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DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 22, 2012 TO AUGUST 29, 2012

SUPREME COURT
MANILA
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-12-3084. August 22, 2012]
(Formerly A.M. No. 12-4-33-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MS. VIVENCIA K. LANGUIDO, Clerk of Court II, Municipal Circuit Trial Court, Pres. Roxas-Antipas-Arakan, North Cotabato,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERKS OF COURT; AS OFFICERS OF THE LAW WHO PERFORM VITAL FUNCTIONS IN THE PROMPT AND SOUND ADMINISTRATION OF JUSTICE, THEIR CONDUCT MUST BE GUIDED BY STRICT PROPRIETY AND DECORUM AT ALL TIMES.— Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, their conduct must be guided by strict propriety and decorum at all times, in order to merit and maintain the public's respect for and trust in the Judiciary.

2. ID.; ID.; ID.; ID.; DUTIES AND LIABILITIES OF ACCOUNTABLE OFFICERS.— Time and again, the Court has been reminding court personnel tasked with collection of court funds, such as clerks of courts and cash clerks, to deposit

immediately with authorized government depositories the various funds they have collected because they are not authorized to keep 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.; RESPONDENT'S EXCUSE OF LACK OF KNOWLEDGE AND ORIETATION IN ADMINISTERING FIDUCIARY FUNDS AND COLLECTIONS DOES NOT ABSOLVE HER FROM LIABILITY; AS A CLERK OF COURT, SHE IS DUTY BOUND TO USE REASONABLE SKILL AND DILIGENCE IN THE PERFORMANCE OF HER OFFICIALLY DESIGNATED DUTIES.—**In the case at bench, Languido undoubtedly had been remiss in the performance of her duties. As clerks of court, she is duty-bound to use reasonable skill and diligence in the performance of her officially designated duties. Records show that Languido failed to do the following: submit financial reports, remit the funds/collections on time, record her cash transactions in the cash books, and did not issue official receipts on several transactions particularly with regard to the confiscated and forfeited bet money and the collection and disbursement of the Sheriff's Trust Fund. Languido's excuse of lack of knowledge and orientation in administering fiduciary funds and collections, and the absence of instructions on how to handle the Sheriff's Trust Fund does not absolve her of liability. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designated to promote full accountability for government funds.

4. **ID.; ID.; ID.; ID.; RESPONDENT'S DELAY IN REMITTING COURT COLLECTIONS IS IN COMPLETE VIOLATION OF SC CIRCULAR 13-92 AND 5-93, WHICH PROVIDE THE GUIDELINES FOR THE PROPER ADMINISTRATION OF COURT FUNDS.—** Languido's delay in remitting court collections was in complete violation of SC Circular Nos. 13-92 and 5-93, which provide the guidelines for the proper administration of court funds. These circulars mandate that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Her failure to observe

these circulars, which resulted in losses, shortage, destruction or impairment of court funds and properties, makes her liable therefor.

R E S O L U T I O N

MENDOZA, *J.*:

The February 12, 2009 Memorandum[1] of the Financial Management Office, Office of the Court Administrator (*FMO-OCA*) reported that several clerks of court of the lower courts failed to submit their Monthly Financial Reports and recommended that an immediate financial audit be conducted on them by the Fiscal Monitoring Division, Court Management Office (*FMD-CMO*). As recommended, FMD-CMO conducted an on-the-spot audit, examination and reconciliation of the book of accounts of Vivencia K. Languido (*Languido*), Clerk of Court, Municipal Circuit Trial Court, Pres. Roxas-Antipas-Arakan, North Cotabato (*MCTC*), covering the period from April 19, 1985 to September 30, 2009.

On March 14, 2002, FMB-CMO submitted its report that Languido incurred delay in the remittances of her collections and had a cash shortage in the total amount of Four Hundred Ninety-One Thousand Nine Hundred Ten Pesos and 70/100 (₱491,910.70). Of the said amount, Languido restituted Eighty-Seven Thousand Nine Hundred Sixty-Nine Pesos and 10/100 (₱87,969.10) leaving a balance of Four Hundred Three Thousand Nine Hundred Forty-One Pesos and 60/100 (₱403,941.60).

Moreover, only one passbook under Savings Account No. 0741-1432-91 could be presented covering the period from 2003 to 2009 because Languido claimed to have lost the earlier passbook.

Furthermore, it was disclosed that Languido failed to issue a receipt and remit to its proper account the bet money confiscated during an arrest in violation of P.D. No. 1602 and forfeited in

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

favor of the government. She explained that she did not know that the money should be deposited in the Special Allowance for the Judiciary Fund.

It was also discovered that Languido had been collecting and disbursing the Sheriff's Trust Fund since 2004 but did not issue the corresponding official receipts or deposit the amounts collected. Neither did she maintain an official cash book nor prepare/submit monthly reports to the Accounting Division, FMO-OCA. For these shortcomings, Languido explained that there were no instructions on how to handle the trust fund.

For her infractions, the OCA withheld her salaries and other benefits. Judge Jose T. Tabosares, MCTC Presiding Judge, relieved her as financial custodian of the court funds, and designated Juliet B. Degutierrez, as the temporary financial custodian.

In a Memorandum,[2] dated March 14, 2012, the matter was referred to the OCA for evaluation, report and recommendation.

The OCA, in its March 23, 2012 Memorandum,[3] adopted the recommendations of the audit team, as follows:

1. This report be docketed as an administrative complaint against Ms. Vivencia K. Languido, Clerk of Court, MCTC, pres. Roxas-Antipas-Arakan, North Cotabato, for non-remittance of collections and non-submission of Monthly Financial Reports in violation of Administrative Circular No. 3-2000 and OCA Circular 113-2004 dated June 15, 2000 and September 16, 2004, respectively;

2. The withheld salaries of Ms. Vivencia K. Languido from May 2008 to date be FORFEITED and APPLIED to the computed liabilities giving priority on the Fiduciary Fund account;

3. Ms. Vivencia K. Languido be DIRECTED within fifteen (15) days from receipt of notice to:

3.1. SUBMIT pertinent documents to the Fiscal Monitoring Division, Court Management Office, this Office, to wit:

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

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

3.1.a. Xerox copy of Fiduciary Fund passbook under Savings Account No. 0741-1432-91 for the period October 2009 to present for verification on the source of Thirty-Nine Thousand Pesos (₱39,000.00) unremitted cash bonds which were released after the audit cut-off.

3.1.b. Valid documents evidencing the following undocumented Fiduciary Fund withdrawals totaling to Twenty-Four Thousand Pesos (₱24,000.00).

x x x x x x x x x

3.2 EXPLAIN in writing why administrative sanction shall not be imposed against her for non-submission of Monthly Financial Reports and for the shortages incurred in the following funds:

Fund	**Shortages**	**Restitution**		**Balance**
		Date	**Amount**	
Judiciary Development Fund	₱109,045.60	10.5.09	₱1,719.60	
		11.3.09	1,476.00	₱105,850.00
Special Allowance for the Judiciary Fund	52,877.00	10.5.09	2,384.40	
		10.30.09	49,774.60	
		11.5.09	718.00	0.00
General Fund	1,277.60			1,277.60
Sheriff's General Fund	72.00			72.00
Fiduciary Fund	278,000.00			278,000.00
Sheriff's Trust Fund	2,855.00	11.5.09	2,855.00	0.00
Mediation Fund	26,500.00	11.3.09	26,500.00	0.00
Victim's Compensation Fund	345.00	11.3.09	345.00	0.00
Legal Research Fund	1,516.50	11.3.09	1,516.50	0.00
Confiscated Bet Money	19,422.00	10.1.09	680.00	18,742.00
TOTAL	**₱491,910.70** =========		**₱87,969.10** =========	**₱403,941.60** =========

4. Ms. Vivencia K. Languido be placed under preventive suspension without pay considering that the acts committed involve gross

dishonesty and grave misconduct and be FINED in the amount of Ten Thousand Pesos (₱10,000.00) for not remitting the collections and depriving the Court of interest income, with a STERN WARNING that a similar act will be dealt with more severely in the future;

5. The Finance Division, Financial Management Office, Office of the Court Administrator is DIRECTED to:

5.1. APPLY the cash shortages incurred by Ms. Vivencia K. Languido against her withheld salaries, net of mandatory deductions, from May 2008 to date totaling Four Hundred Three Thousand Nine Hundred Forty-One Pesos and 60/100 (₱403,941.60) tabulated in 3.1 above;

5.2. REMIT to its respective accounts the deducted shortages referred in 5.1;

5.3. INFORM the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator of the action taken on the immediately preceding directive;

6. Ms. Juliet B. Degutierrez, Clerk II and Officer-in-charge, MCTC, Pres. Roxas-Antipas-Arakan, North Cotabato be DIRECTED to:

6.1. STRICTLY ADHERE and FOLLOW the issuances of the Court on the proper handling and reporting of judiciary funds particularly the prescribed period within which to remit court collections;

6.2 UPDATE daily the recording of financial transactions in the official cashbooks maintained for each fund and CERTIFY at the end of every month the correctness of the entries therein;

7. Judge JOSE T. TABOSARES be DIRECTED to MONITOR the financial transactions of MCTC, Pres. Roxas-Antipas-Arakan, North Cotabato in strict observance of the issuances of the Court to avoid recurrence of irregularity in the collection, deposit and withdrawal of court funds otherwise, he will be held equally liable for the infractions committed by the erring employee of the court under his command; and

8. A Hold Departure Order be ISSUED to Ms. Vivencia K. Languido to prevent her from leaving the country.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice.

They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises.[4] As such, their conduct must be guided by strict propriety and decorum at all times, in order to merit and maintain the public's respect for and trust in the Judiciary.[5]

Time and again, the Court has been reminding court personnel tasked with collection of court funds, such as clerks of courts and cash clerks, to deposit immediately with authorized government depositories the various funds they have collected because they are not authorized to keep funds in their custody.[6] 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.[7]

In the case at bench, Languido undoubtedly had been remiss in the performance of her duties. As clerk of court, she is duty-bound to use reasonable skill and diligence in the performance of her officially designated duties.[8] Records show that Languido failed to do the following: submit financial reports, remit the funds/collections on time, record her cash transactions in the cash books, and did not issue official receipts on several transactions particularly with regard to the confiscated and forfeited bet money and the collection and disbursement of the Sheriff's Trust Fund.

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[4] *Re: Financial Audit Conducted in the Municipal Circuit Trial Court, Ragay-Del Gallego, Camarines Sur*, 534 Phil. 490, 493 (2006).

[5] *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan, OIC, RTC, Branch 117, Pasay City*, 445 Phil. 220, 224 (2003).

[6] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, 525 Phil. 548, 560, (2006).

[7] *Office of the Court Administrator v. Elumbaring*, A.M. No. P-10-2765 (Formerly A.M. No. 09-11-199-MCTC), September 13, 2011, 657 SCRA 453, 464.

[8] *Office of the Court Administrator v. Ramos*, 510 Phil. 243, 249 (2005).

Languido's excuse of lack of knowledge and orientation in administering fiduciary funds and collections, and the absence of instructions on how to handle the Sheriff's Trust Fund does not absolve her of liability. Safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[9]

Languido's delay in remitting court collections was in complete violation of SC Circular Nos. 13-92 and 5-93, which provide the guidelines for the proper administration of court funds. These circulars mandate that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Her failure to observe these circulars, which resulted in losses, shortage, destruction or impairment of court funds and properties, makes her liable therefor.

In the case of *Re: Initial Report on the Financial Audit Conducted in the Municipal Trial Court of Pulilan, Bulacan*,[10] the Court found the respondent clerk of court remiss in the performance of his duties for his failure to remit his collections on JDF and COC General Fund, when he failed to record the daily transactions in the official cash books, to submit monthly reports of collections and deposits and withdrawals to the Accounting Division, CMO, and to follow the circulars issued by the Court in the handling of the fiduciary funds. The respondent was found guilty of dishonesty, gross misconduct and malversation of public funds, and was dismissed from the service.

In *Report on the Financial Audit Conducted on the Books of Accounts of OIC Melinda Deseo, MTC, General Trias, Cavite*,[11] the Court said that the undue delay in the remittances of amounts

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[9] *Office of the Court Administrator v. Nini*, A.M. No. P-11-3002, April 11, 2012.

[10] A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486.

[11] 392 Phil. 122 (2000).

collected by clerks of court, at the very least, constitutes misconduct. The respondent in this case was meted the penalty of suspension for six (6) months and one (1) day without pay.

In the case of *Office of the Court Administrator v. Nini*,[12] the Court stated that delay in the remittances of collection as mandated constituted neglect of duty. The clerk of court therein was found guilty of gross neglect of duty and was suspended for a period of six (6) months and fined in the amount of ₱5,000.00.

On several occasions and for like offense, the Court has imposed the extreme penalty of dismissal from the service even if committed for the first time.[13] In a more recent case, however, the Court mitigated the penalties imposed on erring officers and employees for humanitarian reasons.[14]

WHEREFORE, the Court finds Vivencia K. Languido, Clerk of Court II, Municipal Circuit Trial Court, Pres. Roxas-Antipas-Arakan, North Cotabato, **GUILTY** of Gross Neglect of Duty and imposes upon her the penalty of **SUSPENSION** for six (6) months and a **FINE** of **THIRTY THOUSAND PESOS (₱30,000.00)** with a **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

The Finance Division, Financial Management Office, Office of the Court Administrator is **DIRECTED** to **APPLY** the cash shortages incurred by Vivencia K. Languido in the total amount of Four Hundred Three Thousand Nine Hundred Forty One Pesos and 60/100 (₱403,941.60) against her withheld salaries and

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[12] *Supra* note 9.

[13] *Office of the Court Administrator v. Elumbaring*, *supra* note 7; *Office of the Court Administrator v. Dion*, A.M. No. P-10-2799, January 18, 2011, 639 SCRA 640; and *Office of the Court Administrator v. Recio*, A.M. No. P-04-1813 (Formerly A.M. No. 04-5-119-MeTC), May 31, 2011, 649 SCRA 552.

[14] *Office of the Court Administrator v. Nini*, *supra* note 9; *Office of the Court Administrator v. Almirante*, A.M. No. P-07-2297, March 21, 2011, 645 SCRA 671.

REMIT the said amount to its respective accounts and to furnish the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, copies of machine validated deposit slips as proof of compliance.

Juliet B. Degutierrez, Clerk II and Officer-in-Charge, MCTC, Pres. Roxas-Antipas-Arakan, North Cotabato, is **DIRECTED** to strictly adhere and follow the issuances of the Court on the proper handling and reporting of judiciary funds and to daily update the recording of financial transactions in the official cash book maintained for each fund and certify the correctness of the entries therein at the end of every month.

Lastly, Presiding Judge Jose T. Tabosares is **DIRECTED** and **ENJOINED** to strictly monitor the financial transactions of MCTC, Pres. Roxas-Antipas-Arakan, North Cotabato, in strict compliance with the issuances of the Court, to avoid recurrence of irregularity in the collection, deposit and withdrawal of court funds; otherwise, he will be held equally liable for the infractions committed by the erring employee under his supervision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 158461. August 22, 2012]

DR. EDUARDO AQUINO, *petitioner, vs.* **HEIRS OF RAYMUNDA CALAYAG, namely: Rodrigo, Wilma, Willie, William, Wilson, Wendy, Whitney and Warren, all surnamed CALAYAG, Represented by RODRIGO CALAYAG,** *respondents.*

[G.R. No. 158634. August 22, 2012]

DR. ALBERTO C. REYES, *petitioner, vs.* **HEIRS OF RAYMUNDA CALAYAG, Namely, WILMA, WILLIE, WILLIAM, WILSON, WENDY, WHITNEY and WARREN, all surnamed CALAYAG, Represented by WILMA CALAYAG,** *respondents.*

[G.R. No. 158818. August 22, 2012]

DR. DIVINIA UNITE, *petitioner, vs.* **HEIRS OF RAYMUNDA CALAYAG, Namely RODRIGO, WILMA, WILLIE, WILLIAM, WILSON, WENDY, WHITNEY and WARREN, all surnamed CALAYAG, Represented by RODRIGO CALAYAG,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; NEGLIGENCE; MEDICAL MALPRACTICE; A FORM OF NEGLIGENCE WHICH CONSISTS IN THE PHYSICIAN OR SURGEON'S FAILURE TO APPLY TO HIS PRACTICE THAT DEGREE OF CARE AND SKILL THAT THE PROFESSION GENERALLY AND ORDINARILY EMPLOYS UNDER SIMILAR CONDITIONS AND CIRCUMSTANCES.— The cause of action against the doctors in these cases is commonly known as medical malpractice. It is a form of negligence which consists in the physician or surgeon's failure to apply to his practice that degree of care and skill that the profession generally

and ordinarily employs under similar conditions and circumstances. For this reason, the Court always seeks guidance from expert testimonies in determining whether or not the defendant in a medical malpractice case exercised the degree of care and diligence required of him. The Court has to face up to the fact that physicians have extraordinary technical skills that laymen do not have.

2. ID.; ID.; ID.; ID.; FOUR (4) BASIC THINGS TO ESTABLISH IN ORDER TO SUCCESSFULLY MOUNT A MEDICAL MALPRACTICE ACTION.— To successfully mount a medical malpractice action, the plaintiff should establish four basic things: (1) duty; (2) breach; (3) injury; and (4) proximate causation. The evidence should show that the physician or surgeon, either failed to do something which a reasonably prudent physician or surgeon would have done, or that he or she did something that a reasonably prudent physician or surgeon would not have done; and that the failure or action caused injury to the patient.

3. ID.; ID.; ID.; ID.; THE ABSENCE OF NOTATION ON RECORD, AN IMPORTANT ENTRY BECAUSE THE ABSENCE OF WHICH IS ITSELF A GROUND FOR MALPRACTICE, IMPLIES THAT THE SURGEONS HAD NO INKLING WHEN THE CARDIO-RESPIRATORY ARREST OCCURRED AND HOW MUCH TIME THEY HAVE LEFT TO REVIVE THEIR PATIENT.—But Dr. Unite cannot exempt herself from liability. Dr. Aquino was not feeling well on the day of the operation as he was in fact on sick leave. As surgeon in charge, Dr. Unite should not have allowed Dr. Aquino to take part in the operation. Besides, as the RTC found, the record of the operation contained no notation just when Raymunda had a cardio-respiratory arrest and ceased to take in oxygen. This notation played a critical role since the surgeons had between 6 to 8 minutes from the time of arrest, called the golden period of reversibility, within which to save her from becoming a vegetable. The absence of the notation on record, an important entry because the absence of which is itself a ground for malpractice, implies that the surgeons had no inkling when the cardio-respiratory arrest occurred and how much time they had left to revive their patient. Indeed, it took a subsequent examination by an internist for

them to realize that Raymunda had suffered a cardio-respiratory arrest.

4. ID.; ID.; ID.; ID.; NO CONCRETE PROOF TO HOLD THE HOSPITAL OWNER LIABLE; NO EVIDENCE HAS BEEN PRESENTED THAT THE DECEASED PATIENT SUFFERED HER FATE BECAUSE OF DEFECTIVE HOSPITAL FACILITIES OR POOR STAFF SUPPORT TO THE SURGEONS.— As for Dr. Reyes, the hospital owner, there appears no concrete proof to show that Dr. Unite and Dr. Aquino were under the hospital's payroll. Indeed, Dr. Aquino appeared to be a government physician connected with the Integrated Provincial Health Office of Bulacan. Dr. Unite appeared to be a self-employed doctor. The hospital allowed these doctors to operate on their patients, using its operating room and assisting staffs for a fee. No evidence has been presented that Raymunda suffered her fate because of defective hospital facilities or poor staff support to the surgeons. That Dr. Reyes and his wife rushed to the operating room the moment they heard that Raymunda's vital signs had ceased is not an evidence that they exercised supervision over the conduct of the operation. They evidently came to see what was happening possibly to provide help if needed. Their showing up after the operation is not a proof that they had control and supervision over the work of the two doctors.

5. ID.; ID.; ID.; ID.; NOR WOULD THE DOCTRINE OF OSTENSIBLE AGENCY OR DOCTRINE OF APPARENT AUTHORITY MAKE THE HOSPITAL OWNER LIABLE TO THE DECEASED PATIENT'S HEIRS FOR HER DEATH.—Nor would the doctrine of ostensible agency or doctrine of apparent authority make Dr. Reyes liable to Raymunda's heirs for her death. Two factors must be present under this doctrine: 1) the hospital acted in a manner which would lead a reasonable person to believe that the person claimed to be negligent was its agent or employee; and 2) the patient relied on such belief. Here, there is no evidence that hospital acted in a way that made Raymunda and her husband believe that the two doctors were in the hospital's employ. Indeed, the couple had been consulting Dr. Unite at St. Michael's Clinic, which she owned and operated in Malolos, Bulacan. She convinced them that the caesarean section had to be performed at the SHH because it had the facilities that such operation

required. If the Court were to allow damages against the hospital under this arrangement, independently licensed surgeons would be unreasonably denied access to properly-equipped operating rooms in big hospitals.

6. ID.; ID.; ID.; ID.; THE HEIRS OF THE DECEASED ARE ENTITLED TO ₱50,000.00 AS DEATH INDEMNITY PURSUANT TO ARTICLE 2206 OF THE CIVIL CODE.— As to the award of damages, following precedents set in *Flores v. Pineda*, respondent heirs of Raymunda are entitled to ₱50,000.00 as death indemnity pursuant to Article 2206 of the Civil Code.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A DEFENDANT CANNOT BE REGARDED AS A NEUTRAL WITNESS IN A CASE BECAUSE OF THE NATURAL TENDENCY TO BE BIASED IN TESTIFYING TO FAVOR HIS OR HER CO-DEFENDANTS.—While the Court cannot question the expertise of Dr. Reyes as a general surgeon, it cannot regard him as a neutral witness. Given that he himself was a defendant in the case, he had a natural bias for testifying to favor his co-defendants. Further, since he had no opportunity to actually examine Raymunda, Dr. Reyes could only invoke textbook medical principles that he could not clearly and directly relate to the patient's specific condition.

APPEARANCES OF COUNSEL

Bernard D. Fajardo for Dr. Eduardo I. Aquino.
Manuel Punzalan for Dr. Alberto Reyes.
Nye N. Orquillas for Dr. Divinia Unite.
Juanito I. Velasco for respondents.

D E C I S I O N

ABAD, *J.*:

These cases involve the liability of the surgeon, the anesthesiologist, and the hospital owner arising from a botched caesarean section that resulted in the patient going into a coma.

The Facts and the Case

When his wife Raymunda went into labor pains and began bleeding on November 13, 1990, respondent Rodrigo Calayag (Rodrigo)[1] brought her to St. Michael's Clinic of petitioner Dr. Divinia Unite (Dr. Unite) at Malolos, Bulacan. After initial examination, the doctor told Rodrigo that Raymunda had to have a caesarean section for her baby but this had to be done at the better-equipped Sacred Heart Hospital (SHH), owned and operated by petitioner Dr. Alberto Reyes (Dr. Reyes).

SHH admitted Raymunda at 2:16 p.m. of the same day.[2] To prepare her, the attending anesthesiologist, petitioner Dr. Eduardo Aquino (Dr. Aquino), injected her at about 2:30 p.m. with a preliminary "Hipnotic."[3] At 2:48 p.m., he administered an anesthesia on her spine.[4] A few minutes later, at 2:53 p.m.,[5] Dr. Unite delivered a stillborn eight-month-old baby.[6]

A few minutes later or at around 3:00 p.m., the operating team[7] noticed that Raymunda had become cyanotic.[8] Her blood

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[1] Now, deceased.

[2] Clinical Case Record, Sacred Heart Hospital, Exhibit "J-1" for the respondent heirs.

[3] Anesthesia Record, Sacred Heart Hospital, Exhibit "J-14" for the respondent heirs.

[4] *Id*.

[5] "The birth of a dead baby, the delivery of a fetus that has died before birth for which there is no possibility of resuscitation." Retrieved from http://www.medterms.com/script/main/art.asp?articlekey=19817 last April 24, 2012 by MedicineNet, Inc.

[6] Operating Room Record, Sacred Heart Hospital, Exhibit "J-15" for the respondent heirs.

[7] The operating team is composed of Dr. Unite as Head Surgeon, Dr. Teodoro Unite (Petitioner Dr. Unite's husband) as Assistant Surgeon, and Dr. J. Reyes as the Anesthesiologist. Exhibit "J-15" for the respondent heirs.

[8] "Bluish discoloration of the skin and mucous membranes due to not enough oxygen in the blood." Retrieved from http://www.medterms.com/script/main/art.asp?articlekey=23457 last April 24, 2012 by MedicineNet, Inc.

darkened for lack of oxygen and, all of a sudden, her vital signs were gone.[9] The team worked on her for about 5 to 7 minutes until these were restored.[10]

Rodrigo claimed that when he saw Raymunda after the operation, her skin appeared dark ("*nangingitim ang katawan*") and the white of her eyes showed ("*nakatirik ang mata*"). When he asked Dr. Unite why his wife did not look well, she replied that this was merely the effect of the anesthesia and that she would regain consciousness in about eight hours.

When Raymunda's condition did not improve after a day, Dr. Unite referred her to Dr. Fariñas, an internist, who found that she suffered a cardiac arrest during the operation, which explained her comatose state. Dr. Fariñas referred Raymunda to a neurologist who advised Rodrigo to move her to a better-equipped hospital.[11] SHH discharged her on November 16, 1990, four days after her admission.

Raymunda was directly moved to Medical Center Manila (MCM) where Dr. Rogelio Libarnes (Dr. Libarnes), a neurologist, examined her. He found Raymunda in a "vegetative state,"[12] having suffered from an anoxic injury[13] due to cardio-respiratory arrest during operation.[14] Dr. Libarnes was reluctant, however, to further proceed without consulting Dr. Unite, Raymunda's surgeon, and Dr. Aquino, the anesthesiologist.

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[9] Medical Center Manila, Consultation Sheet written by Dr. Unite. Exhibit "I-1" for the respondent heirs.

[10] *Supra* note 6; TSN, Vol. 2, July 22, 1993, p. 44.

[11] TSN, Vol. 2, May 19, 1992, pp. 10-14.

[12] TSN, Vol. 2, December 14, 1992, p. 11.

[13] "Anoxic brain damage happens when the brain receives inadequate oxygen for several minutes or longer. Brain cells begin to die after approximately four minutes without oxygen." Retrieved from http://www.med.nyu.edu/content?ChunkIID=96472 last April 24, 2012 by NYULangone Medical Center.

[14] *Supra* note 12, at 14.

On November 23, 1990 Dr. Unite went to MCM to remove the stitches from Raymunda's surgical wound. Dr. Unite noted that the wound had dried with slight lochial discharge.[15] Later that day, however, Raymunda's wound split open, causing part of her intestines to jut out. MCM's Dr. Benito Chua re-sutured the wound.[16]

Raymunda never regained consciousness, prompting her MCM doctors to advise Rodrigo to take her home since they could do no more to improve her condition. MCM discharged her on November 30, 1990 and she died 15 days later on December 14, 1990.

Rodrigo filed, together with his seven children, a complaint[17] for damages against Dr. Unite, Dr. Aquino, and Dr. Reyes before the Regional Trial Court (RTC) of Malolos. Rodrigo claimed that Dr. Unite and Dr. Aquino failed to exercise the diligence required for operating on Raymunda. As for Dr. Reyes, Rodrigo averred that he was negligent in supervising the work of Dr. Unite and Dr. Aquino.

Defendant doctors uniformly denied the charge of negligence against them. They claimed that they exercised the diligence required of them and that causes other than negligence brought about Raymunda's condition.

On August 22, 1994, after hearing the parties on their evidence, the RTC rendered a decision, finding the three doctors liable for negligence. The proximate cause of Raymunda's cardiac arrest, said the RTC, was an anesthetic accident, occasioned by injecting her with a high spinal anesthesia. The operating doctors failed to correctly monitor her condition, resulting in a critical delay in resuscitating her after the cardiac arrest. The RTC ordered the doctors to pay Raymunda's heirs ₱153,270.80

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[15] *Supra* note 9.

[16] Record of Operation of Medical Center Manila, Exhibit "H" for the respondent heirs.

[17] Docketed as Civil Case 670-M-91.

as actual damages, ₱300,000.00 as moral damages, and ₱80,000.00 as attorney's fees and cost of suit.

On appeal,[18] the Court of Appeals entirely affirmed the findings of the RTC.[19] Undaunted, Dr. Unite, Dr. Aquino, and Dr. Reyes filed separate petitions for review that the Court subsequently consolidated.

In her petition, Dr. Unite washed her hands of any responsibility in Raymunda's operation. She claimed that it was not her suturing that caused the splitting open of the patient's surgical wound. Further, although some negligence may have attended the operation, this could be traced to the anesthesiologist, Dr. Aquino.

Dr. Aquino claims, on the other hand, that the evidence was insufficient to support the conclusion that anesthetic accident caused the cardio-respiratory arrest since, as testified, other factors may have caused the same.

Finally, Dr. Reyes claims that he cannot be held liable for Raymunda's death since Dr. Unite and Dr. Aquino were not his employees. Based on the control test, he did not exercise control and supervision over their work. They merely used his hospital's facilities for the operation.

The Issues Presented

The cases present two issues:

1. Whether or not Dr. Unite (the surgeon) and Dr. Aquino (the anesthesiologist) acted negligently in handling Raymunda's operation, resulting in her death; and

2. Whether or not Dr. Reyes is liable, as hospital owner, for the negligence of Dr. Unite and Dr. Aquino.

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[18] Docketed as CA-G.R. CV 48075.

[19] Decision dated November 28, 2002. The subsequent motion for reconsideration was denied by the CA in its Resolution dated May 27, 2003.

The Court's Rulings

The cause of action against the doctors in these cases is commonly known as medical malpractice. It is a form of negligence which consists in the physician or surgeon's failure to apply to his practice that degree of care and skill that the profession generally and ordinarily employs under similar conditions and circumstances.[20]

For this reason, the Court always seeks guidance from expert testimonies in determining whether or not the defendant in a medical malpractice case exercised the degree of care and diligence required of him.[21] The Court has to face up to the fact that physicians have extraordinary technical skills that laymen do not have.[22]

To successfully mount a medical malpractice action, the plaintiff should establish four basic things: (1) duty; (2) breach; (3) injury; and (4) proximate causation.[23] The evidence should show that the physician or surgeon, either failed to do something which a reasonably prudent physician or surgeon would have done, or that he or she did something that a reasonably prudent

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[20] *Cayao-Lasam v. Ramolete*, G.R. No. 159132, December 18, 2008, 574 SCRA 439, 454.

[21] *Lucas v. Tuaño*, G.R. No. 178763, April 21, 2009, 586 SCRA 173, 200.

[22] *Li v. Spouses Soliman*, G.R. No. 165279, June 7, 2011, 651 SCRA 32, 55-56.

[23] In *Lucas v. Tuaño*, *supra* note 21, at 199-200, the Supreme Court explains the elements in the following manner: ***Duty***. The physician has the duty to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar circumstances. ***Breach & Injury***. There is breach of duty of care, skill and diligence, or the improper performance of such duty, by the attending physician when the patient is injured in body or in health [and this] constitutes the actionable malpractice. ***Proximate cause***. The injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes.

physician or surgeon would not have done; and that the failure or action caused injury to the patient.[24]

Here, to prove Dr. Unite and Dr. Aquino's negligence, Rodrigo presented Dr. Libarnes, Raymunda's attending neurologist, and Dr. Chua, the general surgeon who re-stitched her wound.

Dr. Libarnes explained that it was cyanosis or lack of oxygen in the brain that caused Raymunda's vegetative state. Her brain began to starve for oxygen from the moment she suffered cardio-respiratory arrest during caesarean section. That arrest, said Dr. Libarnes, could in turn be traced to the anesthetic accident that resulted when Dr. Aquino placed her under anesthesia.[25]

Dr. Libarnes also blamed the doctors who operated on Raymunda for not properly keeping track of her vital signs during the caesarean procedure resulting in their failure to promptly address the cyanosis when it set in.[26] Dr. Chua, on the other hand, testified that Raymunda's surgical wound would not have split open if it had been properly closed.[27]

For their defense, Dr. Unite and Dr. Aquino presented Dr. Reyes, their co-defendant, who practiced general surgery. Dr. Reyes testified that Raymunda's cardio-respiratory arrest could have been caused by factors other than high spinal anesthesia, like sudden release of intra-abdominal pressure and amniotic fluid embolism.[28] Insofar as Raymunda's dehiscence or splitting open of wound was concerned, Dr. Reyes testified that Raymunda's poor nutrition as well as the medication contributed to the dehiscence.

While the Court cannot question the expertise of Dr. Reyes as a general surgeon, it cannot regard him as a neutral witness. Given that he himself was a defendant in the case, he had a

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[24] *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 331 (1997).

[25] TSN, Vol. 2, December 14, 1992, pp. 14-17.

[26] *Id*. at 25-28.

[27] TSN, Vol. 2, November 12, 1992, pp. 14-15.

[28] TSN, Vol. 2, September 16, 1993, p. 21.

natural bias for testifying to favor his co-defendants.[29] Further, since he had no opportunity to actually examine Raymunda, Dr. Reyes could only invoke textbook medical principles that he could not clearly and directly relate to the patient's specific condition.

In contrast, as a neurologist with expertise in the human nervous system, including the brain, Dr. Libarnes was in a better position to explain Raymunda's "vegetative" condition and its cause. In his opinion, an anesthetic accident during her caesarean section caused a cardio-respiratory arrest that deprived her brain of oxygen, severely damaging it. That damage could have been averted had the attending doctors promptly detected the situation and resuscitated her on time. Thus, Dr. Libarnes said:

Atty. Lazaro:

What could have been the probable cause of this cardio-respiratory arrest now Doctor?

Dr. Libarnes:

Well, most common cause of intra-operative cardio-respiratory arrest is anesthesia, an anesthetic accident.

Q: Will you kindly explain that in layman's language now Doctor?

A: The spinal anesthesia can re[sult] in depression of respiratory function. Respiratory arrest if significantly prolong[ed] can lead to cardiac arrest. Cardiac arrest of significant duration can res[ult] in brain injury.[30]

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Q: Now, when you refer to anoxic injury Doctor, you are referring to the lack of supply of oxygen going to the brain that is what you mean?

A: Yes.

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[29] In *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 584-585, the Court held that "A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false."

[30] TSN, Vol. 2, December 14, 1992, pp. 15-16.

Q: And this is due to the weak pumping of the heart, that is correct Doctor?
A: Yes.

Q: And the weak pumping of the heart under the events indicated by you could have been due to anesthesia accident, that is correct?
A: Hypoxia meaning lobe of the lung not providing oxygen, the heart has been stressed under hypoxic condition eventually giving out. Yes, that is correct.[31]

Dr. Aquino administered to Raymunda a high spinal anesthesia when he should have given her only a low or mid-spinal anesthesia.[32]

Notably, Dr. Unite corroborated the fact that Raymunda suffered from cyanosis due to deprivation of oxygen. This was Dr. Unite's explanation when Rodrigo, seeing his wife after the operation, asked why she had a bluish color. Moreover, Dr. Unite admitted in her petition, that the proximate cause of Raymunda's brain injury was Dr. Aquino's acts as anesthesiologist.[33]

But Dr. Unite cannot exempt herself from liability. Dr. Aquino was not feeling well on the day of the operation as he was in fact on sick leave.[34] As surgeon in charge, Dr. Unite should not have allowed Dr. Aquino to take part in the operation.

Besides, as the RTC found, the record of the operation contained no notation just when Raymunda had a cardio-respiratory arrest and ceased to take in oxygen. This notation played a critical role since the surgeons had between 6 to 8 minutes from the time of arrest, called the golden period of reversability, within which to save her from becoming a vegetable. The absence of the notation on record, an important entry because

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[31] *Id*. at 30.

[32] TSN, Vol. 2, September 23, 1993, p. 28.

[33] Petition in G.R. No. 158818, p. 17.

[34] Daily Time Card, Exhibits "G" and "G-1" for the respondent heirs.

the absence of which is itself a ground for malpractice,[35] implies that the surgeons had no inkling when the cardio-respiratory arrest occurred and how much time they had left to revive their patient. Indeed, it took a subsequent examination by an internist for them to realize that Raymunda had suffered a cardio-respiratory arrest.

As for Dr. Reyes, the hospital owner, there appears no concrete proof to show that Dr. Unite and Dr. Aquino were under the hospital's payroll. Indeed, Dr. Aquino appeared to be a government physician connected with the Integrated Provincial Health Office of Bulacan.[36] Dr. Unite appeared to be a self-employed doctor. The hospital allowed these doctors to operate on their patients, using its operating room and assisting staffs for a fee. No evidence has been presented that Raymunda suffered her fate because of defective hospital facilities or poor staff support to the surgeons.

That Dr. Reyes and his wife rushed to the operating room the moment they heard that Raymunda's vital signs had ceased is not an evidence that they exercised supervision over the conduct of the operation. They evidently came to see what was happening possibly to provide help if needed. Their showing up after the operation is not a proof that they had control and supervision over the work of the two doctors.

Nor would the doctrine of ostensible agency or doctrine of apparent authority make Dr. Reyes liable to Raymunda's heirs for her death. Two factors must be present under this doctrine: 1) the hospital acted in a manner which would lead a reasonable person to believe that the person claimed to be negligent was its agent or employee; and 2) the patient relied on such belief.

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[35] "Failure to maintain complete, timely and accurate records can constitute medical malpractice." *Basics of Philippine Medical Jurisprudence and Ethics*., 2010 ed. Bellosillo, J, Castro, B., Mapili E., Rebusa, A. & Rebusa, A., Central Book Supply, Inc., Quezon City.

[36] Exhibits "F" to "F-2" for the respondent heirs.

Here, there is no evidence that the hospital acted in a way that made Raymunda and her husband believe that the two doctors were in the hospital's employ. Indeed, the couple had been consulting Dr. Unite at St. Michael's Clinic, which she owned and operated in Malolos, Bulacan. She convinced them that the caesarean section had to be performed at the SHH because it had the facilities that such operation required. If the Court were to allow damages against the hospital under this arrangement, independently licensed surgeons would be unreasonably denied access to properly-equipped operating rooms in big hospitals.

As to the award of damages, following precedents set in *Flores v. Pineda*,[37] respondent heirs of Raymunda are entitled to ₱50,000.00 as death indemnity pursuant to Article 2206 of the Civil Code.

WHEREFORE, premises considered, this Court **DENIES** the petitions and **AFFIRMS** the decision of the Court of Appeals dated November 28, 2002 and resolution dated May 27, 2003 subject to **MODIFICATION** directing petitioners, Dr. Divinia Unite and Dr. Eduardo Aquino to pay the heirs of Raymunda Calayag, in addition to the damages that the Court of Appeals awarded them, ₱50,000.00 as death indemnity.

SO ORDERED.

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

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[37] G.R. No. 158996, November 14, 2008, 571 SCRA 83, 102.

