVOR of [private respondents] and AGAINST (petitioner):
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> 1) DECLARING [petitioner] TEODORA SOBEJANA-CONDON, disqualified and ineligible to hold the office of Vice-Mayor of Caba, La Union;
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> 2) NULLIFYING her proclamation as the winning candidate for Vice-Mayor of said municipality; [and]
>
> 3) DECLARING the position of Vice-Mayor in said municipality vacant.
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> SO ORDERED.[9]

Ruling of the COMELEC

The petitioner appealed to the COMELEC but the appeal was dismissed by the Second Division in its Order[10] dated November 30, 2010 for failure to pay the docket fees within the prescribed period. On motion for reconsideration, the appeal was reinstated by the COMELEC *en banc* in its Resolution[11]

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[9] *Rollo*, p. 86.

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

[11] *Id.* at 59-72.

dated September 6, 2011. In the same issuance, the substantive merits of the appeal were given due course. The COMELEC *en banc* concurred with the findings and conclusions of the RTC; it also granted the *Motion for Execution Pending Appeal* filed by the private respondents. The decretal portion of the resolution reads:

> WHEREFORE, premises considered the Commission **RESOLVED** as it hereby **RESOLVES** as follows:
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> 1. To **DISMISS** the instant appeal for lack of merit;
> 2. To **AFFIRM** the **DECISION dated 22 October 2010** of the *court a quo;* and
> 3. To **GRANT** the Motion for Execution filed on November 12, 2010.
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> SO ORDERED.[12] (Emphasis supplied)

Hence, the present petition ascribing grave abuse of discretion to the COMELEC *en banc*.

The Petitioner's Arguments

The petitioner contends that since she ceased to be an Australian citizen on September 27, 2006, she no longer held dual citizenship and was only a Filipino citizen when she filed her certificate of candidacy as early as the 2007 elections. Hence, the "personal and sworn renunciation of foreign citizenship" imposed by Section 5(2) of R.A. No. 9225 to dual citizens seeking elective office does not apply to her.

She further argues that a sworn renunciation is a mere formal and not a mandatory requirement. In support thereof, she cites portions of the Journal of the House of Representatives dated June 2 to 5, 2003 containing the sponsorship speech for House Bill (H.B.) No. 4720, the precursor of R.A. No. 9225.

She claims that the private respondents are estopped from questioning her eligibility since they failed to do so when she filed certificates of candidacy for the 2007 and 2010 elections.

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[12] *Id.* at 67-68.

Lastly, she disputes the power of the COMELEC *en banc* to: (a) take cognizance of the substantive merits of her appeal instead of remanding the same to the COMELEC Second Division for the continuation of the appeal proceedings; and (b) allow the execution pending appeal of the RTC's judgment.

The Issues

Posed for resolution are the following issues: *I)* Whether the COMELEC *en banc* may resolve the merits of an appeal after ruling on its reinstatement; *II)* Whether the COMELEC *en banc* may order the execution of a judgment rendered by a trial court in an election case; *III)* Whether the private respondents are barred from questioning the qualifications of the petitioner; and *IV)* For purposes of determining the petitioner's eligibility to run for public office, whether the "sworn renunciation of foreign citizenship" in Section 5(2) of R.A. No. 9225 is a mere pro-forma requirement.

The Court's Ruling

I. An appeal may be simultaneously reinstated and definitively resolved by the COMELEC *en banc* in a resolution disposing of a motion for reconsideration.

The power to decide motions for reconsideration in election cases is arrogated unto the COMELEC *en banc* by Section 3, Article IX-C of the Constitution, *viz*:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

A complementary provision is present in Section 5(c), Rule 3 of the COMELEC Rules of Procedure, to wit:

> Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission *en banc* except

motions on interlocutory orders of the division which shall be resolved by the division which issued the order.

Considering that the above cited *provisos* do not set any limits to the COMELEC *en banc*'s prerogative in resolving a motion for reconsideration, there is nothing to prevent the body from directly adjudicating the substantive merits of an appeal after ruling for its reinstatement instead of remanding the same to the division that initially dismissed it.

We thus see no impropriety much more grave abuse of discretion on the part of the COMELEC *en banc* when it proceeded to decide the substantive merits of the petitioner's appeal after ruling for its reinstatement.

Further, records show that, in her motion for reconsideration before the COMELEC *en banc,* the petitioner not only proffered arguments on the issue on docket fees but also on the issue of her eligibility. She even filed a supplemental motion for reconsideration attaching therewith supporting documents[13] to her contention that she is no longer an Australian citizen. The petitioner, after obtaining an unfavorable decision, cannot be permitted to disavow the *en banc*'s exercise of discretion on the substantial merits of her appeal when she herself invoked the same in the first place.

The fact that the COMELEC *en banc* had remanded similar appeals to the Division that initially dismissed them cannot serve as a precedent to the disposition of the petitioner's appeal. A decision or resolution of any adjudicating body can be disposed in several ways. To sustain petitioner's argument would be virtually putting a straightjacket on the COMELEC *en banc*'s adjudicatory powers.

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[13] (1) Photocopy of a Letter addressed to the COMELEC dated November 10, 2010 issued by the Department of Immigration and Citizenship of Australia, containing an advise that as of September 27, 2006, the petitioner is no longer an Australian citizen; and (2) photocopy of a Certificate of Authentication of the said letter dated November 23, 2010 issued by Grace Anne G. Bulos of the Consular Section of the Philippine Embassy in Canberra, Australia. (*Id.* at 62.)

More significantly, the remand of the appeal to the COMELEC Second Division would be unnecessarily circuitous and repugnant to the rule on preferential disposition of *quo warranto* cases espoused in Rule 36, Section 15 of the COMELEC Rules of Procedure.[14]

II. The COMELEC *en banc* has the power to order discretionary execution of judgment.

We cannot subscribe to petitioner's submission that the COMELEC *en banc* has no power to order the issuance of a writ of execution and that such function belongs only to the court of origin.

There is no reason to dispute the COMELEC's authority to order discretionary execution of judgment in view of the fact that the suppletory application of the Rules of Court is expressly sanctioned by Section 1, Rule 41 of the COMELEC Rules of Procedure.[15]

Under Section 2, Rule 39 of the Rules of Court, execution pending appeal may be issued by an appellate court after the trial court has lost jurisdiction. In *Batul v. Bayron*,[16] we stressed the import of the provision *vis-à-vis* election cases when we held that judgments in election cases which may be executed pending appeal includes those decided by trial courts and those rendered by the COMELEC whether in the exercise of its original or appellate jurisdiction.

III. Private respondents are not estopped from questioning petitioner's eligibility to hold public office.

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[14] Rule 36, Sec. 15. Preferential Disposition of *Quo Warranto* Cases. — The courts shall give preference to *quo warranto* over all other cases, except those of *habeas corpus*.

[15] "[I]n the absence of any applicable provision in [said] Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in a suppletory character and effect."

[16] 468 Phil. 130 (2004).

The fact that the petitioner's qualifications were not questioned when she filed certificates of candidacy for 2007 and 2010 elections cannot operate as an estoppel to the petition for *quo warranto* before the RTC.

Under the Batas Pambansa Bilang 881 (Omnibus Election Code), there are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised, to wit:

(1) ***Before election***, pursuant to Section 78 thereof which provides that:

> Sec. 78. *Petition to deny due course or to cancel a certificate of candidacy.* — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election; and

(2) ***After election***, pursuant to Section 253 thereof, *viz*:

> Sec. 253. *Petition for quo warranto*. — *Any voter* contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission ***within ten days after the proclamation of the results of the election.*** (Emphasis ours)

Hence, if a person qualified to file a petition to disqualify a certain candidate fails to file the petition within the twenty-five (25)-day period prescribed by Section 78 of the Omnibus Election Code for whatever reasons, the elections laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for *quo warranto* within ten (10) days from the proclamation of the

results of the election, as provided under Section 253 of the Omnibus Election Code.[17]

The above remedies were both available to the private respondents and their failure to utilize Section 78 of the Omnibus Election Code cannot serve to bar them should they opt to file, as they did so file, a *quo warranto* petition under Section 253.

IV. Petitioner is disqualified from running for elective office for failure to renounce her Australian citizenship in accordance with Section 5(2) of R.A. No. 9225.

R.A. No. 9225 allows the retention and re-acquisition of Filipino citizenship for natural-born citizens who have lost their Philippine citizenship[18] by taking an oath of allegiance to the Republic, thus:

Section 3. ***Retention of Philippine Citizenship.*** — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship 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 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.

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[17] *Salcedo II v. COMELEC*, 371 Phil. 377, 389 (1999).

[18] 1) natural-born citizens who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country.

The oath is an abbreviated repatriation process that restores one's Filipino citizenship and all civil and political rights and obligations concomitant therewith, subject to certain conditions imposed in Section 5, *viz:*

Sec. 5. *Civil and Political Rights and Liabilities.* — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

(3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens. (Emphasis ours)

Under the provisions of the aforementioned law, the petitioner has validly re-acquired her Filipino citizenship when she took an Oath of Allegiance to the Republic of the Philippines on December 5, 2005. At that point, she held dual citizenship, *i.e.*, Australian and Philippine.

On September 18, 2006, or a year before she initially sought elective public office, she filed a renunciation of Australian citizenship in Canberra, Australia. Admittedly, however, the same was not under oath contrary to the exact mandate of Section 5(2) that the renunciation of foreign citizenship must be sworn before an officer authorized to administer oath.

To obviate the fatal consequence of her inutile renunciation, the petitioner pleads the Court to interpret the "sworn renunciation of any and all foreign citizenship" in Section 5(2) to be a mere *pro forma* requirement in conformity with the intent of the Legislature. She anchors her submission on the statement made by Representative Javier during the floor deliberations on H.B. No. 4720, the precursor of R.A. No. 9225.

At the outset, it bears stressing that the Court's duty to interpret the law according to its true intent is exercised only when the law is ambiguous or of doubtful meaning. The first and fundamental duty of the Court is to apply the law. As such, when the law is clear and free from any doubt, there is no occasion for construction or interpretation; there is only room for application.[19] Section 5(2) of R.A. No. 9225 is one such instance.

Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. For a statute to be considered ambiguous, it must admit of two or more possible meanings.[20]

The language of Section 5(2) is free from any ambiguity. In *Lopez v. COMELEC*,[21] we declared its categorical and single

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[19] *Abello v. Commissioner of Internal Revenue*, 492 Phil. 303, 309-310 (2005).

[20] *Id.* at 310.

[21] G.R. No. 182701, July 23, 2008, 559 SCRA 696.

meaning: a Filipino American or any dual citizen cannot run for any elective public position in the Philippines unless he or she personally swears to a renunciation of all foreign citizenship at the time of filing the certificate of candidacy. We also expounded on the form of the renunciation and held that to be valid, the renunciation must be contained in an affidavit duly executed before an officer of the law who is authorized to administer an oath stating in clear and unequivocal terms that affiant is renouncing all foreign citizenship.

The same meaning was emphasized in *Jacot v. Dal*,[22] when we held that Filipinos re-acquiring or retaining their Philippine citizenship under R.A. No. 9225 must explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines, thus:

> The law categorically requires persons seeking elective public office, who either retained their Philippine citizenship or those who reacquired it, to make a personal and sworn renunciation of any and all foreign citizenship before a public officer authorized to administer an oath simultaneous with or before the filing of the certificate of candidacy.
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> Hence, **Section 5(2) of Republic Act No. 9225 compels natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of Republic Act No. 9225, and (2) for those seeking elective public offices in the Philippines**, to additionally execute a **personal and sworn renunciation** of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, **to qualify as candidates in Philippine elections**.
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> Clearly Section 5(2) of Republic Act No. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires of the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Section 3 thereof (oath of allegiance to the Republic of the Philippines). This is made clear

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[22] G.R. No. 179848, November 29, 2008, 572 SCRA 295.

in the discussion of the Bicameral Conference Committee on Disagreeing Provisions of House Bill No. 4720 and Senate Bill No. 2130 held on 18 August 2003 (precursors of Republic Act No. 9225), where the Hon. Chairman Franklin Drilon and Hon. Representative Arthur Defensor explained to Hon. Representative Exequiel Javier that the oath of allegiance is different from the renunciation of foreign citizenship;

x x x x x x x x x

[T]he intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine citizenship under Republic Act No. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship.[23] (Citation omitted and italics and underlining ours)

Hence, in *De Guzman v. COMELEC*,[24] we declared petitioner therein to be disqualified from running for the position of vice-mayor for his failure to make a personal and sworn renunciation of his American citizenship.

We find no reason to depart from the mandatory nature infused by the above rulings to the phrase "sworn renunciation." The language of the provision is plain and unambiguous. It expresses a single, definite, and sensible meaning and must thus be read literally.[25] **The foreign citizenship must be formally rejected through an affidavit duly sworn before an officer authorized to administer oath.**

It is conclusively presumed to be the meaning that the Legislature has intended to convey.[26] Even a resort to the Journal of the House of Representatives invoked by the petitioner leads to the same inference, *viz:*

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[23] *Id.* at 306-308.

[24] G.R. No. 180048, June 19, 2009, 590 SCRA 149.

[25] *Lokin, Jr. v. COMELEC*, G.R. Nos. 179431-32 and 180443, June 22, 2010, 621 SCRA 385, 406.

[26] *Id.*

INTERPELLATION OF REP. JAVIER

Rep. Javier initially inquired whether under the Bill, dual citizenship is only limited to natural-born Filipinos and not to naturalized Filipinos.

Rep. Libanan replied in the affirmative.

Rep. Javier subsequently adverted to Section 5 of the Bill which provides that natural-born Filipinos who have dual citizenship shall continue to enjoy full civil and political rights. This being the case, he sought clarification as to whether they can indeed run for public office provided that they renounce their foreign citizenship.

Rep. Libanan replied in the affirmative, citing that these citizens will only have to make a personal and sworn renunciation of foreign citizenship before any authorized public officer.

Rep. Javier sought further clarification on this matter, citing that while the Bill provides them with full civil and political rights as Filipino citizens, the measure also discriminates against them since they are required to make a sworn renunciation of their other foreign citizenship if and when they run for public office. He thereafter proposed to delete this particular provision.

In his rejoinder, Rep. Libanan explained that this serves to erase all doubts regarding any issues that might be raised pertaining to the citizenship of any candidate. He subsequently cited the case of *Afroyim vs. Rusk*, wherein the United States considered a naturalized American still as an American citizen even when he cast his vote in Israel during one of its elections.

Rep. Javier however pointed out that the matter of voting is different because in voting, one is not required to renounce his foreign citizenship. He pointed out that under the Bill, Filipinos who run for public office must renounce their foreign citizenship. He pointed out further that this is a contradiction in the Bill.

Thereafter, **Rep. Javier inquired whether Filipino citizens who had acquired foreign citizenship and are now entitled to reacquire their Filipino citizenship will be considered as natural-born citizens. As such, he likewise inquired whether they will also be considered qualified to run for the highest elective positions in the country.**

Rep. Libanan replied in the affirmative, citing that the only requirement is that **they make a sworn renunciation of their foreign citizenship** and that they comply with the residency and registration requirements as provided for in the Constitution.

Whereupon, **Rep. Javier noted that under the Constitution, natural-born citizens are those who are citizens at the time of birth without having to perform an act to complete or perfect his/her citizenship.**

Rep. Libanan agreed therewith, citing that this is the reason why the Bill seeks the repeal of CA No. 63. The repeal, he said, would help Filipino citizens who acquired foreign citizenship to retain their citizenship. **With regard then to Section 5 of the Bill, he explained that the Committee had decided to include this provision because Section 18, Article XI of the Constitution provides for the accountability of public officers.**

In his rejoinder, **Rep. Javier maintained that in this case, the sworn renunciation of a foreign citizenship will only become a *pro forma* requirement.**

On further queries of Rep. Javier, Rep. Libanan affirmed that natural-born Filipino citizens who became foreign citizens and who have reacquired their Filipino citizenship under the Bill will be considered as natural-born citizens, and therefore qualified to run for the presidency, the vice-presidency or for a seat in Congress. He also agreed with the observation of Rep. Javier that a natural-born citizen is one who is a citizen of the country at the time of birth. He also explained that the Bill will, in effect, return to a Filipino citizen who has acquired foreign citizenship, the status of being a natural-born citizen effective at the time he lost his Filipino citizenship.

As a rejoinder, Rep. Javier opined that doing so would be discriminating against naturalized Filipino citizens and Filipino citizens by election who are all disqualified to run for certain public offices. He then suggested that the Bill be amended by not considering as natural-born citizens those Filipinos who had renounced their Filipino citizenship and acquired foreign citizenship. He said that they should be considered as repatriated citizens.

In reply, Rep. Libanan assured Rep. Javier that the Committee will take note of the latter's comments on the matter. He however stressed that after a lengthy deliberation on the subject, the Committees on Justice, and Foreign Affairs had decided to revert back to the

status of being natural-born citizens those natural-born Filipino citizens who had acquired foreign citizenship but now wished to reacquire their Filipino citizenship.

Rep. Javier then explained that a Filipina who loses her Filipino citizenship by virtue of her marriage to a foreigner can regain her repatriated Filipino citizenship, upon the death of her husband, by simply taking her oath before the Department of Justice (DOJ).

Rep. Javier said that he does not oppose the Bill but only wants to be fair to other Filipino citizens who are not considered natural-born. He reiterated that natural-born Filipino citizens who had renounced their citizenship by pledging allegiance to another sovereignty should not be allowed to revert back to their status of being natural-born citizens once they decide to regain their Filipino citizenship. He underscored that this will in a way allow such Filipinos to enjoy dual citizenship.

On whether the Sponsors will agree to an amendment incorporating the position of Rep. Javier, Rep. Libanan stated that this will defeat the purpose of the Bill.

Rep. Javier disagreed therewith, adding that natural-born Filipino citizens who acquired foreign citizenships and later decided to regain their Filipino citizenship, will be considered as repatriated citizens.

Rep. Libanan cited the case of *Bengzon vs. HRET* wherein the Supreme Court had ruled that only naturalized Filipino citizens are not considered as natural-born citizens.

In reaction, Rep. Javier clarified that only citizens by election or those whose mothers are Filipino citizens under the 1935 Constitution and who elected Filipino citizenship upon reaching the age of maturity, are not deemed as natural-born citizens.

In response, Rep. Libanan maintained that in the *Bengzon* case, repatriation results in the recovery of one's original nationality and only naturalized citizens are not considered as natural-born citizens.

On whether the Sponsors would agree to not giving back the status of being natural-born citizens to natural-born Filipino citizens who acquired foreign citizenship, Rep. Libanan remarked that the Body in plenary session will decide on the matter.[27]

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[27] JOURNAL OF THE HOUSE OF REPRESENTATIVES, June 2 to 5, 2003; *rollo*, pp. 94-95.

The petitioner obviously espouses an isolated reading of Representative Javier's statement; she conveniently disregards the preceding and succeeding discussions in the records.

The above-quoted excerpts of the legislative record show that Representative Javier's statement ought to be understood within the context of the issue then being discussed, that is — whether former natural-born citizens who re-acquire their Filipino citizenship under the proposed law will revert to their original status as natural-born citizens and thus be qualified to run for government positions reserved only to natural-born Filipinos, *i.e*. President, Vice-President and Members of the Congress.

It was Representative Javier's position that they should be considered as repatriated Filipinos and not as natural-born citizens since they will have to execute a personal and sworn renunciation of foreign citizenship. Natural-born citizens are those who need not perform an act to perfect their citizenship. Representative Libanan, however, maintained that they will revert to their original status as natural-born citizens. To reconcile the renunciation imposed by Section 5(2) with the principle that natural-born citizens are those who need not perform any act to perfect their citizenship, Representative Javier suggested that the sworn renunciation of foreign citizenship be considered as a mere *pro forma* requirement.

Petitioner's argument, therefore, loses its point. The "sworn renunciation of foreign citizenship" must be deemed a formal requirement only with respect to the re-acquisition of one's status as a natural-born Filipino so as to override the effect of the principle that natural-born citizens need not perform any act to perfect their citizenship. Never was it mentioned or even alluded to that, as the petitioner wants this Court to believe, those who re-acquire their Filipino citizenship and thereafter run for public office has the option of executing an unsworn affidavit of renunciation.

It is also palpable in the above records that Section 5 was intended to complement Section 18, Article XI of the Constitution on public officers' primary accountability of allegiance and loyalty, which provides:

Sec. 18. — Public officers and employees owe the State and this Constitution allegiance at all times and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law.

An oath is a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.[28]

Indeed, the solemn promise, and the risk of punishment attached to an oath ensures truthfulness to the prospective public officer's abandonment of his adopted state and promise of absolute allegiance and loyalty to the Republic of the Philippines.

To hold the oath to be a mere *pro forma* requirement is to say that it is only for ceremonial purposes; it would also accommodate a mere qualified or temporary allegiance from government officers when the Constitution and the legislature clearly demand otherwise.

Petitioner contends that the Australian Citizenship Act of 1948, under which she is already deemed to have lost her citizenship, is entitled to judicial notice. We disagree.

Foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven.[29] To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court which reads:

Sec. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record,

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[28] *BLACK'S LAW DICTIONARY,* Eighth Ed., p. 1101.

[29] *Manufacturers Hanover Trust Co. v. Guerrero,* 445 Phil. 770, 777 (2003).

or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice- consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.** (Emphasis ours)

Sec. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

The Court has admitted certain exceptions to the above rules and held that the existence of a foreign law may also be established through: (1) a testimony under oath of an expert witness such as an attorney-at-law in the country where the foreign law operates wherein he quotes verbatim a section of the law and states that the same was in force at the time material to the facts at hand; and (2) likewise, in several naturalization cases, it was held by the Court that evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice, may be allowed and used as basis for favorable action, if, in the light of all the circumstances, the Court is "satisfied of the authenticity of the written proof offered." Thus, in a number of decisions, mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila was held to be a competent proof of that law.[30]

The petitioner failed to prove the Australian Citizenship Act of 1948 through any of the above methods. As uniformly observed by the RTC and COMELEC, the petitioner failed to show proof of the existence of the law during trial. Also, the letter issued by the Australian government showing that petitioner already

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[30] *Asiavest Limited v. CA*, 357 Phil. 536, 551-552 (1998), citing Jovito Salonga, *Private International Law*, 101-102, 1995 ed.

renounced her Australian citizenship was unauthenticated hence, the courts *a quo* acted judiciously in disregarding the same.

We are bound to arrive at a similar conclusion even if we were to admit as competent evidence the said letter in view of the photocopy of a Certificate of Authentication issued by Consular Section of the Philippine Embassy in Canberra, Australia attached to the petitioner's motion for reconsideration.

We have stressed in *Advocates and Adherents of Social Justice for School Teachers and Allied Workers (AASJS) Member v. Datumanong*[31] that the framers of R.A. No. 9225 did not intend the law to concern itself with the actual status of the other citizenship.

This Court as the government branch tasked to apply the enactments of the legislature must do so conformably with the wisdom of the latter *sans* the interference of any foreign law. If we were to read the Australian Citizen Act of 1948 into the application and operation of R.A. No. 9225, we would be applying not what our legislative department has deemed wise to require. To do so would be a brazen encroachment upon the sovereign will and power of the people of this Republic.[32]

The petitioner's act of running for public office does not suffice to serve as an effective renunciation of her Australian citizenship. While this Court has previously declared that the filing by a person with dual citizenship of a certificate of candidacy is already considered a renunciation of foreign citizenship,[33] such ruling was already adjudged superseded by the enactment of R.A. No. 9225 on August 29, 2003 which provides for the additional condition of a personal and sworn renunciation of foreign citizenship.[34]

The fact that petitioner won the elections can not cure the defect of her candidacy. Garnering the most number of votes

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[31] G.R. No. 160869, May 11, 2007, 523 SCRA 108.

[32] See *Parado v. Republic of the Philippines*, 86 Phil. 340, 344 (1950).

[33] *Valles v. COMELEC*, 392 Phil. 327, 340 (2000); *Mercado v. Manzano*, 367 Phil. 132, 152-153 (1999).

[34] *Jacot v. Dal*, *supra* note 22, at 308.

does not validate the election of a disqualified candidate because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity.[35]

In fine, R.A. No. 9225 categorically demands natural-born Filipinos who re-acquire their citizenship and seek elective office, to execute a personal and sworn renunciation of any and all foreign citizenships before an authorized public officer prior to or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections.[36] The rule applies to all those who have re-acquired their Filipino citizenship, like petitioner, without regard as to whether they are still dual citizens or not. It is a pre-requisite imposed for the exercise of the right to run for public office.

Stated differently, it is an additional qualification for elective office specific only to Filipino citizens who re-acquire their citizenship under Section 3 of R.A. No. 9225. It is the operative act that restores their right to run for public office. The petitioner's failure to comply therewith in accordance with the exact tenor of the law, rendered ineffectual the *Declaration of Renunciation of Australian Citizenship* she executed on September 18, 2006. As such, she is yet to regain her political right to seek elective office. Unless she executes a sworn renunciation of her Australian citizenship, she is ineligible to run for and hold any elective office in the Philippines.

WHEREFORE, in view of all the foregoing, the petition is hereby **DISMISSED.** The Resolution dated September 6, 2011 of the Commission on Elections *en banc* in EAC (AE) No. A-44-2010 is **AFFIRMED *in toto*.**

SO ORDERED.

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

Sereno and *Perlas-Bernabe, JJ.,* on official leave.

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[35] *Lopez v. COMELEC, supra* note 21, at 701.

[36] *Jacot v. Dal, supra* note 22, at 306.

SECOND DIVISION

[G.R. No. 182435. August 13, 2012]

LILIA B. ADA, LUZ B. ADANZA, FLORA C. BAYLON, REMO BAYLON, JOSE BAYLON, ERIC BAYLON, FLORENTINO BAYLON, and MA. RUBY BAYLON, *petitioners, vs.* **FLORANTE BAYLON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JOINDER OF CAUSES OF ACTION; DEFINED AND CONSTRUED.— By a joinder of actions, or more properly, a joinder of causes of action is meant the uniting of two or more demands or rights of action in one action, the statement of more than one cause of action in a declaration. It is the union of two or more civil causes of action, each of which could be made the basis of a separate suit, in the same complaint, declaration or petition. A plaintiff may under certain circumstances join several distinct demands, controversies or rights of action in one declaration, complaint or petition. The objectives of the rule or provision are to avoid a multiplicity of suits where the same parties and subject matter are to be dealt with by effecting in one action a complete determination of all matters in controversy and litigation between the parties involving one subject matter, and to expedite the disposition of litigation at minimum cost. The provision should be construed so as to avoid such multiplicity, where possible, without prejudice to the rights of the litigants.

2. ID.; ID.; ID.; THE JOINDER SHALL NOT INCLUDE SPECIAL CIVIL ACTIONS GOVERNED BY SPECIAL RULES; PRESENT IN CASE AT BAR.— While parties to an action may assert in one pleading, in the alternative or otherwise, as many causes of action as they may have against an opposing party, such joinder of causes of action is subject to the condition, *inter alia*, that the joinder shall not include special civil actions governed by special rules. Here, there was a misjoinder of causes of action. The action for partition filed by the petitioners could not be joined with the action for the rescission of the said donation *inter vivos* in favor of Florante. Lest it be overlooked, an action for partition is a special civil

action governed by Rule 69 of the Rules of Court while an action for rescission is an ordinary civil action governed by the ordinary rules of civil procedure. The variance in the procedure in the special civil action of partition and in the ordinary civil action of rescission precludes their joinder in one complaint or their being tried in a single proceeding to avoid confusion in determining what rules shall govern the conduct of the proceedings as well as in the determination of the presence of requisite elements of each particular cause of action.

3. ID.; ID.; MISJOINDER OF CAUSES OF ACTION; NOT A GROUND FOR DISMISSAL; REMEDIES, CLARIFIED. — Nevertheless, misjoinder of causes of action is not a ground for dismissal. Indeed, the courts have the power, acting upon the motion of a party to the case or *sua sponte*, to order the severance of the misjoined cause of action to be proceeded with separately. However, if there is no objection to the improper joinder or the court did not *motu proprio* direct a severance, then there exists no bar in the simultaneous adjudication of all the erroneously joined causes of action. x x x It should be emphasized that the foregoing rule only applies if the court trying the case has jurisdiction over all of the causes of action therein notwithstanding the misjoinder of the same. If the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from the other causes of action, and if not so severed, any adjudication rendered by the court with respect to the same would be a nullity.

4. ID.; ID.; SUPPLEMENTAL PLEADINGS; PURPOSE THEREOF, EXPLAINED.— In *Young v. Spouses Sy*, this Court had the opportunity to elucidate on the purpose of a supplemental pleading. x x x **The purpose of the supplemental pleading is to bring into the records new facts which will enlarge or change the kind of relief to which the plaintiff is entitled; hence, any supplemental facts which further develop the original right of action, or extend to vary the relief, are available by way of supplemental complaint even though they themselves constitute a right of action.** Thus, a supplemental pleading may properly allege transactions, occurrences or events which had transpired after the filing of the pleading sought to be supplemented, even if the said

supplemental facts constitute another cause of action. x x x In *Planters Development Bank v. LZK Holdings and Development Corp.*, we clarified that, while a matter stated in a supplemental complaint should have some relation to the cause of action set forth in the original pleading, the fact that the supplemental pleading technically states a new cause of action should not be a bar to its allowance but only a matter that may be considered by the court in the exercise of its discretion. In such cases, we stressed that a broad definition of "cause of action" should be applied.

5. CIVIL LAW; CONTRACTS; RESCISSIBLE CONTRACTS; RESCISSION; DEFINED.— Rescission is a remedy granted by law to the contracting parties and even to third persons, to secure the reparation of damages caused to them by a contract, even if it should be valid, by means of the restoration of things to their condition at the moment prior to the celebration of said contract. It is a remedy to make ineffective a contract, validly entered into and therefore obligatory under normal conditions, by reason of external causes resulting in a pecuniary prejudice to one of the contracting parties or their creditors.

6. ID.; ID.; ID.; KINDS.— Contracts which are rescissible are valid contracts having all the essential requisites of a contract, but by reason of injury or damage caused to either of the parties therein or to third persons are considered defective and, thus, may be rescinded. The kinds of rescissible contracts, according to the reason for their susceptibility to rescission, are the following: *first*, those which are rescissible because of lesion or prejudice; *second*, those which are rescissible on account of fraud or bad faith; and *third*, those which, by special provisions of law, are susceptible to rescission.

7. ID.; ID.; ID.; RESCISSION OF A CONTRACT DUE TO FRAUD OR BAD FAITH; REQUISITES.— Contracts which are rescissible due to fraud or bad faith include those which involve things under litigation, if they have been entered into by thex defendant without the knowledge and approval of the litigants or of competent judicial authority. x x x The rescission of a contract under Article 1381(4) of the Civil Code only requires the concurrence of the following: *first*, the defendant, during the pendency of the case, enters into a contract which refers to the thing subject of litigation; and *second*, the said contract was entered into without the knowledge and approval

of the litigants or of a competent judicial authority. As long as the foregoing requisites concur, it becomes the duty of the court to order the rescission of the said contract. The reason for this is simple. Article 1381(4) seeks to remedy the presence of bad faith among the parties to a case and/or any fraudulent act which they may commit with respect to the thing subject of litigation.

APPEARANCES OF COUNSEL

Eltanal & Eltanal Law Offices for petitioners.
Diocos Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated October 26, 2007 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 01746. The assailed decision partially reversed and set aside the Decision[2] dated October 20, 2005 issued by the Regional Trial Court (RTC), Tanjay City, Negros Oriental, Branch 43 in Civil Case No. 11657.

The Antecedent Facts

This case involves the estate of spouses Florentino Baylon and Maximina Elnas Baylon (Spouses Baylon) who died on November 7, 1961 and May 5, 1974, respectively.[3] At the time of their death, Spouses Baylon were survived by their legitimate children, namely, Rita Baylon (Rita), Victoria Baylon (Victoria), Dolores Baylon (Dolores), Panfila Gomez (Panfila), Ramon Baylon (Ramon) and herein petitioner Lilia B. Ada (Lilia).

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring; *rollo*, pp. 17-24.

[2] Under the sala of Judge Winston M. Villegas; *id.* at 68-77.

[3] *Id.* at 59.

Dolores died intestate and without issue on August 4, 1976. Victoria died on November 11, 1981 and was survived by her daughter, herein petitioner Luz B. Adanza. Ramon died intestate on July 8, 1989 and was survived by herein respondent Florante Baylon (Florante), his child from his first marriage, as well as by petitioner Flora Baylon, his second wife, and their legitimate children, namely, Ramon, Jr. and herein petitioners Remo, Jose, Eric, Florentino and Ma. Ruby, all surnamed Baylon.

On July 3, 1996, the petitioners filed with the RTC a Complaint[4] for partition, accounting and damages against Florante, Rita and Panfila. They alleged therein that Spouses Baylon, during their lifetime, owned 43 parcels of land[5] all situated in Negros Oriental. After the death of Spouses Baylon, they claimed that Rita took possession of the said parcels of land and appropriated for herself the income from the same. Using the income produced by the said parcels of land, Rita allegedly purchased two parcels of land, Lot No. 4709[6] and half of Lot No. 4706,[7] situated in Canda-uay, Dumaguete City. The petitioners averred that Rita refused to effect a partition of the said parcels of land.

In their Answer,[8] Florante, Rita and Panfila asserted that they and the petitioners co-owned 22[9] out of the 43 parcels of

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[4] *Id.* at 36-51.

[5] Covered by Original Certificate of Title (OCT) Nos. FV-17761, FV-17763, FV-17753, FV-17775, FV-29781, FV-17757, FV-17754, FV-17776, FV-17778, FV-17760, FV-17758, FV-17762, FV-17764, FV-17766, FV-17767, FV-17769 and FV-27756 and Tax Declaration Nos. 85-11-071, 85-04-019, 85-11-013, 85-06-047, 85-06-048, 85-07-069, 88-06-109-A, 94-25-0021-A, 94-25-0020-A, 94-25-0056-A, 94-25-0057-A, 94-25-0286-A, 94-25-0285-A, 85-13-086, 85-06-007, 85-13-148, 85-09-010-A, 85-13-047, 85-09-076-A, 85-09-054-A, 93-001-10-270R, 85-09-044-A, 85-08-035, 85-08-058, 85-09-134 and 85-11-068.

[6] Covered by Transfer Certificate of Title (TCT) No. 2775.

[7] Covered by TCT No. 2973.

[8] *Rollo*, pp. 53-55.

[9] OCT Nos. FV-17761, FV-17763, FV-17753, FV-29781, FV-17754, FV-17760, FV-17764, FV-17767 and FV-17769 and Tax Declaration Nos. 85-11-071, 85-11-013, 85-06-047, 85-06-048, 94-25-0285-A, 85-06-007,

land mentioned in the latter's complaint, whereas Rita actually owned 10 parcels of land[10] out of the 43 parcels which the petitioners sought to partition, while the remaining 11 parcels of land are separately owned by Petra Cafino Adanza,[11] Florante,[12] Meliton Adalia,[13] Consorcia Adanza,[14] Lilia[15] and Santiago Mendez.[16] Further, they claimed that Lot No. 4709 and half of Lot No. 4706 were acquired by Rita using her own money. They denied that Rita appropriated solely for herself the income of the estate of Spouses Baylon, and expressed no objection to the partition of the estate of Spouses Baylon, but only with respect to the co-owned parcels of land.

During the pendency of the case, Rita, through a Deed of Donation dated July 6, 1997, conveyed Lot No. 4709 and half of Lot No. 4706 to Florante. On July 16, 2000, Rita died intestate and without any issue. Thereafter, learning of the said donation *inter vivos* in favor of Florante, the petitioners filed a Supplemental Pleading[17] dated February 6, 2002, praying that the said donation in favor of the respondent be rescinded in accordance with Article 1381(4) of the Civil Code. They further alleged that Rita was already sick and very weak when the said Deed of Donation was supposedly executed and, thus, could not have validly given her consent thereto.

85-13-148, 85-09-010-A, 85-09-054-A, 93-001-10-270R, 85-09-044-A, 85-08-035 and 85-09-134.

[10] OCT Nos. FV-17757, FV-17758, FV-17762, FV-17766 and FV-27756 and Tax Declaration Nos. 88-06-109-A, 94-25-0057-A, 85-13-086, 85-13-047 and 85-09-076-A.

[11] OCT No. FV-17778 and Tax Declaration No. 85-11-068.

[12] OCT Nos. FV-17775 and FV-17776 and Tax Declaration Nos. 85-07-069, 94-25-0056-A and 85-08-058.

[13] Tax Declaration No. 85-04-019.

[14] Tax Declaration No. 94-25-0021-A.

[15] Tax Declaration No. 94-25-0020-A.

[16] Tax Declaration No. 94-25-0286-A.

[17] *Rollo,* pp. 57-58.

Florante and Panfila opposed the rescission of the said donation, asserting that Article 1381(4) of the Civil Code applies only when there is already a prior judicial decree on who between the contending parties actually owned the properties under litigation.[18]

The RTC Decision

On October 20, 2005, the RTC rendered a Decision,[19] the decretal portion of which reads:

> Wherefore judgment is hereby rendered:
>
> (1) declaring the existence of co-ownership over parcels nos. 1, 2, 3, 5, 7, 10, 13, 14, 16, 17, 18, 26, 29, 30, 33, 34, 35, 36, 40 and 41 described in the complaint;
>
> (2) directing that the above mentioned parcels of land be partitioned among the heirs of Florentino Baylon and Maximina Baylon;
>
> (3) declaring a co-ownership on the properties of Rita Baylon namely parcels no[s]. 6, 11, 12, 20, 24, 27, 31, 32, 39 and 42 and directing that it shall be partitioned among her heirs who are the plaintiffs and defendant in this case;
>
> **(4) declaring the donation inter vivos rescinded without prejudice to the share of Florante Baylon to the estate of Rita Baylon and directing that parcels nos. 1 and 2 paragraph V of the complaint be included in the division of the property as of Rita Baylon among her heirs, the parties in this case;**
>
> (5) excluding from the co-ownership parcels nos. 20, 21, 22, 9, 43, 4, 8, 19 and 37.
>
> Considering that the parties failed to settle this case amicably and could not agree on the partition, the parties are directed to nominate a representative to act as commissioner to make the partition. He shall immediately take [his] oath of office upon [his] appointment.

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[18] *Id.* at 20.

[19] *Id.* at 68-77.

The commissioner shall make a report of all the proceedings as to the partition within fifteen (15) days from the completion of this partition. The parties are given ten (10) days within which to object to the report after which the Court shall act on the commissioner report.

SO ORDERED.[20] (Emphasis ours)

The RTC held that the death of Rita during the pendency of the case, having died intestate and without any issue, had rendered the issue of ownership insofar as parcels of land which she claims as her own moot since the parties below are the heirs to her estate. Thus, the RTC regarded Rita as the owner of the said 10 parcels of land and, accordingly, directed that the same be partitioned among her heirs. Nevertheless, the RTC rescinded the donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 in favor of Florante. In rescinding the said donation *inter vivos*, the RTC explained that:

However[,] with respect to lot [nos.] 4709 and 4706 which [Rita] had conveyed to Florante Baylon by way of donation inter vivos, the plaintiffs in their supplemental pleadings (sic) assailed the same to be rescissible on the ground that it was entered into by the defendant Rita Baylon without the knowledge and approval of the litigants [or] of competent judicial authority. The subject parcels of lands are involved in the case for which plaintiffs have ask[ed] the Court to partition the same among the heirs of Florentino Baylon and Maximina Elnas.

Clearly, the donation inter vivos in favor of Florante Baylon was executed to prejudice the plaintiffs[’] right to succeed to the estate of Rita Baylon in case of death considering that as testified by Florante Baylon, Rita Baylon was very weak and he tried to give her vitamins x x x. The donation inter vivos executed by Rita Baylon in favor of Florante Baylon is rescissible for the reason that it refers to the parcels of land in litigation x x x without the knowledge and approval of the plaintiffs or of this Court. However[,] the rescission shall not affect the share of Florante Baylon to the estate of Rita Baylon.[21]

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[20] *Id.* at 77.

[21] *Id.* at 76-77.

Florante sought reconsideration of the Decision dated October 20, 2005 of the RTC insofar as it rescinded the donation of Lot No. 4709 and half of Lot No. 4706 in his favor.[22] He asserted that, at the time of Rita's death on July 16, 2000, Lot No. 4709 and half of Lot No. 4706 were no longer part of her estate as the same had already been conveyed to him through a donation *inter vivos* three years earlier. Thus, Florante maintained that Lot No. 4709 and half of Lot No. 4706 should not be included in the properties that should be partitioned among the heirs of Rita.

On July 28, 2006, the RTC issued an Order[23] which denied the motion for reconsideration filed by Florante.

The CA Decision

On appeal, the CA rendered a Decision[24] dated October 26, 2007, the dispositive portion of which reads:

> **WHEREFORE,** the Decision dated October 20, 2005 and Order dated July 28, 2006 are ***REVERSED*** *and* ***SET ASIDE*** insofar as they decreed the rescission of the Deed of Donation dated July 6, 1997 and the inclusion of lot no. 4709 and half of lot no. 4706 in the estate of Rita Baylon. The case is ***REMANDED*** to the trial court for the determination of ownership of lot no. 4709 and half of lot no. 4706.
>
> **SO ORDERED.**[25]

The CA held that before the petitioners may file an action for rescission, they must first obtain a favorable judicial ruling that Lot No. 4709 and half of Lot No. 4706 actually belonged to the estate of Spouses Baylon and not to Rita. Until then, the CA asserted, an action for rescission is premature. Further, the CA ruled that the petitioners' action for rescission cannot be joined with their action for partition, accounting and damages through a mere supplemental pleading. Thus:

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[22] *Id.* at 78-79.

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

[24] *Id.* at 17-24.

[25] *Id.* at 23.

If [Lot No. 4709 and half of Lot No. 4706] belonged to the Spouses' estate, then Rita Baylon's donation thereof in favor of Florante Baylon, in excess of her undivided share therein as co-heir, is void. Surely, she could not have validly disposed of something she did not own. In such a case, an action for rescission of the donation may, therefore, prosper.

If the lots, however, are found to have belonged exclusively to Rita Baylon, during her lifetime, her donation thereof in favor of Florante Baylon is valid. For then, she merely exercised her ownership right to dispose of what legally belonged to her. Upon her death, the lots no longer form part of her estate as their ownership now pertains to Florante Baylon. On this score, an action for rescission against such donation will not prosper. x x x.

Verily, before plaintiffs-appellees may file an action for rescission, they must first obtain a favorable judicial ruling that lot no. 4709 and half of lot no. 4706 actually belonged to the estate of Spouses Florentino and Maximina Baylon, and not to Rita Baylon during her lifetime. Until then, an action for rescission is premature. For this matter, the applicability of Article 1381, paragraph 4, of the New Civil Code must likewise await the trial court's resolution of the issue of ownership.

Be that as it may, an action for rescission should be filed by the parties concerned independent of the proceedings below. The first cannot simply be lumped up with the second through a mere supplemental pleading.[26] (Citation omitted)

The petitioners sought reconsideration[27] of the Decision dated October 26, 2007 but it was denied by the CA in its Resolution[28] dated March 6, 2008.

Hence, this petition.

Issue

The lone issue to be resolved by this Court is whether the CA erred in ruling that the donation *inter vivos* of Lot No.

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

[27] *Id.* at 25-28.

[28] *Id.* at 31.

4709 and half of Lot No. 4706 in favor of Florante may only be rescinded if there is already a judicial determination that the same actually belonged to the estate of Spouses Baylon.

The Court's Ruling

The petition is partly meritorious.

Procedural Matters

Before resolving the lone substantive issue in the instant case, this Court deems it proper to address certain procedural matters that need to be threshed out which, by laxity or otherwise, were not raised by the parties herein.

Misjoinder of Causes of Action

The complaint filed by the petitioners with the RTC involves two separate, distinct and independent actions — partition and rescission. *First*, the petitioners raised the refusal of their co-heirs, Florante, Rita and Panfila, to partition the properties which they inherited from Spouses Baylon. *Second*, in their supplemental pleading, the petitioners assailed the donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 made by Rita in favor of Florante *pendente lite*.

The actions of partition and rescission cannot be joined in a single action.

By a joinder of actions, or more properly, a joinder of causes of action is meant the uniting of two or more demands or rights of action in one action, the statement of more than one cause of action in a declaration. It is the union of two or more civil causes of action, each of which could be made the basis of a separate suit, in the same complaint, declaration or petition. A plaintiff may under certain circumstances join several distinct demands, controversies or rights of action in one declaration, complaint or petition.[29]

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[29] *Republic v. Hernandez,* 323 Phil. 606, 624-625 (1996).

The objectives of the rule or provision are to avoid a multiplicity of suits where the same parties and subject matter are to be dealt with by effecting in one action a complete determination of all matters in controversy and litigation between the parties involving one subject matter, and to expedite the disposition of litigation at minimum cost. The provision should be construed so as to avoid such multiplicity, where possible, without prejudice to the rights of the litigants.[30]

Nevertheless, while parties to an action may assert in one pleading, in the alternative or otherwise, as many causes of action as they may have against an opposing party, such joinder of causes of action is subject to the condition, *inter alia*, that the joinder shall not include special civil actions governed by special rules.[31]

Here, there was a misjoinder of causes of action. The action for partition filed by the petitioners could not be joined with the action for the rescission of the said donation *inter vivos* in favor of Florante. Lest it be overlooked, an action for partition is a special civil action governed by Rule 69 of the Rules of Court while an action for rescission is an ordinary civil action governed by the ordinary rules of civil procedure. The variance in the procedure in the special civil action of partition and in the ordinary civil action of rescission precludes their joinder in one complaint or their being tried in a single proceeding to avoid confusion in determining what rules shall govern the conduct of the proceedings as well as in the determination of the presence of requisite elements of each particular cause of action.[32]

A misjoined cause of action, if not severed upon motion of a party or by the court *sua sponte*, may be adjudicated by the court together with the other causes of action.

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[30] *Id.* at 625.

[31] The Rules of Court, Rule 2, Section 5.

[32] See Francisco, *Remedial Law Compendium*, Vol. 1, 9th Rev. Ed., p. 77.

Nevertheless, misjoinder of causes of action is not a ground for dismissal. Indeed, the courts have the power, acting upon the motion of a party to the case or *sua sponte*, to order the severance of the misjoined cause of action to be proceeded with separately.[33] However, if there is no objection to the improper joinder or the court did not *motu proprio* direct a severance, then there exists no bar in the simultaneous adjudication of all the erroneously joined causes of action. On this score, our disquisition in *Republic of the Philippines v. Herbieto*[34] is instructive, *viz*:

> This Court, however, disagrees with petitioner Republic in this regard. This procedural lapse committed by the respondents should not affect the jurisdiction of the MTC to proceed with and hear their application for registration of the Subject Lots.
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> x x x x x x x x x
>
> Considering every application for land registration filed in strict accordance with the Property Registration Decree as a single cause of action, then the defect in the joint application for registration filed by the respondents with the MTC constitutes a misjoinder of causes of action and parties. Instead of a single or joint application for registration, respondents Jeremias and David, more appropriately, should have filed separate applications for registration of Lots No. 8422 and 8423, respectively.
>
> Misjoinder of causes of action and parties do not involve a question of jurisdiction of the court to hear and proceed with the case. They are not even accepted grounds for dismissal thereof. Instead, under the Rules of Court, the misjoinder of causes of action and parties involve an implied admission of the court's jurisdiction. It acknowledges the power of the court, acting upon the motion of a party to the case or on its own initiative, to order the severance of the misjoined cause of action, to be proceeded with separately (in case of misjoinder of causes of action); and/or the dropping of a party and the severance of any claim against said misjoined party, also to be proceeded with separately (in case of misjoinder of parties).[35] (Citations omitted)

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[33] THE RULES OF COURT, Rule 2, Section 6.

[34] 498 Phil. 227 (2005).

[35] *Id.* at 237-239.

It should be emphasized that the foregoing rule only applies if the court trying the case has jurisdiction over all of the causes of action therein notwithstanding the misjoinder of the same. If the court trying the case has no jurisdiction over a misjoined cause of action, then such misjoined cause of action has to be severed from the other causes of action, and if not so severed, any adjudication rendered by the court with respect to the same would be a nullity.

Here, Florante posed no objection, and neither did the RTC direct the severance of the petitioners' action for rescission from their action for partition. While this may be a patent omission on the part of the RTC, this does not constitute a ground to assail the validity and correctness of its decision. The RTC validly adjudicated the issues raised in the actions for partition and rescission filed by the petitioners.

Asserting a New Cause of Action in a Supplemental Pleading

In its Decision dated October 26, 2007, the CA pointed out that the said action for rescission should have been filed by the petitioners independently of the proceedings in the action for partition. It opined that the action for rescission could not be lumped up with the action for partition through a mere supplemental pleading.

We do not agree.

A supplemental pleading may raise a new cause of action as long as it has some relation to the original cause of action set forth in the original complaint.

Section 6, Rule 10 of the Rules of Court reads:

> Sec. 6. Supplemental Pleadings. — Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

In *Young v. Spouses Sy*,[36] this Court had the opportunity to elucidate on the purpose of a supplemental pleading. Thus:

> As its very name denotes, a supplemental pleading only serves to bolster or add something to the primary pleading. A supplement exists side by side with the original. It does not replace that which it supplements. Moreover, a supplemental pleading assumes that the original pleading is to stand and that the issues joined with the original pleading remained an issue to be tried in the action. It is but a continuation of the complaint. **Its usual office is to set up new facts which justify, enlarge or change the kind of relief with respect to the same subject matter as the controversy referred to in the original complaint.**
>
> **The purpose of the supplemental pleading is to bring into the records new facts which will enlarge or change the kind of relief to which the plaintiff is entitled; hence, any supplemental facts which further develop the original right of action, or extend to vary the relief, are available by way of supplemental complaint even though they themselves constitute a right of action.**[37] (Citations omitted and emphasis ours)

Thus, a supplemental pleading may properly allege transactions, occurrences or events which had transpired after the filing of the pleading sought to be supplemented, even if the said supplemental facts constitute another cause of action.

Admittedly, in *Leobrera v. Court of Appeals*,[38] we held that a supplemental pleading must be based on matters arising subsequent to the original pleading related to the claim or defense presented therein, and founded on the same cause of action. We further stressed therein that a supplemental pleading may not be used to try a new cause of action.

However, in *Planters Development Bank v. LZK Holdings and Development Corp.*,[39] we clarified that, while a matter stated

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[36] 534 Phil. 246 (2006).

[37] *Id.* at 260.

[38] 252 Phil. 737 (1989).

[39] 496 Phil. 263 (2005).

in a supplemental complaint should have some relation to the cause of action set forth in the original pleading, the fact that the supplemental pleading technically states a new cause of action should not be a bar to its allowance but only a matter that may be considered by the court in the exercise of its discretion. In such cases, we stressed that a broad definition of "cause of action" should be applied.

Here, the issue as to the validity of the donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 made by Rita in favor of Florante is a new cause of action that occurred after the filing of the original complaint. However, the petitioners' prayer for the rescission of the said donation *inter vivos* in their supplemental pleading is germane to, and is in fact, intertwined with the cause of action in the partition case. Lot No. 4709 and half of Lot No. 4706 are included among the properties that were sought to be partitioned.

The petitioners' supplemental pleading merely amplified the original cause of action, on account of the gratuitous conveyance of Lot No. 4709 and half of Lot No. 4706 after the filing of the original complaint and prayed for additional reliefs, *i.e.*, rescission. Indeed, the petitioners claim that the said lots form part of the estate of Spouses Baylon, but cannot be partitioned unless the gratuitous conveyance of the same is rescinded. Thus, the principal issue raised by the petitioners in their original complaint remained the same.

Main Issue: Propriety of Rescission

After having threshed out the procedural matters, we now proceed to adjudicate the substantial issue presented by the instant petition.

The petitioners assert that the CA erred in remanding the case to the RTC for the determination of ownership of Lot No. 4709 and half of Lot No. 4706. They maintain that the RTC aptly rescinded the said donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 pursuant to Article 1381(4) of the Civil Code.

In his Comment,[40] Florante asserts that before the petitioners may file an action for rescission, they must first obtain a favorable judicial ruling that Lot No. 4709 and half of Lot No. 4706 actually belonged to the estate of Spouses Baylon. Until then, Florante avers that an action for rescission would be premature.

The petitioners' contentions are well-taken.

The resolution of the instant dispute is fundamentally contingent upon a determination of whether the donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 in favor of Florante may be rescinded pursuant to Article 1381(4) of the Civil Code on the ground that the same was made during the pendency of the action for partition with the RTC.

Rescission is a remedy to address the damage or injury caused to the contracting parties or third persons.

Rescission is a remedy granted by law to the contracting parties and even to third persons, to secure the reparation of damages caused to them by a contract, even if it should be valid, by means of the restoration of things to their condition at the moment prior to the celebration of said contract.[41] It is a remedy to make ineffective a contract, validly entered into and therefore obligatory under normal conditions, by reason of external causes resulting in a pecuniary prejudice to one of the contracting parties or their creditors.[42]

Contracts which are rescissible are valid contracts having all the essential requisites of a contract, but by reason of injury or damage caused to either of the parties therein or to third persons are considered defective and, thus, may be rescinded.

The kinds of rescissible contracts, according to the reason for their susceptibility to rescission, are the following: *first*,

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[40] *Rollo*, pp. 96-99.

[41] Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 1991 ed., p. 570.

[42] Caguioa, *Comments and Cases on Civil Law*, Vol. IV, 1968 ed., pp. 443-444.

those which are rescissible because of lesion or prejudice;[43] *second*, those which are rescissible on account of fraud or bad faith;[44] and *third*, those which, by special provisions of law,[45] are susceptible to rescission.[46]

Contracts which refer to things subject of litigation is rescissible pursuant to Article 1381(4) of the Civil Code.

Contracts which are rescissible due to fraud or bad faith include those which involve things under litigation, if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority. Thus, Article 1381(4) of the Civil Code provides:

> Art. 1381. The following contracts are rescissible:
>
> x x x x x x x x x
>
> (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority[.]

The rescission of a contract under Article 1381(4) of the Civil Code only requires the concurrence of the following: *first*, the defendant, during the pendency of the case, enters into a contract which refers to the thing subject of litigation; and *second*, the said contract was entered into without the knowledge and approval of the litigants or of a competent judicial authority. As long as the foregoing requisites concur, it becomes the duty of the court to order the rescission of the said contract.

The reason for this is simple. Article 1381(4) seeks to remedy the presence of bad faith among the parties to a case and/or

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[43] See CIVIL CODE OF THE PHILIPPINES, Articles 1381(1) and (2) and 1098.

[44] See CIVIL CODE OF THE PHILIPPINES, Articles 1381(3) and (4) and 1382.

[45] See CIVIL CODE OF THE PHILIPPINES, Articles 1189, 1191, 1526, 1534, 1538, 1539, 1542, 1556, 1560, 1567 and 1659.

[46] *Supra* note 42, at 446; Reyes and Puno, *An Outline of Philippine Civil Law*, Vol. IV, 1957 ed., pp. 233-235.

any fraudulent act which they may commit with respect to the thing subject of litigation.

When a thing is the subject of a judicial controversy, it should ultimately be bound by whatever disposition the court shall render. The parties to the case are therefore expected, in deference to the court's exercise of jurisdiction over the case, to refrain from doing acts which would dissipate or debase the thing subject of the litigation or otherwise render the impending decision therein ineffectual.

There is, then, a restriction on the disposition by the parties of the thing that is the subject of the litigation. Article 1381(4) of the Civil Code requires that any contract entered into by a defendant in a case which refers to things under litigation should be with the knowledge and approval of the litigants or of a competent judicial authority.

Further, any disposition of the thing subject of litigation or any act which tends to render inutile the court's impending disposition in such case, *sans* the knowledge and approval of the litigants or of the court, is unmistakably and irrefutably indicative of bad faith. Such acts undermine the authority of the court to lay down the respective rights of the parties in a case relative to the thing subject of litigation and bind them to such determination.

It should be stressed, though, that the defendant in such a case is not absolutely proscribed from entering into a contract which refer to things under litigation. If, for instance, a defendant enters into a contract which conveys the thing under litigation during the pendency of the case, the conveyance would be valid, there being no definite disposition yet coming from the court with respect to the thing subject of litigation. After all, notwithstanding that the subject thereof is a thing under litigation, such conveyance is but merely an exercise of ownership.

This is true even if the defendant effected the conveyance without the knowledge and approval of the litigants or of a competent judicial authority. The absence of such knowledge or approval would not precipitate the invalidity of an otherwise

valid contract. Nevertheless, such contract, though considered valid, may be rescinded at the instance of the other litigants pursuant to Article 1381(4) of the Civil Code.

Here, contrary to the CA's disposition, the RTC aptly ordered the rescission of the donation *inter vivos* of Lot No. 4709 and half of Lot No. 4706 in favor of Florante. The petitioners had sufficiently established the presence of the requisites for the rescission of a contract pursuant to Article 1381(4) of the Civil Code. It is undisputed that, at the time they were gratuitously conveyed by Rita, Lot No. 4709 and half of Lot No. 4706 are among the properties that were the subject of the partition case then pending with the RTC. It is also undisputed that Rita, then one of the defendants in the partition case with the RTC, did not inform nor sought the approval from the petitioners or of the RTC with regard to the donation *inter vivos* of the said parcels of land to Florante.

Although the gratuitous conveyance of the said parcels of land in favor of Florante was valid, the donation *inter vivos* of the same being merely an exercise of ownership, Rita's failure to inform and seek the approval of the petitioners or the RTC regarding the conveyance gave the petitioners the right to have the said donation rescinded pursuant to Article 1381(4) of the Civil Code.

Rescission under Article 1381(4) of the Civil Code is not preconditioned upon the judicial determination as to the ownership of the thing subject of litigation.

In this regard, we also find the assertion that rescission may only be had after the RTC had finally determined that the parcels of land belonged to the estate of Spouses Baylon intrinsically amiss. The petitioners' right to institute the action for rescission pursuant to Article 1381(4) of the Civil Code is not preconditioned upon the RTC's determination as to the ownership of the said parcels of land.

It bears stressing that the right to ask for the rescission of a contract under Article 1381(4) of the Civil Code is not contingent upon the final determination of the ownership of the thing subject of litigation. The primordial purpose of Article 1381(4) of the Civil Code is to secure the possible effectivity of the impending judgment by a court with respect to the thing subject of litigation. It seeks to protect the binding effect of a court's impending adjudication *vis-à-vis* the thing subject of litigation regardless of which among the contending claims therein would subsequently be upheld. Accordingly, a definitive judicial determination with respect to the thing subject of litigation is not a condition *sine qua non* before the rescissory action contemplated under Article 1381(4) of the Civil Code may be instituted.

Moreover, conceding that the right to bring the rescissory action pursuant to Article 1381(4) of the Civil Code is preconditioned upon a judicial determination with regard to the thing subject litigation, this would only bring about the very predicament that the said provision of law seeks to obviate. Assuming *arguendo* that a rescissory action under Article 1381(4) of the Civil Code could only be instituted after the dispute with respect to the thing subject of litigation is judicially determined, there is the possibility that the same may had already been conveyed to third persons acting in good faith, rendering any judicial determination with regard to the thing subject of litigation illusory. Surely, this paradoxical eventuality is not what the law had envisioned.

Even if the donation *inter vivos* is validly rescinded, a determination as to the ownership of the subject parcels of land is still necessary.

Having established that the RTC had aptly ordered the rescission of the said donation *inter vivos* in favor of Florante, the issue that has to be resolved by this Court is whether there is still a need to determine the ownership of Lot No. 4709 and half of Lot No. 4706.

In opting not to make a determination as to the ownership of Lot No. 4709 and half of Lot No. 4706, the RTC reasoned that

the parties in the proceedings before it constitute not only the surviving heirs of Spouses Baylon but the surviving heirs of Rita as well. As intimated earlier, Rita died intestate during the pendency of the proceedings with the RTC without any issue, leaving the parties in the proceedings before the RTC as her surviving heirs. Thus, the RTC insinuated, a definitive determination as to the ownership of the said parcels of land is unnecessary since, in any case, the said parcels of land would ultimately be adjudicated to the parties in the proceedings before it.

We do not agree.

Admittedly, whoever may be adjudicated as the owner of Lot No. 4709 and half of Lot No. 4706, be it Rita or Spouses Baylon, the same would ultimately be transmitted to the parties in the proceedings before the RTC as they are the only surviving heirs of both Spouses Baylon and Rita. However, the RTC failed to realize that a definitive adjudication as to the ownership of Lot No. 4709 and half of Lot No. 4706 is essential in this case as it affects the authority of the RTC to direct the partition of the said parcels of land. Simply put, the RTC cannot properly direct the partition of Lot No. 4709 and half of Lot No. 4706 until and unless it determines that the said parcels of land indeed form part of the estate of Spouses Baylon.