SECOND DIVISION

[G.R. No. 163286. August 22, 2012]

MINDANAO TERMINAL AND BROKERAGE SERVICE, INC., *petitioner, vs.* **COURT OF APPEALS and PHILIPPINE PORTS AUTHORITY,** *respondents.*

[G.R. No. 166025. August 22, 2012]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **HON. CESAR M. SOLIS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 14, MANILA and MINDANAO TERMINAL AND BROKERAGE SERVICE, INC.,** *respondents.*

[G.R. No. 170269. August 22, 2012]

PHILIPPINE PORTS AUTHORITY, *petitioner, vs.* **HON. CESAR M. SOLIS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 14, MANILA and MINDANAO TERMINAL AND BROKERAGE SERVICE, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; THE SERVICE OF JUDGMENT SERVES AS THE RECKONING POINT TO DETERMINE WHETHER A DECISION HAD BEEN APPEALED WITHIN THE REGLEMENTARY PERIOD.— The first point is crucial for the service of judgment serves as the reckoning point to determine whether a decision was appealed within the reglementary period, because otherwise, *i.e.*, in the absence of an appeal or if the appeal was made beyond the reglementary period, the decision would, as a consequence, become final. Atty. Dizon contends that he was not properly served with the Court of Appeals decision since Cabrera who received the decision was not connected with his office. She was a front desk receptionist at the **Prestige Tower**

Condominium, where Atty. Dizon was holding his office, as shown by the affidavits executed by Cabrera and the Prestige Tower's management. Atty. Dizon rhetorically argued: "Who is this Virgie Cabrera? Is she an employee of the counsel of record of the petitioner? Is she authorized to receive a copy of a judgment ordering the petitioner to pay PPA the amount of ₱36,585,901.18?" To him, the decision, as the rules dictate, if served by way of registered mail, must be actually received by the addressee or any person in his office, otherwise, service cannot be considered complete. Because no valid service was made, the period to appeal did not prescribe and the decision has not yet attained finality. There is no dispute that as dictated by the Rules on Civil Procedure, Rule 13, Section 10 thereof, service by registered mail is complete upon actual receipt by the addressee, or five (5) days from the date he received the first notice of the postmaster, whichever date is earlier. The purpose of the afore-quoted rule on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that such party can take steps to protect the interests, *i.e.*, enable to file an appeal or apply for other appropriate reliefs before the decision becomes final.

2. ID.; ID.; ID.; IT IS THE RESPONSIBILITY OF A COUNSEL TO INFORM THE COURT OF HIS CHANGE OF ADDRESS FOR SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS.— Atty. Dizon, however, has forgotten that it was his elementary responsibility to have informed the Court of Appeals of his change of address **from** 6/F Padilla Building, Emerald Avenue, Ortigas Commercial Center, Pasig City, **to** Suite 402, Prestige Tower, Emerald Avenue, Ortigas Center, Pasig City. The records show that Atty. Dizon only informed the Court of Appeals of his change of address on 12 November 2003. This was almost one year after the entry of judgment was made on 20 December 2002. It did not escape us that Atty. Dizon filed on 29 August 2003 a Motion for Reconsideration of the Declaration of Finality and to Set Aside Entry of Judgment, months prior to his filing of change of address. The said motion conspicuously bore his old address at Padilla Building, the same address where the postmaster delivered the Court of Appeals decision where it was received by Cabrera. Atty. Dizon's reason therefore, that Cabrera is not his employee but that of Prestige Tower Condominium does not persuade us, because, as certified by the postmaster,

Cabrera received the letter on 4 December 2002 or a year before Atty. Dizon's change of address, and while his office address was at the Padilla Building. On that particular date, therefore, his office at the Prestige Tower Condominium was yet non-existent. At the very least, if it were true that he already moved to his new address, he should have indicated his new address in his motion for reconsideration. But even then, still, the responsibility was with Atty. Dizon to inform the Court of Appeals of such change.

3. ID.; ID.; ID.; CERTIFICATION OF THE POSTMASTER SATISFIES THE REQUIREMENT OF PROOF OF SERVICE.— As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that the official duty has been regularly performed, the choice is not difficult to make. As shown in the records, the postmaster included in his certification the manner, date and the recipient of the delivery, a criterion for the proper service of judgment which this Court enunciated in *Santos v. Court of Appeals*, *viz*: Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made. An examination of the postmaster's certification shows that: **x x x registered letter No. 6270-B was received by Virgie Cabrera on 4 December 2002.** This certification, the form of which came from the Supreme Court, and which only needs to be filled-up by the postmaster, to the mind of this Court, satisfies the requirement stated in *Santos*.

4. ID.; ID.; ID.; CASE AT BAR IS SIMPLY A CASE OF NEGLIGENCE OF COUNSEL TO APPEAL WITHIN THE REGLEMENTARY PERIOD.— Atty. Dizon has no one to blame but himself for allowing his client to lose the multi-million case because of his negligence to appeal the same within the reglementary period. Losing a case on account of a counsel's

negligence is a bitter pill to swallow for the litigant. But then, the Court is duty-bound to observe its rules and procedures. And, in the observance thereof, for the orderly administration of justice, it cannot countenance the negligence and ineptitude of lawyers who wantonly jeopardize the interests of their clients. On his part, a lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

5. ID.; ID.; EXECUTION OF JUDGMENTS; ONCE A JUDGMENT BECOMES FINAL, THE PREVAILING PARTY IS ENTITLED AS A MATTER OF RIGHT TO A WRIT OF EXECUTION.— As a matter of law, once a judgment becomes final, the prevailing party is entitled as a matter of right to a Writ of Execution as mandated by Section 1, Rule 39 of the 1997 Rules of Civil Procedure, which states that: **Section 1.** *Execution upon judgments or final orders*. — **Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.** The rule is clear that it becomes mandatory or ministerial duty of the court to issue a writ of execution to enforce the judgment which has become executory.

6. ID.; ID.; THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT HELD IN ABEYANCE THE WRIT OF EXECUTION NOTWITHSTANDING THE FACT THAT PETITIONER FILED BEFORE THE COURT A PETITION FOR *CERTIORARI* UNDER RULE 65 WHICH DOES NOT BY ITSELF INTERRUPT THE COURSE OF PROCEEDINGS.— This Court holds that the RTC abused its discretion when it held in abeyance the issuance of the writ of execution of the judgment in Civil Case No. 87-42747 entitled *Philippine Ports Authority v. Mindanao Terminal and Brokerage Services, Inc.*, notwithstanding the fact that the same had already become final and executory — this notwithstanding that MINTERBRO filed before this Court a petition for *certiorari* under Rule 65 of the Rules of Court. It did not escape this Court that the RTC Order dated 26 February 2004, holding in abeyance the writ of execution was only "until after the Petition for Review of the defendant shall have been resolved by the **Court of Appeals**." After the Court of Appeals, however, decided and held that its decision was already final and executory, the RTC issued another Order dated 17 September

2004, which in the guise of reiterating the 24 February 2004 order, changed its tone to the effect of holding in abeyance "until after the Petition for Review of the defendants shall have been resolved by the Supreme Court with Finality." It is a basic rule that a petition for *certiorari* under Rule 65 does not by itself interrupt the course of the proceedings. It is necessary to avail of either a temporary restraining order or a writ of preliminary injunction to be issued by a higher court against a public respondent so that it may, during the pendency of the petition, refrain from further proceedings.

7. ID.; ID.; APPEALS; THE TRIAL COURT LOST ITS JURISDICTION OVER THE CASE FROM THE TIME PETITIONER PERFECTED ITS APPEAL OF THE REGIONAL TRIAL COURT (RTC) DECISION TO THE COURT OF APPEALS.— The trial court lost its jurisdiction over the case from the time MINTERBRO perfected its appeal of the RTC decision to the Court of Appeals. From that time on, the RTC was divested of any authority over the substantive issues of the case. This is clear from the reading of Section 8, Rule 42 of the Rules of Court. x x x While Judge Cesar M. Solis anchors his action in citing the same afore-quoted provision "that the RTC may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal," the same is applicable only "before the Court of Appeals gives due course to the petition," as mandated by the very same provision cited by Judge Cesar M. Solis. This was the Court's pronouncement in *Atty. Fernandez v. Court of Appeals*, where this Court held that "this residual jurisdiction of the trial court (referring to Section 8[a] par. 3, Rule 42, 1997 Rules on Civil Procedure) is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal." At the time that Judge Cesar M. Solis issued his *Status Quo Ante Order* of 20 June 2005, even the Court of Appeals has lost jurisdiction over the issue of finality of decision. This Court has by then taken over.

APPEARANCES OF COUNSEL

R.A.S. Dizon Law Office for Mindanao Terminal & Brokerage Services, Inc.

Office of the Government Corporate Counsel for Philippine Ports Authority.

D E C I S I O N

PEREZ, *J.*:

Before us are the consolidated petitions which the Philippine Ports Authority (PPA), a government owned and controlled corporation, tasked with the management and control of all government and privately-owned ports in the country[1] filed against the Mindanao Terminal and Brokerage Services, Inc. (MINTERBRO), a private domestic corporation and grantee of a PPA-issued special permit for stevedoring services at the Davao City's government and privately-owned wharves.[2]

The Facts

On 28 August 1990, the Regional Trial Court (RTC), Br. 14, Manila rendered a decision in *Philippine Ports Authority v. Mindanao Terminal and Brokerage Service, Inc.*,[3] ordering MINTERBRO to pay PPA the sum of Thirty-Six Million Five Hundred Eighty-Five Thousand Nine Hundred One Pesos and Eighteen Centavos (₱36,585,901.18), as government's ten percent (10%) share in MINTERBRO's gross income from its port-related services,[4] *viz*:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [PPA] and against the defendant

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[1] PPA's Brief for the Court of Appeals. CA *rollo*, pp. 62-95.

[2] MINTERBRO's Brief for the Court of Appeals. *Id.* at 21-47.

[3] Civil Case No. 87-42747 was decided by Judge Inocencio D. Maliaman. *Rollo* (G.R. No. 166025), pp. 38-44.

[4] Presidential Decree No. 857 and Letter of Instruction No. 1005-A.

[MINTERBRO], ordering the latter to pay the former the sum of THIRTY SIX MILLION FIVE HUNDRED EIGHTY FIVE THOUSAND NINE HUNDRED ONE PESOS and EIGHTEEN CENTAVOS (₱36,585,901.18) and the costs of suit.[5]

Aggrieved, MINTERBRO assailed the RTC decision before the Court of Appeals. The Court of Appeals in a Decision[6] dated **21 November 2002**, affirmed *in toto* the RTC decision:

WHEREFORE, premises considered and pursuant to applicable law and jurisprudence on the matter, the appealed Decision (dated August 28, 1990) of the Regional Trial Court (Branch XIV) in Manila in Civil Case No. 87-42747, is hereby AFFIRMED *in toto*. Costs against the appellant.[7]

On even date, copies of the said Decision were sent *via* registered mail to the parties' respective counsels along with the Notice of the Decision stating that:

Please take notice that on November 21, 2002, a DECISION, copy hereto attached, was rendered by the TENTH DIVISION of the Court of Appeals in the above-entitled case, the original copy of which is on file with this Office.

You are hereby required to inform this Court, within five (5) days from receipt hereof, of the date when you received this notice and a copy of the DECISION.[8]

While the PPA filed "Compliance" on 17 January 2003 manifesting its receipt of the decision, MINTERBRO failed to do the same, constraining the Court of Appeals' Division Clerk of Court to send a letter-tracer to the Postmaster of Pasig City with the following directive:

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[5] *Rollo* (G.R. No. 166025), p. 44.

[6] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring. *Id.* at 45-56.

[7] *Id.* at 55-56.

[8] CA *rollo*, p. 116.

Upon instruction of the Court, you are HEREBY REQUIRED to INFORM this Office within ten (10) days from receipt hereof, of the exact date when Registered Letter No. 6270-B mailed at Manila on November 27, 2002 and addressed to **Atty. Rafael S. Dizon of 6/F, Padilla Bldg., Emerald Ave., Ortigas Commercial Center, Pasig City,** was delivered to and received by the addressee.

If the said registered letter, however, is still in your possession, unclaimed by the addressee notwithstanding the required notices, sent to and received by him/her, you are directed to return and mail to this Court within the same period indicated above together with your certification of the date the first notice was sent to and received by the said addressee, the person receiving the same and how delivery thereof was made.[9] (Underscoring and emphasis supplied)

In reply, the Postmaster of Pasig City - Central Post Office advised the Court of Appeals that **registered letter No. 6270-B was received by Virgie Cabrera (Cabrera) at the stated address on 4 December 2002.**[10]

Counted from that date, 4 December 2002, **the Court of Appeals Decision became final and executory on 20 December 2002** or 15 days after Cabrera's receipt of the decision. The decision was, thus, recorded in the Book of Entries of Judgments.[11] Copies of the Entry of Judgment were sent on 1 August 2003 to the parties' counsels, with MINTERBRO's copy having been addressed to **Atty. Rafael Dizon (Atty. Dizon), 6/F Padilla Building, Emerald Avenue, Ortigas Commercial Center, Pasig City.**[12]

On 29 August 2003, Atty. Dizon, filed a Motion for Reconsideration of the Declaration of Finality and to Set Aside Entry of Judgment. Atty. Dizon argued that he did not receive the 21 November 2002 Court of Appeals Decision, and, hence, "considering the fact that the Decision rendered by this Honorable

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[9] *Id.* at 131.

[10] *Id.* at 132.

[11] *Id.* at 147.

[12] *Id.* at 147-148.

Court [Court of Appeals] has not been served on the defendant-appellant, it is without doubt that the reglementary period to appeal has not commenced and therefore, the aforesaid decision has not become final."[13] Atty. Dizon added that since the Court of Appeals decision has not yet become final, the issuance by the Division Clerk of Court of the Entry of Judgment was premature.[14]

The Court of Appeals, however, in a Resolution dated 21 April 2004, denied Atty. Dizon's motion and re-affirmed the finality of the questioned decision.[15]

MINTERBRO assailed the 21 April 2004 Resolution *via* petition for review on *certiorari*[16] before this Court which was docketed as **G.R. No. 163286**.

Meanwhile, the PPA, by virtue of the Entry of Judgment, filed a Motion for the Issuance of a Writ of Execution[17] which was granted by the RTC of Manila, Br. 14. This not withstanding, the RTC later held in abeyance the execution of judgment, per motion of MINTERBRO.[18] The RTC Order, penned by Judge Cesar M. Solis, dated 26 February 2004, ratiocinated that:

> Admittedly, the case now pending before the Court of Appeals questioning the finality of judgment before the Court of Appeals (sic) in this case warrants the stay of the execution. Indeed, to execute the judgment at this stage would certainly result in grave injustice if and when the Court of Appeals would grant the defendant's Motion for Reconsideration of the Declaration of Finality and to Set Aside Entry of Judgment.
>
> Besides, to implement the Decision at this juncture, pending the resolution of the incident before the appellate court would render

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[13] *Id.* at 150.

[14] *Id.*

[15] *Rollo* (G.R. No. 163286), pp. 29-31.

[16] *Id.* at 4.

[17] *Rollo* (G.R. No. 166025), p. 9.

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

the adjudication of issue therein, moot and academic. **While the Court of Appeals did not issue any restraining order to prevent this Court from taking any action with regard to its Order granting plaintiff's Motion for Execution, it is deemed proper upon this Court to refrain from enforcing the Decision.** Due respect to the latter court and practical and ethical considerations should prompt this court to wait for the final determination of the Motion now pending with the **Court of Appeals.**[19] (Underscoring and emphasis supplied)

The PPA's Motion for Reconsideration of the above Order was denied,[20] constraining PPA to file a second motion for reconsideration, which the RTC again denied in an Order dated 17 September 2004.[21] Noticeably, though, this order purportedly reiterating its earlier resolution, held the execution in abeyance "until after the Petition for Review of the defendant shall have been resolved by the **Supreme Court**," in stark contrast with the tone of the Order dated 26 February 2004 holding in abeyance only "until after the Petition for Review of the defendant shall have been resolved by the **Court of Appeals**."

The original Resolution dated 26 February 2004 stated:

WHEREFORE, and in view of the foregoing considerations, the Motion for Reconsideration of the defendant is hereby GRANTED. The execution of the Decision rendered in this case is hereby held **in abeyance** until the Motion for Reconsideration of the Declaration of Finality and to Set Aside Entry of Judgment shall have been resolved by the **Court of Appeals.**[22] (Underscoring and emphasis supplied)

While the Order dated 17 September 2004 said:

WHEREFORE, and in view of the foregoing considerations, the instant Motion for Reconsideration of the plaintiff is DENIED.

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[19] CA *rollo*, p. 192.

[20] RTC Order issued by Judge Cesar M. Solis dated 28 May 2004. *Rollo* (G.R. No. 166025), p. 33.

[21] *Id.* at 30-32.

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

Accordingly, this Court hereby **REITERATES** its February 26, 2004 and May 28, 2004[23] Orders holding in abeyance the execution of the Decision in this Case until after the Petition for Review of the defendant shall have been resolved by the **Supreme Court with Finality.**[24] (Underscoring and emphasis supplied)

Hence, PPA filed a petition for *certiorari, via* Rule 65, assailing the RTC Orders, holding in abeyance the execution of judgment, which was docketed as **G.R. No. 166025.**

While G.R. Nos. 163286 and 166025 were pending before this Court, MINTERBRO filed with the RTC, again, with the *sala* of Judge Cesar M. Solis, a *Motion for Issuance of Status Quo Ante Order* to compel the PPA to renew its port operator's permit,[25] which Judge Cesar M. Solis **granted** in an Order dated 20 June 2005 despite PPA's opposition:

WHEREFORE, let a Status *Quo Ante* Order be issued against plaintiff Philippine Ports Authority (PPA) to (1) CEASE and DESIST from imposing certain requirements in consideration of defendant Mindanao Terminal and Brokerage Service, Inc.'s application for renewal/issuance of its COR/PTO permits, and to (2) Act Immediately upon the said defendant's pending application without necessarily considering the existence of such disputed account, should it be warranted by the other circumstances, subject to the satisfaction of the monetary requirement as determined finally by the competent authority.[26]

This prompted the PPA to seek this Court's direct intervention through a petition for *certiorari* under Rule 65, now docketed as **G.R. No. 170269.**

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[23] On 28 May 2004, the RTC issued an order holding in abeyance the resolution of petitioner's Motion for Reconsideration. *Id.* at 33.

[24] *Id.* at 32.

[25] RTC Order dated 10 June 2005. *Rollo* (G.R. No. 170269), pp. 36-38.

[26] *Id.* at 41.

ISSUES:

G.R. No. 163286

a. Whether the Court of Appeals Decision dated 21 November 2002 had become final and executory; and

b. Whether the decision was properly served on MINTERBRO's counsel.[27]

G.R. No. 166025

Whether or not the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it refused to implement/execute its 28 August 1990 Decision which had already become final and executory, in the absence of an injunction or temporary restraining order from higher courts?[28]

G.R. No. 170269

Whether the RTC committed grave abuse of discretion when:

a. it resolved issues alien to the main case; and

b. it supplanted PPA's constitutionally protected right to contract.[29]

Our Ruling

The service of judgment serves as the reckoning point to determine whether a decision had been appealed within the reglementary period or has already become final.

The threshold issue that must be resolved first is whether the Court of Appeals Decision dated 21 November 2002 was properly served on MINTERBRO's counsel in accordance with service of judgment under Sections 9 and 10, Rule 13 of the Rules of Court, which require that:

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[27] *Rollo* (G.R. No. 163286), p. 8.

[28] *Rollo* (G.R. No. 166025), p. 18.

[29] *Rollo* (G.R. No. 170269), p. 22.

Section 9. *Service of judgments, final orders, or resolutions*. — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Section 10. *Completeness of service*. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The first point is crucial for the service of judgment serves as the reckoning point to determine whether a decision was appealed within the reglementary period, because otherwise, *i.e.*, in the absence of an appeal or if the appeal was made beyond the reglementary period, the decision would, as a consequence, become final.

Atty. Dizon contends that he was not properly served with the Court of Appeals decision since Cabrera who received the decision was not connected with his office. She was a front desk receptionist at the **Prestige Tower Condominium,** where Atty. Dizon was holding his office,[30] as shown by the affidavits executed by Cabrera and the Prestige Tower's management. Atty. Dizon rhetorically argued: "Who is this Virgie Cabrera? Is she an employee of the counsel of record of the petitioner? Is she authorized to receive a copy of a judgment ordering the petitioner to pay PPA the amount of ₱36,585,901.18?"

To him, the decision, as the rules dictate, if served by way of registered mail, must be actually received by the addressee or any person in his office, otherwise, service cannot be considered complete.[31] Because no valid service was made, the period to

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[30] *Rollo* (G.R. No. 163286), pp. 11-13.

[31] *Id.* at 12.

appeal did not prescribe and the decision has not yet attained finality.[32]

There is no dispute that as dictated by the Rules on Civil Procedure, Rule 13, Section 10 thereof, service by registered mail is complete upon actual receipt by the addressee, or five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The purpose of the afore-quoted rule on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that such party can take steps to protect the interests, *i.e.*, enable to file an appeal or apply for other appropriate reliefs before the decision becomes final.[33]

Atty. Dizon, however, has forgotten that it was his elementary responsibility to have informed the Court of Appeals of his change of address **from** 6/F Padilla Building, Emerald Avenue, Ortigas Commercial Center, Pasig City, **to** Suite 402, Prestige Tower, Emerald Avenue, Ortigas Center, Pasig City. The records show that Atty. Dizon only informed the Court of Appeals of his change of address on 12 November 2003.[34] This was almost one year after the entry of judgment was made on 20 December 2002.

It did not escape us that Atty. Dizon filed on 29 August 2003 a Motion for Reconsideration of the Declaration of Finality and to Set Aside Entry of Judgment, months prior to his filing of change of address. The said motion conspicuously bore his old address at Padilla Building, the same address where the postmaster delivered the Court of Appeals decision where it was received by Cabrera. Atty. Dizon's reason therefore, that Cabrera is not his employee but that of Prestige Tower

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[32] *Id.* at 4.

[33] R.J. FRANCISCO, *Civil Procedure*, Rule 1-22, Vol. I (1st ed.) 2001, p. 444.

[34] CA *rollo*, p. 153.

Condominium does not persuade us, because, as certified by the postmaster, Cabrera received the letter on 4 December 2002 or a year before Atty. Dizon's change of address, and while his office address was at the Padilla Building. On that particular date, therefore, his office at the Prestige Tower Condominium was yet non-existent. At the very least, if it were true that he already moved to his new address, he should have indicated his new address in his motion for reconsideration. But even then, still, the responsibility was with Atty. Dizon to inform the Court of Appeals of such change.

As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that the official duty has been regularly performed, the choice is not difficult to make.[35] As shown in the records, the postmaster included in his certification the manner, date and the recipient of the delivery, a criterion for the proper service of judgment which this Court enunciated in *Santos v. Court of Appeals, viz*:

> Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the delivery thereof was made.[36]

An examination of the postmaster's certification shows that:

x x x registered letter No. 6270-B was received by Virgie Cabrera on 4 December 2002.[37] (Emphasis supplied)

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[35] *Santos v. Court of Appeals,* G.R. No. 128061, 3 September 1998, 295 SCRA 147, 155.

[36] *Id.*

[37] CA *rollo,* p. 132.

This certification, the form of which came from the Supreme Court, and which only needs to be filled-up by the postmaster, to the mind of this Court, satisfies the requirement stated in *Santos*.

Atty. Dizon has no one to blame but himself for allowing his client to lose the multi-million case because of his negligence to appeal the same within the reglementary period. Losing a case on account of a counsel's negligence is a bitter pill to swallow for the litigant.[38] But then, the Court is duty-bound to observe its rules and procedures. And, in the observance thereof, for the orderly administration of justice, it cannot countenance the negligence and ineptitude of lawyers who wantonly jeopardize the interests of their clients. On his part, a lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.[39]

Once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution.

As a matter of law, once a judgment becomes final, the prevailing party is entitled as a matter of right to a Writ of Execution[40] as mandated by Section 1, Rule 39 of the 1997 Rules of Civil Procedure, which states that:

Section 1. *Execution upon judgments or final orders.* — **Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.** (Emphasis supplied)

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[38] *Vill Transport Services, Inc. v. Court of Appeals,* 271 Phil. 25, 31 (1991).

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

[40] *Balintawak Construction Supply Corp. v. Valenzuela,* G.R. No. 57525, 30 August 1983, 124 SCRA 333, 336.

The rule is clear that it becomes mandatory or ministerial duty of the court to issue a writ of execution to enforce the judgment which has become executory.

Hence, this Court holds that the RTC abused its discretion when it held in abeyance the issuance of the writ of execution of the judgment in Civil Case No. 87-42747 entitled *Philippine Ports Authority v. Mindanao Terminal and Brokerage Services, Inc.*, notwithstanding the fact that the same had already become final and executory % this notwithstanding that MINTERBRO filed before this Court a petition for *certiorari* under Rule 65 of the Rules of Court. It did not escape this Court that the RTC Order dated 26 February 2004, holding in abeyance the writ of execution was only "until after the Petition for Review of the defendant shall have been resolved by the **Court of Appeals**."[41] After the Court of Appeals, however, decided and held that its decision was already final and executory, the RTC issued another Order dated 17 September 2004, which in the guise of reiterating the 24 February 2004 order, changed its tone to the effect of holding in abeyance "until after the Petition for Review of the defendants shall have been resolved by the Supreme Court with Finality."[42] It is a basic rule that a petition for *certiorari* under Rule 65 does not by itself interrupt the course of the proceedings. It is necessary to avail of either a temporary restraining order or a writ of preliminary injunction to be issued by a higher court against a public respondent so that it may, during the pendency of the petition, refrain from further proceedings.[43]

This was the Court's ruling in *Peza v. Hon. Alikpala*,[44] where this Court ruled that:

It is elementary that the mere pendency of a special civil action for *certiorari*, commenced in relation to a case pending before a

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[41] CA *rollo*, pp. 35-37.

[42] *Rollo* (G.R. No. 166025), p. 10.

[43] Riano, *Civil Procedure* (2001), p. 538.

[44] 243 Phil. 196 (1988).

lower Court, does not interrupt the course of the latter when there is no writ of injunction restraining it.[45]

In *Balintawak Construction Supply Corp. v. Valenzuela*,[46] this Court held that:

> It is basic that once a judgment becomes final, the prevailing party is entitled as a matter of right to a Writ of Execution, and the issuance thereof is the Court's ministerial duty, compellable by *Mandamus*. In fact, it has been fittingly said that "an execution is the fruit and end of the suit, and is very aptly called the life of the law." Petitioner, therefore, as the prevailing party was entitled as a matter of right to the execution of the judgment x x x in its favor that had become final and executory.[47]

To this day, these rules remain the same.

This Court, likewise, rules that Judge Cesar M. Solis, the presiding judge of the cases in controversy, gravely abused his discretion when he ordered the PPA to act immediately on MINTERBRO's application for renewal of the latter's Certificate of Registration/Permit to Operate (COR/PTO) when its prior registration expired, and for PPA to cease and desist from imposing certain requirements in consideration of MINTERBRO's application for renewal of said COR/PTO.[48]

It is noteworthy that Civil Case No. 87-42747, the principal case in controversy was already appealed to and decided by the Court of Appeals, which decision, in fact, had, by the records, already become final and executory, and has been consequently entered in the book of judgments. The only issue that remained in litigation was whether or not the decision of the Court of Appeals affirming the trial court's decision in favor of PPA is no longer appealable. On that issue, we did not grant any temporary restraining order.

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[45] *Id.* at 200.

[46] *Supra* note 40.

[47] *Id.* at 336.

[48] *Rollo* (G.R. No. 170269), pp. 36-38.

Notably, the trial court lost its jurisdiction over the case from the time MINTERBRO perfected its appeal of the RTC decision to the Court of Appeals.[49] From that time on, the RTC was divested of any authority over the substantive issues of the case. This is clear from the reading of Section 8, Rule 42 of the Rules of Court, thus:

> Sec. 8. Perfection of appeal: effect thereof. –
>
> (a) Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.
>
> **The Regional Trial Court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.**
>
> However, before the Court of Appeals gives due course to the petition, the Regional Trial Court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal. (Emphasis supplied)

While Judge Cesar M. Solis anchors his action in citing the same afore-quoted provision "that the RTC may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal,"[50] the same is applicable only "before the Court of Appeals gives due course to the petition," as mandated by the very same provision cited by Judge Cesar M. Solis. This was the Court's pronouncement in *Atty. Fernandez v. Court of Appeals*,[51] where this Court held that "this residual jurisdiction of the trial court (referring to Section 8[a] par. 3, Rule 42, 1997 Rules on Civil Procedure) is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject

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[49] *Fernandez v. Court of Appeals*, 397 Phil. 205, 219 (2000).

[50] *Rollo* (G.R. No. 170269), p. 37.

[51] 497 Phil. 748 (2005).

matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal."[52] At the time that Judge Cesar M. Solis issued his *Status Quo Ante Order* of 20 June 2005, even the Court of Appeals has lost jurisdiction over the issue of finality of decision. This Court has by then taken over.

WHEREFORE, premises considered, this Court **HOLDS** that:

(A) There was proper service of judgment on MINTERBRO's counsel; and

(B) The Court of Appeals Decision dated 21 November 2002 in CA G.R. CV No. 35884 had become final and executory.

This Court further **RESOLVES TO:**

(A) **DIRECT** the Regional Trial Court, Manila, Br. 14, to **ISSUE THE WRIT OF EXECUTION** in Civil Case No. 87-42747, and to implement and execute the same without delay; and

(B) **NULLIFY** the Orders of the RTC dated 10 June 2005, 20 June 2005, and 6 September 2005, granting MINTERBRO's Motion for Issuance of Status Quo Ante Order, issuing the Status Quo Ante Order, and, denying PPA's Motion to lift the Status Quo Ante Order, respectively.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Leonardo-de Castro,[*] *Sereno,* and *Reyes, JJ.,* concur.

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[52] *Id.* at 758-759.

[*] Per S.O. No. 1286 dated 22 August 2012.

THIRD DIVISION

[G.R. No. 164258. August 22, 2012]

ESTRELLA TAGLAY, *petitioner, vs.* **JUDGE MARIVIC TRABAJO DARAY and LOVERIE PALACAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHILE THE COURT HAS CONCURRENT JURISDICTION WITH THE REGIONAL TRIAL COURTS AND THE COURT OF APPEALS TO ISSUE WRITS OF *CERTIORARI*, THE CONCURRENCE IS NOT TO BE TAKEN AS AN UNRESTRAINED FREEDOM OF CHOICE AS TO WHICH COURT THE APPLICATION FOR THE WRIT WILL BE DIRECTED.— At the outset, it is necessary to stress that, generally, a direct recourse to this Court in a petition for *certiorari* is highly improper for it violates the established policy of strict observance of the judicial hierarchy of courts. While this Court has concurrent jurisdiction with the RTCs and the CA to issue writs of *certiorari*, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition. A direct invocation of the Supreme Court's original jurisdiction to issue these extraordinary writs is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.

2. ID.; ID.; ID.; PRINCIPLE OF HIERARCHY OF COURTS; MAY BE RELAXED WHEN THE NATURE AND IMPORTANCE OF THE ISSUES RAISED SO WARRANT OR WHEN PURE QUESTIONS OF LAW ARE RAISED.— It is also settled that this Court has full discretionary power to take cognizance of a petition file directly with it if compelling

reasons, or the nature and importance of the issues raised, so warrant. Under the present circumstances, the Court will take cognizance of this case as an exception to the principle of hierarchy of courts, considering that the Information against petitioner was filed way back in November 2001. Any further delay in the resolution of the instant petition will be prejudicial to petitioner. Moreover, the principle may be relaxed when pure questions of law are raised as in this case.

3. ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE STATUTE IN FORCE AT THE TIME OF THE COMMENCEMENT OF THE ACTION; INSTANT CASE FALLS UNDER THE ORIGINAL AND EXCLUSIVE JURISDICTION OF FAMILY COURTS UNDER SECTION 5 (a) OF R.A. 8369 OR THE *FAMILY COURTS ACT OF 1997*.— It is significant to point out, at this juncture, the well-entrenched doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law. Jurisdiction over the subject matter is determined by the statute in force at the time of commencement of the action. In instant case the pertinent statute is R.A. 8369, otherwise known as the *Family Courts Act of 1997*, which took effect on November 23, 1997. Section 5 (a) of R.A. 8369 clearly provides that Family Courts have exclusive original jurisdiction over criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or **where one or more of the victims is a minor at the time of the commission of the offense.** In the present case, there is no dispute that at the time of the commission of the alleged offense on June 2, 2001, private respondent, who is also the private complainant, was a minor. Hence, the case falls under the original and exclusive jurisdiction of Family Courts.

4. ID.; ID.; ADMINISTRATIVE MATTER NO. 99-1-13-SC AND CIRCULAR NO. 11-89; ALL FAMILY COURT CASES FILED WITH FIRST LEVEL COURTS AFTER THE EFFECTIVITY OF THE RESOLUTION ON MARCH 1, 1999 SHOULD BE DISMISSED FOR LACK OF JURISDICTION.— The Court agrees that the Resolution of this Court in Administrative Matter No. 99-1-13-SC and Circular No. 11-99, issued pursuant thereto, is applicable only to Family Courts cases which were filed with first-level courts prior to

the effectivity of the said Resolution on March 1, 1999. This is evident in the language used by the Court in the third "Whereas" clause of the subject Resolution wherein it was stated that "pending the constitution and organization of the Family Courts and the designation of branches of the Regional Trial Courts as Family Courts in accordance with Section 17 (Transitory Provisions) of R.A. 8369, there is a need to provide guidelines in the hearing and determination of criminal cases falling within the jurisdiction of Family Courts which have heretofore been filed with first-level courts." The operative word, as correctly cited by petitioner, is "heretofore" which means "before this" or "up to this time." Moreover, Section 1 of the same Resolution directs all first-level courts, within ten (10) days from receipt of a copy of the subject Resolution, to take an inventory of all criminal cases falling within the jurisdiction of the Family Courts which were filed with them (first-level courts), to prepare an appropriate inventory and to submit the same to the Court Management Office of the Court Administrator. Logic dictates that only those cases which were filed prior to the issuance of the Resolution shall be included in the inventory and, therefore, shall be subject to transfer by first-level courts to the appropriate RTCs. The necessary implication then is that all cases filed with first-level courts after the effectivity of the resolution on March 1, 1999 should be dismissed for lack of jurisdiction. In the present case, the Information was filed against petitioner on November 19, 2001. Thus, the MCTC is already bereft of any authority to transfer the case to the RTC as the same no longer falls under the coverage of Circular No. 11-99. What the MCTC should have done was to dismiss the case for lack of jurisdiction.

5. ID.; ID.; ID.; SINCE PETITIONER'S ARRAIGNMENT BEFORE THE MUNICIPAL CIRCUIT TRIAL COURT (MCTC) IS NULL AND VOID FOR LACK OF JURISDICTION, SHE SHOULD BE ARRAIGNED ANEW ON THE BASIS OF A VALID INFORMATION FILED WITH THE REGIONAL TRIAL COURT (RTC).— It is true that petitioner was arraigned by the MCTC. However, the MCTC has no jurisdiction over the subject matter of the present case. It is settled that the proceedings before a court or tribunal without jurisdiction, including its decision, are null and void. Considering that the MCTC has no jurisdiction, all the proceedings conducted therein, including petitioner's

arraignment, are null and void. Thus, the need for petitioner's arraignment on the basis of a valid information filed with the RTC.

6. ID.; ID.; ID.; TO PROCEED TO TRIAL BEFORE THE RTC ON THE BASIS OF THE INFORMATION FILED WITH THE MCTC WOULD BE AN EXERCISE IN FUTILITY AS THERE IS AN INFIRMITY IN THE INFORMATION CONSTITUTING A JURISDICTIONAL DEFECT WHICH CANNOT BE CURED.— What justifies the dismissal of the case is that the Information filed with the MCTC cannot be used as a basis for the valid indictment of petitioner before the RTC acting as a Family Court, because there was no allegation therein of private complainant's minority. To proceed to trial before the RTC on the basis of the Information filed with the MCTC would be an exercise in futility as there is an infirmity in the Information constituting a jurisdictional defect which cannot be cured. There is no point in proceeding under a defective Information that could never be the basis of a valid conviction. The information filed with the MCTC must thus first be amended and thereafter filed with the RTC. Pending the filing of such Information, the RTC has not yet acquired jurisdiction because while a court may have jurisdiction over the subject matter, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of a valid Information.

7. ID.; ID.; ID.; FACT THAT PETITIONER'S COUNSEL PARTICIPATED IN THE PROCEEDINGS HELD BEFORE THE RTC WITHOUT OBJECTING THAT HIS CLIENT HAD NOT YET BEEN ARRAIGNED DOES NOT CURE THE DEFECT CONSIDERING THAT THERE IS NOTHING TO BE CURED SINCE THERE IS NO ARRAIGNMENT AT ALL BEFORE THE RTC.— It is also true that petitioner's counsel participated in the proceedings held before the RTC without objecting that his client had not yet been arraigned. However, it is wrong for the RTC to rely on the case of *People v. Cabale*, because the accused therein was in fact arraigned, although the same was made only after the case was submitted for decision. In the similar cases of *People v. Atienza and Closa* and *People v. Pangilinan*, the accused in the said cases were also belatedly arraigned. The Court, in these three cases, held that the active participation

of the counsels of the accused, as well as their opportunity to cross-examine the prosecution witnesses during trial without objecting on the ground that their clients had not yet been arraigned, had the effect of curing the defect in the belated arraignment. Moreover, the accused in these cases did not object when they were belatedly arraigned. The same, however, cannot be said in the instant case. There is no arraignment at all before the RTC. On the other hand, the arraignment conducted by the MCTC is null and void. Thus, there is nothing to be cured. Petitioner's counsel also timely raised before the RTC the fact that her client, herein petitioner, was not arraigned.

8. ID.; CRIMINAL PROCEDURE; ARRAIGNMENT; AN INDISPENSABLE REQUIREMENT OF DUE PROCESS.— Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily. Otherwise, absence of arraignment results in the nullity of the proceedings before the trial court.

9. ID.; ID.; CRIMINAL DUE PROCESS; THE ACCUSED MUST BE CHARGED AND TRIED ACCORDING TO THE PROCEDURE PRESCRIBED BY THE LAW AND MARKED BY THE OBSERVANCE OF THE RIGHTS GIVEN TO HIM BY THE CONSTITUTION.— As a final note, it may not be amiss to stress that at all stages of the proceedings leading to his trial and conviction, the accused must be charged and tried according to the procedure prescribed by law and marked by observance of the rights given to him by the Constitution. In the same way that the reading of the Information to the accused during arraignment is not a useless formality, so is the validity of the information being read not an idle ceremony. Criminal due process requires that the accused must be proceeded against under the orderly processes of law. In all criminal cases, the judge should follow the step-by-step procedure required by the Rules. The reason for this is to assure

that the State makes no mistake in taking the life or liberty except that of the guilty.

APPEARANCES OF COUNSEL

Libre and Buac-Libre Law Offices for petitioner.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Orders[1] of the Regional Trial Court (RTC) of Digos City, Branch 18, dated March 9, 2004 and June 7, 2004, in Criminal Case No. FC-71-02. The March 9, 2004 Order denied herein petitioner's Motion to Dismiss, while the June 7, 2004 Order denied her Motion for Reconsideration.

The instant petition arose from a Criminal Complaint[2] for Qualified Trespass to Dwelling filed by private respondent against herein petitioner with the 5th Municipal Circuit Trial Court (MCTC) of Sta. Maria-Malita-Don Marcelino, Davao del Sur on June 19, 2001.

Finding probable cause to indict petitioner, the Public Prosecutor assigned to handle the case filed an Information[3] against her on November 19, 2001. The Information reads as follows:

The undersigned Prosecutor accuses ESTRELLA TAGLAY of the crime of Qualified Trespass to Dwelling as defined and penalized under Article 280 of the Revised Penal Code, as amended, committed as follows:

That on June 2, 2001 at about 2:30 o'clock in the afternoon at Tibangao, Malita, Davao del Sur, Philippines, and within

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[1] Penned by Judge Marivic Trabajo Daray.

[2] Annex "A" to Petition, *rollo*, p. 21.

[3] Annex "C" to Petition, *id.* at 24.

> the jurisdiction of this Honorable Court, the aforesaid accused, a private person and without any justifiable reason and by means of violence, did then and there willfully, unlawfully and feloniously enter into the dwelling of Loverie Palacay without her consent and against her will and once inside maltreated, boxed and choked her, to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

Upon arraignment on June 7, 2002, petitioner pleaded not guilty.[5] Pre-trial conference was set on August 13, 2002.

However, on August 15, 2002, the MCTC issued an Order,[6] to wit:

> It appearing that private complainant Loverie Palacay was a minor on June 2, 2001, the date of the incident, since she was born on August 7, 1983, per Certification dated August 15, 2002 issued by Municipal Registrar Josephine A. Marquez, this case, upon manifestation of Prosecutor Perfecto P. Ordaneza and pursuant to Republic Act No. 8369 and Circular 11-99, is hereby transferred to Branch 20, Regional Trial Court, Digos City, for proper disposition.
>
> SO ORDERED.

Subsequently, the case was transferred to the RTC of Digos City where petitioner was brought to trial.

Witnesses were then presented by the prosecution. Prior to the presentation of the final witness for the prosecution, petitioner filed a Motion to Dismiss on the ground of lack of jurisdiction. Petitioner contended that the RTC did not acquire jurisdiction over the case, because the MCTC erroneously transferred the case to the RTC instead of dismissing it. Petitioner also argued that the RTC's lack of jurisdiction was further aggravated when she was not arraigned before the RTC.

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[4] *Id.*

[5] See MCTC Order, Annex "D" to Petition, *id.* at 26.

[6] Annex "E" to Petition, *id.* at 27.

On March 9, 2004, the RTC issued its assailed Order[7] ruling that it acquired jurisdiction over the case when it received the records of the case as a consequence of the transfer effected by the MCTC; that the transfer of the case from the MCTC is authorized under Administrative Matter No. 99-1-13-SC and Circular No. 11-99; that there is no doubt that the offended party is a minor and, thus, the case falls within the original jurisdiction of Family Courts pursuant to Republic Act (R.A.) No. 8369. The RTC also held that even granting that there was defect or irregularity in the procedure because petitioner was not arraigned before the RTC, such defect was fully cured when petitioner's counsel entered into trial without objecting that his client had not yet been arraigned. Furthermore, the RTC noted that petitioner's counsel has cross-examined the witnesses for the prosecution. Consequently, the RTC denied petitioner's Motion to Dismiss.

Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC via its Order[8] dated June 7, 2004.

Hence, the instant petition for *certiorari*.

Petitioner raises two main grounds.

First, petitioner contends that the RTC did not acquire jurisdiction over the case because Circular No. 11-99, which authorizes the transfer of Family Courts cases filed with first-level courts to the RTCs, is applicable only to cases which were filed prior to the effectivity of the said Circular on March 1, 1999. Petitioner argues that all Family Courts cases filed with first-level courts after the effectivity of the said Circular can no longer be transferred to the RTC; instead they should be dismissed. Considering that the Information in the instant case was filed with the MCTC on November 19, 2001, petitioner avers that the MCTC should have dismissed the case instead of ordering its transfer to the RTC.

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[7] Annex "O" to Petition, *id.* at 40-41.

[8] Annex "Q" to Petition, *id.* at 51.

Second, petitioner insists that she should have been arraigned anew before the RTC and that her arraignment before the MCTC does not count because the proceedings conducted therein were void.

The petition is meritorious.

At the outset, it is necessary to stress that, generally, a direct recourse to this Court in a petition for *certiorari* is highly improper for it violates the established policy of strict observance of the judicial hierarchy of courts.[9] While this Court has concurrent jurisdiction with the RTCs and the CA to issue writs of *certiorari*, this concurrence is not to be taken as an unrestrained freedom of choice as to which court the application for the writ will be directed.[10] There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs.[11] This Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution and immemorial tradition.[12] A direct invocation of the Supreme Court's original jurisdiction to issue these extraordinary writs is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.[13]

However, it is also settled that this Court has full discretionary power to take cognizance of a petition filed directly with it if compelling reasons, or the nature and importance of the issues raised, so warrant.[14] Under the present circumstances, the Court

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[9] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 424-425.

[10] *Anillo v. Commission on the Settlement of Land Problems*, G.R. No. 157856, September 27, 2007, 534 SCRA 228, 236.

[11] *Id.*

[12] *Id.* at 236-237.

[13] *Id.* at 237.

[14] *Cabarles v. Maceda*, G.R. No. 161330, February 20, 2007, 516 SCRA 303, 321.

will take cognizance of this case as an exception to the principle of hierarchy of courts, considering that the Information against petitioner was filed way back in November 2001.[15] Any further delay in the resolution of the instant petition will be prejudicial to petitioner. Moreover, the principle may be relaxed when pure questions of law are raised as in this case.[16]

Now, on the merits of the petition.

It is significant to point out, at this juncture, the well-entrenched doctrine that the jurisdiction of a tribunal over the subject matter of an action is conferred by law.[17] Jurisdiction over the subject matter is determined by the statute in force at the time of the commencement of the action.[18] The pertinent law in the instant case is R.A. 8369, otherwise known as the *Family Courts Act of 1997*, which took effect on November 23, 1997.[19] Section 5 (a) of R.A. 8369 clearly provides that Family Courts have exclusive original jurisdiction over criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or **where one or more of the victims is a minor at the time of the commission of the offense**. In the present case, there is no dispute that at the time of the commission of the alleged offense on June 2, 2001, private respondent, who is also the private complainant, was a minor. Hence, the case falls under the original and exclusive jurisdiction of Family Courts.

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[15] *Ark Travel Express, Inc. v. Abrogar*, G.R. No. 137010, August 29, 2003, 410 SCRA 148, 157.

[16] *Miaque v. Patag*, G.R. Nos. 170609-13, January 30, 2009, 577 SCRA 394, 398.

[17] *People v. Vanzuela*, G.R. No. 178266, July 21, 2008, 559 SCRA 234, 242.

[18] *De Villa v. Court of Appeals*, G.R. No. 87416, April 8, 1991, 195 SCRA 722, 726.

[19] *People v. Garin*, G.R. No. 139069, June 17, 2004, 432 SCRA 394, 416.

Anent the first issue raised, the Court agrees that the Resolution of this Court in Administrative Matter No. 99-1-13-SC and Circular No. 11-99, issued pursuant thereto, is applicable only to Family Courts cases which were filed with first-level courts prior to the effectivity of the said Resolution on March 1, 1999.[20] This is evident in the language used by the Court in the third "Whereas" clause of the subject Resolution wherein it was stated that "pending the constitution and organization of the Family Courts and the designation of branches of the Regional Trial Courts as Family Courts in accordance with Section 17 (Transitory Provisions) of R.A. 8369, there is a need to provide guidelines in the hearing and determination of criminal cases falling within the jurisdiction of Family Courts which have heretofore been filed with first-level courts." The operative word, as correctly cited by petitioner, is "heretofore" which means "before this" or "up to this time."[21] Moreover, Section 1 of the same Resolution directs all first-level courts, within ten (10) days from receipt of a copy of the subject Resolution, to take an inventory of all criminal cases falling within the jurisdiction of the Family Courts which were filed with them (first-level courts), to prepare an appropriate inventory and to submit the same to the Court Management Office of the Office of the Court Administrator. Logic dictates that only those cases which were filed prior to the issuance of the Resolution shall be included in the inventory and, therefore, shall be subject to transfer by first-level courts to the appropriate RTCs. The necessary implication then is that all cases filed with first-level courts after the effectivity of the Resolution on March 1, 1999 should be dismissed for lack of jurisdiction. In the present case, the Information was filed against petitioner on November 19, 2001. Thus, the MCTC is already bereft of any authority to transfer the case to the RTC as the same no longer falls under the coverage

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[20] The subject Court Resolution authorizes first level courts to transfer Family Courts cases filed with them and provides the procedure for such transfer.

[21] *Webster's Third New International Dictionary* (Unabridged), p. 1059.

of Circular No. 11-99. What the MCTC should have done was to dismiss the case for lack of jurisdiction.

More importantly, what justifies the dismissal of the case is that the Information filed with the MCTC cannot be used as a basis for the valid indictment of petitioner before the RTC acting as a Family Court, because there was no allegation therein of private complainant's minority. To proceed to trial before the RTC on the basis of the Information filed with the MCTC would be an exercise in futility as there is an infirmity in the Information constituting a jurisdictional defect which cannot be cured. There is no point in proceeding under a defective Information that could never be the basis of a valid conviction.[22] The Information filed with the MCTC must thus first be amended and thereafter filed with the RTC. Pending the filing of such Information, the RTC has not yet acquired jurisdiction because while a court may have jurisdiction over the subject matter, it does not acquire jurisdiction over the case itself until its jurisdiction is invoked with the filing of a valid Information.[23]

The Court also agrees with petitioner in her contention in the second issue raised that she should have been arraigned by the RTC.

It is true that petitioner was arraigned by the MCTC. However, the MCTC has no jurisdiction over the subject matter of the present case. It is settled that the proceedings before a court or tribunal without jurisdiction, including its decision, are null and void.[24] Considering that the MCTC has no jurisdiction, all the proceedings conducted therein, including petitioner's arraignment, are null and void. Thus, the need for petitioner's arraignment on the basis of a valid Information filed with the RTC.

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[22] *Miaque v. Patag, supra* note 16, at 400.

[23] *People v. Garfin*, G.R. No. 153176, March 29, 2004, 426 SCRA 393, 408.

[24] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 83.

It is also true that petitioner's counsel participated in the proceedings held before the RTC without objecting that his client had not yet been arraigned. However, it is wrong for the RTC to rely on the case of *People v. Cabale*,[25] because the accused therein was in fact arraigned, although the same was made only after the case was submitted for decision. In the similar cases of *People v. Atienza and Closa*[26] and *People v. Pangilinan*,[27] the accused in the said cases were also belatedly arraigned. The Court, in these three cases, held that the active participation of the counsels of the accused, as well as their opportunity to cross-examine the prosecution witnesses during trial without objecting on the ground that their clients had not yet been arraigned, had the effect of curing the defect in the belated arraignment. Moreover, the accused in these cases did not object when they were belatedly arraigned. The same, however, cannot be said in the instant case. There is no arraignment at all before the RTC. On the other hand, the arraignment conducted by the MCTC is null and void. Thus, there is nothing to be cured. Petitioner's counsel also timely raised before the RTC the fact that her client, herein petitioner, was not arraigned.

Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him.[28] The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.[29] As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily.[30]

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[25] G.R. Nos. 73249-50, May 8, 1990, 185 SCRA 140.

[26] 86 Phil. 576 (1950).

[27] G.R. No. 171020, March 14, 2007, 518 SCRA 358.

[28] *People v. Pangilinan*, *supra*, at 371.

[29] *Id.*

[30] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 287.

Otherwise, absence of arraignment results in the nullity of the proceedings before the trial court.[31]

As a final note, it may not be amiss to stress that at all stages of the proceedings leading to his trial and conviction, the accused must be charged and tried according to the procedure prescribed by law and marked by observance of the rights given to him by the Constitution.[32] In the same way that the reading of the Information to the accused during arraignment is not a useless formality, so is the validity of the information being read not an idle ceremony.[33]

Criminal due process requires that the accused must be proceeded against under the orderly processes of law.[34] In all criminal cases, the judge should follow the step-by-step procedure required by the Rules.[35] The reason for this is to assure that the State makes no mistake in taking the life or liberty except that of the guilty.[36]

WHEREFORE, the petition is **GRANTED**. The assailed Orders of the Regional Trial Court of Digos City, Branch 18, dated March 9, 2004 and June 7, 2004, are **REVERSED** and **SET ASIDE** and a new one rendered dismissing the Information in Criminal Case No. FC-71-02, without prejudice to refiling the same in the proper court.

SO ORDERED.

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

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[31] *Borja v. Mendoza*, G.R. No. L-45667, June 20, 1977, 77 SCRA 422, 425; *U.S. v. Palisoc*, 4 Phil. 207, 208 (1905).

[32] *Romualdez v. Sandiganbayan*, G.R. Nos. 143618-41, July 30, 2002, 385 SCRA 436, 446.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

THIRD DIVISION

[G.R. No. 174646. August 22, 2012]

(STANFILCO) DOLE PHILIPPINES, INC., *petitioner, vs.* **REYNALDO B. RODRIGUEZ and LIBORIO AFRICA,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; ABUSE OF RIGHT UNDER ARTICLE 19; PRINCIPLE OF *DAMNUM ABSQUE INJURIA* DOES NOT APPLY WHEN THERE IS AN ABUSE OF A PERSON'S RIGHT.— Under the principle of *damnum absque injuria*, the legitimate exercise of a person's rights, even if it causes loss to another, does not automatically result in an actionable injury. The law does not prescribe a remedy for the loss. This principle, however, does not apply when there is an abuse of a person's right as in this case. While we recognize petitioner's right to remove the improvements on the subject plantation, it, however, exercised such right arbitrarily, unjustly and excessively resulting in damage to respondents' plantation. The exercise of a right, though legal by itself, must nonetheless be in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible.

2. ID.; ID.; ID.; STANDARDS WHICH MAY BE OBSERVED IN THE EXERCISE OF ONE'S RIGHT AND IN THE PERFORMANCE OF ONE'S DUTIES.— Abuse of right under Article 19 of the New Civil Code x x x sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. One is not allowed to exercise his right in a manner which would cause unnecessary prejudice to another or if he would thereby offend morals or good customs. Thus, a person should be protected only when he acts in the legitimate exercise of his right, that is when he acts with

prudence and good faith; but not when he acts with negligence or abuse. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.

3. ID.; ID.; ID.; ID.; STANDARDS NOT MET IN CASE AT BAR.— In this case, evidence presented by respondents shows that as a result of the diggings made by petitioner in order to remove the pipes, banana plants were uprooted. Some of these plants in fact had fruits yet to be harvested causing loss to respondents. After the removal of said pipes, petitioner failed to restore the plantation to its original condition by its failure to cover the diggings with soil. As found by the CA, the Damage Report submitted by Angel Flores stated that there was ground destruction because diggings were done indiscriminately without concern for the standing banana plants. He even added that the destruction of the ground was extensive. The witnesses for petitioner likewise admitted that they had the responsibility to cover the diggings made but failed to do so after the pipelines had been retrieved. Witnesses and pictures also showed that indeed, banana plants were uprooted and scattered around plantation. It is noteworthy that petitioner was given the right to remove only the improvements and facilities that were "non-permanent" instead of giving it the unqualified right to remove everything that it introduced to the plantation. Though not specifically stated in the contract, the reason for said qualification on petitioner's right of removal is the imperative need to protect the plantation from unnecessary destruction that may be caused by the exercise of the right. If permanent structures were allowed to be removed, damage to the plantation would not be avoided. This qualified right should have given petitioner the necessary warning to exercise its right with caution with due regard to the other structures in the plantation and most especially the banana plants and fruits therein. If petitioner was able to consider cutting the pipes underneath the roads within the plantation so as not to destroy said roads, why did it not take into consideration the banana plants and fruits that would be destroyed by reason thereof? Petitioner would not have been unduly prejudiced had it waited for the bananas to be harvested before removing the pipes. Clearly, petitioner abused its right.

4. ID.; ID.; ID.; DAMAGES ON THE BASIS OF ABUSE OF RIGHT MAY BE AWARDED PURSUANT TO ARTICLES 20 AND 21 OF THE CIVIL CODE; APPLICATION.— While Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Complementing the principle of abuse of rights are provisions of Articles 20 and 21 of the Civil Code which x x x provide the legal bedrock for the award of damages to a party who suffers damage whenever one commits an act in violation of some legal provision, or an act which though not constituting a transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved. Article 20 pertains to damages arising from a violation of law which does not obtain here as petitioner was perfectly within its right to remove the improvements introduced in the subject plantation. Article 21, on the other hand, refers to acts *contra bonus mores*. The act is within the article only when it is done willfully. The act is willful if it is done with knowledge of its injurious effect; it is not required that the act be done purposely to produce the injury. Undoubtedly, petitioner removed the pipes with knowledge of its injurious effect which is the destruction of the banana plants and fruits; and failed to cover the diggings which caused ground destruction. Petitioner should, therefore, be liable for damages.

5. ID.; ID.; ID.; AWARD OF TEMPERATE DAMAGES, REDUCED.— For the damages sustained by reason of the uprooted and felled banana plants, the RTC awarded respondents ₱500,000.00. The CA, however, reduced the amount to ₱200,000.00. Under Article 2224 of the Civil Code, temperate or moderate damages are more than nominal but less than compensatory which are given in the absence of competent proof on the actual damages suffered. In view of the CA observations which we will quote below, we deem it proper to further reduce the above amount to ₱100,000.00 as temperate damages[.]

6. ID.; ID.; ID.; AWARDS OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES AND LITIGATION EXPENSES, SUSTAINED.— Under Article 2219 of the New Civil Code, moral damages may be recovered, among others, in acts and actions referred to in Article 21. Moral damages may be awarded in cases referred to in the

chapter on human relations of the Civil Code without need of proof that the wrongful act complained of had caused any physical injury upon the complainant. Anent the award of exemplary damages, Article 2229 allows it by way of example or correction for the public good. Exemplary damages are an antidote so that the poison of wickedness may not run through the body politic. On the matter of attorney's fees and litigation expenses, Article 2208 of the same Code provides, among others, that attorney's fees and expenses of litigation should be recovered, as in this case. We, therefore, sustain the awards made by the CA.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
M. Quevedo Taganas for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA) Decision[1] dated June 1, 2006 and Resolution[2] dated September 6, 2006 in CA-G.R. CV No. 58632. The CA decision modified the Regional Trial Court (RTC)[3] Decision[4] dated September 13, 1996 in Civil Case No. 92-961, while the CA resolution partially granted the motion for reconsideration filed by petitioners Standard (Philippines) Fruit Corporation or Stanfilco, a division of Dole Philippines, Inc. (Dole), Orlando Bulaun (Bulaun), Mario Murillo (Murillo), and Wilhelm Epelepsia (Epelepsia).

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Jose C. Reyes, Jr. and Mariflor P. Punzalan-Castillo, concurring; *rollo*, pp. 108-144.

[2] *Rollo*, pp. 146-149.

[3] Branch 134, City of Makati.

[4] Penned by Acting Presiding Judge Paul T. Arcangel; records, pp. 1046-1056.

The case stemmed from the following factual and procedural antecedents:

Respondent Liborio Africa (Africa) is the registered owner of a banana plantation containing an area of 17.0829 hectares situated in General Santos City, covered by Original Certificate of Title (OCT)[5] No. (V-2642) (P-237) P-5469. On November 1, 1966, Africa entered into a Farm Management Contract[6] (FMC) with his Farm Manager Alfonso Yuchengco (Yuchengco) for the development, cultivation, improvement, administration, and general management of the above-described property as an agricultural development project, more particularly for the purpose of planting and growing bananas and/or other crops and of marketing the products and fruits thereof.[7] The contract was established for a period of ten (10) years from the date of execution thereof.[8] The same was later extended for a total period of twenty-five (25) years, or up to November 1, 1991.[9]

On October 2, 1967, the parties amended the FMC by giving Yuchengco the right to assign, convey, or transfer its rights under the contract to any person or entity, provided due notice is given to Africa.[10] On December 4, 1967, Yuchengco assigned his rights as farm manager to Checkered Farms, Inc. (Checkered Farms).[11]

On January 8, 1968, Checkered Farms entered into an Exclusive Purchasing Agreement[12] with petitioner which bound itself to purchase all the acceptable bananas that would be

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[5] *Rollo*, p. 109.

[6] Records, pp. 508-512.

[7] *Id.* at 508.

[8] *Id.* at 510.

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

[10] *Id.* at 522.

[11] *Rollo*, p. 109.

[12] Records, pp. 527-542.

produced by the former on the lot subject of the FMC.[13] Checkered Farms, for its part, undertook to allow petitioner to introduce installations and improvements on the land and to dismantle and remove all non-permanent installations and improvements it has introduced upon the expiration of the period of the contract, provided that petitioner has the option to leave them on the land without cost to Checkered Farms.[14]

It appears that over the years, petitioner introduced on the subject parcel of land several improvements consisting of, among others, plantation roads and canals, footbridges, irrigation pumps, pipelines, hoses, and overhead cable proppings.[15] On May 30, 1991, Checkered Farms requested[16] for a ten (10)-year extension[17] of the contract due to expire on November 1, 1991, but the request was not acted upon by Africa.[18]

On October 15, 1991, Africa executed a Deed of Payment by Cession and Quitclaim[19] wherein Africa ceded and assigned the 17-hectare subject land to Reynaldo Rodriguez (Rodriguez) as payment and in full satisfaction of the former's obligation to the latter amounting to ₱3 million. In a letter[20] dated December 4, 1991, Rodriguez introduced himself to Checkered Farms as Africa's successor-in-interest and informed it that he was taking over complete possession and absolute control of the subject land effective immediately without prejudice to whatever acceptable new business arrangements that may be agreed upon. On even date, Rodriguez manifested his interest in petitioner's banana grower's program. Since he was interested in petitioner's

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[13] *Id.* at 528.

[14] *Id.* at 533-534.

[15] *Id.* at 1049.

[16] Embodied in a letter dated May 30, 1991, *id.* at 580-581.

[17] Records, p. 583.

[18] *Id.* at 1049.

[19] *Id.* at 363-364.

[20] *Id.* at 547.

corporate grower's contract, Rodriguez allowed petitioner to assume temporarily the continued operation and management of the banana plantation, including the harvesting and marketing of all produce pending the approval of the contract.[21]

On December 5, 1991, Checkered Farms asked Rodriguez that it be allowed to operate the banana plantation until February 1992 to fully wind up the operational activities in the area.[22] In a letter[23] dated December 11, 1991, Rodriguez denied the request as he already authorized petitioner to manage the plantation under an interim arrangement pending final resolution of their negotiation. In the same letter, Rodriguez demanded for the accounting of fruits harvested from the expiration of their contract.

On December 12, 1991, Checkered Farms claimed that the plantation produced 382 boxes of exportable fruits equivalent to ₱8,564.44 and incurred expenses of ₱91,973.48.[24] On December 20, 1991,[25] petitioner rejected Rodriguez's proposal for the company's contract growing arrangement on the same terms as Checkered Farms. Instead, petitioner offered to grant the same terms and conditions as those given to independent small growers in General Santos City. Rodriguez was also requested to inform petitioner of his decision as there was a need to finalize the work plan to dismantle the irrigation system and overhead cable propping system should no agreement be reached.[26]

On January 2, 1992, Rodriguez expressed his doubt on Checkered Farms' accounting of the fruits harvested from the subject land as well as the expenses incurred in its operations. He, thus, billed Checkered Farms the amount of ₱1,100,600.00

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[21] *Id.* at 366-367.

[22] *Id.* at 936.

[23] *Id.* at 937.

[24] *Id.* at 938-939.

[25] *Id.* at 943-944.

[26] *Rollo,* pp. 111-112.

for the fruits harvested, and if no payment is made, to return all the harvest.[27]

On January 11, 1992, Rodriguez requested for reconsideration of the denial of his application for the company's contract growing arrangement and asked petitioner to desist from dismantling the improvements thereon.[28] As no agreement was reached between petitioner and Rodriguez, the latter demanded from the former an accounting of what was harvested during the interim period and a statement of the charges due him.[29] In its reply, petitioner stated that it was able to produce only 753 boxes of bananas valued at ₱17,736.48.[30] Petitioner eventually dismantled and removed the improvements in the plantation.[31]

On February 10, 1992, Rodriguez sent a letter to petitioner demanding the payment of the bananas harvested during the interim administration of petitioner and protesting the "unwarranted and wanton destruction of the farm."[32] Petitioner, however, refused to heed the demand. Instead, it questioned Rodriguez's ownership of the subject land, denied the liquidated price support of ₱12 per kilo or restitution of the harvest in equivalent volume and quality, and denied the accusation of illegal destruction in the plantation.[33]

On April 6, 1992, respondents filed a Complaint for Recovery of Sum of Money and Damages[34] against petitioner and its officials Bulaun, Murillo and Epelepsia. Respondents claimed that despite repeated demands, petitioner and its officials refused and failed, without valid, just, reasonable or lawful ground, to pay the amount

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[27] Records, pp. 947-949.

[28] *Id.* at 945-946.

[29] *Rollo*, p. 112.

[30] *Id.* at 112.

[31] *Id.* at 113.

[32] *Id.* at 114.

[33] *Id.*

[34] Records, pp. 1-20.

of ₱107,484.00 with interest at the legal rate until full payment, or to give an accounting of the entire harvest actually made by them during the period that it was given such interim authority to harvest.[35] Respondents also alleged that petitioner's staff, acting under the direct supervision of Epelepsia who has been working directly with the instructions of Bulaun, all performing under the administrative and operational responsibility of Murillo, stealthily, treacherously and ruthlessly raided the subject plantation destroying the facilities therein which makes them liable for damages.[36] These acts, which are contrary to morals, good customs or public policy, allegedly made petitioner liable for damages.[37] Respondents also demanded indemnity for damages suffered from petitioner's act of depriving the former from using the water facilities installed in the plantation that resulted in the spoilage of respondents' plants.[38] Respondent likewise accused petitioner of knowingly and fraudulently operating and harvesting within respondents' premises, making it liable for damages.[39] Lastly, respondents prayed for the payment of moral, exemplary and nominal damages plus litigation expenses.[40]

In their Answer with Compulsory Counterclaims,[41] petitioner admitted its contractual relationship with Africa but alleged that Rodriguez duped and fraudulently misled petitioner into believing that he was the owner of the subject plantation where in fact it was owned by Africa.[42] Petitioner alleged that he was the owner of the irrigation system on the subject plantation. Thus, it has the right to remove them after the expiration of its

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

[36] *Id.* at 7.

[37] *Id.* at 12.

[38] *Id.* at 13.

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

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

[41] *Id.* at 52-71.

[42] *Id.* at 56.

contract with Africa.[43] It added that the removal of the irrigation system from the subject plantation was a valid exercise of its rights as owner of the irrigation system and an exercise of the right to dismantle and remove the same under the Exclusive Purchasing Agreement with Checkered Farms. It denied respondents' accusation that the dismantling took place at nighttime and with the aid of armed men. Petitioner also denied causing the destruction of standing crops or the canals.[44] In its counterclaim, petitioner demanded from respondents the payment of ₱58,562.11 representing the expenses it incurred during the interim management of the plantation after deducting the farm revenue. Petitioner also prayed for the payment of moral and exemplary damages plus attorney's fees.[45]

On September 13, 1996, the RTC rendered a Decision[46] in favor of respondents and against petitioner, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against defendant corporation ordering the latter to pay to the former the sum of ₱17,786.48, representing the value of the banana fruits harvested during the interim arrangement; the amount of ₱500,000.00 for the destruction of the banana plants and for the rehabilitation of the plantation; the sum of ₱50,000.00 as litigation expenses and ₱50,000.00 as attorney's fees, and the costs of suit.
>
> The complaint, as against defendants Orlando Bulaun, Wilhelm Epelepsia and Mario Murillo, is hereby Dismissed.
>
> Defendant's counterclaim is DENIED.
>
> SO ORDERED.[47]

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[43] *Id.* at 59.

[44] *Id.* at 68.

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

[46] Penned by Acting Presiding Judge Paul T. Arcangel; *id.* at 1046-1056.

[47] Records, p. 1056.

With the admission of petitioner that it harvested 753 boxes of banana fruits valued at ₱17,786.00 from the subject plantation but were not turned over to respondents, the trial court found the latter entitled to said amount as owners of the property.[48] The trial court further found respondents entitled to ₱500,000.00 actual damages for the destroyed banana plants caused by petitioner when it exercised its right to remove the improvements it introduced on the plantation.[49] The RTC, however, found that respondents do not have the right to use the improvements owned by petitioner. Thus, when petitioner removed said improvements, respondents cannot insist that they be awarded damages for the deprivation of the use thereof. Neither can they insist that petitioner leave said improvements on the subject plantation.[50] The trial court also did not award respondents' claim for the value of the crops harvested on the two-hectare property of respondents adjoining the Aparente property, because such portion was believed to belong to the Aparente family.[51] Respondents' prayer for moral, exemplary and nominal damages were denied because petitioner did not act in bad faith but only exercised its right to dismantle the improvements in accordance with the terms of the Exclusive Purchasing Agreement.[52] In view of the destruction of the plantation and respondents' efforts to protect their interest, the RTC awarded ₱50,000.00 litigation expenses and the same amount as attorney's fees.[53] The trial court further absolved Bulaun, Murillo and Epelepsia from liability and made petitioner solely liable. As to petitioner's counterclaim, the court found no reason to award the same as respondents' acts were not meant to harass them but were undertaken to protect their interest.[54]

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[48] *Id.* at 1054.

[49] *Id.*

[50] *Id.* at 1055.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 1055-1056.

[54] *Id.* at 1056.

Petitioner and respondents interposed separate appeals. On June 1, 2006, the CA modified the RTC decision. The dispositive portion of the decision is quoted below for easy reference:

> WHEREFORE, in the light of the foregoing premises, the decision subject of this appeal is hereby *MODIFIED*. The defendant-appellant STANFILCO is hereby ordered to pay plaintiff-appellant Rodriguez the following amounts:
>
> (a) ₱200,000.00 as temperate damages for the banana plants that were felled and for the damage done on the ground;
>
> (b) ₱50,000 by way of moral damages;
>
> (c) ₱50,000 by way of exemplary damages;
>
> (d) ₱50,000 by way of litigation expenses;
>
> (e) ₱50,000 by way of attorney's fees.
>
> SO ORDERED.[55]

The CA first settled the legal standing of Africa and Rodriguez to institute the action before the lower court. As registered owner of the property, the appellate court considered Africa an indispensable party. As assignee of Africa, the CA likewise upheld Rodriguez's legal standing. Contrary to petitioner's protestation, the CA considered petitioner estopped from impugning the equitable ownership of Rodriguez of the subject plantation considering that it was Rodriguez who gave petitioner the authority to supervise and operate the plantation awaiting the results of Rodriguez's application for corporate grower's contract with petitioner.[56]

The CA affirmed the RTC's conclusion that during the interim period when it was given the authority to operate the plantation, petitioner harvested 753 boxes of bananas valued at ₱17,786.48. However, during the same period, petitioner incurred expenses of ₱76,348.57. Thus, respondents still owe petitioner

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[55] *Rollo*, p. 143.

[56] *Id.* at 120-121.

₱58,562.11.[57] As to the nature of the facilities and improvements installed by petitioner, the appellate court refused to consider them immovable as they were installed not by the owner but by a tenant. Pursuant, therefore, to the Exclusive Purchasing Agreement, the appellate court upheld petitioner's right to dismantle the facilities and improvements.[58] Moreover, the CA echoed the RTC conclusion that respondents are not entitled to the crops harvested from the two-hectare property believed to belong to the Aparente family as they were indeed cultivated for the benefit of said family and not for respondents.[59] The court further sustained the RTC's conclusion to exempt petitioners' officers from liability as they merely followed the orders of their superiors.[60] While sustaining respondents' claim for the damages sustained when petitioner exercised its right to dismantle the improvements and facilities introduced on the subject plantation, the appellate court deemed it proper to reduce the amount awarded by the RTC from ₱500,000.00 to ₱200,000.00 as temperate damages.[61] In addition to litigation expenses and attorney's fees, the CA awarded ₱50,000.00 moral damages and ₱50,000.00 exemplary damages.[62] The appellate court further modified the decision in a Resolution dated September 6, 2006 by including the statement that the sum of ₱58,562.11 representing the expenses incurred during the interim period be deducted from the award given to respondents.[63]

Aggrieved, petitioner comes before the Court in this petition for review on *certiorari* with the following assigned errors:

I. THE COURT OF APPEALS ERRED IN NOT APPLYING THE LEGAL PRINCIPLE OF *DAMNUM ABSQUE INJURIA*

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[57] *Id.* at 125.

[58] *Id.* at 132-133.

[59] *Id.* at 133.

[60] *Id.* at 136.

[61] *Id.* at 141-142.

[62] *Id.* at 142-143.

[63] *Id.* at 146-149.

TO RENDER JUDGMENT REVERSING AND SETTING ASIDE THE DECISION OF THE LOWER COURT AND DISMISSING THE COMPLAINT BELOW, CONSIDERING THAT IT FOUND THE REMOVAL AND DISMANTLING OF THE DOLE INSTALLATIONS AND IMPROVEMENTS TO BE IN MERE DISCHARGE OF A CONTRACTUAL RIGHT.

II. THE COURT OF APPEALS ERRED IN AWARDING TEMPERATE, MORAL AND EXEMPLARY DAMAGES AND, AS WELL, ATTORNEY'S FEES TO THE RESPONDENTS, THERE BEING NO FACTUAL AND LEGAL BASES THEREFOR, AS THE CONCLUSION THAT THE AFRICA FARM WAS DESTROYED ON ACCOUNT OF PETITIONER STANFILCO DOLE's ALLEGED LACK OF PRECAUTION IN REMOVING AND DISMANTLING THE INSTALLATIONS AND/OR IMPROVEMENTS INTRODUCED ON THE SAID FARM:

A. IS IN FACT CONTRARY TO FACTUAL FINDINGS BY THE COURT OF APPEALS;

B. HAS NOT BEEN SUFFICIENTLY ESTABLISHED BY SUBSTANTIAL, DIRECT AND POSITIVE EVIDENCE; AND

C. IS ALSO CONTRARY TO THE ESTABLISHED EVIDENCE.

III. THE COURT OF APPEALS ERRED IN NOT GRANTING PETITIONER STANFILCO DOLE'S COUNTERCLAIMS, IT BEING ESTABLISHED THAT RESPONDENTS ACTED TOWARDS IT IN A MANNER WITH MALICE AFORETHOUGHT AND ATTENDED BY BAD FAITH.[64]

Petitioner submits that the CA erred in failing to recognize that the case at bar is a clear case of *damnum absque injuria*, warranting the reversal of the RTC's decision and the dismissal of the complaint below.[65] Petitioner adds that there are no factual

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[64] *Rollo*, p. 71.

[65] *Id.* at 72.

and legal bases for the grant of temperate, moral, and exemplary damages.[66] It explains that the resulting injury to respondents arising from the removal and dismantling of improvements that petitioner undertook pursuant to the provisions of the Exclusive Purchasing Agreement with Checkered Farms is *damnum absque injuria*.[67] It points out that it removed only the removable irrigation facilities refraining from exercising said legal right with respect to the drainage canals, the roads and the overhead proppings which covered the entire length of the farm.[68] Petitioner also claims that the CA was uncertain as to the proximate cause of the alleged destruction resulting in damages to respondents. Thus, the appellate court allegedly erred in charging petitioner with acting wrongfully, wantonly, and in bad faith against respondents warranting the award of temperate, moral, and exemplary damages.[69] Lastly, petitioner asserts that the lower court erred in not awarding its counterclaims it being established that respondents filed the complaint below with malice and attended by bad faith.[70]

The petition is without merit.

Stated in simple terms, the principal questions for resolution are whether petitioner is liable to respondents for damages and if so, the amount of such liability.

At the outset, we would like to specify the claims made by respondents against petitioner brought about by the contractual relations previously entered into by the parties. First, the payment of the value of the bananas harvested by petitioner when it was given the authority to temporarily manage the plantation; second, payment of the value of the bananas harvested in the two-hectare property adjoining the Aparente property; third, indemnity for

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[66] *Id.* at 74.

[67] *Id.*

[68] *Id.* at 80.

[69] *Id.* at 89.

[70] *Id.* at 94.

damages caused to the plantation in the course of removing the irrigation facilities owned by petitioner; fourth, indemnity for damages brought about by the deprivation of petitioner's right to use the irrigation facilities in question; and fifth, the payment of moral, exemplary and other forms of damages. The CA correctly denied respondents' second and fourth claims and aptly granted (with qualification) respondents' first, third and fifth claims.

As to the value of the bananas harvested during petitioner's interim management of the plantation, we find no reason to disturb the RTC and CA's findings that indeed, respondents are entitled to said claim. However, as petitioner incurred expenses, the corresponding value should in turn be deducted from the total harvests made. Thus, while respondents are entitled to the value of 753 boxes of bananas amounting to ₱17,786.48, they cannot be given said amount as petitioner's total expenses of ₱91,973.48 should be deducted. Consequently, respondents, not petitioners, are indebted to the latter in the total amount of ₱58,562.11 as reflected in the CA's assailed resolution modifying its earlier assailed decision.

As to the bananas harvested on the portion which was mistakenly believed to belong to the Aparente family but eventually adjudged in favor of respondents, petitioner cannot be made to answer for the value thereof considering that the proceeds inured not to its benefit but to the Aparente family.

Now on the damages resulting from the dismantling and removal of the facilities and improvements introduced by petitioner on the subject plantation, we find a cogent reason to sustain the CA's conclusions on respondents' entitlement to such claims but find sufficient ground to modify the amounts awarded. It is settled that petitioner was given the right to dismantle the improvements introduced on the subject plantation as clearly provided for in its contract with Checkered Farms, thus:

The PLANTER [Checkered Farms] shall, among other things, undertake and perform the following:

x x x x x x x x x

> f. Allow the COMPANY [petitioner] to dismantle and remove all non-permanent installations and improvements it has introduced on the land upon the expiration of the period of this Agreement provided, that [petitioner] at its option may leave them on the land, without cost to [Checkered Farms].[71]

On the basis of the above contractual provision, petitioner insists that it cannot be held liable for damages allegedly suffered by respondents based on the principle of *damnum absque injuria*.

We do not agree.

Under the principle of *damnum absque injuria*, the legitimate exercise of a person's rights, even if it causes loss to another, does not automatically result in an actionable injury. The law does not prescribe a remedy for the loss. This principle, however, does not apply when there is an abuse of a person's right as in this case.[72] While we recognize petitioner's right to remove the improvements on the subject plantation, it, however, exercised such right arbitrarily, unjustly and excessively resulting in damage to respondents' plantation. The exercise of a right, though legal by itself, must nonetheless be in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible.[73]

As aptly explained by the Court in *GF Equity, Inc. v. Valenzona*[74] —

> The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices

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[71] Records, pp. 94-95.

[72] *Amonoy v. Spouses Gutierrez*, 404 Phil. 586, 589 (2001).

[73] *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 74-75.

[74] G.R. No. 156841, June 30, 2005, 462 SCRA 466.

another or offends morals or good customs. Over and above the specific precepts of positive law are the supreme norms of justice which the law develops and which are expressed in three principles: *honeste vivere, alterum non laedere* and *jus suum quique tribuere*; and he who violates them violates the law. For this reason, it is not permissible to abuse our rights to prejudice others.[75]

In the sphere of our law on human relations, the victim of a wrongful act or omission, whether done willfully or negligently, is not left without any remedy or recourse to obtain relief for the damage or injury he sustained. Incorporated into our civil law are not only principles of equity but also universal moral precepts which are designed to indicate certain norms that spring from the fountain of good conscience and which are meant to serve as guides for human conduct.[76]

Abuse of right under Article 19 of the New Civil Code provides:

> 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.

The above provision sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible.[77] One is not allowed to exercise his right in a manner which would cause unnecessary prejudice to another or if he would thereby offend morals or good customs. Thus, a person should be protected only when he acts in the legitimate exercise of his right, that is

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[75] *GF Equity, Inc. v. Valenzona*, *supra*, at 478-479, citing *De Guzman v. National Labor Relations Commission*, G.R. No. 90856, July 23, 1992, 211 SCRA 723.

[76] *Carpio v. Valmonte*, 481 Phil. 352, 361 (2004).