It should be stressed that the partition proceedings before the RTC only covers the properties co-owned by the parties therein in their respective capacity as the surviving heirs of Spouses Baylon. Hence, the authority of the RTC to issue an order of partition in the proceedings before it only affects those properties which actually belonged to the estate of Spouses Baylon.

In this regard, if Lot No. 4709 and half of Lot No. 4706, as unwaveringly claimed by Florante, are indeed exclusively owned by Rita, then the said parcels of land may not be partitioned simultaneously with the other properties subject of the partition case before the RTC. In such case, although the parties in the case before the RTC are still co-owners of the said parcels of land, the RTC would not have the authority to direct the partition of the said parcels of land as the proceedings before it is only concerned with the estate of Spouses Baylon.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **PARTIALLY GRANTED.** The Decision dated October 26, 2007 issued by the Court of Appeals in CA-G.R. CV No. 01746 is **MODIFIED** in that the Decision dated October 20, 2005 issued by the Regional Trial Court, Tanjay City, Negros Oriental, Branch 43 in Civil Case No. 11657, insofar as it decreed the rescission of the Deed of Donation dated July 6, 1997 is hereby **REINSTATED.** The case is **REMANDED** to the trial court for the determination of the ownership of Lot No. 4709 and half of Lot No. 4706 in accordance with this Decision.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Brion, Villarama, Jr.,[*] and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 195097. August 13, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARLON MEDIDA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— There is a "question of law" when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as

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[*] Additional member per Special Order No. 1274 dated July 30, 2012 *vice* Associate Justice Maria Lourdes P.A. Sereno.

to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.

2. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; PRESUMPTION THEREOF, EXPLAINED; BURDEN OF PROOF TO OVERCOME THE PRESUMPTION RESTS UPON THE PERSON APPLYING FOR LAND REGISTRATION. — Under the Regalian Doctrine, which is embodied in our Constitution, 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, who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable. x x x As the rule now stands, an applicant must prove that the land subject of an application for registration is alienable and disposable by establishing the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable. In a line of cases, we have ruled that mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.

3. ID.; ID.; ID.; ALIENABILITY AND DISPOSABILITY OF LANDS ARE NOT AMONG THE MATTERS THAT CAN BE ESTABLISHED BY MERE ADMISSIONS OR AGREEMENT OF PARTIES; RATIONALE.— This Court also holds that the alienability and disposability of land are not among the matters that can be established by mere

admissions, or even the agreement of parties. The law and jurisprudence provide stringent requirements to prove such fact. Our Constitution, no less, embodies the Regalian doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. The courts are then empowered, as we are duty-bound, to ensure that such ownership of the State is duly protected by the proper observance by parties of the rules and requirements on land registration.

4. CIVIL LAW; LAND REGISTRATION; PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE (PENRO) OR CENRO CERTIFICATION BY ITSELF CANNOT BE CONSIDERED AS *PRIMA FACIE* EVIDENCE OF THE ALIENABLE AND DISPOSABLE CHARACTER OF A PARCEL OF LAND; SUSTAINED.— In *Republic v. T.A.N. Properties, Inc.*, this Court explained that a Provincial Environment and Natural Resources Office (PENRO) or CENRO certification, by itself, fails to prove the alienable and disposable character of a parcel of land. We ruled: **[I]t is not enough for the 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. x x x** We further explained why a CENRO or PENRO certification cannot be considered *prima facie* evidence of the facts stated therein. x x x *The CENRO and Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132*. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. x x x The present rule on the matter then requires that an application for original registration be accompanied by: (1) CENRO or PENRO Certification; and (2) a copy of the original classification

approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Chan & Parawan Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

This resolves the petition for review on *certiorari* filed by petitioner Republic of the Philippines (Republic) to assail the Decision[1] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 01870, entitled *Marlon Medida, Petitioner-appellee, v. Republic of the Philippines, Oppositor-appellant*.

On October 22, 2004, herein respondent Marlon Medida (Medida) filed with the Regional Trial Court (RTC), Argao, Cebu a petition for registration of title over two parcels of land situated in Poblacion, Boljoon, Cebu, identified as Lot Nos. 817 and 597 of Boljoon Cad. 1049-D and measuring 5,972 and 533 square meters, respectively. The petition was docketed as LRA Case No. AL-31 and raffled to Branch 26 of the RTC, Argao, Cebu.

The initial hearing on the petition was conducted on September 22, 2005, with the attendance of the public prosecutor. The RTC delegated the reception of evidence to its Clerk of Court. Before the court, Medida testified that he purchased the subject properties in February 1997 from one Eufemia Romero (Romero), who had previously obtained the lots from Nabor Derama (Derama). At the time of the lots' purchase by Medida, the properties were covered by Tax Declaration No. 08774 under

[1] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 31-40.

the name of Romero. Medida started occupying the properties in 1997, and had since then declared the properties for tax purposes under his name.[2]

Also among the witnesses presented during the proceedings *a quo* were Asuncion Derama Binagatan (Binagatan) and Engineer Rafaela A. Belleza (Engr. Belleza).

Binagatan, daughter of Derama, testified that her father had inherited the subject properties from his uncle, one Florencio Villareal, who possessed the lots even prior to the Second World War. She presented the old Tax Declaration No. 08590 under the name of her father and covering the subject properties.[3]

Engr. Belleza, the Chief of the Technical Services of the Land Management Services – Department of Environment and Natural Resources (DENR), Region VII, testified that the lots' survey conducted by Geodetic Engineer Jose V. Dumaguing (Engr. Dumaguing) was approved by their office. Per the Advance Survey Plans for Lot Nos. 817[4] and 597[5] identified by Engr. Belleza, the subject properties had already been declared alienable and disposable portions of the public domain.

On June 21, 2006, the trial court ruled in favor of Medida *via* a Decision[6] with dispositive portion that reads:

> WHEREFORE, finding the petitioner to have sufficient title proper for registration, the petition is hereby GRANTED and judgment is hereby rendered confirming the title of petitioner Marlon D. Medida[,] married to Patricia F. Medida[,] over the following parcels of land:
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> 1. A parcel of land, Lot 817, Cad. 1049-D, under AP-07-003683, situated in Barangay Poblacion, Municipality of Boljoon, Province of Cebu, containing an area of FIVE THOUSAND NINE HUNDRED SEVENTY[-]TWO (5,972) SQUARE METERS; and

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[2] *Id.* at 77.

[3] *Id.* at 79.

[4] *Id.* at 60.

[5] *Id.* at 63.

[6] *Id.* at 76-84.

2. A parcel of land, Lot 597, Cad. 1049-D, under AP 07-003653, situated in Barangay Poblacion, Municipality of Boljoon, Province of Cebu, containing an area of FIVE HUNDRED THIRTY[-]THREE (533) SQUARE METERS.

IT IS SO DECIDED.[7]

Unsatisfied with the decision of the RTC, petitioner Republic, through the Office of the Solicitor General (OSG), filed an appeal before the CA based on a lone assignment of error, to wit:

The trial court erred in granting appellee's petition for registration because the subject lands were not occupied and possessed for the period required by law.[8]

In support of its appeal, the OSG argued that it was only from the subject lands' date of alienability and disposability that the reckoning of the thirty (30)-year statutory requirement of possession should begin. Based on the Advance Survey Plans submitted by the respondent, Lot Nos. 817 and 597 were declared alienable and disposable in 1987 and 1980, respectively.[9] The OSG then argued that Medida's possession of the properties prior to 1987 and 1980, as the case may be, should not be credited as part of the period of possession required from him as an applicant for land registration.

On December 16, 2010, the CA rendered the assailed Decision[10] dismissing the appeal. It ruled that the doctrine invoked by the OSG had been abandoned by recent jurisprudence. The appellate court emphasized that the more reasonable interpretation of Section 14(1) of Presidential Decree No. 1529 (P.D. No. 1529), otherwise known as the Property Registration Decree, now merely requires the property for registration to be already declared alienable and disposable at the time that the application for registration of title is filed in court. The dispositive portion of the CA decision reads:

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[7] *Id.* at 84.

[8] *Id.* at 87.

[9] *Id.* at 90.

[10] *Id.* at 31-40.

WHEREFORE, premises considered, the present Appeal is hereby DISMISSED and the Decision dated June 21, 2006, rendered by the Regional Trial Court, Branch 26, Laoang Northern Argao, Cebu, in LRA Case No. AL-31 is hereby AFFIRMED.

SO ORDERED.[11]

Hence, this petition for review on *certiorari*. The Republic invokes in its petition a lone ground, to wit:

THE COURT OF APPEALS' CONCLUSION THAT THE SUBJECT LANDS ARE PART OF THE ALIENABLE AND DISPOSABLE PORTION OF THE PUBLIC DOMAIN IS WITHOUT BASIS.[12]

Citing jurisprudence on the matter, the Republic argues that the alienable and disposable character of the subject parcels of land has not been sufficiently proved by the mere presentation of the surveyor's notations on the Advance Survey Plans for Lot Nos. 817 and 597. Petitioner Republic claims that such requirement must be established by the existence of a positive act of the government, such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute.

In his Comment,[13] Medida maintains that he has sufficiently proved that the subject properties have been declared alienable and disposable. To further support this assertion, he submitted with his Comment the following certifications issued by the DENR-Community Environment and Natural Resources Office (CENRO) of Argao, Cebu: (1) the Certification[14] dated June 22, 2011 which states that the parcel of land described as Lot No. 817, Cad/Pls 1049-D, C-1 located at Poblacion, Boljoon, Cebu with an area of 5,972 square meters is within the alienable and disposable area, Proj. No. 59-A, L.C. Map No. 3280, certified on August 6, 1987, as verified by actual ground verification;

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[11] *Id.* at 39.

[12] *Id.* at 14.

[13] *Id.* at 116-124.

[14] *Id.* at 125.

and (2) the Certification[15] dated July 5, 2011 which states that the parcel of land described as Lot No. 597, Cad/Pls 1049-D, C-1 located at Poblacion, Boljoon, Cebu with an area of 533 square meters is within the alienable and disposable area, Proj. No. 59 L.C. Map No. 2876, certified on January 11, 1980, as verified by actual ground verification.

Medida also seeks the petition's denial on the ground that it raises a question of fact, which is not allowed in petitions for review under Rule 45. Medida further argues that the OSG is bound conclusively by its declaration before the CA that the subject parcels of land have been declared alienable and disposable.

Prescinding from the foregoing, the main issue for this Court's resolution is: whether or not the CA erred in ruling that the parcels of land subject of the application for registration are part of the alienable and disposable portions of the public domain.

The petition is meritorious.

First, we address Medida's argument that the present petition raises a question of fact which is beyond the coverage of a petition for review on *certiorari*. The distinction between a "question of law" and a "question of fact" is settled. There is a "question of law" when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.[16]

Judging by the arguments that are raised by the OSG in its petition, the issue delves on the alleged insufficiency of the documents presented by the respondent to support the CA's

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[15] *Id.* at 126.

[16] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 420.

conclusion that the subject parcels of land have been validly declared alienable and disposable. In *Republic v. Vega*,[17] we explained that when a petitioner seeks the review of a lower court's ruling based on the evidence presented, without delving into their probative value but only on their sufficiency to support the legal conclusions made, then a question of law is raised. We explained:

> [T]he Petition raises a question of law, and not a question of fact. Petitioner Republic simply takes issue against the conclusions made by the trial and the appellate courts regarding the nature and character of the subject parcel of land, based on the evidence presented. **When petitioner asks for a review of the decisions made by a lower court based on the evidence presented, without delving into their probative value but simply on their sufficiency to support the legal conclusions made, then a question of law is raised.**
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> x x x x x x x x x
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> Petitioner Republic is not calling for an examination of the probative value or truthfulness of the evidence presented, x x x. It, however, **questions whether the evidence on record is sufficient to support the lower court's conclusion that the subject land is alienable and disposable.** Otherwise stated, considering the evidence presented by respondents Vegas in the proceedings below, were the trial and the appellate courts justified under the law and jurisprudence in their findings on the nature and character of the subject land? **Undoubtedly, this is a pure question of law**, which calls for a resolution of what is the correct and applicable law to a given set of facts.[18] (Emphasis ours)

The issue in the present petition has been limited by the Republic, as it merely concerns the merit of notations in survey plans to prove that the properties sought to be registered have been declared alienable and disposable. Similar to the *Vega* case, the contest rests on the matter of sufficiency of evidence, an issue on a conclusion that was made by the appellate court without necessarily raising an attack on the authenticity of the

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[17] G.R. No. 177790, January 17, 2011, 639 SCRA 541.

[18] *Id.* at 547-548.

documents that were presented in the proceedings before the RTC. The issue being invoked by the Republic to support its petition is then a question of law, a matter that is within the purview of Rule 45 of the Rules of Court.

We now resolve the petition's substantial issue. Under the Regalian Doctrine, which is embodied in our Constitution, 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, who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.[19]

On this requirement of proof to establish that a land has become alienable and disposable, the respondent argues that the Advance Survey Plans[20] that were prepared by Engr. Dumaguing and approved by the DENR-Land Management Bureau, providing notations that the lots indicated therein are within the alienable and disposable properties of the State, should suffice. We disagree.

As the rule now stands, an applicant must prove that the land subject of an application for registration is alienable and disposable by establishing the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required

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[19] *Republic v. Dela Paz,* G.R. No. 171631, November 15, 2010, 634 SCRA 610, 621-622.

[20] *Rollo,* pp. 74-75.

number of years is alienable and disposable.[21] In a line of cases, we have ruled that mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character. Our ruling in *Republic of the Philippines v. Tri-Plus Corporation*[22] is particularly instructive:

> It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.
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> In the present case, **the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable.** In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed. Respondents failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable.[23] (Citations omitted and emphasis ours)

Clearly, even the testimony of Engr. Belleza fails to satisfy the required proof. Before us, Medida attempts to remedy the deficiency in his application by submitting the Certifications[24] of the CENRO of Argao, Cebu, attached to his Comment to

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[21] *Valiao v. Republic*, G.R. No. 170757, November 28, 2011.

[22] 534 Phil. 181 (2006).

[23] *Id.* at 194-195.

[24] *Rollo*, pp. 125-126.

further substantiate his claim that the subject properties were already declared alienable and disposable. Unfortunately for the respondent, the said CENRO Certifications remain inadequate to support his intended purpose.

In *Republic v. T.A.N. Properties, Inc.*,[25] this Court explained that a Provincial Environment and Natural Resources Office (PENRO) or CENRO certification, by itself, fails to prove the alienable and disposable character of a parcel of land. We ruled:

> **[I]t is not enough for the 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 for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.** These facts must be established to prove that the land is alienable and disposable. Respondents failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[26] (Emphasis ours)

We further explained why a CENRO or PENRO certification cannot be considered *prima facie* evidence of the facts stated therein:

> Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:
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> (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;
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> (b) Documents acknowledged before a notary public except last wills and testaments; and

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[25] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

[26] *Id.* at 489.

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

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof **or by a copy attested by the officer having legal custody of the record, or by his deputy** x x x. *The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.*

Section 23, Rule 132 of the Revised Rules on Evidence provides:

> "Sec. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. 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."

The CENRO and Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. x x x.[27] (Citations omitted and italics ours)

The present rule on the matter then requires that an application for original registration be accompanied by: (1) CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[28] Medida failed

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[27] *Id.* at 489-491.

[28] *Republic v. Bantigue Point Development Corporation*, G.R. No. 162322, March 14, 2012.

in this respect. The records only include CENRO Certifications on the subject properties' alienability and disposability, but not a copy of the original classification approved by the DENR Secretary and certified as true copy by its legal custodian. Furthermore, even the CENRO Certifications filed before this Court deserve scant consideration since these were not presented during the trial. The genuineness and due execution of these documents had not been duly proven in the manner required by law.[29]

In view of the failure of the respondent to establish by sufficient proof that the subject parcels of land had been classified as part of the alienable and disposable land of the public domain, his application for registration of title should be denied.

There is even no merit in the petitioner's argument that the Republic is bound by an alleged judicial admission on the subject properties' alienability and disposability, when the latter included the following statement in its Brief[30] filed before the CA:

> The Advance Survey Plan clearly shows that the Lot No. 817 and Lot No. 597, albeit alienable and disposable land, were declared only as such in 1987 and 1980, respectively.[31] (Citation omitted)

Said statement cannot be construed as an admission on the alienable and disposable character of the subject properties, as the Republic merely cited the contents of the Advance Survey Plans to lay its basis in saying that Medida had not satisfied the required number of years of possession. Furthermore, the afore-quoted statement should not be interpreted in isolation or taken out of context, as the statements prior to the alleged judicial admission in fact provide:

> Under the Regalian Doctrine, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in land and charged with the conversion of such patrimony.

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[29] See *Republic v. Gomez*, G.R. No. 189021, February 22, 2012.

[30] *Rollo*, pp. 85-94.

[31] *Id.* at 90.

The same doctrine also states that all lands not otherwise appearing within private ownership are presumed to belong to the State. Hence, **anyone who applies for registration of ownership over a parcel of land has the burden of overcoming the presumption that the land sought to be registered forms part of the public domain.**

Such burden was not discharged in the present case. x x x.[32] (Citations omitted and emphasis ours)

This Court also holds that the alienability and disposability of land are not among the matters that can be established by mere admissions, or even the agreement of parties. The law and jurisprudence provide stringent requirements to prove such fact. Our Constitution,[33] no less, embodies the Regalian doctrine that all lands of the public domain belong to the State, which is the source of any asserted right to ownership of land. The courts are then empowered, as we are duty-bound, to ensure that such ownership of the State is duly protected by the proper observance by parties of the rules and requirements on land registration.

WHEREFORE, premises considered, the petition is **GRANTED.** The Decision dated December 16, 2010 of the Court of Appeals in CA-G.R. CV No. 01870 is hereby **SET ASIDE.** The application for registration filed by Marlon Medida is **DENIED.**

SO ORDERED.

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

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

[33] THE 1987 CONSTITUTION, Article XII, Section 2.

[*] Additional member per Raffle dated March 9, 2011 *vice* Senior Associate Justice Antonio T. Carpio.

[**] Additional member per Special Order No. 1274 dated July 30, 2012 *vice* Associate Justice Maria Lourdes P.A. Sereno.

SECOND DIVISION

[G.R. No. 199877. August 13, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARTURO LARA *Y* ORBISTA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; OBJECTION TO THE ARREST OR ACQUISITION OF JURISDICTION OVER THE PERSON OF THE ACCUSED MUST BE MADE BEFORE HE ENTERS HIS PLEA, OTHERWISE THE OBJECTION IS DEEMED WAIVED.— Jurisdiction over the person of the accused may be acquired through compulsory process such as a warrant of arrest or through his voluntary appearance, such as when he surrenders to the police or to the court. Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. An accused submits to the jurisdiction of the trial court upon entering a plea and participating actively in the trial and this precludes him invoking any irregularities that may have attended his arrest. Furthermore, the illegal arrest of an accused is not a sufficient ground to reverse and set aside a conviction that was arrived upon a complaint duly filed and a trial conducted without error.

2. ID.; ID.; RIGHTS OF THE ACCUSED IN CUSTODIAL INVESTIGATION; STANDING IN A POLICE LINE-UP IS NOT A PART OF CUSTODIAL INVESTIGATION.— Contrary to Lara's claim, that he was not provided with counsel when he was placed in a police line-up did not invalidate the proceedings leading to his conviction. That he stood at the police line-up without the assistance of counsel did not render Sumulong's identification of Lara inadmissible. The right to counsel is deemed to have arisen at the precise moment custodial investigation begins and being made to stand in a police line-up is not the starting point or a part of custodial investigation.

3. ID.; ID.; JUDGMENTS; WHEN RESORT TO CIRCUMSTANTIAL EVIDENCE MAY SUFFICE TO CONVICT AN ACCUSED; REQUISITES.— Well-settled is the rule that direct evidence

of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Even in the absence of direct evidence, conviction can be had if the established circumstances constitute an unbroken chain, consistent with each other and to the hypothesis that the accused is guilty, to the exclusion of all other hypothesis that he is not. Under Section 4, Rule 133 of the Revised Rules on Criminal Procedure, circumstantial evidence sufficed to convict upon the concurrence of the following requisites: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. It is not only by direct evidence that an accused may be convicted of the crime for which he is charged. Resort to circumstantial evidence is essential since to insist on direct testimony would, in many cases, result in setting felons free and denying proper protection to the community.

4. CRIMINAL LAW; ROBBERY WITH HOMICIDE; IT MUST BE SHOWN THAT THE ORIGINAL CRIMINAL DESIGN OF THE CULPRIT WAS ROBBERY AND THE HOMICIDE WAS PERPETRATED WITH A VIEW TO THE CONSUMMATION OF THE ROBBERY BY REASON OR ON THE OCCASION OF ROBBERY; ESTABLISHED IN CASE AT BAR.— Indeed, in cases of robbery with homicide, the taking of personal property with intent to gain must itself be established beyond reasonable doubt. Conclusive evidence proving the physical act of asportation by the accused must be presented by the prosecution. It must be shown that the original criminal design of the culprit was robbery and the homicide was perpetrated with a view to the consummation of the robbery by reason or on the occasion of the robbery. The mere presence of the accused at the crime scene is not enough to implicate him. It is essential to prove the intent to rob and the use of violence was necessary to realize such intent. In this case, Lara's intent to gain is proven by Sumulong's positive narration that it was Lara who pointed the gun at him and demanded that the bag containing the money be turned over to him. That Lara resorted to violence in order to actualize his intent to gain is proven by Sumulong's testimony that he saw Lara fire the gun at the direction of Bautista, who was running away from the pick-up in order to prevent Lara from taking possession of the money.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE TESTIMONY, WHICH THE TRIAL COURT FOUND TO BE FORTHRIGHT AND CREDIBLE, IS WORTHY OF FULL FAITH AND CREDIT AND SHOULD NOT BE DISTURBED ON APPEAL; APPLICATION IN CASE AT BAR.— Notably, the incident took place in broad daylight and in the middle of a street. Thus, where considerations of visibility are favorable and the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should be normally accepted. Lara did not allege, much less, convincingly demonstrate that Sumulong was impelled by improper or malicious motives to impute upon him, however perjurious, such a serious charge. Thus, his testimony, which the trial court found to be forthright and credible, is worthy of full faith and credit and should not be disturbed. If an accused had nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that a prosecution witness would falsely testify against the former.

6. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED PREVAILS OVER ALIBI; PRESENT IN CASE AT BAR.— It is well-settled that positive identification prevails over alibi, which is inherently a weak defense. Such is the rule, for as a defense, alibi is easy to concoct, and difficult to disapprove. Moreover, in order for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the offense was committed, but it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Due to its doubtful nature, alibi must be supported by clear and convincing proof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

This is an automatic appeal from the Decision[1] dated July 28, 2011 of the Court of Appeals (CA) in CA-G.R. CR HC No. 03685. The CA affirmed the Decision[2] dated October 1, 2008 of the Regional Trial Court (RTC), Pasig City, Branch 268, finding Arturo Lara (Lara) guilty beyond reasonable doubt of robbery with homicide.

On June 14, 2001, an Information[3] charging Lara with robbery with homicide was filed with the RTC:

> On or about May 31, 2001, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, armed with a gun, conspiring and confederating together with one unidentified person who is still at-large, and both of them mutually helping and aiding one another, with intent to gain, and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously take, steal and divest from Joselito M. Bautista cash money amounting to ₱230,000.00 more or less and belonging to San Sebastian Allied Services, Inc. represented by Enrique Sumulong; that on the occasion of said robbery, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot said Joselito M. Bautista with the said gun, thereby inflicting upon the latter mortal wounds which directly caused his death.
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> Contrary to law.[4]

Following Lara's plea of not guilty, trial ensued. The prosecution presented three (3) witnesses: Enrique Sumulong (Sumulong), SPO1 Bernard Cruz (SPO1 Cruz) and PO3 Efren Calix (PO3 Calix).

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[1] Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion, concurring; *rollo*, pp. 2-13.

[2] Under the sala of Judge Amelia C. Manalastas; CA *rollo*, pp. 41-47.

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

[4] *Id.* at 23.

Sumulong testified that: (a) he was an accounting staff of San Sebastian Allied Services, Inc. (San Sebastian); (b) on May 31, 2001 and at around 9:00 in the morning, he withdrew the amount of ₱230,000.00 from the Metrobank-Mabini Branch, Pasig City to defray the salaries of the employees of San Sebastian; (c) in going to the bank, he rode a pick-up and was accompanied by Virgilio Manacob (Manacob), Jeff Atie (Atie) and Joselito Bautista (Bautista); (d) he placed the amount withdrawn in a black bag and immediately left the bank; (e) at around 10:30 in the morning, while they were at the intersection of Mercedes and Market Avenues, Pasig City, Lara suddenly appeared at the front passenger side of the pick-up and pointed a gun at him stating, "*Akin na ang pera, iyong bag, nasaan?*"; (f) Bautista, who was seated at the back, shouted, "*Wag mong ibigay*"; (g) heeding Bautista's advice, he threw the bag in Bautista's direction; (h) after getting hold of the bag, Bautista alighted from the pick-up and ran; (i) seeing Bautista, Lara ran after him while firing his gun; (j) when he had the chance to get out of the pick-up, he ran towards Mercedes Plaza and called up the office of San Sebastian to relay the incident; (k) when he went back to where the pick-up was parked, he went to the rear portion of the vehicle and saw blood on the ground; (l) he was informed by one bystander that Bautista was shot and the bag was taken away from him; (m) when *barangay* officials and the police arrived, he and his two (2) other companions were brought to the police station for investigation; (n) on June 7, 2001, while on his way to *Barangay* Maybunga, Pasig City, he saw Lara walking along Dr. Pilapil Street, *Barangay* San Miguel, Pasig City; (o) he alerted the police and Lara was thereafter arrested; and (p) at the police station, he, Atie and Manacob identified Lara as the one who shot and robbed them of San Sebastian's money.[5]

SPO1 Cruz testified that: (a) he was assigned at the Follow-Up Unit of the Pasig City Police Station; (b) at around 7:55 in the evening of June 7, 2001, Sumulong went to the police station and informed him that he saw Lara walking along Dr. Pilapil

[5] *Id.* at 42-43.

Street; (c) four (4) police officers and Sumulong went to Dr. Pilapil Street where they saw Lara, who Sumulong identified; (d) they then approached Lara and invited him for questioning; (e) at the police station, Lara was placed in a line-up where he was positively identified by Sumulong, Manacob and Atie; and (f) after being identified, Lara was informed of his rights and subsequently detained.[6]

PO3 Calix testified that: (a) he was a member of the Criminal Investigation Unit of the Pasig City Police Station; (b) on May 31, 2001, he was informed of a robbery that took place at the corner of Mercedes and Market Avenues, Pasig City; (c) he, together with three (3) other police officers, proceeded to the crime scene; (d) upon arriving thereat, one of the police officers who were able to respond ahead of them, handed to him eleven (11) pieces of empty shells and six (6) deformed slugs of a 9mm pistol; (e) as part of his investigation, he interviewed Sumulong, Atie, Manacob at the police station; and (f) before Bautista died, he was able to interview Bautista at the hospital where the latter was brought after the incident.[7]

In his defense, Lara testified that: (a) he was a plumber who resided at Dr. Pilapil Street, San Miguel, Pasig City; (b) on May 31, 2001, he was at his house, digging a sewer trench while his brother, Wilfredo, was constructing a comfort room; (c) they were working from 8:00 in the morning until 3:00 in the afternoon; (d) on June 7, 2001 and at around 7:00 in the evening, while he was at the house of one of his cousins, police officers arrived and asked him if he was Arturo Lara; (e) after confirming that he was Arturo Lara, the police officers asked him to go with them to the *Barangay* Hall; (f) he voluntarily went with them and while inside the patrol car, one of the policemen said, "*You are lucky, we were able to caught you in your house, if in another place we will kill you*" (sic); (g) he was brought to the police station and not the *barangay* hall as he was earlier told where he was investigated for robbery with

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[6] *Id.* at 43-44.

[7] *Id.* at 44.

homicide; (h) when he told the police that he was at home when the subject incident took place, the police challenged him to produce witnesses; (i) when his witnesses arrived at the station, one of the police officers told them to come back the following day; (j) while he was at the police line-up holding a name plate, a police officer told Sumulong and Atie, "*Ituru nyo na yan at uuwi na tayo*"; and (k) when his witnesses arrived the following day, they were told that he will be subjected to an inquest.[8]

To corroborate his testimony, Lara presented one of his neighbors, Simplicia Delos Reyes. She testified that on May 31, 2001, while she was manning her store, she saw Lara working on a sewer trench from 9:00 in the morning to 5:00 in the afternoon.[9] Lara also presented his sister, Edjosa Manalo, who testified that he was working on a sewer line the whole day of May 31, 2001.[10]

On October 1, 2008, the RTC convicted Lara of robbery with homicide in a Decision,[11] the dispositive portion of which states:

WHEREFORE, premises considered, this Court finds the accused ARTURO LARA *Y* Orbista GUILTY beyond reasonable doubt of the crime of Robbery with Homicide, defined and penalized under Article 294 (1) as amended by Republic Act 7659, and is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua,* with all the accessory penalties prescribed by law.

Accused is further ordered to indemnify the heirs of the deceased the sum of Php50,000.00 as civil indemnity and Php230,000.00 representing the money carted by the said accused.

SO ORDERED.[12]

The RTC rejected Lara's defense of alibi as follows:

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[8] *Id.* at 44-45.

[9] *Id.* at 46.

[10] *Id.*

[11] *Id.* at 41-47.

[12] *Id.* at 47.

The prosecution's witness Enrique Sumulong positively identified accused Arturo Lara as the person who carted away the payroll money of San Sebastian Allied Services, Inc., on May 31, 2001 at around 10:30 o'clock in the morning along the corner of Mercedez and Market Ave., Pasig City and the one who shot Joselito Bautista which caused his instantaneous death on the same day. As repeatedly held by the Supreme Court, ***"For alibi to prosper, an accused must show he was at some other place for such a period of time that it was impossible for him to have been at the crime scene at the time of the commission of the crime"*** (People *versus* Bano, 419 SCRA 697). Considering the proximity of the distance between the place of the incident and the residence of the accused where he allegedly stayed the whole day of May 31, 2001, it is not physically impossible for him to be at the crime scene within the same *barangay*. The positive identification of the accused which were categorical and consistent and without any showing of ill motive on the part of the eyewitnesses, should prevail over the alibi and denial of the accused whose testimony was not substantiated by clear and convincing evidence (People *versus* Aves 420 SCRA 259).[13] (Emphasis supplied)

On appeal, Lara pointed out several errors that supposedly attended his conviction. First, that he was arrested without a warrant under circumstances that do not justify a warrantless arrest rendered void all proceedings including those that led to his conviction. Second, he was not assisted by counsel when the police placed him in a line-up to be identified by the witnesses for the prosecution in violation of Section 12, Article III of the Constitution. The police line-up is part of custodial investigation and his right to counsel had already attached. Third, the prosecution failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to present a witness who actually saw him commit the alleged acts. Sumulong merely presumed that he was the one who shot Bautista and who took the bag of money from him. The physical description of Lara that Sumulong gave to the police was different from the one he gave during the trial, indicating that he did not have a fair glimpse of the perpetrator. Moreover, this gives rise to the possibility that it was his unidentified companion who shot Bautista and

[13] *Id.* at 46.

took possession of the money. Hence, it cannot be reasonably claimed that his conviction was attended with moral certainty. Fourth, the trial court erred in discounting the testimony of his witnesses. Without any showing that they were impelled by improper motives in testifying in his favor, their testimonies should have been given the credence they deserve. While his two (2) witnesses were his sister and neighbor, this does not by itself suggest the existence of bias or impair their credibility.

The CA affirmed Lara's conviction. That Lara was supposedly arrested without a warrant may not serve as a ground to invalidate the proceedings leading to his conviction considering its belated invocation. Any objections to the legality of the warrantless arrest should have been raised in a motion to quash duly filed before the accused enters his plea; otherwise, it is deemed waived. Further, that the accused was illegally arrested is not a ground to set aside conviction duly arrived at and based on evidence that sufficiently establishes culpability:

Appellant's avowal could hardly wash.

It is a shopworn doctrine that any objection involving a warrant of arrest or the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. In voluntarily submitting himself to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over his person, accused-appellant is deemed to have waived his right to assail the legality of his arrest. Applying the foregoing jurisprudential touchstone, appellant is estopped from questioning the validity of his arrest since he never raised this issue before arraignment or moved to quash the *Information.*

What is more, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error. The warrantless arrest, even if illegal, cannot render void all other proceedings including those leading to the conviction of the appellants and his co-accused, nor can the state be deprived of its right to convict the guilty when all the facts on record point to their culpability.[14] (Citations omitted)

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[14] *Rollo,* p. 5.

As to whether the identification of Lara during the police line-up is inadmissible as his right to counsel was violated, the CA ruled that there was no legal compulsion to afford him a counsel during a police line-up since the latter is not part of custodial investigation.

> Appellant's assertion that he was under custodial investigation at the time he was identified in a police line-up and therefore had the right to counsel does not hold water. Ingrained in our jurisdiction is the rule that an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of custodial investigation. An exception to this rule is when the accused had been the focus of police attention at the start of the investigation. In the case at bench, appellant was identified in a police line-up by prosecution witnesses from a group of persons gathered for the purpose. However, there was no proof that appellant was interrogated at all or that a statement or confession was extracted from him. *A priori*, We refuse to hearken to appellant's hollow cry that he was deprived of his constitutional right to counsel given the hard fact that during the police line-up, the accusatory process had not yet commenced.
>
> *Assuming ex hypothesi* that appellant was subjected to interrogation sans counsel during the police line-up, it does not in any way affect his culpability. Any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction. Here, appellant was convicted based on the testimony of a prosecution witness and not on his alleged uncounseled confession or admission.[15] (Citations omitted)

The CA addressed Lara's claim that the prosecution's failure to present a witness who actually saw him commit the crime charged as follows:

> **Third.** Appellant takes umbrage at the alleged failure of the prosecution to present an eyewitness to prove that he shot the victim and took the money.
>
> *Such posture is unpersuasive*.

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[15] *Id.* at 5-6.

Contrary to appellant's assertion, prosecution witness Sumulong actually saw him shoot Bautista, the victim. Sumulong vividly recounted, *viz*:

"Q When you said that "*tinutukan ka*", aside from this act was there any other words spoken by this person?
A There was, sir.

Q What did he say?
A "*Nasaan ang bag ilabas mo yung pera,*" sir.

Q Where were you looking when this person approached you?
A I was looking at his face, sir.

Q And upon hearing those words, what did you do?
A I put out the money, sir, because I got afraid at that time.

Q Did you hand over the black bag containing the money to him?
A No, sir, because one of my companion(s) shouted not to give the money or the bag so I immediately threw away the bag at the back seat, sir.

Q And how long approximately was that person standing by your car window?
A Five (5) to ten (10) minutes, sir.

Q And after you have thrown the black bag containing money to the back of the vehicle, what did that person do?
A I saw Joey alight(ed) from the vehicle carrying the bag and ran away, sir, and **I also saw somebody shoot a gun**?

Q **Who was firing the gun**?
A **The one who held-up us, sir**.

Q By how, do you know his name?
A No, sir.

Q But if you can see him again, (were) you be able to recognize him?
A Yes, sir.

Q If he is in the courtroom, will you be able to recognize him?
A Yes, sir.

Q Please look around and please tell this Honorable Court whether indeed the person you saw holding you up at that time is in court?
A Yes, sir.

Q Will you please stand up and tap his shoulder to identify him?

Interpreter:
The witness tap the shoulder of a person sitting on the first bench of the courtroom wearing yellow t-shirt and black pants who when ask identify himself as Arturo Lara (*sic*).

Q And when as you said Joey got the bag. Alighted from the vehicle and ran away with it, what did the accused do? (*sic*)
A He shot Joey while running around our vehicle, sir.

Q Around how many shots according to your recollection were fired?
A There were several shots, more or less nine (9) shots, sir.

x x x x x x x x x["]

"Q So, you did not personally notice what had transpired or happened after you stepped down from the Nissan pick-up, that is correct?
A **There was, sir, my companion Joselito Bautista was shot**.

Q When you heard the gunfire, you were already proceeding towards that store to call your office by phone, that is correct?
A Not yet, sir, we were still inside the vehicle.

Q And was Joselito Bautista at the rear of the Nissan Sentra when you heard this gunfire?
A Yes, sir.

Q And so he was at the back, so the shooter was also at the back of the vehicle, that is correct?
A **Yes, sir, he went towards the rear portion of the vehicle, he followed Joselito Bautista and shot him**.

Q So, to be clear, when Joselito Bautista ran to the rear, this alleged holdup(p)er followed him?
A Yes, sir.

Q And that was the time(,) you heard this gunfire?
A Yes, sir.

Q So, you did not personally see who fired that firearm?
A Because at that time he was the one holding the gun, sir.

Q So, you are presuming that he was the one who fired the gun because he was holding the gun, am I correct?
A Yes, sir."

x x x x x x x x x

Under Section 4, Rule 133, of the Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Here, the following circumstantial evidence are tellingly sufficient to prove that the guilt of appellant is beyond reasonable doubt, *viz*:

1. While the vehicle was at the intersection of Mercedes and Market Avenues, Pasig City, appellant suddenly emerged and pointed a gun at prosecution witness Sumulong, demanding from him to produce the bag containing the money[.]
2. Prosecution witness Sumulong threw the bag to the victim who was then seated at the backseat of the vehicle.
3. The victim alighted from vehicle carrying the bag.
4. Appellant chased and fired several shots at the victim.
5. The victim sustained several gunshot wounds.
6. The police officers recovered from the scene of the crime six deformed empty shells.[16] (Citations omitted and emphasis supplied)

Finally, the CA found that Lara's alibi failed to convince. Specifically:

Deeply embedded in our jurisprudence is the rule that positive identification of the accused, where categorical and consistent, without

[16] *Id.* at 7-11.

any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants, whose testimonies are not substantiated by clear and convincing evidence.

All the more, to establish alibi the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Appellant miserably failed to prove the physical impossibility of his presence at the *locus criminis* at the time of the perpetration of the felonious act. He himself admitted that his house was just a stone's throw (about three minutes away) from the crime scene.[17] (Citations omitted)

In a Resolution[18] dated February 1, 2012, this Court accepted the appeal as the penalty imposed was *reclusion perpetua* and the parties were afforded an opportunity to file their supplemental briefs. Both parties waived their right to do so, stating that they would adopt the allegations in their respective briefs that they filed with the CA.

Issues

The present review of Lara's conviction for robbery with homicide gives rise to the following issues:

a. whether the identification made by Sumulong, Atie and Manacob in the police line-up is inadmissible because Lara stood therein without the assistance of counsel;

b. whether Lara's supposedly illegal arrest may be raised for the first time on appeal for the purpose of nullifying his conviction;

c. whether there is sufficient evidence to convict Lara; and

d. whether Lara's alibi can be given credence so as to exonerate him from the crime charged.

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

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

Our Ruling

This Court resolves to deny the appeal.

I

Jurisdiction over the person of the accused may be acquired through compulsory process such as a warrant of arrest or through his voluntary appearance, such as when he surrenders to the police or to the court.[19] Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. An accused submits to the jurisdiction of the trial court upon entering a plea and participating actively in the trial and this precludes him invoking any irregularities that may have attended his arrest.[20] Furthermore, the illegal arrest of an accused is not a sufficient ground to reverse and set aside a conviction that was arrived upon a complaint duly filed and a trial conducted without error.[21] As Section 9, Rule 117 of the Revised Rules of Criminal Procedure provides:

> Sec. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of Section 3 of this Rule.

II

Contrary to Lara's claim, that he was not provided with counsel when he was placed in a police line-up did not invalidate the proceedings leading to his conviction. That he stood at the police line-up without the assistance of counsel did not render Sumulong's identification of Lara inadmissible. The right to

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[19] *Miranda v. Tuliao*, 520 Phil. 907, 917 (2006).

[20] See *People v. Ayangao*, 471 Phil. 379, 387-388 (2004).

[21] See *Rebellion v. People*, G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.

counsel is deemed to have arisen at the precise moment custodial investigation begins and being made to stand in a police line-up is not the starting point or a part of custodial investigation. As this Court previously ruled in *People v. Amestuzo*:[22]

> The contention is not meritorious. The guarantees of Sec. 12 (1), Art. III of the 1987 Constitution, or the so-called *Miranda* rights, may be invoked only by a person while he is under custodial investigation. Custodial investigation starts when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements. Police line-up is not part of the custodial investigation; hence, the right to counsel guaranteed by the Constitution cannot yet be invoked at this stage. This was settled in the case of *People vs. Lamsing* and in the more recent case of *People vs. Salvatierra*. The right to be assisted by counsel attaches only during custodial investigation and cannot be claimed by the accused during identification in a police line-up because it is not part of the custodial investigation process. This is because during a police line-up, the process has not yet shifted from the investigatory to the accusatory and it is usually the witness or the complainant who is interrogated and who gives a statement in the course of the line-up.[23] (Citations omitted)

III

It is apparent from the assailed decision of the CA that the finding of guilt against Lara is based on circumstantial evidence. The CA allegedly erred in this wise considering that only direct and not circumstantial evidence can overcome the presumption of innocence.

However, well-settled is the rule that direct evidence of the commission of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. Even in the absence of direct evidence, conviction can be had if the established circumstances constitute an unbroken chain, consistent

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[22] 413 Phil. 500 (2001).

[23] *Id.* at 508-509.

with each other and to the hypothesis that the accused is guilty, to the exclusion of all other hypothesis that he is not.[24]

Under Section 4, Rule 133 of the Revised Rules on Criminal Procedure, circumstantial evidence sufficed to convict upon the concurrence of the following requisites: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

It is not only by direct evidence that an accused may be convicted of the crime for which he is charged. Resort to circumstantial evidence is essential since to insist on direct testimony would, in many cases, result in setting felons free and denying proper protection to the community.[25]

As the CA correctly ruled, the following circumstances established by the evidence for the prosecution strongly indicate Lara's guilt: (a) while the vehicle Sumulong, Atie, Manacob and Bautista were riding was at the intersection of Mercedes and Market Avenues, he appeared at the front passenger side thereof armed with a gun; (b) while pointing the gun at Sumulong who was at the front passenger seat, Lara demanded that Sumulong give him the bag containing the money; (c) instead of giving the bag to Lara, Sumulong gave it to Bautista who was seated at the back of the pick-up; (d) when Bautista got hold of the bag, he alighted and ran towards the back of the pick-up; (e) Lara ran after Bautista and while doing so, fired his gun at Bautista's direction; (f) Bautista sustained several gunshot wounds; and (g) Bautista's blood was on the crime scene and empty shells were recovered therefrom.

Indeed, in cases of robbery with homicide, the taking of personal property with intent to gain must itself be established beyond reasonable doubt. Conclusive evidence proving the physical act

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[24] *People v. Pascual, Jr.*, 432 Phil. 224, 231 (2002).

[25] *People v. dela Cruz*, 397 Phil. 401, 420 (2000), citing *People v. Geron*, 346 Phil. 14, 24 (1997).

of asportation by the accused must be presented by the prosecution. It must be shown that the original criminal design of the culprit was robbery and the homicide was perpetrated with a view to the consummation of the robbery by reason or on the occasion of the robbery.[26] The mere presence of the accused at the crime scene is not enough to implicate him. It is essential to prove the intent to rob and the use of violence was necessary to realize such intent.

In this case, Lara's intent to gain is proven by Sumulong's positive narration that it was Lara who pointed the gun at him and demanded that the bag containing the money be turned over to him. That Lara resorted to violence in order to actualize his intent to gain is proven by Sumulong's testimony that he saw Lara fire the gun at the direction of Bautista, who was running away from the pick-up in order to prevent Lara from taking possession of the money.

Notably, the incident took place in broad daylight and in the middle of a street. Thus, where considerations of visibility are favorable and the witness does not appear to be biased against the accused, his or her assertions as to the identity of the malefactor should be normally accepted.[27] Lara did not allege, much less, convincingly demonstrate that Sumulong was impelled by improper or malicious motives to impute upon him, however perjurious, such a serious charge. Thus, his testimony, which the trial court found to be forthright and credible, is worthy of full faith and credit and should not be disturbed. If an accused had nothing to do with the crime, it is against the natural order of events and of human nature and against the presumption of good faith that a prosecution witness would falsely testify against the former.[28]

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[26] *People v. Geron*, 346 Phil. 14, 26 (1997).

[27] *People v. Santito, Jr.*, 278 Phil. 100, 113 (1991).

[28] *People v. Jumamoy*, G.R. No. 101584, April 7, 1993, 221 SCRA 333, 344.

IV

In view of Sumulong's positive identification of Lara, the CA was correct in denying Lara's alibi outright. It is well-settled that positive identification prevails over alibi, which is inherently a weak defense. Such is the rule, for as a defense, alibi is easy to concoct, and difficult to disapprove.[29]

Moreover, in order for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere else when the offense was committed, but it must likewise be demonstrated that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Due to its doubtful nature, alibi must be supported by clear and convincing proof.

In this case, the proximity of Lara's house at the scene of the crime wholly negates his alibi. Assuming as true Lara's claim and that of his witnesses that he was digging a sewer trench on the day of the incident, it is possible that his witnesses may not have noticed him leaving and returning given that the distance between his house and the place where the subject incident took place can be negotiated, even by walking, in just a matter of minutes. Simply put, Lara and his witnesses failed to prove that it is well-nigh impossible for him to be at the scene of the crime.

In fine, the assailed decision of the CA is affirmed in all respects.

WHEREFORE, premises considered, the Decision dated July 28, 2011 of the Court of Appeals in CA-G.R. CR HC No. 03685 is hereby *AFFIRMED.*

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Brion, Villarama, Jr.,[*] and *Perez, JJ.,* concur.

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[29] *People v. Aminola,* G.R. No. 178062, September 8, 2010, 630 SCRA 384, 394-395.

[*] Additional member per Special Order No. 1274 dated July 30, 2012 *vice* Associate Justice Maria Lourdes P.A. Sereno.

EN BANC

[A.C. No. 9074. August 14, 2012]

GRACE M. ANACTA, [*] *complainant, vs.* **ATTY. EDUARDO D. RESURRECCION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS; DISBARMENT OR SUSPENSION; THE SUPREME COURT IS VESTED WITH THE AUTHORITY AND DISCRETION TO IMPOSE EITHER THE EXTREME PENALTY OF DISBARMENT OR MERE SUSPENSION; SUSTAINED.— Pursuant to Section 27, Rule 138 of the Rules of Court, respondent may either be disbarred or suspended for committing deceitful and dishonest acts. x x x It is thus clear from the foregoing provision that in any of the following circumstances, to wit: *(1) deceit; (2) malpractice; (3) gross misconduct; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) wilful disobedience of any lawful order of a superior court; or (8) corruptly or wilfully appearing as an attorney for a party to a case without authority to do so*; the Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension. Certainly, the Court is not placed in a straitjacket as regards the penalty to be imposed. There is no ironclad rule that disbarment must immediately follow upon a finding of deceit or gross misconduct. The Court is not mandated to automatically impose the extreme penalty of disbarment. It is allowed by law to exercise its discretion either to disbar or just suspend the erring lawyer based on its appreciation of the facts and circumstances of the case.

2. ID.; ID.; ID.; WHEN THE PENALTY OF FOUR-YEAR SUSPENSION IS DEEMED PROPER.— In the exercise of our discretion, we are unquestionably certain that the four-year suspension suffices and commensurable to the infractions he committed. x x x We have gone over jurisprudential rulings where the respondents were found guilty of grave misconduct

[*] Also known as Grace Mino *y* Anacta.

and/or dishonesty and we observe that the Court either disbars or suspends them based on its collective appreciation of attendant circumstances and in the exercise of its sound discretion. x x x "Disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person." In this case, we believe that the penalty of suspension of four years will provide Atty. Resurreccion "with enough time to ponder on and cleanse himself of his misconduct." "While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end." We note that there is no mention in the records of any previous or similar administrative case filed against herein respondent.

3. ID.; ID.; ID.; IF THE MATTER INVOLVES VIOLATIONS OF THE LAWYER'S OATH AND CODE OF CONDUCT, THEN IT FALLS WITHIN THE COURT'S DISCIPLINARY AUTHORITY; APPLICATION IN CASE AT BAR.— Now is the most opportune time to harmonize the Court's ruling on this matter. Thus, it is imperative to first determine whether the matter falls within the disciplinary authority of the Court or whether the matter is a proper subject of judicial action against lawyers. If the matter involves violations of the lawyer's oath and code of conduct, then it falls within the Court's disciplinary authority. However, if the matter arose from acts which carry civil or criminal liability, and which do not directly require an inquiry into the moral fitness of the lawyer, then the matter would be a proper subject of a judicial action which is understandably outside the purview of the Court's disciplinary authority. Thus, we hold that when the matter subject of the inquiry pertains to the mental and moral fitness of the respondent to remain as member of the legal fraternity, the issue of whether the respondent be directed to return the amount received from his client shall be deemed within the Court's disciplinary authority. In this case, respondent received the amount of ₱42,000.00 supposedly as payment for his legal services and as filing fees. In this case, it is thus clear that respondent violated his lawyer's oath and code of conduct when he withheld the amount of ₱42,000.00 despite his failure to render the

necessary legal services and after complainant demanded its return. He must therefore be directed to return the same.

4. ID.; ID.; ID.; DISBARMENT PROCEEDINGS; OBJECT THEREOF IS NOT TO PUNISH THE INDIVIDUAL ATTORNEY HIMSELF; JUSTIFIED.— We emphasize that "[t]he object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office [has] proved them unfit to continue discharging the trust reposed in them as members of the bar."

APPEARANCES OF COUNSEL

Rex G. Rico & Jose Voltaire A. Bautista for complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he purpose of disbarment is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence."[1]

In a Complaint[2] for disbarment filed on August 22, 2007 with the Integrated Bar of the Philippines Committee on Bar Discipline (IBP-CBD), complainant Grace M. Anacta (complainant) prays for the disbarment of respondent Atty. Eduardo D. Resurreccion (respondent) for "gross misconduct, deceit and malpractice."[3]

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[1] *Diaz v. Atty. Gerong*, 225 Phil. 44, 48 (1986).

[2] *Rollo*, pp. 1-6.

[3] *Id.* at 4.

Records show that on November 15, 2004, complainant engaged the services of respondent to file on her behalf a petition for annulment of marriage before the Regional Trial Court (RTC) of Quezon City, for which she paid respondent ₱42,000.00.[4]

In December 2004, respondent presented to the complainant a supposed copy of a Petition for Annulment of Marriage[5] which bore the stamped receipt dated December 8, 2004 of the RTC, as well as its docket number, Civil Case No. 04-25141.

From then on, complainant did not hear from respondent or receive any notice from the trial court relative to the said petition. This prompted her to make inquiries with the Office of the Clerk of Court of the RTC of Quezon City (OCC-RTC). To her surprise and dismay, she discovered that no petition for annulment docketed as Civil Case No. 04-25141 was ever filed before the said court.[6] Thus, complainant terminated the services of respondent "for loss of trust and confidence"[7] and requested the OCC-RTC to refuse any belated attempt on the part of respondent to file a petition for annulment of marriage on her behalf.[8]

On July 30, 2007, complainant, through her new counsel, wrote a letter[9] to the respondent demanding for an explanation as to how respondent intended to indemnify the complainant for damages she had suffered due to respondent's deceitful acts. Respondent has not replied thereto. Hence, complainant filed before the IBP a verified complaint praying that respondent be disbarred.

In an Order[10] dated August 22, 2007, the Director for Bar Discipline of the IBP, Atty. Alicia A. Risos-Vidal, required

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[4] See Service of Agreement dated November 15, 2004, *id.* at 45.

[5] *Id.* at 9-12.

[6] See Certification dated March 7, 2005, *id.* at 16.

[7] See Letter dated March 6, 2005, *id.* at 15.

[8] See Letter dated March 9, 2005, *id.* at 17.

[9] *Id.* at 18.

[10] *Id.* at 19.

the respondent to submit his answer to the complaint within 15 days from notice. However, respondent did not heed said directive. Hence, complainant filed Motions to Declare Respondent in Default and Hear the Case Ex-Parte.[11] The Investigating Commissioner, Romualdo A. Din, Jr., held in abeyance the resolution of the above motions and instead set the complaint for Mandatory Conference on October 6, 2008.[12] On the said date, however, only the complainant and her counsel appeared. Accordingly, in an Order[13] dated October 6, 2008, the Investigating Commissioner deemed respondent to have waived the filing of an answer; noted complainant's motion to declare respondent in default; and gave the complainant 10 days from notice within which to file her verified position paper, after which the case shall be deemed submitted for resolution.

Complainant filed her verified Position Paper[14] on October 15, 2008.

In his Report and Recommendation[15] dated December 8, 2008, the Investigating Commissioner found clear and convincing evidence that respondent is guilty of deceit and dishonesty when he misrepresented having filed the petition for annulment of marriage after receipt of ₱42,000.00 when in fact no such petition was filed. He thus recommended that respondent be suspended from the practice of law for a period of two years and to reimburse/return to the complainant the amount of ₱42,000.00.

In a Resolution[16] dated August 28, 2010, the IBP Board of Governors adopted and approved the findings of the Investigating Commissioner but modified the recommended penalty of suspension from the practice of law from two years to four

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[11] *Id.* at 20-21.

[12] See Notice of Mandatory Conference, *id.* at 33.

[13] *Id.* at 35.

[14] *Id.* at 36-44.

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

[16] As quoted in the Notice of Resolution, *id.* at 59.

years and ordered respondent to return to the complainant the amount of ₱42,000.00, otherwise his suspension will continue until he returns the sum involved.

Our Ruling

We adopt the findings and recommendation of the IBP.

In *Narag v. Atty. Narag*[17] this Court held that "[t]he burden of proof rests upon the complainant, and the Court will exercise its disciplinary power only if she establishes her case by clear, convincing and satisfactory evidence."

In this case, complainant submitted the following documents to prove her allegations: (1) the Service Agreement dated November 15, 2004 to prove the existence of attorney-client relationship between the parties; (2) the Petition for Annulment of Marriage[18] supposedly filed by respondent on December 8, 2004 with the RTC of Quezon City and docketed as Civil Case No. 04-25141; (3) the Certification issued by the Assistant Clerk of Court of the RTC of Quezon City showing that "no Petition for Annulment of Marriage with Civil Case No. Q-04-25141 was filed on December 8, 2004"; (4) the letter dated March 6, 2005 of the complainant to the respondent informing the latter that she is terminating his legal services effective immediately; (5) the letter of complainant to the Clerk of Court of the RTC of Quezon City wherein she requested that "any belated attempt by my former lawyer Atty. Resurreccion to file any Petition for Annulment x x x be refused acceptance"; and, (6) the letter dated July 30, 2007 of complainant's new counsel demanding for an explanation as to how respondent intended to indemnify the complainant for damages she had suffered by reason of respondent's fraudulent misrepresentations.[19]

In the face of such a serious charge, the respondent has chosen to remain silent.

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[17] 353 Phil. 643, 655-656 (1998).

[18] *Supra* note 5.

[19] *Supra* note 9.

Thus, we find the confluence of the evidence submitted by the complainant to have clearly, convincingly and satisfactorily shown that indeed the respondent has authored this reprehensible act. Respondent committed deceitful and dishonest acts by misrepresenting that he had already filed a petition for annulment on behalf of the complainant and pocketing the amount of ₱42,000.00. He even went to the extent of presenting to the complainant a supposed copy of the petition duly filed with the court. After he was found out, he made himself scarce. He ignored all communications sent to him by the complainant. After the disbarment complaint was filed, he failed to file his answer despite due notice. He totally disregarded the proceedings before the IBP despite receipt of summons. "The act of respondent in not filing his answer and ignoring the hearings set by the Investigating Commission, despite due notice, emphasized his contempt for legal proceedings."[20]

We thus agree with the observation of the IBP Investigating Commissioner that "[s]uch action of the respondent is patently deceitful and dishonest, considering further that he received an amount of money from the complainant."[21] "The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always construed as implied admission of the truth thereof."[22]

As early as *In Re: Sotto*,[23] this Court held that:

> One of the qualifications required of a candidate for admission to the bar is the possession of good moral character, and, when one who has already been admitted to the bar clearly shows, by a series of acts, that he does not follow such moral principles as should

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[20] *Berbano v. Atty. Barcelona*, 457 Phil. 331, 342 (2003).

[21] *Rollo*, p. 68.

[22] *Noel-Bertulfo v. Nuñez*, A.M. No. P-10-2758, February 2, 2010, 611 SCRA 270, 280 citing *Grefaldeo v. Judge Lacson*, 355 Phil. 266, 271 (1998).

[23] 38 Phil. 532, 548-549 (1918).

govern the conduct of an upright person, and that, in his dealings with his clients and with the courts, he disregards the rule of professional ethics required to be observed by every attorney, it is the duty of the court, as guardian of the interests of society, as well as of the preservation of the ideal standard of professional conduct, to make use of its powers to deprive him of his professional attributes which he so unworthily abused.

In addition, Rule 1.01 of the Code of Professional Responsibility states that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." "The Code exacts from lawyers not only a firm respect for law, legal processes but also mandates the utmost degree of fidelity and good faith in dealing with clients and the moneys entrusted to them pursuant to their fiduciary relationship."[24]

Pursuant to Section 27, Rule 138 of the Rules of Court, respondent may either be disbarred or suspended for committing deceitful and dishonest acts. Thus:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar **may** be **disbarred** or **suspended** from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, 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 wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. [Emphasis supplied.]

It is thus clear from the foregoing provision that in any of the following circumstances, to wit: *(1) deceit; (2) malpractice; (3) gross misconduct; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) wilful disobedience of any lawful order of a superior court; or (8) corruptly or wilfully appearing as an attorney*

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[24] *Berbano v. Atty. Barcelona*, *supra* note 20 at 342-343.

for a party to a case without authority to do so; the Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension. Certainly, the Court is not placed in a straitjacket as regards the penalty to be imposed. There is no ironclad rule that disbarment must immediately follow upon a finding of deceit or gross misconduct. The Court is not mandated to automatically impose the extreme penalty of disbarment. It is allowed by law to exercise its discretion either to disbar or just suspend the erring lawyer based on its appreciation of the facts and circumstances of the case.

We examined the records of the case and assessed the evidence presented by the complainant. After such examination and assessment, we are convinced beyond doubt that respondent should only be meted the penalty of four-year suspension as properly recommended by the IBP Board of Governors. In the exercise of our discretion, we are unquestionably certain that the four-year suspension suffices and commensurable to the infractions he committed. As will be pointed out later, there have been cases with more or less the same factual setting as in the instant case where the Court also imposed the penalty of suspension and not disbarment.

We have gone over jurisprudential rulings where the respondents were found guilty of grave misconduct and/or dishonesty and we observe that the Court either disbars or suspends them based on its collective appreciation of attendant circumstances and in the exercise of its sound discretion.

In *Garcia v. Atty. Manuel*,[25] the Court found respondent therein to have committed dishonesty and abused the confidence[26] of his client for failing to file the ejectment suit despite asking for and receiving from the complainant the money intended as filing fees. In his bid for exoneration, therein respondent attempted to mislead the Court by claiming that he has not yet received the registry return card of the notice to vacate hence his failure to file the ejectment suit. However, the records indubitably showed

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[25] 443 Phil. 479 (2003).

[26] *Id.* at 486.

that he had already received the same. Moreover, therein respondent likewise refused to return the monies he received from the complainant despite repeated demands.[27] The Court thus concluded that therein respondent's actions constitute gross misconduct. Nevertheless, based on its appreciation of the evidence, the Court refrained from imposing the penalty of disbarment. Instead, it imposed the penalty of suspension from the practice of law for a period of six months, ratiocinating thus:

> Complainant asks that respondent be disbarred. However, we find that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end. In this case, we find suspension to be sufficient sanction against respondent. Suspension, we may add, is not primarily intended as punishment, but as a means to protect the public and the legal profession.[28]

In *Ceniza v. Rubia*,[29] respondent therein was alleged to have misrepresented having already filed in court the necessary complaint by showing the copy of the complaint stamped "received" with a docket number thereon.[30] However, upon verification with the appropriate court, it was discovered that none was filed.[31] It was also noted that respondent therein prompted the complainant to borrow money from a third party just to be able to pay her attorney's fees. When the case reached this Court, it imposed the penalty of suspension and not disbarment. In so doing, the Court lent more credence to the

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[27] *Id.* at 487.

[28] *Id.* at 489.

[29] A.C. No. 6166, October 2, 2009, 602 SCRA 1.

[30] *Id.* at 9.

[31] *Id.* at 4 and 9.

explanation of the respondent that the case was "withdrawn" after it had been stamped "received" by the court.

In *Roa v. Moreno*,[32] the Court found respondent therein guilty of gross misconduct and dishonesty. He issued a bogus Certificate of Land Occupancy to the complainant[33] and refused to return the amount paid by the complainant.[34] For said infractions, the Court meted him with the penalty of suspension from the practice of law for two years.[35]

In *Barcenas v. Alvero*,[36] respondent failed to deposit in court the amount of ₱300,000.00 which he received from his client supposedly as redemption price. He also failed to return the amount despite repeated demands. He was suspended for two years.