[77] *Heirs of Purisima Nala v. Cabansag*, G.R. No. 161188, June 13, 2008, 554 SCRA 437, 442; *Cebu Country Club, Inc. v. Elizagaque*, *supra* note 73, at 73.

when he acts with prudence and good faith; but not when he acts with negligence or abuse.[78] The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[79]

In this case, evidence presented by respondents shows that as a result of the diggings made by petitioner in order to remove the pipes, banana plants were uprooted. Some of these plants in fact had fruits yet to be harvested causing loss to respondents. After the removal of said pipes, petitioner failed to restore the plantation to its original condition by its failure to cover the diggings with soil. As found by the CA, the Damage Report submitted by Angel Flores stated that there was ground destruction because diggings were done indiscriminately without concern for the standing banana plants. He even added that the destruction of the ground was extensive.[80] The witnesses for petitioner likewise admitted that they had the responsibility to cover the diggings made but failed to do so after the pipelines had been retrieved. Witnesses and pictures also showed that indeed, banana plants were uprooted and scattered around the plantation.[81]

It is noteworthy that petitioner was given the right to remove only the improvements and facilities that were "non-permanent" instead of giving it the unqualified right to remove everything that it introduced to the plantation. Though not specifically stated in the contract, the reason for said qualification on petitioner's right of removal is the imperative need to protect the plantation from unnecessary destruction that may be caused by the exercise of the right. If permanent structures were allowed to be removed, damage to the plantation would not be avoided. This qualified right should have given petitioner the necessary warning to exercise its right with caution with due regard to the other

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[78] *Carpio v. Valmonte*, *supra* note 76, at 362.

[79] *Heirs of Purisima Nala v. Cabansag*, *supra* note 77, at 442-443.

[80] Records, pp. 416-417.

[81] *Rollo*, pp. 38-42.

structures in the plantation and most especially the banana plants and fruits therein. If petitioner was able to consider cutting the pipes underneath the roads within the plantation so as not to destroy said roads, why did it not take into consideration the banana plants and fruits that would be destroyed by reason thereof? Petitioner would not have been unduly prejudiced had it waited for the bananas to be harvested before removing the pipes. Clearly, petitioner abused its right.

While Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation.[82] Complementing the principle of abuse of rights are the provisions of Articles 20 and 21 of the Civil Code which read:

> Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Article 21. Any person who willfully 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.

The foregoing rules provide the legal bedrock for the award of damages to a party who suffers damage whenever one commits an act in violation of some legal provision, or an act which though not constituting a transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved.[83] Article 20 pertains to damages arising from a violation of law which does not obtain here[84] as petitioner was perfectly within its right to remove the improvements introduced in the subject plantation. Article 21, on the other hand, refers to acts *contra bonus mores*.[85] The act is within the article only

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[82] *Cebu Country Club, Inc. v. Elizagaque*, *supra* note 73, at 73.

[83] *Carpio v. Valmonte*, *supra* note 76, at 362-363.

[84] *Nikko Hotel Manila Garden v. Reyes*, G.R. No. 154259, February 28, 2005, 452 SCRA 532, 547.

[85] *Id.*

when it is done willfully. The act is willful if it is done with knowledge of its injurious effect; it is not required that the act be done purposely to produce the injury.[86] Undoubtedly, petitioner removed the pipes with knowledge of its injurious effect which is the destruction of the banana plants and fruits; and failed to cover the diggings which caused ground destruction. Petitioner should, therefore, be liable for damages.

For the damages sustained by reason of the uprooted and felled banana plants, the RTC awarded respondents ₱500,000.00. The CA, however, reduced the amount to ₱200,000.00. Under Article 2224 of the Civil Code, temperate or moderate damages are more than nominal but less than compensatory[87] which are given in the absence of competent proof on the actual damages suffered.[88] In view of the CA observations which we will quote below, we deem it proper to further reduce the above amount to ₱100,000.00 as temperate damages:

> The above observation notwithstanding, We are not about to sustain to its full extent the award given by the court ***a quo***. Frankly, We are of the impression that the grant of ₱500,000 calls for the tempering hand of this Court, especially since the pictures show that while there were felled banana plants, a greater number were still left standing and unharmed. Obviously, the number of felled plants as shown in the picture was very minimal, missing the claimed number of 8,500 by quite a long shot.
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> Also in the testimony of plaintiff-appellant Rodriguez, he admitted that he cannot say for sure whether the felled banana plants as shown in the pictures were those that were harvested.

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[86] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I, p. 68.

[87] *Wuerth Philippines, Inc. v. Rodante Ynson*, G.R. No. 175932, February 15, 2012.

[88] *Orix Metro Leasing and Finance Corporation (Formerly Consolidated Orix Leasing and Finance Corporation) v. Minors: Dennis, Mylene, Melanie and Marikris, all surnamed Mangalinao Y Dizon, Manuel M. Ong, Loreto Lucilo, Sonny Li, and Antonio delos Santos*, G.R. No. 174089, January 25, 2012.

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Thus, while it is possible that the banana plants shown in the pictures were felled when the irrigation pipes were removed, We cannot also discount the possibility that some of the fallen plants shown in the pictures fell even earlier during the occasion of the recent harvest that was conducted on the farm on the third week of January 1992, or a week before the dismantling operations began.

Suffice it to say that no solid evidence exists that could sustain the 8,500 banana plants alleged to have been damaged. Perhaps, this huge number could be attributed to the fact that around the time that the said damage report was prepared (February 10, 1992 or almost a week after removal of the irrigation facilities began), many of the plants were already wilting due to the very dry weather in the area which was further aggravated by the absence of irrigation. x x x

But then again, it is not for this Court to define exactly how many plants were felled in the process of removing the pipes. For this reason, We are poised to grant temperate damages in the amount of Two Hundred Thousand (₱200,000.00) pesos.[89]

Under Article 2219 of the New Civil Code, moral damages may be recovered, among others, in acts and actions referred to in Article 21.[90] Moral damages may be awarded in cases referred to in the chapter on human relations of the Civil Code without need of proof that the wrongful act complained of had caused any physical injury upon the complainant.[91] Anent the award of exemplary damages, Article 2229 allows it by way of example or correction for the public good.[92] Exemplary damages are an antidote so that the poison of wickedness may not run through the body politic.[93] On the matter of attorney's fees

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[89] *Rollo*, pp. 141-142.

[90] *Cebu Country Club, Inc. v. Elizagaque*, *supra* note 73, at 75.

[91] *De Guzman v. National Labor Relations Commission*, *supra* note 75, at 732.

[92] *Cebu Country Club, Inc. v. Elizagaque*, *supra* note 73, at 75.

[93] *De Guzman v. National Labor Relations Commission*, *supra* note 75, at 732.

and litigation expenses, Article 2208 of the same Code provides, among others, that attorney's fees and expenses of litigation should be recovered, as in this case.[94] We, therefore, sustain the awards made by the CA.

One final note. The responsibility arising from abuse of rights has a mixed character because it implies a reconciliation between an act, which is the result of an individual juridical will, and the social function of right. The exercise of a right, which is recognized by some specific provision of law, may nevertheless be contrary to law in the general and more abstract sense. The theory is simply a step in the process of tempering law with equity.[95]

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated June 1, 2006 and Resolution dated September 6, 2006 in CA-G.R. CV No. 58632, are **AFFIRMED** with **MODIFICATION** by reducing the temperate damages from ₱200,000.00 to ₱100,000.00.

SO ORDERED.

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

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[94] *Cebu Country Club, Inc. v. Elizagaque, supra* note 73, at 76.

[95] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I, p. 58.

THIRD DIVISION

[G.R. No. 175678. August 22, 2012]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS EMPLOYEES UNION-METRO MANILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE COURT IS LIMITED TO REVIEWING ERRORS OF LAW.— In a petition for review on *certiorari,* this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases. The issues presented by the petitioner are factual in nature. Nevertheless, the CA committed no error in its questioned decision and resolution.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; COLLECTIVE BARGAINING AGREEMENT (CBA); PROVISION ON "NO NEGATIVE DATA BANK POLICY" MAY NOT BE INCLUDED IN THE CBA AFTER ITS EFFECTIVITY.— The CBA in this case contains no provision on the "no negative data bank policy" as a prerequisite in the entitlement of the benefits it set forth for the employees. In fact, a close reading of the CBA would show that the terms and conditions contained therein relative to the availment of the loans are plain and clear, thus, all they need is the proper implementation in order to reach their objective. The CA was, therefore, correct when it ruled that, although it can be said that petitioner is authorized to issue rules and regulations pertinent to availment and administration of the loans under the CBA, the additional rules and regulations, however, must not impose new conditions which are not contemplated in the CBA and should be within the realm of reasonableness. The "no negative data bank policy" is a new condition which is never contemplated in the CBA and at some points, unreasonable to the employees because it provides that before an employee

or his/her spouse can avail of the loan benefits under the CBA, the said employee or his/her spouse must not be listed in the negative data bank, or if previously listed therein, must obtain a clearance at least one year or six months as the case may be, prior to a loan application. It must be remembered that negotiations between an employer and a union transpire before they agree on the terms and conditions contained in the CBA. If the petitioner, indeed, intended to include a "no negative data bank policy" in the CBA, it should have presented such proposal to the union during the negotiations. To include such policy after the effectivity of the CBA is deceptive and goes beyond the original agreement between the contracting parties. This Court also notes petitioner's argument that the "no negative data bank policy" is intended to exact a high standard of conduct from its employees. However, the terms and conditions of the CBA must prevail. Petitioner can propose the inclusion of the said policy upon the expiration of the CBA, during the negotiations for a new CBA, but in the meantime, it has to honor the provisions of the existing CBA.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley for petitioner.
Carlo A. Domingo for respondent.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for Review under Rule 45 of the Revised Rules of Court, dated January 20, 2007, of petitioner Bank of the Philippine Islands (BPI) which seeks to reverse and set aside the Court of Appeals' (CA) Decision[1] and Resolution,[2] dated June 8, 2006 and November 29, 2006, respectively, in CA-G.R. SP No. 83387.

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Remedios A. Salazar-Fernando and Noel G. Tijam, concurring; *rollo*, pp. 30-41.

[2] *Id.* at 42-43.

The antecedent facts follow.

Respondent Bank of the Philippine Islands Employees Union-Metro Manila (BPIEU-MM), a legitimate labor organization and the sole and exclusive bargaining representative of all the regular rank-and-file employees of petitioner BPI in Metro Manila and petitioner BPI have an existing Collective Bargaining Agreement (CBA),[3] which took effect on April 1, 2001. The CBA provides for loan benefits and relatively low interest rates. The said provisions state:

> Article VIII — Fringe Benefits
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> x x x x x x x x x
>
> Section 14. *Multi-Purpose Loan, Real Estate Secured Housing Loan and Car Loan*. — The Bank agrees to continue and maintain its present policy and practice, embodied in its Collective Bargaining Agreement with the Union which expired on 31 March 2001, extending to qualified regular employees the multi-purpose and real estate secured housing loans, subject to the increased limits and provisions hereinbelow, to wit:
>
> (a) Multi-Purpose Loan not exceeding FORTY THOUSAND PESOS (₱40,000.00), payable within the period not exceeding three (3) years via semi-monthly salary deductions, with interest at the rate of eight percent (8%) per annum computed on the diminishing balance.
>
> (b) Real Estate-Secured Housing Loan not exceeding FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00), payable over a period not exceeding fifteen (15) years via semi-monthly salary deductions, with interest at the rate of nine percent (9%) per annum computed on the diminishing balance.
>
> The rate of interest on real estate secured loans, however, may be reduced to six percent (6%) per annum, subject to the following conditions:
>
> 1. If the loan is accepted for coverage by the Home Insurance and Guaranty Corporation (HIGC).

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[3] *Rollo*, pp. 84-105.

2. The HIGC premium shall be paid by the borrower.

3. The borrower procures a Mortgage Redemption Insurance coverage from an insurance company selected by the BANK.

4. The BANK may increase the six percent (6%) interest if the HIGC or the Government imposes new conditions or restrictions necessitating a higher interest in order to maintain the BANK's position before such conditions or restrictions were imposed.

5. Such other terms or conditions imposed or which may be imposed by the HIGC.

6. It is distinctly understood that the rate of interest shall automatically revert to nine percent (9%) per annum upon cancellation of the HIGC coverage for any cause.

The BANK shall make strong representations with the Bangko Sentral ng Pilipinas for a second upgrade and/or availment under the Housing Loan Program.

(c) Car Loan. — The BANK shall submit a revised plan for the approval of the Bangko Sentral ng Pilipinas which shall incorporate a car loan program in its existing Housing Loan Program. The said car loan shall be a sub-limit under the program such that any availment thereof shall operate to decrease the available housing loan limit. Therefore, the combined amount of both housing and car loans that may be availed of shall not exceed FOUR HUNDRED FIFTY THOUSAND PESOS (₱450,000.00). This supplemental revision of the loan program shall be subject to the rules and regulations (*e.g.*, amount of sub-limit, credit ratio, type and age of vehicle, interest rate, *etc*.) which the BANK may promulgate, and to the terms of the approval of the Bangko Sentral ng Pilipinas.

The multi-purpose and housing loans stated in the next preceding paragraphs, as well as the car loan which shall be incorporated in the housing loan program, shall be subject further to the applicable provisions, guidelines and restrictions set forth in the Central Bank Circular No. 561, as amended by Central Bank Circular No. 689, and to the rules, regulations and policies of the BANK on such loans insofar as they do not violate the provisions, guidelines and restrictions set forth in said Central Bank Circular No. 561, as amended.

Section 15. *Emergency Loans*. — The BANK agrees to increase the amount of emergency loans assistance, upon approval by the Central Bank of the Philippines, from a maximum amount of Ten Thousand Pesos (₱10,000.00) to a maximum amount of Fifteen Thousand Pesos (₱15,000.00) to qualified employees intended to cover emergencies only, *i.e.*, expenses incurred but could not be foreseen such as those arising from natural calamities, emergency medical treatment and/or hospitalization of an employee and/or his immediate family and other genuine emergency cases of serious hardship as the BANK may determine. Hospital expenses for caesarian delivery of a female employee or an employee's wife not covered by the Group Hospitalization Insurance Plan shall qualify for the emergency loan.

Emergency loans shall be payable in twenty-four (24) months via semi-monthly salary deductions and shall be charged interest at the minimal rate of Seven percent (7%) per annum for the first ₱10,000.00 and Nine percent (9%) for the additional ₱5,000.00 computed on the diminishing balance. The emergency loan assistance program shall be governed by the rules, regulations and policies of the BANK and such amendments or modifications thereof which the BANK may issue from time to time.[4]

Thereafter, petitioner issued a "no negative data bank policy"[5] for the implementation/availment of the manpower loans which the respondent objected to, thus, resulting into labor-management

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[4] *Id.* at 96-98.

[5] As bank employees, one is expected to practice the highest standards of financial prudence and sensitivity to basic rules of credit and management of his/her financial resources and needs. It is for this reason that Management deemed fit that reference to the Negative Data Bank (NDB) and other sources of financial data handling shall be made for purposes of evaluation of manpower loans.

x x x These procedures apply to all employees, whether officer or staff, regardless of loan type (multi-purpose, emergency, car, housing).

NDB (whether record is in his own name or spouse's)

1. Outstanding obligation should be fully paid at least one year prior to loan application.

- even if cleared/fully paid, but within the one-year penalty box, the application will not be considered.

dialogues. Unsatisfied with the result of those dialogues, respondent brought the matter to the grievance machinery and afterwards, the issue, not having been resolved, the parties raised it to the Voluntary Arbitrator.

In his decision, the Voluntary Arbitrator found merit in the respondent's cause. Hence, the dispositive portion of the said decision reads as follows:

WHEREFORE, viewed in the light of the foregoing circumstances, this Arbitrator hereby rules:

1. That the imposition of the NO NEGATIVE DATA BANK as a new condition for the implementation and availment of

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2. Clearance certification should be obtained from the card company/ lending company/bank/court:

- if card or lending company, the date of full payment should be clearly indicated in the certification.

- if closed account due to mishandling, date of account closure.

- if court case, date of dismissal of case.

3. Employees will be asked to explain in writing the reason/circumstances for being in the NDB.

4. Final approval of the loan will be with the HR Head, SVP Jess Razon.

- if provincial Business Center account, the employee to submit 2 and 3 to BC with his/her loan application; BC to send to HR for evaluation and approval prior to implementation of the loan.

Suspended/Past Due (not yet in NDB) Accounts within the Unibank.

1. Outstanding obligation should be fully paid at least six months prior to the loan application.

- even if cleared/fully paid, but within the 6-month penalty box.

2. Clearance certification from BCC or other Unibank unit where the obligation occurred.

Other Past Due Obligation

Management reserves the right to evaluate an employee's credit-worthiness based on his handling of other obligations, outside of NDB or Unibank units, as basis for granting manpower loans. This is particularly considered in the case of housing loan take-out, if the employee-applicant has been grossly delinquent in his payments to the previous financing company. (*Id.* at 49-50).

the manpower loan benefits by the employees evidently violates the CBA;

2. That all employees who were not allowed or deprived of the manpower loan benefits due to the NO NEGATIVE DATA BANK POLICY be immediately granted in accordance with their respective loan benefits applied for;

3. That the respondent herein is ordered likewise to pay ten percent (10%) of the total amount of all loans to be granted to all employees concerned as Attorney's Fees; and

4. That the parties herein are directed to report compliance with the above directives within ten (10) days from receipt of this ORDER.

SO ORDERED.[6]

Aggrieved, petitioner appealed the case to the CA via Rule 43, but the latter affirmed the decision of the Voluntary Arbitrator with the modification that the award of attorney's fees be deleted. The dispositive portion states:

WHEREFORE, premises considered, the Voluntary Arbitrator's Decision dated April 5, 2004 is hereby AFFIRMED with the MODIFICATION that the award of attorney's fees is hereby deleted.

SO ORDERED.[7]

Petitioner filed a motion for reconsideration, but it was denied in a Resolution[8] dated November 29, 2006.

Hence, the present petition.

Petitioner raises the following arguments:

A. The "No NDB policy" is a valid and reasonable requirement that is consistent with sound banking practice and is meant to inculcate among officers and employees of the petitioner the need for fiscal

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

[7] *Id.* at 40.

[8] *Id.* at 42-43.

responsibility and discipline, especially in an industry where the element of trust is paramount.

B. The "No NDB policy" does not violate the parties' Collective Bargaining Agreement.

C. The "No NDB policy" conforms to existing BSP regulations and circulars, and to safe and sound banking practices.[9]

Respondent, on the other hand, claims that the petition did not comply with Section 4, Rule 45 of the Revised Rules of Court and must be dismissed outright in accordance with Section 5 of the same rule; that the CA did not commit any reversible error in the questioned judgment to warrant the exercise of its discretionary appellate jurisdiction; and that the Voluntary Arbitrator and the CA duly passed upon the same issues raised in the instant petition and their decisions are based on substantial evidence and are in accordance with law and jurisprudence.[10]

In its Reply[11] dated September 21, 2007, petitioner reiterates the issues it presented in its petition. It also argues that the present petition must not be dismissed based on mere technicality.

Subsequently, the parties submitted their respective memoranda.[12]

Petitioner's arguments are mere rehash of those it raised in the CA. It insists that the rationale behind the use of the "no negative data bank policy" aims to encourage employees of a banking institution to exercise the highest standards of conduct, considering the bank's fiduciary relationship with its depositors and clients. It likewise contends that a scrutiny of the CBA reveals an express conformity to petitioner's prerogative to issue policies that would guide the parties in the availment of manpower loans under the CBA. Furthermore, petitioner avers that the subject policy does not only conform to the provisions of the

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[9] *Id.* at 16.

[10] Comment dated June 7, 2007, *id.* at 118-129.

[11] *Rollo*, pp. 134-138.

[12] *Id.* at 143-181.

parties' CBA, but it is also in harmony with the circulars and regulations of the Bangko Sentral ng Pilipinas.

The petition lacks merit.

In a petition for review on *certiorari*, this Court's jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous.[13] Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.[14] The issues presented by the petitioner are factual in nature. Nevertheless, the CA committed no error in its questioned decision and resolution.

A CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit, including mandatory provisions for grievances and arbitration machineries.[15] As in all other contracts, there must be clear indications that the parties reached a meeting of the minds.[16] Therefore, the terms and conditions of a CBA constitute the law between the parties.[17]

The CBA in this case contains no provision on the "no negative data bank policy" as a prerequisite in the entitlement of the benefits it set forth for the employees. In fact, a close reading of the CBA would show that the terms and conditions contained

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[13] *Retuya v. Dumarpa*, G.R. No. 148848, August 5, 2003, 408 SCRA 315, 326.

[14] *Gerlach v. Reuters Limited, Phils.*, G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.

[15] *University of the Immaculate Concepcion, Inc. v. Secretary of Labor and Employment, et al.*, G.R. No. 146291, January 23, 2002, 374 SCRA 471, 480, citing *Manila Fashions v. National Labor Relations Commission*, 332 Phil. 121 (1996).

[16] *Id.* at 480-481.

[17] *Mactan Workers Union v. Aboitiz*, G.R. No. L-30241, June 30, 1972, 45 SCRA 577, 581.

therein relative to the availment of the loans are plain and clear, thus, all they need is the proper implementation in order to reach their objective. The CA was, therefore, correct when it ruled that, although it can be said that petitioner is authorized to issue rules and regulations pertinent to the availment and administration of the loans under the CBA, the additional rules and regulations, however, must not impose new conditions which are not contemplated in the CBA and should be within the realm of reasonableness. The "no negative data bank policy" is a new condition which is never contemplated in the CBA and at some points, unreasonable to the employees because it provides that before an employee or his/her spouse can avail of the loan benefits under the CBA, the said employee or his/her spouse must not be listed in the negative data bank, or if previously listed therein, must obtain a clearance at least one year or six months as the case may be, prior to a loan application.

It must be remembered that negotiations between an employer and a union transpire before they agree on the terms and conditions contained in the CBA. If the petitioner, indeed, intended to include a "no negative data bank policy" in the CBA, it should have presented such proposal to the union during the negotiations. To include such policy after the effectivity of the CBA is deceptive and goes beyond the original agreement between the contracting parties.

This Court also notes petitioner's argument that the "no negative data bank policy" is intended to exact a high standard of conduct from its employees. However, the terms and conditions of the CBA must prevail. Petitioner can propose the inclusion of the said policy upon the expiration of the CBA, during the negotiations for a new CBA, but in the meantime, it has to honor the provisions of the existing CBA.

Article 1702 of the New Civil Code provides that, in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living of the laborer. Thus, this Court has ruled that any doubt or ambiguity in the contract between management and the union members should

be resolved in favor of the latter.[18] Therefore, there is no doubt, in this case, that the welfare of the laborers stands supreme.

WHEREFORE, the Petition for Review under Rule 45 of the Revised Rules of Court, dated January 20, 2007, of petitioner Bank of the Philippine Islands, is hereby **DENIED** and the Court of Appeals' Decision and Resolution, dated June 8, 2006 and November 29, 2006, respectively, are hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177903. August 22, 2012]

HEIRS OF PATRICIO ASUNCION, namely, EMILIANA, CONRADO, ROSALINA and HERMINIA, all surnamed ASUNCION, represented by EMILIANA FLORO ASUNCION, PHIL-VILLE DEVELOPMENT HOUSING CORPORATION, MOLDEX PRODUCTS, INC., represented by JACINTO T. UY, and SPEED MIX, INC., represented by WINIFRED G. GOB, *petitioners, vs.* **EMILIANO DE GUZMAN RAYMUNDO,** *respondent.*

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[18] *Holy Cross of Davao College, Inc. v. Holy Cross of Davao Faculty Union-KAMAPI*, G.R. No. 156098, June 27, 2005, 461 SCRA 319, *Babcock-Hitachi (Phils.), Inc. v. Babcock Hitachi (Phils.), Inc., Makati Employees Union*, G.R. No. 156260, March 10, 2005, 453 SCRA 156, 161; *Mindanao Steel Corporation v. Minsteel Free Workers Organization Cagayan de Oro*, G.R. No. 130693, March 4, 2004, 424 SCRA 614, 618 and *Plastic Town Center Corporation v. National Labor Relations Commission*, G.R. No. 81176, April 19, 1989, 172 SCRA 580, 587.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (R.A. 3844); REQUIREMENTS FOR A VOLUNTARY SURRENDER, AS A MODE OF EXTINGUISHMENT OF TENANCY RELATIONS, TO BE VALID.— Voluntary surrender, as a mode of extinguishment of tenancy relations, does not require any court authorization considering that it involves the tenant's own volition. To protect the tenant's right to security of tenure, voluntary surrender, as contemplated by law, must be convincingly and sufficiently proved by competent evidence. As held in *Nisnisan v. Court of Appeals*, the tenant's intention to surrender the landholding cannot be presumed, much less determined by mere implication. If not, the right of a tenant farmer to security of tenure becomes an illusory one. Thus, for surrender of tenancy rights to be considered as voluntary, it is paramount that the intention to relinquish the right must be clear, and the same must be coupled by the physical act of surrender of one's possession of the farmland. R.A. No. 3844 further requires that the voluntary surrender of the landholding by an agricultural lessee must be *due to circumstances more advantageous to him and his family*.

2. ID.; ID.; ID.; REQUIREMENTS NOT PRESENT IN CASE AT BAR.— After a careful perusal of the records of this case, the Court holds that the Deed of Conveyance and Voluntary Surrender denominated as *Kasulatan ng Pagsasalin At Kusang Loob na Pagsusuko* allegedly executed by Remedios in 1979 could not have produced any legal effect because she was not the recognized tenant on the land. Records reveal that respondent was the identified tenant of the subject landholding and his name was the one reflected in the master list of tenants, not his mother's. Hence, Remedios could not surrender possession of the land on which she did not have a recognized right. Likewise, the Court does not find the *Sinumpaang Salaysay*, dated June 19, 1989, executed by respondent convincing enough to sustain the petitioners' allegation that he had voluntarily surrendered his tenancy right over the land in dispute. Respondent, in his position paper, disclosed that he was "an illiterate," who was merely coaxed into signing a document that he did not understand. In addition, the said affidavit merely

echoed that his mother was the tenant and had already given up her tenancy right upon receiving disturbance compensation from the heirs of Asuncion. Succeeding events, however, would depict a different scenario. Respondent claims that he never left the premises. In fact, he stayed on the land, cultivated it until he was qualified, and was issued a CLT in 1981. If respondent voluntarily surrendered his tenancy right over the land, he would have long surrendered its actual possession and would not have qualified as a farmer-beneficiary of the OLT program under P.D. No.27. Respondent further points out that he was only prevented from entering the subject land in 1991 when Speed Mix fenced the area while he was on vacation. All these circumstances prove that respondent never intended to surrender his tenancy right on the land. Neither did he freely give his consent to the surrender nor did he physically surrender the land in dispute. As earlier stated, in order to be considered voluntary, intention to surrender the right must be followed by the tenant's actual physical surrender of the possession of the land.

3. ID.; ID.; R.A. 3844 IN RELATION TO PRESIDENTIAL DECREE NO. 27 (P.D. 27); BUYER OF LANDS COVERED BY P.D. 27 CANNOT BE CONSIDERED A BUYER IN GOOD FAITH AS THE SALE OF SAID LAND IS NOT ALLOWED BY LAW.— It is clear from the provisions of P.D. No. 27 that agricultural lands covered by the said law must stay in the hands of the tenant-beneficiary as it aims to make the latter owners of the land they till. To ensure the tenant-farmer's continued enjoyment and possession of the property, the explicit terms of P.D. No. 27 proscribe the transfer by the tenant of the ownership, rights or possession of a landholding to other persons, or the surrender of the same to the former landowner. In other words, a tenant-farmer may not transfer his ownership or possession of, or his rights to the property, except only in favor of the government or by hereditary succession in favor of his successors. Any other transfer of the land grant in violation of this proscription is, therefore, null and void following Memorandum Circular No. 7, series of 1979[.] x x x Thus, any individual or juridical person dealing with agricultural lands covered by P.D. No. 27 must naturally subscribe to the provisions of the law. At the time of the sale between the heirs of Asuncion and Phil-Ville, respondent was already the holder of a CLT proving

his inchoate ownership of the subject agricultural land primarily devoted to rice production. CLT is the provisional title of ownership over the landholding while the lot owner is awaiting full payment of the land's value or for as long as the beneficiary is an amortizing owner. As the CLT holder, respondent was the rightful owner of the farmland by express grant of P.D. No. 27. As already stated, any other transfer of the land that circumvents the specific mandate of the law cannot be upheld. To rule otherwise would defeat the intent of the law, put tenant-farmers as susceptible prey, and make the land an open market for persons who are not even actual tillers thereof.

4. ID.; ID.; ID.; CERTIFICATION ISSUED BY AGRARIAN REFORM OFFICE AS TO THE ABSENCE OR PRESENCE OF TENANCY RELATIONSHIP DOES NOT BIND THE COURT.— The Court is of the view that the Certificate of Non-Tenancy, dated March 18, 1980, issued by Team Leader 1 Armando Canlas *(Canlas)* of Meycauayan, Bulacan attesting that the landholding "has no tenant-tiller as per records and investigation conducted by this Office and not covered by OLT under P.D. No. 27" is of no considerable value. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the Municipal Agrarian Reform Officer *(MARO)* or the Barangay Agrarian Reform Committee *(BARC)*, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the Judiciary. The fact that a Certificate of Land Transfer was issued to respondent, proving that the land was covered by P.D. No. 27, diminishes the weight of the attestations made in the certification issued by Canlas.

APPEARANCES OF COUNSEL

JM Sidiangco Law Office for petitioners.
Rodrigo E. Marinas for Phil-Ville Dep't.
Felino Quiming, Jr. for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assails the December 19, 2006 Decision[1] and the May 16, 2007 Resolution[2] of the Court of Appeals *(CA)* which affirmed *in toto* the November 10, 2003 Decision[3] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 5282,[4] an Action for Annulment of Deeds of Sale, Cancellation of Certificates of Title, Recovery of Possession with Prayer for the Issuance of a Writ of Preliminary Injunction.

The Facts:

On October 3, 1994, respondent Emiliano De Guzman Raymundo *(respondent)* filed a Complaint[5] before the Regional Office of the Department of Agrarian Reform Adjudication Board *(DARAB)*, Region III, Malolos, Bulacan, for Annulment of Deeds of Sale, Cancellation of Titles, Recovery of Possession with Prayer for the Issuance of a Writ of Preliminary Injunction against the petitioners where he alleged that he was a tenant in an agricultural land situated in Pandayan, Malcahan, Meycauayan, Bulacan, and primarily devoted to *palay*. It had an area of 1.473 hectares and was covered by Original Certificate of Title *(OCT)* No. 01726 (0-665M) registered under the name of Patricio Asuncion and Emiliana Floro. Respondent further alleged that the landholding was placed under the coverage of Presidential Decree *(P.D.)* No. 27 through the Operation Land Transfer *(OLT)*

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[1] *Rollo*, pp. 58-67. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justice Andres B. Reyes, Jr. and Associate Justice Mariflor P. Punzalan Castillo, concurring.

[2] *Id.* at 69.

[3] *Id.* at 122-138.

[4] Formerly Reg. Case No. 763-B '94.

[5] *Rollo*, pp. 337-344.

Program. The then Ministry of Agrarian Reform (now Department of Agrarian Reform) included respondent in the master list of agricultural tenants covering the province of Bulacan. On July 22, 1981, a Certificate of Land Transfer *(CLT)* was issued in his name as reflected in CLT No. 0-042717.[6] Sometime in 1989, his mother, Remedios Raymundo *(Remedios — now deceased)*, forced him to sign a document, which turned out to be an affidavit of waiver giving up his tenancy right over the subject land. Respondent insisted that he never surrendered possession of the land and continued to till it.

Later, respondent, through the explanation of his counsel, discovered that the heirs of Asuncion executed an Extrajudicial Settlement of Estate of their parents' properties on October 8, 1981, and immediately sold the subject land to Philippine Ville Development Housing Corporation *(Phil-Ville)*. Accordingly, the original title was cancelled and new titles were issued under Phil-Ville's name, specifically, Transfer Certificate of Title (TCT) Nos. T-39.627 (M) and 39.629 (M). Respondent complained that the sale was illegal as the landholding was already covered by the OLT program in clear violation of the provisions of P.D. No. 27 and Executive Order (E.O.) No. 228. Furthermore, the landholding was sold without prior DAR clearance. Thereafter, Phil-Ville sold the same land to Moldex Products Incorporated *(Moldex)* despite the defective titles. A new set of titles was issued to Moldex identified as TCT Nos. 93586 and 93.587. Moldex, then, sold portions of the land to Speed Mix, Incorporated *(Speed Mix)*, which proceeded to fence and cement the area preventing respondent from entering the property. Speed Mix later constructed a building on that portion of the land.

On February 22, 1996, the PARAD rendered its decision[7] dismissing the complaint for lack of merit. It ruled that because respondent's mother, Remedios Raymundo *(Remedios)*, voluntarily surrendered her tenancy rights over the landholding in question, all her rights and interests therein were extinguished

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[6] *Id.* at 371.

[7] *Id.* at 88-119. Penned by Provincial Adjudicator Gergorio D. Sapera.

binding even her successors-in-interest. According to the PARAD, the voluntary surrender of their tenancy right was even corroborated by the respondent himself when he executed his *Sinumpaang Salaysay*,[8] dated June 19, 1989, confirming the supposed relinquishment of their tenancy. Thus, the PARAD held that respondent was already estopped in raising the issue because he already slept on his right.

Aggrieved, respondent appealed the said decision to the DARAB.

On November 10, 2003, the DARAB *reversed* the PARAD's decision. The decretal portion of the DARAB decision reads:

> WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE. A new judgment is hereby rendered:
>
> 1. Declaring the Deed of Conveyance and Voluntary Surrender in November 1979 executed by Remedios Raymundo in favor of Patricio Asuncion and the '*Sinumpaang Salaysay*' dated June 19, 1989 executed by Plaintiff-Appellant as null and void;
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> 2. Directing Defendants-Appellees, their agents and representatives, to peacefully restore Plaintiff-Appellant on the subject landholding;
>
> 3. Directing the Municipal Agrarian Reform Officer (MARO) of Meycauyan, Bulacan and/or Provincial Agrarian Reform Officer (PARO) of the Province of Bulacan not to cancel the CLT issued in favor of Plaintiff-Appellant; and
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> 4. Directing the same MARO and/or PARO to generate an Emancipation Patent covering the landholding in favor of Plaintiff-Appellant.
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> SO ORDERED.[9]

The DARAB ruled that the Deed of Conveyance and Voluntary Surrender,[10] purportedly executed by Remedios as well as

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[8] *Id.* at 327.

[9] *Id.* at 137.

[10] *Id.* at 326.

respondent's own *Sinumpaang Salaysay* that supposedly confirmed the voluntary surrender of their tenancy right, were null and void for it transgressed the provisions of P.D. No. 27.

The petitioners moved for the reconsideration of its decision, but the DARAB denied it in a Resolution,[11] dated December 29, 2004.

The petitioners elevated the case to the CA *via* a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure.

On December 19, 2006, the CA *affirmed* the DARAB decision. The CA explained that the land in question was subject to the coverage of P.D. No. 27, and upon the death of respondent's father, the original tenant on the land, actual cultivation was transferred to respondent qualifying him to be the farmer-beneficiary on the land. As a holder of a CLT, respondent earned the right to possess the land he was tilling. The CA wrote that "the deed of conveyance and voluntary surrender executed by Remedios Raymundo in favor of petitioner Patricio Asuncion is null and void, for having been executed in violation of P.D. No. 27. In addition, the *Sinumpaang Salaysay* executed by respondent is likewise null and void from the very beginning because the said respondent cannot confirm a contract or deed of conveyance and voluntary surrender executed by her mother that is void from the very beginning."[12] Thus, the subsequent sale of the landholding to the petitioners are likewise null and void. The CA decreed that Moldex could not be considered a purchaser in good faith because P.D. No. 27 mandated that lands covered by it could not be transferred except by hereditary succession or to the government.

The petitioners' Motion for Reconsideration was denied by the CA in its May 16, 2007 Resolution.

Hence, this petition.

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[11] *Id.* at 139-142.

[12] *Id.* at 65.

In advocacy of their position, the petitioners ascribe to the CA the commission of this sole error:

> **THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS CONCLUSION OF LAW BY SUSTAINING THE DECISION OF THE DARAB DECLARING AS NULL AND VOID THE VOLUNTARY SURRENDER EXECUTED BY RESPONDENT AND ORDERING HIS "REINSTATEMENT" ON THE LANDHOLDING IN QUESTION**[13]

The petitioners argue that respondent's right to the landholding was severed the moment his predecessor-in-interest (his mother, Remedios) executed a document voluntarily surrendering her tenancy right to the land in question. They likewise posit that respondent himself even executed another affidavit, dated June 19, 1989, echoing the voluntary surrender of her mother and the supposed erroneous inclusion of his name to the DAR survey identifying him as the cultivator of the landholding.[14] They lament that respondent has not even presented any evidence to prove his tenancy such as presenting lease receipts or any proof that he was recognized as a tenant by the landowners.

The Court is not persuaded.

Republic Act *(R.A)* No. 3844 (1963), otherwise known as the Agricultural Land Reform Code, declares it to be the policy of the State to make small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society.[15]

As such, Section 7 of R.A. No. 3844 assures that tenant-farmers enjoy security of tenure over the land they till, to wit:

> Section 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon

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[13] *Id.* at 35.

[14] *Id.* at 41.

[15] Republic Act No. 3844, Section 2, par. (6).

the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. x x x

As an exception to this security of tenure, however, Section 8 of R.A. No. 3844 specifically enumerates the grounds for the extinguishment of agricultural leasehold relations, *viz*.:

Section 8. Extinguishment of Agricultural Leasehold Relation. — The agricultural leasehold relation established under this Code shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee. (Emphasis supplied)

Voluntary surrender, as a mode of extinguishment of tenancy relations, does not require any court authorization considering that it involves the tenant's own volition.[16] To protect the tenant's right to security of tenure, voluntary surrender, as contemplated by law, must be convincingly and sufficiently proved by competent evidence. As held in *Nisnisan v. Court of Appeals*,[17] the tenant's intention to surrender the landholding cannot be presumed, much less determined by mere implication. If not, the right of a tenant farmer to security of tenure becomes an illusory one.[18]

Thus, for surrender of tenancy rights to be considered as voluntary, it is paramount that the intention to relinquish the right must be clear, and the same must be coupled by the physical act of surrender of one's possession of the farmland. R.A. No.

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[16] *Jacinto v. Court of Appeals*, 176 Phil. 580, 588 (1978).

[17] 355 Phil. 605, 614 (1998).

[18] *Ludo & Luym Development Corporation v. Barretto*, 508 Phil. 385, 398 (2005); *Talavera v. Court of Appeals*, 261 Phil. 929, 933 (1990).

3844 further requires that the voluntary surrender of the landholding by an agricultural lessee must be *due to circumstances more advantageous to him and his family*.[19]

After a careful perusal of the records of this case, the Court holds that the Deed of Conveyance and Voluntary Surrender denominated as *Kasulatan ng Pagsasalin at Kusang Loob na Pagsusuko* allegedly executed by Remedios in 1979 could not have produced any legal effect because she was not the recognized tenant on the land. Records reveal that respondent was the identified tenant of the subject landholding and his name was the one reflected in the master list of tenants, not his mother's. Hence, Remedios could not surrender possession of the land on which she did not have a recognized right.

Likewise, the Court does not find the *Sinumpaang Salaysay*, dated June 19, 1989, executed by respondent convincing enough to sustain the petitioners' allegation that he had voluntarily surrendered his tenancy right over the land in dispute. Respondent, in his position paper,[20] disclosed that he was "an illiterate,"[21] who was merely coaxed into signing a document that he did not understand. In addition, the said affidavit merely echoed that his mother was the tenant and had already given up her tenancy right upon receiving disturbance compensation from the heirs of Asuncion. Succeeding events, however, would depict a different scenario.

Respondent claims that he never left the premises. In fact, he stayed on the land, cultivated it until he was qualified, and

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[19] REPUBLIC ACT NO. 3844 provides:

Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year*. — The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

x x x x x x x x x

(5) Voluntary surrender due to circumstances more advantageous to him and his family.

[20] *Rollo*, pp. 362-370.

[21] *Id.* at 363.

was issued a CLT in 1981. If respondent voluntarily surrendered his tenancy right over the land, he would have long surrendered its actual possession and would not have qualified as a farmer-beneficiary of the OLT program under P.D. No. 27. Respondent further points out that he was only prevented from entering the subject land in 1991 when Speed Mix fenced the area while he was on vacation. All these circumstances prove that respondent never intended to surrender his tenancy right on the land. Neither did he freely give his consent to the surrender nor did he physically surrender the land in dispute. As earlier stated, in order to be considered voluntary, intention to surrender the right must be followed by the tenant's actual physical surrender of the possession of the land.

As to the question of whether Moldex could be considered a buyer in good faith, the Court answers in the negative.

Our law on agrarian reform is a legislated promise to emancipate poor farm families from the bondage of the soil. P.D. No. 27 was promulgated in the exact same spirit, with mechanisms which hope to forestall a reversion to the archaic and inequitable feudal system of land ownership. It aspires to guarantee the continued possession, cultivation and enjoyment by the beneficiary of the land that he tills which would certainly not be possible where the former owner is allowed to reacquire the land at any time following the award in contravention of the government's objective to emancipate tenant-farmers from the bondage of the soil.[22]

It is clear from the provisions of P.D. No. 27 that agricultural lands covered by the said law must stay in the hands of the tenant-beneficiary as it aims to make the latter owners of the land they till. To ensure the tenant-farmer's continued enjoyment and possession of the property, the explicit terms of P.D. No. 27 proscribe the transfer by the tenant of the ownership, rights or possession of a landholding to other persons, or the surrender of the same to the former landowner. In other words, a tenant-farmer may not transfer his ownership or possession of, or his

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[22] *Toralba v. Mercado*, 478 Phil. 563, 571 (2004).

rights to the property, except only in favor of the government or by hereditary succession in favor of his successors.[23] Any other transfer of the land grant in violation of this proscription is, therefore, null and void following Memorandum Circular No. 7,[24] series of 1979, which likewise states:

> Despite the above prohibition, however, there are reports that many farmer-beneficiaries of P.D. 27 have transferred their ownership, rights and/or possession of their farms/homelots to other persons or have surrendered the same to their former landowners. All these transactions/surrenders are violative of P.D. 27 and therefore null and void.

Thus, any individual or juridical person dealing with agricultural lands covered by P.D. No. 27 must naturally subscribe to the provisions of the law. At the time of the sale between the heirs of Asuncion and Phil-Ville, respondent was already the holder of a CLT proving his inchoate ownership of the subject agricultural land primarily devoted to rice production. CLT is the provisional title of ownership over the landholding while the lot owner is awaiting full payment of the land's value or for as long as the beneficiary is an amortizing owner.[25] As the CLT holder, respondent was the rightful owner of the farmland by express grant of P.D. No. 27. As already stated, any other transfer of the land that circumvents the specific mandate of the law cannot be upheld. To rule otherwise would defeat the intent of the law, put tenant-farmers as susceptible prey, and make the

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[23] Paragraph 13 of Presidential Decree No. 27 states: Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations. See also *Sps. Caliwag-Carmona v. Court of Appeals*, 528 Phil. 1103, 1114 (2006); *Torres v. Ventura*, G.R. No. 86044, July 2, 1990, 187 SCRA 96, 105; *Corpuz v. Grospe*, G.R. No. 135297, June 13, 2000, 333 SCRA 425, 436-437.

[24] The Circular is dated April 23, 1979.

[25] H. De Leon, *Textbook on Agrarian Reform and Taxation* (1990), p. 99.

land an open market for persons who are not even actual tillers thereof.[26]

The Court is of the view that the Certificate of Non-Tenancy,[27] dated March 18, 1980, issued by Team Leader 1 Armando Canlas *(Canlas)* of Meycauayan, Bulacan attesting that the landholding "has no tenant-tiller as per records and investigation conducted by this Office and not covered by OLT under P.D. No. 27" is of no considerable value. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the Municipal Agrarian Reform Officer *(MARO)* or the Barangay Agrarian Reform Committee *(BARC)*, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the Judiciary.[28] The fact that a Certificate of Land Transfer was issued to respondent, proving that the land was covered by P.D. No. 27, diminishes the weight of the attestations made in the certification issued by Canlas.

The Court, however, deems it proper to delete the order requiring the MARO of Meycauayan, Bulacan and/or Provincial Agrarian Reform Officer *(PARO)* of the Province of Bulacan to generate the Emancipation Patent in favor of respondent as there is no proof that he already paid in full the amortizations due him to be entitled the issuance thereof. Land transfer under P.D. No. 27 is realized in two phases: (1) the issuance of a certificate of land transfer to a farmer-beneficiary as soon as the DAR transfers the landholding to him in recognition of his being deemed an owner; and (2) the issuance of an emancipation patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the

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[26] *Torres v. Ventura*, G.R. No. 86044, July 2, 1990, 189 SCRA 96, 105.

[27] *Rollo*, p. 323.

[28] *Salmorin v. Zaldivar*, G.R. No. 169691, July 23, 2008, 559 SCRA 564, 572.

farmer-beneficiary.[29] Therefore, the Emancipation Patent may only be issued upon proof of full payment of the annual amortizations by the CLT holder.

WHEREFORE, the December 19, 2006 Decision and the May 16, 2007 Resolution of the Court of Appeals affirming *in toto* the November 10, 2003 Decision of the Department of Agrarian Reform Adjudication Board (DARAB) are hereby **AFFIRMED** with **MODIFICATION** in that the order, directing the Municipal Agrarian Reform Officer of Meycauayan, Bulacan and/or Provincial Agrarian Reform Officer of the Province of Bulacan to generate the Emancipation Patent covering the landholding in favor of respondent Emiliano De Guzman Raymundo, is hereby deleted.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186993. August 22, 2012]

THEODORE and NANCY ANG, represented by ELDRIGE MARVIN B. ACERON, *petitioners, vs.* **SPOUSES ALAN and EM ANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; VENUE OF ACTIONS; VENUE OF PERSONAL ACTION WHERE

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[29] *Del Castillo v. Orciga*, 532 Phil. 204, 214 (2006).

THE PLAINTIFF DOES NOT RESIDE IN THE PHILIPPINES; CASE AT BAR.— The petitioners' complaint for collection of sum of money against the respondents is a personal action as it primarily seeks the enforcement of a contract. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced. However, if the plaintiff does not reside in the Philippines, the complaint in such case may only be filed in the court of the place where the defendant resides. In *Cohen and Cohen v. Benguet Commercial Co., Ltd.*, this Court held that there can be no election as to the venue of the filing of a complaint when the plaintiff has no residence in the Philippines. In such case, the complaint may only be filed in the court of the place where the defendant resides. x x x Here, the petitioners are residents of Los Angeles, California, USA while the respondents reside in Bacolod City. Applying the foregoing principles, the petitioners' complaint against the respondents may only be filed in the RTC of Bacolod City – the court of the place where the respondents reside. The petitioners, being residents of Los Angeles, California, USA, are not given the choice as to the venue of the filing of their complaint. x x x [I]t bears stressing that the *situs* for bringing real and personal civil actions is fixed by the Rules of Court to attain the greatest convenience possible to the litigants and their witnesses by affording them maximum accessibility to the courts. And even as the regulation of venue is primarily for the convenience of the plaintiff, as attested by the fact that the choice of venue is given to him, it should not be construed to unduly deprive a resident defendant of the rights conferred upon him by the Rules of Court.

2. **ID.; ID.; ID.; PLAINTIFF'S ATTORNEY-IN-FACT IS NOT A REAL PARTY IN INTEREST, HIS RESIDENCE IS IMMATERIAL TO THE FILING OF THE PLAINTIFF'S COMPLAINT.—** [I]t is clear that Atty. Aceron is not a real party in interest in the case below as he does not stand to be benefited or injured by any judgment therein. He was merely appointed by the petitioners as their attorney-in-fact for the

> limited purpose of filing and prosecuting the complaint against the respondents. Such appointment, however, does not mean that he is subrogated into the rights of petitioners and ought to be considered as a real party in interest. Being merely a representative of the petitioners, Atty. Aceron in his personal capacity does not have the right to file the complaint below against the respondents. He may only do so, as what he did, in behalf of the petitioners – the real parties in interest. To stress, the right sought to be enforced in the case below belongs to the petitioners and not to Atty. Aceron. Clearly, an attorney-in-fact is not a real party in interest. The petitioner's reliance on Section 3, Rule 3 of the Rules of Court to support their conclusion that Atty. Aceron is likewise a party in interest in the case below is misplaced. x x x Nowhere in the rule x x x is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by a representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case. Indeed, to construe the express requirement of residence under the rules on venue as applicable to the attorney-in-fact of the plaintiff would abrogate the meaning of a "real party in interest", as defined in Section 2 of Rule 3 of the 1997 Rules of Court *vis-a-vis* Section 3 of the same Rule.

APPEARANCES OF COUNSEL

Aceron Punzalan Vehemente Avila & Del Prado Law Offices for petitioners.

Alfonso B. Manayon for respondents.

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 August 28, 2008 and the Resolution[2] dated February 20, 2009 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 101159. The assailed decision annulled and set aside the Orders dated April 12, 2007[3] and August 27, 2007[4] issued by the Regional Trial Court (RTC) of Quezon City, Branch 81 in Civil Case No. Q-06-58834.

The Antecedent Facts

On September 2, 1992, spouses Alan and Em Ang (respondents) obtained a loan in the amount of Three Hundred Thousand U.S. Dollars (US$300,000.00) from Theodore and Nancy Ang (petitioners). On even date, the respondents executed a promissory note[5] in favor of the petitioners wherein they promised to pay the latter the said amount, with interest at the rate of ten percent (10%) *per annum*, upon demand. However, despite repeated demands, the respondents failed to pay the petitioners.

Thus, on August 28, 2006, the petitioners sent the respondents a demand letter asking them to pay their outstanding debt which, at that time, already amounted to Seven Hundred Nineteen Thousand, Six Hundred Seventy-One U.S. Dollars and Twenty-Three Cents (US$719,671.23), inclusive of the ten percent (10%) annual interest that had accumulated over the years. Notwithstanding the receipt of the said demand letter, the respondents still failed to settle their loan obligation.

On August 6, 2006, the petitioners, who were then residing in Los Angeles, California, United States of America (USA),

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[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *rollo*, pp. 18-30.

[2] *Id.* at 108.

[3] Under the sala of Presiding Judge Ma. Theresa L. Dela Torre-Yadao; *id.* at 47-48.

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

[5] *Id.* at 39.

executed their respective Special Powers of Attorney[6] in favor of Attorney Eldrige Marvin B. Aceron (Atty. Aceron) for the purpose of filing an action in court against the respondents. On September 15, 2006, Atty. Aceron, in behalf of the petitioners, filed a Complaint[7] for collection of sum of money with the RTC of Quezon City against the respondents.

On November 21, 2006, the respondents moved for the dismissal of the complaint filed by the petitioners on the grounds of improper venue and prescription.[8] Insisting that the venue of the petitioners' action was improperly laid, the respondents asserted that the complaint against them may only be filed in the court of the place where either they or the petitioners reside. They averred that they reside in Bacolod City while the petitioners reside in Los Angeles, California, USA. Thus, the respondents maintain, the filing of the complaint against them in the RTC of Quezon City was improper.

The RTC Orders

On April 12, 2007, the RTC of Quezon City issued an Order[9] which, *inter alia*, denied the respondents' motion to dismiss. In ruling against the respondents' claim of improper venue, the court explained that:

> Attached to the complaint is the Special Power of Attorney x x x which clearly states that plaintiff Nancy Ang constituted Atty. Eldrige Marvin Aceron as her duly appointed attorney-in-fact to prosecute her claim against herein defendants. Considering that the address given by Atty. Aceron is in Quezon City, hence, being the plaintiff, venue of the action may lie where he resides as provided in Section 2, Rule 4 of the 1997 Rules of Civil Procedure.[10]

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[6] *Id.* at 37-38.

[7] *Id.* at 31-36.

[8] *Id.* at 40-45.

[9] *Id.* at 47-48.

[10] *Id.* at 47.

The respondents sought reconsideration of the RTC Order dated April 12, 2007, asserting that there is no law which allows the filing of a complaint in the court of the place where the representative, who was appointed as such by the plaintiffs through a Special Power of Attorney, resides.[11]

The respondents' motion for reconsideration was denied by the RTC of Quezon City in its Order[12] dated August 27, 2007.

The respondents then filed with the CA a petition for *certiorari*[13] alleging in the main that, pursuant to Section 2, Rule 4 of the Rules of Court, the petitioners' complaint may only be filed in the court of the place where they or the petitioners reside. Considering that the petitioners reside in Los Angeles, California, USA, the respondents assert that the complaint below may only be filed in the RTC of Bacolod City, the court of the place where they reside in the Philippines.

The respondents further claimed that, the petitioners' grant of Special Power of Attorney in favor of Atty. Aceron notwithstanding, the said complaint may not be filed in the court of the place where Atty. Aceron resides, *i.e.*, RTC of Quezon City. They explained that Atty. Aceron, being merely a representative of the petitioners, is not the real party in interest in the case below; accordingly, his residence should not be considered in determining the proper venue of the said complaint.

The CA Decision

On August 28, 2008, the CA rendered the herein Decision,[14] which annulled and set aside the Orders dated April 12, 2007 and August 27, 2007 of the RTC of Quezon City and, accordingly, directed the dismissal of the complaint filed by the petitioners. The CA held that the complaint below should have been filed in Bacolod City and not in Quezon City. Thus:

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[11] *Id.* at 50-55.

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

[13] *Id.* at 60-69.

[14] *Id.* at 18-30.

As maybe clearly gleaned from the foregoing, the place of residence of the plaintiff's attorney-in-fact is of no moment when it comes to ascertaining the venue of cases filed in behalf of the principal since what should be considered is the residence of the real parties in interest, *i.e.*[,] the plaintiff or the defendant, as the case may be. Residence is the permanent home – the place to which, whenever absent for business or pleasure, one intends to return. Residence is vital when dealing with venue. Plaintiffs, herein private respondents, being residents of Los Angeles, California, U.S.A., which is beyond the territorial jurisdiction of Philippine courts, the case should have been filed in Bacolod City where the defendants, herein petitioners, reside. Since the case was filed in Quezon City, where the representative of the plaintiffs resides, contrary to Sec. 2 of Rule 4 of the 1997 Rules of Court, the trial court should have dismissed the case for improper venue.[15]

The petitioners sought a reconsideration of the Decision dated August 28, 2008, but it was denied by the CA in its Resolution dated February 20, 2009.[16]

Hence, the instant petition.

Issue

In the instant petition, the petitioners submit this lone issue for this Court's resolution:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW WHEN IT RULED THAT THE COMPLAINT MUST BE DISMISSED ON THE GROUND THAT VENUE WAS NOT PROPERLY LAID.[17]

The Court's Ruling

The petition is denied.

Contrary to the CA's disposition, the petitioners maintain that their complaint for collection of sum of money against the

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[15] *Id.* at 27.

[16] *Id.* at 108.

[17] *Id.* at 9.

respondents may be filed in the RTC of Quezon City. Invoking Section 3, Rule 3 of the Rules of Court, they insist that Atty. Aceron, being their attorney-in-fact, is deemed a real party in interest in the case below and can prosecute the same before the RTC. Such being the case, the petitioners assert, the said complaint for collection of sum of money may be filed in the court of the place where Atty. Aceron resides, which is the RTC of Quezon City.

On the other hand, the respondents in their Comment[18] assert that the petitioners are proscribed from filing their complaint in the RTC of Quezon City. They assert that the residence of Atty. Aceron, being merely a representative, is immaterial to the determination of the venue of the petitioners' complaint.

The petitioners' complaint should have been filed in the RTC of Bacolod City, the court of the place where the respondents reside, and not in RTC of Quezon City.

It is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.[19]

The petitioners' complaint for collection of sum of money against the respondents is a personal action as it primarily seeks the enforcement of a contract. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the

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[18] *Id.* at 130-138.

[19] *Hyatt Elevators and Escalators Corp. v. Goldstar Elevators, Phils., Inc.*, 510 Phil. 467, 476 (2005).

place where the action has been instituted at the time the action is commenced.[20]

However, if the plaintiff does not reside in the Philippines, the complaint in such case may only be filed in the court of the place where the defendant resides. In *Cohen and Cohen v. Benguet Commercial Co., Ltd.*,[21] this Court held that there can be no election as to the venue of the filing of a complaint when the plaintiff has no residence in the Philippines. In such case, the complaint may only be filed in the court of the place where the defendant resides. Thus:

> Section 377 provides that actions of this character "may be brought in any province where the defendant or any necessary party defendant may reside or be found, or in any province where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff." **The plaintiff in this action has no residence in the Philippine Islands. Only one of the parties to the action resides here. There can be, therefore, no election by plaintiff as to the place of trial. It must be in the province where the defendant resides.** x x x.[22] (Emphasis ours)

Here, the petitioners are residents of Los Angeles, California, USA while the respondents reside in Bacolod City. Applying the foregoing principles, the petitioners' complaint against the respondents may only be filed in the RTC of Bacolod City – the court of the place where the respondents reside. The petitioners, being residents of Los Angeles, California, USA, are not given the choice as to the venue of the filing of their complaint.

Thus, the CA did not commit any reversible error when it annulled and set aside the orders of the RTC of Quezon City and consequently dismissed the petitioners' complaint against the respondents on the ground of improper venue.

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[20] *Baritua v. CA*, 335 Phil. 12, 15-16 (1997).

[21] 34 Phil. 526 (1916).

[22] *Id.* at 534-535.

In this regard, it bears stressing that the *situs* for bringing real and personal civil actions is fixed by the Rules of Court to attain the greatest convenience possible to the litigants and their witnesses by affording them maximum accessibility to the courts.[23] And even as the regulation of venue is primarily for the convenience of the plaintiff, as attested by the fact that the choice of venue is given to him, it should not be construed to unduly deprive a resident defendant of the rights conferred upon him by the Rules of Court.[24]

Atty. Aceron is not a real party in interest in the case below; thus, his residence is immaterial to the venue of the filing of the complaint.

Contrary to the petitioners' claim, Atty. Aceron, despite being the attorney-in-fact of the petitioners, is not a real party in interest in the case below. Section 2, Rule 3 of the Rules of Court reads:

> Sec. 2. *Parties in interest.* – **A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit**. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (Emphasis ours)

Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved.[25] A real party in interest is the party who, by the substantive law, has the right sought to be enforced.[26]

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[23] See *Koh v. Court of Appeals*, 160-A Phil. 1034, 1041 (1975).

[24] *Portillo v. Hon. Reyes and Ramirez*, 113 Phil. 288, 290 (1961).

[25] *Goco v. Court of Appeals*, G.R. No. 157449, April 6, 2010, 617 SCRA 397, 405.

[26] See *Uy v. Court of Appeals*, 372 Phil. 743 (1999).

Applying the foregoing rule, it is clear that Atty. Aceron is not a real party in interest in the case below as he does not stand to be benefited or injured by any judgment therein. He was merely appointed by the petitioners as their attorney-in-fact for the limited purpose of filing and prosecuting the complaint against the respondents. Such appointment, however, does not mean that he is subrogated into the rights of petitioners and ought to be considered as a real party in interest.

Being merely a representative of the petitioners, Atty. Aceron in his personal capacity does not have the right to file the complaint below against the respondents. He may only do so, as what he did, in behalf of the petitioners – the real parties in interest. To stress, the right sought to be enforced in the case below belongs to the petitioners and not to Atty. Aceron. Clearly, an attorney-in-fact is not a real party in interest.[27]

The petitioner's reliance on Section 3, Rule 3 of the Rules of Court to support their conclusion that Atty. Aceron is likewise a party in interest in the case below is misplaced. Section 3, Rule 3 of the Rules of Court provides that:

> Sec. 3. *Representatives as parties*. – Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, **the beneficiary shall be included in the title of the case and shall be deemed to be the real property in interest**. A representative may be a trustee of an expert trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (Emphasis ours)

Nowhere in the rule cited above is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by a

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[27] See *Filipinas Industrial Corp., et al. v. Hon. San Diego, et al.*, 132 Phil. 195 (1968).

representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case.

Indeed, to construe the express requirement of residence under the rules on venue as applicable to the attorney-in-fact of the plaintiff would abrogate the meaning of a "real party in interest", as defined in Section 2 of Rule 3 of the 1997 Rules of Court *vis-à-vis* Section 3 of the same Rule.[28]

On this score, the CA aptly observed that:

> As may be unerringly gleaned from the foregoing provisions, there is nothing therein that expressly allows, much less implies that an action may be filed in the city or municipality where either a representative or an attorney-in-fact of a real party in interest resides. Sec. 3 of Rule 3 merely provides that the name or names of the person or persons being represented must be included in the title of the case and such person or persons shall be considered the real party in interest. In other words, the principal remains the true party to the case and not the representative. Under the plain meaning rule, or *verba legis*, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. x x x.[29] (Citation omitted)

At this juncture, it bears stressing that the rules on venue, like the other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and even-handed determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose the court where he may file his complaint or petition. The choice of venue should not be left to the plaintiff's whim or caprice. He may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue.[30]

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[28] See *Pascual v. Pascual*, 511 Phil. 700, 707 (2005).

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

[30] *Supra* note 19, at 477, citing *Sy v. Tyson Enterprises, Inc.*, 204 Phil. 693, 699 (1982).

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated August 28, 2008 and Resolution dated February 20, 2009 rendered by the Court of Appeals in CA-G.R. SP No. 101159 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,*[**] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188854. August 22, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNANTE SALINO *Y* MAHINAY,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610; AN ACCUSED WHO WAS NOT FOUND GUILTY FOR RAPE MAY STILL BE CONVICTED UNDER R.A. 7610.— While Salino apparently committed no rape, he can nonetheless be held liable for violating Section 5(b), Article III of R.A. 7610 included in the charge. Under this sub-section, a person who commits sexual intercourse or lascivious conduct with a child exploited in prostitution and other sexual abuses is liable for child abuse. Notably, the criminal information accused Salino of "rape in relation (with violation of R.A. 7610)." x x x As the Court held in *People v. Albay*, if the minor victim is more

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[*] Additional member per Raffle dated February 6, 2012 *vice* Associate Justice Maria Lourdes P. A. Sereno.

[**] Additional member per Special Order No. 1286 dated August 22, 2012 *vice* Associate Justice Arturo D. Brion.

than 12 years old but below 18 when the crime is committed, the accused may be prosecuted either for rape under the RPC or child abuse under R.A. 7610. A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Obviously, Salino, an adult, used wiles and liquor to influence JS into yielding to his sexual desires. He took advantage of her immaturity and adventurism, mindless of the psychological trauma that she would have to bear for the rest of her life when she grows old enough to appreciate its consequences.

2. ID.; ID.; ID.; PROPER PENALTY FOR CHILD ABUSE APPLYING THE INDETERMINATE SENTENCE LAW.— The penalty prescribed for violation of the provisions of Section 5(b), Article III of R.A. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of any mitigating or aggravating circumstance, the proper imposable penalty is *reclusion temporal* in its maximum period, which is the medium of the penalty prescribed by law. Applying the Indeterminate Sentence Law, therefore, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 17 years, 4 months and 1 day to 20 years of *reclusion temporal*, while the minimum term shall be within the range next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal*, in its minimum period, or a period ranging from 8 years and 1 day to 14 years and 8 months. Therefore, Salino should be meted the indeterminate penalty of 10 years, 2 months and 21 days of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum.

3. ID.; ID.; ID.; ID.; CIVIL INDEMNITY AND MORAL DAMAGES, AWARDED.— Since every person criminally liable is civilly liable, the award of civil indemnity *ex delicto* of ₱50,000.00 to JS is in order. As to moral damages, JS testified that the incident traumatized her. She had difficulty concentrating on her studies and to avoid gossip, her family moved to another place. To the Court, this entitles her to moral damages of ₱50,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This Court sets aside in this case the finding of the lower courts that the accused committed rape. Still it finds him guilty of child abuse, given the circumstances.

The Facts and the Case

The public prosecutor charged the accused Reynante M. Salino (Salino) with rape under the Revised Penal Code (RPC) in relation to Republic Act (R.A.) 7610[1] before the Regional Trial Court (RTC) of Las Piñas City. The prosecution presented the testimonies of complainant JS,[2] witness Ernesto Acogido, and Dr. Mamerto S. Bernabe, Jr.

JS was a 14-year-old high school student[3] when she got romantically involved with Salino. JS testified that at around 3:00 p.m. on December 19, 2005, she, Salino, Ernesto Acogido, and Jenny Rose Custodio were at Salino's house, drinking liquor. After an hour or so, Jenny Rose left, having been called by her mother. Ernesto followed, leaving JS alone with Salino. Having consumed half a bottle of liquor, JS fell asleep. She regained

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[1] Otherwise known as the "*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*."

[2] Pursuant to Republic Act 9262, otherwise known as the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, are withheld and fictitious initials instead are used to represent her. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.

[3] JS's age is proven by the submission of her Certificate of Live Birth (Exhibit "E") stating that she was born on May 14, 1991, records, p. 165.

consciousness on hearing and seeing Ernesto return. She was surprised to see Salino mounted on her but she felt so weak to resist him. The liquor she took made her drift back to sleep.

When JS woke up at around 6:00 p.m., her hair and clothes were in shambles and she felt pain in her genitalia. Salino asked her to stay the night but she refused. She went home with Jenny Rose who had returned to fetch her. Jenny Rose noticed kiss marks on her neck and told her. JS fell asleep on getting home. Her father tried to wake her up at around 7:30 p.m., demanding where she had been. When she did not answer, he slapped her.

Ernesto testified that on Salino's instruction, he gave JS more than the usual amount of liquor and then left them. He feared what Salino might do to him had he refused. Thus, Ernesto whiled away time at a nearby store. After growing impatient, he went back to Salino's house, picked the door's lock, and entered. He saw Salino atop JS who appeared unconscious, sexually ravishing her. Ernesto told Salino to stop it but the latter paid no attention to him.[4]

Ernesto turned around and left for home. On getting there, he told his mother about the incident. Later, JS's parents came and inquired about what happened to their daughter. Ernesto's mother told them that Salino had raped her.

Dr. Bernabe testified that he examined JS on December 20, 2005 and found ecchymoses on JS's neck and both a deep healed and fresh lacerations on her genital organ. He concluded that his findings are consistent with probable recent vaginal penetration.[5]

Salino denied raping JS. He claimed that she agreed to have sex with him as in fact they had prior sexual relation on December 7, 2005 to celebrate their one-month relationship. JS initiated sex by embracing him and holding his penis. She asked him to

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[4] TSN, April 25, 2007, p. 14.

[5] Dr. Bernabe's findings are stated in Medico-Legal Report No. M-4715-05 (Exhibit "G"), records, p. 167.

put kiss marks on her neck. He was shocked to learn that JS filed a complaint for rape against him.

On November 19, 2007 the RTC found Salino guilty of rape under Article 266-A, paragraph 1 (b)[6] of the RPC and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC held that the alcohol JS took rendered her unconscious, enabling Salino to rape her. Being a minor, JS could not also give a valid consent. The court ordered Salino to indemnify JS of ₱50,000.00 and pay her ₱50,000.00 as moral damages.

On May 7, 2009,[7] the Court of Appeals (CA) affirmed in CA-G.R. CR-HC 03111 the decision of the RTC in its entirety, prompting Salino to appeal to this Court.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in affirming the RTC decision which found Salino guilty of the rape of JS, given the circumstances that attended the sexual act between them.

The Ruling of the Court

The CA agreed with the RTC that Salino took advantage of JS's drunkenness that rendered her unconscious during the time he had carnal knowledge of her. JS testified that she had no recollection of Salino forcing himself into her because she was drunk. She was only awoken by the sound that Ernesto made when he entered the room.

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[6] Article 266-A. Rape; When and How Committed. – Rape is committed –

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

x x x x x x x x x

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

[7] Penned by Justice Remedios A. Salazar-Fernando with the concurrence of Justices Magdangal M. de Leon and Ramon R. Garcia, *rollo*, pp. 2-26.

But this makes no sense. If she had indeed passed out, how could she be roused from sleep by the noise that Ernesto made when he entered the room and not by Salino's ongoing physical assault of her? Surely, the pain of physical violence, more than footsteps and a creaking door, should have awakened her.

Besides, it is not disputed that she and Salino were lovers. Left alone and having taken liquor, it was not unlikely for them to lose self-restraint. Notably, the medico-legal's finding of an old, healed laceration in JS supports Salino's claim that he had once had sexual relation with her. Still, JS came with friends to his house and partook of liquor, indicating that she did not mind the risk of a renewed tryst with him.

While Salino apparently committed no rape, he can nonetheless be held liable for violating Section 5 (b), Article III of R.A. 7610 included in the charge. Under this sub-section, a person who commits sexual intercourse or lascivious conduct with a child exploited in prostitution and other sexual abuses is liable for child abuse.

Notably, the criminal information accused Salino of "rape in relation (with violation of R.A. 7610)." Thus —

> That on or about 19th day of December 2005, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously commit sexual abuse against one "AAA", a 14-year old minor, by then and there molesting the latter by inserting his penis into the victim's genitalia and licking it against her will and consent.
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> CONTRARY TO LAW.[8]

As the Court held in *People v. Abay*,[9] if the minor victim is more than 12 years old but below 18 when the crime is committed, the accused may be prosecuted either for rape under the RPC or child abuse under R.A. 7610. A child is deemed exploited in

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[8] Records, p. 1.

[9] G.R. No. 177752, February 24, 2009, 580 SCRA 235, 239-240.

prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.[10]

Obviously, Salino, an adult, used wiles and liquor to influence JS into yielding to his sexual desires. He took advantage of her immaturity and adventurism, mindless of the psychological trauma that she would have to bear for the rest of her life when she grows old enough to appreciate its consequences.

The penalty prescribed for violation of the provisions of Section 5 (b), Article III of R.A. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of any mitigating or aggravating circumstance, the proper imposable penalty is *reclusion temporal* in its maximum period, which is the medium of the penalty prescribed by law. Applying the Indeterminate Sentence Law,[11] therefore, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 17 years, 4 months and 1 day to 20 years of *reclusion temporal*, while the minimum term shall be within the range next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal*, in its minimum period, or a period ranging from 8 years and 1 day to 14 years and 8 months. Therefore, Salino should be meted the indeterminate penalty of 10 years, 2 months and 21 days of *prision mayor*,

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[10] *People v. Larin*, 357 Phil. 987, 998 (1998).

[11] Section 1 of the Indeterminate Sentence Law provides:

Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

as minimum to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum.

Since every person criminally liable is civilly liable, the award of civil indemnity *ex delicto* of ₱50,000.00 to JS is in order. As to moral damages, JS testified that the incident traumatized her. She had difficulty concentrating on her studies and to avoid gossip, her family moved to another place. To the Court, this entitles her to moral damages of ₱50,000.00.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated May 7, 2009 in CA-G.R. CR-HC 03111, is **AFFIRMED** with **MODIFICATIONS**. Accused Reynante Salino *y* Mahinay is found **GUILTY** of Child Abuse under Section 5 (b), Article III of Republic Act 7610, and is sentenced to suffer the indeterminate penalty of 10 years, 2 months and 21 days of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, as maximum. He is likewise ordered to indemnify the private complainant the amounts of ₱50,000.00 as civil indemnity *ex delicto* and ₱50,000.00 as moral damages.

The time during which the accused had been under preventive imprisonment shall be credited in his favor.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191192. August 22, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR BALQUEDRA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IDENTIFICATION OF THE ACCUSED, SUFFICIENTLY ESTABLISHED.—** The records will show that AAA had positively identified appellant as the perpetrator. Although the crime was committed at night, there was a lighted kerosene lamp on the table when he entered the shanty. AAA had sufficient light and means to identify her assailant at the time of the incident. There was no evidence presented that this light was put out when she went to sleep, or that it was knocked off the table, or that it broke while the crime was being committed. Also, appellant raped AAA facing her and covering only her mouth, thus giving her a full view of his face. Lastly, appellant was familiar to AAA, since he was her neighbour, his residence a mere 200 meters away from hers. He himself admitted that she had known him since she was a child.

2. **ID.; ID.; TESTIMONY OF WITNESSES; VICTIM'S TESTIMONY CORROBORATED BY MEDICAL CERTIFICATE AND DOCTOR'S TESTIMONY.—** Aside from AAA's testimony, the Medico-Legal Certificate and the testimony of the doctor who had examined the victim corroborated the latter's story of rape. Based on the medical certificate, AAA was examined six days after the crime took place. Upon a perineal inspection of her external genitalia, lacerations at the 5, 7 and 9 o'clock positions were found by the examining physician. Appellant avers that the testimony of the doctor negates the allegation that the former had sexual congress with the victim just one week before the medical examination. Appellant points out that, according to the doctor, the most **probable** period when the lacerations were inflicted was over a month before the date of the examination. It is exactly this uncertainty that belies appellant's argument. Notably, the examining doctor herself said that she could not tell exactly when the lacerations were inflicted. Furthermore, lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. Here, the doctor found not only one, but three, lacerations.

3. **CRIMINAL LAW; RAPE; USE OF FORCE, PRESENT IN CASE AT BAR.—** Force in rape cases is defined as "power, violence or constraint exerted upon or against a person." x x x

Here, appellant used force through physical power and constraint by covering the mouth of AAA, placing her arms behind her back, and pinning her down with his body. The presence of force is further bolstered by AAA's testimony that she struggled and fought back in vain. Appellant used his physical advantage to overpower the 14-year-old girl and have carnal knowledge of her.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; REQUISITE PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE AT THE TIME OF COMMISSION, NOT PROVEN.— In *Baro*, the very same case relied upon by appellant, the Court laid down the following requisite for alibi to prosper: The rule is well settled that in order for it to prosper, it must be demonstrated that the person charged with the crime was not only somewhere else when the offense was committed, but was so far away that it would have **been physically impossible** to have been at the place of the crime or its immediate vicinity at the time of its commission. Applying this requisite to the instant case, it was not physically impossible for appellant to have been at AAA's shanty at the time of the commission of the crime, since his house was merely 200 meters away.

5. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— Due to the secretive nature of the crime of rape, complainant's credibility becomes the single most important issue. Appellant contends that AAA does not deserve full faith and credence, because her answers were unclear and inconsistent, and she could hardly narrate the incident in a straight manner. However, it is a well-settled rule that the findings of the trial court and its calibration of the testimonial evidence of the parties are accorded great weight because of its unique advantage of monitoring and observing the demeanor, deportment and conduct of the witnesses. We find no reason to reverse the RTC's findings. It found the testimony of AAA to be "direct, equivocal and consistent" and ruled that "even on cross-examination, AAA's candor and honesty were evident." Furthermore, AAA was able to **clearly narrate in detail** that a man by the name of Edgar Balquedra, using force, was able to have carnal knowledge of her.

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

This is an appeal, via Notice of Appeal dated 11 August 2009,[1] of the 31 July 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03188, affirming the conviction of Edgar Balquedra (appellant) for raping AAA.[3] He imputes error to the CA and the Regional Trial Court (RTC) for giving credence to the testimonies of AAA and the medical officer who examined her.[4]

The antecedent facts are as follows:

FACTS

AAA, her sister BBB, and their brother regularly slept in their family's shanty located near their house.[5] On 06 June 2005 at 9:30 p.m., only the two girls slept in the shanty because their brother was out of town.[6] Later in the night, BBB went back to the house to drink water, but did not return.[7] While AAA was alone in the shanty, appellant entered.[8] AAA, who

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[1] *Rollo,* pp. 20-22.

[2] *Id.* at 2-19; penned by Associate Justice Isaias Dicdican, concurred in by Associate Justice Bienvenido L. Reyes (now a member of this Court) and Associate Justice Marlene Gonzales-Sison.

[3] *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] *Id.* at 29.

[5] TSN, 6 February 2006, pp. 7-8.

[6] *Id.* at 9-10.

[7] Records, p. 169.

[8] *Id.*

was already lying on the bed, recognized him as her neighbour.[9] She asked him what he was doing there,[10] but he did not answer.[11] Instead, he allegedly covered her mouth with his left hand and pinned her down on the bed using his body.[12] He then pulled down her shorts and panty with his right hand, and subsequently pulled down his shorts and briefs with the same hand.[13] AAA tried to struggle, but she could not move because appellant was stronger than her.[14] He then spread out her legs, inserted his penis into her vagina, and made pumping motions.[15] After consummating the deed, he threatened to kill her if she told anybody about what happened.[16] After he left, AAA went back to the house and kept silent about the incident, because she was afraid of his threat.[17]

One week after, appellant attempted to rape BBB.[18] This attempt against AAA's sister was recorded in a police blotter naming Edgar Balquedra as the perpetrator.[19] After this incident, AAA confided to her mother that she had been raped by the same Edgar Balquedra.[20]

AAA's parents, outraged by what happened, brought her to a health center on 14 June 2005 to be examined.[21] In Medico-

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[9] *Id.* at 172.

[10] *Id.* at 169.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 158.

[20] *Id.* at 169.

[21] *Id.* at 4.

Legal Certificate dated 14 June 2005, the examining physician found lacerations in the victim's external genitalia.[22]

On 16 June 2005, AAA executed a Sworn Statement before the Provincial Prosecutor detailing her rape by appellant.[23] On the same day, a criminal Complaint was filed with the Municipal Trial Court (MTC) of Agoo, La Union.[24] Finding *prima facie* evidence that the rape was committed, and that appellant was probably guilty thereof, the MTC forwarded the records to the Provincial Prosecutor for appropriate action.[25]

On 22 July 2005, the Provincial Prosecutor charged appellant with rape in the RTC, Branch 32, Agoo, La Union, in the following Information:[26]

> That on or about the 6th day of June 2005, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously, have sexual intercourse with one AAA, a fourteen (14) year old minor by covering her mouth, removing the underwear and inserting his penis and have a [sic] carnal knowledge of the said victim against her will and at the same time uttering threatening remarks to said victim, against her will, to her damage and prejudice.
>
> CONTRARY TO LAW.

Upon arraignment, appellant pleaded not guilty.[27] Thereafter, trial ensued.

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[22] *Id.*

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

[24] *Id.* at 1.

[25] *Id.* at 33.

[26] *Id.* at 39.

[27] *Id.* at 45.

The prosecution presented the testimonies of AAA,[28] her mother,[29] and the doctor[30] who examined her, as well as her Sworn Statement[31] and the Medico-Legal Certificate as documentary evidence.[32] On the other hand, appellant's defense consisted of denial and alibi. He testified that he was at home with his wife on the night of the rape.[33] He also alleged ill will on the part of AAA's father, he hit with the bicycle, causing the dislocation of the latter's right ankle.[34]

The RTC found that AAA had clearly identified appellant and described how he had raped her[35] as opposed to appellant's unavailing defense of denial and alibi.[36] Accordingly, it ruled that he was guilty beyond reasonable doubt of rape. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds accused Edgardo Balquedra guilty beyond reasonable doubt of the crime of rape, and hereby sentences him to suffer the penalty of *reclusion perpetua*.