In *Small v. Banares*[37] respondent received ₱80,000.00 from complainant for his legal services and as filing fees. He however failed to file the necessary complaint and was never heard from again. He was thus suspended from the practice of law for two years.

In *Judge Angeles v. Atty. Uy, Jr.*,[38] therein respondent failed to promptly report that he received money on behalf of his client. However, for lack of evidence of misappropriation, he was only suspended and not disbarred.

In *Gonato v. Atty. Adaza*,[39] Atty. Adaza asked money from his client supposedly as filing fees when in fact no such filing fees are needed or due. Worse, he issued a falsified "official

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[32] A.C. No. 8382, April 21, 2010, 618 SCRA 693.

[33] *Id.* at 698.

[34] *Id.* at 699.

[35] *Id.* at 700.

[36] A.C. No. 8159, April 23, 2010, 619 SCRA 1, 10.

[37] A.C. No. 7021, February 21, 2007, 516 SCRA 323.

[38] 386 Phil. 221 (2000).

[39] 385 Phil. 426 (2000).

receipt" as proof of payment. Finally, when he was discovered, he failed to heed his client's demand to return the amount. For such infractions, Atty. Adaza was suspended for a period of six months.

In *Aquino v. Atty. Barcelona*,[40] Atty. Barcelona deliberately misrepresented to his client that he was able to successfully facilitate the restructuring of his client's loan with a bank through his "connection". On the basis of said false pretenses, he collected ₱60,000.00 from his client. His client eventually became aware of such misrepresentations when his property was foreclosed by the bank. Atty. Barcelona was thus charged with misconduct and for which he was suspended by the Court for a period of six months.

The foregoing cases illustrate that the Court is not bound to impose the penalty of disbarment in cases of gross misconduct and/or dishonesty, if in its appreciation of facts and in the exercise of its sound discretion, the penalty of suspension would be more commensurate.[41] "Disbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person."[42] In this case, we believe that the penalty of suspension of four years will provide Atty. Resurreccion "with enough time to ponder on and cleanse himself of his misconduct."[43] "While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end."[44] We note that there is no mention

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[40] 431 Phil. 59 (2002).

[41] See *Ducat, Jr. v. Atty. Villalon, Jr.*, 392 Phil. 394, 404-405 (2000).

[42] *Salomon, Jr. v. Frial*, A.C. No. 7820, September 12, 2008, 565 SCRA 9, 15-16.

[43] *Id.*

[44] *Wilkie v. Limos*, A.C. No. 7505, October 24, 2008, 570 SCRA 1, 10.

in the records of any previous or similar administrative case filed against herein respondent.

Anent the issue of whether respondent should be directed to return the amount of ₱42,000.00 he received from the complainant, we note that the rulings of this Court in this matter have been diverse. On one hand, there are cases where this Court directed respondents to return the money they received from the complainants. On the other hand, there are also cases where this Court refrained from venturing into this matter on the ground that the same is not within the ambit of its disciplinary authority as the only issue in administrative cases is the fitness of the lawyer to remain a member of the bar.

Now is the most opportune time to harmonize the Court's ruling on this matter. Thus, it is imperative to first determine whether the matter falls within the disciplinary authority of the Court or whether the matter is a proper subject of judicial action against lawyers. If the matter involves violations of the lawyer's oath and code of conduct, then it falls within the Court's disciplinary authority. However, if the matter arose from acts which carry civil or criminal liability, and which do not directly require an inquiry into the moral fitness of the lawyer, then the matter would be a proper subject of a judicial action which is understandably outside the purview of the Court's disciplinary authority. Thus, we hold that when the matter subject of the inquiry pertains to the mental and moral fitness of the respondent to remain as member of the legal fraternity, the issue of whether the respondent be directed to return the amount received from his client shall be deemed within the Court's disciplinary authority.

In this case, respondent received the amount of ₱42,000.00 supposedly as payment for his legal services and as filing fees. Canon 16 of the Code of Professional Responsibility provides:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

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Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x

In this case, it is thus clear that respondent violated his lawyer's oath and code of conduct when he withheld the amount of ₱42,000.00 despite his failure to render the necessary legal services and after complainant demanded its return. He must therefore be directed to return the same.

Finally, we emphasize that "[t]he object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office [has] proved them unfit to continue discharging the trust reposed in them as members of the bar."[45]

WHEREFORE, respondent Atty. Eduardo D. Resurreccion is ordered **SUSPENDED** from the practice of law for four years. He is also **DIRECTED** to return to the complainant the amount of ₱42,000.00 within thirty (30) days from the promulgation of this Decision.

Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Court Administrator is directed to circulate this Decision to all courts in the country.

SO ORDERED.

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

Sereno, J., on official leave.

Perlas-Bernabe, J., on leave.

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[45] *Berbano v. Atty. Barcelona, supra* note 20 at 340, citation omitted.

THIRD DIVISION

[A.C. No. 9094. August 15, 2012]

SANTOS VENTURA HOCORMA FOUNDATION, INC., represented by GABRIEL H. ABAD, *complainant, vs.* **ATTY. RICHARD V. FUNK,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); A LAWYER CANNOT REPRESENT CONFLICTING INTERESTS EXCEPT BY WRITTEN CONSENT OF ALL CONCERNED GIVEN AFTER FULL DISCLOSURE OF THE FACT; VIOLATION IN CASE AT BAR.— Canon 15, Rule 15.03 of the CPR provides that a lawyer cannot represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Here, it is undeniable that Atty. Funk was formerly the legal counsel of Hocorma Foundation. Years after terminating his relationship with the foundation, he filed a complaint against it on behalf of another client, the Mabalacat Institute, without the foundation's written consent. x x x This rule is so absolute that good faith and honest intention on the erring lawyer's part does not make it inoperative. The reason for this is that a lawyer acquires knowledge of his former client's doings, whether documented or not, that he would ordinarily not have acquired were it not for the trust and confidence that his client placed on him in the light of their relationship. It would simply be impossible for the lawyer to identify and erase such entrusted knowledge with faultless precision or lock the same into an iron box when suing the former client on behalf of a new one. Here, the evidence shows that Hocorma Foundation availed itself of the legal services of Atty. Funk in connection with, among others, the transfer of one of the properties subject of the several suits that the lawyer subsequently filed against the foundation. Indeed, Atty. Funk collected attorney's fees from the foundation for such services. Thus, he had an obligation not to use any knowledge he acquired during that relationship, including the fact that the property under litigation existed at all, when he sued the foundation.

APPEARANCES OF COUNSEL

David Cui-David Buenaventura Ang Law Office for complainant.

D E C I S I O N

ABAD, *J.*:

This is a disbarment case against a lawyer who sued a former client in representation of a new one.

The Facts and the Case

Complainant Santos Ventura Hocorma Foundation, Inc. (Hocorma Foundation) filed a complaint for disbarment against respondent Atty. Richard Funk. It alleged that Atty. Funk used to work as corporate secretary, counsel, chief executive officer, and trustee of the foundation from 1983 to 1985.[1] He also served as its counsel in several criminal and civil cases.

Hocorma Foundation further alleged that on November 25, 2006 Atty. Funk filed an action for quieting of title and damages against Hocorma Foundation on behalf of Mabalacat Institute, Inc. (Mabalacat Institute). Atty. Funk did so, according to the foundation, using information that he acquired while serving as its counsel in violation of the Code of Professional Responsibility (CPR) and in breach of attorney-client relationship.[2]

In his answer, Atty. Funk averred that Don Teodoro V. Santos (Santos) organized Mabalacat Institute in 1950 and Hocorma Foundation in 1979. Santos hired him in January 1982 to assist Santos and the organizations he established, including the Mabalacat Institute, in its legal problems. In 1983 the Mabalacat Institute made Atty. Funk serve as a director and legal counsel.[3]

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[1] *Rollo*, Vol. I, p. 2.

[2] *Id.* at 2-5.

[3] *Id.*, Vol. II, p. 4.

Subsequently, according to Atty. Funk, when Santos got involved in various litigations, he sold or donated substantial portions of his real and personal properties to the Hocorma Foundation. Santos hired Atty. Funk for this purpose. The latter emphasized that, in all these, the attorney-client relationship was always between Santos and him. He was more of Santos' personal lawyer than the lawyer of Hocorma Foundation.[4]

Atty. Funk claimed that before Santos left for America in August 1983 for medical treatment, he entered into a retainer agreement with him. They agreed that Atty. Funk would be paid for his legal services out of the properties that he donated or sold to the Hocorma Foundation. The foundation approved that compensation agreement on December 13, 1983. But it reneged and would not pay Atty. Funk's legal fees.[5]

Atty. Funk also claimed that Santos executed a Special Power of Attorney (SPA) in his favor on August 13, 1983. The SPA authorized him to advise Hocorma Foundation and follow up with it Santos' sale or donation of a 5-hectare land in Pampanga to Mabalacat Institute, covered by TCT 19989-R. Out of these, two hectares already comprised its school site. The remaining three hectares were for campus expansion.

Atty. Funk was to collect all expenses for the property transfer from Hocorma Foundation out of funds that Santos provided. It was Santos' intention since 1950 to give the land to Mabalacat Institute free of rent and expenses. The SPA also authorized Atty. Funk to register the 5-hectare land in the name of Mabalacat Institute so a new title could be issued to it, separate from the properties of Hocorma Foundation.[6] When Santos issued the SPA, Atty. Funk was Mabalacat Institute's director and counsel. He was not yet Hocorma Foundation's counsel.[7] When Santos

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[4] *Id.* at 5-6.

[5] *Id.* at 6.

[6] *Id.* at 4-5.

[7] *Id.* at 5.

executed the deeds of conveyances, Atty. Funk's clients were only Santos and Mabalacat Institute.[8]

According to Atty. Funk, on August 15, 1983 Santos suggested to Hocorma Foundation's Board of Trustees the inclusion of Atty. Funk in that board, a suggestion that the foundation followed.[9] After Santos died on September 14, 1983, Atty. Funk was elected President of Mabalacat Institute, a position he had since held.[10]

Atty. Funk claims that in 1985 when Hocorma Foundation refused to pay his attorney's fees, he severed his professional relationship with it. On November 9, 1989, four years later, he filed a complaint against the foundation for collection of his attorney's fees. The trial court, the Court of Appeals (CA), and the Supreme Court decided the claim in his favor.[11]

After hearing, the Committee on Bar Discipline (CBD) found Atty. Funk to have violated Canon 15, Rule 15.03[12] of the Code of Professional Responsibility (CPR) with the aggravating circumstance of a pattern of misconduct consisting of four court appearances against his former client, the Hocorma Foundation. The CBD recommended Atty. Funk's suspension from the practice of law for one year.[13] On April 16, 2010 the IBP Board of Governors adopted and approved the CBD's report and recommendation.[14] Atty. Funk moved for reconsideration but the IBP Board of Governors denied it on June 26, 2011.

The Issue Presented

The issue here is whether or not Atty. Funk betrayed the trust and confidence of a former client in violation of the CPR

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[8] *Id.* at 7.

[9] *Id.*

[10] *Id.* at 4.

[11] *Id.* at 10.

[12] Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[13] *Rollo*, Vol. III, p. 6.

[14] *Id.* at 1.

when he filed several actions against such client on behalf of a new one.

The Court's Ruling

Canon 15, Rule 15.03 of the CPR provides that a lawyer cannot represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Here, it is undeniable that Atty. Funk was formerly the legal counsel of Hocorma Foundation. Years after terminating his relationship with the foundation, he filed a complaint against it on behalf of another client, the Mabalacat Institute, without the foundation's written consent.

An attorney owes his client undivided allegiance. Because of the highly fiduciary nature of their relationship, sound public policy dictates that he be prohibited from representing conflicting interests or discharging inconsistent duties. An attorney may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client. This rule is so absolute that good faith and honest intention on the erring lawyer's part does not make it inoperative.[15]

The reason for this is that a lawyer acquires knowledge of his former client's doings, whether documented or not, that he would ordinarily not have acquired were it not for the trust and confidence that his client placed on him in the light of their relationship. It would simply be impossible for the lawyer to identify and erase such entrusted knowledge with faultless precision or lock the same into an iron box when suing the former client on behalf of a new one.

Here, the evidence shows that Hocorma Foundation availed itself of the legal services of Atty. Funk in connection with, among others, the transfer of one of the properties subject of the several suits that the lawyer subsequently filed against the foundation. Indeed, Atty. Funk collected attorney's fees from

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[15] *Artezuela v. Atty. Maderazo*, 431 Phil. 135, 143 (2002), citing *Maturan v. Gonzales*, 350 Phil. 882, 886-887 (1998).

the foundation for such services. Thus, he had an obligation not to use any knowledge he acquired during that relationship, including the fact that the property under litigation existed at all, when he sued the foundation.

The Court finds it fitting to adopt the CBD's recommendation as well as the IBP Board of Governors' resolution respecting the case.

WHEREFORE, the Court **AFFIRMS** the resolution of the Board of Governors of the Integrated Bar of the Philippines dated April 16, 2010 and June 26, 2011 and **SUSPENDS** Atty. Richard Funk from the practice of law for one year effective immediately. Serve copies of this decision upon the Office of the Court Administrator for dissemination, the Integrated Bar of the Philippines, and the Office of the Bar Confidant so the latter may attach its copy to his record.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Reyes,*[*] *JJ.,* concur.

FIRST DIVISION

[A.M. No. P-12-3029. August 15, 2012]
(Formerly OCA I.P.I. No. 08-2850-P)

ASTORGA AND REPOL LAW OFFICES, represented by ATTY. ARNOLD B. LUGARES, *complainant, vs.* **LEODEL N. ROXAS, Sheriff IV, Regional Trial Court, Branch 66, Makati City,** *respondent.*

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[*] Designated Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order 1283 dated August 6, 2012.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; DUTY TO FILE A PERIODIC REPORT, WHEN REQUIRED; VIOLATION IN CASE AT BAR.— Rule 39, Section 14 of the Rules of Court x x x clearly mandates the sheriff or other proper officer to file a return and when necessary, periodic reports, with the court which issued the writ of execution. The writ of execution shall be returned to the court immediately after the judgment had been partially or fully satisfied. In case the writ is still unsatisfied or only partially satisfied 30 days after the officer's receipt of the same, said officer shall file a report with the court stating the reasons therefor. Subsequently, the officer shall periodically file with the court a report on the proceedings taken to enforce the writ every 30 days until said writ is fully satisfied or its effectivity expires. The officer is further required to furnish the parties with copies of the return and periodic reports. x x x. For almost two years, respondent was completely remiss in filing the mandated periodic reports on the Writ of Execution dated July 10, 2006. Consequently, for the same period of time, FGU, the prevailing party in Civil Case No. 01-1002, was left unaware of any steps taken by respondent to satisfy the Decision dated January 16, 2006. Ultimately, it is apparent that respondent did not file any periodic report because he had nothing to state therein as he failed to take any further action to satisfy the Decision dated January 16, 2006 and implement the Writ of Execution dated July 10, 2006. x x x Difficulties or obstacles in the satisfaction of a final judgment and execution of a writ do not excuse respondent's total inaction. Neither the Rules nor jurisprudence recognizes any exception from the periodic filing of reports by sheriffs. If only respondent submitted such periodic reports, he could have brought his predicament to the attention of the RTC and FGU and he could have given the RTC and FGU the opportunity to act and/or move to address the same.

2. ID.; ID.; ID.; ID.; SHERIFFS ARE REQUIRED TO COMPLY WITH THE MANDATED DUTY AS SPEEDILY AS POSSIBLE; RATIONALE.— It is almost trite to say that execution is the fruit and end of the suit and is the life of law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Therefore, sheriffs ought to

know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible. As agents of the law, high standards are expected of sheriffs. x x x Being the final stage in the litigation process, execution of judgments ought to be carried out speedily and efficiently since judgments left unexecuted or indefinitely delayed are rendered inutile and the parties prejudiced thereby, condemnatory of the entire judicial system. This admonition is now enshrined as Canon IV, Section 1 of the Code of Conduct for Court Personnel that reads, "[c]ourt personnel shall at all times perform official duties properly and with diligence. x x x"

3. ID.; ID.; ID.; ID.; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY; PENALTY.— Evidently, respondent displayed conduct short of the stringent standards required of court employees. Respondent's long delay in the execution of the final judgment in favor of FGU and failure to submit the required periodic reports constitute simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission Memorandum Circular No. 19 classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. This being respondent's first offense, the penalty recommended by the OCA of one (1) month and one (1) day is appropriate.

D E C I S I O N

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

This is an administrative complaint filed by complainant Astorga and Repol Law Offices, represented by Atty. Arnold

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

B. Lugares (Atty. Lugares), against respondent Leodel N. Roxas, Sheriff IV of the Regional Trial Court (RTC), Branch 66, Makati City, for willful neglect of duty, relative to Civil Case No. 01-1002, entitled *FGU Insurance Corporation v. NEC Cargo Services, Inc. and Albert T. Tamayo, Third Party Defendant*.

Civil Case No. 01-1002 is a case for damages instituted by FGU Insurance Corporation (FGU) against NEC Cargo Services, Inc. (NEC) before the RTC. FGU was represented by complainant.

After several years of litigation, the RTC rendered a Decision in favor of FGU, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff [FGU] and against the defendant NEC Cargo Services, Inc., ordering the latter to pay the plaintiff the following:
>
> 1. the amount of ₱1,942,285.91 with legal interest thereon from June 21, 2001 until the whole amount is fully paid;
>
> 2. attorney's fees amounting to ₱70,000.00; and
>
> 3. costs of suit.
>
> With regard to the third party complaint of defendant NEC Cargo Services Inc., the third party defendant Alberto Tamayo, doing business under the name and style of Patriot Cargo Movers, is hereby ordered to reimburse defendant/third party plaintiff for all the sums the latter would pay plaintiff.[1]

The aforementioned Decision became final and executory on September 24, 2004.[2]

FGU filed a Motion for Execution which was granted by the RTC and the Writ of Execution was accordingly issued on July 10, 2006.[3]

On July 11, 2006, respondent served a copy of the Writ of Execution upon NEC at Block 15, Lot 9, Tulip Street, Camella

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[1] *Rollo*, pp. 1-2.

[2] *Id.* at 8. Per the Certification of Branch Clerk of Court John Ivan B. Tablizo dated May 21, 2008.

[3] *Id*.

Homes I, Putatan, Muntinlupa City, which was received by Mr. Narciso E. Catalon (Catalon). On even date, respondent levied upon the personal properties, consisting of office equipment, found inside the NEC office.

An auction sale was set on July 19, 2006 at 10:30 a.m. at the Main Entrance of the Hall of Justice of Makati City. Copies of the Notice of Sale were sent to all concerned parties and posted on the bulletin boards at the City Hall, Hall of Justice, and Post Office of Makati City.

However, Catalon filed on July 17, 2006 an Affidavit of Third Party Claim, asserting ownership over the levied properties.

Respondent personally furnished complainant, through Atty. Lugares, on July 18, 2006 a copy of the Notice of Third Party Claim, together with a copy of Catalon's Affidavit of Third Party Claim.

Since FGU failed to post an indemnity bond in favor of third party claimant Catalon, respondent did not proceed with the scheduled auction sale on July 19, 2006.

The Sheriff's Report dated August 7, 2006, prepared by respondent, declared the levy upon the personal properties in the NEC office lifted, cancelled, and without effect; and stated that the same personal properties were released to Catalon and the original copy of the Writ of Execution and all pertinent papers were temporarily returned to the RTC unsatisfied.

Since then, there appears to have been no further development in the execution of the RTC Decision dated January 16, 2006 in Civil Case No. 01-1002.

Thus, complainant filed the instant Complaint-Affidavit[4] dated April 29, 2008 against respondent, alleging, among other things, that:

> 7. Sometime in October of 2007, [complainant] furnished [respondent] with the Articles of Incorporation of the [NEC]

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[4] *Id*. at 5-7.

from the Securities and Exchange Commission to inform him that the [NEC] has leviable assets/credits in the form of unpaid subscriptions and asked him to make the corresponding levy/garnishment. He however refused to execute the Decision and make the corresponding levy/garnishment without any valid reason as if to protect the [NEC] and its officers/subscribers.

8. Repeated follow-ups were again made by the [complainant] but to no avail, still no action from [respondent] and no periodic reports. With this, [complainant] was constrained to ask the assistance of the Branch Clerk of said Court to remind the sheriff of his duty to execute the Decision in the above-mentioned case. Despite this, there is still no action from [respondent] and no periodic reports. The levy/garnishment requested by the [complainant] had fallen on deaf ears. Simply stated, no further action was taken.

9. [Respondent] actually thwarted the Decision by refusing to execute it. He was able to set at naught all the hardships and labor of [FGU], Presiding Judge, Justices, lawyers and other court officers and employees in litigating the case. [Respondent] acts as if [FGU] and [complainant] is at his mercy of whether to execute the Decision or not. This should not be the case because as sheriff, he is duty bound to immediately execute the Decision and not refuse to do his job. His actuation in sleeping on [FGU's] repeated requests certainly undermines the people's faith in the judicial process. People will be discouraged from invoking the jurisdiction of the Courts to settle their dispute if in the end, their victory would only remain a paper victory if the sheriff tasked to execute the Decision would renege on its obligation as what [respondent] is doing.

10. At present, the Decision in [FGU's] favor still remains to be executed, while [respondent] does nothing to execute the same. This should not be the case because [FGU] as the prevailing party is entitled to the fruits of the Decision. Something must be done in order to have the Decision executed.

11. It is respectfully submitted that [respondent] should be penalized and removed from service for willfully refusing

to comply with his sworn duty to execute the Decision, which is his job, and obey the order/writ of the court.[5]

In his Comment[6] dated July 3, 2008, respondent categorically and vehemently denied what he called as "baseless and malicious accusation" imputed against him by complainant. Respondent countered that:

3. The truth of which is that by virtue of the Writ of Execution dated 10 July 2006, on 11 July 2006, [respondent] levied [the] personal properties of defendant Corporation (NEC Cargo Services, Inc.) but was lifted in view of the Affidavit of Third-Party Claim filed.

4. Contrary to the unfounded allegation of non-filing of periodic reports, [respondent], in compliance with the Rules of Court, prepared and submitted the corresponding Sheriff's Report/ Return dated 07 August 2006, (Annex "A") setting forth therein the whole proceedings undertaken and filed with the Court. And a copy thereof was furnished to Atty. Arnold Lugares, received on 28 August 2006 (proof of receipt is attached to the case record).

5. That on October 2007, [respondent] was furnished by Atty. Arnold Lugares of an undated handwritten letter appended thereto with mere photocopies of a list of names of alleged incorporators and asking [respondent] to send notices of garnishment regarding [NEC's] leviable assets/credits in the form of unpaid subscriptions. (attached herewith is a photocopy of Atty. Arnold Lugares undated letter and its attachments). (Annex "B"). Further, contrary to the baseless allegation in paragraph no. 7 of the Complaint-Affidavit, [respondent] was never furnished of the Articles of Incorporation of [NEC] from the Securities and Exchange Commission by Atty. Arnold Lugares.

6. Contrary to the allegation of "repeated follow-ups", [respondent] suggested to Atty. Arnold Lugares to notify the Court relative to his allegation of [NEC's] leviable assets in the form of unpaid subscription. Respondent Sheriff opines

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

[6] *Id*. at 14-15.

that the unpaid subscription of the incorporators are not leviable assets and there is a need to determine and show proof that the subscriptions are declared delinquent through the filing of an appropriate Motion addressed to the Court. It is a fundamental legal axiom that a Writ of Execution must conform strictly to the dispositive portion of the decision sought to be executed. (*Banquerigo vs. C.A.*, 498 SCRA 169). As to the directive in the Writ of Execution in light of the dispositive portion being executed, the Respondent Sheriff acted with prudence and caution especially where the alleged unpaid subscriptions are sought by Atty. Arnold Lugares, counsel of the prevailing party, is not specified in the judgment.

7. Lastly, respondent Sheriff is not remiss in the performance of his duties and does not have the slightest intention to neglect his duty as executing sheriff in the implementation of the Writ relative to the said Civil Case No. 01-1002.[7]

Consequently, respondent prayed that he be absolved from any administrative liability.

On November 9, 2011, the Office of the Court Administrator (OCA) submitted its report[8] with the following recommendations:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. The administrative complaint against Leodel N. Roxas, Sheriff IV, Regional Trial Court, Branch 66, Makati City be RE-DOCKETED as a regular administrative matter; and

2. Sheriff Roxas be found GUILTY of simple neglect of duty, and

3. Sheriff Roxas be SUSPENDED FOR ONE (1) MONTH and ONE (1) DAY WITHOUT PAY and STERNLY WARNED that the commission of the same or similar acts in the future shall be dealt with more severely.[9]

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[7] *Id*.

[8] *Id*. at 20-23.

[9] *Id*. at 23.

In a Resolution[10] dated January 18, 2012, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Complainant[11] and respondent[12] submitted their Manifestations dated March 12, 2012 and April 27, 2012, respectively, stating that they were submitting the case for resolution based on the pleadings filed.

Hence, we now resolve the present administrative matter, completely agreeing with the findings and recommendations of the OCA.

Rule 39, Section 14 of the Rules of Court provides:

> 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 (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties. (Emphasis ours.)

The aforequoted provision clearly mandates the sheriff or other proper officer to file a return and when necessary, periodic reports, with the court which issued the writ of execution. The writ of execution shall be returned to the court immediately after the judgment had been partially or fully satisfied. In case the writ is still unsatisfied or only partially satisfied 30 days after the officer's receipt of the same, said officer shall file a

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[10] *Id.* at 25.

[11] *Id.* at 27-28.

[12] *Id.* at 32.

report with the court stating the reasons therefor. Subsequently, the officer shall periodically file with the court a report on the proceedings taken to enforce the writ every 30 days until said writ is fully satisfied or its effectivity expires. The officer is further required to furnish the parties with copies of the return and periodic reports.

Herein respondent had undeniably failed to file periodic reports on the Writ of Execution dated July 10, 2006. Respondent received a copy of said Writ also on July 10, 2006 and he filed a Sheriff's Report on August 7, 2006. According to his Report, respondent had to lift and cancel the levy on the office equipment found inside the NEC office given Catalon's third party claim over said properties and the failure of FGU to post an indemnity bond in Catalon's favor, thus, the Writ of Execution dated July 10, 2006 was returned to the RTC unsatisfied. The Sheriff's Report dated August 7, 2006 was the first and last filed by respondent in connection with the Writ of Execution dated July 10, 2006, until the instant administrative complaint dated April 29, 2008 was filed against him. For almost two years, respondent was completely remiss in filing the mandated periodic reports on the Writ of Execution dated July 10, 2006. Consequently, for the same period of time, FGU, the prevailing party in Civil Case No. 01-1002, was left unaware of any steps taken by respondent to satisfy the Decision dated January 16, 2006. Ultimately, it is apparent that respondent did not file any periodic report because he had nothing to state therein as he failed to take any further action to satisfy the Decision dated January 16, 2006 and implement the Writ of Execution dated July 10, 2006.

In his defense, respondent claimed that there is no other NEC property which he could levy or garnish to satisfy the Decision dated January 16, 2006. Respondent averred that he could not garnish the unpaid subscriptions of NEC incorporators, as complainant wished, because the unpaid subscriptions were not specified in the dispositive portion of the judgment to be implemented. Respondent's reasoning is unacceptable. Difficulties or obstacles in the satisfaction of a final judgment and execution of a writ do not excuse respondent's total inaction. Neither the Rules nor jurisprudence recognizes any exception

from the periodic filing of reports by sheriffs. If only respondent submitted such periodic reports, he could have brought his predicament to the attention of the RTC and FGU and he could have given the RTC and FGU the opportunity to act and/or move to address the same.

It is almost trite to say that execution is the fruit and end of the suit and is the life of law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.[13]

Therefore, sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Accordingly, they must comply with their mandated ministerial duty as speedily as possible. As agents of the law, high standards are expected of sheriffs.[14]

In *Añonuevo v. Rubio*,[15] we stressed the reminder to all court personnel to perform their assigned tasks promptly and with great care and diligence considering the important role they play in the administration of justice. With respect to sheriffs, they are to implement writs of execution and similar processes mindful that litigations do not end merely with the promulgation of judgments. Being the final stage in the litigation process, execution of judgments ought to be carried out speedily and efficiently since judgments left unexecuted or indefinitely delayed are rendered inutile and the parties prejudiced thereby, condemnatory of the entire judicial system. This admonition is now enshrined as Canon IV, Section 1 of the Code of Conduct for Court Personnel that reads, "[c]ourt personnel shall at all times perform official duties properly and with diligence. x x x"

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[13] *Garcia v. Yared*, 447 Phil. 444, 453 (2003).

[14] *Pesongco v. Estoya*, 519 Phil. 226, 241 (2006).

[15] 479 Phil. 336, 340 (2004).

Evidently, respondent displayed conduct short of the stringent standards required of court employees. Respondent's long delay in the execution of the final judgment in favor of FGU and failure to submit the required periodic reports constitute simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission Memorandum Circular No. 19 classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months, for the first offense. This being respondent's first offense, the penalty recommended by the OCA of one (1) month and one (1) day is appropriate.

WHEREFORE, respondent Leodel N. Roxas, Sheriff IV of the Regional Trial Court, Branch 66, Makati City, is found **GUILTY** of simple neglect of duty and is **SUSPENDED** for one (1) month and one (1) day counted from his receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Court Administrator, which is instructed to circulate the Decision to the clerk of court of all trial courts for dissemination to all concerned court personnel.

SO ORDERED.

Carpio[**] *(Senior Associate Justice), Bersamin, del Castillo,* and *Villarama, Jr., JJ.,* concur.

[**] Per Special Order No. 1284 dated August 6, 2012.

FIRST DIVISION

[A.M. No. P-12-3033. August 15, 2012]
(Formerly A.M. No. 10-8-97-MeTC)

MEMORANDA OF JUDGE ELIZA B. YU ISSUED TO LEGAL RESEARCHER MARIEJOY P. LAGMAN AND TO COURT STENOGRAPHER SOLEDAD J. BASSIG, ALL OF METROPOLITAN TRIAL COURT, BRANCH 47, PASAY CITY

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; SIMPLE NEGLECT OF DUTY; DEFINED; PRESENT IN CASE AT BAR.—** Simple neglect of duty is defined as the failure to give attention to a task or the disregard of a duty due to carelessness or indifference. Here, respondent Lagman showed carelessness or indifference in the performance of her duties to give due care and attention to established procedure in the calendar of cases. x x x With regard to respondent Bassig, we also find her liable for simple neglect of duty for her failure to follow the established procedure in the conduct of hearings. x x x From the foregoing, we hold that the mistakes or errors in the contents of the orders, subpoena, and Minues of the Hearing committed by respondents Lagman and Bassig could be attributed to their lack of attention or focus on the task at hand. These could have easily been avoided had they exercised greater care and diligence in the performance of their duties. We find respondents Lagman and Bassig liable for simple neglect of duty.

2. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** Under Section 52, Rule IV of ;the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and (1) day to six (6) months for the first offense. We, however, consider the following factors as mitigating: (1) their length of service in the judiciary — respondent Lagman's 12 years and respondent Bassig's 42 years; (2) their mistakes or errors appearing not to have prejudiced any public interest or private party; and (3) the instant case being the

first offense for both of them in their long years of service in the Judiciary. **WHEREFORE**, respondents MARIEJOY P. LAGMAN and SOLEDAD J. BASSIG are hereby found guilty of simple neglect of duty. They are REPRIMANDED and STERNLY WARNED that the commission of the same or similar acts in the future shall be dealt with more severely.

D E C I S I O N

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

This administrative case originates from a letter[1] dated July 28, 2010 of Executive Judge Bibiano G. Colasito of the Metropolitan Trial Court (MeTC), Pasay City, transmitting to the Office of the Court Administrator (OCA) for appropriate action the following memoranda and orders issued by Judge Eliza B. Yu (Judge Yu) to two members of her staff at the MeTC, Branch 47, Pasay City, and their subsequent letter-explanations: a) Memoranda[2] dated June 16 and 22, 2010 to Mariejoy P. Lagman (respondent Lagman), Legal Researcher; b) Memorandum[3] dated July 16, 2010 to Soledad J. Bassig (respondent Bassig), Court Stenographer; c) letters[4] dated June 22 and 24, 2010 from respondent Lagman; d) letters[5] dated July 20 and August 17, 2010 from respondent Bassig; and e) Orders[6] dated August 13 and 16, 2010.

In a letter[7] dated October 12, 2010, the OCA required Judge Yu to submit certified photocopies of the documents pertinent

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

[1] *Rollo*, p. 1.

[2] *Id.* at 2 and 7.

[3] *Id.* at 29.

[4] *Id.* at 6 and 9.

[5] *Id.* at 31 and 47. The second letter was subsequently sent to the OCA on August 19, 2010 by Executive Judge Bibiano G. Colasito.

[6] *Id.* at 46 and 48. Both orders were subsequently sent to the OCA on August 19, 2010 by Executive Judge Bibiano G. Colasito.

[7] *Id.* at 32.

to her complaints against respondents Lagman and Bassig in order for the OCA to take appropriate action on the matter.

In response, Judge Yu submitted the required documents and in a letter[8] dated October 26, 2010, charged respondent Lagman with grave misconduct, falsification, usurpation of judicial functions, and dishonesty. Judge Yu l'ikewise charged respondent Bassig with misconduct, falsification, usurpation of judicial functions, and gross insubordination.

The charges of grave misconduct, falsification, usurpation of judicial functions, and dishonesty against respondent Mariejoy P. Lagman

Judge Yu, in her Memorandum[9] dated June 10, 2010, directed respondent Lagman to explain why she included and called Civil Case No. M-PSY-09-09232, entitled "*Toyota Financial Services Philippines vs. Vivian Villanueva, et al.*," during the hearing on June 9, 2010, when the said case was not even calendared on that day.

In a letter[10] dated June 10, 2010, respondent Lagman explained that the counsel of one of the parties, a certain Atty. Condez, questioned the failure of the court to calendar his "*Ex-Parte* Motion for Reconsideration" on June 9, 2010, as specifically stated in his motion. Respondent Lagman reasoned that she was forced to call the case due to the insistence of Atty. Condez to set his motion for hearing on the said date. She stated that it was an unintentional and honest mistake on her part and asked the indulgence and forgiveness of Judge Yu.

In another Memorandum[11] dated June 16, 2010, Judge Yu again directed respondent Lagman to explain why there was a

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[8] *Id.* at 33.

[9] *Id.* at 60; This was not included in the transmittal letter of Executive Judge Bibiano G. Colasito but was sent by Judge Eliza B. Yu to the OCA.

[10] *Id.* at 61.

[11] *Id.* at 2-5.

discrepancy in the dates in Civil Case No. 482-01, entitled "*Antonia Villanueva, et al. vs. Laura Perez, et al.*" Judge Yu pointed out that the *Constancia* dated April 22, 2010 stated that the hearing had been reset to June 17, 2010, while the Minutes of the Hearing dated April 22, 2010 indicated the resetting to July 1, 2010. Judge Yu further alleged that the *Constancia* stated that she was in Cardona, Rizal, when in fact, she was attending the 57th Orientation of Newly-Appointed Judges.

Judge Yu also called the attention of respondent Lagman to a similar mistake she made in connection with the preparation of the Minutes of the Hearing for Civil Case No. SCC-10-55, entitled "*Laura Asuncion vs. Diosdado Riño.*" According to Judge Yu, respondent Lagman prepared the Minutes of the Hearing on May 28, 2010 when no such hearing was conducted on the said date. Judge Yu alleged that respondent Lagman wrote in the said Minutes that the hearing of the case was terminated and thereafter submitted the case for decision.

Respondent Lagman admitted in a letter[12] dated June 22, 2010, that she failed to notice and correct the different hearing dates in the *Constancia* and the Minutes dated April 22, 2010, in Civil Case No. 482-01, which she explained were actually prepared by the stenographer on duty. She also acknowledged the mistake made in the Minutes of the Hearing which should have indicated the name of then Acting Presiding Judge Josephine Vito Cruz, and not the name of Judge Yu. Respondent Lagman asked for the indulgence and forgiveness of Judge Yu for the inadvertent mistakes she had committed and promised that the same would not be repeated.

With regard to the mistakes made in the preparation of the Minutes of the Hearing for Civil Case No. SCC-10-55, respondent Lagman denied having submitted the case for decision. She maintained that, as reflected in the Minutes, she had merely stated that the complainant appeared while the defendant neither appeared nor filed his answer. Respondent Lagman also contended that she should not be blamed if complainant, who arrived on

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[12] *Id.* at 6.

time, signed the Minutes without waiting for the arrival of Judge Yu. She further explained that she simply allowed the complainant to sign the Minutes of the Hearing after the latter requested and manifested that she would come back after her other appointments. Unfortunately, the complainant did not come back. Respondent Lagman asserted that all her acts were within the bounds of the law, and that she neither committed any corrupt acts nor intended to defy any rules.

In a Memorandum[13] dated June 22, 2010, Judge Yu directed respondent Lagman to explain the discrepancy in the total number of pending criminal and civil cases indicated in the physical inventory conducted on February 8, 2010, and those recorded in the January and February 2010 monthly reports, which were both submitted to the Court Management Office of the Supreme Court.

Respondent Lagman, in a letter-explanation[14] dated June 24, 2010, clarified that there was actually no discrepancy in the total number of pending criminal and civil cases since the results of the physical inventory conducted on February 8, 2010, which were for the year-end December 31, 2009, were the same results that were submitted to the Supreme Court on February 16, 2010. She further explained that the inventory did not include the newly-raffled cases as they were supposed to be included in the report for the month of January 2010, which at that time, had not yet been completed. Respondent Lagman stated that all the statistics indicated in the reports were actual and legitimate numbers, and that if ever there was indeed a discrepancy, the Court Management Office would have called her attention regarding the errors.

The charges of misconduct, falsification, usurpation of judicial functions, and gross insubordination against respondent Soledad J. Bassig

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[13] *Id.* at 7.

[14] *Id.* at 9.

In a Memorandum[15] dated July 16, 2010, Judge Yu required respondent Bassig to explain why the latter should not be charged with gross insubordination and grave misconduct for drafting the Minutes of the Hearing dated July 16, 2010 in Civil Case No. B-03-08, entitled "*Rodelio R. Hilario vs. Shirley Pabilona, et al.*" and letting the counsels of the parties sign therein, when in fact no hearing was conducted on the said date.

In a letter-explanation[16] dated July 20, 2010, respondent Bassig clarified that the plaintiff in Civil Case No. B-03-08 filed a motion and set the same for hearing on July 16, 2010. However, Judge Yu acted on the motion and issued an Order on July 15, 2010, requiring the defendants to comment on the said motion. Respondent Bassig explained that the parties to the case came to their office on July 16, 2010, as set in the motion, and requested that they be allowed to sign the Minutes of the Hearing to simply show that they appeared before the court on the said date. She explained that she did not make it appear that there was a hearing as she merely reiterated the Order dated July 15, 2010 of Judge Yu. Respondent Bassig added that she did not intend to commit any wrong and begged the indulgence of Judge Yu for any mistake she may have committed in the preparation of the Minutes.

In connection with a pending criminal case (Criminal Case Nos. 04-178 & 179 CFM, entitled "*People of the Philippines vs. Kenneth Yap Yu*") before the *sala* of Judge Yu, she issued an Order[17] dated August 16, 2010 directing respondent Bassig to explain why the subpoena sent to the defense witnesses bore trial dates different from the trial dates specified in the Order and in the Transcript of Stenographic Notes.[18] Judge Yu emphasized that such mistake "contributes to the delay in the administration of justice punishable by contempt of court."

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

[16] *Id.* at 31.

[17] *Id.* at 46.

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

Respondent Bassig explained in a letter[19] dated August 17, 2010, that it was actually not her, but Court Stenographer Froilan Robert Tomas, who prepared the subpoena in the said criminal case. According to her, Tomas narrated that he merely copied the entries in the previous subpoena that he made and inadvertently omitted to include the August 16, 2010 hearing date. Respondent Bassig contended that she missed correcting the hearing dates indicated in the subpoena issued as there were 17 cases calendared on July 6, 2010. She added that the mistake was not deliberately done but was simply inadvertence on her part.

Judge Yu averred that respondent Bassig committed several errors, which were done either to tire the former in making the corrections or to cause harm should the former sign the orders without meticulously checking them. She cited respondent Bassig's mistake in drafting an Order[20] dated August 13, 2010, which stated that in the Sheriff's Return dated August 10, 2010, the Summons was not served since the defendants cannot be located at their given address, and that the case be sent to the archives in the meantime. Judge Yu claimed that the Sheriff's Return[21] dated August 10, 2010, on the contrary, clearly stated that the summons was duly served.

In separate letters[22] both dated January 3, 2011, Court Administrator Jose Midas P. Marquez directed respondents Lagman and Bassig to submit their respective comment/ manifestation on the various memoranda issued by Judge Yu which resulted in the filing of the instant administrative complaint against them.

In an undated Comment/Manifestation,[23] respondent Lagman countered Judge Yu's charges of Grave Misconduct, Falsification, Usurpation of Judicial Function and Dishonesty. She reiterated

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[19] *Id.* at 47.

[20] *Id.* at 48.

[21] *Id.* at 54.

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

[23] *Id.* at 133-134.

the explanations she previously gave to Judge Yu and maintained that she acted within the bounds of the law and the rules. Thus, she denied having committed any acts constituting grave misconduct or corruption. Respondent Lagman prayed that charges against her be dismissed for lack of merit.

Likewise, respondent Bassig, in an undated Comment/ Manifestation,[24] refuted the accusations made against her by Judge Yu. She argued that she had no intention of usurping the judicial functions of Judge Yu. Respondent Bassig maintained that she neither committed a corrupt act nor intended to defy any law or rules. She likewise prayed that the complaint against her be dismissed for lack of merit.

In a letter[25] dated January 13, 2011, Judge Yu reiterated the infractions allegedly committed by respondents Lagman and Bassig and recommended that the OCA indorse the criminal aspect of the administrative case against them to the Office of the Ombudsman.

In a Memorandum[26] dated November 9, 2011, the OCA held respondents Lagman and Bassig administratively liable for simple neglect of duty and submitted the following recommendations:

1. The Memoranda of Judge Eliza B. Yu against Mariejoy P. Lagman, Legal Researcher and Soledad J. Bassig, Court Stenographer, both of the Metropolitan Trial Court, Branch 47, Pasay City be REDOCKETED as a regular administrative matter;

2. Ms. Lagman and Ms. Bassig be found GUILTY of simple neglect of duty; and

3. Ms. Lagman and Ms. Bassig be REPRIMANDED and be STERNLY WARNED that the commission of the same or similar acts in the future shall be dealt with more severely.[27]

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[24] *Id.* at 137-138.

[25] *Id.* at 144.

[26] *Id.* at 160-168.

[27] *Id.* at 167-168.

In the Resolution dated February 1, 2012, this Court, among others, redocketed the Memoranda of Judge Yu against respondents Lagman and Bassig as a regular administrative matter and required "the parties to manifest if they are willing to submit the administrative matter for decision/resolution on the basis of the records/pleadings filed."[28]

In compliance, Judge Yu submitted her Manifestation[29] dated April 17, 2012. Likewise, respondents Lagman and Bassig submitted their undated joint manifestation[30] and maintained that the charges filed by Judge Yu against them were pure harassment. Respondents Lagman and Bassig further manifested that they neither committed any grave misconduct nor disregarded any law or rule.

We adopt the findings of fact of the OCA and hold respondents Lagman and Bassig liable for simple neglect of duty. Simple neglect of duty is defined as the failure to give attention to a task or the disregard of a duty due to carelessness or indifference.[31]

Here, respondent Lagman showed carelessness or indifference in the performance of her duties. As Officer-in-Charge, she was remiss in her duties to give due care and attention to established procedure in the calendar of cases. Respondent Lagman should have properly informed Judge Yu of the inadvertent omission of Civil Case No. M-PSY-09-09232 in the list of calendared cases for hearing. She should have sought the necessary permission from Judge Yu before calling the case as she was still under her direct supervision.

With regard to the discrepancies in the dates in Civil Case No. 482-01, we understand that the said mistakes could not be blamed solely on respondent Lagman as she was not the one

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[28] *Id.* at 170-171.

[29] *Id.* at 173-189.

[30] *Id.* at 248-249.

[31] *Calo v. Dizon*, A.M. No. P-07-2359, August 11, 2008, 561 SCRA 517, 533.

who prepared the documents. However, the errors in the *Constancia* and in the Minutes of the Hearing could have been avoided and corrected had respondent Lagman paid more attention to the details specified in the documents, *i.e.*, the date of hearing and the name of the then Presiding Judge Vito Cruz.

Similarly in Civil Case No. SCC-10-55, respondent Lagman did not follow established procedure when she allowed one of the parties to sign the Minutes of the Hearing without waiting for the arrival of Judge Yu. It must be remembered that the Minutes of the Hearing is a very important document which gives a brief summary of the events that took place at the session or hearing of a case. It is, in fact, a capsulized history of the case at a given session or hearing, for it states the date and time of session; the names of the judge, clerk of court, stenographer and court interpreter who were present; the names of the counsel of the parties who appeared; the party presenting evidenced marked; and the date of the next hearing.

We, however, agree with the OCA that there was actually no usurpation of judicial authority, since contrary to the allegations of Judge Yu, the Minutes of the Hearing did not state that the case had been submitted for decision but merely indicated the appearance of the complainant and the absence of defendant and his failure to file his answer. Likewise, with regard to the alleged discrepancies in the number of pending cases in the inventory and monthly reports, we agree with the OCA that respondent Lagman had clearly explained and clarified the reports and inventory that she had submitted to the Court Management Office of the Supreme Court.

With regard to respondent Bassig, we also find her liable for simple neglect of duty for her failure to follow the established procedure in the conduct of hearings. As alleged by Judge Yu, respondent Bassig made it appear that a hearing was conducted for Civil Case No. B-03-08 on July 16, 2010 when in fact, no hearing was actually conducted on the said date. Moreover, respondent Bassig also committed mistakes in the dates specified in the subpoena issued by the court in Criminal Case Nos. 04-178 & 179 CFM. She also failed to pay particular attention to

the details of a draft Order dated August 13, 2010 that she prepared, stating that the summons in the Sheriff's Return was not served. On the contrary, the summons was actually duly served.

In the instant case, respondent Bassig could have rectified the inadvertent mistakes in the drafting of the subpoena, order, and Minutes of the Hearing had she given more effort and attention in reviewing the drafts and not putting the blame on other court personnel. She should have gone over the drafts and made sure that the papers were correct and in order. Thus, it is clear that respondent Bassig was remiss in her duties as the Officer-in-Charge. She failed to supervise her subordinates well and to efficiently conduct the proper administration of justice.

From the foregoing, we hold that the mistakes or errors in the contents of the orders, subpoena, and Minutes of the Hearing committed by respondents Lagman and Bassig could be attributed to their lack of attention or focus on the task at hand. These could have easily been avoided had they exercised greater care and diligence in the performance of their duties. We find respondents Lagman and Bassig liable for simple neglect of duty.

In *Pilipiña v. Roxas*,[32] we held that:

> The Court cannot countenance neglect of duty for even simple neglect of duty lessens the people's confidence in the judiciary and ultimately in the administration of justice. By the very nature of their duties and responsibilities, public servants must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.[33]

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[34] simple neglect of

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[32] A.M. No. P-08-2423, March 6, 2008, 547 SCRA 676.

[33] *Id.* at 682-683.

[34] Civil Service Commission Resolution No. 991936, August 31, 1999.

duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. We, however, consider the following factors as mitigating: (1) their length of service in the judiciary — respondent Lagman's 12 years and respondent Bassig's 42 years; (2) their mistakes or errors appearing not to have prejudiced any public interest or private party; and (3) the instant case being the first offense for both of them in their long years of service in the Judiciary.

WHEREFORE, respondents MARIEJOY P. LAGMAN and SOLEDAD J. BASSIG are hereby found guilty of simple neglect of duty. They are **REPRIMANDED** and **STERNLY WARNED** that the commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Carpio[**] *(Senior Associate Justice), Bersamin, del Castillo,* and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 155830. August 15, 2012]

NUMERIANO P. ABOBON, *petitioner, vs.* **FELICITAS ABATA ABOBON and GELIMA ABATA ABOBON,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; BEST PROOF OF OWNERSHIP OF A PARCEL

[**] Per Special Order No. 1284 dated August 6, 2012.

OF LAND; DOCTRINE OF INDEFEASIBILITY, WHEN NOT APPLICABLE; CASE AT BAR.— A fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The certificate of title thus becomes the best proof of ownership of a parcel of land; hence, anyone who deals with property registered under the Torrens system may rely on the title and need not go beyond the title. This reliance on the certificate of title rests on the doctrine of indefeasibility of the land title, which has long been well-settled in this jurisdiction. It is only when the acquisition of the title is attended with fraud or bad faith that the doctrine of indefeasibility finds no application. Accordingly, we rule for the respondents on the issue of the preferential right to the possession of the land in question. Their having preferential right conformed to the age-old rule that whoever held a Torrens title in his name is entitled to the possession of the land covered by the title. Indeed, possession, which is the holding of a thing or the enjoyment of a right, was but an attribute of their registered ownership.

2. ID.; ID.; ID.; ID.; ID.; CERTIFICATE OF TITLE NOT SUBJECT TO COLLATERAL ATTACK UNDER SECTION 48 OF P.D. NO. 1529 (THE PROPERTY REGISTRATION DECREE); CASE AT BAR.— Numeriano denies to the respondents the right to rely on their TCT, insisting that he had become the legal owner of the land in question even before the respondents had acquired it by succession from their parents, and that he had acted in good faith in possessing the land in question since then. He argues that he did not need to file a separate direct action to annul the respondents' title because "by proving that they are owners thereof, said title may be annulled as an incidental result." Numeriano's argument lacks legal basis. In order for him to properly assail the validity of the respondents' TCT, he must himself bring an action for *that* purpose. Instead of bringing that direct action, he mounted his attack as a merely defensive allegation herein. Such manner of attack against the TCT was a collateral one, which was disallowed by Section 48 of Presidential Decree No. 1529 (*The Property Registration Decree*).

3. ID.; DAMAGES; MORAL DAMAGES; TO BE RECOVERED, MORAL DAMAGES MUST BE CAPABLE OF PROOF AND MUST BE ACTUALLY PROVED WITH A REASONABLE DEGREE OF CERTAINTY. — To be recoverable, moral damages must be capable of proof and must be actually proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. Yet, nothing was adduced here to justify the grant of moral damages. What we have was only the allegation on moral damages, with the complaint stating that the respondents had been forced to litigate, and that they had suffered mental anguish, serious anxiety and wounded feelings from the petitioner's refusal to restore the possession of the land in question to them. The allegation did not suffice, for allegation was not proof of the facts alleged.

4. ID.; ID.; EXEMPLARY DAMAGES; AWARD THEREOF IS PROPER ONLY IF ENTITLEMENT TO MORAL, TEMPERATE OR COMPENSATORY DAMAGES WAS SHOWN.— Exemplary damages were proper only if the respondents, as the plaintiffs, showed their entitlement to moral, temperate or compensatory damages. Yet, they did not establish their entitlement to such other damages.

5. ID.; ID.; ATTORNEY'S FEES; A DISCUSSION OF THE FACTUAL BASIS AND LEGAL JUSTIFICATION FOR THE AWARD THEREOF MUST BE LAID OUT IN THE BODY OF THE DECISION; RATIONALE.— As to attorney's fees, the general rule is that such fees cannot be recovered by a successful litigant as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the right to litigate. Indeed, prior to the effectivity of the present *Civil Code*, such fees could be recovered only when there was a stipulation to that effect. It was only under the present *Civil Code* that the right to collect attorney's fees in the cases mentioned in Article 2208 of the *Civil Code* came to be recognized. Such fees are now included in the concept of actual damages. Even so, whenever attorney's fees are proper in a case, the decision rendered therein should still expressly state the *factual* basis and *legal* justification for granting them. Granting them in the dispositive portion of the judgment is not enough; a discussion of the *factual* basis and *legal* justification for them must be laid out in the

body of the decision. Considering that the award of attorney's fees in favor of the respondents fell short of this requirement, the Court disallows the award for want of the factual and legal premises in the body of the decision. The requirement for express findings of fact and law has been set in order to bring the case within the exception and justify the award of the attorney's fees. Otherwise, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.

6. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE LOWER COURTS, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE UPON THE SUPREME COURT; EXCEPTION; CASE AT BAR.— The findings of fact of lower courts, particularly when affirmed by the CA, are final and conclusive upon the Court. In this as well as in other appeals, the Court, not being a trier of facts, does not review their findings, especially when they are supported by the records or based on substantial evidence. It is not the function of the Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower courts are absolutely devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion. There has been no such showing made by Numeriano herein. x x x All the lower courts uniformly found that his evidence related to a parcel of land *entirely different* from the land in question. According to the MCTC, "the land for which he has presented evidence to support his claim of ownership is entirely different from the land the plaintiffs are claiming." On its part, the RTC held that "the land, subject matter of this controversy is all of 4668 sq. meters and bearing different boundaries from that of the donated property and was already registered under OCT No. 28727 as early as 1926," such that "the subject property is separate and distinct from that property donated to the defendant's parents in 1937." Agreeing with both lower courts, the CA declared: "(i)n fine, what these decisions are saying is that petitioner may have evidence that he owns a parcel of land but, based on the evidence he had presented, the said parcel of land is different from the one he is presently occupying."

APPEARANCES OF COUNSEL

Manolo A. Flor for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

The controversy involves the rightful possession of a parcel of registered land. The respondents, who were the registered owners, sued the petitioner, their first cousin, to recover the possession of the land in question, stating that they had only allowed the petitioner to use the land out of pure benevolence, but the petitioner asserted that the land belonged to him as owner by right of succession from his parents.

Antecedents

Respondents Felicitas and Gelima Abobon were the plaintiffs in this action for recovery of possession and damages brought against petitioner Numeriano Abobon (Numeriano) in the 2nd Municipal Circuit Trial Court of Labrador-Sual in Pangasinan (MCTC). They averred that they were the registered owners of that parcel of unirrigated riceland with an area of 4,668 square meters, more or less, and situated in Poblacion, Labrador, Pangasinan, and covered by Transfer Certificate of Title (TCT) No. 201367 of the Registry of Deeds of Pangasinan (Exhibit A); that they had allowed Numeriano, their first cousin, the free use of the land out of benevolence; and that they now immediately needed the parcel of land for their own use and had accordingly demanded that Numeriano should vacate and return it to them but he had refused.

In his answer, Numeriano admitted being the first cousin of the respondents and the existence of TCT No. 201367 covering the land in question, and having received the demand for him to vacate. He alleged, however, that he did not vacate because he was the owner of the land in question. He asserted that if the land in question related to the unirrigated riceland with an area of 3,000 square meters that he was presently tilling and covered

by tax declaration no. 2 in the name of his father, Rafael Abobon (Rafael), then the respondents did not have a valid cause of action against him because he had inherited that portion from his parents; that he and his predecessors-in-interest had also continuously, publicly and adversely and in the concept of owner possessed the parcel of land for more than 59 years; that in 1937, his grandfather Emilio Abobon (Emilio), the original owner, had granted that portion of 3,000 square meters to Rafael when he got married to his mother, Apolonia Pascua, by means of a donation *propter nuptias*; that since then his parents had possessed and tilled the land; that he himself had exclusively inherited the land from his parents in 1969 because his brother Jose had received his own inheritance from their parents; that the possession of his parents and his own had continued until the present; that assuming that the respondents were the true owners of the land, they were already estopped by laches from recovering the portion of 3,000 square meters from him.

On August 23, 2000, after due proceedings, the MCTC ruled in favor of the respondents,[1] finding that the respondents' parents Leodegario Abobon (Leodegario) and Macaria Abata (Macaria) had purchased the property on February 27, 1941 from Emilio with the conformity of Emilio's other children, including Rafael; that on February 4, 1954, Leodegario and Macaria had registered their title and ownership under TCT No. 15524; that on February 16, 1954, Leodegario and Macaria had sold the land to Juan Mamaril; that on February 25, 1954, Juan Mamaril had registered the land in his name under TCT No. 15678; that on November 13, 1970, Juan Mamaril had sold the land back to Leodegario, and TCT No. 87308 had been issued under the name of Leodegario; that on January 16, 1979, Leodegario had submitted a sworn statement as required by Presidential Decree No. 27 to the effect that his tenant on the land had been one Cornelio Magno; that on April 15, 1993, the respondents had inherited the land upon the death of Leodegario; that on October 22, 1994, the respondents had adjudicated the land unto themselves through a deed of extrajudicial settlement; that after due

[1] Records, pp. 244-253.

publication of the deed of extrajudicial settlement, the respondents had registered the land in their own names on December 20, 1994, resulting in the issuance of TCT No. 201367 to them; that after the 1989 *palay* harvest, the respondents had allowed the petitioner the free use of the land out of benevolence; that the respondents had started to verbally demand that the petitioner vacate the land on May 25, 1993; and that because the petitioner had refused to vacate, the respondents had then brought a complaint in the *barangay* on May 31, 1996, where mediation had failed to settle the dispute.

The MCTC further found that the 3,000 square-meter land Numeriano referred to as donated to his parents was not the same as the land in question due to their boundaries being entirely different; that in the donation *propter nuptias* (Exhibit 11), Emilio had stated that the parcels of land thereby covered had not been registered under Act No. 496 or under the provisions of the Spanish Mortgage Law, whereas the land in question had already been registered; that even assuming that the 3,000 square-meter land was inside the land in question, his claim would still not prosper because the donation *propter nuptias* in his parents' favor had been invalid for not having been signed and accepted in writing by Rafael, his father; that the donation *propter nuptias* had also been cancelled or dissolved when his mother had signed as an instrumental witness and his father had given his consent to the sale of the land in question then covered by Original Certificate No. 28727 by Emilio to Leodegario; and that his parents' assent to the sale signified either that his parents had conformed to the dissolution of the donation *propter nuptias* in their favor, or that the land sold to Leodegario had been different from the land donated to them.

The MCTC held that the respondents were not guilty of laches because of their numerous acts and transactions from 1941 until 1996 involving the land in question, specifically: (*a*) the sale of the land to Juan Mamaril and its repurchase by Leodogario; (*b*) the registration of title and ownership; (*c*) the extrajudicial partition of the property by the heirs of Leodegario; (*d*) Numeriano's free use of the land from 1989 onwards upon being allowed to do so by the respondents; (*e*) the verbal demands from the

respondents since 1993 for Numeriano to vacate the land; and (*f*) the commencement of the action to recover possession against Numeriano. It considered such acts and transactions as negating any notion of the respondents' abandonment of their right to assert ownership.[2]

The MCTC disposed thus:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:

1. Declaring the plaintiffs as the true and lawful owner and possessor of the land in question;
2. Ordering the defendant to vacate the premises in question and to surrender its possession to the plaintiffs;
3. Ordering the defendant to pay the plaintiffs the amount of ₱20,000.00 as moral damages and the amount of ₱5,000.00 as exemplary damages;
4. Ordering the defendant to pay the amount of ₱10,000.00 as and for attorney's fees;
5. Dismissing the counterclaim;
6. Ordering the defendant to pay the costs of the suit.

SO ORDERED.[3]

Numeriano appealed to the Regional Trial Court in Lingayen City, Pangasinan (RTC), which, on April 16, 2001, upheld the MCTC,[4] *viz*:

WHEREFORE, PREMISES well-considered, the appeal taken by defendant/appellant is hereby DISMISSED.

SO ORDERED.

Citing the variance between the description of the land in question and the description of the land covered by the donation

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[2] *Id.*, at 252.

[3] *Id.*, at 252-253.

[4] *Id.*, at 289-295.

propter nuptias, as well as the failure of Numeriano to explain his parents' participation in the sale of the land in question in 1941 to Leodegario and Macaria, the RTC concluded that the land in question was really separate and distinct from the property donated to his parents in 1937;[5] and lent credence to the respondents' claim that they had allowed him to use the land only out of their benevolence.[6]

Still dissatisfied, Numeriano appealed *via* petition for review to the Court of Appeals (CA), submitting that he was the lawful owner and possessor of the 3,000 square meter parcel of land that he occupied and cultivated; and that the respondents' TCT was invalid.[7]

On May 16, 2002, however, the CA rejected Numeriano's submissions and affirmed the RTC,[8] holding that the respondents were in possession of a certificate of title that enjoyed the conclusive presumption of validity, by virtue of which they were entitled to possess the land in question; that the parcel of land that he owned was different from the land in question; and that his impugning the validity of the respondents' TCT partook of the nature of an impermissible collateral attack against the TCT, considering that the validity of a Torrens title could be challenged only directly through an action instituted for that purpose.[9]

The CA, pointing out that the MCTC's declaration that the respondents were the true owners of the land in question went beyond the ambit of a possessory action that was limited to determining only the issue of physical possession,[10] deleted the declaration, and disposed as follows:

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[5] *Id.*, at 293-294.

[6] *Id.*, at 295.

[7] CA *rollo*, pp. 7-22.

[8] *Rollo*, pp. 119-127; penned by Associate Justice Andres B. Reyes, Jr. (later Presiding Justice), and concurred in by then Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice) and Associate Justice Mario L. Guariña III (retired).

[9] *Id.*, at 125.

[10] *Id.*, at 126-127.

WHEREFORE, the foregoing premises considered. The Decision under appeal is hereby AFFIRMED with the modification that the declaration by the Municipal Circuit Trial Court of respondents as to the owners of the subject parcel of land is deleted.

SO ORDERED.

Hence, this appeal, with Numeriano positing as follows:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AWARDING POSSESSION OF SUBJECT PREMISES TO RESPONDENTS WITHOUT CITING ANY REASONS THEREFOR AND DESPITE THE FACT THAT EVIDENCE ON HAND SHOWS PETITIONER BECAME THE LAWFUL OWNER THEREOF PRIOR TO TIME RESPONDENTS ACQUIRED THE SAME.

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE LOT BEING CLAIMED BY RESPONDENTS IS DIFFERENT FROM THAT BEING CLAIMED BY PETITIONER.

III.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER SHOULD FILE A SEPARATE ACTION FOR ANNULMENT OF TITLE AS THERE IS NO NEED THEREFOR.

IV.

ASSUMING SANS ADMITTING THAT PETITIONER IS NOT THE LAWFUL OWNER OF SUBJECT PREMISES, WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE RTC'S AND MCTC'S DECISIONS ORDERING PETITIONER TO PAY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT AND DISMISSING HIS COUNTERCLAIM.[11]

Ruling

The appeal lacks merit.

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[11] *Id.*, at 13-14.

First of all, a fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[12] The certificate of title thus becomes the best proof of ownership of a parcel of land;[13] hence, anyone who deals with property registered under the Torrens system may rely on the title and need not go beyond the title.[14] This reliance on the certificate of title rests on the doctrine of indefeasibility of the land title, which has long been well-settled in this jurisdiction. It is only when the acquisition of the title is attended with fraud or bad faith that the doctrine of indefeasibility finds no application.[15]

Accordingly, we rule for the respondents on the issue of the preferential right to the possession of the land in question. Their having preferential right conformed to the age-old rule that whoever held a Torrens title in his name is entitled to the possession of the land covered by the title.[16] Indeed, possession, which is the holding of a thing or the enjoyment of a right,[17] was but an attribute of their registered ownership.

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[12] *Federated Realty Corporation v. Court of Appeals*, G.R. No. 127967, December 14, 2005, 477 SCRA 707, 716-717; *Clemente v. Razo*, G.R. No. 151245, March 4, 2005, 452 SCRA 768, 778; *Vda. de Retuerto v. Barz*, G.R. No. 148180, December 19, 2001, 372 SCRA 712, 719.

[13] *Halili v. Court of Industrial Relations*, G.R. No. L-24864, May 30, 1996, 257 SCRA 174, 183.

[14] *Sandoval v. Court of Appeals*, G.R. No. 106657, August 1, 1996, 260 SCRA 283, 295; *Lopez v. Court of Appeals*, G.R. No. L-49739, January 20, 1989, 169 SCRA 271, 276.

[15] *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586; *Alfredo v. Borras*, G.R. No. 144225, June 17, 2003, 404 SCRA 145, 169; *Heirs of Pedro Lopez v. De Castro*, G.R. No. 112905, February 3, 2000, 324 SCRA 591, 617; *Bornales v. Intermediate Appellate Court*, No. 75336, October 18, 1998, 166 SCRA 519, 524-525.

[16] *Spouses Esmaquel and Sordevilla v. Coprada*, G.R. No. 152423, December 15, 2010, 638 SCRA 428, 439; *Javelosa v. Court of Appeals*, G.R. No. 124297, December 10, 1996, 265 SCRA 493, 504-505; *Pangilinan v. Aguilar*, G.R. No. L-29275, January 31, 1972, 43 SCRA 136.

[17] Article 523, *Civil Code*.

It is beyond question under the law that the owner has not only the right to enjoy and dispose of a thing without other limitations than those established by law, but also the right of action against the holder and possessor of the thing in order to recover it.[18] He may exclude any person from the enjoyment and disposal of the thing, and, 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.[19]

Secondly, Numeriano denies to the respondents the right to rely on their TCT, insisting that he had become the legal owner of the land in question even before the respondents had acquired it by succession from their parents, and that he had acted in good faith in possessing the land in question since then. He argues that he did not need to file a separate direct action to annul the respondents' title because "by proving that they are owners thereof, said title may be annulled as an incidental result."[20]

Numeriano's argument lacks legal basis. In order for him to properly assail the validity of the respondents' TCT, he must himself bring an action for *that* purpose. Instead of bringing that direct action, he mounted his attack as a merely defensive allegation herein. Such manner of attack against the TCT was a collateral one, which was disallowed by Section 48 of Presidential Decree No. 1529 (*The Property Registration Decree*), *viz*:

> Section 48. *Certificate not Subject to Collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Thirdly, the core issue in an action for the recovery of possession of realty like this one concerned only the priority

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[18] Article 428, *Civil Code*.

[19] Article 429, *Civil Code*.

[20] *Rollo*, p. 23.

right to the possession of the realty.[21] As such, Numeriano's assertion of ownership in his own right could not be finally and substantively determined herein, for it was axiomatic that the adjudication of the question of ownership in an action for the recovery of possession of realty would only be provisional and would not even be a bar to an action between the same parties involving the ownership of the same property.[22]

Fourthly, Numeriano insists that the land he occupied had been donated to his parents and was different from the land in question.

His insistence was bereft of factual support. All the lower courts uniformly found that his evidence related to a parcel of land *entirely different* from the land in question. According to the MCTC, "the land for which he has presented evidence to support his claim of ownership is entirely different from the land the plaintiffs are claiming."[23] On its part, the RTC held that "the land, subject matter of this controversy is all of 4668 sq. meters and bearing different boundaries from that of the donated property and was already registered under OCT No. 28727 as early as 1926," such that "the subject property is separate and distinct from that property donated to the defendant's parents in 1937."[24] Agreeing with both lower courts, the CA declared: "(i)n fine, what these decisions are saying is that petitioner may have evidence that he owns a parcel of land but, based on the evidence he had presented, the said parcel of land is different from the one he is presently occupying."[25]

We sustain the lower courts. The findings of fact of lower courts, particularly when affirmed by the CA, are final and

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[21] *Acosta v. Enriquez*, G.R. No. 140967, June 26, 2003, 405 SCRA 55, 60.

[22] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 24.

[23] Records, p. 248.

[24] *Id.*, at 294.

[25] *Rollo*, p. 126.

conclusive upon the Court. In this as well as in other appeals, the Court, not being a trier of facts, does not review their findings, especially when they are supported by the records or based on substantial evidence.[26] It is not the function of the Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower courts are absolutely devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[27] There has been no such showing made by Numeriano herein.

Lastly, the Court must undo the awards of moral and exemplary damages and attorney's fees.

To be recoverable, moral damages must be capable of proof and must be actually proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[28] Yet, nothing was adduced here to justify the grant of moral damages. What we have was only the allegation on moral damages, with the complaint stating that the respondents had been forced to litigate, and that they had suffered mental anguish, serious anxiety and wounded feelings from the petitioner's refusal to restore the possession of the land in question to them.[29] The allegation did not suffice, for allegation was not proof of the facts alleged.

The Court cannot also affirm the exemplary damages granted in favor of the respondents. Exemplary damages were proper only if the respondents, as the plaintiffs, showed their entitlement to moral, temperate or compensatory damages.[30] Yet, they did not establish their entitlement to such other damages.

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[26] *FGU Insurance Corporation v. Court of Appeals*, G.R. No. 137775, March 31, 2005, 454 SCRA 337, 348.

[27] *Id.*, at 349.

[28] *Fidel v. Court of Appeals*, G.R. No. 168263, July 21, 2008, 559 SCRA 186, 196.

[29] *Id.*

[30] The *Civil Code* provides:

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or

As to attorney's fees, the general rule is that such fees cannot be recovered by a successful litigant as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the right to litigate.[31] Indeed, prior to the effectivity of the present *Civil Code*, such fees could be recovered only when there was a stipulation to that effect. It was only under the present *Civil Code* that the right to collect attorney's fees in the cases mentioned in Article 2208[32] of the

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compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[31] *Firestone Tire & Rubber Co. of the Phil. v. Ines Chaves & Co., Ltd.*, No. L-17106, October 19, 1996, 18 SCRA 356, 358; *Heirs of Justiva vs. Gustilo*, L-16396, January 31, 1963, 7 SCRA 72.

[32] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

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

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

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

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

Civil Code came to be recognized.[33] Such fees are now included in the concept of actual damages.[34]

Even so, whenever attorney's fees are proper in a case, the decision rendered therein should still expressly state the *factual* basis and *legal* justification for granting them.[35] Granting them in the dispositive portion of the judgment is not enough;[36] a discussion of the *factual* basis and *legal* justification for them must be laid out in the body of the decision.[37] Considering that the award of attorney's fees in favor of the respondents fell short of this requirement, the Court disallows the award for want of the factual and legal premises in the body of the decision.[38] The requirement for express findings of fact and law has been set in order to bring the case within the exception and justify the award of the attorney's fees. Otherwise, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[39]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 16, 2002 by the Court of Appeals**,** with the **MODIFICATION** that the awards of moral damages, exemplary damages and attorney's fees are **DELETED.**

The petitioner shall pay the costs of suit.

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[33] See *Reyes v. Yatco*, 100 Phil. 964 (1957); *Tan Ti v. Alvear*, 26 Phil. 566 (1914); *Castueras v. Bayona*, 106 Phil., 340.

[34] *Fores v. Miranda*, 105 Phil. 266 (1959).

[35] *Buduhan v. Pakurao*, G.R. No. 168237, February 22, 2006, 483 SCRA 116.

[36] *Gloria v. De Guzman, Jr.*, G.R. No. 116183, October 6, 1995, 249 SCRA 126.

[37] *Policarpio v. Court of Appeals*, G.R. No. 94563, March 5, 1991, 194 SCRA 129.

[38] *Koa v. Court of Appeals*, G.R. No. 84847, March 5, 1993, 219 SCRA 541, 549; *Central Azucarera de Bais v. Court of Appeals*, G.R. No. 87597, August 3, 1990, 188 SCRA 328, 340.

[39] *Ballesteros v. Abion*, G.R. No. 143361, February 9, 2006, 482 SCRA 23.

SO ORDERED.

Carpio[*] *(Senior Associate Justice), Leonardo-de Castro (Acting Chairperson), del Castillo,* and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 163859. August 15, 2012]

DR. FERNANDO A. MELENDRES, M.D., Executive Director of the Lung Center of the Philippines (LCP), *petitioner, vs.* **PRESIDENTIAL ANTI-GRAFT COMMISSION, acting through its duly authorized representative, COMMISSIONER CESAR D. BUENAFLOR, ALBERTO G. ROMULO, Executive Secretary, AND SUSAN SY NAVAL, THERESA M. ALCANTARA, JOSE PEPITO M. AMORES, VINCENT M. BALANAG, JR., GUILLERMO G. BARROA, JR., REY A. DESALES, NORBERTO A. FRANCISCO, DAVID F. GEOLLEGUE, BENILDA B. GALVEZ, LUISITO F. IDOLOR, VICTORIA C. IDOLOR, BUENAVENTURA V. MEDINA, JR., NEWELL R. NACPIL, RAOUL C. VILLARETE and GUILLERMO T. MADLANG-AWA, all of the Lung Center of the Philippines (LCP),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; ADMINISTRATIVE DUE PROCESS IS SATISFIED WHEN A PERSON IS NOTIFIED OF THE CHARGE AGAINST

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[*] Vice Justice Estela M. Perlas-Bernabe, who is on leave, per Special Order No. 1284 issued on August 6, 2012.

HIM AND GIVEN THE OPPORTUNITY TO EXPLAIN OR DEFEND HIMSELF. — Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. 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. More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses. But as long as a party is given the opportunity to defend his or her interests in due course, said party is not denied due process.

2. ID.; ID.; THREE-FOLD RESPONSIBILITY FOR VIOLATION OF DUTY; EXPLAINED. — We have ruled that dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability. It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act. Administrative liability is thus separate and distinct from penal and civil liability. Moreover, the fact that the administrative case and the case filed before the Ombudsman are based on the same subject matter is of no moment. It is a fundamental principle of administrative law that the administrative case may generally proceed against a respondent independently of a criminal action for the same act or omission and requires only a preponderance of evidence to establish administrative guilt as against proof beyond reasonable doubt of the criminal charge. Accordingly, the dismissal of two criminal cases by the Sandiganbayan and of several criminal complaints by the Ombudsman did not result in the absolution of petitioner from the administrative charges.

APPEARANCES OF COUNSEL

Macam Raro Uleo & Partners for petitioner.
The Solicitor General for public respondent.
Artuto F. Martinez for private respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

The present petition under Rule 45 assails the Decision[1] dated February 27, 2004 and Resolution[2] dated May 28, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 74272 affirming the Order dated December 3, 2002 of the Presidential Anti-Graft Commission (PAGC).

The factual antecedents:

Petitioner Dr. Fernando A. Melendres was appointed Executive Director of the Lung Center of the Philippines (LCP) in 1999 by then President Joseph Ejercito Estrada.

Acting on a complaint lodged by 15 physicians of the LCP, the Secretary of Health issued Department Order No. 119, s. 2002, dated April 3, 2002 creating a Fact-Finding Committee to look into their charges against petitioner. The Committee simultaneously investigated the charges against petitioner, and the latter's counter-charges against Dr. Jose Pepito Amores, LCP Deputy Director for Hospital Support Services, and the 14 complainant-physicians.

On June 28, 2002, the Committee submitted its Final Report of its findings and recommendations to then Health Secretary Manuel M. Dayrit. Said report enumerated the complaints against petitioner as follows:

i. Procurement of presentation banner without bidding, complexed with falsification of documents;

ii. Unlawful/excessive availments of gasoline privileges;

iii. Procurement/payment of the cellular phone and pager bills of respondent using LCP funds;

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[1] *Rollo*, pp. 46-59. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Eloy R. Bello, Jr. and Magdangal M. De Leon concurring.

[2] *Id.* at 61.

iv. Awarding of a Contract of Lease of a room/clinic in the LCP for respondent's own and direct benefit;

v. Unlawful award of the Sports Consultant Services Agreement;

vi. Appointment of Architect Federico R. Medina in which the second of two architectural service agreements was falsified;

vii. Respondent's propensity to make special petty cash funds in substantial amounts to circumvent the public bidding/ canvass requirement, particularly for the construction of the 2nd floor of the T-Block Building of the LCP;

viii. Issuance of Center Order No. 155-A, s. 2001 on the use of alternative modes other than public bidding for purchases or acquisitions of a unit or system valued in excess of P1M;

ix. Refusal or inaction to implement the Resolution of the Office of the Government Corporate Counsel (OGCC) finding Ms. Heidi Basobas guilty of gross neglect of duty, inefficiency and competence, and recommending her dismissal from the service;

x. Issuance of Center Order No. 55, s. 2000 which granted double payment of RATA for the single position of Pharmacy Division Head;

xi. Implementing reorganization and personnel movements within LCP not in accordance with the Department of Health (DOH) Rationalization and Streamlining Plan nor approved by the Department of Budget and Management, and without factual and legal bases;

xii. Multiple demotion of Dr. Jose Pepito Amores by issuing orders removing from his supervision and jurisdiction the following Divisions: Accounting & Budget, Billing, Credit Collection, Nursing Service, and Research;

xiii. Questionable personnel appointments made in the absence of any (1) announced vacancy in the plantilla positions; (2) list of applicants to the said positions; and (3) deliberations from LCP's Medical Staff Accreditation Committee;

xiv. Use of Demerol and Nubaine, for which he had coerced Drs. Victoria Canlas Idolor and Theresa Alcantara to issue prescriptions for said drugs;

xv. Invalid appointment as LCP Director which should be by the majority vote of all the members of the LCP Board of Trustees; and

xvi. Undue Discrimination in the grant of privilege to engage in the private practice of medicine and other instances of discrimination against some medical staff.[3]

The Committee found *prima facie* case against petitioner for the following offenses: (a) procurement of presentation banner without public bidding complexed with falsification of documents; (b) falsification of documents in the hiring of architectural consultant; (c) violation of auditing rules on the drawing of petty cash advances to circumvent the law on public bidding of infrastructure projects; and (d) unauthorized implementation of a reorganization plan unapproved by the Board of Trustees.

Adopting the findings of the Fact-Finding Committee, the LCP Board of Trustees, chaired by the Secretary of Health, issued a Resolution[4] dated August 23, 2002 (1) recommending to the Office of the President (OP) the filing of formal administrative charges against petitioner and his preventive suspension pending investigation; (2) directing the separation from service of LCP Deputy Director Jose Pepito Amores effective September 30, 2002; and (3) directing the transmission of a copy of the Report of the Fact-Finding Committee to the Civil Service Commission (CSC) in relation to the complaint filed against the 14 LCP physicians.

Sometime in August 2002, the same physicians, including most of herein individual respondents, issued a Manifesto[5] addressed to President Gloria Macapagal-Arroyo expressing their disenchantment with petitioner whom they claimed does not deserve to continue holding the position of LCP Executive

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[3] CA *rollo*, pp. 59-86.

[4] *Rollo,* pp. 108-112.

[5] The Manifesto was signed by Jose Pepito Amores, Theresa M. Alcantara, Vincent Balanag, Jr., Guillermo G. Barroa, Jr., Rey Desales, Norberto Francisco, David Geollegue, Benilda Galvez, Cynthia Habaluyas, Luisito Idolor, Victoria Idolor and Buenaventura Medina, Jr. (*Rollo,* pp. 166-171.)

Director because of his abusive behavior such as making sarcastic and slanderous remarks to humiliate staff members, accusations against several doctors allegedly involved in the May 1998 fire which gutted the LCP and his predecessor Dr. Calixto Zaldivar for alleged anomalous contracts with the Department of Public Works and Highways, immorality (living-in with a mistress who is a former LCP nurse), unlawful personnel actions (designating his hand-picked staff to key positions and transferring those occupying such positions to other units or departments without diminution in rank or salary), harassment of staff members who are not in his good graces, nepotism, and entering into questionable contracts with suppliers. These acts imputed to petitioner allegedly caused demoralization among the LCP medical staff and rank and file.

On October 22, 2002, a Complaint-Affidavit was filed before the PAGC by herein individual respondents, 15 physicians of the LCP, containing the same 16 charges subject of the investigation conducted by the Fact-Finding Committee.[6]

On September 11, 2002, Executive Secretary Alberto G. Romulo issued Administrative Order (AO) No. 39 directing the PAGC to conduct a formal investigation against petitioner, ordering his preventive suspension for 90 days, and authorizing the Secretary of Health to appoint an *interim* officer-in-charge of the LCP.

AO No. 39 specifically stated that —

> The PAGC shall observe the prevailing rules and procedures prescribed under existing Civil Service laws and regulations, and shall terminate the formal inquiry within ninety (90) days from receipt of this Order.
>
> The PAGC shall, likewise, within twenty (20) days after receipt of the last pleading or evidence, if any, in case respondent Executive Director Melendres does not elect a formal investigation, or after the termination of the formal investigation, should respondent Executive Director Melendres elect one, forward to this Office the entire records of the case together with its findings and

[6] *Rollo,* pp. 215-226.

recommendations, as well as a draft decision for the approval of the President.[7]

Finding sufficient basis to commence an administrative investigation (PAGC-ADM-0112-02), PAGC Hearing Commissioner Cesar D. Buenaflor issued an Order on November 8, 2002 directing the petitioner to submit within 10 days his Counter-Affidavit/Verified Answer. On November 18, 2002, petitioner submitted his Counter-Affidavit. The preliminary conference was then set on November 21, 2002.[8]

At the preliminary conference, petitioner appeared with his counsel. During the continuation of preliminary conference on November 28, 2002, the parties were directed to submit within five days or until December 4, 2002 their respective Position Paper/Memorandum. The designated hearing officer, Commissioner Buenaflor, likewise declared that based on the records/pleadings and the position papers submitted, the case shall be deemed submitted for resolution. Petitioner's counsel questioned the order and the jurisdiction of the PAGC. Commissioner Buenaflor advised said counsel to bring the issues raised by him before the proper forum, and reiterated his order for the parties to file their respective position papers.[9]

On November 29, 2002, petitioner through counsel filed a Motion for Formal Hearing and/or Investigation, invoking Section 22 of the Revised Uniform Rules on Administrative Cases in the Civil Service (URACC).[10]

On even date, petitioner filed a Motion for Inhibition alleging bias and partiality on the part of Commissioner Buenaflor in terminating the case which deprived him of his right to due process as required by the URACC, which should be observed and complied with by the said hearing officer.[11]

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[7] CA *rollo*, pp. 42-42-A.

[8] *Id.* at 110-123; *rollo*, pp. 314-315.

[9] *Rollo*, pp. 316-319.

[10] CA *rollo*, pp. 44-48.

[11] *Rollo*, pp. 267-278.

In an Order[12] dated December 3, 2002, Commissioner Buenaflor denied for lack of merit both motions filed by petitioner. Complainants submitted their position paper as required.

Petitioner did not file a position paper but instead filed before the CA a petition for *certiorari* with prayer for temporary restraining order and/or writ of preliminary injunction. Petitioner argued that the PAGC order is a patent nullity because Commissioner Buenaflor terminated the proceedings with undue haste, in violation of petitioner's right to substantive and procedural due process, as it deprived him of the opportunity to submit a supplemental affidavit for which he had made a reservation, as well as records and taped proceedings of the Fact-Finding Committee.[13]

Meanwhile, the PAGC submitted to the OP its investigation report. On February 4, 2003, the OP issued AO No. 59 declaring that the PAGC's findings and recommendation are in order. Thus, as recommended by the PAGC, the OP dismissed petitioner from the service, with forfeiture of his leave credits and retirement benefits, and disqualification from re-employment in the government service, effective immediately upon receipt of the order.[14]

By Decision dated February 27, 2004, the CA dismissed the petition and affirmed the assailed orders of the PAGC.

The CA held that petitioner's right to due process was not violated since Section 3, Rule III of the New Rules of Procedure of the PAGC authorizes the PAGC hearing commissioner to determine whether or not there is a necessity for conducting formal hearings. Moreover, petitioner was given ample opportunity to present his side and defend himself when he was required to file his Counter-Affidavit/Verified Answer, he appeared with his counsel in the preliminary conference held on November 21 and 28, 2002, and he was given the opportunity to submit his

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[12] CA *rollo,* pp. 40-41.

[13] *Id.* at 5-37.

[14] *Rollo,* pp. 320-353.

Position Paper/Memorandum. Accordingly, the CA ruled that no grave abuse of discretion was committed by public respondent Commissioner in issuing the assailed orders.

Petitioner's motion for reconsideration was likewise denied by the CA in its Resolution dated May 28, 2004.

Hence, this petition setting forth the following arguments:

I.

WITH DUE RESPECT, THE APPELLATE COURT COMMITTED GRAVE ERROR IN DECLARING THAT THE ORDER ISSUED BY PUBLIC RESPONDENT PAGC DID NOT VIOLATE THE RIGHT OF PETITIONER MELENDRES TO BE ACCORDED OF HIS CONSTITUTIONALLY GUARANTEED RIGHT TO DUE PROCESS

II.

WITH DUE RESPECT, THE APPELLATE COURT EGREGIOUSLY COMMITTED ERROR IN NOT RECOGNIZING, AS IN FACT IT IGNORED, THE FACT THAT THE ORDER ISSUED BY RESPONDENT PAGC WAS IN VIOLATION OF ADMINISTRATIVE ORDER NO. 39 WHICH DIRECTED PAGC TO CONDUCT A FORMAL INVESTIGATION AND TO OBSERVE THE PREVAILING RULES AND PROCEDURES PRESCRIBED UNDER EXISTING CIVIL SERVICE RULES AND REGULATIONS, AND SHALL TERMINATE THE FORMAL INQUIRY WITHIN NINETY (90) DAYS FROM THE RECEIPT OF AO NO. 39.

III.

THE APPELLATE COURT, IN SUSTAINING AND AFFIRMING THE DECEMBER 3, 2003 ORDER OF PAGC IGNORED, AS IN FACT IT VIRTUALLY CLOSED, ANY OPPORTUNITY FOR PETITIONER MELENDRES TO A FORMAL HEARING AND TO ADDUCE EVIDENCE IN HIS BEHALF WHEN PUBLIC RESPONDENT PAGC WITH UNDUE HASTE TERMINATED THE PROCEEDINGS WITHOUT A HEARING AND IGNORED THE PLEA OF PETITIONER TO SUBMIT A SUPPLEMENTAL AFFIDAVIT IN CLEAR VIOLATION OF THE ELEMENTARY REQUIREMENTS OF ADMINISTRATIVE DUE PROCESS.

IV.

THE APPELLATE COURT, IN AFFIRMING AND SUSTAINING THE DECEMBER 3, 2003 ORDER OF PAGC, BLINDED ITSELF TO THE REALITY THAT PAGC DESPOTICALLY, WHIMSICALLY AND CAPRICIOUSLY SWEPT ASIDE ITS OWN ADMINISTRATIVE INVESTIGATION PARAMETERS EMBODIED IN ITS ORDER OF NOVEMBER 11, 2002, LET ALONE THE DIRECTIVE EMBODIED IN AO NO. 39 MANDATING PAGC TO OBSERVE PREVAILING RULES AND PROCEDURES PRESCRIBED UNDER CIVIL SERVICE LAWS AND REGULATIONS.

V.

THE APPELLATE COURT, IN PROMULGATING ITS DECISION ALONG WITH ITS RESOLUTION DENYING PETITIONER MELENDRES'S MOTION FOR RECONSIDERATION, REFUSED TO SEE THE GRAVE ABUSE OF DISCRETION OF PUBLIC RESPONDENT PAGC IN ISSUING THE ORDER VIOLATING PETITIONER MELENDRES'S RIGHT TO DUE PROCESS WHEN IT DISREGARDED SECTION 22, RULE II OF THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.[15]

The petition has no merit.

Petitioner's claim that he was denied due process is anchored on Section 22, Rule II of the URACC, which provides:

SEC. 22. *Conduct of Formal Investigation*. — Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the disciplining authority where from the allegations of the complaint and the answer of the respondent, including the supporting documents of both parties, the merits of the case cannot be decided judiciously without conducting such investigation.

The investigation shall be held not earlier than five (5) days nor later than ten (10) days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) days from the issuance of the formal charge, or the receipt of the answer unless the period is extended by the disciplining authority in meritorious cases.

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

For this purpose, the Commission may entrust the formal investigation to lawyers of other agencies pursuant to Section 79.

The URACC, however, does not preclude the adoption of procedural rules for administrative cases by other government agencies. This is evident from Section 2, Rule I thereof, which states in part:

SEC. 2. *Coverage and Definition of Terms.* — These Rules shall be applicable to all cases brought before the Civil Service Commission and other government agencies, **except where a special law provides otherwise.** (Emphasis supplied.)

Executive Order (EO) No. 12 issued on April 16, 2001 created the PAGC which replaced the Presidential Commission Against Graft and Corruption (PCAGC) established under EO No. 151 (both offices now *defunct*). EO No. 12 authorized the PAGC to investigate presidential appointees and non-presidential appointees who may have acted in conspiracy with such presidential appointees. Pursuant to Section 17 of EO No. 12, the PAGC promulgated on March 14, 2002 its New Rules of Procedure to govern the investigations conducted by the Commission En Banc and Panel of Hearing Officers.

The pertinent rules on the investigation of formal complaints are found in Rule III of the PAGC New Rules of Procedure, as follows:

Section 1. **How Respondent Charged.** — Where a *prima facie* case is determined to have been established, the respondent shall be required, through an ORDER, to file his or her counter-affidavit/ verified answer (not a Motion to Dismiss or Motion for Bill of Particulars) to the charges against him or her, furnishing him or her with copies of the complaint, the sworn statements and other documents submitted by the complainant.

Respondent is given an inextendible period of ten (10) days from receipt of the Order to file his Counter-Affidavit/verified Answer (not a Motion to Dismiss or Motion for Bill of Particulars), together with the affidavits of his or her witnesses and other documents in his or her defense and proof of service on the complainant or his or her counsel.

Any motion to dismiss or for a bill of particulars that may be filed shall be expunged from the records, and the filing thereof shall not suspend the proceedings nor the period for the filing of the respondent's Counter-Affidavit/verified Answer.

The filing or submission of reply-affidavits and/or rejoinders shall not be required or allowed except where new issues of fact or questions of law which are material and substantial in nature are raised or invoked in the counter-affidavit or subsequent pleadings and there exists a need for said issues or questions to be controverted or rebutted, clarified or explained to enable the Commission to arrive at a fair and judicious resolution of the case.

If allowed or required by the Commission, the period for the submission of reply affidavits or rejoinders shall not exceed five (5) days.

Sec. 2. **Failure to file Response.** — The respondent's failure to file his Counter-Affidavit/verified Answer within the ten (10) day period given him or her shall be considered a waiver of his or her right to file the same and to present evidence in his or her behalf, and the Commissioner assigned shall recommend the appropriate action to the Commission, on the basis of the complaint and documents on record.

Sec. 3. **Action After Respondent's Response.** — ***If upon evaluation of the documents submitted by both parties, it should appear*** either that the charge or charges have been satisfactorily traversed by the respondent in his Counter-Affidavit/verified Answer, or **that the Counter-Affidavit/verified Answer does not tender a genuine issue, the Commissioner assigned shall forthwith,** or after a clarificatory hearing to ascertain the authenticity and/or significance of the relevant documents, **submit for adoption by the Commission the appropriate recommendation to the President**.

The Commissioner assigned may, ***at his sole discretion***, set a ***hearing to propound clarificatory questions*** to the parties or their witnesses if he or she believes that there are matters which need to be inquired into personally by him or her. In said hearing, the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine. If they so desire, they may submit written questions to the Commissioner assigned who may propound such questions to the parties or witnesses concerned. **Thereafter, the parties be required, to file with the Commission, within an**

inextendible period of five (5) days, and serve on the adverse party his verified Position Paper.

Sec. 4. **Summary Resolution After Preliminary Conference.** – Should it be determined prior to the first hearing date, that the issues can be resolved without need for setting the case for clarificatory questioning, the Commissioner assigned shall forthwith, submit for adoption by this Commission, the appropriate recommendation to the President.[15-a] (Underscoring and boldfacing of headings in the original; italicization and other boldfacing supplied.)

In this case, petitioner as directed submitted his Counter-Affidavit within the ten-day period given by Commissioner Buenaflor in his Order dated November 21, 2002 during the preliminary conference where petitioner appeared with his counsel. In the same order, the complainants were given three days to submit their Reply to the Counter-Affidavit if they deemed it necessary, and the respondent was granted a similar period within which to submit his Rejoinder to the Reply, if there is any. On November 28, 2002, during the continuation of the preliminary conference, since there was no Reply filed by the complainants, Commissioner Buenaflor directed the parties to submit their respective Position Paper/Memorandum within five days or until December 4, 2002, and declared that based on the records/ pleadings and the Position Papers to be submitted, the case shall be deemed submitted for resolution.

Commissioner Buenaflor observed the procedure laid down in the 2002 PAGC New Rules of Procedure and exercised his discretion not to conduct further hearings for clarificatory questions after finding from the pleadings and evidence submitted by the parties, that a hearing for clarificatory questions is not necessary. Petitioner failed to show that such act of Commissioner Buenaflor submitting the case for resolution on the basis of the records/pleadings and the Position Papers, was tainted with grave abuse of discretion. In the same vein, no grave abuse of discretion attended the denial of petitioner's Motion for Formal hearing and/or Investigation, in which petitioner invoked Section 22 of

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[15-a] *Id.* at 364-366.

the URACC. It may be noted that under the 2007 PAGC Rules of Procedure, the Commission is also allowed, after the submission of the Answer by the respondent or conduct of hearing for clarificatory questions, to require the parties to submit position papers to argue their case.[16]

As to the Motion for Inhibition of Commissioner Buenaflor, the same is grounded on his earlier order submitting the case for resolution on the basis of pleadings on record and position papers. Said motion was properly denied as no iota of evidence had been adduced by the petitioner to substantiate his allegation of bias and partiality. Indeed, bias and partiality cannot be presumed.[17] Mere suspicion of partiality is not enough. There should be hard evidence to prove it, as well as manifest showing of bias and partiality stemming from an extrajudicial source or some other basis.[18]

Petitioner nonetheless asserts that the assailed order was contrary to the directive in AO No. 39 which specifically recognized his right to elect a formal investigation. Having requested for such formal investigation, petitioner claims the PAGC violated his right to due process when it denied his motion for a formal investigation.

We are not persuaded.

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. It is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. 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.

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[16] PAGC NEW RULES OF PROCEDURE issued March 14, 2007, Sections 5 and 6.

[17] *Casimiro v. Tandog*, G.R. No. 146137, June 8, 2005, 459 SCRA 624, 632.

[18] *Id.*, citing *Hizon v. Dela Fuente*, G.R. No. 152328, March 23, 2004, 426 SCRA 211, 216.

More often, this opportunity is conferred through written pleadings that the parties submit to present their charges and defenses.[19] But as long as a party is given the opportunity to defend his or her interests in due course, said party is not denied due process.[20]

As this Court held in *Medina v. Commission on Audit*:[21]

> As correctly pointed out by the OSG, **the denial of petitioner's request for a formal investigation is not tantamount to a denial of her right to due process**. Petitioner was required to file a counter-affidavit and position paper and later on, was given a chance to file two motions for reconsideration of the decision of the deputy ombudsman. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. **As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met**.[22] (Emphasis supplied.)

Since petitioner was given the opportunity to defend himself from the charges against him, as in fact he submitted a Counter-Affidavit with the PAGC, though he failed to comply with the order for the submission of position paper, he cannot complain of denial of due process. It may be noted that while petitioner in his Counter-Affidavit made a reservation to submit a supplemental counter-affidavit because he was supposedly still in the process of completing the review of all documents including the tape recording of the proceedings of the Fact-Finding Committee and the sworn statements given by the witnesses to provide details of his defense, said reservation was conditioned on whether the stenographic notes will be made available at all "after the review and completion of the review and evaluation

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[19] *Cabalit v. Commission on Audit-Region VII*, G.R. Nos. 180236, 180341 & 180342, January 17, 2012, p. 12, citing *Office of the Ombudsman v. Galicia,* G.R. No. 167711, October 10, 2008, 568 SCRA 327, 344.

[20] *Id.*, citing *Cayago v. Lina,* G.R. No. 149539, January 19, 2005, 449 SCRA 29, 44-45.

[21] G.R. No. 176478, February 4, 2008, 543 SCRA 684.

[22] *Id.* at 696-697, citing *Montemayor v. Bundalian,* 453 Phil. 158, 165 (2003).

of the proceedings by the Committee Investigator." However, as mentioned in the same pleading, petitioner's request for a copy of the transcript of stenographic notes was already denied by the Chairman of the Fact-Finding Committee under the letter dated November 11, 2002[23] which stated that the Committee never took stenographic notes in the course of its investigation. Moreover, the Committee had long completed its investigation as in fact the Final Report on its findings and recommendations became the basis of the LCP Board of Trustees Resolution dated August 23, 2002 adopting the Committee's findings and recommendations.

We note that in AO No. 59 imposing the penalty of dismissal on petitioner, the OP found no error or abuse committed by the PAGC in issuing the assailed orders, thus:

> PAGC correctly denied respondent Executive Director Melendres' motions for a formal hearing and for inhibition. A formal hearing is not a mandatory requirement of due process in administrative proceedings. One may be heard not solely by verbal presentation, but also and perhaps even many times creditably and practicably than oral argument, through pleadings. Thus, it is enough that the parties are given the opportunity to be heard by means of the submission of pleadings, memoranda and/or position papers. In fact, aside from counter-affidavit, respondent Executive Director Melendres was also required by PAGC to submit his position paper but he failed to do so. Such failure amounts to a waiver to present addition[al] evidence on his behalf. It is, therefore, puzzling why respondent Executive Director was asking for a full-blown formal hearing when he could not even submit a position paper. Moreover, in his counter-affidavit, respondent Executive Director Melendres admitted that "the same complaint [subject of this case] had already been investigated, reviewed, evaluated, heard, and terminated by the [Fact-Finding] Committee [created by Secretary Manuel M. Dayrit of the Department of Health]". Thus, one may validly ask why respondent Executive Director Melendres wanted another full-blown investigation. Undoubtedly, the inescapable conclusion that can be made from the filing of the motion for a formal hearing is that respondent Executive Director Melendres was merely buying time

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[23] *Rollo*, p. 160.

by trying to prolong the disposition of the case in order to unduly perpetuate himself as the head of the Lung Center of the Philippines.

On the other hand, the denial of the motion for inhibition against Commissioner Cesar Buenaflor for alleged bias and impartiality is in order considering that the grounds adduced are not grounds for mandatory disqualification or inhibition of judges. Rule 137, Section 1 of the Rules of Court enumerates the grounds for the absolute disqualification of judges, x x x

x x x x x x x x x

Th[e] rule enumerates the grounds under which a judge is legally disqualified from sitting in a case, and excludes all other grounds not specified therein. The judge may, however, "in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. Hence, the decision to inhibit is left to the sound discretion of the judge himself. No one has the right to supplant the exercise of such discretion provided the exercise of the same is devoid of grave abuse.[24]

As to petitioner's contention that the PAGC should not have entertained the affidavit-complaint filed on October 22, 2002 as it is a "brand new" complaint which was not that indicated by AO No. 39, suffice it to state that the said affidavit-complaint merely reiterated the charges for which petitioner was already investigated by the Fact-Finding Committee created by the Secretary of Health. Petitioner being a presidential appointee, the OP is the disciplining authority which can properly impose disciplinary actions on him; hence, it is the OP through AO No. 39 which ordered his preventive suspension pending investigation on the same charges against him by the PAGC. There was no "new" complaint because the respondent-physicians simply instituted a formal complaint, this time before the OP which is by law the disciplining authority over presidential appointees, the DOH being merely the investigating authority.

Initiation of administrative complaints before the PAGC is provided for in Section 1, Rule II of the PAGC New Rules of Procedure, which states:

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[24] *Id.* at 351-352. Citations omitted.

Section 1. **Administrative Charge; How Initiated.** — An administrative charge within the jurisdiction of the Commission may be initiated and prosecuted by:

(a) written complaint under oath accompanied by affidavits of witnesses and other evidences in support of the charge(s), or

(b) upon written charge by the disciplining authority.

In this case, the administrative charge against petitioner was initiated under both (a) and (b), the complainant-physicians having filed their own formal complaint after the OP had issued AO No. 39 ordering that petitioner be investigated on those charges for which the LCP Board of Trustees had found *prima facie* evidence of his culpability based on the findings and recommendations of the Fact-Finding Committee. Notably, the allegations set forth in the Affidavit-Complaint filed on October 22, 2002 and the LCP Board of Trustees Resolution are practically the same. The PAGC can thus properly take cognizance of the findings and evidence submitted in both written complaints/ charges.

Finally, we find no merit in petitioner's suggestion that in the disposition of this case, the dismissal of the following criminal complaints should be considered: (1) Criminal Case No. SB 08-CRM-0282 for Falsification of Public Documents under Article 171(6) of the Revised Penal Code, as per Resolution[25] dated June 2, 2010 of the Sandiganbayan's Fourth Division granting petitioner's demurrer to evidence based on insufficiency of evidence; (2) Criminal Case No. SB 08-CRM-0281 dismissed for lack of probable cause as per the Minutes[26] of the proceedings of the Third Division held on June 16, 2008, and Memorandum[27] dated July 2, 2008 of the Office of the Special Prosecutor, Office of the Ombudsman; (3) OMB-C-C-02-0507-I for Violation of Executive Order No. 301 (1987), Section 3, Implementing Rules and Regulations of EO No. 262 and Section 3(a) of Republic

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[25] *Id.* at 459-469.

[26] *Id.* at 470.

[27] *Id.* at 471-474.

Act (R.A.) No. 3019, as amended, as per Resolution[28] dated April 8, 2003; and (4) Memorandum[29] dated June 4, 2007 of the Office of the Special Prosecutor in OMB-C-C-03-0258-D approving the recommendation of Assistant Special Prosecutor II Ma. Christina T. Marallag for the dismissal of several charges constituting Violation of Section 3(e) of R.A. No. 3019, and Article 171, paragraph 6 of the Revised Penal Code (RPC), except for Falsification of Public Documents under Article 171, RPC "for making an erasure in the Purchase Order dated December 21, 2001 by erasing the word 'EXCLUSIVE DISTRIBUTOR' and changing it with the word 'CANVASS' to make it appear that it is the mode of procurement of the presidential banner, when in truth and in fact no canvass was conducted."

We have ruled that dismissal of a criminal action does not foreclose institution of an administrative proceeding against the same respondent, nor carry with it the relief from administrative liability.[30] It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act. Administrative liability is thus separate and distinct from penal and civil liability.[31]

Moreover, the fact that the administrative case and the case filed before the Ombudsman are based on the same subject matter is of no moment. It is a fundamental principle of administrative

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[28] *Id.* at 476-488.

[29] *Id.* at 489-514.

[30] *Flores v. Montemayor,* G.R. No. 170146, June 8, 2011, 651 SCRA 396, 402-403, citing *Office of the Court Administrator v. Enriquez,* A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10 and *Office of the Court Administrator v. Cañete,* A.M. No. P-91-621, November 10, 2004, 441 SCRA 512, 520.

[31] *Office of the President v. Cataquiz,* G.R. No. 183445, September 14, 2011, 657 SCRA 681, 706, citing *Tecson v. Sandiganbayan,* 376 Phil. 191, 198 (1999) and *Veloso v. Sandiganbayan*, G.R. Nos. 89043-65, July 16, 1990, 187 SCRA 504, 509-510.

law that the administrative case may generally proceed against a respondent independently of a criminal action for the same act or omission and requires only a preponderance of evidence to establish administrative guilt as against proof beyond reasonable doubt of the criminal charge.[32] Accordingly, the dismissal of two criminal cases by the Sandiganbayan and of several criminal complaints by the Ombudsman did not result in the absolution of petitioner from the administrative charges.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated February 27, 2004 and Resolution dated May 28, 2004 of the Court of Appeals in CA-G.R. SP No. 74272 are **AFFIRMED and UPHELD.**

With costs against the petitioner.

SO ORDERED.

Carpio[*] *(Senior Associate Justice), Leonardo-de Castro,*[**] *Bersamin,* and *del Castillo, JJ.,* concur

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[32] *Amadore v. Romulo*, G.R. No. 161608, August 9, 2005, 466 SCRA 397, 418, citing *The Police Commission v. Lood*, No. L-34230, March 31, 1980, 96 SCRA 819, 825; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 727; and *People v. Toledano*, G.R. No. 110220, May 18, 2000, 332 SCRA 210, 216-217.

[*] Designated Acting Member of the First Division per Special Order No. 1284 dated August 6, 2012.

[**] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 165166. August 15, 2012]

CHARLES GOTARDO, *petitioner, vs.* **DIVINA BULING,** *respondent.*

SYLLABUS

1. CIVIL LAW; PATERNITY AND FILIATION; PROOF OF FILIATION, SPECIFIED.— One can prove filiation, either legitimate or illegitimate, through the record of birth appearing in the civil register or a final judgment, an admission of filiation in a public document or a private handwritten instrument and signed by the parent concerned, or the open and continuous possession of the status of a legitimate or illegitimate child, or any other means allowed by the Rules of Court and special laws. We have held that such other proof of one's filiation may be a "baptismal certificate, a judicial admission, a family bible in which [his] name has been entered, common reputation respecting [his] pedigree, admission by silence, the [testimonies] of witnesses, and other kinds of proof [admissible] under Rule 130 of the Rules of Court."

2. ID.; ID.; FOUR SIGNIFICANT PROCEDURAL ASPECTS OF A TRADITIONAL PATERNITY ACTION; EXPLAINED.— In *Herrera v. Alba*, we stressed that there are four significant procedural aspects of a traditional paternity action that parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and the child. We explained that a *prima facie* case exists if a woman declares — supported by corroborative proof — that she had sexual relations with the putative father; at this point, the burden of evidence shifts to the putative father. We explained further that the two affirmative defenses available to the putative father are: (1) incapability of sexual relations with the mother due to either physical absence or impotency, or (2) that the mother had sexual relations with other men at the time of conception.

3. ID.; ID.; CHILD SUPPORT; THE AMOUNT THEREOF SHALL BE IN PROPORTION TO THE RESOURCES OR

MEANS OF THE GIVER AND THE NECESSITIES OF THE RECIPIENT; APPLICATION IN CASE AT BAR.— Since filiation is beyond question, support follows as a matter of obligation; a parent is obliged to support his child, whether legitimate or illegitimate. Support consists of everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. Thus, the amount of support is variable and, for this reason, no final judgment on the amount of support is made as the amount shall be in proportion to the resources or means of the giver and the necessities of the recipient. It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support. In this case, we sustain the award of ₱2,000.00 monthly child support, without prejudice to the filing of the proper motion in the RTC for the determination of any support in arrears, considering the needs of the child, Gliffze, during the pendency of this case.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE ASSESSMENT THEREOF, TESTIMONY MUST BE CONSIDERED IN ITS ENTIRETY INSTEAD OF IN TRUNCATED PARTS.— Jurisprudence teaches that in assessing the credibility of a witness, his testimony must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and to anchor a conclusion based on these parts. "In ascertaining the facts established by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered." Evidently, the totality of the respondent's testimony positively and convincingly shows that no real inconsistency exists. The respondent has consistently asserted that she started intimate sexual relations with the petitioner sometime in September 1993.

APPEARANCES OF COUNSEL

Antonio R. Bacalso for petitioner.
Aurora A. Econg for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioner Charles Gotardo, to challenge the March 5, 2004 decision[2] and the July 27, 2004 resolution[3] of the Court of Appeals (*CA*) in CA GR CV No. 76326. The CA decision ordered the petitioner to recognize and provide legal support to his minor son, Gliffze O. Buling. The CA resolution denied the petitioner's subsequent motion for reconsideration.

FACTUAL BACKGROUND

On September 6, 1995, respondent Divina Buling filed a complaint with the Regional Trial Court (*RTC*) of Maasin, Southern Leyte, Branch 25, for compulsory recognition and support *pendente lite,* claiming that the petitioner is the father of her child Gliffze.[4]

In his answer, the petitioner denied the imputed paternity of Gliffze.[5] For the parties' failure to amicably settle the dispute, the RTC terminated the pre-trial proceedings.[6] Trial on the merits ensued.

The respondent testified for herself and presented Rodulfo Lopez as witness. Evidence for the respondent showed that she met the petitioner on December 1, 1992 at the Philippine Commercial and Industrial Bank, Maasin, Southern Leyte branch where she had been hired as a casual employee, while the petitioner

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[1] Filed under Rule 45 of the Rules of Court; *rollo,* pp. 10-26.

[2] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid; *id.* at 29-45.

[3] *Id.* at 46-47.

[4] Original records, pp. 1-8.

[5] *Id.* at 22-25.

[6] *Id.* at 54.

worked as accounting supervisor.[7] The petitioner started courting the respondent in the third week of December 1992 and they became sweethearts in the last week of January 1993.[8] The petitioner gave the respondent greeting cards on special occasions, such as on Valentine's Day and her birthday; she reciprocated his love and took care of him when he was ill.[9]

Sometime in September 1993, the petitioner started intimate sexual relations with the respondent in the former's rented room in the boarding house managed by Rodulfo, the respondent's uncle, on Tomas Oppus St., Agbao, Maasin, Southern Leyte.[10] The petitioner rented the room from March 1, 1993 to August 30, 1994.[11] The sexual encounters occurred twice a month and became more frequent in June 1994; eventually, on August 8, 1994, the respondent found out that she was pregnant.[12] When told of the pregnancy, the petitioner was happy and made plans to marry the respondent.[13] They in fact applied for a marriage license.[14] The petitioner even inquired about the costs of a wedding reception and the bridal gown.[15] Subsequently, however, the petitioner backed out of the wedding plans.[16]

The respondent responded by filing a complaint with the Municipal Trial Court of Maasin, Southern Leyte for damages against the petitioner for breach of promise to marry.[17] Later,

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[7] TSN, February 16, 1996, p. 5; TSN, May 15, 1996, p. 6.

[8] TSN, February 16, 1996, p. 6; TSN, May 15, 1996, p. 6.

[9] TSN, February 16, 1996, pp. 7-10; Exhibits "B" and "C", Folder of Exhibits, p. 2.

[10] TSN, February 16, 1996, p. 10; TSN, May 15, 1996, p. 3; TSN, July 18, 1996, pp. 5-8.

[11] TSN, May 15, 1996, p. 3; TSN, July 18, 1996, p. 4.

[12] TSN, February 16, 1996, p. 11; TSN, May 15, 1996, pp. 4-5.

[13] TSN, February 16, 1996, pp. 11-12.

[14] *Id.* at 12-15; Exhibit "E", Folder of Exhibits, p. 4.

[15] TSN, February 16, 1996, p. 16.

[16] *Id.* at 17.

[17] *Id.* at 24; Exhibit "3", Folder of Exhibits, pp. 61-64.

however, the petitioner and the respondent amicably settled the case.[18]

The respondent gave birth to their son Gliffze on March 9, 1995.[19] When the petitioner did not show up and failed to provide support to Gliffze, the respondent sent him a letter on July 24, 1995 demanding recognition of and support for their child.[20] When the petitioner did not answer the demand, the respondent filed her complaint for compulsory recognition and support *pendente lite*.[21]

The petitioner took the witness stand and testified for himself. He denied the imputed paternity,[22] claiming that he first had sexual contact with the respondent in the first week of August 1994 and she could not have been pregnant for twelve (12) weeks (or three (3) months) when he was informed of the pregnancy on September 15, 1994.[23]

During the pendency of the case, the RTC, on the respondent's motion,[24] granted a ₱2,000.00 monthly child support, retroactive from March 1995.[25]

THE RTC RULING

In its June 25, 2002 decision, the RTC dismissed the complaint for insufficiency of evidence proving Gliffze's filiation. It found the respondent's testimony inconsistent on the question of when she had her first sexual contact with the petitioner, *i.e.*, "September 1993" in her direct testimony while "last week of January 1993"

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[18] TSN, February 16, 1996, p. 24; Exhibit "I", Folder of Exhibits, pp. 9-10.

[19] TSN, February 16, 1996, p. 20; Exhibit "A", Folder of Exhibits, p. 1.

[20] TSN, February 16, 1996, p. 20; Exhibit "F", Folder of Exhibits, p. 5.

[21] TSN, February 16, 1996, p. 25.

[22] TSN, September 5, 2000, pp. 3-4.

[23] TSN, September 5, 2000, pp. 7, 10, 11.

[24] Original records, pp. 58-59.

[25] August 1, 1996 order; *id.* at 60.

during her cross-testimony, and her reason for engaging in sexual contact even after she had refused the petitioner's initial marriage proposal. It ordered the respondent to return the amount of support *pendente lite* erroneously awarded, and to pay ₱10,000.00 as attorney's fees.[26]

The respondent appealed the RTC ruling to the CA.[27]

THE CA RULING

In its March 5, 2004 decision, the CA departed from the RTC's appreciation of the respondent's testimony, concluding that the latter merely made an honest mistake in her understanding of the questions of the petitioner's counsel. It noted that the petitioner and the respondent had sexual relationship even before August 1994; that the respondent had only one boyfriend, the petitioner, from January 1993 to August 1994; and that the petitioner's allegation that the respondent had previous relationships with other men remained unsubstantiated. The CA consequently set aside the RTC decision and ordered the petitioner to recognize his minor son Gliffze. It also reinstated the RTC order granting a ₱2,000.00 monthly child support.[28]

When the CA denied[29] the petitioner's motion for reconsideration,[30] the petitioner filed the present petition for review on *certiorari*.

THE PETITION

The petitioner argues that the CA committed a reversible error in rejecting the RTC's appreciation of the respondent's testimony, and that the evidence on record is insufficient to prove paternity.

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[26] *Id.* at 143-158.

[27] *Id.* at 159.

[28] *Supra* note 2.

[29] *Supra* note 3.

[30] *CA rollo*, pp. 144-152.

THE CASE FOR THE RESPONDENT

The respondent submits that the CA correctly explained that the inconsistency in the respondent's testimony was due to an incorrect appreciation of the questions asked, and that the record is replete with evidence proving that the petitioner was her lover and that they had several intimate sexual encounters during their relationship, resulting in her pregnancy and Gliffze's birth on March 9, 1995.

THE ISSUE

The sole issue before us is whether the CA committed a reversible error when it set aside the RTC's findings and ordered the petitioner to recognize and provide legal support to his minor son Gliffze.

OUR RULING

We do not find any reversible error in the CA's ruling.

We have recognized that "[f]iliation proceedings are usually filed not just to adjudicate paternity but also to secure a legal right associated with paternity, such as citizenship, support (as in this case) or inheritance. [In paternity cases, the burden of proof] is on the person who alleges that the putative father is the biological father of the child."[31]

One can prove filiation, either legitimate or illegitimate, through the record of birth appearing in the civil register or a final judgment, an admission of filiation in a public document or a private handwritten instrument and signed by the parent concerned, or the open and continuous possession of the status of a legitimate or illegitimate child, or any other means allowed by the Rules of Court and special laws.[32] We have held that such other proof of one's filiation may be a "baptismal certificate, a judicial admission, a family bible in which [his] name has been entered, common reputation respecting [his] pedigree,

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[31] *Estate of Rogelio G. Ong v. Diaz*, G.R. No. 171713, December 17, 2007, 540 SCRA 480, 490. See also *Herrera v. Alba*, 499 Phil. 185, 191 (2005).

[32] FAMILY CODE OF THE PHILIPINES, Articles 172 and 175.

admission by silence, the [testimonies] of witnesses, and other kinds of proof [admissible] under Rule 130 of the Rules of Court."[33]

In *Herrera v. Alba*,[34] we stressed that there are four significant procedural aspects of a traditional paternity action that parties have to face: a *prima facie* case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative father and the child.[35] We explained that a *prima facie* case exists if a woman declares — supported by corroborative proof — that she had sexual relations with the putative father; at this point, the burden of evidence shifts to the putative father.[36] We explained further that the two affirmative defenses available to the putative father are: (1) incapability of sexual relations with the mother due to either physical absence or impotency, or (2) that the mother had sexual relations with other men at the time of conception.[37]

In this case, the respondent established a *prima facie* case that the petitioner is the putative father of Gliffze through testimony that she had been sexually involved only with one man, the petitioner, at the time of her conception.[38] Rodulfo corroborated her testimony that the petitioner and the respondent had intimate relationship.[39]

On the other hand, the petitioner did not deny that he had sexual encounters with the respondent, only that it occurred on a much later date than the respondent asserted, such that it was physically impossible for the respondent to have been three (3) months pregnant already in September 1994 when he was informed

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[33] *Cruz v. Cristobal*, 529 Phil. 695, 710-711 (2006). See also *Heirs of Ignacio Conti v. Court of Appeals*, 360 Phil. 536, 549 (1998); and *Trinidad v. CA*, 352 Phil. 12, 32-33 (1998).

[34] *Supra* note 31.

[35] *Id.* at 192.

[36] *Ibid.*

[37] *Ibid.*

[38] TSN, May 15, 1996, pp. 15-16.

[39] TSN, July 18, 1996, p. 8.

of the pregnancy.[40] However, the petitioner failed to substantiate his allegations of infidelity and insinuations of promiscuity. His allegations, therefore, cannot be given credence for lack of evidentiary support. The petitioner's denial cannot overcome the respondent's clear and categorical assertions.

The petitioner, as the RTC did, made much of the variance between the respondent's direct testimony regarding their first sexual contact as "sometime in September 1993" and her cross-testimony when she stated that their first sexual contact was "last week of January 1993," as follows:

ATTY. GO CINCO:

When did the defendant, according to you, start courting you?

A Third week of December 1992.

Q And you accepted him?

A Last week of January 1993.

Q And by October you already had your sexual intercourse?

A Last week of January 1993.

COURT: What do you mean by accepting?

A I accepted his offer of love.[41]

We find that the contradictions are for the most part more apparent than real, having resulted from the failure of the respondent to comprehend the question posed, but this misunderstanding was later corrected and satisfactorily explained. Indeed, when confronted for her contradictory statements, the respondent explained that that portion of the transcript of stenographic notes was incorrect and she had brought it to the attention of Atty. Josefino Go Cinco (her former counsel) but the latter took no action on the matter.[42]

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[40] TSN, September 5, 2000, pp. 7, 10, 11.

[41] TSN, May 15, 1996, p. 6.

[42] TSN, May 30, 2000, pp. 4-5.

Jurisprudence teaches that in assessing the credibility of a witness, his testimony must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and to anchor a conclusion based on these parts. "In ascertaining the facts established by a witness, everything stated by him on direct, cross and redirect examinations must be calibrated and considered."[43] Evidently, the totality of the respondent's testimony positively and convincingly shows that no real inconsistency exists. The respondent has consistently asserted that she started intimate sexual relations with the petitioner sometime in September 1993.[44]

Since filiation is beyond question, support follows as a matter of obligation; a parent is obliged to support his child, whether legitimate or illegitimate.[45] Support consists of everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.[46] Thus, the amount of support is variable and, for this reason, no final judgment on the amount of support is made as the amount shall be in proportion to the resources or means of the giver and the necessities of the recipient.[47] It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[48]

In this case, we sustain the award of ₱2,000.00 monthly child support, without prejudice to the filing of the proper motion in the RTC for the determination of any support in arrears, considering the needs of the child, Gliffze, during the pendency of this case.

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[43] *Northwest Airlines, Inc. v. Chiong*, G.R. No. 155550, January 31, 2008, 543 SCRA 308, 324; and *Leyson v. Lawa*, 535 Phil. 153, 167 (2006).

[44] TSN, February 16, 1996, p. 10; TSN, May 15, 1996, p. 3.

[45] FAMILY CODE OF THE PHILIPPINES, Article 195.

[46] *Id.,* Article 194.

[47] *Id.,* Article 201.

[48] *Id.,* Article 202.

WHEREFORE, we hereby **DENY** the petition for lack of merit. The March 5, 2004 decision and the July 27, 2004 resolution of the Court of Appeals in CA GR CV No. 76326 are hereby **AFFIRMED.** Costs against the petitioner.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171132. August 15, 2012]

MANUEL D. YNGSON, JR. (in his capacity as the Liquidator of ARCAM & COMPANY, INC.), *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; THE RIGHT OF THE SECURED CREDITOR TO FORECLOSE THE MORTGAGE IN ITS FAVOR DURING THE LIQUIDATION OF DEBTOR CORPORATION, SUSTAINED; CASE AT BAR.— In the case of *Consuelo Metal Corporation v. Planters Development Bank*, which involved factual antecedents similar to the present case, the court has already settled the above question and upheld the right of the secured creditor to foreclose the mortgages in its favor during the liquidation of a debtor corporation. x x x CMC questioned the validity of the foreclosure because it was done without the knowledge and approval of the liquidator. The Court ruled in favor of the respondent bank. x x x **Creditors**

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[*] Designated as Acting Member of the Second Division in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1274 dated July 30, 2012.

of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims. x x x **The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver or upon the issuance of a stay order by the trial court. However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.** x x x It is worth mentioning that under Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, the right of a secured creditor to enforce his lien during liquidation proceedings is retained. In this case, PNB elected to maintain its rights under the security or lien; hence, its right to foreclose the mortgaged properties should be respected, in line with our pronouncement in *Consuelo Metal Corporation.*

2. ID.; PREFERENCE OF CREDITS; A PREFERENCE APPLIES ONLY TO CLAIMS WHICH DO NOT ATTACH TO SPECIFIC PROPERTIES; EXPLAINED.— As to petitioner's argument on the right of first preference as regards unpaid wages, the Court has elucidated in the case of *Development Bank of the Philippines v. NLRC* that a distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 of the Labor Code, does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. Consequently, the right of first preference for unpaid wages may not be invoked in this case to nullify the foreclosure sales conducted pursuant to PNB's right as a secured creditor to enforce its lien on specific properties of its debtor, ARCAM.

APPEARANCES OF COUNSEL

Yngson & Associates for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal are the Resolutions dated April 14, 2005[1] and January 24, 2006[2] of the Court of Appeals (CA) in CA-G.R. SP No. 88735. The CA dismissed petitioner's petition for review of the January 4, 2005 Resolution[3] and February 9, 2000 Order[4] of the Securities and Exchange Commission (SEC) for failure of petitioner to attach to the petition copies of material portions of the records and other relevant or pertinent documents.