The accused is also ordered to pay the victim in the amount of ₱50,000.00 as moral damages; ₱50,000.00 as civil indemnity; and ₱25,000.00 as exemplary damages.[37]

Through counsel, appellant filed with the CA a Notice of Appeal dated 17 December 2007.[38]

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[28] TSN, 06 February 2006, p. 2.

[29] TSN, 11 September 2007, p. 56.

[30] TSN, 18 September 2007, p. 82.

[31] TSN, 13 August 2007, p. 37.

[32] *Id.* at 38.

[33] TSN, 20 November 2007, pp. 107-116.

[34] *Id.* at 117-118.

[35] Records, p. 170.

[36] *Id.* at 172.

[37] *Id.* at 172-173.

[38] *Id.* at 178-179.

In his brief, he questioned the credibility of AAA, the findings of the examining doctor who executed the Medico-Legal Certificate, and the degree of force he had allegedly employed against AAA.[39] Ruling against the appeal, the CA found that AAA's testimony was consistent in all material aspects and corroborated by the findings indicated in the medical report.[40] It also ruled that the degree of force employed was sufficient to consummate the rape.[41] As a result, the conviction was affirmed *in toto*.[42] Thereafter, appellant filed a Notice of Appeal of the 31 July 2009 Decision of the CA based on questions of fact and law.[43]

On 21 April 2010, this Court informed the parties that it had received the records from the CA and required them to file their respective supplemental briefs.[44] Both parties manifested that they would no longer file supplemental briefs, since they had exhaustively argued all the relevant issues in the Briefs they had previously submitted before the CA.[45]

OUR RULING

We rule that the CA was correct in affirming the RTC's finding that AAA's testimony was credible and sufficient to establish the rape committed by appellant.

In reviewing the crime of rape, the Court is guided by the following principles: *first*, to accuse a man of rape is easy, but to disprove the accusation is difficult though the accused may be innocent; *second*, considering that only two persons are usually

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[39] CA *rollo*, pp. 37-40.

[40] *Rollo*, pp. 14-15.

[41] *Id.* at 16.

[42] *Id.* at 18; "**WHEREFORE,** in view of the foregoing premises, the instant appeal is hereby **DENIED** and, consequently, ordered **DISMISSED**, and the appealed decision is hereby **AFFIRMED *in toto***. **SO ORDERED**."

[43] *Id.* at 20.

[44] *Id.* at 25.

[45] *Id.* at 31-37.

involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; *third and last*, the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[46]

The Victim's Positive Identification of Appellant

The records will show that AAA had positively identified appellant as the perpetrator. Although the crime was committed at night, there was a lighted kerosene lamp on the table when he entered the shanty.[47] AAA had sufficient light and means to identify her assailant at the time of the incident. There was no evidence presented that this light was put out when she went to sleep, or that it was knocked off the table, or that it broke while the crime was being committed. Also, appellant raped AAA facing her and covering only her mouth, thus giving her a full view of his face.[48]

Lastly, appellant was familiar to AAA, since he was her neighbour, his residence a mere 200 meters away from hers.[49] He himself admitted that she had known him since she was a child.[50]

The Victim's Testimony Sufficiently Corroborated by the Medical Certificate

Aside from AAA's testimony,[51] the Medico-Legal Certificate and the testimony of the doctor who had examined the victim corroborated the latter's story of rape. Based on the medical

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[46] *People v. Watimar*, 392 Phil. 711 (2000).

[47] TSN, 13 August 2007, pp. 16-18.

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

[49] Records, p. 172.

[50] TSN, 20 November 2007, p. 124.

[51] TSN, 13 August 2007, pp. 24-32.

certificate, AAA was examined six days after the crime took place.[52] Upon a perineal inspection of her external genitalia, lacerations at the 5, 7 and 9 o'clock positions were found by the examining physician.[53]

Appellant avers that the testimony of the doctor negates the allegation that the former had sexual congress with the victim just one week before the medical examination.[54] Appellant points out that, according to the doctor, the most **probable** period when the lacerations were inflicted was over a month before the date of the examination.[55] It is exactly this uncertainty that belies appellant's argument. Notably, the examining doctor herself said that she could not tell exactly when the lacerations were inflicted.[56] Furthermore, lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[57] Here, the doctor found not only one, but three, lacerations.[58]

The Presence of the Element of Force in the Perpetration of Rape

Appellant's argument that the degree of force employed against AAA was not enough to have cowed her into submission[59] fails to convince.

Force in rape cases is defined as "power, violence or constraint exerted upon or against a person."[60] In *People v. Maceda*,[61]

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[52] Records, p. 4.

[53] *Id.*

[54] CA *rollo*, p. 39.

[55] TSN, 18 September 2007, p. 88.

[56] *Id.* at 94.

[57] *People v. Acala*, 366 Phil. 797 (1999).

[58] Records, p. 4.

[59] CA *rollo*, p. 40.

[60] *People v. Florenci*, G.R. No. 148144, 30 April 2004, 428 SCRA 336.

[61] *People v. Maceda*, G.R. No. 138805, 28 February 2001, 353 SCRA 228.

cited by the CA, the court explained the standards for evaluating the force employed in rape:

> x x x. [I]t is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. x x x.

Here, appellant used force through physical power and constraint by covering the mouth of AAA, placing her arms behind her back, and pinning her down with his body.[62] The presence of force is further bolstered by AAA's testimony that she struggled and fought back in vain.[63] Appellant used his physical advantage to overpower the 14-year-old girl and have carnal knowledge of her.

Appellant's Unconvincing Defense of Denial and Alibi

In his defense, appellant simply denies the charge of rape and gives the lame excuse that he was at home during the entire period when the crime was allegedly committed.

He relies on *People v. Baro*[64] to bolster his defense that alibi is not always a weak defense.

The Court is unconvinced. In *Baro*, the very same case relied upon by appellant, the Court laid down the following requisite for alibi to prosper:

> The rule is well settled that in order for it to prosper, it must be demonstrated that the person charged with the crime was not only somewhere else when the offense was committed, but was so far away that it would have **been physically impossible** to have been at the place of the crime or its immediate vicinity at the time of its commission.[65] (Emphasis supplied)

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[62] TSN, 13 August 2007, pp. 21-35.

[63] *Id.* at 21-25.

[64] 432 Phil. 625 (2002).

[65] *Id.* at 640.

Applying this requisite to the instant case, it was not physically impossible for appellant to have been at AAA's shanty at the time of the commission of the crime, since his house was merely 200 meters away.[66]

As a last-ditch effort, appellant even goes to the extent of claiming that the rape charges were fabricated and motivated by ill will on the part of AAA's father.[67] The latter purportedly suffered from a dislocated ankle after being hit by a bicycle that appellant was riding.[68] This claim is beyond belief, as no father would use both of his daughters to vindicate a mere dislocated ankle. The CA was on point when it cited our ruling in *People v. Malones*,[69] which states:

> It is unnatural for a parent to use [his] offsprings [sic] as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma. It is hard to believe that a [parent] would sacrifice [his] own daughter and present her to be the subject of a public trial if [he], in fact, has not been [sic] motivated by an honest desire to have the culprit punished.

Due to the secretive nature of the crime of rape, complainant's credibility becomes the single most important issue.[70] Appellant contends that AAA does not deserve full faith and credence, because her answers were unclear and inconsistent, and she could hardly narrate the incident in a straight manner.[71] However, it is a well-settled rule that the findings of the trial court and its calibration of the testimonial evidence of the parties are accorded great weight because of its unique advantage of monitoring and observing the demeanor, deportment and conduct

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[66] TSN, 20 November 2007, p. 122.

[67] *Id.* at 117-118.

[68] *Id.*

[69] 469 Phil. 301, 327 (2004).

[70] *Id.*

[71] CA *rollo*, p. 38.

of the witnesses.[72] We find no reason to reverse the RTC's findings. It found the testimony of AAA to be "direct, equivocal and consistent"[73] and ruled that "even on cross-examination, AAA's candor and honesty were evident."[74] Furthermore, AAA was able to **clearly narrate in detail** that a man by the name of Edgar Balquedra, using force, was able to have carnal knowledge of her.

Although the Court affirms the CA ruling, the award of exemplary damages must be increased from ₱25,000 to ₱30,000 in consonance with prevailing jurisprudence.[75]

WHEREFORE, the appeal is **DENIED**. The 31 July 2009 Decision of the Court of the Appeals in CA-G.R. CR-HC No. 03188 is hereby **AFFIRMED with MODIFICATION**. Accused-appellant Edgar Balquedra is hereby declared guilty beyond reasonable doubt of the crime of rape. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱30,000 as exemplary damages.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Leonardo-de Castro,[*] *del Castillo,*[**] and *Perez, JJ.*, concur.

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[72] *People v. Funesto*, 449 Phil. 153 (2003).

[73] CA *rollo*, p. 12.

[74] *Id.*

[75] *People v. Lindo*, G.R. No. 189818, 9 August 2010, 627 SCRA 519.

[*] Designated additional member in lieu of Associate Justice Arturo D. Brion per S.O. No. 1286 dated 22 August 2012.

[**] Designated additional member in lieu of Associate Justice Bienvenido L. Reyes due to prior action in the CA Decision.

THIRD DIVISION

[G.R. No. 191792. August 22, 2012]

ANGELITO CASTRO, RAYMUNDO SAURA and RAMONITO FANUNCION, *petitioners, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY and MANUEL V. PANGILINAN,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); BENEFITS UNDER THE CBA EXTEND ONLY TO EMPLOYEES WHO ARE MEMBERS OF THE COLLECTIVE BARGAINING UNIT; APPLICATION.— In the present case, the Court's August 3, 1998 Resolution sustaining petitioners' dismissal as a consequence of their participation in the illegal strike became final on January 18, 1999. Accordingly, PLDT informed them of their termination for cause on the basis of the said Resolution. While they challenged their dismissals upon a claim that supervening events evincing an intent on the part of PLDT to waive /condone the effects of the illegal strike had set in which rendered the final Resolution of the Court moot and academic, the Court, in the Resolution dated January 16, 2006 in G.R. Nos. 170607-08, ruled out the presence of supervening events. As such, it is only proper to reckon the termination of petitioners' employment with PLDT to January 18, 1999. Consequently, petitioners were no longer employees of PLDT nor members of the collective bargaining unit represented by MKP when the CBA was signed on March 14, 2001 or when it became effective on November 9, 2000 and are, thus, not entitled to avail of the benefits under the new CBA. Accordingly, the Court finds no reversible error on the part of the CA in directing each of the petitioners to return the amount of ₱133,000.00 which they respectively received from respondents.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Siguion Reyna Montecillo & Ongsiako Law Offices for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari*[1] assails the November 24, 2009 Decision[2] and March 25, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 72889, which set aside the June 21, 2002[4] and September 11, 2002 Resolutions of the National Labor Relations Commission (NLRC) and directed petitioners, among others, to return the amount of ₱133,000.00 which they received from respondents by virtue of the Order[5] of the Labor Arbiter dated April 18, 2002.

The Factual Antecedents

Respondent Philippine Long Distance Telephone Company (PLDT) is a domestic corporation engaged in telecommunications business. On the other hand, petitioners were among the ninety-four (94) union officers and members who were dismissed by respondent PLDT due to their participation in the strike staged from December 22, 1992 to January 21, 1993 by the Manggagawa ng Komunikasyon sa Pilipinas (MKP), the collective bargaining agent of all rank and file employees of PLDT. The strike was, thereafter, declared illegal and the employees' dismissals were adjudged valid in the Resolution dated February 27, 1998 rendered

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[1] *Rollo*, pp. 11-29.

[2] *Id.* at 241-249. Penned by Justice Francisco P. Acosta, with Justices Juan Q. Enriquez, Jr. and Pampio A. Abarintos, concurring.

[3] *Id.* at 265-266.

[4] *Id.* at 54-61.

[5] *Id.* at 113-121.

by the NLRC to which the case was certified for compulsory arbitration.

Meanwhile, during the pendency of the case before the NLRC, the striking employees were admitted back to work in April 1993 subject to the outcome of the pending case. The NLRC Resolution was subsequently upheld by the Court in the Resolution dated August 3, 1998, which eventually attained finality and accordingly entered in the Book of Entries of Judgments.

In separate letters dated January 12, 1999, the concerned employees including petitioners were notified of their termination for cause citing the above Resolutions of the NLRC and the Court. Aggrieved, they filed separate complaints (which were thereafter consolidated) for illegal dismissal, money claims and damages against PLDT, averring that in the intervening time between their return to work in April 1993 and their dismissal on January 12, 1999, PLDT voluntarily extended to a number of the 94 employees the benefit of redundancy/early retirement program, and even promotions to high-ranking positions notwithstanding that the continuance of their employment was subject to the outcome of the pending case. They claimed that the foregoing acts constituted supervening events or voluntary acts amounting to a waiver/condonation of the effects of the illegality of strike which rendered the NLRC and Supreme Court Resolutions moot and academic.

For its part, PLDT denied any condonation/waiver and interposed the defense of *res judicata* claiming that the issue of the validity of the employees' dismissals had already been resolved with finality by the Court.

In the Decision[6] dated March 15, 2000, Labor Arbiter Vicente R. Layawen rejected the claim of *res judicata* and declared the dismissal of the concerned employees illegal. He found PLDT's acts of granting benefits of early retirement/redundancy program, extending promotions, and re-assigning the employees without any reservation or condition and without reference to the pending

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[6] *Id.* at 78-95.

cases as tantamount to its condonation of their unlawful acts. He thereby ordered PLDT to reinstate them, to pay their backwages with 12% interest per annum from their termination on January 12, 1999 and to pay attorney's fees.

Pending appeal with the NLRC, the concerned employees were reinstated in the payroll and received their salaries from April to December 2000 as well as other benefits.[7]

In the Decision[8] dated December 28, 2000, the NLRC vacated the above decision holding that the intent to waive/condone the effects of the illegal strike was not sufficiently established by the cited circumstances. However, considering that 29 of the employees involved were allowed to avail of early retirement and redundancy benefits, it awarded to the other employees a similar benefit of one-half month pay per year of service as financial assistance on the basis of equitable and humanitarian considerations.

The parties filed their respective petitions for *certiorari* before the CA, docketed as CA-G.R. SP Nos. 68415 and 68770.[9] However, both petitions were dismissed in the Decision dated March 18, 2005[10] which was affirmed in the Resolution of the Court dated January 16, 2006 in G.R. Nos. 170607-08 that became final and executory and entered in the Book of Entries of Judgments on April 5, 2006.

Meanwhile on March 14, 2001, MKP and PLDT signed a new Collective Bargaining Agreement (CBA), among others, granting all PLDT employees the amount of ₱133,000.00 each in lieu of wage increases during the first year of the CBA. The

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[7] Resolution dated June 21, 2002, *id.* at 57.

[8] *Id.* at 96-111.

[9] Petitioners questioned the NLRC's reversal of the Labor Arbiter's Decision, while respondents assailed the NLRC's award of financial assistance to petitioners.

[10] Penned by Justice Ruben T. Reyes, with Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring.

CBA was made effective November 9, 2000, the day immediately following the expiration of the old CBA. The concerned employees filed motions for execution before the Labor Arbiter seeking payment of salaries and other benefits granted under the new CBA.

The Ruling of the Labor Arbiter

In the Order[11] dated April 18, 2002, Labor Arbiter Jaime M. Reyno adjudged the entitlement of the employees to the payment of the amount of ₱133,000.00 each granted under the CBA, explaining that the said benefit accrued on November 9, 2000 prior to the reversal by the NLRC on December 28, 2000 of the March 15, 2000 Decision of Labor Arbiter Layawen, and thus, included in the reinstatement aspect of the latter decision pending appeal. He thereby directed respondents to pay the concerned employees the said amount or a total of ₱6,517,000.00 (later reduced to ₱6,384,000.00).[12]

The Ruling of the NLRC

On appeal, the NLRC sustained the above order in the Resolution[13] dated June 21, 2002, holding that the said grant is no different from the other benefits that were received by petitioners as a consequence of their reinstatement pending appeal.

Upon the employees' motions, Labor Arbiter Reyno ordered PLDT's bank, Equitable PCI Bank, Ayala Locsin Branch, to release the garnished amount of ₱6,384,000.00 to the Sheriff

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[11] *Rollo*, pp. 113-121.

[12] One of the recipients of the ₱133,000.00 benefit, Apolonio Constantino, Jr., was subsequently excluded from the list of recipients (*id.* at 56), thus:

original total amount	₱6,517,000.00
less: exclusion of Apolonio Constantino	(133,000.00)
corrected total amount	₱6,384,000.00

[13] *Id.* at 54-61.

for deposit with the NLRC cashier,[14] which was subsequently released to the employees.[15]

The Ruling of the CA

In the assailed November 24, 2009 Resolution, the CA vacated the NLRC Decision and ordered each petitioner to return the amount of ₱133,000.00 they received by virtue of the April 18, 2002 Order of Labor Arbiter Reyno. It found that the concerned employees were no longer employees at the time of the signing of the CBA on March 14, 2001 notwithstanding that its effectivity was made retroactive to November 9, 2000. Thus, not being members of the bargaining unit, they cannot claim benefits under the CBA.

Issue before the Court

In the instant case, petitioners insist that they are entitled to the payment of the CBA-imposed ₱133,000.00 because the CBA became effective on November 9, 2000 prior to the December 28, 2000 NLRC Decision that declared their dismissal as valid.

On the other hand, respondents contend that the parties to the CBA came to an agreement on the terms and conditions thereof only on March 14, 2001. Hence, since the petitioners were no longer part of the bargaining unit represented by MKP at that time, they can no longer avail of the benefits under the new CBA. Accordingly, the grant to them of the CBA-imposed ₱133,000.00 per employee is a form of unjust enrichment.

The Court's Ruling

The petition is bereft of merit.

Settled is the rule that the benefits of a CBA extend only to laborers and employees who are members of the collective bargaining unit.[16]

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[14] Order dated September 26, 2002, *id.* at 155.

[15] Order dated October 2, 2002, *id.* at 156.

[16] *Philippine Airlines, Incorporated v. Philippine Airlines Employees Association (PALEA),* G.R. No. 142399, March 12, 2008, 548 SCRA 117, 130.

In the present case, the Court's August 3, 1998 Resolution sustaining petitioners' dismissal as a consequence of their participation in the illegal strike became final on January 18, 1999. Accordingly, PLDT informed them of their termination for cause on the basis of the said Resolution. While they challenged their dismissals upon a claim that supervening events evincing an intent on the part of PLDT to waive/condone the effects of the illegal strike had set in which rendered the final Resolution of the Court moot and academic, the Court, in the Resolution dated January 16, 2006 in G.R. Nos. 170607-08, ruled out the presence of supervening events. As such, it is only proper to reckon the termination of petitioners' employment with PLDT to January 18, 1999.

Consequently, petitioners were no longer employees of PLDT nor members of the collective bargaining unit represented by MKP when the CBA was signed on March 14, 2001 or when it became effective on November 9, 2000 and are, thus, not entitled to avail of the benefits under the new CBA. Accordingly, the Court finds no reversible error on the part of the CA in directing each of the petitioners to return the amount of ₱133,000.00 which they respectively received from respondents.

WHEREFORE, the assailed November 24, 2009 Decision and March 25, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 72889 are hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192908. August 22, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **ST. VINCENT DE PAUL COLLEGES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE ON THE SIXTY-DAY PERIOD TO FILE THE PETITION, EXPLAINED.— A reading of the x x x rulings leads to the simple conclusion that *Laguna Metts Corporation* involves a strict application of the general rule that **petitions for *certiorari* must be filed strictly within sixty (60) days from notice of judgment or from the order denying a motion for reconsideration**. *Domdom*, on the other hand, **relaxed the rule and allowed an extension of the sixty (60)-day period subject to the Court's sound discretion**. *Labao v. Flores* subsequently laid down some of the exceptions to the strict application of the rule[.] x x x Note that *Labao* explicitly recognized the general rule that the sixty (60)-day period within which to file a petition for *certiorari* under Rule 65 is non-extendible, only that there are certain exceptional circumstances, which may call for its non-observance. Even more recently, in *Mid-Islands Power Generation Corporation v. Court of Appeals*, the Court, taking into consideration *Laguna Metts Corporation* and *Domdom*, "relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest" and affirmed the extension granted by the CA to the respondent Power One Corporation due to the exceptional nature of the case and the strong public interest involved.

2. ID.; ID.; ID.; ID.; EXCEPTIONAL CIRCUMSTANCES WARRANTING THE RELAXATION OF THE SIXTY-DAY PERIOD RULE, PRESENT IN CASE AT BAR.— [U]nder Section 4, Rule 65 of the Rules of Court and as applied in *Laguna Metts Corporation*, the general rule is that a petition for *certiorari* must be filed within sixty (60) days from notice

of the judgment, order, or resolution sought to be assailed. Under exceptional circumstances, however, and subject to the sound discretion of the Court, said period may be extended pursuant to *Domdom*, *Labao and Mid-Islands Power* cases. Accordingly, the CA should have admitted the Republic's petition: *first*, due to its own lapse when it granted the extension sought by the Republic per Resolution dated April 30, 2009; *second*, because of the public interest involved, *i.e.*, expropriation of private property for public use (MCTEP); and *finally*, no undue prejudice or delay will be caused to either party in admitting the petition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Triste Nalda & Associates for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, where petitioner Republic of the Philippines (Republic), represented by the Department of Public Works and Highways through the Office of the Solicitor General, questions the resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 108499, to wit:

1. Resolution dated October 30, 2009[2] dismissing petitioner's petition for *certiorari* under Rule 65 for being filed out of time; and

2. Resolution dated July 15, 2010[3] denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 15-44.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Arturo G. Tayag and Michael P. Elbinias, concurring; *id.* at 45-52.

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

Antecedent Facts

The instant case arose from two cases filed by the Republic seeking expropriation of certain properties in the name of St. Vincent de Paul Colleges, Inc. (St. Vincent). In Civil Case No. 0062-04, the Republic sought to expropriate 1,992 square meters out of a total area of 6,068 square meters of land for the construction of the Manila-Cavite Toll Expressway Project (MCTEP). Said property belongs to St. Vincent covered by TCT No. T-821169 and located in Binakayan, Kawit, Cavite. In Civil Case No. 0100-04, on the other hand, the Republic sought to expropriate 2,450 square meters out of a total area of 9,039 square meters, also belonging to St. Vincent and covered by TCT No. T-821170. Said property adjoins the property subject of Civil Case No. 0062-04.

Subsequently, the Republic filed in both cases an amended complaint alleging that the subject land originated from a free patent title and should be adjudicated to it without payment of just compensation pursuant to Section 112 of Commonwealth Act No. 141.

On August 9, 2005, the Republic filed in Civil Case No. 0062-04 a motion for the issuance of an order of expropriation.[4] It was granted by the trial court per Order[5] dated August 16, 2005, ruling that the Republic has a lawful right to take the 1,992 square meters portion of the subject property, with "no pronouncement as to just compensation" since the subject property originated from a free patent.[6] A motion for the issuance of an order of expropriation was likewise filed by the Republic in Civil Case No. 0100-04 but before this could be resolved, the Republic moved to consolidate the two cases, which was granted by the trial court.[7]

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[4] Under the sala of Acting Presiding Judge Rommel D. Baybay; *id.* at 98-102.

[5] *Id.* at 103.

[6] *Id.*

[7] *Id.* at 131.

On November 16, 2006, the trial court denied St. Vincent's motion for reconsideration of its Order dated August 16, 2005 granting expropriation.[8] As alleged in the petition, no appeal was taken by St. Vincent from said orders.[9]

After almost 2 years, or on July 28, 2008, St. Vincent filed a Manifestation with Motion for Clarification of the Order dated August 16, 2005,[10] contending that although it does not oppose the ruling regarding the determination of public purpose and the Republic's right to expropriate the subject land, it, however, claims that it is entitled to just compensation.

Meanwhile, the Republic attempted to implement the Order dated August 16, 2005 by entering the subject portion of St. Vincent's property. Aggrieved, the latter demanded upon the Republic and its agents to immediately vacate, and remove any and all equipment or structures they introduced on its property in a demand-letter[11] dated October 3, 2008.

Due to St. Vincent's refusal to honor the order of expropriation, the Republic filed an urgent motion for the issuance of a writ of possession, which was denied by the lower court in its Order[12] dated November 25, 2006 [2008]. The lower court, however, modified its Order dated August 16, 2005 and required the Republic to immediately pay St. Vincent in an amount equivalent to one hundred percent (100%) of the value of the property sought to be expropriated. The Republic moved for reconsideration but it was denied by the lower court per Order[13] dated January 29, 2009 for lack of factual and legal basis.

Seeking to avail the extra ordinary remedy of *certiorari* under Rule 65 of the Rules of Court, the Republic filed with the CA

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[8] *Id.* at 132.

[9] *Id.* at 22.

[10] *Id.* at 133-139.

[11] *Id.* at 159.

[12] *Id.* at 190-193.

[13] *Id.* at 203-204.

a motion for additional time of fifteen (15) days within which to file its petition. The CA granted the motion in its Resolution[14] dated April 30, 2009 and the Republic was given a non-extensible period of fifteen (15) days or until May 4, 2009 within which to file its petition for *certiorari*.

On April 30, 2009, the Republic filed its petition for *certiorari* assailing the lower court's orders dated November 25, 2008 and January 29, 2009 for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.

On June 19, 2009, the CA, *motu proprio,* issued a Resolution[15] ordering the Republic to show cause why its petition for *certiorari* should not be dismissed for being filed out of time, pursuant to A.M. No. 07-7-12-SC.

The Republic filed its Compliance with Explanation[16] dated July 1, 2009 pleading for the relaxation of the rules by reason of the transcendental importance of the issues involved in the case and in consideration of substantial justice. St. Vincent filed its Comment/Opposition[17] dated July 15, 2009 alleging among others that the said explanation is merely *pro forma* due to the Republic's failure to justify its explanation.

On October 30, 2009, the CA rendered the assailed resolution dismissing the Republic's petition for *certiorari* on the ground that the petition was filed out of time inasmuch as extensions of time are now disallowed by A.M. No. 07-7-12-SC[18] and as applied in *Laguna Metts Corporation v. Court of Appeals*.[19]

On November 26, 2009, the Republic filed its motion for reconsideration alleging that it merely relied in good faith on

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[14] *Id.* at 211.

[15] *Id.* at 247.

[16] *Id.* at 248-255.

[17] *Id.* at 256-262.

[18] *Id.* at 48-52.

[19] G.R. No. 185220, July 27, 2009, 594 SCRA 139.

the appellate court's resolution granting the former an additional period of fifteen (15) days within which to file the subject petition.

On July 15, 2010, the CA rendered the assailed resolution denying the Republic's motion for reconsideration, stating that it cannot disobey the ruling in *Laguna Metts Corporation*.[20]

Hence, this petition.

The Republic relies on the CA resolution granting its motion for extension of time and upon the strength of the substantial merits of its petition. The Republic also invokes *Domdom v. Third and Fifth Divisions of the Sandiganbayan*,[21] where the Court ruled that absent a prohibition, motions for extensions are allowed, subject to the Court's sound discretion.

St. Vincent, however, contends that the present petition fails to neither allege any circumstance nor state any justification for the deliberate disregard of a very elementary rule of procedure like Section 4 of Rule 65 of the Rules of Court. And in the absence of any such circumstance or justification, the general rule on *pro forma* motions/pleadings must apply.

The Issue

The Republic discussed the substantial merits of its case; however, the CA did no more than include such matters in its narration of facts, and neither did St. Vincent dwell on said issues. Hence, the only issue to be resolved in this petition is whether the CA committed a reversible error when it dismissed the Republic's petition for *certiorari* for being filed out of time, pursuant to A.M. No. 07-7-12-SC.

The Court's Ruling

We GRANT the petition.

The Court notes that the CA Resolution dated April 30, 2009, which initially granted the Republic's motion for extension, was

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[20] *Rollo*, pp. 53-54.

[21] G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528.

premised on the mistaken notion that the petition filed by the latter was one for petition for review as a mode of appeal. The CA resolution stated, among others: "[P]rovided that this Motion for Extension of Time to File Petition for Review is seasonably filed, as prayed for, x x x."[22] Thus, the CA granted extension inasmuch as motions for this purpose are allowed by the rules.[23] On this score alone, the CA should have admitted the petition filed by the Republic since the latter merely relied on its Resolution dated April 30, 2009 granting the extension prayed for.

Nevertheless, the CA subsequently dismissed the petition filed by the Republic on the ground that the same was filed out of time, following A.M. No. 07-7-12-SC. In its Resolution dated July 15, 2010, which dismissed the Republic's motion for reconsideration, the CA also relied on the ruling in *Laguna Metts Corporation* that the sixty (60)-day period within which to file a petition for *certiorari* is non-extendible. The petitioner, however, insists that *Domdom* allows extensions of time to file a petition.

In order to resolve the instant controversy, the Court deems it necessary to discuss the relationship between its respective rulings in *Laguna Metts Corporation* and *Domdom* with respect to the application of the amendment introduced by A.M. No. 07-7-12-SC to Section 4, Rule 65 of the Rules of Court.

Before said amendment, Section 4 of Rule 65 originally provides:

> Sec. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board,

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[22] *Rollo*, p. 211.

[23] See RULES OF COURT, Rule 42, Section 1 and Rule 43, Section 4.

officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

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

As amended by A.M. No. 07-7-12-SC, Section 4 of Rule 65 now reads:

Sec. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

In interpreting said amendment, the Court, in *Laguna Metts Corporation*, held that:

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.

If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved. The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for *certiorari*.

The rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for *certiorari* under Rule 65 to delay a case or even defeat the ends of justice. Deleting the paragraph allowing extensions to file petition on compelling grounds did away with the filing of such motions. **As the Rule now stands, petitions for *certiorari* must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration**.[24] (Citation omitted and emphasis ours)

Nevertheless, *Domdom* later stated:

On the People's argument that a motion for extension of time to file a petition for *certiorari* is no longer allowed, the same rests on shaky grounds. Supposedly, the deletion of the following provision in Section 4 of Rule 65 by A.M. No. 07-7-12-SC evinces an intention to absolutely prohibit motions for extension:

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

The full text of Section 4 of Rule 65, *as amended* by A.M. No. 07-7-12-SC, reads:

x x x x x x x x x

That no mention is made in the above-quoted amended Section 4 of Rule 65 of a motion for extension, unlike in the previous for formulation, does not make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." Absent such prohibition,

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[24] *Supra* note 19, at 145-146.

motions for extensions are allowed, subject to the Court's sound discretion. The present petition may thus be allowed, having been filed within the extension sought and, at all events, given its merits.[25] **(Citation omitted and emphasis and underscoring ours)**

What seems to be a "conflict" is actually more apparent than real. A reading of the foregoing rulings leads to the simple conclusion that *Laguna Metts Corporation* involves a strict application of the general rule that **petitions for *certiorari* must be filed strictly within sixty (60) days from notice of judgment or from the order denying a motion for reconsideration**. *Domdom*, on the other hand, **relaxed the rule and allowed an extension of the sixty (60)-day period subject to the Court's sound discretion**.[26]

Labao v. Flores[27] subsequently laid down some of the exceptions to the strict application of the rule, *viz*:

> Under Section 4 of Rule 65 of the 1997 Rules of Civil Procedure, *certiorari* should be instituted within a period of 60 days from notice of the judgment, order, or resolution sought to be assailed. **The 60-day period is inextendible to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case**.
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>
> **However, there are recognized exceptions to their strict observance**, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not

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[25] *Supra* note 21, at 534-535.

[26] *Id.* at 535.

[27] G.R. No. 187984, November 15, 2010, 634 SCRA 723.

be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[28] (Citations omitted and emphasis ours)

Note that *Labao* explicitly recognized the general rule that the sixty (60)-day period within which to file a petition for *certiorari* under Rule 65 is non-extendible, only that there are certain exceptional circumstances, which may call for its non-observance. Even more recently, in *Mid-Islands Power Generation Corporation v. Court of Appeals*,[29] the Court, taking into consideration *Laguna Metts Corporation* and *Domdom*, "relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest" and affirmed the extension granted by the CA to the respondent Power One Corporation due to the exceptional nature of the case and the strong public interest involved.

In *Laguna Metts Corporation v. Court of Appeals*, we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for *certiorari* in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition for compelling reasons. Instead, **we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court**. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. x x x.

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[28] *Id.* at 730-732.

[29] G.R. No. 189191, February 29, 2012.

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*, we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, *ipso facto*, make the filing of a motion for extension to file a Rule 65 petition absolutely prohibited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. **Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.**

Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest. x x x:

x x x x x x x x x

The present Petition involves one of those exceptional cases in which relaxing the procedural rules would serve substantial justice and safeguard strong public interest. x x x Consequently, in order to protect strong public interest, this Court deems it appropriate and justifiable to relax the amendment of Section 4, Rule 65 under A.M. No. 07-7-12-SC, concerning the reglementary period for the filing of a Rule 65 petition. Considering that the imminent power crisis is an exceptional and meritorious circumstance, the parties herein should be allowed to litigate the issues on the merits. **Furthermore, we find no significant prejudice to the substantive rights of the litigants as respondent was able to file the Petition before the CA within the 15-day extension it asked for**. We therefore find no grave abuse of discretion attributable to the CA when it granted respondent Power One's Motion for Extension to file its Petition for *Certiorari*.[30] (Citations omitted and emphasis ours)

To reiterate, under Section 4, Rule 65 of the Rules of Court and as applied in *Laguna Metts Corporation*, the general rule is that a petition for *certiorari* must be filed within sixty (60) days from notice of the judgment, order, or resolution sought to be assailed. Under exceptional circumstances, however, and

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[30] *Id.*

subject to the sound discretion of the Court, said period may be extended pursuant to *Domdom, Labao and Mid-Islands Power* cases.

Accordingly, the CA should have admitted the Republic's petition: *first*, due to its own lapse when it granted the extension sought by the Republic per Resolution dated April 30, 2009; *second*, because of the public interest involved, *i.e.*, expropriation of private property for public use (MCTEP); and *finally*, no undue prejudice or delay will be caused to either party in admitting the petition.

WHEREFORE, premises considered, the petition is **GRANTED**. The Resolutions dated October 30, 2009 and July 15, 2010 of the Court of Appeals in CA-G.R. SP No. 108499 are **NULLIFIED**. The Court of Appeals is hereby **ORDERED** to **REINSTATE** and **ADMIT** the petition for *certiorari* filed by the Republic of the Philippines in CA-G.R. SP No. 108499 and to proceed with the case with dispatch.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Leonardo-de Castro,[*] *Perez,* and *Sereno, JJ.,* concur.

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[*] Additional member per Special Order No. 1286 dated August 22, 2012 *vice* Associate Justice Arturo D. Brion.

THIRD DIVISION

[G.R. No. 196883. August 22, 2012]

GLOBAL RESOURCE FOR OUTSOURCED WORKERS (GROW), INC. and MS RETAIL KSC/MS RETAIL CENTRAL MARKETING CO. and MR. EUSEBIO H. TANCO, *petitioners, vs.* **ABRAHAM C. VELASCO and NANETTE T. VELASCO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; CLAIM FOR OVERTIME PAY MAY STILL BE PASSED UPON BY THE COURT OF APPEALS DESPITE EMPLOYEE'S FAILURE TO APPEAL THE SAME BUT THE CA CANNOT AWARD SUCH CLAIM WITHOUT SUPPORTING EVIDENCE.— In the present case, although respondents were found to have been dismissed for cause, depriving them of overtime pay, if rightly due to them, would still amount to an impairment of substantive rights. Thus, following the dictates of equity and as an exception to the general rule, the Court finds it proper for the CA to have passed upon the matter of overtime pay, despite the fact that respondents did not appeal from the LA Decision denying the same claim. Be that as it may, a perusal of the records disclosed a dearth of evidence to support an award of overtime pay. x x x Accordingly, the CA's award for overtime pay must necessarily be recalled.

2. ID.; ID.; EMPLOYMENT CONTRACT; WHERE THE CONTRACT IS VAGUE, TRUE INTENTION OF THE PARTIES IS DETERMINED THROUGH THEIR CONTEMPORANEOUS AND SUBSEQUENT ACTS.— [W]hen the contract is vague and ambiguous, as in the case at bar, it is the Court's duty to determine the real intention of the contracting parties considering the contemporaneous and subsequent acts of the latter. x x x The respondents agreed to render four (4) shows per day with an estimated performance time of thirty (30) minutes. However, it should also be noted

that respondents were given time to prepare before each show and time to rest after every performance; thus, respondents would normally consume two (2) hours for each show. If respondents were required to render at least four (4) shows a day, they necessarily had to work for at least eight (8) hours a day. Since the petitioners employed a six-day workweek, it is an inevitable conclusion that respondents were required to work for at least 48 hours per week. The Court also notes that the respondents were properly apprised of the error in their employment contracts. Despite ample opportunity — more than half a year — to air out their misgivings on the matter and ask their employer for overtime pay, if they really believed that the 48 hours work per month was not erroneous, respondents did nothing. Respondents did not complain or assail the implementation of their true number of work hours. Instead, they proceeded to carry out their work under the correct 48-hour week schedule for more than half of the entire duration of their employment contract, without any protest. It was only before the LA that respondents raised their complaint on the matter for the first time. These circumstances indicate that respondents' protest was a mere afterthought. As such, it cannot sway the Court to accept that work for 48 hours per month was the true intention of the parties. An evaluation of the terms of the employment contracts and the acts of the parties indeed reveal that their true intention was for the respondents to perform work of at least forty eight (48) hours per week, and not 48 hours per month. It should be emphasized that in case of conflict between the text of a contract and the intent of the parties, it is the latter that prevails, for intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies or ambiguities. To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; REQUIREMENTS FOR A VALID DISMISSAL OF AN EMPLOYEE; EMPLOYER'S FAILURE TO OBSERVE TWIN-NOTICE RULE, ENTITLES THE EMPLOYEE TO NOMINAL DAMAGES AND ATTORNEY'S FEES.— To be totally free from liability, the employer must not only show sufficient ground for the termination of employment but it must also comply with procedural due process by giving the

employees sought to be dismissed two notices: 1) notice of the intention to dismiss, indicating therein the acts or omissions complained of, coupled with an opportunity for the employees to answer and rebut the charges against them; and 2) notice of the decision to dismiss. MS Retail failed in this respect. While it notified respondents of their dismissal in its letter dated September 23, 2008, it failed to furnish them with a written notice of the charges thus, denying them a reasonable opportunity to explain their side. The petitioners' failure to observe due process when it terminated respondents' employment for just cause did not invalidate the dismissal but rendered petitioners liable for nominal damages. Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. The amount thereof is addressed to the sound discretion of the court. Considering the prevailing circumstances in the case at bar, the Court deems it proper to ward to each of the respondents PhP30,000.00 as nominal damages. With respect to the attorney's fees, while the CA, in the body of its Decision found respondents entitled to such award, it omitted to include the same in the dispositive portion of its Decision. Such award must, however, be upheld, not only because labor cases take much time to litigate, but also because these require special dedication and expertise on the part of the pro-worker's counsel. Therefore, it is just to award attorney's fees of PhP30,000.00 to each of the respondents.

APPEARANCES OF COUNSEL

Dela Rosa & Nograles for petitioners.
Gonzales Dela Rosa Hemedez Law Firm for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate

his business.[1] However, this power is never unbridled and the exercise thereof should unfailingly comply with both substantive and procedural requirements of the law.

This is an appeal under Rule 45 of the Revised Rules of Court which seeks to reverse the January 31, 2011 Decision[2] and May 13, 2011 Resolution[3] of the Court of Appeals holding the petitioners liable for overtime pay, nominal damages and attorney's fees.

The Facts

Petitioner Global Resource for Outsourced Workers (GROW), Inc. is a domestic corporation engaged in the placement of workers for overseas deployment, with petitioner Eusebio Tanco as its President.[4]

Sometime in January 2008, respondents Abraham Velasco and Nanette Velasco (collectively respondents) were hired by petitioners MS Retail KSC/MS Retail Central Marketing Co. (MS Retail),[5] through GROW, as Circus Performer and Circus Performer-Assistant, respectively, at MS Retail's Store located in Kuwait.

Based on their employment contracts, respondents Abraham and Nanette were entitled to monthly salaries of KD 650 or USD 2,303.92 and KD 150 or USD 531.87, respectively,[6] under the following work schedule:[7]

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[1] *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 663.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florita S. Macalino, concurring, *rollo*, pp. 52-61.

[3] *Id.* at 62-63.

[4] *Id.* at 14.

[5] *Id.* at 195.

[6] *Id.* at 53.

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

No. of shows per day	:	4 shows/day
No. of work days per week	:	6 days/wk.
No. of work hours per month	:	48 hrs/mo.

It was also stipulated that MS Retail may determine the hours of work assigned to respondents "from time to time in accordance with the general and particular requirements of the operation" of MS Retail.[8] Moreover, when respondents are not actually performing shows, they may be asked to carry out duties as the business may require.[9]

Respondents arrived in Kuwait on February 22, 2008 and were made to perform shows after a brief orientation. In a meeting with the store manager of MS Retail, they brought up their work hours and show schedules as provided for in their employment contract. They were, however, informed that the work hours of "48 hrs/mo" as appearing in the contract, was a typographical error as the correct number of their working hours was 48 hours per week, to which they complied.

On August 26, 2008, respondents went to Thailand on approved vacation leave. On September 2, 2008, respondent Abraham sent an electronic mail (email) to Mr. Joseph San Juan, the Human Resources Coordinator of MS Retail, advising him of their inability to return for work on September 3, 2008 because of the political protests in Thailand and that they had rebooked their return flight to Kuwait on September 10, 2008.[10] However,

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[8] *Id.* at 79-80, 84-85.

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

[10] *Id.* at 168. Respondent Abraham's email dated September 2, 2008 is reproduced verbatim below:

"greetings po sir joey. si abe po ito, pasensya na po di pa po kami makakabalik this sept 2 kasi po nagkaron pong problem dito sa bangkok. sobrang gulo po ngayon dito. nakakaron po kasi ng riot at rally everyday kadalasan po walang pasok ang schools at office dahil nga po magulo dahil meron po silang gustong pababain na opisyal sa government. pde nyo yun check sa news sa internet. nagparebook na po kami ng ticket kaya lang ang available flight lang po ng pinakamaaga is sep 10. nag email po ako sa inyo last sunday kaya lang bumalik po sakin kasi mali po ung

contrary to their representation, the respondents proceeded to the Philippines on September 9, 2008.[11]

On September 17, 2008, Mr. San Juan emailed respondents asking for their definite date of return to Kuwait and warning them that if they do not immediately return to work before the end of the month, they will be dismissed from employment for cause.[12]

The respondents ignored the said email. Thus, on September 23, 2008, MS Retail terminated their employment through email, which reads:[13]

Please be informed that we are terminating your employment contract with MS Retail effective today, 23rd September 2008. Due to Kuwait Private Labour Law Article 55. "The employer has the right to terminate the labourer without notice and indemnity in the following cases:

c) If he has been absent from duty for more that [*sic*] seven consecutive days without any legal reason."

Therefore, company decided to terminate your employment contract and blacklist both of you in entering Kuwait.

Consider this email as your official termination letter.

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email address na nasa akin, natanong tanong na lang po ako kaya po ngayon ko lang nacheck yung correct email nyo. pasensya na po uli. salamat po."

[11] *Id.* at 54.

[12] *Id.* at 169; Mr. San Juan's electronic email dated September 17, 2008 states:

"When are you coming back to Kuwait? This extension is not acceptable anymore, all your extended days will be considered as leave without pay and ***this is our final warning to both of you****. If you don't come back to Kuwait before the end of this month, we have no option but to terminate your employment contract and immediately backlist both of you in Kuwait plus other GCC country. Baroue are refunding some money to customers because some of the party they selected involves your show in the package.*

Please let us know when you coming back to Kuwait. We need a confirmed date."

[13] *Id.* at 170.

Unknown to MS Retail, the respondents had already filed a labor case for constructive dismissal, breach of contract, and payment of the remaining portion of their contracts, damages and attorney's fees on September 15, 2008.[14] They claimed that, contrary to the terms of their employment contracts, they were made to work for at least eight (8) hours a day or 48 hours per week, without overtime pay. Moreover, they were assigned work not related to their task as circus performers. Hence, they were deemed to have been constructively dismissed, warranting the payment of the unexpired portion of their contract, damages and attorney's fees.[15]

Labor Arbiter's Ruling

The Labor Arbiter (LA) granted respondents' claim in her April 8, 2009 Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering GLOBAL RESOURCES FOR OUTSOURCED WORKERS AND MS RETAIL KSC jointly and severally liable to pay complainants Abraham C. Velasco and Nannette T. Velasco their salaries for the unexpired portion of their employment contract for six (6) months:
>
> 1.) Abraham Velasco
> (US$2,303.92 x 6 mos.) = US$13,823.52
>
> 2.) Nannette Velasco
> (US$531.87 x 6 mos.) = US$43,191.22*
> TOTAL US$57,014.74**
>
> 3.) Ten (10%) percent Atty.'s fees - US$5,701.47***
>
> All other claims are dismissed for want of basis.

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[14] *Id.* at 54.

[15] *Id.* at 197.

* Should be US$3,191.22.

** Should be US$17,014.74.

*** Should be US$1,701.47.

SO ORDERED.[16]

The LA found respondents to have been constructively dismissed from service without just cause, debunking petitioners' defense that respondents abandoned their work as shown by the immediate filing of the complaint for illegal dismissal.[17]

Respondents' claim for overtime pay was, however, denied for the reason that indeed a typographical error was committed in providing the number of working hours as 48 hours per month instead of 48 hours per week. The LA made the observation that "it is a known practice that employees work for a regular eight (8) hours a day and 48 hours for 6 days work."[18]

Only petitioners filed an appeal before the National Labor Relations Commission (NLRC). The respondents did not appeal the denial of their claim for overtime pay.

Ruling of NLRC

On October 30, 2009, the NLRC Second Division rendered its Decision[19] dismissing the complaint for constructive/illegal dismissal on the ground of abandonment.[20]

The NLRC found no basis to sustain the charge of constructive dismissal premised on petitioners' act of imposing a greater number of working hours different from that stipulated in the

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[16] *Id.* at 204.

[17] *Id.* at 200.

[18] *Id.* at 202.

[19] *Id.* at 225-240.

[20] *Id.* at 239. The dispositive portion of the Decision reads:

"IN LIGHT OF THE FOREGOING, we modify the assailed Decision. We affirm that part denying complainants' claims for overtime and damages. However, we REVERSE the finding below of illegal dismissal as well as the award of the salaries of the complainants for the unexpired portion of their contract, including the award of attorney's fees, for being without lawful basis. Accordingly, the complaint below for constructive dismissal/ illegal dismissal and money claims is hereby DISMISSED for lack of merit.

SO ORDERED."

employment contract. It affirmed the standard practice of other employees working as party entertainers in the store of MS Retail of rendering an average of eight (8) hours a day or forty-eight (48) hours work for one (1) week, as well as the LA's finding of typographical error in the working hours provided for under respondents' contract.[21]

In contrast to the findings of the LA, the NLRC gave credence to petitioners' claim of abandonment, holding that the respondents' "continuing absence from work without any justifiable reason, notwithstanding notice with warning for them to return to work, coupled with their actual flight back to Philippines, indicated an *animus* to no longer go back to their work in Kuwait."[22] Respondents' Motion for Reconsideration[23] was denied in the NLRC Resolution dated January 25, 2010, prompting the filing of a petition for *certiorari* before the Court of Appeals.

Ruling of the Court of Appeals

On January 31, 2011, the CA rendered the assailed Decision[24] holding that while respondents were validly terminated, the petitioners failed to comply with the twin-notice rule, to wit: first informing the respondents of the charge and affording them an opportunity to be heard, then subsequently advising them of their termination. Petitioners were then held liable for nominal damages and attorney's fees. Finally, the CA found respondents entitled to overtime pay for work rendered in excess of 48 hours per month.

The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby PARTLY GRANTED. Accordingly, the assailed Decision dated October 30, 2009 and Resolution January 25, 2010 of the

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[21] *Id.* at 236-237.

[22] *Id.* at 239.

[23] *Id.* at 241-251.

[24] *Id.* at 52-63.

NLRC are AFFIRMED with MODIFICATION. MS Retail is hereby ordered to pay petitioners the following:

1. PhP30,000.00 each for non-compliance with statutory due process; and

2. Overtime pay for work rendered in excess of the forty eight (48) hours work per month.

The case is hereby REMANDED to the Labor Arbiter for proper computation of the money claims.

SO ORDERED.

Issues Presented Before the Court

In the present petition for review, the validity of the dismissal of the respondents was not assailed. The only issues raised are:

(1) Whether or not the CA erred in granting the respondents overtime pay considering that its denial by the LA was not appealed by the respondents.

(2) Whether or not the CA erred in awarding nominal damages and attorney's fees to the respondents.

The Court's Ruling

The petition is partly meritorious.

The petitioners contend that the failure of the respondents to appeal the ruling of the LA denying the latter's claim for overtime pay rendered the same final and binding upon them. The contention lacks merit.

In the case of *Bahia Shipping Services, Inc. v. Chua*,[25] the Court cited an exception to the rule that a party who has not appealed cannot obtain any affirmative relief other than the one granted in the appealed decision. It stated:

Indeed, a party who has failed to appeal from a judgment is deemed to have acquiesced to it and can no longer obtain from the appellate court any affirmative relief other than what was already granted

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[25] G.R. No. 162195, April 8, 2008, 550 SCRA 600, 609.

under said judgment. However, when strict adherence to such technical rule will impair a substantive right, such as that of an illegally dismissed employee to monetary compensation as provided by law, then equity dictates that the Court set aside the rule to pave the way for a full and just adjudication of the case.

In the present case, although respondents were found to have been dismissed for cause, depriving them of overtime pay, if rightly due to them, would still amount to an impairment of substantive rights. Thus, following the dictates of equity and as an exception to the general rule, the Court finds it proper for the CA to have passed upon the matter of overtime pay, despite the fact that respondents did not appeal from the LA Decision denying the same claim.

Be that as it may, a perusal of the records disclosed a dearth of evidence to support an award of overtime pay.

As a general rule, the factual findings of the CA when supported by substantial evidence on record are final and conclusive and may not be reviewed on appeal.[26] This is, however, subject to several exceptions, one of which is when there is a conflict between the factual findings of the CA and the NLRC, as in this case, warranting review by the Court.[27]

Petitioners argue that the "48 hours per month" work schedule stipulated in the employment contract is a mere typographical error, the true intention of the parties being for the respondents to render work of at least 48 hours per week.

The Court agrees with the petitioners.

Obligations arising from contracts, like an employment contract, have the force of law between the contracting parties and should be complied with in good faith.[28] When the terms of

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[26] *Wensha Spa Center, Inc. v. Yung*, G.R. No. 185122, August 16, 2010, 628 SCRA 311, 320.

[27] *Id.*; *Sps. Estonina v. Court of Appeals*, G.R. No. 111547, January 27, 1997, 266 SCRA 627, 635-636.

[28] Civil Code, Art. 1159.

a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations governs.[29] However, when the contract is vague and ambiguous, as in the case at bar, it is the Court's duty to determine the real intention of the contracting parties considering the contemporaneous and subsequent acts of the latter.[30]

The employment contracts of the respondents provide that their work schedule shall be as follows:[31]

No. of shows per day:	4 shows/day
No. of work days per week:	6 days/wk.
No. of work hours per month:	48 hrs/mo.

The respondents agreed to render four (4) shows per day with an estimated performance time of thirty (30) minutes. However, it should also be noted that respondents were given time to prepare before each show and time to rest after every performance; thus, respondents would normally consume two (2) hours for each show.[32] If respondents were required to render at least four (4) shows a day, they necessarily had to work for at least eight (8) hours a day. Since the petitioners employed a six-day workweek, it is an inevitable conclusion that respondents were required to work for at least 48 hours per week.

The Court also notes that the respondents were properly apprised of the error in their employment contracts. Despite ample opportunity — more than half a year — to air out their misgivings on the matter and ask their employer for overtime pay, if they really believed that the 48 hours work per month was not erroneous, respondents did nothing. Respondents did not complain or assail the implementation of their true number of work hours. Instead, they proceeded to carry out their work under the correct 48-hour week schedule for more than half of

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[29] Civil Code, Art. 1370.

[30] Civil Code, Art. 1371.

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

[32] *Id.* at 377-378.

the entire duration of their employment contract, without any protest. It was only before the LA that respondents raised their complaint on the matter for the first time. These circumstances indicate that respondents' protest was a mere afterthought. As such, it cannot sway the Court to accept that work for 48 hours per month was the true intention of the parties.

An evaluation of the terms of the employment contracts and the acts of the parties indeed reveal that their true intention was for the respondents to perform work of at least forty eight (48) hours per week, and not 48 hours per month.

It should be emphasized that in case of conflict between the text of a contract and the intent of the parties, it is the latter that prevails,[33] for intention is the soul of a contract, not its wording which is prone to mistakes, inadequacies or ambiguities.[34] To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.[35]

Accordingly, the CA's award for overtime pay must necessarily be recalled.

On the second issue, it is unassailed that the respondents abandoned their work when they failed without valid reason to resume their duties after their leave of absence expired on September 3, 2008. Thus, the CA correctly ruled that the termination of the respondents' employment on September 23, 2008 was with just cause. Nonetheless, the Court cannot absolve petitioners from liability.

Book V, Rule XIV, of the Omnibus Rules Implementing the Labor Code outlines the procedure for termination of employment, to wit:

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[33] *Id.*

[34] *Marquez v. Espejo*, G.R. No. 168387, August 25, 2010, 629 SCRA 117, 140, citing *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 143.

[35] *Id.*

Section 1. Security of tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

Section 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

x x x x x x x x x

Section 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.

Section 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

To be totally free from liability, the employer must not only show sufficient ground for the termination of employment but it must also comply with procedural due process by giving the employees sought to be dismissed two notices: 1) notice of the intention to dismiss, indicating therein the acts or omissions complained of, coupled with an opportunity for the employees to answer and rebut the charges against them; and 2) notice of the decision to dismiss.[36] MS Retail failed in this respect. While it notified respondents of their dismissal in its letter dated September 23, 2008, it failed to furnish them with a written notice of the charges thus, denying them a reasonable opportunity to explain their side.

The petitioners' failure to observe due process when it terminated respondents' employment for just cause did not invalidate the dismissal but rendered petitioners liable for nominal

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[36] *MGG Marine Services, Inc. v. NLRC*, G.R. No. 114313, July 29, 1996, 259 SCRA 664, 677.

damages.[37] Under the Civil Code, nominal damages is adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[38] The amount thereof is addressed to the sound discretion of the court. Considering the prevailing circumstances in the case at bar, the Court deems it proper to award to each of the respondents PhP30,000.00 as nominal damages.[39]

With respect to the attorney's fees, while the CA, in the body of its Decision found respondents entitled to such award, it omitted to include the same in the dispositive portion of its Decision. Such award must, however, be upheld, not only because labor cases take much time to litigate, but also because these require special dedication and expertise on the part of the pro-worker's counsel.[40] Therefore, it is just to award attorney's fees of PhP30,000.00 to each of the respondents.

Finally, a more complete and just resolution of the present case calls for the determination of the nature of the liability of all the petitioners. The Court notes that the CA ordered only MS Retail to pay respondents. However, Section 10 of Republic Act 8042,[41] as amended by Republic Act 10022,[42] provides for

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[37] *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617; *JAKA Food Processing Corp. v. Pacot*, G.R. No. 151378, March 28, 2005, 454 SCRA 119, 125.

[38] Civil Code, Art. 2221.

[39] See note 38.

[40] *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 600.

[41] The Migrant Workers and Overseas Filipinos Act of 1995.

[42] An Act Amending Republic Act No. 8042, Otherwise Known as The Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes; it became a law on March 8, 2010 and took effect on May 9, 2010 after satisfying the publication requirement.

the solidary liability of the principal and the recruitment agency, to wit:

SEC. 10. *Money Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary **and other forms of damage.** Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/ placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/ placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.** (*Emphasis supplied*)

In view of the foregoing, the liability for the monetary awards granted to respondents shall be jointly and severally borne by all the petitioners.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Decision and Resolution of the Court of Appeals are hereby **MODIFIED** by **DELETING** the award for overtime pay and **ORDERING** petitioners to jointly and severally pay each of the respondents PhP30,000.00 as nominal damages and PhP30,000.00 as attorney's fees.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[A.C. No. 9259. August 23, 2012]

JASPER JUNNO F. RODICA, *complainant, vs.* **ATTY. MANUEL "LOLONG" M. LAZARO, ATTY. EDWIN M. ESPEJO, ATTY. ABEL M. ALMARIO, ATTY. MICHELLE B. LAZARO, ATTY. JOSEPH C. TAN, and JOHN DOES,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; A LAWYER SHOULD BE MORE CIRCUMSPECT AND PRUDENT IN HIS ACTUATIONS.— Atty. Espejo x x x admitted drafting Rodica's Manifestation and Motion to Withdraw Motion for Reconsideration indicating therein the firm name of the Lazaro Law Office as well as his name and the names of Atty. Manuel and Atty. Michelle without the knowledge and consent of his superiors, and in likewise affixing his signature thereon. x x x Atty. Espejo was well aware that Rodica was represented by another counsel in the RTC case. As a practicing lawyer, he should know that it is the said counsel, Atty. Ibutnande, who has the duty to prepare the said motion. In fact, he himself stated that it is Atty. Ibutnande who is in a better position to evaluate the merit of the withdrawal of the Motion for Reconsideration. Atty. Espejo's claim that he drafted and signed the pleading just to extend assistance to Rodica deserves scant consideration. It is true that under Rules 2.01 and 2.02, Canon 2 of the Code of Professional Responsibility, a lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed, and in such cases, even if he does not accept a case, shall not refuse to render legal advise to the person concerned if only to the extent necessary to safeguard the latter's right. However, in this case, Rodica cannot be considered as defenseless or oppressed considering that she is properly represented by counsel in the RTC case. Needless to state, her rights are amply safeguarded. It would have been different had Rodica not been represented by any lawyer, which, however, is not the case. Moreover, the Court wonders why Atty. Espejo,

knowing fully well that Rodica is not their law firm's client and without the knowledge and consent of his superiors, gave in to Rodica's request for him to indicate in the said motion the names of his law firm, Atty. Manuel and Atty. Michelle for the purpose of "giving more weight and credit to the pleading." As a member of the bar, Atty. Espejo ought to know that motions and pleadings filed in courts are acted upon in accordance with their merit or lack of it, and not on the reputation of the law firm or the lawyer filing the same. More importantly, he should have thought that in so doing, he was actually assisting Rodica in misrepresenting before the RTC that she was being represented by the said law firm and lawyers, when in truth she was not. It is well to remind Atty. Espejo that before being a friend to Rodica, he is first and foremost an officer of the court. Hence, he is expected to maintain a high standard of honesty and fair dealings and must conduct himself beyond reproach at all times. He must likewise ensure that he acts within the bounds of reason and common sense, always aware that he is an instrument of truth and justice. As shown by his actuations, Atty. Espejo fell short of what is expected of him. Under the circumstances, Atty. Espejo should have exercised prudence by first diligently studying the soundness of Rodica's pleas and the repercussions of his acts. We note that on August 5, 2011, or even before the filing of the disbarment complaint, Atty. Espejo already caused the filing of his Motion to Withdraw Appearance before the RTC. Therein, Atty. Espejo already expressed remorse and sincere apologies to the RTC for wrongly employing the name of the Lazaro Law Office. Considering that Atty. Espejo is newly admitted to the Bar (2010), we deem it proper to warn him to be more circumspect and prudent in his actuations.

APPEARANCES OF COUNSEL

MOST Law for Atty. Joseph C. Tan.

R E S O L U T I O N

DEL CASTILLO, *J.*:

"The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons."[1]

This is a Complaint[2] for disbarment filed by Jasper Junno F. Rodica (Rodica) against Atty. Manuel "Lolong" M. Lazaro (Atty. Manuel), Atty. Edwin M. Espejo (Atty. Espejo), Atty. Abel M. Almario (Atty. Almario), Atty. Michelle B. Lazaro (Atty. Michelle), and Atty. Joseph C. Tan (Atty. Tan) for gross and serious misconduct, deceit, malpractice, grossly immoral conduct, and violation of the Code of Professional Responsibility.

Factual Antecedents

On May 5, 2011, William Strong (Strong), an American, was arrested and detained by the operatives of the Bureau of Immigration. Strong sought the assistance of Philip[3] G. Apostol (Apostol), a friend and neighbor, to secure the services of a lawyer. Apostol referred him to Atty. Manuel, who is a partner at the M.M. Lazaro and Associates Law Office (Lazaro Law Office).

Atty. Manuel initially declined because his law office only handles cases of its retained clients and those known to him or any of the associate lawyers.[4] However, he was eventually prevailed upon by Apostol who would consider it as a special favor if Atty. Manuel would handle Strong's case. Hence, Atty. Manuel, together with Atty. Almario and Atty. Espejo, senior and junior associates, respectively, at the Lazaro Law Office,

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[1] *Gatmaytan, Jr. v. Atty. Ilao*, 490 Phil. 165, 166 (2005), citing *De Guzman v. Tadeo*, 68 Phil. 554, 558 (1939).

[2] *Rollo*, pp. 1-34.

[3] Also spelled as Phillip in some parts of the records.

[4] *Rollo*, pp. 248-249.

agreed to meet Strong at the Taguig Detention Center of the Bureau of Immigration.[5]

During the meeting, Atty. Manuel explained to Strong the terms of the Lazaro Law Office's engagement as well as the fees. Strong assured him of his capacity to pay and offered to pay a success fee of US$100,000.00 should the said law office be able to expedite his release from detention as well as his departure from the Philippines.[6] Finding Strong to be believable and trustworthy, Atty. Manuel agreed to handle his case.[7]

During the course of their meeting, Strong casually mentioned that he has a property in Boracay and that he suspected his neighbors as the persons who caused his arrest. According to Strong, his live-in partner Rodica filed a Complaint before the Regional Trial Court (RTC) of Kalibo, Aklan, for recovery of possession and damages[8] (against Hillview Marketing Corporation[9] (Hillview), Stephanie Dornau (Dornau) as President of Hillview, the Alargo Park Neighborhood Association, Inc. and spouses Robert and Judy Gregoire) in connection with the 353-square meter property they bought in Boracay. He disclosed that he and Rodica had been trying to sell the Boracay property to rid themselves of the problems but could not find buyers because of the said case. They even offered the property to Apostol but the latter was hesitant because of the said pending case. Atty. Manuel averred that towards the end of the interview with Strong, Rodica arrived. Strong described Rodica as his "handyman" who will act as his liaison in the case.

Upon inquiry with the Bureau of Immigration, it was discovered that Strong's arrest was made pursuant to an Interpol Red Notice;

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[5] *Id.* at 249.

[6] *Id.* at 250.

[7] *Id.* at 249.

[8] *Id.* at 299-312.

[9] Also referred to as Hillview Equities and Resources, Inc. in some parts of the records.

and that Strong is wanted in Brazil for Conspiracy to Commit Fraud, Setting Up a Gang and Other Related Crimes. Specifically, Strong is being indicted for his alleged involvement in "an international gang involved in shares fraud which led to the creation of hundreds of millions of dollars in illegal securities."[10] Strong denied any participation in the alleged crime. Strong then pleaded with Atty. Manuel to expedite his deportation to any country except Brazil and reiterated his willingness to pay the success fee of US$100,000.00.

In her Complaint, Rodica alleged that in one of her meetings with the lawyers of the Lazaro Law Office, she hinted that Atty. Tan, a senior partner at the Marcos Ochoa Serapio Tan and Associates (MOST Law) and who is also the lawyer of Hillview and Dornau, was instrumental in the immigration case of Strong. According to Rodica, Atty. Manuel called up Atty. Tan. Thereafter, Atty. Manuel allegedly informed Rodica that Atty. Tan admitted having initiated the immigration case resulting in the detention of Strong; that Atty. Tan threatened to do something bad against Rodica and her family; and that Atty. Tan demanded for Rodica to withdraw the RTC case as part of a settlement package.

On May 25, 2011, the Bureau of Immigration, rendered its Judgment[11] granting the motion of Strong to voluntarily leave the country. On May 31, 2011, Strong left the Philippines. Subsequently, or on June 6, 2011, Rodica filed with the RTC a motion effectively withdrawing her complaint.

Rodica alleged that after the deportation of Strong and the withdrawal of the RTC case, she heard nothing from the Lazaro Law Office. She also claimed that contrary to her expectations, there was no "simultaneous over-all settlement of [her] grievances x x x [with] the defendants [in the RTC] case.[12] Thinking that

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[10] *Rollo*, p. 193.

[11] *Id.* at 382-383.

[12] *Id.* at 7.

she was deceived, Rodica filed the instant administrative case. In sum, she claimed that:

> 21. RESPONDENT ATTORNEYS (MANUEL, MICHELLE, EDWIN and ABEL) of M.M. LAZARO & ASSOCIATES, furthermore, committed GRAVE MISCONDUCT & DECEIT to complainant and the courts when (among other things):
>
> (a.) they mis-represented to complainant that the withdrawal of her case at the Regional Trial Court at Kalibo (Branch VI-Civil Case No. 8987) was only the first step in an over-all settlement package of all her differences with her legal adversaries (*i.e.* Hillview Marketing Corporation and the latter's officials / Stephanie Dornau / Atty. Joseph Tan *etc.*), which respondent Manuel M. Lazaro had allegedly already taken care of;
>
> (b.) they extorted from her more than ₱7 MILLION for alleged professional / legal fees and PENALTIES involved in William Strong's immigration case, when what actually happened was -
>
> (c.) as complainant came to know later, almost all of said amount was allegedly used as "pay-off" to immigration, police and Malaca[ñ]ang officials as well as Atty. Joseph Tan, and as 'graft money'/ '*kotong*' / '*lagay*' / "*tong-pats*", for the expeditious approval of Mr. William Strong's voluntary deportation plea with the Bureau of Immigration;
>
> (d.) they even shamelessly denied the status of the complainant as their client, just so that they can evade their responsibility to her;
>
> (e.) they even submitted concocted stories (re Mr. Apostol's purchase bid for the Boracay villa of complainant; Atty. Espejo's attempt to cover-up for Lolong Lazaro and accept sole responsibility for signing the questioned manifestation and withdrawal documents last May 24, 2011, and many others) with the Regional Trial Court of Kalibo (Branch VI) just so that they can hide the truth, hide their crimes and go scot free;
>
> 22. RESPONDENT Atty. JOSEPH C. TAN on the other hand performed as a willing partner of ATTY. MANUEL M.

> LAZARO by acting as 'conduit' to his Malaca[ñ]ang patron ("JOHN DOE") in causing the arrest of William Strong last May 5, 2011, and in packaging with Lolong Lazaro of the 'magic formula' regarding William Strong's voluntary deportation bid and the conditions attached thereto as sufficiently explained;
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> x x x x x x x x x
>
> 23. RESPONDENTS also violated THEIR OATH AS x x x ATTORNEYS, especially with the phrases ". . . I will obey the laws . . . I will do no falsehood, nor consent to the doing of any in court ; . . . I will delay no man for money or malice . . . with all good fidelity as well to the courts as to my clients . . . ";[13]

Otherwise stated, Rodica claimed that she is a client of the Lazaro Law Office and that she was deceived into causing the withdrawal of the RTC case. Further, she claimed that the Lazaro Law Office collected exorbitant fees from her.

In their Comment, Atty. Almario and Atty. Espejo admitted being present in the May 13, 2011 meeting with Rodica. They denied, however, that Atty. Manuel talked with Atty. Tan during the said meeting, or conveyed the information that Atty. Tan and the group of Dornau were the ones behind Strong's arrest and detention.

Atty. Almario and Atty. Espejo disputed Rodica's assertion that the withdrawal of the RTC case was a condition *sine qua non* to Strong's departure from the country. They pointed out that the Manifestation with Motion to Withdraw Motion for Reconsideration[14] was filed only on June 3, 2011,[15] or nine days after the May 25, 2011 Judgment of the Bureau of Immigration was issued, and three days after Strong left the country on May

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

[14] *Id.* at 97-101.

[15] However, in the Order (*id.* at 239-241) of October 4, 2011, the RTC of Kalibo noted that Rodica filed on June 6, 2011 the Manifestation with Motion to Withdraw the Motion for Reconsideration.

31, 2011. They insisted that Rodica withdrew the RTC case because it was one of the conditions set by Apostol before buying the Boracay property.

As to the preparation of Rodica's Motion to Withdraw Motion for Reconsideration relative to the RTC case, Atty. Espejo claimed that the former begged him to prepare the said motion. Since the two already became close friends, Atty. Espejo accommodated Rodica's request. He admitted to acceding to Rodica's requests to put the name of the Lazaro Law Office, the names of its partners, as well as his name, in the motion and into signing the same, without the prior knowledge and consent of the other senior lawyers of the firm. Atty. Espejo claimed that he did all of these out of his good intention to help and assist Rodica in making the Boracay property more saleable by freeing it from any pending claims.

In his Comment,[16] Atty. Manuel contended that none of the lawyers of the Lazaro Law Office communicated with Atty. Tan relative to the deportation proceedings or the RTC case. He claimed that it was highly improbable for the Lazaro Law Office to impress upon Rodica that it will coordinate with Atty. Tan for the withdrawal of the RTC case to expedite the deportation proceedings as the RTC case was already dismissed as early as March 29, 2011 for failure to state a cause of action. Atty. Manuel averred that the two cases are incongruous with each other and one cannot be used to compromise the other.

Atty. Joseph Tan's Arguments

For his part, Atty. Tan asserted that the allegations against him are "double hearsay" because the same were based on information allegedly relayed to Rodica by Atty. Manuel, who, in turn, allegedly heard it from Atty. Tan.[17] He denied any participation in the withdrawal of the RTC case and the arrest and deportation of Strong.

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[16] *Rollo*, pp. 243-298.

[17] See Atty. Tan's Comment dated April 12, 2012, *id.* at 416-445.

Atty. Tan stressed that Strong was deported on May 31, 2011. Three days thereafter, or on June 3, 2011, Rodica, with the assistance of her counsel of record, Atty. Joan I. Tabanar-Ibutnande (Atty. Ibutnande), filed the Manifestation with Motion to Withdraw Motion for Reconsideration. He averred that if it is indeed true, as Rodica alleged, that the filing of the said motion was a pre-condition to Strong's voluntary deportation, then the filing of the same should have preceded Strong's deportation. However, it was the reverse in this case.

Atty. Tan also pointed out that it would be inconceivable for him to participate in Strong's arrest as he had already obtained a favorable ruling "on the merits" for his clients in the RTC case even before Strong was arrested and incarcerated. Besides, Strong is not a party and had nothing to do with the RTC case. Atty. Tan likewise denied having any dealings with the rest of the respondents insofar as the arrest and voluntary deportation of Strong are concerned. Neither did he receive any phone call or message from his co-respondents nor did he communicate with them in any manner regarding Strong's case.

Issue

The sole issue to be resolved is whether the allegations in Rodica's Complaint merit the disbarment or suspension of respondents.

Our Ruling

In *Siao v. Atty. De Guzman, Jr.*,[18] this Court reiterated its oft repeated ruling that in suspension or disbarment proceedings, lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove her allegations by preponderant evidence. Elaborating on the required quantum of proof, this Court declared thus:

> Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the

[18] A.C. No. 7649, December 14, 2011.

court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number. (Citations omitted.)

In the absence of preponderant evidence, the presumption of innocence of the lawyer continues and the complaint against him must be dismissed.[19]

In the present case, the totality of evidence presented by Rodica failed to overcome the said presumption of innocence.

Rodica's claim of "settlement package" is devoid of merit.

Rodica's assertions that Atty. Tan orchestrated Strong's arrest and that Atty. Manuel proposed the withdrawal of the RTC case to facilitate the deportation of Strong, are mere allegations without proof and belied by the records of the case. "The basic rule is that mere allegation is not evidence, and is not equivalent to proof."[20] Aside from her bare assertions, Rodica failed to present even an iota of evidence to prove her allegations. In fact, the records belie her claims. The documents issued by the Bureau of Immigration showed that Strong was the subject of the Interpol Red Notice for being a fugitive from justice wanted for crimes allegedly committed in Brazil.[21] His warrant of arrest was issued sometime in February 2008. Significantly, even before

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[19] *Atty. Dela Cruz v. Atty. Diesmos*, 528 Phil. 927, 928-929 (2006).

[20] *Villanueva v. Philippine Daily Inquirer, Inc.*, G.R. No. 164437, May 15, 2009, 588 SCRA 1, 11.

[21] *Rollo*, pp. 198-199.

Strong was arrested and eventually deported, Atty. Tan had already obtained a favorable judgment for his clients.

We also agree that it is highly inconceivable for Atty. Tan and the Lazaro Law Office to concoct the scheme of "pressuring" Rodica to withdraw the RTC case for the purpose of expediting the deportation proceedings of Strong. The following facts are undisputed: (1) Rodica's counsel of record in the RTC is Atty. Ibutnande; (2) the RTC case was already dismissed in the Order[22] of March 29, 2011 for failure to state a cause of action; (3) on April 18, 2011, Rodica through her counsel of record filed a Motion for Reconsideration; (4) on May 5, 2011, Strong was arrested and detained pursuant to an Interpol Red Notice; (5) Strong hired the Lazaro Law Office to handle his deportation case; (6) on May 19, 2011 Strong filed a Manifestation with Omnibus Motion to voluntarily leave the country; (7) the Bureau of Immigration rendered a Judgment[23] dated May 25, 2011 granting Strong's motion to voluntarily leave the country; (8) Strong left the country on May 31, 2011; (9) Rodica's Manifestation with Motion to Withdraw the Motion for Reconsideration was filed on June 6, 2011; and, (8) acting on the said Manifestation with Motion, the RTC on June 14, 2011 issued an Order[24] granting the same.

Given the chronology of events, there appears no relation between the deportation case and the withdrawal of the RTC case. Thus, it would be specious if not far-fetched to conclude that the withdrawal of the RTC case was a pre-condition to Strong's deportation.

As regards the alleged participation of Atty. Manuel in the "settlement package" theory of Rodica, suffice it to say that Atty. Manuel has in his favor "the presumption that, as an officer of the court, he regularly performs the duties imposed upon him by his oath as a lawyer and by the Code of Professional

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[22] *Id.* at 340-344.

[23] *Id.* at. 382-383.

[24] *Id.* at 239-241.

Responsibility."[25] Hence, absent any competent evidence to the contrary, Atty. Manuel, as Strong's counsel, is presumed to have worked out the release and subsequent deportation of his client in accordance with the proper procedures.

Preponderance of evidence shows that Rodica caused the withdrawal of the RTC case to facilitate the sale of the Boracay property to Apostol.

We cannot lend credence to Rodica's allegation that she was deceived by Atty. Manuel, Atty. Espejo, Atty. Almario and Atty. Michelle, another senior associate at the Lazaro Law Office, into believing that the withdrawal of the RTC case was part of a settlement package to settle her differences with her legal adversaries. We accord more credence to the explanation of the respondents, particularly Atty. Espejo, that in the course of rendering legal services to Strong, he had become close to Rodica so much so that he accommodated Rodica's request to cause the withdrawal of the RTC case to facilitate the sale of the Boracay property to Apostol.

In their Joint Comment,[26] respondents Attys. Almario, Espejo and Michelle debunked the opinion of Rodica's "well-meaning lawyer friends" that the withdrawal of the RTC case "absolve[d] all defendants from any wrong-doing" and made "the contents of her original complaint practically meaningless." Atty. Almario and Atty. Espejo opined that since the dismissal of Rodica's complaint was based on her failure to state a cause of action and without prejudice, the same may simply be re-filed by revising her complaint and ensuring that it states a cause of action.

As argued by Atty. Manuel, he and his lawyers only acted in the best interest of their client Strong and rendered services in accordance with the latter's objective of leaving the country

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[25] *People v. Cabodoc*, 331 Phil. 491, 505 (1996).

[26] *Rollo*, pp. 153-187.

and not being deported to Brazil. The Lazaro Law Office cannot be faulted for the dismissal of the RTC case because it had already been dismissed even before the Lazaro Law Office was engaged to handle Strong's immigration case. Besides, Rodica admittedly agreed to withdraw her RTC case to meet Apostol's condition and to make the property marketable.

Apostol corroborated Atty. Manuel's statement in his Affidavit[27] of July 21, 2011. He affirmed that he told Rodica that he would only consider purchasing the Boracay property if it is cleared of any pending case so that he can protect himself, as a buyer, from any possible issues that may crop up involving the said property. According to him, Rodica assured him that she would work for the termination of the RTC case and consult her lawyers in Boracay on the matter so she could already sell the property.

It is difficult to imagine that Rodica was deceived by some of the respondent lawyers into believing that the withdrawal of the RTC case was only the initial step in the settlement of her differences with her adversaries.[28] We went over the said Manifestation with Motion to Withdraw the Motion for Reconsideration[29] and we note that paragraph 6 thereof specifically states:

> 6. However, the Plaintiff respectfully manifests that after much serious thought and deliberation, and considering the anxieties caused by the pendency of the instant case, Plaintiff is no longer interested in pursuing the case. Accordingly, Plaintiff respectfully moves for the withdrawal of the Motion for Reconsideration dated April 14, 2011 of the Order dated March 29, 2011 dismissing the instant Complaint filed on April 18, 2011.[30]

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[27] *Id.* at 95-96.

[28] *Id.* at 32.

[29] *Id.* at 97-101.

[30] *Id.* at 98.

As already noted by the RTC, Branch 6, Kalibo, Aklan in its Order[31] dated April 4, 2011, in the case for recovery of possession with damages:[32]

> This Manifestation was signed by plaintiff, her Manila lawyers and Atty. Joan Ibutnande[,] plaintiff's counsel on record. From the statements made by plaintiff in her Manifestation to Withdraw Motion for Reconsideration that she had made serious thoughts and deliberation she cannot now say that she was manipulated and forced in signing the same. The Court perceives plaintiff to be an intelligent woman not to be swayed of her principles and beliefs and manipulated by others, she may have a fickle mind when it comes to other things but definitely it can not be applied to the Court.
>
> The Court does not see the connection between the instant case and that of William Strong as alleged by the plaintiff. Mr. Strong is not a party in this case, even plaintiff's counsel thought so too. From the Motion for Reconsideration filed by Atty. Joan Ibutnande, it was stated in paragraph 5: "That the undersigned counsel was baffled as she did not see any connection [between] the incident surrounding the arrest of Mr. William Strong and the above-entitled case filed [by] the [plaintiff], and told the plaintiff about it x x x." As Mr. Strong is not a party in the instance case, his affairs whatever [they are] can not dictate the outcome of this case.[33]

Moreover, it would appear from her own narration that Rodica is not someone who is naïve or ignorant. In her complaint, she claimed to be an astute businesswoman who even has some business in Barcelona, Spain.[34] Thus, the more reason we cannot lend credence to her claim that she was tricked into believing that the withdrawal of the RTC case was only preliminary to the complete settlement of all her differences with her perceived adversaries. If such had been the agreement, then a Compromise Agreement enumerating all the terms and conditions should have

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[31] *Id.* at 411-413.