The facts follow:

ARCAM & Company, Inc. (ARCAM) is engaged in the operation of a sugar mill in Pampanga.[5] Between 1991 and 1993, ARCAM applied for and was granted a loan by respondent Philippine National Bank (PNB).[6] To secure the loan, ARCAM executed a Real Estate Mortgage over a 350,004-square meter parcel of land covered by TCT No. 340592-R and a Chattel Mortgage over various personal properties consisting of machinery, generators, field transportation and heavy equipment.

ARCAM, however, defaulted on its obligations to PNB. Thus, on November 25, 1993, pursuant to the provisions of the Real

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[1] *Rollo*, pp. 32-33. Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr. concurring.

[2] *Id.* at 35. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa concurring.

[3] *Id.* at 39-45.

[4] *Id.* at 36-38.

[5] *Id.* at 10.

[6] *Id.* at 265.

Estate Mortgage and Chattel Mortgage, PNB initiated extrajudicial foreclosure proceedings in the Office of the Clerk of Court/*Ex Officio* Sheriff of the Regional Trial Court (RTC) of Guagua, Pampanga.[7] The public auction was scheduled on December 29, 1993 for the mortgaged real properties and December 8, 1993 for the mortgaged personal properties.

On December 7, 1993, ARCAM filed before the SEC a Petition for Suspension of Payments, Appointment of a Management or Rehabilitation Committee, and Approval of Rehabilitation Plan, with application for issuance of a temporary restraining order (TRO) and writ of preliminary injunction. The SEC issued a TRO and subsequently a writ of preliminary injunction, enjoining PNB and the Sheriff of the RTC of Guagua, Pampanga from proceeding with the foreclosure sale of the mortgaged properties.[8] An interim management committee was also created.

On February 9, 2000, the SEC ruled that ARCAM can no longer be rehabilitated. The SEC noted that the petition for suspension of payment was filed in December 1993 and six years had passed but the potential "white knight" investor had not infused the much needed capital to bail out ARCAM from its financial difficulties.[9] Thus, the SEC decreed that ARCAM be dissolved and placed under liquidation.[10] The SEC Hearing Panel also granted PNB's motion to dissolve the preliminary injunction and appointed Atty. Manuel D. Yngson, Jr. & Associates as Liquidator for ARCAM.[11] With this development, PNB revived the foreclosure case and requested the RTC Clerk of Court to re-schedule the sale at public auction of the mortgaged properties.

Contending that foreclosure during liquidation was improper, petitioner filed with the SEC a Motion for the Issuance of a

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[7] *Id.* at 272.

[8] *Id.* at 39.

[9] *Id.* at 37.

[10] *Id.* at 38.

[11] *Id.* at 11.

Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the foreclosure sale of ARCAM's assets. The SEC *en banc* issued a TRO effective for seventy-two (72) hours, but said TRO lapsed without any writ of preliminary injunction being issued by the SEC. Consequently, on July 28, 2000, PNB resumed the proceedings for the extrajudicial foreclosure sale of the mortgaged properties.[12] PNB emerged as the highest winning bidder in the auction sale, and certificates of sale were issued in its favor.

On November 16, 2000, petitioner filed with the SEC a motion to nullify the auction sale.[13] Petitioner posited that all actions against companies which are under liquidation, like ARCAM, are suspended because liquidation is a continuation of the petition for suspension proceedings. Petitioner argued that the prohibition against foreclosure subsisted during liquidation because payment of all of ARCAM's obligations was proscribed except those authorized by the Commission. Moreover, petitioner asserted that the mortgaged assets should be included in the liquidation and the proceeds shared with the unsecured creditors.

In its Opposition, PNB asserted that neither Presidential Decree (P.D.) No. 902-A nor the SEC rules prohibits secured creditors from foreclosing on their mortgages to satisfy the mortgagor's debt after the termination of the rehabilitation proceedings and during liquidation proceedings.[14]

On January 4, 2005, the SEC issued a Resolution[15] denying petitioner's motion to nullify the auction sale. It held that PNB was not legally barred from foreclosing on the mortgages.

Aggrieved, petitioner filed on February 28, 2005, a petition for review in the CA questioning the January 4, 2005 Resolution of the SEC.[16]

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[12] *Id.* at 12.

[13] *Id.*

[14] *Id.* at 41.

[15] *Id.* at 39-45.

[16] *Id.* at 13.

By Resolution dated April 14, 2005, the CA dismissed the petition on the ground that petitioner failed to attach material portions of the record and other documents relevant to the petition as required in Rule 46, Section 3 of the 1997 Rules of Civil Procedure, as amended. The CA likewise denied ARCAM's motion for reconsideration in its Resolution dated January 24, 2006.

Hence this petition under Rule 45 arguing that:

4.1. THE SEC ERRED IN FAILING TO APPLY THE RULES OF CONCURRENCE AND PREFERENCE OF CREDITS UNDER THE CIVIL CODE AND JURISPRUDENCE WHEN PD 902-A PROVIDES THAT THE SAME BE APPLIED IN INSTANCES WHEREBY AN ENTITY IS ORDERED DISSOLVED AND PLACED UNDER LIQUIDATION ON ACCOUNT OF FAILURE TO REHABILITATE DUE TO INSOLVENCY.[17]

4.2. IT WAS GROSSLY ERRONEOUS FOR THE SEC TO HAVE ALLOWED PNB TO FORECLOSE THE MORTGAGE WITHOUT FIRST ALLOWING THE ARCAM LIQUIDATOR TO MAKE A DETERMINATION OF THE LIENS OVER THE ARCAM REAL PROPERTIES, SINCE THE LIQUIDATOR HAD INITIALLY DETERMINED THAT ASIDE FROM PNB, SOME ARCAM WORKERS MAY ALSO HAVE A LEGAL LIEN OVER THE SAID PROPERTY AS REGARDS THEIR CLAIMS FOR UNPAID WAGES. THESE LIENS OVER THE SAME MOVABLE OR REAL PROPERTY ARE TO BE SATISFIED PRO-RATA WITH THE CONTRACTUAL LIENS PURSUANT TO 2247 AND 2249 OF THE CIVIL CODE, IN RELATION TO 2241 TO 2242 RESPECTIVELY. ALSO, THERE MAY BE SOME TAX ASSESSMENTS THAT THE LIQUIDATOR DOES NOT KNOW ABOUT, AND IF THERE WERE, THESE COULD COMPRISE TAX LIENS, WHICH UNDER ARTICLE 2243 OF THE CIVIL CODE ARE CLEARLY GIVEN PRIORITY OVER OTHER PREFERRED CLAIMS SINCE SUCH ARE TO BE SATISFIED FIRST, OVER OTHER LIENS PROVIDED UNDER ARTICLES 2241 AND 2242 OF THE CIVIL CODE, SUCH AS MORTGAGE LIENS.[18]

4.3. THE SEC LABORED UNDER THE MISTAKEN IMPRESSION THAT AFTER AN ENTITY IS DISSOLVED AND

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[17] *Id.* at 15.

[18] *Id.* at 16.

PLACED UNDER LIQUIDATION DUE TO INSOLVENCY, SECURED CREDITORS ARE AUTOMATICALLY ALLOWED TO FORECLOSE OR EXECUTE OR OTHERWISE MAKE GOOD ON THEIR CREDITS AGAINST THE DEBTOR.[19]

4.4. JURISPRUDENCE ON THE MATTER ALSO NEGATES THE SEC'S HOLDING THAT THE FORECLOSURE BY PNB WAS LEGAL. EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT PNB IS THE SOLE AND ONLY LIEN HOLDER, IT STILL CANNOT FORECLOSE UNLESS THE LIQUIDATOR AGREES TO SUCH OR THAT THE SEC GAVE PNB PRIOR PERMISSION TO INSTITUTE THE SEPARATE FORECLOSURE PROCEEDINGS.[20]

4.5. RESPONDENT PNB SHOULD BE MADE TO PAY DAMAGES FOR THE REASON THAT THE FORECLOSURE PROCEEDINGS WERE ATTENDED WITH BAD FAITH.[21]

The issues to be resolved are: (1) whether the CA correctly dismissed the petition for failure to attach material documents referred to in the petition; and (2) whether PNB, as a secured creditor, can foreclose on the mortgaged properties of a corporation under liquidation without the knowledge and prior approval of the liquidator or the SEC.

On the procedural issue, the Court finds that the CA erred in dismissing the petition for review before it on the ground of failure to attach material portions of the record and other documents relevant to the petition. A perusal of the petition for review filed with the CA, and as admitted by PNB,[22] reveals that certified true copies of the assailed January 4, 2005 SEC Resolution and the February 9, 2000 SEC Order appointing petitioner Atty. Manuel D. Yngson, Jr. as liquidator were annexed therein.

We find the foregoing attached documents sufficient for the appellate court to decide the case at bar considering that the SEC resolution contains statements of the factual antecedents

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[19] *Id.* at 19.

[20] *Id.* at 21.

[21] *Id.* at 24.

[22] *Id.* at 98.

material to the case. The Resolution also contains the SEC's findings on the legality of PNB's foreclosure of the mortgages. The SEC held that when the rehabilitation proceeding was terminated and the suspensive effect of the order staying the enforcement of claims was lifted, PNB could already assert its preference over unsecured creditors, and the secured asset and the proceeds need not be included in the liquidation and shared with the unsecured creditors.[23] Before the CA, petitioner raised only the same legal questions as there was no controversy involving factual matters. Petitioner claimed that the SEC erred in not applying the rules on concurrence and preference of credits, and in denying its motion to nullify the auction sale of the secured properties.[24] Therefore, the assailed SEC Resolution is the only material portion of the record that should be annexed with the petition for the CA to decide on the correctness of the SEC's interpretation of the law and jurisprudence on the matter before it.

Having so ruled, this Court would normally order the remand of the case to the CA for resolution of the substantive issues. However, we find it more appropriate to decide the merits of the case in the interest of speedy justice considering that the parties have adequately argued all points and issues raised. It is the policy of the Court to strive to settle an entire controversy in a single proceeding, and to leave no root or branch to bear the seeds of future litigation.[25] The ends of speedy justice would not be served by a remand of this case to the CA especially since any ruling of the CA on the matter could end up being appealed to this Court.

Did the SEC then err in ruling that PNB was not barred from foreclosing on the mortgages? We answer in the negative.

In the case of *Consuelo Metal Corporation v. Planters Development Bank*,[26] which involved factual antecedents similar

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[23] *Id.* at 44-45.

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

[25] *Ching v. Court of Appeals*, 387 Phil. 28, 42 (2000); *Golangco v. Court of Appeals*, 347 Phil. 771, 778 (1997).

[26] G.R. No. 152580, June 26, 2008, 555 SCRA 465.

to the present case, the court has already settled the above question and upheld the right of the secured creditor to foreclose the mortgages in its favor during the liquidation of a debtor corporation. In that case, Consuelo Metal Corporation (CMC) filed with the SEC a petition to be declared in a state of suspension of payment, for rehabilitation, and for the appointment of a rehabilitation receiver or management committee under Section 5(d) of P.D. No. 902-A. On April 2, 1996, the SEC, finding the petition sufficient in form and substance, declared that "all actions for claims against CMC pending before any court, tribunal, office, board, body and/or commission are deemed suspended immediately until further orders" from the SEC. Then on November 29, 2000, upon the management committee's recommendation, the SEC issued an Omnibus Order directing the dissolution and liquidation of CMC. Thereafter, respondent Planters Development Bank (Planters Bank), one of CMC's creditors, commenced the extrajudicial foreclosure of CMC's real estate mortgage. Planters Bank extrajudicially foreclosed on the real estate mortgage as CMC failed to secure a TRO. CMC questioned the validity of the foreclosure because it was done without the knowledge and approval of the liquidator. The Court ruled in favor of the respondent bank, as follows:

> In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, we held that if rehabilitation is no longer feasible and the assets of the corporation are finally liquidated, secured creditors shall enjoy preference over unsecured creditors, subject only to the provisions of the Civil Code on concurrence and preference of credits. **Creditors of secured obligations may pursue their security interest or lien, or they may choose to abandon the preference and prove their credits as ordinary claims**.
>
> Moreover, Section 2248 of the Civil Code provides:
>
> > "Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers."
>
> In this case, Planters Bank, as a secured creditor, enjoys preference over a specific mortgaged property and has a right to foreclose the mortgage under Section 2248 of the Civil Code. **The creditor-**

mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. The right to foreclose such mortgage is merely suspended upon the appointment of a management committee or rehabilitation receiver or upon the issuance of a stay order by the trial court. However, the creditor-mortgagee may exercise his right to foreclose the mortgage upon the termination of the rehabilitation proceedings or upon the lifting of the stay order.[27] (Emphasis supplied)

It is worth mentioning that under Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, the right of a secured creditor to enforce his lien during liquidation proceedings is retained. Section 114 of said law thus provides:

SEC. 114. *Rights of Secured Creditors.* — The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law. A secured creditor may:

(a) waive his rights under the security or lien, prove his claim in the liquidation proceedings and share in the distribution of the assets of the debtor; or

(b) **maintain his rights under his security or lien**;

If the secured creditor maintains his rights under the security or lien:

(1) the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance; if its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;

(2) the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or

(3) the secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws. (Emphasis supplied)

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[27] *Id.* at 474-475.

In this case, PNB elected to maintain its rights under the security or lien; hence, its right to foreclose the mortgaged properties should be respected, in line with our pronouncement in *Consuelo Metal Corporation*.

As to petitioner's argument on the right of first preference as regards unpaid wages, the Court has elucidated in the case of *Development Bank of the Philippines v. NLRC*[28] that a distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 of the Labor Code, does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. Consequently, the right of first preference for unpaid wages may not be invoked in this case to nullify the foreclosure sales conducted pursuant to PNB's right as a secured creditor to enforce its lien on specific properties of its debtor, ARCAM.

WHEREFORE, the petition for review on *certiorari* is **DENIED.**

With costs against the petitioner.

SO ORDERED.

Carpio[*] *(Senior Associate Justice, Chairperson), Leonardo-de Castro,*[**] *Bersamin,* and *del Castillo, JJ.,* concur.

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[28] G.R. No. 86227, January 19, 1994, 229 SCRA 350, 353.

[*] Designated Acting Member of the First Division per Special Order No. 1284 dated August 6, 2012.

[**] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 175301. August 15, 2012]

EDITO GULFO and EMMANUELA GULFO, *petitioners, vs.* **JOSE P. ANCHETA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; THE ALLEGATIONS IN THE COMPLAINT AND THE RELIEFS PRAYED FOR ARE THE DETERMINANTS OF THE NATURE OF THE ACTION AND OF WHICH COURT HAS JURISDICTION OVER THE MATTER; APPLICATION IN CASE AT BAR.— "The allegations in the complaint and the reliefs prayed for are the determinants of the nature of the action and of which court has jurisdiction over the matter." x x x Even a cursory reading of these allegations yield no conclusion other than that the complaint is an ordinary action for damages that is purely civil rather than corporate in character. The respondent merely seeks to be indemnified for the harm he suffered; no question about the membership of the petitioners in the association is involved, nor is the existence of the association in any manner under question. In fact, these allegations are based on either Articles 19, 20, and 21 of the Civil Code on human relations, and on the provisions on damages under Title XVIII of the Civil Code. Thus, the CA decision is correct when it held that the acts alleged in the subject complaint may also give rise to indemnification under Article 2176 of the Civil Code. Since the issue of damages arising from the Civil Code, not intra-corporate controversy, is involved, the RTC is the appropriate court with the power to try the case, not the homeowners' association, pursuant to Section 19(8) of *Batas Pambansa Bilang* 129, as amended by Republic Act No. 7691.

2. COMMERCIAL LAW; CORPORATION CODE; INTRA-CORPORATE DISPUTE, DEFINED; TESTS FOR DETERMINING WHETHER THE DISPUTE IS AN INTRA-CORPORATE CONTROVERSY.— Jurisprudence consistently states that an intra-corporate dispute is one that arises from intra-corporate relations; relationships between or among stockholders; or the relationships between the

stockholders and the corporation. In order to limit the broad definition of intra-corporate dispute, this Court has applied the *relationship* test and the *controversy* test. These two tests, when applied, have been the guiding principle in determining whether the dispute is an intra-corporate controversy or a civil case.

3. ID.; ID.; ID.; ID.; RELATIONSHIP TEST AND CONTROVERSY TEST, EXPLAINED.— In *Union Glass & Container Corp., et al. v. SEC, et al.*, the Court declared that the ***relationship test*** determines whether the relationship is: "[a] between the corporation, partnership or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, members, or officers; [c] between the corporation, partnership or association and the [S]tate [insofar] as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves." Under this test, no doubt exists that the parties were members of the same association, but this conclusion must still be supplemented by the controversy test before it may be considered as an intra-corporate dispute. Relationship alone does not *ipso facto* make the dispute intra-corporate; the mere existence of an intra-corporate relationship does not always give rise to an intra-corporate controversy. The incidents of that relationship must be considered to ascertain whether the controversy itself is intra-corporate. This is where the controversy test becomes material. Under the ***controversy test***, the dispute must be rooted in the existence of an intra-corporate relationship, and must refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code, as well as the internal and intra-corporate regulatory rules of the corporation, in order to be an intra-corporate dispute. These are essentially determined through the allegations in the complaint which determine the nature of the action.

APPEARANCES OF COUNSEL

Lizardo Carlos & Associates for petitioners.
D.P. Capili Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by Edito Gulfo and Emmanuela Gulfo, under Rule 45 of the Rules of Court, to assail the decision[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 68784 dated June 27, 2006. The CA reversed and set aside the resolution dated June 20, 2000 of the Regional Trial Court *(RTC)*, Branch 253, Las Piñas City, and remanded the case to the RTC for trial on the merits.

The Antecedent Facts

The petitioners are the neighbors of Jose Ancheta *(respondent)*. The parties occupy a duplex residential unit on Zodiac Street, Veraville Homes, Almanza Uno, Las Piñas City. The petitioners live in unit 9-B, while the respondent occupies unit 9-A of the duplex.[3]

Sometime in 1998, respondent's septic tank overflowed; human wastes and other offensive materials spread throughout his entire property. As a result, respondent and his family lived through a very unsanitary environment, suffering foul odor and filthy premises for several months.[4]

In the early months of 1999, the respondent engaged the services of Z.E. Malabanan Excavation & Plumbing Services to fix the overflow. It was then discovered that the underground drainage pipe, which connected respondent's septic tank to the subdivision's drainage system, had been closed by cement that blocked the free flow of the wastes from the septic tank to the drainage system.[5]

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[1] *Rollo,* pp. 9-31.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Mario L. Guariña III and Noel G. Tijam; *id.* at 89-96.

[3] *Id.* at 90.

[4] *Ibid.*

[5] *Id.* at 177.

The respondent narrated that the petitioners had just recently renovated their duplex unit and, in the process, had made some diggings in the same portion where the drainage pipe had been cemented.[6] The respondent added that the closing of the drainage pipe with cement could not have been the result of an accident, but was the malicious act by the petitioners.[7] On May 19, 1999, the respondent filed a complaint for damages against the petitioners with the RTC, alleging that the petitioners maliciously closed a portion of the respondent's drainage pipe and this led to the overflowing of the respondent's septic tank.

The motion to dismiss

On June 24, 1999, the petitioners moved to dismiss the complaint on the ground of lack of jurisdiction. The petitioners argued that since the parties reside in the same subdivision and are also members of the same homeowners' association (Veraville Homeowners Association, Inc.), the case falls within the jurisdiction of the Home Insurance and Guaranty Corporation *(HIGC)*.[8]

The petitioners noted that the HIGC is a government-owned and-controlled corporation created under Republic Act No. 580[9] which vested the administrative supervision over homeowners' associations to the Securities and Exchange Commission *(SEC)*. This law was later repealed by Executive Order No. 535[10] which transferred the regulatory and adjudicative functions of the SEC over homeowners' associations to the HIGC.

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[6] *Ibid.*

[7] *Id.* at 174.

[8] *Id.* at 175.

[9] AN ACT TO CREATE THE HOME FINANCING COMMISSION, TO STIMULATE HOME BUILDING AND LAND OWNERSHIP AND TO PROMOTE THE DEVELOPMENT OF LAND FOR THAT PURPOSE, PROVIDE LIBERAL FINANCING THROUGH AN INSURED MORTGAGE SYSTEM, AND DEVELOP THRIFT THROUGH THE ACCUMULATION OF SAVINGS IN INSURED INSTITUTIONS.

[10] AMENDING THE CHARTER OF THE HOME FINANCING COMMISSION, RENAMING IT AS HOME FINANCING CORPORATION, ENLARGING ITS POWERS, AND FOR OTHER PURPOSES.

The petitioners based their arguments on Section 1(b), Rule II of the 1994 Revised Rules of Procedure which regulates the Hearing of Homeowner's Disputes, as follows:

> (b) **Controversies arising out of intra-corporate relations between and among members of the association;** between any or all of them and the association of which they are members; and between such association and the state/general public or other entity **in so far as it concerns its right to exist as a corporate entity**.[11] (emphases ours)

The ruling of the RTC

In its resolution promulgated on June 20, 2000, the RTC dismissed the complaint on the ground of lack of jurisdiction. The RTC viewed the case as one involving an intra-corporate dispute falling under the jurisdiction of the HIGC**.** The dispositive portion of the RTC decision reads:

> Considering that defendants have complied with the Order of this Court dated May 2, 2000 and have substantiated their allegations that Veraville Homeowners I Association, Almanza Uno, Las Piñas City is duly registered with the Home Insurance Guranty *[sic]* Corporation, this Court is of the considered view that it has no jurisdiction over the instant case, as this Court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body equipped with special competence for the purpose.
>
> WHEREFORE, for lack of jurisdiction[,] the instant case is ordered DISMISSED.[12] (italics supplied).

Aggrieved, the respondent appealed the RTC ruling to the CA. The respondent maintained the argument that no intra-corporate dispute existed.

Ruling of the CA

On June 27, 2006, the CA reversed the judgment of the RTC and remanded the case to the lower court for trial on the merits.

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[11] *Id.* at 16.

[12] *Rollo,* p. 90.

The CA ruled that the factual allegations in the complaint support the claim for damages.[13] The CA noted that although the case involves a dispute between members of the homeowners' association, it is not an intra-corporate matter as it does not concern the right of the corporation to exist as an entity.

The petitioners moved for reconsideration, but the CA denied the motion in its resolution of November 7, 2006; hence, the present petition.

We resolve in this petition the lone issue of whether the CA erred in ruling that the RTC has jurisdiction over this dispute.

The Court's Ruling

We deny this petition for lack of merit.

Jurisdiction is determined by the allegations in the complaint

"The allegations in the complaint and the reliefs prayed for are the determinants of the nature of the action and of which court has jurisdiction over the matter."[14] With this in mind, we examined paragraphs 7, 8 and 9 of the complaint[15] which provide:

> 7. That due to the malicious acts of the defendants in cutting-off or closing a portion of the drainage pipe connecting the septic tank of the plaintiff to the village drainage system, that brought about the unwholesome situation above-described, plaintiff suffered from sleepless nights, wounded feelings, anxiety, and worry over the health and physical well-being of his whole family, for which defendants are liable to plaintiff in the amount of ONE MILLION (₱1,000,000.00) PESOS for and as moral damages;

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[13] *Supra* note 2.

[14] *Del Rosario v. Gerry Roxas Foundation, Inc.*, G.R. No. 170575, June 8, 2011, 651 SCRA 414, 416-417, citing *Spouses Huguete v. Spouses Embudo,* 453 Phil. 170, 176-177 (2003); and *Co Tiamco v. Diaz,* 75 Phil. 672, 683-684 (1946).

[15] Annex "B"; *rollo,* pp. 45-47.

8. That to set an example for those who maliciously and deliberately do acts which are violative of other's rights especially those that are inimical to one's health or life, like that of herein defendants, herein defendantss (sic) be ordered to pay exemplary damages for at least ONE HUNDRED THOUSAND (₱100,000.00) PESOS;

9. That in order to protect and enforce his rights in the instant case, plaintiff has to hire the services of undersigned counsel and agreed to pay the amount of ONE HUNDRED THOUSAND (₱100,000.00) PESOS for and as attorney's fees and ₱2,000.00 for each hearing he attends relative thereto as and for appearance fees; and likewise incur litigation expenses in the amount of not less than ₱25,000.00[.]

Even a cursory reading of these allegations yield no conclusion other than that the complaint is an ordinary action for damages that is purely civil rather than corporate in character. The respondent merely seeks to be indemnified for the harm he suffered; no question about the membership of the petitioners in the association is involved, nor is the existence of the association in any manner under question. In fact, these allegations are based on either Articles 19,[16] 20,[17] and 21[18] of the Civil Code on human relations, and on the provisions on damages under Title XVIII of the Civil Code. Thus, the CA decision is correct when it held that the acts alleged in the subject complaint may also give rise to indemnification under Article 2176 of the Civil Code, which provides:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual

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[16] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[17] Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

[18] Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Since the issue of damages arising from the Civil Code, not intra-corporate controversy, is involved, the RTC is the appropriate court with the power to try the case, not the homeowners' association, pursuant to Section 19(8) of *Batas Pambansa Bilang* 129,[19] as amended by Republic Act No. 7691.[20]

An intra-corporate dispute

We take this opportunity to reiterate what constitutes intra-corporate disputes. Jurisprudence consistently states that an intra-corporate dispute is one that arises from intra-corporate relations; relationships between or among stockholders; or the relationships between the stockholders and the corporation.[21] In order to limit the broad definition of intra-corporate dispute, this Court has applied the *relationship* test and the *controversy* test. These two tests, when applied, have been the guiding principle in determining whether the dispute is an intra-corporate controversy or a civil case.[22]

In *Union Glass & Container Corp., et al. v. SEC, et al.*,[23] the Court declared that the ***relationship test*** determines whether the relationship is: "[a] between the corporation, partnership

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[19] AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[20] **AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980."**

[21] *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*, G.R. No. 187872, November 17, 2010, 635 SCRA 380, citing *Sps. Abejo v. Judge De la Cruz*, 233 Phil. 668, 681 (1987).

[22] *Speed Distributing Corp. v. Court of Appeals*, 469 Phil. 739, 758-759 (2004).

[23] 211 Phil. 222, 230-231 (1983).

or association and the public; [b] between the corporation, partnership or association and its stockholders, partners, members, or officers; [c] between the corporation, partnership or association and the [S]tate [insofar] as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves."

Under this test, no doubt exists that the parties were members of the same association, but this conclusion must still be supplemented by the controversy test before it may be considered as an intra-corporate dispute. Relationship alone does not *ipso facto* make the dispute intra-corporate; the mere existence of an intra-corporate relationship does not always give rise to an intra-corporate controversy. The incidents of that relationship must be considered to ascertain whether the controversy itself is intra-corporate.[24] This is where the controversy test becomes material.

Under the ***controversy test***, the dispute must be rooted in the existence of an intra-corporate relationship, and must refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code, as well as the internal and intra-corporate regulatory rules of the corporation,[25] in order to be an intra-corporate dispute. These are essentially determined through the allegations in the complaint which determine the nature of the action.

We found from the allegations in the complaint that the respondent did not question the status of the petitioners as members of the association. There were no allegations assailing the petitioners' rights or obligations on the basis of the association's rules and by-laws, or regarding the petitioners' relationships with the association. What were alleged were only demands for civil indemnity and damages. The intent to seek indemnification only (and not the petitioners' status, membership,

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[24] *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*, 217 Phil. 280, 299 (1984).

[25] *Reyes v. Regional Trial Court of Makati*, Br. 142, G.R. No. 165744, August 11, 2008, 561 SCRA 593, 611.

or their rights in the association) is clear from paragraphs 7, 8 and 9 of the complaint.[26]

In light of these, the case before us involves a simple civil action — the petitioners' liability for civil indemnity or damages — that could only be determined through a full-blown hearing for the purpose before the RTC.

WHEREFORE, we hereby **DENY** the petition, and **AFFIRM** the Decision dated June 27, 2006 and the Resolution dated November 7, 2006 of the Court of Appeals in CA-G.R. CV No. 68784. The records of the case are hereby **REMANDED** to the Regional Trial Court of Las Piñas City, Branch 253, for trial on the merits. In light of the age of this case, we hereby **DIRECT** the Regional Trial Court to prioritize the hearing and disposition of this case.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 178288. August 15, 2012]

SPOUSES CHARLIE FORTALEZA and OFELIA FORTALEZA, *petitioners, vs.* **SPOUSES RAUL LAPITAN and RONA LAPITAN,** *respondents.*

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[26] *Supra* note 15.

[*] Designated as Acting Member of the Second Division in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1274 dated July 30, 2012.

SYLLABUS

1. REMEDIAL LAW; 2009 INTERNAL RULES OF THE COURT OF APPEALS (IRCA); RAFFLE OF CASES; THE TWO-RAFFLE SYSTEM IS ALREADY ABANDONED UNDER THE 2009 IRCA; AS THE RULE NOW STANDS, THE JUSTICE TO WHOM A CASE IS RAFFLED SHALL ACT ON IT BOTH AT THE COMPLETION STAGE AND FOR THE DECISION ON THE MERITS.— True, under the 2002 Internal Rules of the Court of Appeals (IRCA), appealed civil cases undergo two-raffle system. First, a preliminary raffle is held to determine the Justice to whom the case will be assigned for completion of records. After completion, a second raffle is conducted to determine the Justice to whom the case will be assigned for study and report. "Each stage is distinct [and] it may happen that the Justice to whom the case was initially raffled for completion may not be the same Justice who will write the decision thereon." x x x However, the two-raffle system is already abandoned under the 2009 IRCA. As the rule now stands, the Justice to whom a case is raffled shall act on it both at the completion stage and for the decision on the merits.

2. ID.; ID.; ALLEGED DEFECT IN THE PROCESSING OF THE CASE BEFORE THE COURT OF APPEALS HAS BEEN EFFECTIVELY CURED; RULES OF PROCEDURE MAY BE MODIFIED AT ANY TIME AND BECOME EFFECTIVE AT ONCE, SO LONG AS THE CHANGE DOES NOT AFFECT VESTED RIGHTS.— [T]he alleged defect in the processing of this case before the CA has been effectively cured. We stress that rules of procedure may be modified at any time and become effective at once, so long as the change does not affect vested rights. Moreover, it is equally axiomatic that there are no vested rights to rules of procedure. Thus, unless spouses Fortaleza can establish a right by virtue of some statute or law, the alleged violation is not an actionable wrong. At any rate, the 2002 IRCA does not provide for the effect of non-compliance with the two-raffle system on the validity of the decision. Notably too, it does not prohibit the assignment by raffle of a case for study and report to a Justice who handled the same during its completion stage.

3. ID.; ID.; PERSONAL BIAS AND PREJUDGMENT CANNOT BE INFERRED FROM THE ALLEGED BREACH OF

RULES; CLEAR AND CONVINCING EVIDENCE IS REQUIRED TO PROVE BIAS AND PREJUDICE.— We also find that personal bias and prejudgment cannot be inferred from the alleged breach of internal rules. It is settled that clear and convincing evidence is required to prove bias and prejudice. Bare allegations and mere suspicions of partiality are not enough in the absence of evidence to overcome the presumption that a member of the court will undertake his noble role to dispense justice according to law and evidence and without fear or favor. Moreover, no acts or conduct of the division or the *ponente* was shown to indicate any arbitrariness against the spouses Fortaleza. What is extant is that the opinions formed in the course of judicial proceedings are all based on the evidence presented.

4. CIVIL LAW; CONTRACTS; MORTGAGE; LAW ON EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; (ACT NO. 3135); WRIT OF POSSESSION; THE OBLIGATION OF A COURT TO ISSUE A WRIT OF POSSESSION CEASES TO BE MINISTERIAL ONLY IF THERE IS A THIRD PARTY HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR.— [T]he cited authorities are not on all fours with this case. In *Barican*, we held that the obligation of a court to issue a writ of possession ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor. Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession. And in *Cometa*, there was a pending action where the validity of the levy and sale of the properties in question were directly put in issue which this Court found pre-emptive of resolution. For if the applicant for a writ of possession acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession. Moreover, it is undisputed that the properties subject of said case were sold at an unusually lower price than their true value. Thus, equitable considerations motivated this Court to withhold the issuance of the writ of possession to prevent injustice on the other party. Here, there are no third parties holding the subject property adversely to the judgment debtor. It was spouses Fortaleza themselves as debtors-mortgagors who are occupying the subject property. They are not even strangers to the foreclosure proceedings in which the *ex parte* writ of possession was applied for.

Significantly, spouses Fortaleza did not file any direct action for annulment of the foreclosure sale of the subject property. Also, the peculiar circumstance of gross inadequacy of the purchase price is absent. Accordingly, unless a case falls under recognized exceptions provided by law and jurisprudence, we maintain the *ex parte*, non-adversarial, summary and ministerial nature of the issuance of a writ of possession as outlined in Section 7 of Act No. 3135, as amended by Act No. 4118.

5. ID.; ID.; ID.; ID.; RESPONDENTS SUFFICIENTLY ESTABLISHED THEIR RIGHT TO THE WRIT OF POSSESSION IN CASE AT BAR; THE ONE-YEAR PERIOD FOR PETITIONERS TO REDEEM THE MORTGAGED PROPERTY HAS ELAPSED, AS A CONSEQUENCE THEREOF, THE OWNERSHIP OF THE SUBJECT PROPERTY HAD ALREADY BEEN CONSOLIDATED AND A NEW CERTIFICATE OF TITLE HAD BEEN ISSUED UNDER THE NAME OF RESPONDENTS.— Under [Section 7 of Act No. 3135] the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period. Notably, in this case, the one-year period for the spouses Fortaleza to redeem the mortgaged property had already lapsed. Furthermore, ownership of the subject property had already been consolidated and a new certificate of title had been issued under the name of the spouses Lapitan. Hence, as the new registered owners of the subject property, they are even more entitled to its possession and have the unmistakable right to file an *ex parte* motion for the issuance of a writ of possession. As aptly explained in *Edralin v. Philippine Veterans Bank*, the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment. x x x In this case, spouses Lapitan sufficiently established their right to the writ of possession. More specifically, they presented the following documentary exhibits: (1) the Certificate of Sale and its annotation at the back of spouses Fortaleza's TCT No. T-412512; (2) the Affidavit of Consolidation proving that spouses Fortaleza failed to redeem the property within the one-year redemption period; (3) TCT No. T-535945 issued in their names; and, (4) the formal demand on spouses Fortaleza to vacate the subject property.

6. ID.; ID.; ID.; ID.; ANY QUESTION REGARDING THE REGULARITY AND VALIDITY OF THE MORTGAGE

OR ITS FORECLOSURE CANNOT BE RAISED AS A JUSTIFICATION FOR OPPOSING THE PETITION FOR THE ISSUANCE OF THE WRIT OF POSSESSION; THE ISSUES MAY BE RAISED AND DETERMINED ONLY AFTER THE ISSUANCE OF THE WRIT OF POSSESSION.— [W]e agree with the CA that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the petition for the issuance of the writ of possession. The said issues may be raised and determined only after the issuance of the writ of possession. Indeed, "[t]he judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure." The writ issues as a matter of course. "The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership." To underscore this mandate, Section 8 of Act No. 3135 gives the debtor-mortgagor the right to file a petition for the setting aside of the foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ was issued within 30 days after the purchaser-mortgagee was given possession. The court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal. "Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately."

7. ID.; ID.; ID.; ID.; PETITIONERS' NEGLIGENCE OR OMISSION TO EXERCISE THE RIGHT OF REDEMPTION WITHIN THE PRESCRIBED PERIOD WITHOUT JUSTIFIABLE CAUSE OPERATES AS WAIVER AND ABANDONMENT OF THEIR RIGHT TO REDEEM THE FORECLOSED PROPERTY.— Spouses Fortaleza's argument that the subject property is exempt from forced sale because it is a family home deserves scant consideration. As a rule, the family home is exempt from execution, forced sale or attachment. However, Article 155(3) of the Family Code explicitly allows the forced sale of a family

home "*for debts secured by mortgages on the premises before or after such constitution.*" In this case, there is no doubt that spouses Fortaleza voluntarily executed on January 28, 1998 a deed of Real Estate Mortgage over the subject property which was even notarized by their original counsel of record. And assuming that the property is exempt from forced sale, spouses Fortaleza did not set up and prove to the Sheriff such exemption from forced sale before it was sold at the public auction. As elucidated in *Honrado v. Court of Appeals*: While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. **Failure to do so would estop the party from later claiming the exemption**. As this Court ruled in *Gomez v. Gealone*: Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself at the time of the levy or within a reasonable period thereafter[.] Certainly, reasonable time for purposes of the law on exemption does not mean a time after the expiration of the one-year period for a judgment debtor to redeem the property.

8. ID.; FAMILY CODE; THE FAMILY HOME; TO BE EXEMPT FROM FORCED SALE THE CLAIM FOR EXEMPTION SHOULD BE SET UP AND PROVED TO THE SHERIFF BEFORE THE SALE OF THE PROPERTY AT PUBLIC AUCTION; FAILURE TO DO SO WOULD ESTOP THE PARTY FROM LATER CLAIMING THE EXEMPTION.— Equally without merit is spouses Fortaleza's reliance on the cases of *Tolentino* and *De Los Reyes* in praying for the exercise of the right of redemption even after the expiration of the one-year period. In *Tolentino*, we held that an action to redeem filed within the period of redemption, with a simultaneous deposit of the redemption money tendered to the sheriff, is equivalent to an offer to redeem and has the effect of preserving the right to redemption for future enforcement even beyond the one-year period. And in *De Los Reyes*, we allowed the mortgagor to redeem the disputed property after finding that the tender of the redemption price to the

sheriff was made within the one-year period and for a sufficient amount. The circumstances in the present case are far different. The spouses Fortaleza neither filed an action nor made a formal offer to redeem the subject property accompanied by an actual and simultaneous tender of payment. It is also undisputed that they allowed the one-year period to lapse from the registration of the certificate of sale without redeeming the mortgage. For all intents and purposes, spouses Fortaleza have waived or abandoned their right of redemption. Although the rule on redemption is liberally interpreted in favor of the original owner of the property, we cannot apply the privilege of liberality to accommodate the spouses Fortaleza due to their negligence or omission to exercise the right of redemption within the prescribed period without justifiable cause.

APPEARANCES OF COUNSEL

Edilberto B. Cosca for petitioners.
Angelita S. Gramaje for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Unless a case falls under recognized exceptions provided by law and jurisprudence, courts should maintain the *ex parte*, non-adversarial, summary and ministerial nature of the issuance of a writ of possession.

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] of the Court of Appeals (CA) dated January 10, 2007 in CA-G.R. CV No. 86287 which affirmed the Order[3] of the Regional Trial Court (RTC) of Calamba City, Branch 35, dated September 16, 2005 in SLRC

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[1] *Rollo*, pp. 11-42.

[2] CA *rollo*, pp. 337-346; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas.

[3] *Rollo*, pp. 85-89; penned by Judge Romeo C. de Leon.

Case No. 2528-2004-C granting an *ex parte* petition for the issuance of writ of possession. Likewise assailed is the CA Resolution[4] dated June 6, 2007 which denied the Motion for Reconsideration[5] of the said assailed Decision.

Factual Antecedents

Spouses Charlie and Ofelia Fortaleza (spouses Fortaleza) obtained a loan from spouses Rolando and Amparo Lapitan (creditors) in the amount of ₱1.2 million subject to 34% interest *per annum*. As security, spouses Fortaleza executed on January 28, 1998 a Deed of Real Estate Mortgage[6] over their residential

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[4] CA *rollo*, pp. 388-389.

[5] *Id.* at 349-368.

[6] *Rollo*, pp. 166-167. Real Estate Mortgage:

That the MORTGAGORS hereby acknowledge being indebted unto the MORTGAGEE[S] in the total sum of ONE MILLION TWO HUNDRED THOUSAND PESOS (₱1,200,000.00) x x x which debt the MORTGAGORS undertake and promise to pay to the [MORTGAGEE] within a period of SIX MONTHS from signing hereof, without need of demand, with an interest at the bank rate of 34%. Provided that if the MORTGAGORS fail to pay their indebtedness when due, the MORTGAGEE[S] may extend the period of payment for another SIX (6) MONTHS, on the condition that the MORTGAGORS will pay the accrued interest thereon and part of the principal loan amount.

That, as security for the full payment of the above indebtedness of ₱1,200,000.00 plus accrued interest, the MORTGAGORS hereby transfers [sic] and conveys [sic] by way [of] First Mortgage in favor of the MORTGAGEE[S], [their] heirs and assigns, a certain parcel of land situated and a residential house both at Bo. Anos, Los Baños, Laguna embraced under Transfer Certificate of Title No. T-412512 and Tax Declaration No. 002-3789 x x x.

x x x x x x x x x

Provided that if the total indebtedness of ₱1,200,000.00 plus the accrued interest is not paid within the specified period of SIX (6) MONTHS from signing hereof, or its SIX (6) MONTHS extension, then this mortgage shall be immediately foreclosed either judicially or extrajudicially as provided by law at the option of the MORTGAGEE[S]. For this purpose the MORTGAGEE[S] [are] hereby appointed and constituted attorney[s]-in-fact of the MORTGAGORS with full power and authority to take possession of the mortgaged property and sell the same at public auction x x x.

house and lot situated in Barrio Anos, Municipality of Los Baños, Laguna (subject property) registered under Transfer Certificate of Title (TCT) No. T-412512.[7]

When spouses Fortaleza failed to pay the indebtedness including the interests and penalties, the creditors applied for extrajudicial foreclosure of the Real Estate Mortgage before the Office of the Clerk of Court and *Ex-Officio* Sheriff of Calamba City. The public auction sale was set on May 9, 2001.

At the sale, the creditors' son Dr. Raul Lapitan and his wife Rona (spouses Lapitan) emerged as the highest bidders with the bid amount of ₱2.5 million. Then, they were issued a Certificate of Sale[8] which was registered with the Registry of Deeds of Calamba City and annotated at the back of TCT No. T-412512 under Entry No. 615683 on November 15, 2002.[9]

The one-year redemption period expired without the spouses Fortaleza redeeming the mortgage. Thus, spouses Lapitan executed an affidavit of consolidation of ownership on November 20, 2003 and caused the cancellation of TCT No. T-412512 and the registration of the subject property in their names under TCT No. T-535945[10] on February 4, 2004. Despite the foregoing, the spouses Fortaleza refused spouses Lapitan's formal demand[11] to vacate and surrender possession of the subject property.

Proceedings before the Regional Trial Court

On August 27, 2004, spouses Lapitan filed an *ex parte* petition for the issuance of writ of possession with Branch 35 of the RTC of Calamba City docketed as SLRC Case No. 2528-2004-C.[12] As new registered owners of the subject property, spouses Lapitan

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[7] *Id.* at 160-163.

[8] Issued on October 24, 2002, *id.* at 164-165.

[9] *Id.* at 163.

[10] *Id.* at 157.

[11] Demand Letter dated August 17, 2004, *id.* at 168.

[12] *Id.* at 57-61.

claimed that they were entitled to its possession pursuant to Section 7 of Act No. 3135,[13] as amended by Act No. 4118.

In their opposition,[14] spouses Fortaleza questioned the validity of the real estate mortgage and the foreclosure sale. They argued that the mortgage was void because the creditors bloated the principal amount by the imposition of exorbitant interest. Spouses Fortaleza added that the foreclosure proceeding was invalid for non-compliance with the posting requirement.

Later, for repeated failure of spouses Fortaleza to appear at the scheduled hearings, the RTC allowed spouses Lapitan to present evidence *ex parte*.

Eventually, on September 16, 2005, the RTC ordered the issuance of a writ of possession explaining that it is a ministerial duty of the court especially since the redemption period had expired and a new title had already been issued in the name of the spouses Lapitan, thus:

> WHEREFORE, premises considered, the Opposition with counterclaim filed by the respondents is denied while this instant petition is hereby granted.
>
> Accordingly, the Branch Clerk of Court is hereby ordered to issue a Writ of Possession directing the provincial sheriff of Laguna to place the petitioner in possession of the above described property free from any adverse occupants thereof.
>
> SO ORDERED.[15]

Spouses Fortaleza moved for reconsideration,[16] claiming that the subject property is their family home and is exempt from foreclosure sale. On October 11, 2005, however, the RTC issued an Order[17] denying their motion. Accordingly, the branch clerk

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[13] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages. Approved March 6, 1924.

[14] *Rollo*, pp. 63-68.

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

[16] See Motion for Reconsideration dated September 19, 2005, *id.* at 90-93.

[17] *Id.* at 106-108.

of court issued the Writ of Possession[18] and the sheriff served the corresponding Notice to Vacate[19] against spouses Fortaleza.

Proceedings before the Court of Appeals

Dissatisfied, spouses Fortaleza elevated the case to the CA *via* Rule 41 of the Rules of Court docketed as CA-G.R. CV No. 86287. With the perfection of an appeal, the RTC held in abeyance the implementation of the writ.[20] After the parties submitted their respective briefs, the CA rendered the assailed Decision[21] dated January 10, 2007 dismissing the appeal:

> WHEREFORE, the appeal is hereby DISMISSED. The Order dated September 16, 2005 of the Regional Trial Court, Branch 35, Calamba City in SLRC Case No. 2528-2004-SC, is AFFIRMED. The court a quo is DIRECTED to enforce the Writ of Possession it issued on October 24, 2005.
>
> SO ORDERED.[22]

In affirming the ruling of the RTC, the CA stressed that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the issuance of the writ of possession since the proceedings is *ex parte* and non-litigious. Moreover, until the foreclosure sale is annulled, the issuance of the writ of possession is ministerial.

Issues

Unsuccesful with their quest to have the CA reconsider its Decision,[23] spouses Fortaleza filed this petition for review on *certiorari*[24] raising the following errors:

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

[19] *Id.* at 111.

[20] See Order dated October 26, 2005, *id.* at 113.

[21] CA *rollo*, pp. 337-346.

[22] *Id.* at 345.

[23] See Resolution dated June 6, 2007, *id.* at 388-389.

[24] *Rollo*, pp. 11-42.

I

WHETHER X X X THE HONORABLE COURT OF APPEALS VIOLATED THE TWO (2)-RAFFLE RULE PRESCRIBED BY AND LONG ESTABLISHED UNDER THE REVISED INTERNAL RULES OF THE COURT OF APPEALS WHEN IT IMMEDIATELY RENDERED THE ASSAILED DECISION BARELY AFTER THE SUBMISSION OF THE PARTIES' BRIEFS. IN SO DOING, THE HONORABLE COURT OF APPEALS ENGAGED IN PROCEDURAL SHORTCUTS AND ACTED WITH UNDUE HASTE AND INDECENT SPEED, THUS RENDERING ITS DECISION AS NULL AND VOID AND CHARACTERIZED BY MANIFEST BIAS AND PARTIALITY TO THE RESPONDENTS.

II

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN UPHOLDING THE TRIAL COURT'S ISSUANCE OF A WRIT OF POSSESSION DESPITE THE FACT THAT THE RESPONDENTS FAILED TO ESTABLISH THEIR ENTITLEMENT TO THE ISSUANCE OF SAID WRIT, THE NON-COMPLIANCE BY THE ORIGINAL MORTGAGORS AND THE RESPONDENTS OF THE STATUTORY REQUIREMENTS OF EXTRAJUDICIAL FORECLOSURE OF MORTGAGE UNDER ACT NO. 3135, AND THE FATAL DEFECTS OF THE FORECLOSURE PROCEEDINGS.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PETITIONERS WERE PREVENTED BY THE RESPONDENTS FROM EXERCISING THEIR RIGHT OF REDEMPTION OVER THE FORECLOSED PROPERTY BY DEMANDING A REDEMPTION PRICE OF A HIGHLY INEQUITABLE AND MORE THAN DOUBLE THE AMOUNT OF THE FORECLOSED PROPERTY, ESPECIALLY THAT THE FORECLOSED MORTGAGED PROPERTY IS THE FAMILY HOME OF PETITIONERS AND THEIR CHILDREN.[25]

First, spouses Fortaleza point out that the CA violated its own 2002 Internal Rules of Procedure when it decided the case

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[25] *Id.* at 236-237.

without passing the two-raffle system. They claim that the justice assigned in the completion stage also decided the case on the merits. This procedural shortcut, according to spouses Fortaleza, evinces the appellate court's bias and prejudgment in favor of the spouses Lapitan.

Second, citing *Barican v. Intermediate Appellate Court*[26] and *Cometa v. Intermediate Appellate Court*,[27] and reiterating the irregularities that allegedly attended the foreclosure sale, the spouses Fortaleza insist that the issuance of writ of possession is not always ministerial and the trial court should have accorded them opportunity to present contrary evidence.

Last, spouses Fortaleza maintain that the subject property is a family home exempt from forced sale. Hence, in the spirit of equity and following the rulings in *Tolentino v. Court of Appeals*,[28] and *De los Reyes v. Intermediate Appellate Court*,[29] the Court should allow them to exercise the right of redemption even after the expiration of the one-year period.

Our Ruling

On Matters of Procedure

True, under the 2002 Internal Rules of the Court of Appeals (IRCA), appealed civil cases undergo two-raffle system. First, a preliminary raffle is held to determine the Justice to whom the case will be assigned for completion of records. After completion, a second raffle is conducted to determine the Justice to whom the case will be assigned for study and report. "Each stage is distinct [and] it may happen that the Justice to whom the case was initially raffled for completion may not be the same Justice who will write the decision thereon."[30] Thus:

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[26] 245 Phil. 316 (1988).

[27] 235 Phil. 569 (1987).

[28] 193 Phil. 663 (1981).

[29] 257 Phil. 406 (1989).

[30] *De Liano v. Court of Appeals*, 421 Phil. 1033, 1050-1051 (2001).

Section 2. *Raffle of Cases.* —

(a) Assignment of cases to a Justice, whether for completion of records or for study and report, shall be by raffle, subject to the following rules:

(1) Appealed cases for completion of records shall be raffled to individual Justices; (Sec. 5(a), Rule 3, RIRCA [a])

(1.1) Records are deemed completed upon filing of the required briefs or memoranda or the expiration of the period for the filing thereof and resolution of all pending incidents. **Thereupon, the Division Clerk of Court shall report the case to the Justice concerned for the issuance of a resolution declaring the case submitted for decision and referring the same to the Raffle Committee for raffle to a Justice for study and report**; (Sec. 5(b), Rule 3, RIRCA [a]).[31] (Emphasis supplied.)

However, the two-raffle system is already abandoned under the 2009 IRCA. As the rule now stands, the Justice to whom a case is raffled shall act on it both at the completion stage and for the decision on the merits, thus:

SEC. 2. *Raffle of Cases.* —

(a) Cases shall be assigned to a Justice by raffle for completion of records, study and report, subject to the following rules:

(1) Cases, whether original or appealed, shall be raffled to individual justices;

(1.1) Records are deemed completed upon filing of the required pleadings, briefs or memoranda or the expiration of the period for the filing thereof and resolution of all pending incidents. **Upon such completion, the Division Clerk of Court shall report the case to the Justice concerned for the issuance of a resolution declaring the**

[31] Sec. 2, Rule 111, 2002 Internal Rules of the Court of Appeals, as amended.

> **case submitted for decision.**[32] (Emphasis supplied.)

Corollarily, the alleged defect in the processing of this case before the CA has been effectively cured. We stress that rules of procedure may be modified at any time and become effective at once, so long as the change does not affect vested rights.[33] Moreover, it is equally axiomatic that there are no vested rights to rules of procedure.[34] Thus, unless spouses Fortaleza can establish a right by virtue of some statute or law, the alleged violation is not an actionable wrong.[35] At any rate, the 2002 IRCA does not provide for the effect of non-compliance with the two-raffle system on the validity of the decision. Notably too, it does not prohibit the assignment by raffle of a case for study and report to a Justice who handled the same during its completion stage.

We also find that personal bias and prejudgment cannot be inferred from the alleged breach of internal rules. It is settled that clear and convincing evidence is required to prove bias and prejudice.[36] Bare allegations and mere suspicions of partiality are not enough in the absence of evidence to overcome the presumption that a member of the court will undertake his noble role to dispense justice according to law and evidence and without fear or favor.[37] Moreover, no acts or conduct of the division or the *ponente* was shown to indicate any arbitrariness against the spouses Fortaleza. What is extant is that the opinions formed

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[32] Sec. 2, Rule III, 2009 INTERNAL RULES OF THE COURT OF APPEALS.

[33] *Aguillon v. Director of Lands*, 17 Phil. 506, 508 (1910); *Laurel v. Misa*, 76 Phil. 372, 378 (1946).

[34] *Alindao v. Hon. Joson*, 332 Phil. 239, 251 (1996).

[35] See *Olsen & Co. v. Herstein and Rafferty*, 32 Phil. 520, 531 (1915).

[36] *Rockwell Perfecto Gohu v. Spouses Gohu*, 397 Phil. 126, 132 (2000).

[37] *Heirs of Generoso A. Juaban v. Bancale*, G.R. No. 156011, July 3, 2008, 557 SCRA 1, 13. See also *People v. Governor Kho*, 409 Phil. 326, 336 (2001), citing *Go v. Court of Appeals*, G.R. No. 106087, April 7, 1993, 221 SCRA 397, 409-410; *Abad v. Judge Belen*, 310 Phil. 832, 836 (1995); *Webb v. People*, 342 Phil. 206, 216 (1997); *People v. Court of Appeals*, 369 Phil. 150, 158 (1999).

in the course of judicial proceedings are all based on the evidence presented.

On the Issuance of Writ of Possession

Spouses Fortaleza claim that the RTC grievously erred in ignoring the apparent nullity of the mortgage and the subsequent foreclosure sale. For them, the RTC should have heard and considered these matters in deciding the case on its merits. They relied on the cases of *Barican*[38] and *Cometa*[39] in taking exception to the ministerial duty of the trial court to grant a writ of possession.

But the cited authorities are not on all fours with this case. In *Barican*, we held that the obligation of a court to issue a writ of possession ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor. Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession. And in *Cometa*, there was a pending action where the validity of the levy and sale of the properties in question were directly put in issue which this Court found pre-emptive of resolution. For if the applicant for a writ of possession acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession. Moreover, it is undisputed that the properties subject of said case were sold at an unusually lower price than their true value. Thus, equitable considerations motivated this Court to withhold the issuance of the writ of possession to prevent injustice on the other party.

Here, there are no third parties holding the subject property adversely to the judgment debtor. It was spouses Fortaleza themselves as debtors-mortgagors who are occupying the subject property. They are not even strangers to the foreclosure proceedings in which the *ex parte* writ of possession was applied for. Significantly, spouses Fortaleza did not file any direct action for annulment of the foreclosure sale of the subject property.

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[38] *Supra* note 26.

[39] *Supra* note 27.

Also, the peculiar circumstance of gross inadequacy of the purchase price is absent.

Accordingly, unless a case falls under recognized exceptions provided by law[40] and jurisprudence,[41] we maintain the *ex parte*, non-adversarial, summary and ministerial nature of the issuance of a writ of possession as outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides:

> SECTION 7. 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 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** x x x 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. (Emphasis supplied.)

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period. Notably, in this case, the one-year period for the spouses Fortaleza to redeem the mortgaged property had already lapsed. Furthermore, ownership of the subject property had already been consolidated and a new certificate of title had been issued under the name of the spouses Lapitan. Hence, as the new registered owners of the subject property, they are even more entitled to its possession and have the unmistakable right to file an *ex parte* motion for the issuance of a writ of possession. As aptly

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[40] Rules of Court, Rule 39, Section 35, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135.

[41] See *Metropolitan Bank and Trust Co. v. Lamb Construction Consortium Corporation*, G.R. No. 170906, November 27, 2009, 606 SCRA 159; *Cometa v. Intermediate Appellate Court*, *supra* note 27; *Sulit v. Court of Appeals*, 335 Phil. 914 (1997).

explained in *Edralin v. Philippine Veterans Bank*,[42] the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment, thus:

> Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. x x x The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. **At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.** (Emphasis in the original.)

In this case, spouses Lapitan sufficiently established their right to the writ of possession. More specifically, they presented the following documentary exhibits: (1) the Certificate of Sale and its annotation at the back of spouses Fortaleza's TCT No. T-412512; (2) the Affidavit of Consolidation proving that spouses Fortaleza failed to redeem the property within the one-year redemption period; (3) TCT No. T-535945 issued in their names; and, (4) the formal demand on spouses Fortaleza to vacate the subject property.

Lastly, we agree with the CA that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the petition for the issuance of the writ of possession.[43] The said issues may be raised and determined only after the issuance of the writ of possession.[44] Indeed, "[t]he judge with whom an application for writ of possession is filed need not look into the validity of

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[42] G.R. No. 168523, March 9, 2011, 645 SCRA 75, 85-86.

[43] See *Chailease Finance Corporation v. Spouses Ma*, 456 Phil. 498, 505-506 (2003).

[44] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

the mortgage or the manner of its foreclosure."[45] The writ issues as a matter of course. "The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership."[46] To underscore this mandate, Section 8[47] of Act No. 3135 gives the debtor-mortgagor the right to file a petition for the setting aside of the foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ was issued within 30 days after the purchaser-mortgagee was given possession. The court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal.

"Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately."[48]

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[45] *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149.

[46] *Bank of the Philippine Islands v. Tarampi*, G.R. No. 174988, December 10, 2008, 573 SCRA 537, 543-544, citing *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 865 (2000).

[47] Section 8. *Setting aside of sale and writ of possession.* — **The debtor may, in the proceedings in which possession was requested,** but not later than thirty days after the purchaser was given possession, **petition that the sale be set aside and the writ of possession cancelled,** specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphases supplied.)

[48] *Bank of the Philippine Islands v. Tarampi*, *supra* note 46 at 544, citing *Chailease Finance Corporation v. Spouses Ma*, *supra* note 43.

On exemption of the subject property and the exercise of right of redemption

Spouses Fortaleza's argument that the subject property is exempt from forced sale because it is a family home deserves scant consideration. As a rule, the family home is exempt from execution, forced sale or attachment.[49] However, Article 155(3) of the Family Code explicitly allows the forced sale of a family home "*for debts secured by mortgages on the premises before or after such constitution*." In this case, there is no doubt that spouses Fortaleza voluntarily executed on January 28, 1998 a deed of Real Estate Mortgage over the subject property which was even notarized by their original counsel of record. And assuming that the property is exempt from forced sale, spouses Fortaleza did not set up and prove to the Sheriff such exemption from forced sale before it was sold at the public auction. As elucidated in *Honrado v. Court of Appeals*:[50]

> While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. **Failure to do so would estop the party from later claiming the exemption**. As this Court ruled in *Gomez v. Gealone*:
>
> > Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself at the time of the levy or within a reasonable period thereafter[.][51] (Emphasis supplied.)

Certainly, reasonable time for purposes of the law on exemption does not mean a time after the expiration of the one-year period for a judgment debtor to redeem the property.[52]

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[49] See Article 155 of the Family Code.

[50] 512 Phil. 657 (2005).

[51] *Id.* at 666.

[52] *Spouses De Mesa v. Spouses Acero*, G.R. No. 185064, January 16, 2012.

Equally without merit is spouses Fortaleza's reliance on the cases of *Tolentino*[53] and *De Los Reyes*[54] in praying for the exercise of the right of redemption even after the expiration of the one-year period. In *Tolentino*, we held that an action to redeem filed within the period of redemption, with a simultaneous deposit of the redemption money tendered to the sheriff, is equivalent to an offer to redeem and has the effect of preserving the right to redemption for future enforcement even beyond the one-year period.[55] And in *De Los Reyes*, we allowed the mortgagor to redeem the disputed property after finding that the tender of the redemption price to the sheriff was made within the one-year period and for a sufficient amount.

The circumstances in the present case are far different. The spouses Fortaleza neither filed an action nor made a formal offer to redeem the subject property accompanied by an actual and simultaneous tender of payment. It is also undisputed that they allowed the one-year period to lapse from the registration of the certificate of sale without redeeming the mortgage. For all intents and purposes, spouses Fortaleza have waived or abandoned their right of redemption. Although the rule on redemption is liberally interpreted in favor of the original owner of the property, we cannot apply the privilege of liberality to accommodate the spouses Fortaleza due to their negligence or omission to exercise the right of redemption within the prescribed period without justifiable cause.

WHEREFORE, premises considered, the petition is **DENIED.** The Decision dated January 10, 2007 and Resolution dated June 6, 2007 of the Court of Appeals in CA-G.R. CV No. 86287 are **AFFIRMED.**

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[53] *Supra* note 28.

[54] *Supra* note 29.

[55] See also *Belisario v. Intermediate Appellate Court*, 247-A Phil. 184 (1988).

SO ORDERED.

Carpio[*] *(Senior Associate Justice), Leonardo-de Castro,*[**] *(Acting Chairperson), Bersamin,* and *Villarama, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 179677. August 15, 2012]

ROMEO M. MONTALLANA, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and the HON. COURT OF APPEALS (FIFTEENTH DIVISION),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS NEGLECT OF DUTY AND GROSS NEGLIGENCE; EXPLAINED.— Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

2. ID.; ID.; ID.; DUTIES AND RESPONSIBILITIES; PETITIONER MISERABLY FAILED TO PERFORM HIS DUTIES AS A PUBLIC SERVANT.— It is worth to reiterate that a public office is a public trust. Public officers and employees

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[*] Per Special Order No. 1284 dated August 6, 2012.

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

must, at all time, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. As a public servant, petitioner is tasked to provide efficient, competent, and proper service to the public. Public official and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability. In the case at bar, petitioner miserably failed to perform his duties as a public servant.

3. ID.; ID.; ID.; ID.; ADMINISTRATIVE LIABILITY FOR GROSS NEGLIGENCE BASED ON THE PRINCIPLE OF COMMAND RESPONSIBILITY; ESTABLISHED IN CASE AT BAR.— True, this Court has held in several cases that in the absence of substantial evidence of gross negligence of the petitioner, administrative liability could not be based on the principle of command responsibility. However, in the case at bar, the findings of the Office of the Ombudsman, as affirmed by the CA, clearly establish the negligence of petitioner in the performance of his duties as head of the Electrical Division. Among the duties and responsibilities attached to the Electrical Division of Quezon City is to conduct annual inspection of existing electrical installations within the jurisdiction of Quezon City. Section 3 (B) of Ordinance No. SP-33, S-92, or the Ordinance Creating an Electrical Division Under the Engineering Department of Quezon City and Providing for its Personnel Requirements, Duties and Functions, as well as Appropriating the Necessary Funds Therefor, provides that: Section 3. The Electrical Division shall have the following duties and functions: A. Formulate, evaluate and supervise the electrical aspects of the construction projects undertaken by the city; B. Inspect the electrical installations of the newly constructed structures in the City and *undertake annual inspections of existing electrical installation*; x x x. Thus, it was incumbent on petitioner as head of the Electrical Division to see to it that proper annual inspections are conducted on the existing electrical installations in Quezon City. Records would disclose that the charges against petitioner were supported by the evidence on record. It has been sufficiently established by the FFIB and concurred to by the Ombudsman as well as the CA.

4. ID.; ID.; ID.; ID.; PETITIONER'S NEGLIGENCE IN THE PERFORMANCE OF HIS DUTIES AS A PUBLIC SERVANT

WAS WELL ESTABLISHED BY SUBSTANTIAL EVIDENCE.— The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. From the foregoing, petitioner's negligence in the performance of his duties as a public servant was well established. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

5. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE BODIES IF BASED ON SUBSTANTIAL EVIDENCE ARE CONTROLLING ON THE REVIEWING AUTHORITY.— Suffice it to state that in this jurisdiction the well-settled rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is settled that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law. Consequently, the CA correctly affirmed the conclusion of the Office of the Ombudsman.

6. ID.; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE ISSUE OF WHETHER PETITIONER'S GUILT ON THE ADMINISTRATIVE CHARGE AGAINST HIM IS SUPPORTED BY SUBSTANTIAL EVIDENCE IS FACTUAL IN NATURE, THE DETERMINATION OF WHICH IS BEYOND THE AMBIT OF THE COURT.— The issue of whether petitioner's guilt on the administrative charges against him is supported by substantial evidence is factual in nature, the determination of which is beyond the ambit of this Court. The task of this Court in an appeal by petition for review on *certiorari* as a jurisdictional matter is limited to reviewing errors of law that might have been committed by the CA. The Supreme Court cannot be tasked to go over the proofs presented by the petitioner in the proceedings below and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence. This Court has time and again

refrained from interfering with the Ombudsman's exercise of its constitutionally mandated investigatory and prosecutor powers. This is in recognition of the Office of the Ombudsman's independence and initiative in prosecuting or dismissing a complaint filed before it. More so, in the case at bar, where the CA affirmed the factual findings and conclusion of the Office of the Ombudsman. Although there are exceptions to this rule, none of which exists in the present case.

APPEARANCES OF COUNSEL

Roberto C. Diokno for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated May 28, 2007 of the Court of Appeals in CA-G.R. SP No. 93898 denying the petition filed by petitioner Romeo M. Montallana and the Resolution[2] dated September 17, 2007 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

In the early hours of August 18, 2001, fire struck and engulfed the Manor Hotel in Kamias Road, Quezon City, claiming the lives of seventy-four people and seriously injuring several others.

To determine the officials and persons responsible for this tragedy, an investigation was conducted by the Fact-Finding & Intelligence Bureau (FFIB) of the Office of the Ombudsman (OMB). The FFIB found that the fire that consumed the Manor Hotel was attributable to the hotel's faulty electrical wiring systems. It concluded that, had it not been for the gross negligence

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[1] Penned by Associate Justice Marlene Gonzalez-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring; *rollo*, pp. 34-50.

[2] *Id.* at 51.

of the public officials of the local government of Quezon City, who were in charge in the licensing operations of the Manor Hotel, the incident would not have happened.

Consequently, a formal complaint was filed against petitioner, with several other public officials, before the Administrative Adjudication Bureau of the OMB, for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Gross Negligence docketed as OMB-ADM-0-01-0376 (OMB-0-01-0659) and for Violation of Section 4, Republic Act (R.A.) No. 6713, docketed as OMB-ADM-0-01-0390 (OMB-0-01-0679).

The complaint alleged, among other things, that:

1. From 1995 up to 2000, the Electrical Division, Engineering Department did not conduct an annual inspection of the electrical systems of Manor Hotel.

2. The Electrical Division does not even have a copy of the electrical plans and specifications of Manor Hotel as required under Rule II, 3.2.2.4 of the Rules Implementing the Building Code.

3. There was an unreadable Certificate of Inspection No. 90-11814 which was made as an attachment to the application of Manor Hotel for business/mayor's permit for 2001.

4. The Annual Notice of Electrical Inspection dated February 15, 2001 conducted by Gerardo R. Villaseñor, Electrical Inspector, concurred by Engr. Rodel A. Mesa and petitioner, shows that Manor Hotel has only 89 air-conditioning units at the time of inspection disclosing a great disparity as to the true electrical load of the Manor Hotel at the time of the incident.

5. The Electrical Division likewise negligently or deliberately failed to indicate in its report that as of September 25, 2000, four (4) electrical meters of the Manor Hotel were disconnected by MERALCO due to jumper connections.[3]

Pending investigation, petitioner and his co-respondents were preventively suspended. On September 24, 2001, petitioner filed

[3] CA Decision, *rollo*, pp. 36-37.

his Counter-Affidavit.[4] On February 20, 2002, petitioner filed his Consolidated Memorandum.[5]

For his part, petitioner raised the following defenses:

1. [D]uring his incumbency as Chief of the Electrical Division, the mandatory electrical inspections were regularly conducted and made annually by the assigned inspector(s) in all business establishments within the jurisdiction of Quezon City, including the Manor Hotel.

2. For year 2000, Electrical Inspector Villaseñor inspected the electrical systems of Manor Hotel and submitted to him the Notice of Annual Inspection dated February 15, 2001 with No. 01-00896, with a Certification by Edgardo M. Merida, a licensed electrical contractor, to the effect that the electrical installations and equipment at the hotel were inspected and tested by the latter and found to be in safe condition. He (Montallana) signed and approved the same based on the facts set forth therein, relying in good faith on the correctness of the entries made by his inspectors.

3. The requested official records which could prove that mandatory annual electrical inspection were conducted at the Manor Hotel from 1995 to 2000 cannot be produced as these could have been lost due to frequent transfers of office and lack of storage rooms or were among those damaged by the fire that razed the Quezon City Hall main building sometime in August 1998.

4. Assuming there was misrepresentation as to the true electrical status of the Manor Hotel on the latest inspection conducted six (6) months prior to the subject fire incident, as a superior officer, he cannot be held liable for the acts of his subordinates as he only based his approval on their reports.[6]

On June 17, 2003, the Investigating Panel of the OMB rendered a Decision[7] finding petitioner liable for Conduct Prejudicial to

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[4] *Rollo*, pp. 87-89.

[5] *Id.* at 97-115.

[6] *Id.* at 37-38.

[7] *Id.* at 116-191.

the Best Interest of the Service and Gross Neglect of Duty and meted upon him the penalty of dismissal from the service with all its accessory penalties, the decretal portion on which reads:

> **WHEREFORE,** premises considered, we rule and so hold as follows:
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> 1). **OMB-ADM-0-01-0376**:
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> a). x x x
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> b). x x x
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> c). Respondents x x x **ROMEO M. MONTALLANA** x x x, are hereby found **GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND GROSS NEGLECT OF DUTY**, and for which they are hereby meted the penalty of **DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES.**
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> x x x x x x x x x
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> The Honorable Mayor of Quezon City, and the Honorable Secretary of the Department of Interior and Local Government are hereby directed to implement this **DECISION** upon finality thereof and in accordance with law.
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> **SO ORDERED.**[8]

On July 26, 2004, the Office of the Special Prosecutor of the OMB issued a Memorandum[9] which modified the Joint Decision insofar as petitioner and the other respondents are concerned. In the said Memorandum, petitioner was also found guilty of gross negligence and conduct prejudicial to the best interest of the service. It was also stated therein that since petitioner was already separated from the service due to his retirement, the benefits he received by virtue thereof must be returned to the government as declared in the Affidavit of Undertaking which he executed before his retirement. The said Memorandum was approved by then Ombudsman Simeon V. Marcelo on November 26, 2004.

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[8] *Id.* at 184-186. (Emphasis supplied.)

[9] *Id.* at 192-227.

Aggrieved, petitioner filed a Motion for Reconsideration.[10] On March 2, 2006, the Office of the Special Prosecutor issued a Memorandum[11] denying the motion. The said Memorandum was approved by then Ombudsman Ma. Merceditas Navarro-Gutierrez on March 13, 2006, [12] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, there having been no cogent and convincing arguments and pieces of evidence to set aside the assailed Memorandum, the undersigned prosecution officers respectfully recommend that the motions for reconsideration filed by herein accused be DENIED for utter lack of merit. It is further recommended that findings and recommendation contained in the Memorandum dated 26 July 2004 be AFFIRMED *in toto*.[13]

Not satisfied, petitioner sought recourse before the CA, docketed as CA-G.R. SP No. 93898. On May 28, 2007, the CA rendered a Decision[14] denying the petition, the decretal portion of which reads:

> In light of the foregoing, the instant petition is hereby DENIED. The Joint Decision dated June 17, 2003 and Memorandum dated July 26, 2004 of the Office of Ombudsman, in so far as herein petitioner is concerned, is AFFIRMED.
>
> SO ORDERED.[15]

In ruling against petitioner, the CA ratiocinated that between petitioner's unsubstantiated denials of the irregularities made in the electrical inspection of the Manor Hotel and the categorical findings of the investigators, there is no room for a contrary conclusion that petitioner is indeed administratively liable for his negligence. The CA held that petitioner cannot attribute the

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[10] *Id.* at 229-233.

[11] *Id.* at 234-264.

[12] CA *rollo*, p. 187.

[13] *Rollo*, p. 264.

[14] *Id.* at 34-50.

[15] *Id.* at 49-50.

fault to his subordinates. As head of office and the final approving authority of the Electrical Division, it behooves petitioner to see to it that his subordinate engineers and inspectors are performing their respective duties effectively. Petitioner should have made appropriate measures that can verify the veracity of their reports.

Petitioner filed a Motion for Reconsideration,[16] but it was denied in the Resolution[17] dated September 17, 2007.

Hence, the petition assigning the following errors:

THE COURT OF APPEALS GRAVELY ERRED IN DENYING PETITIONER'S PETITION AND IN AFFIRMING [THE] OMBUDSMAN'S DECISION DISMISSING PETITIONER FROM THE SERVICE, IT APPEARING THAT THE QUESTIONED DECISION IS NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THIS HONORABLE COURT CONSIDERING THAT:

A. PUBLIC OFFICERS ARE IMMUNE FROM LIABILITY FOR THE ACTS AND OMISSIONS OF THEIR SUBORDINATES.

B. THE FINDINGS OF RESPONDENTS OMBUDSMAN AND COURT OF APPEALS ON THE ADMINISTRATIVE LIABILITY OF PETITIONER ARE BASED ON ASSUMPTION AND SPECULATION.[18]

Petitioner maintains that prior to the incident at the Manor Hotel, the Electrical Division, Engineering Department of Quezon City conducted an electrical inspection on the electrical systems and load of the said hotel. The inspection was conducted by Electrical Inspectors Gerardo Villaseñor and Edgardo Merida, which caused the issuance of the Notice of Annual Inspection[19] dated February 15, 2001 to the owner of Manor Hotel. The

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[16] *Id.* at 289-300.

[17] *Id.* at 51.

[18] *Id.* at 21.

[19] *Id.* at 93.

notice bore the signature of the two inspectors, who both certified that the electrical installations and equipment at the Manor Hotel were inspected and tested by them and found to be in safe condition. Petitioner then affixed his signature thereon signifying his approval of the reports made by his subordinates.

Petitioner insists that he signed the Notice of Annual Inspection in good faith. His act of signing the notice is incidental to his function as Acting Chief of the Electrical Division. By affixing his signature on the notice, petitioner relied in good faith on the correctness of the entries made therein by his subordinates. Petitioner contends that his reliance on the veracity of the report and entries made in the said notice is not constitutive of gross negligence.

Petitioner also posits that the Ombudsman and CA erred in concluding that no annual electrical inspections were conducted on the Manor Hotel prior to 2001. Petitioner submits that his failure to present copies of prior notice of inspection reports made on the Manor Hotel was due to the fact that the hotel was constructed and completed prior to the creation of the Electrical Division; it was only in 1996 that he became the Officer-in-Charge of the Electrical Division; that most of the records of the Electrical Division were lost or destroyed when a fire razed the 5th floor of the Quezon City Hall and when the Office of the Electrical Division was transferred several times to different parts of the Quezon City Hall.

Based on the foregoing, petitioner argues that he could not be held administratively liable based on the principle of command responsibility.

On its part, respondent maintains that the evidence presented before the Ombudsman showed that petitioner failed to live up to the exacting demands of public office. Petitioner was unmindful and indifferent of his duties and responsibilities. The negligent acts of petitioner clearly show that he failed to perform his official duties with the highest degree of responsibility and integrity, which eventually contributed to the tragic incident.

The petition is bereft of merit.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[20]

True, this Court has held in several cases that in the absence of substantial evidence of gross negligence of the petitioner, administrative liability could not be based on the principle of command responsibility.[21] However, in the case at bar, the findings of the Office of the Ombudsman, as affirmed by the CA, clearly establish the negligence of petitioner in the performance of his duties as head of the Electrical Division.

Among the duties and responsibilities attached to the Electrical Division of Quezon City is to conduct annual inspection of existing electrical installations within the jurisdiction of Quezon City. Section 3 (B) of Ordinance No. SP-33, S-92, or the Ordinance Creating an Electrical Division Under the Engineering Department of Quezon City and Providing for its Personnel Requirements, Duties and Functions, as well as Appropriating the Necessary Funds Therefor,[22] provides that:

Section 3. The Electrical Division shall have the following duties and functions:

A. Formulate, evaluate and supervise the electrical aspects of the construction projects undertaken by the city;

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[20] *Civil Service Commission v. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 541, 547.

[21] *De Jesus v. Guerrero* III, G.R. No. 171491, September 4, 2009, 598 SCRA 340, 353; *Principe v. Fact-Finding & Intelligence Bureau*, G.R. No. 145973, January 23, 2002, 374 SCRA 460, 468.

[22] Enacted on November 26, 1992 and approved on January 26, 1993.

B. Inspect the electrical installations of the newly constructed structures in the City and undertake annual inspections of existing electrical installations;
C. Evaluate and process applications for wiring permits and electrical certificates; and
D. Perform other related functions as may be required by the practice of Electrical Engineering as per requirements of the Philippine Electrical Code, the R.A. 184 and other related laws and ordinances.[23]

Thus, it was incumbent on petitioner as head of the Electrical Division to see to it that proper annual inspections are conducted on the existing electrical installations in Quezon City. Records would disclose that the charges against petitioner were supported by the evidence on record. It has been sufficiently established by the FFIB and concurred to by the Ombudsman as well as the CA that:

1. Records of the Business Permit & License Office revealed that Manor Hotel was issued a Certificate of Electrical Inspection only on its first year of operation in 1991. Manor Hotel was able to secure its business permits for years 1995, 1999, 2000 and 2001, without the necessary requirements for obtaining the same such as a Certificate of Electrical Inspection. Thus, for these years, there was no electrical inspection conducted. Further, the hotel did not apply and secure a business permit for year 1996, 1997, 1998 and it has no business permit at the time of the incident. Since there was no application for a business permit, there was likewise no referral for an electrical inspection to the Electrical Division, which is a Standard Operating Procedure in processing applications for business permits. Thus, for these years, there can be no electrical inspection conducted.

2. The logbook presented reflected an entry that in 1998, Manor Hotel obtained wiring/electrical permit and Certificate of Electrical Inspection, but it was not clear therefrom if the inspection was indeed conducted as Manor Hotel did not secure a business permit for that year, too.

3. The Electrical Division does not have a copy of the approved electrical plans and specifications of the Manor Hotel, supposedly to be on active file, as required under Rule II, 3.2.2.4 of the Rules

[23] Emphasis supplied.

Implementing the Building Code. Such plan is a vital document which must come in handy for the Electrical Division as it is a guide necessary in carrying out electrical inspections of any establishment or building. The excuse that the Electrical Division did not exist yet at the time of the construction/completion of the Manor Hotel, is lame. Petitioner, being the Chief thereat, should have taken initiatives to secure a copy for his file to aid him in determining the veracity of the reports submitted to him by his subordinates. Absent such plan and specifications, it weakens his defense that inspections were done accordingly.

4. The Notice of Annual Inspection dated February 15, 2001 does not *per se* prove that an inspection was indeed conducted. If it were so, the excess on the electrical load and the jumper connections would have been discovered that could have prevented the incident, the proximate cause of which was the electrical overload.

5. The Answer of Manuel S. Baduria, Sr. — Fire Marshall I stated that the fire was caused by electrical ignition and that it was not his duty to regulate/inspect the installation of electrical wirings in buildings and establishments as it is incumbent upon the Electrical Division to conduct the same.

6. The Answer of Alfredo Macapugay — City Engineer and concurrent Local Building Official of Quezon City stated that if there was any negligence committed, it should be solely directed against the Electrical Division of Quezon City as it is their direct responsibility to conduct the annual inspection of the electrical installations of all the business establishments within the city.

7. The Answer of Engr. Rodel A. Mesa, Inspector Engineer II, Electrical Division, confirmed that the Notice of Annual Inspection dated February 15, 2001 did not pass through the normal channel and was processed and issued without his knowledge and recommendation. He stressed that the payment of fees corresponding to the electrical loads and the issuance of the Certificate were all done in the same day, April 16, 2001 and was presented to him for his initial only on April 17, 2001, after it was already issued. Such incident is not an isolated case as there were other instances that the annual notice did not pass through him for reasons known only to his colleagues. He tried to convey such practice to his superior (referring to petitioner) but no positive action was taken thereon.

8. The Electrical Report No. 08-29-01 of Engr. David R. Aoanan, Chief. Electrical Section, National Bureau of Investigation, established that the overuse of electrical gadgets and appliances within the hotel caused the overloading of the electrical installation which ignited the ceiling of the stockroom of the third floor of the hotel.

9. The Notice of Annual Inspection dated February 15, 2001 does not categorically prove that the inspection was conducted considering that it contains misrepresentations as to the true electrical status of Manor Hotel.

10. Petitioner made conflicting statements about his hand in the approval and signing of such Notice. In this petition and in the Consolidated Memorandum he stated that he signed and approved the Notice of Annual Inspection while in his Motion for Reconsideration he stated that he did not sign nor initial said Notice, but it was Engr. Rodel A. Mesa who did so. This only shows that petitioner was not sure as to his stand as to whether an inspection was conducted.

11. While denying his participation in the Notice of Annual Inspection dated February 15, 2001, petitioner nevertheless used this Notice as his only proof that inspection were regularly conducted.[24]

The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust.[25] From the foregoing, petitioner's negligence in the performance of his duties as a public servant was well established. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[26]

Suffice it to state that in this jurisdiction the well-settled rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It is settled that it is not for the appellate court to substitute its

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[24] *Rollo*, pp. 45-48.

[25] *De Jesus v. Guerrero III*, *supra* note 21.

[26] *Id.* at 350.

own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[27] Consequently, the CA correctly affirmed the conclusion of the Office of the Ombudsman.

Moreover, the issue of whether petitioner's guilt on the administrative charges against him is supported by substantial evidence is factual in nature, the determination of which is beyond the ambit of this Court. The task of this Court in an appeal by petition for review on *certiorari* as a jurisdictional matter is limited to reviewing errors of law that might have been committed by the CA.[28] The Supreme Court cannot be tasked to go over the proofs presented by the petitioner in the proceedings below and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[29] This Court has time and again refrained from interfering with the Ombudsman's exercise of its constitutionally mandated investigatory and prosecutory powers. This is in recognition of the Office of the Ombudsman's independence and initiative in prosecuting or dismissing a complaint filed before it.[30] More so, in the case at bar, where the CA affirmed the factual findings and conclusion of the Office of the Ombudsman. Although there are exceptions to this rule, none of which exists in the present case.

It is worth to reiterate that a public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity,

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[27] *Medina v. Commission on Audit (COA),* G.R. No. 176478, February 4, 2008, 543 SCRA 684, 697-698.

[28] *Bacsasar v. Civil Service Commission,* G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.

[29] *Medina v. Commission on Audit, supra* note 27, at 698.

[30] *Alecha v. Pasion,* G.R. No. 164506, January 19, 2010, 610 SCRA 288, 294.

loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[31] As a public servant, petitioner is tasked to provide efficient, competent, and proper service to the public. Public officials and employees are under obligation to perform the duties of their offices honestly, faithfully, and to the best of their ability.[32] In the case at bar, petitioner miserably failed to perform his duties as a public servant.

WHEREFORE, premises considered, the petition is **DENIED.** The Decision dated May 28, 2007 and the Resolution dated September 17, 2007 of the Court of Appeals in CA-G.R. SP No. 93898 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Reyes,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 181180. August 15, 2012]

PHILASIA SHIPPING AGENCY CORPORATION AND/OR INTERMODAL SHIPPING, INC., *petitioners, vs.* **ANDRES G. TOMACRUZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; ENTITLEMENT OF SEAFARERS

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[31] Constitution, Art. XI, Sec. 1.

[32] *Narvasa-Kampana v. Josue*, A.M. No. 2004-09-SC, June 30, 2004, 433 SCRA 284, 288.

[*] Designated Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 8, 2012.

TO DISABILITY BENEFITS IS GOVERNED NOT ONLY BY MEDICAL FINDINGS BUT ALSO BY CONTRACT AND LAW.— Entitlement of seafarers to disability benefits is governed not only by medical findings but also by contract and by law. By contract, Department Order No. 4, series of 2000, of the Department of Labor and Employment (POEA SEC) and the parties' Collective Bargaining Agreement bind the seafarer and the employer. By law, the labor code provisions on disability apply with equal force to seafarers.

2. ID.; ID.; ID.; THE APPLICABILITY OF THE LABOR CODE PROVISIONS ON PERMANENT DISABILITY, PARTICULARLY ARTICLE 192 (C) (1), TO SEAFARERS, IS ALREADY A SETTLED MATTER.— The petitioners are mistaken in their notion that only the POEA SEC should be considered in resolving theissue at hand. The applicability of the Labor Code provisions on permanent disability, particularly Article 192(C)(1), to seafarers, is already a settled matter. This Court, in the recent case of *Magsaysay Maritime Corporation v. Lobusta*, reiterating our ruling in *Remigio v. National Labor Relations Commission*, explained: x x x [T]he Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity. In *Vergara v. Hammonia Maritime Services, Inc.* this Court, further clarifying the application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits, held: The standard terms

[of the POEA SEC] agreed upon, x x x, are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

3. ID.; ID.; ID.; RESPONDENT'S TEMPORARY TOTAL PERMANENT DISABILITY SHOULD BE DEEMED TOTAL AND PERMANENT CONSIDERING THAT WHEN THE COMPANY-DESIGNATED PHYSICIAN MADE A DECLARATION THAT HE WAS ALREADY FIT TO WORK, 249 DAYS HAD ALREADY LAPSED FROM THE TIME HE WAS REPATRIATED FOR MEDICAL REASONS.— As we said in *Vergara*, "[a]s we outlined above, a temporary total disability only becomes permanent when so declared by the company[-designated] physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability." Applying the foregoing considerations in the case at bar, we affirm the Court of Appeals' ruling. While the Court of Appeals held that Tomacruz's disability was permanent since he was unable to perform his job for more than 120 days, this Court has clarified in *Vergara* and likewise in *Magsaysay*, that this "temporary total disability period may be extended up to a maximum of 240 days." This clarification, however, does not change the judgment. The sequence of events is undisputed and uncontroverted. From the time Tomacruz was repatriated on November 18, 2002, he submitted himself to the care and treatment of the company-designated physician. When the company-designated physician made a declaration on July 25, 2003 that Tomacruz was already fit to work, 249 days had already lapsed from the time he was repatriated. As such, his temporary total disability should be deemed total and permanent, pursuant to Article 192 (c)(1) of the Labor Code and its implementing rule.

4. ID.; ID.; ID.; FINDING THAT RESPONDENT CONTRACTED HIS ILLNESS WHILE ON BOARD THE *M/V SALINGA* WAS NOT DISPUTED NOR CONTROVERTED.— Neither will petitioners' argument that Tomacruz's illness existed even before his employment with them serve to relieve them of their duty to pay him disability benefits. As the Court of Appeals

pronounced, this assertion "deserves scant consideration" since the finding of both the Labor Arbiter and the NLRC that Tomacruz contracted his illness while on board the M/V Salinga was neither disputed nor controverted.

5. ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN'S CERTIFICATION THAT RESPONDENT WAS FIT TO WORK DOES NOT MAKE HIM INELIGIBLE TO RECEIVE PERMANENT TOTAL DISABILITY, THEN FACT REMAINS THAT RESPONDENT WAS UNABLE TO WORK FOR MORE THAN 240 DAYS.— Even the company-designated physician's certification that Tomacruz was already fit to work does not make him ineligible to receive permanent total disability benefits. The fact remains that Tomacruz was unable to work for more than 240 days as he was only certified to work on July 25, 2003. Consequently, Tomacruz's disability is considered permanent and total, and the fact that he was declared fit to work by the company-designated physician "does not matter."

6. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; JUSTIFIED IN CASE AT BAR; RESPONDENT WAS COMPELLED TO LITIGATE TO SATISFY HIS CLAIM.— Circumstances show that Tomacruz was forced to file a complaint against the petitioners when they refused to heed his demand for payment of disability denefits and sickness wages. Under Article 2208 of the Civil Code, attorney's fees can be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." As Tomacruz was compelled to litigate to satisfy his claim, He is entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual Payment.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Romulo P. Valmores for respondent.

D E C I S I O N

LEONARDO-DE CASTRO,* *J.*:

Challenged in this petition for review on *certiorari*[1] are the June 15, 2007 Decision[2] and January 14, 2009 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 94561, wherein they reversed the National Labor Relations Commission (NLRC) in NLRC CA No. 043129-05/NLRC OFW (M)03-11-2866-00.

Andres G. Tomacruz (Tomacruz) was a seafarer, whose services were engaged by PHILASIA Shipping Agency Corp., (PHILASIA) on behalf of Intermodal Shipping Inc. (petitioners) as Oiler #1 on board the vessel M/V Saligna.[4] A twelve-month Philippine Overseas Employment Administration (POEA) Contract of Employment was duly signed by the parties on January 9, 2002.[5]

This was preceded by four similar contracts, which Tomacruz was able to complete for the petitioners, aboard different vessels. For all five contracts, Tomacruz was required to undergo a pre-employment medical examination and obtain a "fit to work" rating before he could be deployed.[6]

Having been issued a clean bill of health, Tomacruz boarded M/V Saligna on January 15, 2002 and performed his duties without any incident. However, sometime in September 2002, during the term of his last contract, Tomacruz noticed blood in his urine. Tomacruz immediately reported this to the Ship Captain,

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

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

[2] *Rollo*, pp. 12-30; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Rosmari D. Carandang, concurring.

[3] *Id.* at 32-33.

[4] CA *rollo*, p. 307.

[5] *Id.* at 315.

[6] *Id.* at 307.

who referred him to a doctor in Japan. Tomacruz was subjected to several check-ups and ultrasounds, which revealed a "stone" in his right kidney. Despite such diagnosis, no medical certificate was issued; thus, he was allowed to continue working.[7]

Eventually, Tomacruz was repatriated to the Philippines and sent to Micah Medical Clinic & Diagnostic Laboratory. The November 19, 2002 KUB Ultrasound report of the clinic revealed that he had stones in both his kidneys.[8]

Referred by Micah Medical Clinic to Dr. Nicomedes Cruz, the company-designated physician, Tomacruz went through more tests, medications, and treatments. On July 25, 2003, Dr. Cruz declared Tomacruz fit to work despite a showing that there were stones about 0.4 cm in size found in both his kidneys, and there was the possibility of hematoma.[9]

Intending to get his sixth contract, Tomacruz, armed with the declaration that he was fit to work, proceeded to the office of the petitioners to seek employment. However, he was told by PHILASIA that because of the huge amount that was spent on his treatment, their insurance company did not like his services anymore.[10]

Nagging in Tomacruz's mind was the veracity of his "fit to work" declaration. Thus, he sought the medical opinion of another physician, Dr. Efren R. Vicaldo, who, on September 9, 2003, stated the following findings in a Medical Certificate:[11]

Nephrolithiasis, bilateral
S/P ESWL, right 1x
S/P ESWL, left 3x
Impediment Grade VII (41.80%)

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[7] *Id.* at 307-308.

[8] *Id.* at 316.

[9] *Id.* at 27.

[10] *Id.* at 308.

[11] *Id.* at 317.

Accompanying the Medical Certificate was a "Justification of Impediment Grade VII (41.8%) for Seaman Andres G. Tomacruz,"[12] which provided:

> This patient/seaman is a known case of bilateral *nephrolithiasis* since 1999.
>
> Sometime in 1999, he underwent right *nephrolithotomy* at St. Luke's Medical Center.
>
> [I]n September, 2002 he had gross *hematuria* for which he was seen and evaluated in Japan. Renal ultrasound revealed small right kidney stone.
>
> Apparently, he had recurrent bilateral renal stones for which he underwent ESWL once for his right kidney stone and ESWL three times for his left kidney stone.
>
> Latest ultrasound however still revealed bilateral kidney stones; his latest creatinine is also slightly elevated.
>
> He is now unfit to resume work as seaman in any capacity.
>
> His illness is considered work aggravated.
>
> He has to regularly monitor his renal function status to make sure he does not progress to renal failure.
>
> Worsening of his symptoms may require repeat ESWL procedures.
>
> Pain is a common accompanying symptom of *nephrolithiasis* and this patient is expected to have recurrent colicky pains.
>
> Secondary infection is also common in patients with renal stones. This obviously impairs his quality of life.[13]

Months later, or on November 3, 2003, Tomacruz filed a complaint for disability benefits, sickness wages, damages, and attorney's fees against the petitioners, before the Quezon City Arbitration Branch of the NLRC. This was docketed as OFW Case No. (M) 03-11-2866-00.[14]

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[12] *Id.* at 318.

[13] *Id.*

[14] *Rollo*, p. 16.

After the submission of the parties' respective pleadings, Labor Arbiter Virginia T. Luya-Azarraga dismissed the complaint in a Decision dated November 26, 2004.

Noting that Tomacruz was a seafarer, the Labor Arbiter explained that as such, he was a contractual employee, whose employment was governed by the contract that he signed every time he was hired. Thus, the Labor Arbiter held, once the seafarer's employment was terminated either by completion of contract or repatriation due to a medical reason or any other authorized cause under the POEA Standard Employment Contract (SEC), the employer was under no obligation to re-contract the seafarer.[15]

Zeroing in on Tomacruz's medical condition, the Labor Arbiter observed how he was given extensive medical attention by the company-designated physician, and how he was given medication from the time he was repatriated until he was declared fit to work. As such, the Labor Arbiter said that the company-designated physician's assessment of Tomacruz's medical condition should be more accurate than that of the subsequent doctor's second medical opinion, which was not supported by sufficient evidence to warrant consideration.[16]

Aggrieved, Tomacruz appealed this decision to the NLRC, on the grounds that the Labor Arbiter gravely erred in upholding the findings of the company-designated physician's declaration that he was fit to work over his doctor of choice, who was an internal medicine practitioner; thus, was better qualified in determining his health condition.[17]

Not impressed, the NLRC agreed with the Labor Arbiter and declared that the opinion of the company-designated physician, as the one with the sole accreditation by law to determine the fitness or unfitness of a seafarer under POEA SEC, should prevail

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[15] *Id.* at 147-148.

[16] *Id.* at 148.

[17] *Id.* at 139.

over the second opinion of Tomacruz's doctor of choice. The NLRC, citing "Vol. II, p. 664 of the book of Francisco on Evidence,"[18] added:

> When expert opinions differ, the care and accuracy with which the experts have determined the data upon which they based their conclusions are to be considered. Opinion testimony founded on facts within the knowledge and experience of the witness and supported by good reasons is likely to receive greater credence and carry more weight than a purely speculative theory or one which is rendered by person not qualified in the field about which they testify. Opinion of witnesses of accredited skill and experience who have formed their judgment from personal examination of the subject of controversy are generally more worthy of belief than those illicited by hypothetical questions which may or may not state all the fact necessary to a correct conclusion (20 American Jurisprudence 1056-1058)[19]

On the above premise, the NLRC, on October 28, 2005, affirmed the Labor Arbiter's Decision. Tomacruz's Motion for Reconsideration[20] was likewise dismissed by the NLRC on March 10, 2006 for lack of merit.[21]

Via a Rule 65 petition for *certiorari*,[22] Tomacruz elevated his case to the Court of Appeals based on the sole ground that:

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK [OR] IN EXCESS OF ITS JURISDICTION IN NOT GRANTING THE PETITIONER'S CLAIM FOR DISABILITY BENEFITS.[23]

In his petition, docketed as CA-G.R. SP No. 94561, Tomacruz outlined the events and correspondences that he believed supported his case. He alleged that the declaration of the company-designated

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[18] *Id.*

[19] *Id.* at 139-140.

[20] CA *rollo*, pp. 129-142.

[21] *Id.* at 143.

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

[23] *Id.* at 9.

physician that he was fit to work was not worthy of belief as it was self-serving and biased. He also claimed that this was not in accordance with the result of the ultrasound conducted on him on July 24, 2003, the day before he was declared fit to work, which states:

I N T E R P R E T A T I O N

Follow-up to the previous study dated July 1, 2003 shows the following findings.

The right kidney measures 10.0 x 5.1 x 4.1 cm (LWH) with a cortical thickness of 1.5 cm, while the left kidney measures 11.8 x 5.2 x 6.4 cm (LWH) with a cortical thickness of 1.9 cm.

There is no significant interval change in the status of the previously noted lithiases in the right mid-pericalyceal area, measuring 0.4 cm, and the one in the left lower calyx, likewise measuring 0.4 cm.

A hypoechoic fluid focus is noted outlining the left perirenal area, with an approximate volume of 36cc.

The renal parenchyma demonstrates homogenous echopattern with no focal lesion seen. The central echo complexes are dense and compact with no ectasia or lithiasis seen.

IMPRESSION:

UNCHANGED FINDING OF RIGHT MID-PERICALYCEAL AND LEFT LOWER CACYCEAL LITHIASES SINCE THE PREVIOUS STUDY OF 07-01-03.
MILD LEFT SIDED SUBSCAPSULAR FLUID COLLECTION, PROBABLY A HEMATOMA.
FOLLOW-UP IS SUGGESTED.[24]

Citing this Court's ruling in *Crystal Shipping, Inc. v. Natividad*,[25] Tomacruz averred that since he was unable to perform his customary work as an oiler on board an ocean-going vessel for more than 120 days, he should be considered permanently disabled, and therefore entitled to disability benefits.[26]

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[24] *Id.* at 24.

[25] 510 Phil. 332, 340 (2005).

[26] CA *rollo*, pp. 14-15.

Entitlement of Tomacruz to the disability benefits was the issue the Court of Appeals focused on. In arriving at its decision, the Court of Appeals examined Section 20 B in relation to Section 32 of the 2000 POEA SEC on compensation and benefits for injury or illness of seafarers on board ocean-going vessels. The Court of Appeals also looked into the Labor Code's concept of permanent total disability and the standards laid down by this Court in previous cases.

Not agreeing with the Labor Arbiter and the NLRC, the Court of Appeals, on June 16, 2007, granted the petition, on the premise that Tomacruz suffered from permanent total disability. The *fallo* of the Decision reads:

> **WHEREFORE,** in light of the foregoing, the instant petition is **GRANTED**. Accordingly, the challenged resolutions of the public respondent National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US$60,000.00 or its peso equivalent at the time of actual payment; and b) attorney's fees of ten percent (10%) of the total monetary award or its peso equivalent at the time of actual payment.[27]

The petitioners moved for the reconsideration of this decision, which was however, denied by the Court of Appeals in a Resolution dated January 14, 2009, for lack of merit.

Espousing their cause, the petitioners are now before us, with the following assignment of errors:

A. THE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING THE PETITION DESPITE THE APPARENT ABSENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION IN AFFIRMING THE DISMISSAL BY THE LABOR ARBITER OF RESPONDENT'S COMPLAINT FOR DISABILITY BENEFITS. THE RESOLUTIONS OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION BOTH REFLECT SOUND APPLICATION OF THE POEA STANDARD CONTRACT OF EMPLOYMENT TO

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[27] *Rollo*, p. 29.

FACTS OF THIS CASE AS BORNE OUT BY THE EVIDENCE ON RECORD.

1. THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING DISABILITY BENEFITS DESPITE THE UNDISPUTED FINDING OF FACT THAT COMPLAINANT IS ALREADY DECLARED FIT TO WORK.

2. THE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING THE PROVISION OF ARTICLE 192 OF THE LABOR CODE (OR 120-DAY RULE) TO THE INSTANT CASE ON ENTITLEMENT OF A SEAFARER TO DISABILITY BENEFITS WHICH IS SPECIFICALLY GOVERNED BY PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT. APPLYING ARTICLE 192 OF THE LABOR CODE IN A CLAIM FOR DISABILITY BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT IS CLEARLY MISPLACED.

3. THE CRYSTAL SHIPPING DECISION OF THE HONORABLE SUPREME COURT IS NOT APPLICABLE IN THE INSTANT CASE AND THE SAID CASE CANNOT BE RESORTED TO AS BASIS FOR ANY DECISION FOR BEING ERRONEOUS AS WELL.

B. THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING ATTORNEY'S FEES.[28]

Procedural Issue:
Grave Abuse of Discretion

Petitioners argue that the Court of Appeals erred in granting the Rule 65[29] petition filed by Tomacruz before it since the NLRC committed no grave abuse of discretion when it affirmed the Labor Arbiter's decision, and the petition merely raised possible errors of law and misappreciation of evidence by the NLRC in denying the claim.[30]

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[28] *Id.* at 49.

[29] Rules of Court.

[30] *Id.* at 50.

The power of the Court of Appeals to review the evidence on record even on a Petition for *Certiorari* under Rule 65[31] has already been confirmed by this Court in several cases, *viz*:

> The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission.* This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of *Batas Pambansa Blg.* 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg.* 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[32]

In *Culili v. Eastern Telecommunications Philippines, Inc.*,[33] this Court explained:

> While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[34]

A perusal of the challenged decision before us will reveal that the Court of Appeals actually sustained the factual findings

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[31] 1997 Rules of Civil Procedure.

[32] *PICOP Resources, Incorporated (PRI) v. Tañeca,* G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66.

[33] G.R. No. 165381, February 9, 2011, 642 SCRA 338.

[34] *Id.* at 353.

of the tribunals below. However, it found itself unable to affirm their rulings, in light of the applicable law on the matter. Thus, it was compelled to go beyond the issue of grave abuse of discretion.

Main Issue: Entitlement of Tomacruz to Disability Benefits

The core issue in this case is the propriety of the Court of Appeals' award of disability benefits to Tomacruz on the basis of the Labor Code provisions on disability, and despite the company-designated physician's declaration of his fitness to work.

The petitioners argue that the Court of Appeals erred in awarding disability benefits despite the findings of the company-designated physician that Tomacruz was already fit to work. Petitioners aver that the company-designated physician's assessment and evaluation of Tomacruz's health condition should prevail over that of his doctor of choice.[35] They cite *Sarocam v. Interorient Maritime Ent., Inc.*[36] to support this contention.[37] Petitioners also asseverate that the Court of Appeals "seriously erred"[38] in applying Article 192 of the Labor Code in this case. They claim that the POEA SEC is the governing law between the parties[39] and the application of the Labor Code provisions on disability is misplaced.[40]

Applicability of the Labor Code Provisions on disability benefits to seafarers

Entitlement of seafarers to disability benefits is governed not only by medical findings but also by contract and by law.[41] By

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[35] *Rollo*, p. 54.

[36] 526 Phil. 448 (2006).

[37] *Rollo*, pp. 55-56.

[38] *Id.* at 57.

[39] *Id.* at 60.

[40] *Id.* at 57.

[41] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

contract, Department Order No. 4, series of 2000, of the Department of Labor and Employment (POEA SEC) and the parties' Collective Bargaining Agreement bind the seafarer and the employer.[42] By law, the Labor Code provisions on disability apply with equal force to seafarers.[43]

The petitioners are mistaken in their notion that only the POEA SEC should be considered in resolving the issue at hand. The applicability of the Labor Code provisions on permanent disability, particularly Article 192(c)(1), to seafarers, is already a settled matter.[44] This Court, in the recent case of *Magsaysay Maritime Corporation v. Lobusta*,[45] reiterating our ruling in *Remigio v. National Labor Relations Commission*,[46] explained:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA [Standard Employment Contract] itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to the "special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering

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[42] *Id.*

[43] *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011, 659 SCRA 642, 651.

[44] *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 593.

[45] G.R. No. 177578, January 25, 2012.

[46] 521 Phil. 330 (2006).

from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[47]

In *Vergara v. Hammonia Maritime Services, Inc.*[48] this Court, further clarifying the application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits, held:

The standard terms [of the POEA SEC] agreed upon, x x x, are to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

Award of Disability Benefits

The Labor Code provision material to this case, and the one being challenged, states:

ART. 192. *PERMANENT TOTAL DISABILITY*

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

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[47] *Id.* at 346-347.

[48] *Supra* note 41 at 626-627.

The rule referred to in the above provision is Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code. It states:

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.

As we said in *Vergara*, "[t]hese provisions are to be read hand in hand with the POEA [SEC] whose Section 20 [(B)] (3) states":[49]

"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."

Elucidating on the combination of the Labor Code provisions and the POEA SEC, this Court, in *Vergara* said:

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

[49] *Id.* at 627.

attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[50]

Upon Tomacruz's return to the country, he underwent medical treatment in accordance with the terms of the POEA SEC. From the time Tomacruz was repatriated on November 18, 2002, until he was declared fit to work on July 25, 2003, he was given extensive medical attention supervised by a company-designated physician. The only time conflict arose was when despite the fit to work declaration, petitioners refused to hire Tomacruz. This was what prompted Tomacruz to seek a second medical opinion, on which he based his demand for disability and sickness benefits.

As we said in *Vergara*, "[a]s we outlined above, a temporary total disability only becomes permanent when so declared by the company[-designated] physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability."[51]

Applying the foregoing considerations in the case at bar, we affirm the Court of Appeals' ruling. While the Court of Appeals held that Tomacruz's disability was permanent since he was unable to perform his job for more than 120 days,[52] this Court has clarified in *Vergara* and likewise in *Magsaysay*, that this "temporary total disability period may be extended up to a maximum of 240 days."[53] This clarification, however, does not change the judgment.

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[50] *Id.* at 628.

[51] *Id.* at 629.

[52] *Rollo*, p. 28.

[53] *Magsaysay Maritime Corporation v. Lobusta*, *supra* note 45.

The sequence of events is undisputed and uncontroverted. From the time Tomacruz was repatriated on November 18, 2002, he submitted himself to the care and treatment of the company-designated physician. When the company-designated physician made a declaration on July 25, 2003 that Tomacruz was already fit to work, 249 days had already lapsed from the time he was repatriated. As such, his temporary total disability should be deemed total and permanent, pursuant to Article 192 (c)(1) of the Labor Code and its implementing rule.

Case of Sarocam v. Interorient Maritime Ent., Inc. is not in point

The ruling in *Sarocam v. Interorient Maritime Ent., Inc.*[54] being cited by petitioner cannot be applied in this case as the seafarer therein was declared "fit for duty"[55] only thirteen (13) days from the date of his repatriation. Moreover, he executed a release and quitclaim barely three months from being pronounced fit to work.[56] On top of this, he only filed his complaint for benefits and damages roughly eleven months after he was declared fit for work, based on the medical findings of his doctors of choice, whom he consulted only eight to nine months after he was examined by the company-designated physician.[57]

Neither will petitioners' argument that Tomacruz's illness existed even before his employment with them[58] serve to relieve them of their duty to pay him disability benefits. As the Court of Appeals pronounced, this assertion "deserves scant consideration"[59] since the finding of both the Labor Arbiter and the NLRC that Tomacruz contracted his illness while on board the M/V Salinga was neither disputed nor controverted.[60]

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[54] *Supra* note 36.

[55] *Id.* at 450.

[56] *Id.*

[57] *Id.* at 450-451.

[58] *Rollo*, pp. 56-57.

[59] *Id.* at 27.

[60] *Id.*

Even the company-designated physician's certification that Tomacruz was already fit to work does not make him ineligible to receive permanent total disability benefits. The fact remains that Tomacruz was unable to work for more than 240 days as he was only certified to work on July 25, 2003. Consequently, Tomacruz's disability is considered permanent and total, and the fact that he was declared fit to work by the company-designated physician "does not matter."[61]

On the contention that the opinion of Tomacruz's doctor of choice should not prevail over that of the company-designated physician, this Court deems this issue now irrelevant as Tomacruz's entitlement to disability benefits had been decided on the bases of law and contract, and not on the medical findings of either doctor.

Award of Attorney's Fees

Circumstances show that Tomacruz was forced to file a complaint against the petitioners when they refused to heed his demand for payment of disability benefits and sickness wages. Under Article 2208 of the Civil Code, attorney's fees can be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."[62] As Tomacruz was compelled to litigate to satisfy his claim, he is entitled to attorney's fees of ten percent (10%) of the total award at its peso equivalent at the time of actual payment.[63]

WHEREFORE, we **DENY** the present petition for review on *certiorari* and **AFFIRM** the June 15, 2007 Decision and January 14, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 94561. We **ORDER** petitioners PHILASIA Shipping Agency Corporation and Intermodal Shipping, Inc. to pay respondent Andres G. Tomacruz US$60,000.00 as disability benefits; and

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[61] *Valenzona v. Fair Shipping Corporation*, *supra* note 43 at 655.

[62] CIVIL CODE, Art. 2208(2).

[63] *Valenzona v. Fair Shipping Corporation*, *supra* note 43 at 657.

US$6,000.00 as attorney's fees, to be paid in Philippine Peso at the exchange rate prevailing during the time of payment.

SO ORDERED.

Carpio[**] *(Senior Associate Justice), Bersamin, del Castillo,* and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 184746. August 15, 2012[*]]

SPOUSES CRISPIN GALANG and CARIDAD GALANG, *petitioners, vs.* **SPOUSES CONRADO S. REYES and FE DE KASTRO REYES (As substituted by their legal heir: Hermenigildo K. Reyes),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; THE COMPLAINT INSTITUTED BY PETITIONERS WAS FOR ANNULMENT OF TITLE AND NOT FOR REVERSION; THE REAL PARTY IN INTEREST IS NOT THE STATE BUT THE RESPONDENTS WHO CLAIM A RIGHT OF OWNERSHIP OVER THE PROPERTY IN QUESTION EVEN BEFORE THE ISSUANCE OF A TITLE IN FAVOR OF THE PETITIONERS.— Regarding the first issue, the Galangs state that the property was formerly a public land, titled in their names by virtue of Free Patent No. 045802-96-2847 issued by the DENR. Thus, they posit that the Reyeses do not have the personality and authority to institute any action

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[**] Per Special Order No. 1284 dated August 6, 2012.

[*] Promulgation date corrected to 15 August 2012 instead of 08 August 2012.

for annulment of title because such authority is vested in the Republic of the Philippines, through the Office of the Solicitor General. In this regard, the Galangs are mistaken. The action filed by the Reyeses seeks the transfer to their names of the title registered in the names of the Galangs. In their Complaint, they alleged that: first, they are the owners of the land, being the owners of the properties through which the Marigman creek passed when it changed its course; and second, the Galangs illegally dispossessed them by having the same property registered in their names. It was not an action for reversion which requires that the State be the one to initiate the action in order for it to prosper. x x x In this case, the complaint instituted by the Reyeses before the RTC was for the annulment of the title issued to the Galangs, and not for reversion. Thus, the real party in interest here is not the State but the Reyeses who claim a right of ownership over the property in question even before the issuance of a title in favor of the Galangs. Although the Reyeses have the right to file an action for reconveyance, they have failed to prove their case. Thus, on the second issue, the Court agrees with the RTC that the Reyeses failed to adduce substantial evidence to establish their allegation that the Galangs had fraudulently registered the subject property in their names.

2. CIVIL LAW; PROPERTY; ACCESSION; OWNERSHIP OF DRIED-UP RIVERBED; CLAIMANT MUST PROVE THAT THE OLD CREEK INDEED CHANGED ITS COURSE NATURALLY WITHOUT ARTIFICIAL OR MAN-MADE INTERVENTION.— The CA reversed the RTC decision giving the reason that the property was the former bed of Marigman Creek, which changed its course and passed through their Ponderosa property, thus, ownership of the subject property was automatically vested in them. The law in this regard is covered by Article 461 of the Civil Code. x x x If indeed a property was the former bed of a creek that changed its course and passed through the property of the claimant, then, pursuant to Article 461, the ownership of the old bed left to dry by the change of course was *automatically* acquired by the claimant. Before such a conclusion can be reached, the fact of *natural* abandonment of the old course must be shown, that is, it must be proven that the creek indeed changed its course without artificial or man-made intervention. Thus, the claimant, in this case the Reyeses, must prove three key elements by clear and convincing evidence. These are: (1) the *old* course

of the creek, (2) the *new* course of the creek, and (3) the change of course of the creek from the old location to the new location by *natural* occurrence.

3. ID.; ID.; ID.; ID.; RESPONDENTS FAILED TO ADDUCE INDUBITABLE EVIDENCE TO PROVE THE OLD COURSE, ITS NATURAL ABANDONMENT AND THE NEW COURSE.— The Reyeses failed to adduce indubitable evidence to prove the *old course*, its *natural abandonment* and the *new course*. In the face of a Torrens title issued by the government, which is presumed to have been regularly issued, the evidence of the Reyeses was clearly wanting. Uncorroborated testimonial evidence will not suffice to convince the Court to order the reconveyance of the property to them.

4. ID.; LAND REGISTRATION; AS BETWEEN THE TWO CLAIMS, THE COURT IS INCLINED TO DECIDE IN FAVOR OF PETITIONERS WHO HOLD A VALID AND SUBSISTING TITLE TO THE PROPERTY WHICH, IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE COURT PRESUMES TO HAVE BEEN ISSUED BY THE PENRO IN THE REGULAR PERFORMANCE OF ITS OFFICIAL DUTY.— The conflicting claims here are (1) the title of the Galangs issued by the DENR, through the PENRO, and (2) the claim of the Reyeses, based on unsubstantiated testimony, that the land in question is the former bed of a dried up creek. As between these two claims, this Court is inclined to decide in favor of the Galangs who hold a valid and subsisting title to the property which, in the absence of evidence to the contrary, the Court presumes to have been issued by the PENRO in the regular performance of its official duty.

5. ID.; ID.; ALLEGATIONS OF FRAUD AND MISREPRESENTATION IN THE ISSUANCE OF THE FREE PATENT WERE NEVER PROVEN.— The bottom line here is that, fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved. In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation. Thus, the Court cannot sustain the findings of the CA.

APPEARANCES OF COUNSEL

D.L. Wagas Law Office for petitioners.
Gene B. Macalaguing for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to reverse and set aside the April 9, 2008 Decision[1] of the Court of Appeals *(CA)* and its October 6, 2008 Resolution,[2] in CA–G.R. CV. No. 85660.

The Facts

On September 4, 1997, spouses Conrado S. Reyes and Fe de Kastro Reyes *(the Reyeses)* filed a case for the annulment of Original Certificate of Title *(OCT)* No. P-928 against spouses Crispin and Caridad Galang *(the Galangs)* with the Regional Trial Court, Antipolo, Rizal *(RTC)*,docketed as Civil Case No. 97-4560.

In their Complaint,[3] the Reyeses alleged that they owned two properties: (1) a subdivision project known as Ponderosa Heights Subdivision *(Ponderosa)*, and (2) an adjoining property covered by Transfer Certificate of Title *(TCT)* No. 185252, with an area of 1,201 sq.m.;[4] that the properties were separated by the Marigman Creek, which dried up sometime in 1980 when it changed its course and passed through Ponderosa; that the Galangs, by employing manipulation and fraud, were able to obtain a certificate of title over the dried up creek bed from the

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[1] *Rollo*, pp. 19-27. Special Fourteenth Division, penned by Associate Justice Marlene Gonzales-Sison, with Associate Justice Lucenito N. Tagle (Acting Chairman, Special Fourteenth Division) and Associate Justice Monina Arevalo Zenarosa, concurring.

[2] *Id.* at 28-30.

[3] *Id.* at 40-44.

[4] *Id.* at 41.

Department of Environment and Natural Resources *(DENR)*, through its Provincial Office *(PENRO)*; that, specifically, the property was denominated as Lot 5735, Cad 29 Ext., Case-1, with an area of 1,573 sq.m. covered by OCT No. P-928; that they discovered the existence of the certificate of title sometime in March 1997 when their caretaker, Federico Enteroso *(Enteroso)*, informed them that the subject property had been fraudulently titled in the names of the Galangs; that in 1984, prior to such discovery, Enteroso applied for the titling of the property, as he had been occupying it since 1968 and had built his house on it; that, later, Enteroso requested them to continue the application because of financial constraints on his part;[5] that they continued the application, but later learned that the application papers were lost in the Assessor's Office;[6] and that as the owners of the land where the new course of water passed, they are entitled to the ownership of the property to compensate them for the loss of the land being occupied by the new creek.

The Galangs in their Answer[7] denied that the land subject of the complaint was part of a creek and countered that OCT No. P-928 was issued to them after they had complied with the free patent requirements of the DENR, through the PENRO; that they and their predecessor-in-interest had been in possession, occupation, cultivation, and ownership of the land for quite some time; that the property described under TCT No. 185252 belonged to Apolonio Galang, their predecessor-in-interest, under OCT No. 3991; that the property was transferred in the names of the Reyeses through falsified document;[8] that assuming *ex gratia argumenti* that the creek had indeed changed its course and passed through Ponderosa, the Reyeses had already claimed for themselves the portion of the dried creek which adjoined and co-existed with their property; that Enteroso was able to occupy a portion of their land by means of force, coercion,

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

[6] *Id.* at 43.

[7] *Id.* at 48-53.

[8] *Id.* at 56.

machinations, and stealth in 1981; that such unlawful entry was then the subject of an Accion Publiciana before the RTC of Antipolo City (Branch 72); and that at the time of the filing of the Complaint, the matter was still subject of an appeal before the CA, under CA-G.R. CV No. 53509.

The RTC Decision

In its Decision,[9] dated July 16, 2004, the RTC dismissed the complaint for lack of cause of action and for being an erroneous remedy. The RTC stated that a title issued upon a patent may be annulled only on grounds of actual and intrinsic fraud, which much consist of an intentional omission of fact required by law to be stated in the application or willful statement of a claim against the truth. In the case before the trial court, the Reyeses presented no evidence of fraud despite their allegations that the Galangs were not in possession of the property and that it was part of a dried creek. There being no evidence, these contentions remained allegations and could not defeat the title of the Galangs. The RTC wrote:

> A title issued upon patent may be annulled only on ground of actual fraud.
>
> Such fraud must consist [of] an intentional omission of fact required by law to be stated in the application or willful statement of a claim against the truth. It must show some specific facts intended to deceive and deprive another of his right. The fraud must be actual and intrinsic, not merely constructive or intrinsic; the evidence thereof must be clear, convincing and more than merely preponderant, because the proceedings which are being assailed as having been fraudulent are judicial proceedings, which by law, are presumed to have been fair and regular. (*Libudan v. Palma Gil* 45 SCRA 17)
>
> However, aside from allegations that defendant Galang is not in possession of the property and that the property was part of a dried creek, no other sufficient evidence of fraud was presented by the plaintiffs. They have, thus, remained allegations, which cannot defeat the defendants title.[10]

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[9] *Id.* at 55-61.

[10] *Id.* at 69.

The RTC added that the land, having been acquired through a homestead patent, was presumably public land. Therefore, only the State can institute an action for the annulment of the title covering it.

It further opined that because the Reyeses claimed to have acquired the property by right of accretion, they should have filed an action for reconveyance, explaining "[t]hat the remedy of persons whose property had been wrongly or erroneously registered in another's name is not to set aside the decree/title, but an action for reconveyance, or if the property has passed into the hands of an innocent purchaser for value, an action for damages."[11]

The Court of Appeals Decision

In its Decision, dated April 9, 2008, the CA *reversed* and *set aside* the RTC decision and ordered the cancellation of OCT No. P-928 and the reconveyance of the land to the Reyeses.

The CA found that the Reyeses had proven by preponderance of evidence that the subject land was a portion of the creek bed that was abandoned through the natural change in the course of the water, which had now traversed a portion of Ponderosa. As owners of the land occupied by the new course of the creek, the Reyeses had become the owners of the abandoned creek bed *ipso facto.* Inasmuch as the subject land had become private, a free patent issued over it was null and void and produced no legal effect whatsoever. *A posteriori*, the free patent covering the subject land, a private land, and the certificate of title issued pursuant thereto, are null and void.[12]

The Galangs moved for a reconsideration,[13] but their motion was denied in a Resolution dated October 6, 2008.

Hence, this petition.

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

[12] *Id.* at 24.

[13] *Id.* at 32-38.

Issues

The Galangs present, as warranting a review of the questioned CA decision, the following grounds:

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT RESOLVING THAT THE OFFICE OF THE SOLICITOR GENERAL, NOT THE PRIVATE RESPONDENTS, HAS THE SOLE AUTHORITY TO FILE [CASES FOR] ANNULMENT OF TITLE INVOLVING PUBLIC LAND.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT PRIVATE RESPONDENTS HAVE [A] CAUSE OF ACTION AGAINST PETITIONERS EVEN WITHOUT EXHAUSTION OF ADMINISTRATIVE REMED[IES].

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DEVIATING FROM THE FINDINGS OF FACT OF THE TRIAL COURT AND INTERPRETING ARTICLE 420 IN RELATION TO ARTICLE 461 OF THE CIVIL CODE OF THE PHILIPPINES BY SUBSTITUTING ITS OWN OPINION BASED ON ASSUMPTION OF FACTS.[14]

A reading of the records discloses that these can be synthesized into two principal issues, to wit: (1) whether the Reyeses can file the present action for annulment of a free patent title and reconveyance; and (2) if they can, whether they were able to prove their cause of action against the Galangs.

The Court's Ruling

Regarding the first issue, the Galangs state that the property was formerly a public land, titled in their names by virtue of Free Patent No. 045802-96-2847 issued by the DENR. Thus, they posit that the Reyeses do not have the personality and authority to institute any action for annulment of title because

[14] *Id.* at 11.

such authority is vested in the Republic of the Philippines, through the Office of the Solicitor General.[15]

In this regard, the Galangs are mistaken. The action filed by the Reyeses seeks the transfer to their names of the title registered in the names of the Galangs. In their Complaint, they alleged that: first, they are the owners of the land, being the owners of the properties through which the Marigman creek passed when it changed its course; and second, the Galangs illegally dispossessed them by having the same property registered in their names. It was not an action for reversion which requires that the State be the one to initiate the action in order for it to prosper. The distinction between the two actions was elucidated in the case of *Heirs of Kionisala v. Heirs of Dacut*,[16] where it was written:

> **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

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[15] *Id.* at 12.

[16] 428 Phil. 249 (2002).

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.** In *Heirs of Marciano Nagano v. Court of Appeals* we ruled —

> x x x from the allegations in the complaint x x x private respondents claim ownership of the 2,250 square meter portion for having possessed it in the concept of an owner, openly, peacefully, publicly, continuously and adversely since 1920. This claim is an assertion that the lot is private land x x x Consequently, merely on the basis of the allegations in the complaint, the lot in question is apparently beyond the jurisdiction of the Director of the Bureau of Lands and could not be the subject of a Free Patent. Hence, the dismissal of private respondents' complaint was premature and trial on the merits should have been conducted to thresh out evidentiary matters. It would have been entirely different if the action were clearly for reversion, in which case, it would have to be instituted by the Solicitor General pursuant to Section 101 of C.A. No. 141 x x x

It is obvious that private respondents allege in their complaint all the facts necessary to seek the nullification of the free patents as well as the certificates of title covering Lot 1015 and Lot 1017. Clearly, they are the real parties in interest in light of their allegations that they have always been the owners and possessors of the two (2) parcels of land even prior to the issuance of the documents of title in petitioners' favor, hence the latter could only have committed fraud in securing them —

> x x x That plaintiffs are absolute and exclusive owners and in actual possession and cultivation of two parcels of agricultural lands herein particularly described as follows [technical description of Lot 1017 and Lot 1015] x x x 3. That plaintiffs became absolute and exclusive owners of the abovesaid parcels of land by virtue of inheritance from their late father, Honorio Dacut, who in turn acquired the same from a certain Blasito Yacapin and from then on was in possession thereof exclusively, adversely and in the concept of owner for more than thirty (30) years x x x 4. That recently, plaintiff discovered that defendants, without the knowledge and consent of the former, fraudulently applied for patent the said parcels of land and as

> a result thereof certificates of titles had been issued to them as evidenced by certificate of title No. P-19819 in the name of the Hrs. of Ambrocio Kionisala, and No. P-20229 in the name of Isabel Kionisala x x x 5. That the patents issued to defendants are null and void, the same having been issued fraudulently, defendants not having been and/or in actual possession of the litigated properties and the statement they may have made in their application are false and without basis in fact, and, the Department of Environment and Natural Resources not having any jurisdiction on the properties the same not being anymore public but already private property x x x

It is not essential for private respondents to specifically state in the complaint the actual date when they became owners and possessors of Lot 1015 and Lot 1017. The allegations to the effect that they were so preceding the issuance of the free patents and the certificates of title, *i.e.*, "the Department of Environment and Natural Resources not having any jurisdiction on the properties the same not being anymore public but already private property," are unquestionably adequate as a matter of pleading to oust the State of jurisdiction to grant the lots in question to petitioners. If at all, the oversight in not alleging the actual date when private respondents' ownership thereof accrued reflects a mere deficiency in details which does not amount to a failure to state a cause of action. The remedy for such deficiency would not be a motion to dismiss but a motion for bill of particulars so as to enable the filing of appropriate responsive pleadings.

With respect to the purported cause of action for **reconveyance**, it is settled that in this kind of action the free patent and the certificate of title are respected as incontrovertible. **What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in the defendant's name. All that must be alleged in the complaint are two (2) facts which admitting them to be true would entitle the plaintiff to recover title to the disputed land, namely, (1) that the plaintiff was the owner of the land and, (2) that the defendant had illegally dispossessed him of the same.**

We rule that private respondents have sufficiently pleaded (in addition to the cause of action for declaration of free patents and certificates of title) an action for reconveyance, more specifically, one which is based on implied trust. An implied trust arises where the defendant (or in this case petitioners) allegedly acquires the

disputed property through mistake or fraud so that he (or they) would be bound to hold and reconvey the property for the benefit of the person who is truly entitled to it. In the complaint, private respondents clearly assert that they have long been the absolute and exclusive owners and in actual possession and cultivation of Lot 1015 and Lot 1017 and that they were fraudulently deprived of ownership thereof when petitioners obtained free patents and certificates of title in their names. These allegations certainly measure up to the requisite statement of facts to constitute an action for reconveyance.[17] [Emphases supplied]

In this case, the complaint instituted by the Reyeses before the RTC was for the annulment of the title issued to the Galangs, and not for reversion. Thus, the real party in interest here is not the State but the Reyeses who claim a right of ownership over the property in question even before the issuance of a title in favor of the Galangs. Although the Reyeses have the right to file an action for reconveyance, they have failed to prove their case. Thus, on the second issue, the Court agrees with the RTC that the Reyeses failed to adduce substantial evidence to establish their allegation that the Galangs had fraudulently registered the subject property in their names.

The CA reversed the RTC decision giving the reason that the property was the former bed of Marigman Creek, which changed its course and passed through their Ponderosa property, thus, ownership of the subject property was automatically vested in them.

The law in this regard is covered by Article 461 of the Civil Code, which provides:

Art. 461. River beds which are abandoned through the natural change in the course of the waters ipso facto belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.

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[17] *Id.* at 260-263, cited in *Banguilan v. Court of Appeals*, G.R. No. 165815, April 27, 2007, 522 SCRA 644, 653-655.

If indeed a property was the former bed of a creek that changed its course and passed through the property of the claimant, then, pursuant to Article 461, the ownership of the old bed left to dry by the change of course was *automatically* acquired by the claimant.[18] Before such a conclusion can be reached, the fact of *natural* abandonment of the old course must be shown, that is, it must be proven that the creek indeed changed its course without artificial or man-made intervention. Thus, the claimant, in this case the Reyeses, must prove three key elements by clear and convincing evidence. These are: (1) the *old* course of the creek, (2) the *new* course of the creek, and (3) the change of course of the creek from the old location to the new location by *natural* occurrence.

In this regard, the Reyeses failed to adduce indubitable evidence to prove the *old course*, its *natural abandonment* and the *new course*. In the face of a Torrens title issued by the government, which is presumed to have been regularly issued, the evidence of the Reyeses was clearly wanting. Uncorroborated testimonial evidence will not suffice to convince the Court to order the reconveyance of the property to them. This failure did not escape the observation of the Office of the Solicitor General. Thus, it commented:

> In the case at bar, it is **not clear whether or not the Marigman Creek dried-up naturally back in 1980.** Neither did private respondents submit any findings or report from the Bureau of Lands or the DENR Regional Executive Director, who has the jurisdiction over the subject lot, regarding the **nature of change in the course of the creek's waters.** Worse, what is even **uncertain** in the present case is the **exact location** of the subject matter of dispute. This is evident from the decision of the Regional Trial Court which failed to specify which portion of the land is actually being disputed by the contending parties.
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> x x x x x x x x x

[18] Tolentino, *II Commentaries and Jurisprudence on the Civil Code of the Philippines* 137 (1992 ed., reprinted 2005), citing *Fitzimmons v. Cassity*, (La. App.) 172 So. 824.

Since the propriety of the remedy taken by private respondents in the trial court and their legal personality to file the aforesaid action depends on whether or not the litigated property in the present case still forms part of the public domain, or had already been converted into a private land, **the identification of the actual portion of the land subject of the controversy becomes necessary and indispensable** in deciding the issues herein involved.

x x x x x x x x x

Notably, private respondents failed to submit during trial any convincing proof of a similar declaration by the government that a portion of the Marigman Creek had already dried-up and that the same is already considered alienable and disposable agricultural land which they could acquire through acquisitive prescription.

Indeed, a thorough investigation is very imperative in the light of the conflicting factual issues as to the character and actual location of the property in dispute. These factual issues could properly be resolved by the DENR and the Land Management Bureau, which have the authority to do so and have the duty to carry out the provisions of the Public Land Act, after both parties have been fully given the chance to present all their evidence.[19] [Emphases supplied]

Moreover, during cross-examination, Conrado S. Reyes admitted that the plan surveyed for Fe de Castro Reyes and Jose de Castro, marked before the RTC as Exhibit "A-2", was prepared by a geodetic engineer without conducting an actual survey on the ground:

COUNSEL FOR DEFENDANTS:

> I am showing to you Exhibit "A-2" which is a plan surveyed for Fe de Kastro Reyes and Jose de Kastro. This plan was prepared by the geodetic engineer without conducting actual survey on the ground, is it not?

A: I cannot agree to that question.

Q: But based on the certification of the geodetic engineer, who prepared this it appears that this plan was plotted only based on the certification on this plan marked as Exhibit "A-2", is it not?

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[19] *Rollo*, pp. 109-112.

A: Yes, sir.

Q: So, based on this certification that the geodetic engineer conducted the survey of this plan based on the technical description without conducting actual survey on the ground?

A: Yes, sir.[20]

At some point, Mr. Reyes admitted that he was not sure that the property even existed:

COUNSEL FOR DEFENDANTS:

The subject matter of this document Exhibit I is that, that property which at present is titled in the name of Fe de Castro Reyes married to Conrado Reyes, *et al*. is that correct?

A: Yes.

Q: The subject matter of this case now is the adjoining lot of this TCT 185252, is that correct?

A: I do not know.

Q: You mean you do not know the lot subject matter of this case?

A: I do not know whether it really exists.

Q: Just answer the question, you do not know?

A: Yes.[21]

The conflicting claims here are (1) the title of the Galangs issued by the DENR, through the PENRO, and (2) the claim of the Reyeses, based on unsubstantiated testimony, that the land in question is the former bed of a dried up creek. As between these two claims, this Court is inclined to decide in favor of the Galangs who hold a valid and subsisting title to the property which, in the absence of evidence to the contrary, the Court presumes to have been issued by the PENRO in the regular performance of its official duty.

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[20] TSN, Civil Case No. 97-4560, May 7, 1999, p. 6.

[21] TSN, Civil Case No. 97-4560, May 21, 1999, p. 9.

The bottom line here is that, fraud and misrepresentation, as grounds for cancellation of patent and annulment of title, should never be presumed, but must be proved by clear and convincing evidence, with mere preponderance of evidence not being adequate. Fraud is a question of fact which must be proved.[22]

In this case, the allegations of fraud were never proven. There was no evidence at all specifically showing actual fraud or misrepresentation. Thus, the Court cannot sustain the findings of the CA.

WHEREFORE, the petition is **GRANTED.** The April 9, 2008 Decision and the October 6, 2008 Resolution of the Court of Appeals, in CA–G.R. CV. No. 85660, are hereby **REVERSED** and **SET ASIDE.** Civil Case No. 97-4560 of the Regional Trial Court of Antipolo City, Branch 73, is hereby ordered **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190071. August 15, 2012]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **MAUNLAD HOMES, INC. and all other persons or entities claiming rights under it,** *respondents.*

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[22] *Datu Kiram Sampaco v. Hadji Serad Mingca Lantud,* G.R. No. 163551, July 18, 2011, 654 SCRA 36, 49-50.

[**] Designated Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; CONSTRUED.—** In any case involving the question of jurisdiction, the Court is guided by the settled doctrine that *the jurisdiction of a court is determined by the nature of the action pleaded by the litigant through the allegations in his complaint.* Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to expiration or termination of the right to possess. Under Section 1, Rule 70 of the Rules of Court, the action must be filed "within one (1) year after [the] unlawful deprivation or withholding of possession[.]" Thus, to fall within the jurisdiction of the MeTC, the complaint must allege that — 1. the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; 2. eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination of the defendant's right of possession; 3. thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and 4. within one year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.

2. **ID.; ID.; ID.; ID.; THE ALLEGATIONS IN CASE AT BAR CLEARLY DEMONSTRATE A CAUSE OF ACTION FOR UNLAWFUL DETAINER AND VESTED THE METROPOLITAN TRIAL COURT (MeTC) WITH JURISDICTION OVER PETITIONER'S ACTION.—** Contrary to the findings of the lower courts, all four requirements were alleged in Union Bank's Complaint. Union Bank alleged that Maunlad Homes "maintained possession of the subject properties" pursuant to the Contract to Sell. Maunlad Homes, however, "failed to faithfully comply with the terms of payment," prompting Union Bank to "rescind the Contract to Sell in a Notice of Rescission dated February 5, 2003[.]" When Maunlad Homes "refused to turn over and vacate the subject premises[,]" Union Bank sent another Demand Letter on November 19, 2003 to Maunlad Homes requiring it (1) "[t]o pay the equivalent rentals-in-arrears as of October 2003 in the amount of

₱15,554,777.01 and monthly thereafter until the premises are fully vacated and turned over" to Union Bank, and (2) to vacate the property peacefully and turn over possession to Union Bank. As the demand went unheeded, Union Bank instituted an action for unlawful detainer before the MeTC on February 19, 2004, within one year from the date of the last demand. **These allegations clearly demonstrate a cause of action for unlawful detainer and vested the MeTC jurisdiction over Union Bank's action.**

3. **ID.; ID.; ID.; ID.; A DEFENDANT MAY NOT DIVEST THE TRIAL COURT OF ITS JURISDICTION BY MERELY CLAIMING OWNERSHIP OF THE PROPERTY; THE TRIAL COURT MAY RESOLVE THE ISSUE OF OWNERSHIP ONLY TO DETERMINE THE ISSUE OF POSSESSION.—** Despite Maunlad Homes' claim of ownership of the property, the Court rules that the MeTC retained its jurisdiction over the action; a defendant may not divest the MeTC of its jurisdiction by merely claiming ownership of the property. Under Section 16, Rule 70 of the Rules of Court, "[w]hen the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession." Section 18, Rule 70 of the Rules of Court, however, states that "[t]he judgment x x x shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building."

4. **ID.; ID.; ID.; ID.; THE AUTHORITY GRANTED TO THE TRIAL COURT TO PRELIMINARILY RESOLVE THE ISSUE OF OWNERSHIP TO DETERMINE THE ISSUE OF POSSESSION ULTIMATELY ALLOWS IT TO INTERPRET AND ENFORCE THE CONTRACT OR AGREEMENT BETWEEN THE PLAINTIFF AND THE DEFENDANT.—** The authority granted to the MeTC to preliminarily resolve the issue of ownership to determine the issue of possession ultimately allows it to interpret and enforce the contract or agreement between the plaintiff and the defendant. To deny the MeTC jurisdiction over a complaint merely because the issue of possession requires the interpretation of a contract will effectively rule out unlawful detainer as a remedy. As stated, in an action for unlawful detainer, the

defendant's right to possess the property may be by virtue of a contract, express or implied; corollarily, the termination of the defendant's right to possess would be governed by the terms of the same contract. Interpretation of the contract between the plaintiff and the defendant is inevitable because it is the contract that initially granted the defendant the right to possess the property; it is this same contract that the plaintiff subsequently claims was violated or extinguished, terminating the defendant's right to possess. We ruled in *Sps. Refugia v. CA* that — where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. The MeTC's ruling on the rights of the parties based on its interpretation of their contract is, of course, not conclusive, but is merely provisional and is binding only with respect to the issue of possession.

5. ID.; CIVIL PROCEDURE; VENUE OF ACTIONS; MAY BE VALIDLY AGREED UPON IN WRITING BY THE PARTIES BEFORE THE FILING OF THE ACTION.— While Section 1, Rule 4 of the Rules of Court states that ejectment actions shall be filed in "the municipal trial court of the municipality or city wherein the real property involved x x x is situated[,]" Section 4 of the same Rule provides that the rule shall not apply "[w]here the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof." Precisely, in this case, the parties provided for a different venue. In *Villanueva v. Judge Mosqueda, etc., et al.,* the Court upheld the validity of a stipulation in a contract providing for a venue for ejectment actions other than that stated in the Rules of Court. Since the unlawful detainer action is connected with the contract, Union Bank rightfully filed the complaint with the MeTC of Makati City.

6. CIVIL LAW; SPECIAL CONTRACTS; SALES; THE CONTRACT IN CASE AT BAR IS A CONTRACT TO SELL; RESPONDENT'S ACT OF WITHHOLDING THE INSTALLMENTS PAYMENTS RENDERED THE CONTRACT WITHOUT FORCE AND EFFECT AND ULTIMATELY DEPRIVED ITSELF OF THE RIGHT TO CONTINUE POSSESSING THE SUBJECT PROPERTY. — Section 11 of the contract between Union Bank and Maunlad Homes

provides that "[u]pon payment in full of the Purchase Price of the Property x x x, the SELLER shall execute and deliver a Deed of Absolute Sale conveying the Property to the BUYER." "Jurisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell." The presence of this provision generally identifies the contract as being a mere contract to sell. After reviewing the terms of the contract between Union Bank and Maunlad Homes, we find no reasonable ground to exempt the present case from the general rule; the contract between Union Bank and Maunlad Homes is a contract *to sell*. In a contract to sell, the full payment of the purchase price is a positive suspensive condition whose non-fulfillment is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. "The non-payment of the purchase price renders the contract to sell ineffective and without force and effect." Maunlad Homes' act of withholding the installment payments rendered the contract ineffective and without force and effect, and ultimately deprived itself of the right to continue possessing Maunlad Shopping Mall.

APPEARANCES OF COUNSEL

S.P. Madrid & Associates for petitioner.
M.B. Tomacruz & Associates Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Union Bank of the Philippines (*Union Bank*), assailing the decision dated October 28, 2009[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107772.

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[1] *Rollo,* pp. 12-93.

[2] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), and concurred in by Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz; *id.* at 339-343.

THE FACTS

Union Bank is the owner of a **commercial complex located in Malolos, Bulacan**, known as the Maunlad Shopping Mall.

Sometime in August 2002, Union Bank, as seller, and respondent Maunlad Homes, Inc. (*Maunlad Homes*), as buyer, entered into a **contract to sell**[3] involving the Maunlad Shopping Mall. The contract set the purchase price at ₱151 million, ₱2.4 million of which was to be paid by Maunlad Homes as down payment payable on or before July 5, 2002, with the balance to be amortized over the succeeding 180-month period.[4] Under the contract, Union Bank authorized Maunlad Homes to take possession of the property and to build or introduce improvements thereon. The parties also agreed that if Maunlad Homes violates any of the provisions of the contract, all payments made will be applied as rentals for the use and possession of the property, and all improvements introduced on the land will accrue in favor of Union Bank.[5] **In the event of rescission due to failure to pay or to comply with the terms of the contract, Maunlad Homes will be required to immediately vacate the property and must voluntarily turn possession over to Union Bank**.[6]

When Maunlad Homes failed to pay the monthly amortization, Union Bank sent the former a **Notice of Rescission of Contract**[7] dated February 5, 2003, demanding payment of the installments due within 30 days from receipt; otherwise, it shall consider the contract automatically rescinded. Maunlad Homes failed to comply. Hence, on November 19, 2003, **Union Bank sent Maunlad Homes a letter demanding payment of the rentals due and requiring that the subject property be vacated and its possession turned over to the bank**. When Maunlad Homes continued to refuse, **Union Bank instituted an ejectment suit**

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[3] *Id.* at 168-171.

[4] Section 2 of the Contract to Sell; *id.* at 168.

[5] Section 6 of the Contract to Sell; *id.* at 169.

[6] *Ibid.*

[7] *Id.* at 178.

before the Metropolitan Trial Court (*MeTC*) of Makati City, Branch 64, on February 19, 2004. Maunlad Homes resisted the suit by claiming, among others, that it is the owner of the property as Union Bank did not reserve ownership of the property under the terms of the contract.[8] By virtue of its ownership, Maunlad Homes claimed that it has the right to possess the property.

On May 18, 2005, the **MeTC dismissed Union Bank's ejectment complaint**.[9] It found that Union Bank's cause of action was based on a breach of contract and that both parties are claiming a better right to possess the property based on their respective claims of ownership of the property. The MeTC ruled that the appropriate action to resolve these conflicting claims was an *accion reivindicatoria*, over which it had no jurisdiction.

On appeal, **the Regional Trial Court (*RTC*) of Makati City, Branch 139, affirmed the MeTC** in its decision dated July 17, 2008;[10] it agreed with the MeTC that the issues raised in the complaint extend beyond those commonly involved in an unlawful detainer suit. The RTC declared that the case involved a determination of the rights of the parties under the contract. Additionally, the RTC noted that the property is located in Malolos, Bulacan, but the ejectment suit was filed by Union Bank in Makati City, based on the contract stipulation that "[t]he venue of all suits and actions arising out or in connection with [the] Contract to Sell shall be [in] Makati City."[11] The RTC ruled that the proper venue for the ejectment action is in Malolos, Bulacan, pursuant to the second paragraph of Section 1, Rule 4 of the Rules of Court, which states:

> Section 1. *Venue of real actions.* — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

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[8] *Id.* at 183-188.

[9] *Id.* at 248-251. Penned by Presiding Judge Dina Pestaño Teves.

[10] *Id.* at 314-319. Penned by Presiding Judge Benjamin T. Pozon.

[11] Section 17 of the Contract to Sell; *id.* at 170.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated. [emphasis ours]

The RTC declared that Union Bank cannot rely on the waiver of venue provision in the contract because ejectment is not an action arising out of or connected with the contract.

Union Bank appealed the RTC decision to the CA through a petition for review under Rule 42 of the Rules of Court. **The CA affirmed the RTC decision** in its October 28, 2009 decision,[12] ruling that Union Bank's claim of possession is based on its claim of ownership which in turn is based on its interpretation of the terms and conditions of the contract, particularly, the provision on the consequences of Maunlad Homes' breach of contract. The CA determined that Union Bank's cause of action is premised on the interpretation and enforcement of the contract and the determination of the validity of the rescission, both of which are matters beyond the jurisdiction of the MeTC. Therefore, it ruled that the **dismissal of the ejectment suit was proper.** The CA, however, made no further ruling on the issue of venue of the action.

From the CA's judgment, Union Bank appealed to the Court by filing the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

THE PARTIES' ARGUMENTS

Union Bank disagreed with the CA's finding that it is claiming ownership over the property through the ejectment action. It claimed that it never lost ownership over the property despite the execution of the contract, since only the right to possess was conceded to Maunlad Homes under the contract; Union Bank never transferred ownership of the property to Maunlad Homes. Because of Maunlad Homes' failure to comply with the terms of the contract, Union Bank believes that it rightfully rescinded the sale, which rescission terminated Maunlad Homes'

[12] *Supra* note 2.

right to possess the subject property. Since Maunlad Homes failed to turn over the possession of the subject property, Union Bank believes that it correctly instituted the ejectment suit.

The Court initially denied Union Bank's petition in its Resolution dated March 17, 2010.[13] Upon motion for reconsideration filed by Union Bank, the Court set aside its Resolution of March 17, 2010 (in a Resolution dated May 30, 2011[14]) and required Maunlad Homes to comment on the petition.

Maunlad Homes contested Union Bank's arguments, invoking the rulings of the lower courts. It considered Union Bank's action as based on the propriety of the rescission of the contract, which, in turn, is based on a determination of whether Maunlad Homes indeed failed to comply with the terms of the contract; the propriety of the rescission, however, is a question that is within the RTC's jurisdiction. Hence, Maunlad Homes contended that the dismissal of the ejectment action was proper.

THE COURT'S RULING

We find the petition meritorious.

The authority of the MeTC to interpret contracts in an unlawful detainer action

In any case involving the question of jurisdiction, the Court is guided by the settled doctrine that *the jurisdiction of a court is determined by the nature of the action pleaded by the litigant through the allegations in his complaint.*[15]

Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the

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[13] *Rollo*, p. 348.

[14] *Id.* at 439.

[15] *Abaya Investments Corporation v. Merit Philippines*, G.R. No. 176324, April 16, 2008, 551 SCRA 646, 653; and *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83, 94-95 (1998).

defendant in unlawful detainer is originally legal but became illegal due to expiration or termination of the right to possess.[16] Under Section 1, Rule 70 of the Rules of Court, the action must be filed "within one (1) year after [the] unlawful deprivation or withholding of possession[.]" Thus, to fall within the jurisdiction of the MeTC, the complaint must allege that —

1. the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff;
2. eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination of the defendant's right of possession;
3. thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and
4. within one year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.[17]

Contrary to the findings of the lower courts, all four requirements were alleged in Union Bank's Complaint. Union Bank alleged that Maunlad Homes "maintained possession of the subject properties" pursuant to the Contract to Sell.[18] Maunlad Homes, however, "failed to faithfully comply with the terms of payment," prompting Union Bank to "rescind the Contract to Sell in a Notice of Rescission dated February 5, 2003[.]"[19] When Maunlad Homes "refused to turn over and vacate the subject

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[16] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156-157.

[17] *Delos Reyes v. Odones,* G.R. No. 178096, March 23, 2011, 646 SCRA 328, 334-335, citing *Cabrera v. Getaruela,* G.R. No. 164213, April 21, 2009, 586 SCRA 129, 137.

[18] Paragraph 7 of Union Bank's Complaint; *rollo*, p. 96.

[19] Paragraph 8 of Union Bank's Complaint; *ibid.*

premises[,]"[20] Union Bank sent another Demand Letter on November 19, 2003 to Maunlad Homes requiring it (1) "[t]o pay the equivalent rentals-in-arrears as of October 2003 in the amount of ₱15,554,777.01 and monthly thereafter until the premises are fully vacated and turned over" to Union Bank, and (2) to vacate the property peacefully and turn over possession to Union Bank.[21] As the demand went unheeded, Union Bank instituted an action for unlawful detainer before the MeTC on February 19, 2004, within one year from the date of the last demand. **These allegations clearly demonstrate a cause of action for unlawful detainer and vested the MeTC jurisdiction over Union Bank's action.**

Maunlad Homes denied Union Bank's claim that its possession of the property had become unlawful. It argued that its failure to make payments did not terminate its right to possess the property because it already acquired ownership when Union Bank failed to reserve ownership of the property under the contract. **Despite Maunlad Homes' claim of ownership of the property, the Court rules that the MeTC retained its jurisdiction over the action; a defendant may not divest the MeTC of its jurisdiction by merely claiming ownership of the property.**[22] Under Section 16, Rule 70 of the Rules of Court, "[w]hen the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession." Section 18, Rule 70 of the Rules of Court, however, states that "[t]he judgment x x x shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building."

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[20] Paragraph 10 of Union Bank's Complaint; *id.* at 97.

[21] Paragraph 11 of Union Bank's Complaint; *ibid.*

[22] *Consignado v. Court of Appeals*, G.R. No. 87148, March 18, 1992, 207 SCRA 297, 305-306, citing *De la Cruz v. Court of Appeals*, G.R. No. L-57454, November 29, 1984, 133 SCRA 520, 528; and *Ching v. Hon. Antonio Q. Malaya, etc., et al.*, G.R. No. 56449, August 31, 1987, 153 SCRA 412.

The authority granted to the MeTC to preliminarily resolve the issue of ownership to determine the issue of possession ultimately allows it to interpret and enforce the contract or agreement between the plaintiff and the defendant. To deny the MeTC jurisdiction over a complaint merely because the issue of possession requires the interpretation of a contract will effectively rule out unlawful detainer as a remedy. As stated, in an action for unlawful detainer, the defendant's right to possess the property may be by virtue of a contract, express or implied; corollarily, the termination of the defendant's right to possess would be governed by the terms of the same contract. Interpretation of the contract between the plaintiff and the defendant is inevitable because it is the contract that initially granted the defendant the right to possess the property; it is this same contract that the plaintiff subsequently claims was violated or extinguished, terminating the defendant's right to possess. We ruled in *Sps. Refugia v. CA*[23] that —

> where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues.

The MeTC's ruling on the rights of the parties based on its interpretation of their contract is, of course, not conclusive, but is merely provisional and is binding only with respect to the issue of possession.

Thus, despite the CA's opinion that Union Bank's "case involves a determination of the rights of the parties under the Contract to Sell,"[24] it is not precluded from resolving this issue. Having acquired jurisdiction over Union Bank's action, the MeTC can resolve the conflicting claims of the parties based on the facts presented and proved.

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[23] 327 Phil. 982, 1006 (1996).

[24] *Rollo*, p. 342.

The right to possess the property was extinguished when the contract to sell failed to materialize

Maunlad Homes acquired possession of the property based on its contract with Union Bank. While admitting that it suspended payment of the installments,[25] Maunlad Homes contended that the suspension of payment did not affect its right to possess the property because its contract with Union Bank was one *of sale* and not *to sell;* hence, ownership of the property has been transferred to it, allowing it to retain possession notwithstanding nonpayment of installments. The terms of the contract, however, do not support this conclusion.

Section 11 of the contract between Union Bank and Maunlad Homes provides that "[u]pon payment in full of the Purchase Price of the Property x x x, the SELLER shall execute and deliver a Deed of Absolute Sale conveying the Property to the BUYER."[26] "Jurisprudence has established that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell."[27] The presence of this provision generally identifies the contract as being a mere contract to sell.[28] After reviewing the terms of the contract between Union Bank and Maunlad Homes, we find no reasonable ground to exempt the present case from the general rule; the contract between Union Bank and Maunlad Homes is a contract *to sell*.

In a contract to sell, the full payment of the purchase price is a positive suspensive condition whose non-fulfillment is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. "The non-payment of the purchase price renders the contract to sell ineffective and

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[25] *Id.* at 315.

[26] *Id.* at 169.

[27] *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 49.

[28] *Ibid.*

without force and effect."[29] Maunlad Homes' act of withholding the installment payments rendered the contract ineffective and without force and effect, and ultimately deprived itself of the right to continue possessing Maunlad Shopping Mall.

The propriety of filing the unlawful detainer action in Makati City pursuant to the venue stipulation in the contract

Maunlad Homes questioned the venue of Union Bank's unlawful detainer action which was filed in Makati City while the contested property is located in Malolos, Bulacan. Citing Section 1, Rule 4 of the Rules of Court, Maunlad Homes claimed that the unlawful detainer action should have been filed with the municipal trial court of the municipality or city where the real property involved is situated. Union Bank, on the other hand, justified the filing of the complaint with the MeTC of Makati City on the venue stipulation in the contract which states that "[t]he venue of all suits and actions arising out [of] or in connection with this Contract to Sell shall be at Makati City."[30]

While Section 1, Rule 4 of the Rules of Court states that ejectment actions shall be filed in "the municipal trial court of the municipality or city wherein the real property involved x x x is situated[,]" Section 4 of the same Rule provides that the rule shall not apply "[w]here the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof." Precisely, in this case, the parties provided for a different venue. In *Villanueva v. Judge Mosqueda, etc., et al.*,[31] the Court upheld the validity of a stipulation in a contract providing for a venue for ejectment actions other than that stated in the Rules of Court. Since the unlawful detainer action is connected with the contract, Union Bank rightfully filed the complaint with the MeTC of Makati City.

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[29] *Valenzuela v. Kalayaan Development & Industrial Corporation*, G.R. No. 163244, June 22, 2009, 590 SCRA 380, 388.

[30] Section 17 of the Contract to Sell; *rollo*, p. 170.

[31] 201 Phil. 474, 476 (1982).

WHEREFORE, we hereby **GRANT** the petition and **SET ASIDE** the decision dated October 28, 2009 of the Court of Appeals in CA-G.R. SP No. 107772. Respondent Maunlad Homes, Inc. is **ORDERED TO VACATE** the Maunlad Shopping Mall, the property subject of the case, immediately upon the finality of this Decision. Respondent Maunlad Homes, Inc. is further **ORDERED TO PAY** the rentals-in-arrears, as well as rentals accruing in the interim until it vacates the property.

The case is **REMANDED** to the Metropolitan Trial Court of Makati City, Branch 64, to determine the amount of rentals due. In addition to the amount determined as unpaid rent, respondent Maunlad Homes, Inc. is **ORDERED TO PAY** legal interest of six percent (6%) per annum, from November 19, 2003, when the demand to pay and to vacate was made, up to the finality of this Decision. Thereafter, an interest of twelve percent (12%) per annum shall be imposed on the total amount due until full payment is made.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191532. August 15, 2012]

MARGARITA AMBRE *Y* CAYUNI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[*] Acting member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1274 dated July 30, 2012.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; EXCLUSIONARY RULE.— Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision. Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.

2. ID.; ID.; ID.; ID.; ID; EXCEPTIONS TO THE RULE; ARREST *IN FLAGRANTE DELICTO*.— This exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exception established by jurisprudence is search incident to a lawful arrest. In this exception, the law requires that a lawful arrest must precede the search of a person and his belongings. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. Section 5, Rule 113 of the Rules of Criminal Procedure, however, recognizes permissible warrantless arrests. x x x **(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;** x x x Section 5, thereof provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante delicto;* (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is

attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

3. ID.; ID.; ID.; ID.; ID.; PETITIONER WAS CAUGHT BY THE POLICE OFFICERS IN THE ACT OF USING *SHABU* AND, THUS, CAN BE LAWFULLY ARRESTED WITHOUT A WARRANT.— In the case at bench, there is no gainsaying that Ambre was caught by the police officers in the act of using shabu and, thus, can be lawfully arrested without a warrant. PO1 Mateo positively identified Ambre sniffing suspected shabu from an aluminum foil being held by Castro. Ambre, however, made much of the fact that there was no prior valid intrusion in the residence of Sultan. The argument is specious. Suffice it to state that prior justification for intrusion or prior lawful intrusion is not an element of an arrest *in flagrante delicto*. Thus, even granting *arguendo* that the apprehending officers had no legal right to be present in the dwelling of Sultan, it would not render unlawful the arrest of Ambre, who was seen sniffing shabu with Castro and Mendoza in a pot session by the police officers. Accordingly, PO2 Masi and PO1 Mateo were not only authorized but were also duty-bound to arrest Ambre together with Castro and Mendoza for illegal use of methamphetamine hydrochloride in violation of Section 15, Article II of R.A. No. 9165. To write finis to the issue of validity and irregularity in her warrantless arrest, the Court holds that Ambre is deemed to have waived her objections to her arrest for not raising them before entering her plea.

4. ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT THE WARRANTLESS ARREST OF PETITIONER WAS VALID, THE SUBSEQUENT SEARCH AND SEIZURE DONE ON HER PERSON WAS LIKEWISE VALID.— Considering that the warrantless arrest of Ambre was valid, the subsequent search and seizure done on her person was likewise lawful. After all, a legitimate warrantless arrest necessarily cloaks the arresting police officer with authority to validly search and seize from the offender (1) dangerous weapons, and (2) those that may be used as proof of the commission of an offense. Further, the physical evidence corroborates the testimonies of the prosecution witnesses that Ambre, together with Castro and Mendoza, were illegally using *shabu*. The urine samples taken from them were found positive for the presence of *shabu*, as indicated in Physical Science Report No. DT-041-05 to DT-

043-05. It was likewise found that the items seized from the three were all positive for traces of *shabu* as contained in Physical Science Report No. D-149-05 dated April 21, 2005. These findings were unrebutted.

5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE; MOST IMPORTANT FACTOR IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS. — Ambre's assertion that her conviction was incorrect, because the evidence against her was obtained in violation of the procedure laid down in R.A. No. 9165, is untenable. While ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain. This Court, however, has consistently held that the most important factor is the preservation of the integrity and evidentiary value of the seized items. In this case, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drug paraphernalia had not been compromised. Hence, even though the prosecution failed to submit in evidence the physical inventory and photograph of the drug paraphernalia with traces of *shabu*, this will not render Ambre's arrest illegal or the items seized from her inadmissible.

6. ID.; ID.; ID.; ID.; PROOF OF THE EXISTENCE OF DRUG PARAPHERNALIA IS NOT A CONDITION *SINE QUA NON* FOR CONVICTION OF ILLEGAL USE OF DANGEROUS DRUGS.— Even if the Court strikes down the seized drug paraphernalia with traces of *shabu* as inadmissible, Ambre will not be exculpated from criminal liability. *First*, let it be underscored that proof of the existence and possession by the accused of drug paraphernalia is not a condition *sine qua non* for conviction of illegal use of dangerous drugs. The law merely considers possession of drug paraphernalia as *prima facie* evidence that the possessor has smoked, ingested or used a dangerous drug and creates a presumption that he has violated Section 15 of R.A. No. 9165.

7. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE POLICE OFFICERS' TESTIMONIES HAVE ADEQUATELY ESTABLISHED WITH MORAL CERTAINTY THE COMMISSION OF THE CRIME CHARGED AND THE

IDENTITY OF PETITIONER AS THE PERPETRATOR.— The testimonies of the police officers have adequately established with moral certainty the commission of the crime charged in the information and the identity of Ambre as the perpetrator. At this juncture, the Court affirms the RTC's finding that the police officers' testimonies deserve full faith and credit. Appellate courts, generally, will not disturb the trial court's assessment of a witness' credibility unless certain material facts and circumstances have been overlooked or arbitrarily disregarded. The Court finds no reason to deviate from this rule in this case.

8. **ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; APPLICABLE IN CASE AT BAR THERE BEING ANY SHOWING THAT THE POLICE OFFICERS WERE IMPELLED WITH IMPROPER MOTIVE TO FALSELY IMPLICATE PETITIONER.—** The Court upholds the presumption of regularity in the performance of official duties. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The presumption was not overcome as there was no showing that PO3 Moran, PO1 Mateo, PO2 Hipolito, and P/Insp. dela Rosa were impelled with improper motive to falsely impute such offense against Ambre.

9. **ID.; ID.; DEFENSE OF DENIAL; BARE DENIALS CANNOT PREVAIL OVER POSITIVE IDENTIFICATION.—** As against the positive testimonies of the prosecution witnesses, the defense of denial offered by Ambre must simply fail. Bare denials cannot prevail over positive identification made by the prosecution witnesses. Besides, this Court has held in a catena of cases that the defense of denial or frame-up has been viewed with disfavor for it can just as easily be concocted and is a common and standard ploy in most prosecutions for violation of the Dangerous Drugs Act.

10. **ID.; CRIMINAL PROCEDURE; APPEALS; IT IS TOO LATE FOR PETITIONER TO CHALLENGE THE PENALTY OF SIX MONTHS OF REHABILITATION IN A GOVERNMENT CENTER, RAISED AS AN ISSUE FOR THE FIRST TIME ON APPEAL AS IT WOULD CONTRAVENE THE BASIC RULES OF FAIR PLAY AND**

JUSTICE.— Ambre contends that the penalty of six months of rehabilitation in a government center imposed on her was a nullity, in view of the alleged lack of confirmatory test. The Court is not persuaded. It must be emphasized that in no instance did Ambre challenge, at the RTC, the supposed absence of confirmatory drug test conducted on her. Ambre only questioned the alleged omission when she appealed her conviction before the CA. It was too late in the day for her to do so. Well-entrenched is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.

APPEARANCES OF COUNSEL

Barbadillo Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the November 26, 2009 Decision[1] and the March 9, 2010 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 31957, which affirmed the September 1, 2008 Decision[3] of the Regional Trial Court, Branch 123, Caloocan City, *(RTC)* in Criminal Case No. C-73029, finding petitioner Margarita Ambre *y* Cayuni *(Ambre)* guilty beyond reasonable doubt of the crime of violation of Section 15, Article II of Republic Act *(R.A.)* No. 9165.

THE FACTS

Two separate Informations were filed against Ambre, and co-accused, Bernie Castro *(Castro)* and Kaycee Mendoza

[1] Penned by Associate Justice Ramon R. Garcia with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Fernanda Lampas Peralta, concurring; *rollo*, pp. 31-50.

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

[3] Penned by Judge Edmundo T. Acuña; *id.* at 66-76.

(Mendoza), before the RTC charging them with illegal possession of drug paraphernalia docketed as Criminal Case No. C-73028, and illegal use of *methylamphetamine hydrochloride*, otherwise known as *shabu*, docketed as Criminal Case No. C-73029. The Informations indicting the accused read:

Criminal Case No. C-73028

That on or about 20th day of April 2005 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) unsealed transparent plastic sachet containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE), one (1) rolled aluminum foil strip containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE), one (1) folded aluminum foil strip containing traces of white crystalline substance, (METHYLAMPHETAMINE HYDROCHLORIDE) and two (2) disposable plastic lighters, knowing the same are paraphernalias instruments apparatus fit or intended for smoking, consuming, administering, ingesting or introducing dangerous drug (METHYLAMPHETAMINE HYDROCHLORIDE) into the body.

Contrary to law.[4]

Criminal Case No. C-73029

That on or about the 20th of April 2005 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without being authorized by law, did then and there willfully, unlawfully and feloniously use and sniff Methylamphetamine Hydrochloride (*Shabu*), knowing the same to be a dangerous drug under the provisions of the above-cited law.

Contrary to law.[5]

When arraigned, Castro and Mendoza pleaded guilty to both charges. Consequently, they were meted the penalty of

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[4] *Id.* at 66.

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

imprisonment of six (6) months and one (1) day to one (1) year and eight (8) months and a fine of 25,000.00 in Criminal Case No. C-73028. For their conviction in Criminal Case No. C-73029, the RTC ordered their confinement at the Center for the Ultimate Rehabilitation of Drug Dependents *(CUREDD)* for a period of six (6) months.[6]

Ambre, on the other hand, entered a plea of not guilty to the charges.[7] Trial on the merits ensued.

The Version of the Prosecution

From the testimonies of prosecution witnesses PO3 Fernando Moran *(PO3 Moran)*, PO1 Ronald Allan Mateo *(PO1 Mateo)*, PO2 Randulfo Hipolito *(PO2 Hipolito)*, and P/Insp. Jessie dela Rosa (*P/Insp. dela Rosa*), it appeared that on April 20, 2005, the Caloocan Police Station Anti-Illegal Drug-Special Operation Unit conducted a buy-bust operation pursuant to a tip from a police informant that a certain Abdulah Sultan *(Sultan)* and his wife Ina Aderp *(Aderp)* were engaged in the selling of dangerous drugs at a residential compound in Caloocan City; that the buy-bust operation resulted in the arrest of Aderp and a certain Moctar Tagoranao *(Tagoranao)*; that Sultan ran away from the scene of the entrapment operation and PO3 Moran, PO2 Masi and PO1 Mateo, pursued him; that in the course of the chase, Sultan led the said police officers to his house; that inside the house, the police operatives found Ambre, Castro and Mendoza having a pot session; that Ambre, in particular, was caught sniffing what was suspected to be *shabu* in a rolled up aluminum foil; and that PO3 Moran ran after Sultan while PO2 Masi and PO1 Mateo arrested Ambre, Castro and Mendoza for illegal use of *shabu*.

The items confiscated from the three were marked and, thereafter, submitted for laboratory examination. Physical Science Report No. DT-041-05 to DT-043-05 stated that the urine samples taken from Ambre and her co-accused were positive for the

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[6] *Id.* at 34.

[7] *Id.* at 67.

presence of *shabu* while Physical Science Report No. D-149-05 showed that the items seized from them were all found positive for traces of *shabu*.[8]

The Version of the Defense

Ambre vehemently denied the charges against her. Through the testimonies of Ambre, Mendoza and Lily Rosete *(Rosete)*, the defense claimed that on the afternoon of April 20, 2005, Ambre was inside the residential compound in Caloocan to buy *malong*; that her mother asked Rosete to accompany her because Rosete's daughter-in-law, Nancy Buban *(Buban)*, was a resident of Phase 12, Caloocan City, an area inhabited by Muslims; that when they failed to buy malong, Rosete and Buban left her inside the residential compound to look for other vendors; that ten minutes later, the policemen barged inside the compound and arrested her; that she was detained at the Caloocan City Jail where she met Castro, Mendoza and Tagoranao; and that she was not brought to the Philippine National Police *(PNP)* Crime Laboratory for drug testing.

Rosete further testified that after she had left Ambre inside the compound to find other malong vendors, she returned fifteen minutes later and learned that the policemen had arrested people inside the compound including Ambre.

Mendoza, who was convicted in Criminal Case No. C-73029, claimed that no pot session took place on the afternoon of April 20, 2005. She averred that she and Ambre were merely inside the residential compound, when policemen suddenly came in and pointed guns at them.[9]

The Ruling of the Regional Trial Court

On September 1, 2008, the RTC rendered its decision declaring that the prosecution was able to establish with certitude the guilt of Ambre for illegal use of *methylamphetamine hydrochloride* or violation of Section 15, Article II of R.A. No. 9165. The

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[8] *Id.* at 137-140.

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

RTC, however, acquitted her of the crime of violation of Section 12, Article II of R.A. No. 9165 for failure of the prosecution to prove with particularity the drug paraphernalia found in her possession. The trial court adjudged:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1) In Crim. Case No. C- 73028, finding accused MARGARITA AMBRE Y CAYUNI not guilty of the crime of Violation of Section 12, Article II, RA 9165;
>
> 2) In Crim. Case No. C-73029, finding accused MARGARITA AMBRE Y CAYUNI guilty beyond reasonable doubt of the crime of Violation of Sec. 15, Art. II RA 9165 and hereby sentences her to be confined and rehabilitated at the government rehabilitation center in Bicutan, Taguig, Metro Manila for a period of six (6) months. The six (6) month period of rehabilitation shall commence only from the time that she is brought inside the rehabilitation center and its promulgation by this court for which the accused shall be notified.
>
> The *shabu* subject of these cases is hereby confiscated in favor of the government to be disposed of in accordance with the rules governing the same.
>
> Costs against the accused.
>
> SO ORDERED.[10]

The Decision of the Court of Appeals

Undaunted, Ambre appealed the judgment of conviction before the CA professing her innocence of the crime. On November 26, 2009, the CA rendered the assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated September 1, 2008 of the Regional Trial Court, Branch 123, Caloocan City is AFFIRMED.
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> SO ORDERED.[11]

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

[11] *Id.* at 50.

Ambre's motion for reconsideration was denied by the CA in its March 9, 2010 Resolution. Hence, she filed this petition

THE ISSUES

Ambre raised the following issues:

1. WHETHER OR NOT THE ARREST OF AND THE SEARCH DONE AGAINST THE PETITIONER ON APRIL 20, 2005 (THAT YIELDED ALLEGED DRUG PARAPHERNALIA) CONFORMED WITH THE MANDATED LEGAL PROCEDURES IN CONDUCTING A BUY-BUST OPERATION.

2. WHETHER OR NOT THE ARREST OF AND THE SEARCH DONE AGAINST THE PETITIONER WERE PART AND PARCEL OF THE DISMISSED AND DISCREDITED BUY-BUST OPERATIONS OF THE POLICE AND/OR "FRUITS OF THE POISONOUS TREE" AND HENCE, WERE ILLEGAL.

3. WHETHER OR NOT THE PROSECUTION'S EVIDENCE THAT WERE SEIZED DURING THE ILLEGAL BUY-BUST OPERATION ARE ADMISSIBLE AS EVIDENCE.

4. WHETHER OR NOT THE EXCLUSION OR DISREGARD OF THE FAVORABLE TESTIMONY OF PETITIONER'S WITNESS, HER CO-ACCUSED, KAYCEE MENDOZA, ON THE GROUND THAT THE LATTER EARLIER PLED GUILTY TO SUCH ILLEGAL USE, HAD VIOLATED THE RULE ON INTER ALIOS ACTA UNDER SECTION 26, RULE 130 OF THE RULES OF COURT.

5. WHETHER OR NOT THE PETITIONER'S PENALTY OF SIX (6) MONTHS REHABILITATION IN A GOVERNMENT CENTER IS A NULLITY GIVEN THE LACK OF CONFIRMATORY TEST AS REQUIRED UNDER R.A. 9165 ("COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002").[12]

A perusal of the pleadings filed by the parties leads the Court to conclude that the case revolves on the following core issues:

1.) Whether the warrantless arrest of Ambre and the search of her person was valid; and

2.) Whether the items seized are inadmissible in evidence.

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[12] *Id.* at 16.

Essentially, Ambre insists that the warrantless arrest and search made against her were illegal because no offense was being committed at the time and the police operatives were not authorized by a judicial order to enter the dwelling of Sultan. She argues that the alleged "hot pursuit" on Sultan which ended in the latter's house, where she, Mendoza and Castro were supposedly found having a pot session, was more imaginary than real. In this regard, Ambre cites the April 29, 2005 Resolution of the Prosecutor's Office of Caloocan City dismissing the case against Aderp and Sultan for insufficiency of evidence because the April 20, 2005 buy-bust operation was highly suspicious and doubtful. She posits that the items allegedly seized from her were inadmissible in evidence being fruits of a poisonous tree. She claims that the omission of the apprehending team to observe the procedure outlined in R.A. No. 9165 for the seizure of evidence in drugs cases significantly impairs the prosecution's case. Lastly, Ambre maintains that she was not subjected to a confirmatory test and, hence, the imposition of the penalty of six months rehabilitation was not justified.

For the State, the Office of the Solicitor General *(OSG)* urges this Court to affirm the challenged decision for failure of Ambre to show that the RTC committed any error in convicting her of illegal use of shabu. The OSG insists that Ambre was lawfully arrested in accordance with Section 5, Rule 113 of the Rules of Court. It is of the opinion that the credible and compelling evidence of the prosecution could not be displaced by the empty denial offered by Ambre.

THE COURT'S RULING

The conviction of Ambre stands.

Section 2, Article III[13] of the Constitution mandates that a search and seizure must be carried out through or on the strength

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[13] Section 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

of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision. Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.[14]

This exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exception established by jurisprudence is search incident to a lawful arrest.[15] In this exception, the law requires that a lawful arrest must precede the search of a person and his belongings. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. Section 5, Rule 113 of the Rules of Criminal Procedure, however, recognizes permissible warrantless arrests:

"Sec. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

Section 5, above, provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante*

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complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[14] Sec.3 (2), Art. III, 1987 Constitution.

[15] *People v. Delos Reyes*, G.R. No. 174774, August 31, 2011, 656 SCRA 417, 449.

delicto; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[16]

In the case at bench, there is no gainsaying that Ambre was caught by the police officers in the act of using *shabu* and, thus, can be lawfully arrested without a warrant. PO1 Mateo positively identified Ambre sniffing suspected *shabu* from an aluminum foil being held by Castro.[17] Ambre, however, made much of the fact that there was no prior valid intrusion in the residence of Sultan. The argument is specious.

Suffice it to state that prior justification for intrusion or prior lawful intrusion is not an element of an arrest *in flagrante delicto.* Thus, even granting *arguendo* that the apprehending officers had no legal right to be present in the dwelling of Sultan, it would not render unlawful the arrest of Ambre, who was seen sniffing *shabu* with Castro and Mendoza in a pot session by the police officers. Accordingly, PO2 Masi and PO1 Mateo were not only authorized but were also duty-bound to arrest Ambre together with Castro and Mendoza for illegal use of *methamphetamine hydrochloride* in violation of Section 15, Article II of R.A. No. 9165.

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[16] *People v. Chua*, 444 Phil. 757, 770 (2003).

[17] *Rollo,* p. 68.

To write finis to the issue of validity and irregularity in her warrantless arrest, the Court holds that Ambre is deemed to have waived her objections to her arrest for not raising them before entering her plea.[18]

Considering that the warrantless arrest of Ambre was valid, the subsequent search and seizure done on her person was likewise lawful. After all, a legitimate warrantless arrest necessarily cloaks the arresting police officer with authority to validly search and seize from the offender (1) dangerous weapons, and (2) those that may be used as proof of the commission of an offense.[19]

Further, the physical evidence corroborates the testimonies of the prosecution witnesses that Ambre, together with Castro and Mendoza, were illegally using *shabu*. The urine samples taken from them were found positive for the presence of *shabu*, as indicated in Physical Science Report No. DT-041-05 to DT-043-05. It was likewise found that the items seized from the three were all positive for traces of *shabu* as contained in Physical Science Report No. D-149-05 dated April 21, 2005. These findings were unrebutted.

Ambre's assertion that her conviction was incorrect, because the evidence against her was obtained in violation of the procedure laid down in R.A. No. 9165, is untenable.

While ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain.[20] This Court, however, has consistently held that the most important factor is the preservation of the integrity and evidentiary value of the seized items.[21] In this case, the prosecution was able to demonstrate that the integrity and evidentiary value of the

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[18] *People v. Ng Yik Bun*, G.R. No. 180452, January 10, 2011, 639 SCRA 88, 103-104.

[19] Section 13, Rule 126, Rules of Court.

[20] *People v. Mendoza*, G.R. No. 189327, February 29, 2012.

[21] *People v. Manlangit*, G.R. No. 189806, January 12, 2011, 639 SCRA 455, 469.

confiscated drug paraphernalia had not been compromised. Hence, even though the prosecution failed to submit in evidence the physical inventory and photograph of the drug paraphernalia with traces of shabu, this will not render Ambre's arrest illegal or the items seized from her inadmissible.

Records bear out that after the arrest of Ambre with Castro and Mendoza, the following items were confiscated from them: one (1) unsealed sachet with traces of suspected *shabu*; one (1) strip of rolled up aluminum foil with traces of suspected *shabu*; one (1) folded piece of aluminum foil with traces of white crystalline substance also believed to be *shabu*; and two (2) yellow disposable lighters. Upon arrival at the police station, PO3 Moran turned over the seized items to PO2 Hipolito who immediately marked them in the presence of the former. All the pieces of evidence were placed inside an improvised envelope marked as "SAID-SOU EVIDENCE 04-20-05." With the Request for Laboratory Examination, PO2 Hipolito brought the confiscated items to the PNP Crime Laboratory and delivered them to P/Insp. dela Rosa, a forensic chemist, who found all the items, except the disposable lighters, positive for traces of shabu. Verily, the prosecution had adduced ample evidence to account for the crucial links in the chain of custody of the seized items.

Even if the Court strikes down the seized drug paraphernalia with traces of *shabu* as inadmissible, Ambre will not be exculpated from criminal liability. *First*, let it be underscored that proof of the existence and possession by the accused of drug paraphernalia is not a condition *sine qua non* for conviction of illegal use of dangerous drugs. The law merely considers possession of drug paraphernalia as *prima facie* evidence that the possessor has smoked, ingested or used a dangerous drug and creates a presumption that he has violated Section 15 of R.A. No. 9165.[22]

Secondly, the testimonies of the police officers have adequately established with moral certainty the commission of the crime charged in the information and the identity of Ambre as the

[22] Section 12, par. 2, Art. II, R.A. No. 9165.

perpetrator. At this juncture, the Court affirms the RTC's finding that the police officers' testimonies deserve full faith and credit. Appellate courts, generally, will not disturb the trial court's assessment of a witness' credibility unless certain material facts and circumstances have been overlooked or arbitrarily disregarded.[23] The Court finds no reason to deviate from this rule in this case.

Likewise, the Court upholds the presumption of regularity in the performance of official duties. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The presumption was not overcome as there was no showing that PO3 Moran, PO1 Mateo, PO2 Hipolito, and P/Insp. dela Rosa were impelled with improper motive to falsely impute such offense against Ambre.

As against the positive testimonies of the prosecution witnesses, the defense of denial offered by Ambre must simply fail. Bare denials cannot prevail over positive identification made by the prosecution witnesses.[24] Besides, this Court has held in a catena of cases that the defense of denial or frame-up has been viewed with disfavor for it can just as easily be concocted and is a common and standard ploy in most prosecutions for violation of the Dangerous Drugs Act.[25]

Finally, Ambre contends that the penalty of six months of rehabilitation in a government center imposed on her was a nullity, in view of the alleged lack of confirmatory test. The Court is not persuaded.

It must be emphasized that in no instance did Ambre challenge, at the RTC, the supposed absence of confirmatory drug test conducted on her. Ambre only questioned the alleged omission

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[23] *People v. Gregorio, Jr.*, G.R. No. 174474, May 25, 2007, 523 SCRA 216, 227.

[24] *People v. Unisa*, G.R. No. 185721, September 28, 2011.

[25] *People v. Astudillo*, 440 Phil. 203, 224 (2002).

when she appealed her conviction before the CA. It was too late in the day for her to do so. Well-entrenched is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.[26]

WHEREFORE, the petition is **DENIED.** The assailed November 26, 2009 Decision and the March 9, 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31957 are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194721. August 15, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN BRIAN AMARILLO *Y* MAPA *A.K.A.* JAO MAPA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE AND POSSESSION OF SHABU; ESTABLISHED IN CASE AT BAR.— To prove illegal sale of *shabu*, the following elements

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[26] *Tolentino v. Court of Appeals*, 435 Phil. 39, 47 (2002).

[*] Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated September 19, 2011.

[**] Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1283 dated August 6, 2012.

must be present: "(a) the identities 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 for the thing. And, to secure conviction, it is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence. In the instant case, the prosecution proved beyond reasonable doubt that accused-appellant, not being authorized by law, sold a sachet of *shabu* to PO1 Mendoza in a buy-bust operation. PO1 Mendoza testified that, during the buy-bust operation, the informant introduced him to accused-appellant; that informant asked accused-appellant if he could help PO1 Mendoza buy *shabu*; that accused-appellant agreed to sell him Three Hundred Peso-worth of *shabu*; that PO1 Mendoza, counted the pre-marked bills in front of accused-appellant and gave them to him; and that accused-appellant, in turn, handed him a small transparent plastic sachet, which he took from the pocket of his short pants, and which tested for *shabu* based on the result of the laboratory examination. PO1 Lique corroborated the testimony of PO1 Mendoza by stating that he saw accused-appellant hand something to the poseur-buyer. Further, the seized items, together with the result of the laboratory examination and the marked money were all presented in court. As to the crime of illegal possession of *shabu*, the prosecution clearly proved the presence of the following essential elements of the crime: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug." After the arrest of the accused-appellant, seventeen (17) heat-sealed sachets of white substance were found in his possession. The chemistry report showed that the white substance in the plastic sachets tested for *shabu*. And, there was no showing that such possession was authorized by law. We find no merit in the arguments of the defense that the arresting officers did not testify that the marking of the seized items were done in the presence of the persons mentioned by the law and its implementing rules; and that testimonies on how the confiscated items were turned over to the investigator for examination were lacking.

2. ID.; ID.; REQUIRED PHYSICAL INVENTORY AND PHOTOGRAPH OF THE CONFISCATED EVIDENCE; AN ACCUSED MAY STILL BE FOUND GUILTY,

DESPITE THE FAILURE TO FAITHFULLY OBSERVE THE REQUIREMENTS PROVIDED UNDER SECTION 21 OF R.A. 9165, FOR AS LONG AS THE CHAIN OF CUSTODY REMAINS UNBROKEN.— As to the required "presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official," Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 specifically provides: x x x 1) The apprehending officer/ team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. x x x This has been substantially complied with after the prosecution was able to show that the accused, the arresting officers and a public official were all present during the inventory of the seized items as evidenced by the testimonies of the witnesses, the photographs, and the Acknowledgement Receipt of the items seized. Even assuming for the sake of argument that all of these were defective for one reason or another, the defense failed to consider the following well-settled principle: The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. x x x The Court has long settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Sec. 21 of RA 9165, for as long as the chain of custody remains unbroken.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION, FOUND CREDIBLE.— As to the credibility of the witnesses and their testimonies, we hold, as we have done time and again, that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well

as great respect, if not conclusive effect" and that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings." Also, after a thorough examination of the records, we find the testimonies of the witnesses for the prosecution credible. For instance, after the cross examination of *Barangay* Captain Gatchalian, the presiding judge asked him a number of clarificatory questions, which he readily answered in a straightforward manner. x x x Lique corroborated material facts in the testimony of PO1 Mendoza, to the effect that the sale of *shabu* between accused-appellant and PO1 Mendoza was consummated, and that *Barangay* Captain Gatchalian was present during the inventory of the seized items.

4. ID.; ID.; DISPUTABLE PRESUMPTIONS; THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; APPLICABLE IN CASE AT BAR THERE BEING NO SHOWING OF ANY ILL MOTIVE ON THE PART OF THE ARRESTING OFFICERS TO FALSELY ACCUSED APPELLANT OF THE CRIMES CHARGED.— The doctrine of presumption of regularity in the performance of official duty is likewise applicable in the instant case there being no showing of any ill motive on the part of the arresting officers to falsely accuse accused-appellant of the crimes charged. In fact, he himself testified that "he did not know any of the persons who arrested him and that he did not also have any misunderstanding with any one of them." The Court elucidated: x x x. And in the absence of proof of any intent on the part of the police authorities to falsely impute such a serious crime against appellant, as in this case, the presumption of regularity in the performance of official duty, . . ., must prevail over the self-serving and uncorroborated claim of appellant that she had been framed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, ***J.*:**

Once again, on the strength of the prosecution's evidence, we uphold the state's compliance with the chain of custody rule and sustain the conviction[1] of accused-appellant of the crimes of illegal sale and illegal possession of *shabu*.

The Facts

Accused-appellant identified himself as "John Brian Amarillo, 25 years old, a resident of Laperal Compound, Guadalupe Viejo, Makati City, single, a washing boy."[2] The records do not indicate when, how and upon whose liking the *a.k.a.* "Jao Mapa" came to be associated with the accused.

"Jao Mapa," the "washing boy" who was acquitted for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in Criminal Case Nos. 03-2044-45,[3] in 2004, and whose name appeared in the drugs Watchlist of *Barangay* Guadalupe Viejo, Makati City,[4] was again charged with illegal sale and illegal possession of *shabu* this time allegedly committed in 2006.

The accusatory portions of the separate Informations both dated 10 April 2006 filed and raffled to the Regional Trial Court, Branch 65, Makati read:

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[1] CA *rollo*, pp. 91-105. Decision dated 31 May 2010 in CA-G.R. CR-HC No. 03579 penned by Court of Appeals Associate Justice Normandie B. Pizarro, with Associate Justices Amelita G. Tolentino and Ruben C. Ayson concurring.

Records, pp. 108-114. Decision dated 28 July 2008 of the Regional Trial Court, Branch 65, Makati, in Criminal Case Nos. 06-750-751. Penned by Judge Edgardo M. Caldona.

[2] Records, p. 266, TSN, 7 July 2008.

[3] *Id.* at 21. Certification dated 10 April 2006 issued by Alicia Q. Boada, Record Officer I, Makati Anti Drug Abuse Council, Makati City.

[4] *Id.*

[Criminal Case No. 06-750]

That on or about the 8th day of April 2006, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, [JOHN BRIAN AMARILLO *y* MAPA *alias* "Jao Mapa/Jao"], without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver zero point zero three (0.03) gram of *Methylamphetamine Hydrochloride* (*shabu*), which is a dangerous drug.

CONTRARY TO LAW.[5]

[Criminal Case No. 06-751]

That on or about the 8th day of April 2006, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, [JOHN BRIAN AMARILLO *y* MAPA *alias* "Jao Mapa/Jao"], not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession direct custody and control the following items with markings, to wit:

"JAO 1"	-	0.03 gram
"JAO 2"	-	0.02 gram
"JAO 3"	-	0.02 gram
"JAO 4"	-	0.02 gram
"JAO 5"	-	0.02 gram
"JAO 6"	-	0.02 gram
"JAO 7"	-	0.02 gram
"JAO 8"	-	0.01 gram
"JAO 9"	-	0.02 gram
"JAO 10"	-	0.03 gram
"JAO 11"	-	0.02 gram
"JAO 12"	-	0.02 gram
"JAO 13"	-	0.03 gram
"JAO 14"	-	0.02 gram

with a total weight of zero point three three (0.33) gram of *Methylamphetamine Hydrochloride* (*shabu*) which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

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[5] *Id.* at 2.

[6] *Id.* at 4.

On 8 May 2006, accused-appellant pleaded not guilty. During pre-trial, the forensic chemist and PO2 Rafael Castillo, the police investigator assigned to the case, appeared in court. The parties stipulated on the following: "qualification of the forensic chemist as an expert witness; existence of the documents relative to the examination conducted by the forensic chemist; substance, subject matter of [the] case; existence of the Final Investigation [R]eport; and Acknowledgement Receipt,"[7] after which, the court ordered that the testimony of the forensic chemist and the police investigator be dispensed with.[8]

On trial, the prosecution presented the following witnesses: PO1 Percival Mendoza[9] (PO1 Mendoza) and PO3 Julius Lique[10] (PO3 Lique), both of the Station Anti-Illegal Drugs Special Operations Task Force of the Makati Central Police Station; and *Barangay* Captain Angelito Gatchalian[11] (Barangay Captain Gatchalian) of *Barangay* Guadalupe Viejo. The defense, on the other hand, presented the accused as its lone witness.[12]

The Court of Appeals summarized the version of the prosecution in the following manner:

x x x x x x x x x

On April 8, 2006, PO1 Mendoza x x x received a telephone call from an informant that a certain Jao Mapa (later identified as the Accused-Appellant) was selling prohibited narcotics at Laperal Compound, Guadalupe Viejo, Makati City. Immediately, a briefing for a buy-bust operation was conducted. The buy-bust team prepared Three Hundred Pesos (PhP300.00) worth of marked money and designated PO1 Mendoza as the poseur-buyer. The other members of the team were PO2 Lique, PO1 Randy Santos, and PO1 Voltaire

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[7] *Id.* at 41. Order dated 27 November 2006 of the Regional Trial Court.

[8] *Id.* at 43.

[9] *Id.* at 120, TSN, 14 April 2008.

[10] *Id.* at 188-206, TSN, 26 May 2008.

[11] *Id.*

[12] *Id.* at 264-276, TSN, 7 July 2008.

Esquerra. The team coordinated with the Philippine Drug Enforcement Agency before proceeding to the target area.

At around 9:15 o'clock in the evening of the same day, the team proceeded to the basketball court inside Laperal Compound where the Accused-Appellant was sighted. Once inside, PO1 Mendoza and the informant, with the help of sufficient lights coming from the nearby shanties and sari-sari stores, saw a man wearing a camouflage short pants and a dark t-shirt casually standing beside one of the basketball court's post while talking to two (2) men. The informant called the attention of the Accused-Appellant and introduced PO1 Mendoza to the latter as a buyer intending to purchase Three Hundred Pesos (PhP300.00) worth of *shabu*. PO1 Mendoza then handed the marked money to the Accused-Appellant who, in turn, took from his right pocket a small plastic sachet allegedly containing *shabu* and gave it to the former. Upon receipt, PO1 Mendoza examined the contents thereof and asked the Accused-Appellant, "*Panalo to ha*?" The Accused-Appellant replied with "*Ako pa! Amin ang pinakamagandang bato dito*."

When PO1 Mendoza was certain that the plastic sachet contained *shabu*, he lit a cigarette, a pre-arranged signal, and motioned to his team members to arrest the Accused-Appellant. PO1 Mendoza subsequently introduced himself as a police officer and arrested the latter. A few seconds later, his other team members arrived. A procedural body search was conducted resulting in the discovery of a small Mercury Drug plastic bag containing seventeen (17) small heat-sealed transparent plastic sachets with suspected *shabu*, the marked money, and several Peso bills of different denominations. The confiscated items were immediately marked, photographed, and inventoried at the place of arrest and in the presence of Brgy. Capt. Gatchalian. The photographs of the seized items were taken by PO3 Lique. Thereafter, the Accused-Appellant was brought to the Makati Police Station for further investigation. Subsequently, the seized plastic sachets were brought to the Crime Laboratory to determine the presence of *shabu*. The results thereof showed that the substances therein were positive for *Methylamphetamine, Hydrochloride*, a dangerous drug.[13]

The version of the defense, on the other hand, consisted of the sole testimony of the accused, to wit:

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[13] CA *rollo*, pp. 94-96. Decision dated 31 May 2010.

The Accused-Appellant testified that, on April 8, 2006, at around 3:00 o'clock in the afternoon, he was watching a game at the basketball court in Laperal Compound, Guadalupe Viejo, Makati City, when several men arrived and asked him if he knew the whereabouts of a certain Alvin. When he could not give any information, they brought him to the Makati Police Station. It was only after he was detained that he learned that charges were being filed against him for the sale and possession of dangerous drugs.[14]

After trial, the court found accused-appellant guilty beyond reasonable doubt of both crimes.[15] The dispositive portion of the Decision dated 28 July 2008 reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 06-750, finding the accused JOHN BRIAN AMARILLO *y* MAPA, guilty beyond reasonable doubt of the charge for violation of Section 5, Article II, R.A. No. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of five hundred thousand pesos (₱500,000.00);

2. In Criminal Case No. 06-751, finding the same accused JOHN BRIAN AMARILLO *y* MAPA, guilty beyond reasonable doubt of the charge for violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) days as minimum to twenty (20) years as maximum and to pay a fine of three hundred thousand pesos (₱300,000.00).[16]

On appeal, the Court of Appeals AFFIRMED[17] the decision of the trial court. Hence, this automatic review of the accused' conviction.

Our Ruling

We sustain the conviction of appellant.

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[14] *Id.* at 96.

[15] Records, pp. 108-114. Decision dated 28 July 2008.

[16] *Id.* at 114.

[17] CA *rollo*, p. 104. Decision dated 31 May 2010.

To prove illegal sale of *shabu*, the following elements must be present: "(a) the identities 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 for the thing.[18] And, to secure conviction, it is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.[19]

In the instant case, the prosecution proved beyond reasonable doubt that accused-appellant, not being authorized by law, sold a sachet of *shabu* to PO1 Mendoza in a buy-bust operation. PO1 Mendoza testified that, during the buy-bust operation, the informant introduced him to accused-appellant; that informant asked accused-appellant if he could help PO1 Mendoza buy *shabu*; that accused-appellant agreed to sell him Three Hundred Peso-worth of *shabu*; that PO1 Mendoza, counted the pre-marked bills in front of accused-appellant and gave them to him; and that accused-appellant, in turn, handed him a small transparent plastic sachet, which he took from the pocket of his short pants, and which tested for *shabu* based on the result of the laboratory examination. PO1 Lique corroborated the testimony of PO1 Mendoza by stating that he saw accused-appellant hand something to the poseur-buyer. Further, the seized items, together with the result of the laboratory examination and the marked money were all presented in court.

As to the crime of illegal possession of *shabu*, the prosecution clearly proved the presence of the following essential elements of the crime: "(a) the accused [was] in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession [was] not authorized by law; and (c) the accused freely and consciously possessed the drug."[20] After the

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[18] *People v. Bautista*, G.R. No. 177320, 22 February 2012.

[19] *Id.* citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.

[20] *Id.* citing *People v. Naquita*, *id.*

arrest of the accused-appellant, seventeen (17) heat-sealed sachets of white substance were found in his possession. The chemistry report showed that the white substance in the plastic sachets tested for *shabu*. And, there was no showing that such possession was authorized by law.

We find no merit in the arguments of the defense that the arresting officers did not testify that the marking of the seized items were done in the presence of the persons mentioned by the law and its implementing rules; and that testimonies on how the confiscated items were turned over to the investigator for examination were lacking.

The Joint Affidavit of Arrest[21] executed by PO1 Mendoza and PO1 Randy C. Santos, the allegations of which PO1 Mendoza affirmed and confirmed during his direct testimony, is clear on two points: (1) that the seized items were marked and inventoried at the place where accused-appellant was arrested; and (2) that the integrity of the seized items was preserved. Thus:

> 4. That immediately thereafter, together with the confiscated pieces of evidence marked and inventoried at the place of suspect's apprehension, the confiscated pieces of evidence, together with suspect AMARILLO, were immediately brought at SAID SOTF office, for formal dispositions and proper investigations.
>
> 5. That, before the SAID SOTF office, the investigator on case acknowledge the complaint, and in preparation for the formal filing of formal charges against herein suspects, same was subjected to the procedural Drug Test at SOCO/SPD and mandatory MEDICO LEGAL examinations at OSMAK Malugay as assisted by the same arresting officers, x x x. The confiscated pieces of evidence, only in so far with the suspected illegal drugs and the small white plastic Mercury Drug were referred at SOCO SPD for laboratory examinations and safe keeping.[22]

The Joint Affidavit of Arrest is consistent with the following testimony of PO1 Mendoza on direct examination:

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[21] Records, pp. 22-24.

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

Q: Mr. Witness, after the inventory what did you do next, if there's any?
A: We proceeded to our office, SAID SOFT office, sir.
Q: And what did you do when you reached your office?
A: We made the necessary documents for filing the case, sir.
Q: What did you do with the items you recovered from the accused?
A: **We turned it over to the investigator together with the subject person to SOCO crime laboratory for drug test examination and for laboratory examination, sir.**[23] *(Emphasis supplied.)*

The testimony, in turn, is well-supported by a copy of the Request for Laboratory Examination (Exhibit "A") showing that it was PO1 Mendoza himself who brought the request to the PNP Crime Laboratory. Stamped on the face of the receiving copy of the request were the following:

PNP CRIME LABORATORY
SOUTHERN POLICE DISTRICT OFFICE
F. ZOBEL, MAKATI CITY
CONTROL NO. 1204-06
T/D RECEIVED: 11:55 PM 8 APRIL 06
RECEIVED BY: NVP DE RANIA
DELIVERED BY: **PO1 PERCIVAL MENDOZA**
CASE NO. D-284-06[24] *(Emphasis supplied)*

As to the required "presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official," Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. 9165 specifically provides:

SECTION 21. ***Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** — x x x:

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[23] *Id.* at 128-129, TSN, 14 April 2008.

[24] *Id.* at 88.

> 1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;
>
> x x x *(Emphasis supplied)*

This has been substantially complied with after the prosecution was able to show that the accused, the arresting officers and a public official were all present during the inventory of the seized items as evidenced by the testimonies of the witnesses, the photographs, and the Acknowledgement Receipt of the items seized.

Even assuming for the sake of argument that all of these were defective for one reason or another, the defense failed to consider the following well-settled principle:

> The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. x x x[25]

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[25] *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 468-469.

The Court has long settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Sec. 21 of RA 9165, for as long as the chain of custody remains unbroken.[26]

As to the credibility of the witnesses and their testimonies, we hold, as we have done time and again, that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect"[27] and that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings."[28]

Also, after a thorough examination of the records, we find the testimonies of the witnesses for the prosecution credible. For instance, after the cross examination of *Barangay* Captain Gatchalian, the presiding judge asked him a number of clarificatory questions, which he readily answered in a straightforward manner. Thus:

Q: May we know x x x if you knew all along before the buy bust operation where to be conducted by the said anti-narcotics team?
A: Yes, sir, because I am the Cluster head, every time we have an operation beforehand they tell me the operation.
Q: So you knew all along that you will be called to act as the witness when the inventory would be prepared?
A: Yes, [Y]our Honor.
Q: When you reached the place where the incident happened, was the inventory sheet already accomplished wherein the items allegedly seized from the accused were listed?

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[26] *Id*. citing *People v. Rasialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507.

[27] *People v. Sabadlab*, G.R. No. 186392, 18 January 2012 citing *People v. Mayingque*, G.R. No. 179709, 6 July 2010, 624 SCRA 123, 140.

[28] *People v. Presas*, G.R. No. 182525, 2 March 2011, 644 SCRA 443, 449 citing *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010, 614 SCRA 202 further citing *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

A: Not yet, when I arrived, that's the time they prepared the inventory sheet, so, **when I arrived, then they started to write the items**.[29] *(Emphasis supplied)*

PO3 Lique corroborated material facts in the testimony of PO1 Mendoza, to the effect that the sale of *shabu* between accused-appellant and PO1 Mendoza was consummated, and that *Barangay* Captain Gatchalian was present during the inventory of the seized items.

The doctrine of presumption of regularity in the performance of official duty is likewise applicable in the instant case there being no showing of any ill motive on the part of the arresting officers to falsely accuse accused-appellant of the crimes charged. In fact, he himself testified that "he did not know any of the persons who arrested him and that he did not also have any misunderstanding with any one of them."[30] The Court elucidated:

x x x. And in the absence of proof of any intent on the part of the police authorities to falsely impute such a serious crime against appellant, as in this case, the presumption of regularity in the performance of official duty, . . ., must prevail over the self-serving and uncorroborated claim of appellant that she had been framed.[31]

Finally, we find the penalties imposed by the trial court in order.

Under Sec. 5, Article II of R.A. No. 9165, a person found guilty of unauthorized sale of *shabu* shall suffer 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).[32]

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[29] Records, p. 195, TSN, 26 May 2008.

[30] *Id.* at 114. Decision dated 28 July 2008 of the Regional Trial Court.

[31] *Espano v. CA*, 351 Phil. 798, 805 (1998) citing *People v. Velasco*, 252 SCRA 135 (1996) further citing *People v. Ponsica*, 230 SCRA 87 (1994).

[32] **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,

On the other hand, under Section 11, Article II of the same Act, the crime of illegal possession of *shabu* weighing less than five (5) grams is punishable by imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).[33]

Applying the Indeterminate Sentence Law in the determination of the appropriate penalty,[34] the trial court correctly imposed the following penalties: (1) in Criminal Case No. 06-750 for the crime of illegal sale of *shabu*, life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) considering that these are within the period and range of the fine prescribed by law;[35] and (2) in Criminal Case No. 06-751 for the crime of

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who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[33] **SECTION 11.** ***Possession of Dangerous Drugs.*** — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.0) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

3. Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x, *methamphetamine hydrochloride* or "*shabu*", or x x x.

[34] Sec. 1, Act No. 4103 , as amended provides:

Sec. 1. x x x [I]f the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

[35] *People v. Sabadlab*, *supra* note 27.

illegal possession of 0.33 gram of *shabu*, imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00), which is within the range of the amount imposable therefor.[36]

WHEREFORE, the Decision dated 31 May 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03579 is **AFFIRMED,** and, thereby the 28 July 2008 Decision of the Regional Trial Court in Criminal Case Nos. 06-750-751 is hereby **AFFIRMED *in toto***.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Brion, Villarama, Jr.,[*] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 200134. August 15, 2012]

ROBERTO OTERO, *petitioner, vs.* **ROGER TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; DEFAULT; A DEFENDANT WHO FAILS TO FILE AN ANSWER LOSES HIS STANDING IN COURT.— The effect of a defendant's failure to file an answer within the time allowed therefor is primarily governed by Section 3, Rule 9 of the Rules

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[36] *People v. Lopez*, G.R. No. 181441, 14 November 2008, 571 SCRA 252, 262; *People v. Mamaril*, G.R. No. 171980, 6 October 2010, 632 SCRA 369, 372-373, 382.

[*] Per S.O. No. 1274 dated 30 July 2012.

of Court. x x x A defendant who fails to file an answer may, upon motion, be declared by the court in default. Loss of standing in court, the forfeiture of one's right as a party litigant, contestant or legal adversary, is the consequence of an order of default. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may be object to or refute evidence or motions filed against him.

2. ID.; ID.; ID.; ID.; A DEFENDING PARTY DECLARED IN DEFAULT RETAINS THE RIGHT TO APPEAL FROM THE JUDGMENT BY DEFAULT ON LIMITED GROUNDS.— The fact that a defendant has lost his standing in court for having been declared in default does not mean that he is left *sans* any recourse whatsoever. In *Lina v. CA, et al.*, this Court enumerated the remedies available to party who has been declared in default, to wit: a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec 3, Rule 18) b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and d) **He may also appeal from the judgment rendered against him as contrary to the evidence or to the law**, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41) Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: *first*, the failure of the plaintiff to prove the material allegations of the complaint; *second*, the decision is contrary to law; and *third*, the amount of judgment is excessive or different in kind from that prayed for. In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the *ex parte* presentation of his evidence.

3. ID.; ID.; ID.; ID.; A DEFENDANT WHO HAS BEEN DECLARED IN DEFAULT IS PRECLUDED FROM RAISING ANY OTHER GROUND IN HIS APPEAL FROM THE JUDGMENT BY DEFAULT SINCE, OTHERWISE, HE WOULD THEN BE ALLOWED TO ADDUCE EVIDENCE IN HIS DEFENSE, WHICH RIGHT HE HAD LOST AFTER HE WAS DECLARED IN DEFAULT.— A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default. Indeed, he is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff's claim. x x x Here, Otero, in his appeal from the judgment by default, asserted that Tan failed to prove the material allegations of his complaint. He contends that the lower courts should not have given credence to the statements of account that were presented by Tan as the same were not authenticated. He points out that Betache, the person who appears to have prepared the said statements of account, was not presented by Tan as a witness during the *ex parte* presentation of his evidence with the MTCC to identify and authenticate the same. Accordingly, the said statements of account are mere hearsay and should not have been admitted by the lower tribunals as evidence. Thus, essentially, Otero asserts that Tan failed to prove the material allegations of his complaint since the statements of account which he presented are inadmissible in evidence. While the RTC and the CA, in resolving Otero's appeal from the default judgment of the MTCC, were only required to examine the pieces of evidence that were presented by Tan, the CA erred in brushing aside Otero's arguments with respect to the admissibility of the said statements of account on the ground that the latter had already waived any defense or objection which he may have against Tan's claim.

4. ID.; ID.; ID.; ID.; WHILE IT MAY BE SAID THAT BY DEFAULTING, THE DEFENDANT LEAVES HIMSELF AT THE MERCY OF THE COURT, THE RULE NEVERTHELESS SEES TO IT THAT ANY JUDGMENT AGAINST HIM MUST BE IN ACCORDANCE WITH THE EVIDENCE REQUIRED BY LAW.— Contrary to the CA's disquisition, it is not accurate to state that having been declared

in default by the MTCC, Otero is already deemed to have waived any and all defenses which he may have against Tan's claim. While it may be said that by defaulting, the defendant leaves himself at the mercy of the court, the rules nevertheless see to it that any judgment against him must be in accordance with the evidence required by law. The evidence of the plaintiff, presented in the defendant's absence, cannot be admitted if it is basically incompetent. Although the defendant would not be in a position to object, elementary justice requires that only legal evidence should be considered against him. If the same should prove insufficient to justify a judgment for the plaintiff, the complaint must be dismissed. And if a favorable judgment is justifiable, it cannot exceed in amount or be different in kind from what is prayed for in the complaint.

5. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF PRIVATE DOCUMENTS.— Anent the admissibility of the statements of account presented by Tan, this Court rules that the same should not have been admitted in evidence by the lower tribunals. Section 20, Rule 132 of the Rules of Court provides that the authenticity and due execution of a private document, before it is received in evidence by the court, must be established. x x x A private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.

6. ID.; ID.; ID.; ID.; THE STATEMENTS OF ACCOUNT PRESENTED BY RESPONDENT WERE MERELY HEARSAY AS THE GENUINENESS AND DUE

EXECUTION OF THE SAME WERE NEVER ESTABLISHED. — The statements of account which Tan adduced in evidence before the MTCC indubitably are private documents. Considering that these documents do not fall among the aforementioned exceptions, the MTCC could not admit the same as evidence against Otero without the required authentication thereof pursuant to Section 20, Rule 132 of the Rules of Court. During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed, or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. Here, Tan, during the *ex parte* presentation of his evidence, did not present anyone who testified that the said statements of account were genuine and were duly executed or that the same were neither spurious or counterfeit or executed by mistake or under duress. Betache, the one who prepared the said statements of account, was not presented by Tan as a witness during the *ex parte* presentation of his evidence with the MTCC. Considering that Tan failed to authenticate the aforesaid statements of account, the said documents should not have been admitted in evidence against Otero. It was thus error for the lower tribunals to have considered the same in assessing the merits of Tan's Complaint.

7. ID.; ID.; WEIGHT AND SUFFICIENCY; NOTWITHSTANDING THE INADMISSIBILITY OF THE STATEMENTS OF ACCOUNT, PETITIONER WAS STILL ABLE TO PROVE BY PREPONDERANCE OF EVIDENCE THE MATERIAL ALLEGATIONS OF HIS COMPLAINT.— In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. This rule holds true especially when the latter has had no opportunity to present evidence because of a default order. Needless to say, the extent of the relief that may be granted can only be so much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133. Notwithstanding the inadmissibility of the said statements of account, this Court finds that Tan was still able to prove by a preponderance of evidence the material allegations of his complaint against Otero.

APPEARANCES OF COUNSEL

Pasquil Sevilla Magulta & Garde Law Offices for petitioner.
Emmanuel A. Gaabucayan for respondent.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated April 29, 2011 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 02244, which affirmed the Judgment[2] dated December 28, 2007 issued by the Regional Trial Court (RTC), Cagayan de Oro City, Branch 23 in Civil Case No. 2007-90.

The Antecedent Facts

A Complaint[3] for collection of sum of money and damages was filed by Roger Tan (Tan) with the Municipal Trial Court in Cities (MTCC), Cagayan de Oro City on July 28, 2005 against Roberto Otero (Otero). Tan alleged that on several occasions from February 2000 to May 2001, Otero purchased on credit petroleum products from his Petron outlet in Valencia City, Bukidnon in the aggregate amount of ₱270,818.01. Tan further claimed that despite several verbal demands, Otero failed to settle his obligation.

Despite receipt of the summons and a copy of the said complaint, which per the records of the case below were served through his wife Grace R. Otero on August 31, 2005, Otero failed to file his answer with the MTCC.

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[1] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr., concurring; *rollo*, pp. 30-33.

[2] Under the sala of Presiding Judge Ma. Anita M. Esguerra-Lucagbo; *id.* at 49-50.

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

On November 18, 2005, Tan filed a motion with the MTCC to declare Otero in default for his failure to file his answer. Otero opposed Tan's motion, claiming that he did not receive a copy of the summons and a copy of Tan's complaint. Hearing on the said motion was set on January 25, 2006, but was later reset to March 8, 2006, Otero manifesting that he only received the notice therefor on January 23, 2006. The hearing on March 8, 2006 was further reset to April 26, 2006 since the presiding judge was attending a convention. Otero failed to appear at the next scheduled hearing, and the MTCC issued an order declaring him in default. A copy of the said order was sent to Otero on May 9, 2006. Tan was then allowed to present his evidence *ex parte*.

Tan adduced in evidence the testimonies of Rosemarie Doblado and Zita Sara, his employees in his Petron outlet who attended Otero when the latter made purchases of petroleum products now the subject of the action below. He likewise presented various statements of account[4] showing the petroleum products which Otero purchased from his establishment. The said statements of account were prepared and checked by a certain Lito Betache (Betache), apparently likewise an employee of Tan.

The MTCC Decision

On February 14, 2007, the MTCC rendered a Decision[5] directing Otero to pay Tan his outstanding obligation in the amount of ₱270,818.01, as well as attorney's fees and litigation expenses and costs in the amounts of ₱15,000.00 and ₱3,350.00, respectively. The MTCC opined that Otero's failure to file an answer despite notice is a tacit admission of Tan's claim.

Undeterred, Otero appealed the MTCC Decision dated February 14, 2007 to the RTC, asserting that the MTCC's disposition is factually baseless and that he was deprived of due process.

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[4] *Id.* at 73-81.

[5] Under the sala of Judge Eleuteria Badoles-Algodon; *id.* at 47-48.

The RTC Decision

On December 28, 2007, the RTC rendered a Judgment[6] affirming the MTCC Decision dated February 14, 2007. The RTC held that the statements of account that were presented by Tan before the MTCC were overwhelming enough to prove that Otero is indeed indebted to Tan in the amount of ₱270,818.01. Further, brushing aside Otero's claim of denial of due process, the RTC pointed out that:

> As to the second assignment of error, suffice to say that as borne out by the record of the case, defendant-appellant was given his day in Court contrary to his claim. His wife, Grace R. Otero received a copy of the summons together with a copy of the Complaint and its corresponding annexes on August 31, 2005, per Return of Service made by Angelita N. Bandoy, Process Server of OCC-MTCC of Davao City. He was furnished with a copy of the Motion to Declare Defendant in Default on November 18, 2005, per Registry Receipt No. 2248 which was received by the defendant. Instead of filing his answer or any pleading to set aside the Order of default, he filed his Comment to the Motion to Declare Defendant in Default of which plaintiff filed his Rejoinder to Defendant's Comment.
>
> The case was set for hearing on January 23, 2006, but defendant through counsel sent a telegram that he only received the notice on the day of the hearing thereby he was unable to appear due to his previous scheduled hearings. Still, for reasons only known to him, defendant failed to lift the Order of Default.
>
> The hearing on January 23, 2006 was reset on March 8, 2006 and again reset on April 26, 2006 by agreement of counsels x x x.
>
> It is not therefore correct when defendant said that he was deprived of due process.[7]

Otero sought reconsideration of the Judgment dated December 28, 2007 but it was denied by the RTC in its Order[8] dated February 20, 2008.

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[6] *Id.* at 49-50.

[7] *Id.*

[8] *Id.* at 51.

Otero then filed a petition for review[9] with the CA asserting that both the RTC and the MTCC erred in giving credence to the pieces of evidence presented by Tan in support of his complaint. Otero explained that the statements of account, which Tan adduced during the *ex parte* presentation of his evidence, were prepared by a certain Betache who was not presented as a witness by Tan. Otero avers that the genuineness and due execution of the said statements of account, being private documents, must first be established lest the said documents be rendered inadmissible in evidence. Thus, Otero asserts, the MTCC and the RTC should not have admitted in evidence the said statements of account as Tan failed to establish the genuineness and due execution of the same.

The CA Decision

On April 29, 2011, the CA rendered the assailed Decision[10] which denied the petition for review filed by Otero. In rejecting Otero's allegation with regard to the genuineness and due execution of the statements of account presented by Tan, the CA held that any defense which Otero may have against Tan's claim is already deemed waived due to Otero's failure to file his answer. Thus:

> Otero never denied that his wife received the summons and a copy of the complaint. He did not question the validity of the substituted service. Consequently, he is charged with the knowledge of Tan's monetary claim. Section 1, Rule 9 of the Rules of Court explicitly provides that defenses and objections not pleaded are deemed waived. Moreover, when the defendant is declared in default, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant.
>
> Due to Otero's failure to file his Answer despite being duly served with summons coupled with his voluntary appearance in court, he is deemed to have waived whatever defenses he has against Tan's claim. Apparently, Otero is employing dilatory moves to defer the payment of his obligation which he never denied.[11] (Citation omitted)

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[9] *Id.* at 52-63.

[10] *Id.* at 30-33.

[11] *Id.* at 32-33.

Otero's Motion for Reconsideration[12] was denied by the CA in its Resolution[13] dated December 13, 2011.

Hence, the instant petition.

Issues

Essentially, the fundamental issues to be resolved by this Court are the following: *first*, whether Otero, having been declared in default by the MTCC, may, in the appellate proceedings, still raise the failure of Tan to authenticate the statements of account which he adduced in evidence; and *second*, whether Tan was able to prove the material allegations of his complaint.

The Court's Ruling

The petition is denied.

First Issue: Authentication of the Statements of Account

The CA, in denying the petition for review filed by Otero, held that since he was declared in default by the MTCC, he is already deemed to have waived whatever defenses he has against Tan's claim. He is, thus, already barred from raising the alleged infirmity in the presentation of the statements of account.

We do not agree.

A defendant who fails to file an answer loses his standing in court.

The effect of a defendant's failure to file an answer within the time allowed therefor is primarily governed by Section 3, Rule 9 of the Rules of Court, *viz*:

> Sec. 3. Default; declaration of. — If the defending party fails to answer within the time allowed therefor, **the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the**

[12] *Id.* at 34-40.

[13] *Id.* at 42-43.

court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court. x x x (Emphasis ours)

A defendant who fails to file an answer may, upon motion, be declared by the court in default. Loss of standing in court, the forfeiture of one's right as a party litigant, contestant or legal adversary, is the consequence of an order of default. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may be object to or refute evidence or motions filed against him.[14]

A defendant who was declared in default may nevertheless appeal from the judgment by default, albeit on limited grounds.

Nonetheless, the fact that a defendant has lost his standing in court for having been declared in default does not mean that he is left *sans* any recourse whatsoever. In *Lina v. CA, et al.*,[15] this Court enumerated the remedies available to party who has been declared in default, to wit:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec 3, Rule 18)

b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

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[14] See *S.C. Johnson & Son, Inc. v. Court of Appeals*, 188 Phil. 579 (1990); *Cavili v. Judge Florendo*, 238 Phil. 597, 603 (1987).

[15] 220 Phil. 311 (1985).

d) **He may also appeal from the judgment rendered against him as contrary to the evidence or to the law**, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)[16] (Emphasis ours)

Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: *first*, the failure of the plaintiff to prove the material allegations of the complaint; *second*, the decision is contrary to law; and *third*, the amount of judgment is excessive or different in kind from that prayed for.[17] In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the *ex parte* presentation of his evidence.

A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default.[18] Indeed, he is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff's claim. Thus, in *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*,[19] this Court explained that:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. **He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, *inter alia,*** that the amount of the judgment is excessive or is different in kind from that prayed for, **or that the plaintiff failed to prove the material allegations of his complaint,** or that the decision is contrary to law. **Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his**

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[16] *Id.* at 316-317.

[17] See *Martinez v. Republic of the Philippines*, 536 Phil. 868 (2006).

[18] See *Arquero v. Court of Appeals*, G.R. No. 168053, September 21, 2011.

[19] 479 Phil. 43 (2004).

right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.[20] (Citations omitted and emphasis ours)

Here, Otero, in his appeal from the judgment by default, asserted that Tan failed to prove the material allegations of his complaint. He contends that the lower courts should not have given credence to the statements of account that were presented by Tan as the same were not authenticated. He points out that Betache, the person who appears to have prepared the said statements of account, was not presented by Tan as a witness during the *ex parte* presentation of his evidence with the MTCC to identify and authenticate the same. Accordingly, the said statements of account are mere hearsay and should not have been admitted by the lower tribunals as evidence.

Thus, essentially, Otero asserts that Tan failed to prove the material allegations of his complaint since the statements of account which he presented are inadmissible in evidence. While the RTC and the CA, in resolving Otero's appeal from the default judgment of the MTCC, were only required to examine the pieces of evidence that were presented by Tan, the CA erred in brushing aside Otero's arguments with respect to the admissibility of the said statements of account on the ground that the latter had already waived any defense or objection which he may have against Tan's claim.

Contrary to the CA's disquisition, it is not accurate to state that having been declared in default by the MTCC, Otero is already deemed to have waived any and all defenses which he may have against Tan's claim.

While it may be said that by defaulting, the defendant leaves himself at the mercy of the court, the rules nevertheless see to it that any judgment against him must be in accordance with the evidence required by law. The evidence of the plaintiff,

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[20] *Id.* at 52.

presented in the defendant's absence, cannot be admitted if it is basically incompetent. Although the defendant would not be in a position to object, elementary justice requires that only legal evidence should be considered against him. If the same should prove insufficient to justify a judgment for the plaintiff, the complaint must be dismissed. And if a favorable judgment is justifiable, it cannot exceed in amount or be different in kind from what is prayed for in the complaint.[21]

Thus, in *SSS v. Hon. Chaves*,[22] this Court emphasized that:

> We must stress, however, that a judgment of default against the petitioner who failed to appear during pre-trial or, for that matter, any defendant who failed to file an answer, does not imply a waiver of all of their rights, except their right to be heard and to present evidence to support their allegations. **Otherwise, it would be meaningless to request presentation of evidence every time the other party is declared in default. If it were so, a decision would then automatically be rendered in favor of the non-defaulting party and exactly to the tenor of his prayer.** The law also gives the defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint.[23] (Citations omitted and emphasis ours)

The statements of account presented by Tan were merely hearsay as the genuineness and due execution of the same were not established.

Anent the admissibility of the statements of account presented by Tan, this Court rules that the same should not have been admitted in evidence by the lower tribunals.

Section 20, Rule 132 of the Rules of Court provides that the authenticity and due execution of a private document, before it is received in evidence by the court, must be established. Thus:

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[21] See *Tanhu v. Judge Ramolete*, 160 Phil. 1101, 1126 (1975).

[22] 483 Phil. 292 (2004).

[23] *Id.* at 301-302.

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.

A private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[24]

The statements of account which Tan adduced in evidence before the MTCC indubitably are private documents. Considering that these documents do not fall among the aforementioned exceptions, the MTCC could not admit the same as evidence against Otero without the required authentication thereof pursuant to Section 20, Rule 132 of the Rules of Court. During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed, or that the document is neither spurious nor counterfeit nor executed by mistake or under duress.[25]

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[24] *Patula v. People of the Philippines*, G.R. No. 164457, April 11, 2012.

[25] *Salas v. Sta. Mesa Market Corporation*, G.R. No. 157766, July 12, 2007, 527 SCRA 465, 472.

Here, Tan, during the *ex parte* presentation of his evidence, did not present anyone who testified that the said statements of account were genuine and were duly executed or that the same were neither spurious or counterfeit or executed by mistake or under duress. Betache, the one who prepared the said statements of account, was not presented by Tan as a witness during the *ex parte* presentation of his evidence with the MTCC.

Considering that Tan failed to authenticate the aforesaid statements of account, the said documents should not have been admitted in evidence against Otero. It was thus error for the lower tribunals to have considered the same in assessing the merits of Tan's Complaint.

Second Issue: The Material Allegations of the Complaint

In view of the inadmissibility of the statements of account presented by Tan, the remaining question that should be settled is whether the pieces of evidence adduced by Tan during the *ex parte* presentation of his evidence, excluding the said statements of account, sufficiently prove the material allegations of his complaint against Otero.

We rule in the affirmative.

In civil cases, it is a basic rule that the party making allegations has the burden of proving them by a preponderance of evidence. The parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent.[26] This rule holds true especially when the latter has had no opportunity to present evidence because of a default order. Needless to say, the extent of the relief that may be granted can only be so much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133.[27]

Notwithstanding the inadmissibility of the said statements of account, this Court finds that Tan was still able to prove by

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[26] See *New Sun Valley Homeowners' Association, Inc. v. Sangguniang Barangay, Barangay Sun Valley, Parañaque City*, G.R. No. 156686, July 27, 2011, 654 SCRA 438, 464.

[27] See *Gajudo v. Traders Royal Bank*, 519 Phil. 791, 803 (2006).

a preponderance of evidence the material allegations of his complaint against Otero.

First, the statements of account adduced by Tan during the *ex parte* presentation of his evidence are just summaries of Otero's unpaid obligations, the absence of which do not necessarily disprove the latter's liability.

Second, aside from the statements of account, Tan likewise adduced in evidence the testimonies of his employees in his Petron outlet who testified that Otero, on various occasions, indeed purchased on credit petroleum products from the former and that he failed to pay for the same. It bears stressing that the MTCC, the RTC and the CA all gave credence to the said testimonial evidence presented by Tan and, accordingly, unanimously found that Otero still has unpaid outstanding obligation in favor of Tan in the amount of ₱270,818.01.

Well-established is the principle that factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal.[28] The Court sees no compelling reason to depart from the foregoing finding of fact of the lower courts.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The Decision dated April 29, 2011 rendered by the Court of Appeals in CA-G.R. SP No. 02244 is **AFFIRMED.**

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), Brion, Villarama, Jr.,[*] and *Perez, JJ.,* concur.

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[28] *Insular Investment and Trust Corporation v. Capital One Equities Corp.*, G.R. No. 183308, April 25, 2012.

[*] Additional member per Special Order No. 1274 dated July 30, 2012 *vice* Associate Justice Maria Lourdes P.A. Sereno.

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— The failure of the lawyer to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use. (Dhaliwal *vs*. Atty. Dumaguing, A.C. No. 9390, Aug. 01, 2012) p. 209

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Moral damages in rape cases — Proper and without need of proof other than the fact of rape by virtue of the undeniable moral suffering of the victim. (People of the Phils. *vs*. Arcillas, G.R. No. 181491, July 30, 2012) p. 40

DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425)

Illegal possession of dangerous drugs — As regards the prosecution therefor, the elements to be proven are the following: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People of the Phils. *vs*. Gustafsson *y* Nacua, G.R. No. 179265, July 30, 2012) p. 29

DEFAULT

Order of default — A defendant who fails to file an answer loses his standing in court. (Otero *vs*. Tan, G.R. No. 200134, Aug. 15, 2012) p. 714

— A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default. *(Id.)*

— A defending party declared in default retains the right to appeal from the judgment by default on limited grounds. *(Id.)*

— While it may be said that by defaulting, the defendant leaves himself at the mercy of the court, the rules nevertheless see to it that any judgment against him must be in accordance with the evidence required by law. *(Id.)*

DENIAL OF THE ACCUSED

Defense of — Bare denials cannot prevail over positive identification. (Ambre *vs*. People, G.R. No. 191532, Aug. 15, 2012) p. 681

DISBARMENT

Concept — The power to disbar should be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstances. (Engr. Tumbokon *vs*. Atty. Pefianco, A.C. No. 6116, Aug. 01, 2012) p. 202

Disbarment complaint — While ordinarily referred to an investigator who shall look into the allegations contained therein, it may be dispensed with in the interest of expediency and convenience as when the matters necessary for the complete disposition of the counter-complaint are already found in the records of the case. (City Prosecutor Armando P. Abanado *vs*. Judge Bayona, A.M. No. MTJ-12-1804 [Formerly A.M. OCA I.P.I. No. 09-2179-MTJ], July 30, 2012) p. 13

Disbarment proceedings — Object thereof is not to punish the individual attorney himself. (Anacta *vs.* Atty. Resurreccion, A.C. No. 9074, Aug. 14, 2012) p. 488

— The Supreme Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension. *(Id.)*

DUE PROCESS

Administrative due process — It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act. (Dr. Melendres *vs*. PCGG, G.R. No. 163859, Aug. 15, 2012) p. 546

— It is satisfied when a person is notified of the charge against him and is given an opportunity to explain or defend himself. *(Id.)*

Essence of — Cry for due process must fail when the party seeking due process was in fact given several opportunities to be heard and air his side but it is by his own fault or choice he squanders these chances. (Heirs of Jolly Bugarin *vs*. Rep. of the Phils., G.R. No. 174431, Aug. 06, 2012) p. 351

EMPLOYEES, KINDS OF

Probationary employee — Concept of probationary employment, elucidated. (Carvajal *vs*. Luzon Dev't. Bank and/or Oscar Ramirez, G.R. No. 186169, Aug. 01, 2012) p. 273

— Failure to qualify in accordance with the standards prescribed by employer does not require notice and hearing. *(Id.)*

— If the termination is for cause, the probationary employee may be terminated anytime during the probation and the employer does not have to wait until the probation period is over. *(Id.)*

— The probationary employee may also be terminated for failure to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of the engagement. *(Id.)*

— The rule on reasonable standards made known to the employee prior to engagement should not be used to exculpate a probationary employee who acts in a manner contrary to basic knowledge and common sense, in regard to which there is no need to spell out a policy or standard to be met. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogative — The exercise of management prerogatives will be upheld provided it is not done in bad faith or with abuse of discretion. (Radio Phils. Network, Inc. *vs*. Yap, G.R. No. 187713, Aug. 01, 2012) p. 288

— The management's right to formulate reasonable rules to regulate the conduct of its employees for the protection of its interests is recognized by the court. *(Id.)*

EMPLOYMENT, TERMINATION OF

Procedural due process — Failure to observe the two-notice rule entitles the respondent to nominal damages. (Jarl Construction *vs*. Atencio, G.R. No. 175969, Aug. 01, 2012) p. 256

— Purpose of two-notice rule; elucidated. *(Id.)*

Reinstatement — An order reinstating a dismissed employee is immediately self-executory without need of a writ of execution. (Radio Phils. Network, Inc. *vs*. Yap, G.R. No. 187713, Aug. 01, 2012) p. 288

— In case of strained relations or non-availability of positions, the employer is given the option to reinstate the employee merely in the payroll in order to avoid the intolerable presence in the workplace of the unwanted employee. *(Id.)*

EVIDENCE

Authentication and proof of documents — Proof of private documents; elucidated. (Otero *vs*. Tan, G.R. No. 200134, Aug. 15, 2012) p. 714

— The statements of account presented by respondent were merely hearsay as the genuineness and due execution of the same were never established. *(Id.)*

Circumstantial evidence — Circumstantial evidence requires the concurrence of the following: (1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt of the guilt of the accused. (People *vs*. Lara, G.R. No. 199877, Aug. 13, 2012) p. 469

Flight of the accused — Competent evidence to indicate one's guilt and when unexplained, is a circumstance from which an inference of guilt may be drawn. (People of the Phils. *vs*. Camat, G.R. No. 188612, July 30, 2012) p. 55

Judicial notice — Foreign laws must be alleged and proven in accordance with the rules; exceptions. (Sobejana-Condon *vs*. COMELEC, G.R. No. 198742, Aug. 10, 2012) p. 407

Weight and sufficiency of — The party making allegations has the burden of proving them by a preponderance of evidence; parties must rely on the strength of their own evidence and not upon the weakness of the defense offered by their opponent. (Otero *vs*. Tan, G.R. No. 200134, Aug. 15, 2012) p. 714

FAMILY CODE

Family home — To be exempt from forced sale the claim for exemption should be set up and proved to the sheriff before the sale of the property at public auction; failure to do so would estop the party from later claiming exemption. (Sps. Fortaleza *vs*. Sps. Lapitan, G.R. No. 178288, Aug. 15, 2012) p. 596

FILIATION

Proof of filiation — Four significant procedural aspects of a traditional paternity action that parties have to face: a prima facie case, affirmative defenses, presumption of legitimacy, and physical resemblance between the putative

father and the child. (Gotardo *vs.* Buling, G.R. No. 165166, Aug. 15, 2012) p. 566

— Specified. *(Id.)*

FORCIBLY ENTRY

Action for — The possession is illegal from the beginning and the basic inquiry centers on who has the prior possession de facto. (Heirs of Rogelio Isip, Sr. *vs*. Quintos, G.R. No. 172008, Aug. 01, 2012) p. 245

GARNISHMENT

Dissolution of — Grounds. (Bank of Phil. Islands *vs.* Lee, G.R. No. 190144, Aug. 1, 2012) p. 311

GOVERNMENT

Branches of government — Concept of independence, explained. (*Re*: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/ Associate Justices of the Supreme Court, A.M. No. 11-7-10-SC, July 31, 2012) p. 147

INTERESTS

Interest on monetary awards — May be adjudicated at the discretion of the Court as a part of the damages in crimes and quasi-delicts. (People of the Phils. *vs*. Arcillas, G.R. No.181491, July 30, 2012) p. 40

INTERLOCUTORY ORDER

Effect of — Does not finally dispose of the case and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other but obviously indicates that other things remain to be done. (Bank of Phil. Islands *vs*. Lee, G.R. No. 190144, Aug. 01, 2012) p. 311

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. (City Prosecutor Armando P. Abanado *vs*. Judge Bayona, A.M. No. MTJ-12-1804 [Formerly A.M. OCA I.P.I. No. 09-2179-MTJ], July 30, 2012) p. 13

Gross misconduct — Presupposes evidence of grave irregularity in the performance of duty. (City Prosecutor Armando P. Abanado *vs*. Judge Bayona, A.M. No. MTJ-12-1804 [Formerly A.M. OCA I.P.I. No. 09-2179-MTJ], July 30, 2012) p. 13

JUDGMENTS

Immutability of final judgment — Elucidated. (Heirs of Jolly Bugarin *vs.* Rep. of the Phils., G.R. No. 174431, Aug. 06, 2012) p. 351

Stare decisis — Applied. (GSIS *vs*. Buenviaje-Carreon, G.R. No. 189529, Aug. 10, 2012) p. 399

— Where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. *(Id.)*

JUDICIAL DEPARTMENT

Fiscal autonomy — An aspect of judicial independence. (*Re*: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/ Associate Justices of the Supreme Court, A.M. No. 11-7-10-SC, July 31, 2012) p. 147

— Exercised by the Chief Justice in consultation with the Supreme Court En Banc. *(Id.)*

— May be violated when there is interference on the Supreme Court's discretionary authority to determine the manner of granting retirement privileges and benefits. *(Id.)*

— Real fiscal autonomy covers the grant to the Judiciary of the authority to use and dispose of its funds and properties at will, free from any outside control or interference. *(Id.)*

— Under the guarantees of the Judiciary's fiscal autonomy and its independence, the Chief Justice and the Court En Banc determine and decide the who, what, where, when and how of the privileges and benefits they extend to justices, judges, court officials and court personnel within the parameters of the Court's granted power. *(Id.)*

— While, as a general proposition, the authority of legislatures to control the purse in the first instance is unquestioned, any form of interference by the Legislative or the Executive on the Judiciary's fiscal autonomy amounts to an improper check on a co-equal branch of government. *(Id.)*

Judicial independence — No less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained. (*Re*: COA Opinion on the Computation of the Appraised Value of the Properties Purchased by the Retired Chief/Associate Justices of the Supreme Court, A.M. No. 11-7-10-SC, July 31, 2012) p. 147

— Two distinct concepts: decisional independence and institutional independence; explained. *(Id.)*

JURISDICTION

Concept — Once acquired, jurisdiction is not lost upon the instance of the parties but continues until the case is terminated. (Maj. Gen. Carlos F. Garcia, AFP [Ret.] *vs*. Exec. Sec., G.R. No. 198554, July 30, 2012) p. 114

Determination of — The allegations in the complaint and the reliefs prayed for are the determinants of the nature of the action and of which court has jurisdiction over the matter. (Gulfo *vs*. Ancheta, G.R. No. 175301, Aug. 15, 2012) p. 587

Jurisdiction over the person — Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. (People *vs*. Lara, G.R. No. 199877, Aug. 13, 2012) p. 469

LABOR STANDARDS

Disability benefits — Governed not only by medical findings but also by contract and law. (Philasia Shipping Agency Corp. and/or Intermodal Shipping, Inc. *vs*. Tomacruz, G.R. No. 181180, Aug. 15, 2012) p. 632

— Respondent's disability should be deemed total and permanent considering that when the company designated physician made a declaration that he was already fit to work, 249 days had already lapsed from the time he was repatriated for medical reasons. *(Id.)*

— The applicability of the Labor Code provisions on permanent disability, particularly Art. 192 (1), to seafarers, is a settled matter. *(Id.)*

— The company-designated physician's certification that respondent was fit to work does not make him ineligible to receive permanent total disability benefits, the fact that respondent was unable to work for more than 240 days. *(Id.)*

Employees benefits— The burden of proving payment of the employee's salaries and other monetary benefits rests with the employer. (Jarl Construction *vs*. Atencio, G.R. No. 175969, Aug. 01, 2012) p. 256

LAND REGISTRATION

Certificate of title — Doctrine of indefeasibility, when applicable. (Abobon *vs*. Abata Abobon, G.R. No. 155830, Aug. 15, 2012) p. 530

Claim of ownership — As between two claims, the Court is inclined to decide in favor of the one who holds a valid and subsisting title to the property. (Sps. Galang *vs*. Sps. Reyes, G.R. No. 184746, Aug. 15, 2012) p. 652

Provincial Environment and Natural Resources Office (PENRO) — Provincial Environment and Natural Resources Office (PENRO) or CENRO certification, by itself, fails to prove

the alienable and disposable character of a parcel of land. (Rep. of the Phils. *vs*. Medida, G.R. No. 195097, Aug. 13, 2012) p. 454

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

"Devolution" — Defined as the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities. (CSC *vs*. Dr. Agnes Ouida P. Yu, G.R. No. 189041, July 31, 2012) p. 182

Section 17 (i) thereof — The absorption of national government agency personnel is mandatory; exception. (CSC *vs*. Dr. Agnes Ouida P. Yu, G.R. No. 189041, July 31, 2012) p. 182

MORTGAGES

Foreclosure of mortgage — Any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the petition for the issuance of the writ of possession; the said issues may be raised and determined only after the issuance of the writ of possession. (Sps. Fortaleza *vs*. Sps. Lapitan, G.R. No. 178288, Aug. 15, 2012) p. 596

— The obligation of a court to issue a writ of possession ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor. *(Id.)*

— When one-year period to redeem has lapsed, ownership of the subject property had already been consolidated and a new certificate of title had been issued under the name of the respondents. *(Id.)*

Right of mortgagees — The creditor-mortgagee has the right to foreclose the mortgage over a specific real property whether or not the debtor-mortgagor is under insolvency or liquidation proceedings. (Yngson, Jr. *vs*. Phil. National Bank, G.R. No. 171132, Aug. 15, 2012) p. 576

Right of redemption — Negligence or omission to exercise the right of redemption within the prescribed period without justifiable cause operates as a waiver and abandonment of their right to redeem the foreclosed property. (Sps. Fortaleza *vs*. Sps. Lapitan, G.R. No. 178288, Aug. 15, 2012) p. 596

MURDER

Attempted murder — Present where accused had not performed all the acts of execution that would have brought about the victim's death. (People of the Phils. *vs*. Camat, G.R. No. 188612, July 30, 2012) p. 55

Commission of — Elements; established. (People of the Phils. *vs*. Camat, G.R. No. 188612, July 30, 2012) p. 55

NATIONAL ECONOMY AND PATRIMONY

Jura Regalia or Regalian doctrine — Alienability and disposability of land are not among the matters that can be established by mere admissions or even the agreement of parties. (Rep. of the Phils. *vs*. Medida, G.R. No. 195097, Aug. 13, 2012) p. 454

— All lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. *(Id.)*

OBLIGATIONS

Reciprocal obligations — Defined. (Goldloop Properties Inc. *vs.* GSIS, G.R. No. 171076, Aug. 1, 2012) p. 215

OMNIBUS ELECTION CODE (B.P. BLG. 881)

Qualification of candidates — Instances when question thereof may be raised. (Sobejana-Condon *vs*. COMELEC, G.R. No. 198742, Aug. 10, 2012) p. 407

PARTIES TO CIVIL ACTIONS

Real party-in-interest — The complaint instituted by petitioners was for annulment of title and not for revision; real party in interest is not the State but the respondents who claim

a right of ownership over the property in question. (Sps. Galang *vs.* Sps. Reyes, G.R. No. 184746, Aug. 15, 2012) p. 652

PENALTIES, COMPUTATION OF

Article 29 of the Revised Penal Code — Applies suppletorily to the Articles of War in the implementation and execution of a general Court Martial's decision. (Maj. Gen. Carlos F. Garcia, AFP [Ret.] *vs*. Exec. Sec., G.R. No. 198554, July 30, 2012) p. 114

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Award of compensation — A disputably presumed work-related illness under the POEA Standard Employment Contract must still be proven by the seafarer claiming permanent disability benefits. (Casomo *vs*. Career Phils. Shipmanagement, Inc., G.R. No. 191606, Aug. 01, 2012) p. 326

— A seafarer suffering from an occupational disease would still have to satisfy four conditions before his or her disease may be compensable. *(Id.)*

— Awards of compensation cannot rest entirely on bare assertions and presumptions; claimant must present evidence to prove work-causation. *(Id.)*

— Not indicative of a seafarer's complete and whole medical condition which renders the subsequent contraction of illnesses by the seafarer as work-related. *(Id.)*

— Seafarer must demonstrate that his work involved risks and within a period of exposure thereto resulted in his contraction of the disease. *(Id.)*

— The burden of proving the causal link between a claimant's work and the ailment suffered rests on a claimant's shoulder. *(Id.)*

— Work-related illness, defined; ameloblastoma is not listed as an occupational disease. *(Id.)*

PLEADINGS

Supplemental pleadings —The purpose of the supplemental pleading is to bring into the records new facts which will enlarge or change the kind of relief to which the plaintiff is entitled. (Ada *vs.* Baylon, G.R. No. 182435, Aug. 13, 2012) p. 432

POSSESSION

Right of — A mere caretaker of a land has no right of possession over such land. (Heirs of Rogelio Isip, Sr. *vs*. Quintos, G.R. No. 172008, Aug. 01, 2012) p. 245

PRELIMINARY INVESTIGATION

Proceedings — Considered primarily as an executive function. (City Prosecutor Armando P. Abanado *vs*. Judge Bayona, A.M. No. MTJ-12-1804 [Formerly A.M. OCA I.P.I. No. 09-2179-MTJ], July 30, 2012) p. 13

PRESUMPTIONS

Presumption of regularity in the performance of official duty — Applicable when there is no showing of any ill motive on the part of the arresting officers to falsely accuse accused-appellant of the crimes charged. (People *vs*. Amarillo, G.R. No. 194721, Aug. 15, 2012) p. 698

(Ambre *vs*. People, G.R. No. 191532, Aug. 15, 2012) p. 681

Presumptions — Where two conflicting probabilities arise from the evidence; the one compatible with the presumption of innocence will be adopted. (People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

PROPERTY

Accession — Ownership of dried-up riverbed; claimant must prove that the old creek indeed changed its course naturally without artificial or man-made intervention. (Sps. Galang *vs*. Sps. Reyes, G.R. No. 184746, Aug. 15, 2012) p. 652

PROSECUTION OF OFFENSES

Criminal prosecutions — The manner in which the prosecution of the case is handled is within the sound discretion of the prosecutor. (Alvarez *vs*. People of the Phils., G.R. No. 192591, July 30, 2012) p. 89

PUBLIC OFFICERS AND EMPLOYEES

Abandonment of office — A person holding public office may abandon such office by non-user or acquiescence. (CSC *vs*. Dr. Agnes Ouida P. Yu, G.R. No. 189041, July 31, 2012; *Leonardo-De Castro, J., concurring opinion*) p. 182

— A voluntary act and springs from and is accompanied by deliberation and freedom of choice. (CSC *vs*. Dr. Agnes Ouida P. Yu, G.R. No. 189041, July 31, 2012) p. 182

— Elements. *(Id.)*

— It must be total and under such circumstance as clearly to indicate an absolute relinquishment. *(Id.)*

Duties and responsibilities — Administrative liability for gross negligence based on the principle of command responsibility; elucidated. (Montallana *vs*. Office of the Ombudsman, G.R. No. 179677, Aug. 15, 2012) p. 617

— 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. *(Id.)*

Forfeiture of ill-gotten wealth — Forfeiture of ill-gotten wealth is civil in nature because the proceeding does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the government. (Heirs of Jolly Bugarin *vs*. Rep. of the Phils., G.R. No. 174431, Aug. 06, 2012) p. 351

— The burden to debunk the presumption that the properties have been unlawfully acquired shifts to the accused after the government had established the elements of the offense. *(Id.)*

Gross neglect of duty or gross negligence — Refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. (Montallana *vs*. Office of the Ombudsman, G.R. No. 179677, Aug. 15, 2012) p. 617

On detail with other offices — Shall be paid their salaries, emoluments, allowances, fringe benefits and other personal services costs from the appropriations of their parent agencies. (CSC *vs*. Dr. Agnes Ouida P. Yu, G.R. No. 189041, July 31, 2012) p. 182

QUALIFYING CIRCUMSTANCES

Use of unlicensed firearm — In order for the same to be considered, adequate proof, such as written or testimonial evidence, must be presented showing that the appellant was not a licensed firearm holder. (People of the Phils. *vs*. Camat, G.R. No. 188612, July 30, 2012) p. 55

RAPE

Prosecution of rape cases — Time-tested principles in deciding rape cases, namely: (1) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. (People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

Qualified rape — Special qualifying circumstances of minority and relationship must be specifically alleged in the information and proven beyond reasonable doubt during the trial. (People of the Phils. *vs*. Arcillas, G.R. No.181491, July 30, 2012) p. 40

2008 REVISED MANUAL FOR PROSECUTORS OF THE DEPARTMENT OF JUSTICE - NATIONAL PROSECUTION SERVICE

Guidelines — Does not require the attachment to an information of the resolution of the investigating prosecutor recommending the dismissal of a criminal complaint after it was reversed by the Provincial, City or Chief State Prosecutor. (City Prosecutor Armando P. Abanado *vs.* Judge Bayona, A.M. No. MTJ-12-1804 [Formerly A.M. OCA I.P.I. No. 09-2179-MTJ], July 30, 2012) p. 13

ROBBERY WITH HOMICIDE

Commission of — It must be shown that the original criminal design of the culprit was robbery and the homicide was perpetrated with a view to the consummation of the robbery by reason or on the occasion of the robbery. (People *vs.* Lara, G.R. No. 199877, Aug. 13, 2012) p. 469

SALES

Contract of sale — Where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell; the non-payment of the purchase price renders the contract to sell ineffective and without force and effect. (Union Bank of the Phils. *vs.* Maunlad Homes, Inc., G.R. No. 190071, Aug. 15, 2012) p. 667

SHERIFFS

Duties — Periodic reports on the status of a writ of execution is mandatory; failure by sheriff to make periodic reports on the status of a writ of execution is simple neglect of duty. (Astorga and Repol Law Office *vs.* Roxas, A.M. No. P-12-3029, Aug. 15, 2012) p. 507

— Sheriffs are required to comply with their mandated duty as speedily as possible. *(Id.)*

SUPPORT

Child support — The amount thereof shall be in proportion to the resources or means of the giver and necessities of the recipient. (Gotardo *vs*. Buling, G.R. No. 165166, Aug. 15, 2012) p. 566

TREACHERY

As a qualifying circumstance — Qualifies the killing to murder. (People of the Phils. *vs.* Camat, G.R. No. 188612, July 30, 2012) p. 55

UNLAWFUL DETAINER

Complaint for — A defendant may not divest the trial court of its jurisdiction by merely claiming ownership of property; the trial court may resolve the issue of ownership only to determine the issue of possession. (Union Bank of the Phils. *vs*. Maunlad Homes, Inc., G.R. No. 190071, Aug. 15, 2012) p. 667

— The authority granted to the trial court to preliminary resolve the issue of ownership to determine the issue of possession ultimately allows it to interpret and enforce the contract or agreement between the plaintiff and defendant. *(Id.)*

— Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. *(Id.)*

VENUE

Venue of actions — Venue of actions may be validly agreed upon in writing by the parties before the filing of the action. (Union Bank of the Phils. *vs* Maunlad Homes, Inc., G.R. No. 190071, Aug. 15, 2012) p. 667

WITNESSES

Credibility of — Accused may be convicted of rape simply on the basis of the complainant's testimony, this principle holds true only if such testimony meets the test of credibility. (People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

— Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. (People of the Phils. *vs*. Camat, G.R. No. 188612, July 30, 2012) p. 55

— Findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. (People *vs*. Amarillo, G.R. No. 194721, Aug. 15, 2012) p. 698

(People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

(People of the Phils. *vs*. Gustafsson y Nacua, G.R. No. 179265, July 30, 2012) p. 29

— Great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth. (People of the Phils. *vs*. Arcillas, G.R. No. 181491, July 30, 2012) p. 40

— Indifference on the lingering presence of the appellant at the scene of the alleged crime after the same happened instead of immediately reporting the incident naturally makes her testimony tainted with uncertainty. (People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

— It is to be expected that one who is guilty of a crime would want to dissociate himself from the person of his victim, the scene of the crime, and from all other things and circumstances related to the offense which could possibly implicate him or give rise to even the slightest suspicion as to his guilt. *(Id.)*

— Testimonies of the police officers have adequately established with moral certainty the commission of the crime charged in the information and the identity of the petitioner as the perpetrator. (Ambre *vs*. People, G.R. No. 191532, Aug. 15, 2012) p. 681

— Testimony must be considered in its entirety instead of in truncated parts. (Gotardo *vs*. Buling, G.R. No. 165166, Aug. 15, 2012) p. 566

— The failure to resist the alleged assault indubitably casts doubt on her credibility and the veracity of narration of the incident. (People *vs*. Bermejo, G.R. No. 195307, Aug. 06, 2012) p. 373

Testimony of —When the testimony, which the trial court found to be forthright and credible, is worthy of full faith and credit and should not be disturbed on appeal. (People *vs*. Lara, G.R. No. 199877, Aug. 13, 2012) p. 469

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