[32] Docketed as Civil Case No. 8987.

[33] *Rollo*, pp. 412-413.

[34] *Id.* at 2.

been filed instead of the Manifestation with Motion to Withdraw the Motion for Reconsideration. In addition, the withdrawal should not have been limited to the RTC case as it appears that there are other cases pending with other tribunals and agencies[35] involving the same parties. If Rodica is to be believed, then these cases should likewise have been dismissed in order to achieve the full and complete settlement of her concerns with her adversaries.

From the above and by preponderance of evidence, it is clear that Rodica's purpose in withdrawing the RTC case is to pave the way for Apostol to purchase the Boracay property. In fact, Rodica eventually executed a Deed of Absolute Sale in favor of Apostol over the Boracay property.[36]

Rodica's claim of paying more than ₱7 million to the Lazaro Law Office is not substantiated.

There is likewise no merit in Rodica's allegation that the Lazaro Law Office extorted from her more than ₱7 million for alleged professional and legal fees and penalties relative to Strong's immigration case. To support her claim, Rodica attached four statements of account issued by the Lazaro Law Office for US$2,650.00 under Statement of Account No. 13837,[37] US$2,400.00 under Statement of Account No. 13838,[38] US$1,550.00 under Statement of Account No. 13839[39] and US$8,650.00 under Statement of Account No. 13835,[40] or for a total amount of US$15,250.00. She likewise presented photocopies of portions of her dollar savings account passbook to show where the aforesaid funds came from.

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[35] *Id.* at 2, 537-538.

[36] *Id.* at 402-403.

[37] *Id.* at 59.

[38] *Id.* at 60.

[39] *Id.* at 61.

[40] *Id.* at 62.

Considering the prevailing exchange rate at that time, the Court notes that the sum total of the abovementioned figures in its peso equivalent is far less than ₱7 million. In fact, the statements of account even support the contention of Atty. Manuel that Strong failed to fully pay the amount of US$100,000.00 as success fee. Anent the alleged withdrawals from Rodica's dollar savings account, the same merely established that she made those withdrawals. They do not constitute as competent proof that the amounts so withdrawn were indeed paid to Lazaro Law Office.

Rodica was not the client of the Lazaro Law Office.

Rodica also faulted the Lazaro Law Office lawyers for disclaiming that she is their client. However, Rodica admitted in paragraph 5 of her unnotarized Sworn Affidavit[41] that Atty. Manuel and his lawyer-assistants were "engaged by William [Strong] to handle his case with the Philippine immigration authorities." Thus, this Court is more inclined to believe that the Lazaro Law Office agreed to handle only the deportation case of Strong and such acceptance cannot be construed as to include the RTC case. In fact, all the billings of Lazaro Law Office pertained to the immigration case, and not to the RTC case. To reiterate, the RTC case has nothing to do with Strong's deportation case. Records also show that the RTC case was filed long before Strong was arrested and detained. In fact, it had already been dismissed by the trial court long before Strong engaged the legal services of the Lazaro Law Office. More importantly, Strong is not a party to the RTC case. Also, the counsel of record of Rodica in the RTC case is Atty. Ibutnande, and not the Lazaro Law Office. There is nothing on record that would show that respondent Attys. Manuel, Michelle, and Almario had any participation therein.

Atty. Espejo's participation in the RTC case.

However, we cannot say the same as regards Atty. Espejo. He admitted drafting Rodica's Manifestation and Motion to

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[41] *Id.* at 35-43.

Withdraw Motion for Reconsideration indicating therein the firm name of the Lazaro Law Office as well as his name and the names of Atty. Manuel and Atty. Michelle without the knowledge and consent of his superiors, and in likewise affixing his signature thereon.

Atty. Espejo acknowledged committing the abovementioned acts as a way of assisting Rodica who had already become his close friend. Atty. Espejo's admissions are as follows:

11. [Atty. Espejo] further recounts that after being advised to simply withdraw her Motion for Reconsideration ("MR"), [Rodica] pleaded with [Atty. Espejo] **to prepare the documents required to be filed with the RTC x x x to spare her Boracay lawyers from preparing the same.** [Atty. Espejo] accommodated Jasper and drafted the Manifestation with Motion to Withdraw Motion for Reconsideration ("Motion to Withdraw MR") to be given to [Rodica's] Boracay counsel, **Atty. Joan I. Tabanar-Ibutnande, who is in a better position to evaluate the merit of the withdrawal of the MR.**

11.1. Upon seeing [Atty. Espejo's] initial draft, **[Rodica] requested [Atty. Espejo] to include x x x the name of the [Lazaro] Law Office as signatory allegedly to give more credence and weight to the pleading** and to show the defendants in the RTC case her sincere intention to terminate the case. Due to [Rodica's] pleas and insistence, [Atty. Espejo], who among all lawyers of [the Lazaro] Law Office, became the most familiar and "chummy" with [Rodica], agreed to include the [Lazaro] Law Office and put his name as the signatory for the Office. Still not satisfied, [Rodica] pleaded with [Atty. Espejo] to further revise the Motion to Withdraw MR to include the names of [Atty. Manuel] and [Atty. Michelle] as signatories and represented that she herself will cause them to sign it. Relying on [Rodica's] representations that she would speak to [Atty. Manuel] about the matter, [Atty. Espejo] obliged to include the name of [Atty. Michelle and Atty. Manuel]. [Rodica] repeatedly reminded [Atty. Espejo] not to bother [Atty. Manuel] on the matter and that she herself will take it up with [Atty. Manuel] at the proper time.

11.2 [Atty. Espejo] has a soft heart. He signed the pleading only with good intentions of helping and assisting [Rodica], the common law wife of a client, whom he had learned to fancy because of being constantly together and attending to her. He never thought

ill of [Rodica] and believed her when she said she would speak to [Atty. Lazaro] about the matter as represented. [Atty. Espejo] only agreed to sign the pleading for purposes of withdrawing [Rodica's] MR to attain [Rodica's] purpose or desired result and objective – to convince or facilitate the sale to Apostol and/or to make the property more marketable to interested buyers and to attain peace with the defendants in the RTC case. Evidently, [Rodica] took advantage of [Atty. Espejo's] youth and naivete and manipulated him to do things on her behalf, and deliberately excluded [Atty. Almario] the senior lawyer. [Rodica] preferred to discuss matters with [Atty. Espejo] than with [Atty. Almario] as the latter often contradicts her views. [Atty. Espejo] apologized to [Atty. Manuel] for allowing himself to be manipulated by [Rodica].[42]

At the outset, Atty. Espejo was well aware that Rodica was represented by another counsel in the RTC case. As a practicing lawyer, he should know that it is the said counsel, Atty. Ibutnande, who has the duty to prepare the said motion. In fact, he himself stated that it is Atty. Ibutnande who is in a better position to evaluate the merit of the withdrawal of the Motion for Reconsideration.

Atty. Espejo's claim that he drafted and signed the pleading just to extend assistance to Rodica deserves scant consideration. It is true that under Rules 2.01 and 2.02, Canon 2 of the Code of Professional Responsibility, a lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed, and in such cases, even if he does not accept a case, shall not refuse to render legal advise to the person concerned if only to the extent necessary to safeguard the latter's right. However, in this case, Rodica cannot be considered as defenseless or oppressed considering that she is properly represented by counsel in the RTC case. Needless to state, her rights are amply safeguarded. It would have been different had Rodica not been represented by any lawyer, which, however, is not the case.

Moreover, the Court wonders why Atty. Espejo, knowing fully well that Rodica is not their law firm's client and without

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[42] *Id.* at 165-166.

the knowledge and consent of his superiors, gave in to Rodica's request for him to indicate in the said motion the names of his law firm, Atty. Manuel and Atty. Michelle for the purpose of "giving more weight and credit to the pleading." As a member of the bar, Atty. Espejo ought to know that motions and pleadings filed in courts are acted upon in accordance with their merit or lack of it, and not on the reputation of the law firm or the lawyer filing the same. More importantly, he should have thought that in so doing, he was actually assisting Rodica in misrepresenting before the RTC that she was being represented by the said law firm and lawyers, when in truth she was not.

It is well to remind Atty. Espejo that before being a friend to Rodica, he is first and foremost an officer of the court.[43] Hence, he is expected to maintain a high standard of honesty and fair dealings and must conduct himself beyond reproach at all times.[44] He must likewise ensure that he acts within the bounds of reason and common sense, always aware that he is an instrument of truth and justice.[45] As shown by his actuations, Atty. Espejo fell short of what is expected of him. Under the circumstances, Atty. Espejo should have exercised prudence by first diligently studying the soundness of Rodica's pleas and the repercussions of his acts.

We note that on August 5, 2011, or even before the filing of the disbarment complaint, Atty. Espejo already caused the filing of his Motion to Withdraw Appearance[46] before the RTC. Therein, Atty. Espejo already expressed remorse and sincere apologies to the RTC for wrongly employing the name of the Lazaro Law Office. Considering that Atty. Espejo is newly admitted to the Bar (2010), we deem it proper to warn him to be more circumspect and prudent in his actuations.

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[43] *Silva vda. de Fajardo v. Atty. Bugaring*, 483 Phil. 170, 184 (2004).

[44] *Overgaard v. Atty. Valdez*, A.C. No. 7902, September 30, 2008, 567 SCRA 118, 130.

[45] *Bantolo v. Atty. Castillon, Sr.*, 514 Phil. 628, 633 (2005).

[46] *Rollo*, pp. 78-83.

WHEREFORE, premises considered, the instant Complaint for disbarment against respondents Atty. Manuel "Lolong" M. Lazaro, Atty. Edwin M. Espejo, Atty. Abel M. Almario, Atty. Michelle B. Lazaro and Atty. Joseph C. Tan is **DISMISSED**. Atty. Edwin M. Espejo is **WARNED** to be more circumspect and prudent in his actuations.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 154213. August 23, 2012]

EASTERN MEDITERRANEAN MARITIME LTD. and AGEMAR MANNING AGENCY, INC., *petitioners, vs.* **ESTANISLAO SURIO, FREDDIE PALGUIRAN, GRACIANO MORALES, HENRY CASTILLO, ARISTOTLE ARREOLA, ALEXANDER YGOT, ANRIQUE BATTUNG, GREGORIO ALDOVINO, NARCISO FRIAS, VICTOR FLORES, SAMUEL MARCIAL, CARLITO PALGUIRAN, DUQUE VINLUAN, JESUS MENDEGORIN, NEIL FLORES, ROMEO MANGALIAG, JOE GARFIN and SALESTINO SUSA,** *respondents.*

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

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

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. 8042); R.A. 8042 DID NOT REMOVE FROM THE POEA THE ORIGINAL AND EXCLUSIVE JURISDICTION TO HEAR AND DECIDE DISCIPLINARY CASES INVOLVING OVERSEAS CONTRACT WORKERS, THUS, NLRC HAS NO APPELLATE JURISDICTION TO REVIEW THE DECISION OF THE POEA.— Petitioners' adamant insistence that the NLRC should have appellate authority over the POEA's decision in the disciplinary action because their complaint against respondents was filed in 1993 was unwarranted. Although Republic Act No. 8042, through its Section 10, transferred the original and exclusive jurisdiction to hear and decide *money claims* involving overseas Filipino workers from the POEA to the Labor Arbiters, the law did not remove from the POEA the original and exclusive jurisdiction to hear and decide all disciplinary action cases and other special cases administrative in character involving such workers. The obvious intent of Republic Act No. 8042 was to have the POEA focus its efforts in resolving all administrative matters affecting and involving such workers. This intent was even expressly recognized in the *Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995* promulgated on February 29, 1996[.] x x x It is clear to us, therefore, that the NLRC had no appellate jurisdiction to review the decision of the POEA in disciplinary cases involving overseas contract workers.

2. ID.; ID.; ID.; R.A. 8042 MAY BE APPLIED RETROACTIVELY.— Petitioners' position that Republic Act No. 8042 should not be applied retroactively to the review of the POEA's decision dismissing their complaint against respondents has no support in jurisprudence. Although, as a rule, all laws are prospective in application unless the contrary is expressly provided, or unless the law is procedural or curative in nature, there is no serious question about the retroactive applicability of Republic Act No. 8042 to the appeal of the POEA's decision on petitioners' disciplinary action against respondents. x x x Republic Act No. 8042 applies to petitioners' complaint by virtue of the case being then still pending or

undetermined at the time of the law's passage, there being no vested rights in rules of procedure. They could not validly insist that the reckoning period to ascertain which law or rule should apply was the time when the disciplinary complaint was originally filed in the POEA in 1993. Moreover, Republic Act No. 8042 and its implementing rules and regulations were already in effect when petitioners took their appeal. A statute that eliminates the right to appeal and considers the judgment rendered final and unappealable only destroys the right to appeal, but not the right to prosecute an appeal that has been perfected prior to its passage, for, at that stage, the right to appeal has already vested and cannot be impaired. Conversely and by analogy, an appeal that is perfected when a new statute affecting appellate jurisdiction comes into effect should comply with the provisions of the new law, unless otherwise provided by the new law. Relevantly, petitioners need to be reminded that the right to appeal from a decision is a privilege established by positive laws, which, upon authorizing the taking of the appeal, point out the cases in which it is proper to present the appeal, the procedure to be observed, and the courts by which the appeal is to be proceeded with and resolved. This is why we consistently hold that the right to appeal is statutory in character, and is available only if granted by law or statute.

3. ID.; ID.; ID.; APPELLATE JURISDICTION IN CASES DECIDED BY POEA IS NOW VESTED IN THE SECRETARY OF LABOR.— When Republic Act No. 8042 withheld the appellate jurisdiction of the NLRC in respect of cases decided by the POEA, the appellate jurisdiction was vested in the Secretary of Labor in accordance with his power of supervision and control under Section 38(1), Chapter 7, Title II, Book III of the *Revised Administrative Code of 1987*[.] x x x In conclusion, we hold that petitioners should have appealed the adverse decision of the POEA to the Secretary of Labor instead of to the NLRC. Consequently, the CA, being correct on its conclusions, committed no error in upholding the NLRC.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma and Carbonell for petitioners.

Capuyan and Quimpo Law Offices for respondents.

D E C I S I O N

BERSAMIN, *J.*:

On appeal is the decision the Court of Appeals (CA) promulgated on December 21, 2001 affirming the resolution of the National Labor Relations Commission (NLRC) declaring itself to be without appellate jurisdiction to review the decision of the Philippine Overseas Employment Administration (POEA) involving petitioners' complaint for disciplinary action against respondents.[1]

Respondents were former crewmembers of MT *Seadance*, a vessel owned by petitioner Eastern Mediterranean Maritime Ltd. and manned and operated by petitioner Agemar Manning Agency, Inc. While respondents were still on board the vessel, they experienced delays in the payment of their wages and in the remittance of allotments, and were not paid for extra work and extra overtime work. They complained about the vessel's inadequate equipment, and about the failure of the petitioners to heed their repeated requests for the improvement of their working conditions. On December 19, 1993, when MT *Seadance* docked at the port of Brofjorden, Sweden to discharge oil, representatives of the International Transport Federation (ITF) boarded the vessel and found the wages of the respondents to be below the prevailing rates. The ensuing negotiations between the ITF and the vessel owner on the increase in respondents' wages resulted in the payment by the vessel owner of wage differentials and the immediate repatriation of respondents to the Philippines.

Subsequently, on December 23, 1993, the petitioners filed against the newly-repatriated respondents a complaint for disciplinary action based on breach of discipline and for the

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[1] *Rollo*, pp. 19-26; penned by Associate Justice Mariano C. Del Castillo (now a Member of the Court), and concurred in by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but already retired) and Associate Justice Renato C. Dacudao (retired).

reimbursement of the wage increases in the Workers Assistance and Adjudication Office of the POEA.

During the pendency of the administrative complaint in the POEA, Republic Act No. 8042 (*Migrant Workers and Overseas Filipinos Act of 1995*) took effect on July 15, 1995. Section 10 of Republic Act No. 8042 vested original and exclusive jurisdiction over all money claims arising out of employer-employee relationships involving overseas Filipino workers in the Labor Arbiters, to wit:

> Section 10. *Money Claims*. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The jurisdiction over such claims was previously exercised by the POEA under the POEA *Rules and Regulations of 1991* (1991 POEA Rules).

On May 23, 1996, the POEA dismissed the complaint for disciplinary action. Petitioners received the order of dismissal on July 24, 1996.[2]

Relying on Section 1, Rule V, Book VII of the 1991 POEA Rules, petitioners filed a partial appeal on August 2, 1996 in the NLRC, still maintaining that respondents should be administratively sanctioned for their conduct while they were on board MT *Seadance*.

On March 21, 1997, the NLRC dismissed petitioners' appeal for lack of jurisdiction,[3] thus:

> We dismiss the partial appeal.

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[2] *Id.*, at 35.

[3] *Id.*, at 31-33.

The Commission has no jurisdiction to review cases decided by the POEA Administrator involving disciplinary actions. Under the Migrant Workers and Overseas Filipinos Act of 1995, the Labor Arbiter shall have jurisdiction over money claims involving employer-employee relationship (Sec. 10, R.A. 8042). Said law does not provide that appeals from decisions arising from complaint for disciplinary action rest in the Commission.

PREMISES CONSIDERED, instant appeal from the Order of May 23, 1996 is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.

Not satisfied, petitioners moved for reconsideration, but the NLRC denied their motion. They received the denial on July 8, 1997.[4]

Petitioners then commenced in this Court a special civil action for *certiorari* and *mandamus*. Citing *St. Martin Funeral Homes v. National Labor Relations Commission*,[5] however, the Court referred the petition to the CA on November 25, 1998.

Petitioners contended in their petition that:

THE NLRC GRAVELY ABUSED ITS DISCRETION AND/OR GRAVELY ERRED IN DISMISSING PETITIONERS' APPEAL AND MOTION FOR RECONSIDERATION WHEN IT REFUSED TO TAKE COGNIZANCE OF PETITIONERS' APPEAL DESPITE BEING EMPOWERED TO DO SO UNDER THE LAW.[6]

On December 21, 2001, the CA dismissed the petition for *certiorari* and *mandamus*, holding that the inclusion and deletion of overseas contract workers from the POEA blacklist/watchlist were within the exclusive jurisdiction of the POEA to the exclusion of the NLRC, and that the NLRC had no appellate jurisdiction to review the matter, *viz*:

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[4] *Id.*, at 6.

[5] *Id.*, at 58.

[6] *Id.*, at 119.

Section 10 of RA 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, provides that:

> "Money Claims – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
>
> x x x x x x x x x

Likewise, the Rules and Regulations implementing RA 8042 reiterate the jurisdiction of POEA, thus:

> "Section 28. Jurisdiction of the POEA. – The POEA shall exercise original and exclusive jurisdiction to hear and decide:
>
> a) All cases, which are administrative in character, involving or arising out of violations of rules and regulations relating to licensing and registration of recruitment and employment agencies or entities; and
>
> b) Disciplinary action cases and other special cases, which are administrative in character, involving employers, principals, contracting partners and Filipino migrant workers."

Further, Sections 6 and 7 Rule VII, Book VII of the POEA Rules & Regulations (1991) provide:

> "Sec. 6. Disqualification of Contract Workers. Contract workers, including seamen, against whom have been imposed or with pending obligations imposed upon them through an order, decision or resolution shall be included in the POEA Blacklist Workers shall be disqualified from overseas employment unless properly cleared by the Administration or until their suspension is served or lifted.
>
> Sec. 7. Delisting of the Contract Worker's Name from the POEA Watchlist. The name of an overseas worker may be excluded, deleted and removed from the POEA Watchlist only after disposition of the case by the Administration."

Thus, it can be concluded from the afore-quoted law and rules that, public respondent has no jurisdiction to review disciplinary cases decided by [the] POEA involving contract workers. Clearly, the matter of inclusion and deletion of overseas contract workers in the POEA Blacklist/Watchlist is within the exclusive jurisdiction of the POEA to the exclusion of the public respondent. Nor has the latter appellate jurisdiction to review the findings of the POEA involving such cases.

x x x x x x x x x

In fine, we find and so hold, that, no grave abuse of discretion can be imputed to the public respondent when it issued the assailed Decision and Order, dated March 21, 1997 and June 13, 1997, respectively, dismissing petitioners' appeal from the decision of the POEA.

WHEREFORE, finding the instant petition not impressed with merit, the same is hereby DENIED DUE COURSE. Costs against petitioners.

SO ORDERED.[7]

Issue

Petitioners still appeal, submitting to the Court the sole issue of:

WHETHER OR NOT THE NLRC HAS JURISDICTION TO REVIEW ON APPEAL CASES DECIDED BY THE POEA ON MATTERS PERTAINING TO DISCIPLINARY ACTIONS AGAINST PRIVATE RESPONDENTS.

They contend that both the CA and the NLRC had no basis to rule that the NLRC had no jurisdiction to entertain the appeal only because Republic Act No. 8042 had not provided for its retroactive application.

Respondents counter that the appeal should have been filed with the Secretary of Labor who had exclusive jurisdiction to review cases involving administrative matters decided by the POEA.

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[7] *Id.*, at 22-26.

Ruling

The petition for review lacks merit.

Petitioners' adamant insistence that the NLRC should have appellate authority over the POEA's decision in the disciplinary action because their complaint against respondents was filed in 1993 was unwarranted. Although Republic Act No. 8042, through its Section 10, transferred the original and exclusive jurisdiction to hear and decide *money claims* involving overseas Filipino workers from the POEA to the Labor Arbiters, the law did not remove from the POEA the original and exclusive jurisdiction to hear and decide all disciplinary action cases and other special cases administrative in character involving such workers. The obvious intent of Republic Act No. 8042 was to have the POEA focus its efforts in resolving all administrative matters affecting and involving such workers. This intent was even expressly recognized in the *Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995* promulgated on February 29, 1996, *viz*:

> Section 28. *Jurisdiction of the POEA.* – The POEA shall exercise original and exclusive jurisdiction to hear and decide:
>
> (a) all cases, which are administrative in character, involving or arising out of violations or rules and regulations relating to licensing and registration of recruitment and employment agencies or entities; and
>
> **(b) disciplinary action cases and other special cases, which are administrative in character, involving employers, principals, contracting partners and Filipino migrant workers.**
>
> Section 29. *Venue* – The cases mentioned in Section 28(a) of this Rule, may be filed with the POEA Adjudication Office or the DOLE/POEA regional office of the place where the complainant applied or was recruited, at the option of the complainant. The office with which the complaint was first filed shall take cognizance of the case.
>
> Disciplinary action cases and other special cases, as mentioned in the preceding Section, shall be filed with the POEA Adjudication Office.

It is clear to us, therefore, that the NLRC had no appellate jurisdiction to review the decision of the POEA in disciplinary cases involving overseas contract workers.

Petitioners' position that Republic Act No. 8042 should not be applied retroactively to the review of the POEA's decision dismissing their complaint against respondents has no support in jurisprudence. Although, as a rule, all laws are prospective in application unless the contrary is expressly provided,[8] or unless the law is procedural or curative in nature,[9] there is no serious question about the retroactive applicability of Republic Act No. 8042 to the appeal of the POEA's decision on petitioners' disciplinary action against respondents. In a way, Republic Act No. 8042 was a procedural law due to its providing or omitting guidelines on appeal. A law is procedural, according to *De Los Santos v. Vda. De Mangubat*,[10] when it –

> [R]efers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.

Republic Act No. 8042 applies to petitioners' complaint by virtue of the case being then still pending or undetermined at the time of the law's passage, there being no vested rights in rules of procedure.[11] They could not validly insist that the

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[8] The *Civil Code* provides:

Article 4. Laws shall have no retroactive effect, unless the contrary is provided.

[9] Agpalo, *Statutory Construction* (2003), p. 370.

[10] G.R. No. 149508, October 10, 2007, 535 SCRA 411, 422.

[11] *Fil-Estate Properties, Inc. v. Homena-Valencia*, G.R. No. 173942, June 25, 2008, 555 SCRA 345, 349; *Pfizer, Inc. v. Galan*, G.R. No. 143389, May 25, 2001, 358 SCRA 240, 246.

reckoning period to ascertain which law or rule should apply was the time when the disciplinary complaint was originally filed in the POEA in 1993. Moreover, Republic Act No. 8042 and its implementing rules and regulations were already in effect when petitioners took their appeal. A statute that eliminates the right to appeal and considers the judgment rendered final and unappealable only destroys the right to appeal, but not the right to prosecute an appeal that has been perfected prior to its passage, for, at that stage, the right to appeal has already vested and cannot be impaired.[12] Conversely and by analogy, an appeal that is perfected when a new statute affecting appellate jurisdiction comes into effect should comply with the provisions of the new law, unless otherwise provided by the new law. Relevantly, petitioners need to be reminded that the right to appeal from a decision is a privilege established by positive laws, which, upon authorizing the taking of the appeal, point out the cases in which it is proper to present the appeal, the procedure to be observed, and the courts by which the appeal is to be proceeded with and resolved.[13] This is why we consistently hold that the right to appeal is statutory in character, and is available only if granted by law or statute.[14]

When Republic Act No. 8042 withheld the appellate jurisdiction of the NLRC in respect of cases decided by the POEA, the appellate jurisdiction was vested in the Secretary of Labor in accordance with his power of supervision and control under Section 38(1), Chapter 7, Title II, Book III of the *Revised Administrative Code of 1987*, to wit:

Section 38. *Definition of Administrative Relationship.* – Unless otherwise expressly stated in the Code or in other laws defining the

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[12] Agpalo, *supra* at note 10, p. 386, citing *Pavon v. Phil. Island Telephone & Telegraph Co.*, 9 Phil. 247 (1907), *Priolo v. Priolo*, 9 Phil. 566, 567 (1908) and *Un Pak Lieng v. Nigorra*, 9 Phil. 486, 489 (1908).

[13] *Aragon v. Araullo*, 11 Phil. 7, 9 (1908).

[14] *Aris (Phil.) Inc. v. NLRC*, G.R. No. 90501, August 5, 1991, 200 SCRA 246, 253.

special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

Supervision and Control. – Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph. xxx.

Thus, Section 1, Part VII, Rule V of the 2003 POEA Rules and Regulations specifically provides, as follows:

Section 1. *Jurisdiction*. – The Secretary shall have the exclusive and original jurisdiction to act on appeals or petition for review of disciplinary action cases decided by the Administration.

In conclusion, we hold that petitioners should have appealed the adverse decision of the POEA to the Secretary of Labor instead of to the NLRC. Consequently, the CA, being correct on its conclusions, committed no error in upholding the NLRC.

WHEREFORE, we **AFFIRM** the decision promulgated on December 21, 2001 by the Court of Appeals; and **ORDER** the petitioners to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Villarama, Jr., Perez,[*] and *Perlas-Bernabe, JJ.*, concur.

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[*] Vice Associate Justice Mariano C. Del Castillo, who penned the decision of the Court of Appeals under review, per the raffle of July 25, 2012.

FIRST DIVISION

[G.R. No. 169254. August 23, 2012]

DE LA SALLE UNIVERSITY, *petitioner, vs.* **DE LA SALLE UNIVERSITY EMPLOYEES ASSOCIATION (DLSUEA-NAFTEU),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE DOCTRINE; APPLIED IN LABOR CASES.— We note that both G.R. No. 168477 and this petition are offshoots of petitioner's purported temporary measures to preserve its neutrality with regard to the perceived void in the union leadership. While these two cases arose out of different notices to strike filed on April 3, 2003 and August 27, 2003, it is undeniable that the facts cited and the arguments raised by petitioner are almost identical. **Inevitably, G.R. No. 168477 and this petition seek only one relief**, **that is**, **to absolve petitioner from respondent's charge of committing an unfair labor practice**, **or specifically**, **a violation of Article 248**(**g**) **in relation to Article 252 of the Labor Code**. For this reason, we are constrained to apply the law of the case doctrine in light of the finality of our July 20, 2005 and September 21, 2005 resolutions in G.R. No. 168477. In other words, our previous affirmance of the Court of Appeals' finding – that petitioner erred in suspending collective bargaining negotiations with the union and in placing the union funds in escrow considering that the intra-union dispute between the Aliazas and Bañez factions was not a justification therefor — is binding herein. Moreover, we note that entry of judgment in G.R. No. 168477 was made on November 3, 2005, and that put to an end to the litigation of said issues once and for all.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE; FINDINGS OF THE SECRETARY OF LABOR AND THE COURT OF APPEALS THAT THE EMPLOYER IS GUILTY OF UNFAIR LABOR PRACTICE FOR FAILURE TO BARGAIN COLLECTIVELY WITH THE UNION, UPHELD.— Petitioner's reliance on the July 12, 2002 Decision of Labor Arbiter Pati, and the NLRC's affirmance thereof, is

misplaced. The unfair labor practice complaint dismissed by Labor Arbiter Pati questioned petitioner's actions immediately after the March 19, 2001 Decision of BLR Regional Director Maraan, finding that "the reason for the hold-over [of the previously elected union officers] is already extinguished." The present controversy involves petitioner's actions subsequent to (1) the clarification of said March 19, 2001 Maraan Decision by BLR Director Cacdac who opined in a May 16, 2003 memorandum that the then incumbent union officers (*i.e.*, the Bañez faction) continued to hold office until their successors have been elected and qualified, and (2) the July 28, 2003 Decision of the Secretary of Labor in OS-AJ-0015-2003 ruling that the very same intra-union dispute (subject of several notices of strike) is insufficient ground for the petitioner to suspend CBA negotiations with respondent union. We take notice, too, that the aforesaid Decision of Labor Arbiter Pati has since been set aside by the Court of Appeals and such reversal was upheld by this Court's Second Division in its Decision dated April 7, 2009 in G.R. No. 177283, wherein petitioner was found liable for unfair labor practice. Neither can petitioner seek refuge in its defense that as early as November 2003 it had already released the escrowed union dues to respondent and normalized relations with the latter. The fact remains that from its receipt of the July 28, 2003 Decision of the Secretary of Labor in OS-AJ-0015-2003 until its receipt of the November 17, 2003 Decision of the Secretary of Labor in OS-AJ-0033-2003, petitioner failed in its duty to collectively bargain with respondent union without valid reason. At most, such subsequent acts of compliance with the issuances in OS-AJ-0015-2003 and OS-AJ-0033-2003 merely rendered moot and academic the Secretary of Labor's directives for petitioner to commence collective bargaining negotiations within the period provided. To conclude, we hold that the findings of fact of the Secretary of Labor and the Court of Appeals, as well as the conclusions derived therefrom, were amply supported by evidence on record. Thus, in line with jurisprudence that such findings are binding on this Court, we see no reason to disturb the same.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Edgar B. Afable and *Emelito A. Licerio* for respondent.

D E C I S I O N

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

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 4, 2005 Decision[1] and August 5, 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 82472, entitled *De La Salle University versus the Honorable Secretary of Labor and De La Salle University Employees Association* (*DLSUEA-NAFTEU*), which affirmed the November 17, 2003 Decision[3] and January 20, 2004 Order[4] of the Secretary of Labor in OS-AJ-0033-2003 (NCMB-NCR-NS-08-246-03). These decisions and resolutions consistently found petitioner guilty of unfair labor practice for failure to bargain collectively with respondent.

This petition involves one of the three notices of strike filed by respondent De La Salle University Employees Association (DLSUEA-NAFTEU) against petitioner De La Salle University due to its refusal to bargain collectively with it in light of the intra-union dispute between respondent's two opposing factions. The following narration of facts will first discuss the circumstances surrounding the said intra-union conflict between the rival factions of respondent union and, thereafter, recite the cases relating to the aforementioned conflict, from the complaint for unfair labor practice to the subsequent notices of strike, and to the assumption of jurisdiction by the Secretary of Labor.

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

[1] *Rollo* (G.R. No. 169252), pp. 46-55; penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring.

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

[3] *Id.* at 119-125; signed by Acting Secretary Manuel G. Imson.

[4] *Id.* at 127-133; signed by Secretary Patricia A. Sto. Tomas.

Petition for Election of Union Officers

On May 30, 2000, some of respondent's members headed by Belen Aliazas (the Aliazas faction) filed a petition for the election of union officers in the Bureau of Labor Relations (BLR).[5] They alleged therein that there has been no election for respondent's officers since 1992 in supposed violation of the respondent union's constitution and by-laws which provided for an election of officers every three years.[6] It would appear that respondent's members repeatedly voted to approve the hold-over of the previously elected officers led by Baylon R. Bañez (Bañez faction) and to defer the elections to expedite the negotiations of the economic terms covering the last two years of the 1995-2000 collective bargaining agreement (CBA)[7] pursuant to Article 253-A of the Labor Code.[8]

On March 19, 2001, BLR Regional Director Alex E. Maraan issued a Decision ordering the conduct of an election of union

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[5] *Id.* at 241; docketed as BLR-A-TR-41-5-8-01 (NLRC-OD-005-006-LRD).

[6] Petitioner contends that the non-holding of elections was also contrary to Article 241(c) of the Labor Code.

[7] *Rollo* (G.R. No. 169252), pp. 241-242.

[8] LABOR CODE, Article 253-A. *Terms of a Collective Bargaining Agreement.* — Any Collective Bargaining Agreement [CBA] that the parties may enter into shall, insofar as the representations aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty-day period immediately before the date of expiry of such five-year term of the [CBA]. All other provisions of the [CBA] shall be renegotiated not later than three (3) years after its execution. Any agreement of such other provisions of the [CBA] entered into within six (6) months from the date of expiry of the term of such other provisions as fixed in such [CBA], shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the [CBA], the parties may exercise their rights under this Code.

officers to be presided by the Labor Relations Division of the Department of Labor and Employment-National Capital Region (DOLE-NCR).[9] He noted therein that the members of the Bañez faction were not elected by the general membership but were appointed by the Executive Board to their positions since 1985.[10]

The Bañez faction appealed the said March 19, 2001 Decision of the BLR Regional Director.

While the appeal was pending, the Aliazas faction filed a Very Urgent Motion for Intervention in the BLR. They alleged therein that the Bañez faction, in complete disregard of the March 19, 2001 Decision, scheduled a "regular" election of union officers without notice to or participation of the DOLE-NCR.[11]

In an Order dated July 6, 2001, BLR Director IV Hans Leo J. Cacdac granted the motion for intervention.[12] He held that the unilateral act of setting the date of election on July 9, 2001 and the disqualification of the Aliazas faction by the DLSUEA-COMELEC supported the intervening faction's fear of biased elections.[13]

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[9] *Rollo* (G.R. No. 169252), pp. 218-224. The decretal portion stated:

WHEREFORE, in view of the foregoing, the petition for the conduct of an election of officers among the members of [respondent] is hereby GRANTED. Let the election of officers be conducted not later than 30 days from receipt of this order subject to pre-election conference to be presided by the Labor Relations Division to discuss/thresh out the mechanics of election.

[10] *Id.* at 219-220.

[11] *Id.* at 226.

[12] *Id.* at 226-227. The decretal portion stated:

WHEREFORE, without necessarily resolving the merits of the appeal and considering the urgency of the issues raised by [the Aliazas faction] and the limited time x x x the motion is hereby GRANTED. Consequently, [the Bañez faction] and/or the members of the DLSUEA- COMELEC x x x are hereby directed to cease and desist from conducting the x x x election of DLSUEA officers on July 9, 2001 until further orders from this office.

[13] *Id.* at 227.

Thereafter, in a Resolution dated May 23, 2002, BLR Director Cacdac dismissed the appeal of the Bañez faction. The salient portions thereof stated:

> The exercise of a union member's basic liberty to choose the union leadership is guaranteed in Article X of [respondent's] constitution and by-laws. Section 4 mandates the conduct of a regular election of officers on the first Saturday of July and on the same date every three years thereafter.
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> In unequivocal terms, Article 241(c) of the Labor Code states that "[t]he members shall directly elect their officers, including those of the national union or federation, to which they or their union is affiliated, by secret ballot at intervals of five (5) years."
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> [**The Bañez faction**] **admitted that no elections were conducted in 1992 and 1998**, **when the terms of office of the officers expired**. This Office emphasizes that even the decision to dispense with the elections and allow the hold-over officers to continue should have been subjected to a secret ballot under Article 241(d) which states:
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> > The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or *force majeure* renders such secret ballot impractical, in which case the board of directors of the organization may make the decision in behalf of the general membership.
>
> **With the clear and open admission that no election transpired even after the expiration of the union officers' terms of office**, **the call for the conduct of elections by the Regional Director was valid and should be sustained**.[14] (Emphases supplied.)

Subsequently, in a memorandum dated May 16, 2003, BLR Director Cacdac stated that there was no void in the union leadership as the March 19, 2001 Decision of Regional Director Maraan did not automatically terminate the Bañez faction's tenure in office. He explained therein that "[a]s duly-elected officers of [respondent], their leadership is not deemed terminated by

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[14] *Id.* at 241-246.

the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a hold-over capacity, until their successors shall have been elected and qualified."[15]

On August 28, 2003, an election of union officers under the supervision of the DOLE was conducted. The Bañez faction emerged as the winner thereof.[16] The Aliazas faction contested the election results.

On October 29, 2003, the Bañez faction was formally proclaimed as the winner in the August 28, 2003 election of union officers.[17]

The Complaint for Unfair Labor Practices and Three Notices of Strike

On March 20, 2001, despite the brewing conflict between the Aliazas and Bañez factions, petitioner entered into a five-year CBA covering the period from June 1, 2000 to May 31, 2005.[18]

On August 7, 2001, the Aliazas faction wrote a letter to petitioner requesting it to place in escrow the union dues and other fees deducted from the salaries of employees pending the resolution of the intra-union conflict. We quote the pertinent portion of the letter here:

The [BLR], in its March 19, 2001 [decision], declared that the hold-over capacity as president of Mr. Baylon Bañez, as well as that of the other officers [of respondent] has been extinguished. It

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[15] *Id.* at 416.

[16] *Id.* at 345-346; Minutes of the Election of Officers at the De La Salle University Employees Association with Case No. NCR-OD-0005-006-LRD on August 28, 2003.

[17] *Id.* at 124; Resolution issued by Regional Director Ciriaco N. Lagunzad.

[18] *Rollo* (G.R. No. 168477), pp. 46-47.

was likewise stated in the [decision] that "to further defer the holding of a local election is whimsical, capricious and is a violation of the union members' rights under Article 241 and [is] punishable by expulsion."

This being so, we would like to request [petitioner] to please put on escrow all union dues/agency fees and whatever money considerations deducted from salaries of the concerned co-academic personnel until such time that an election of union officials has been scheduled and subsequent elections has been held. We fully understand that putting the collection on escrow means the continuance of our monthly deductions but the same will not be remitted to [respondent's] funds.[19]

Petitioner acceded to the request of the Aliazas faction and informed the Bañez faction of such fact in a letter dated August 16, 2001. Petitioner explained:

It is evident that the intra-union dispute between the incumbent set of officers of your Union on one hand and a sizeable number of its members on the other hand has reached serious levels. By virtue of the 19 March 2001 Decision and the 06 July 2001 Order of the Department of Labor and Employment (DOLE), the hold-over authority of your incumbent set of officers has been considered extinguished and an election of new union officers, to be conducted and supervised by the DOLE, has been directed to be held. **Until the result of this election [come] out and a declaration by the DOLE of the validly elected officers is made, a void in the Union leadership exists**.

In light of these circumstances, the University has no other alternative but to temporarily do the following:

1. Establish a savings account for the Union where all the collected union dues and agency fees will be deposited and held in trust; and
2. Discontinue normal relations with any group within the Union including the incumbent set of officers.

We are informing you of this decision of [petitioner] not only for your guidance but also for the apparent reason that [it] does not

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[19] Records, p. 26.

want itself to be unnecessarily involved in your intra-union dispute. This is the only way [petitioner] can maintain neutrality on this matter of grave concern.[20] (Emphasis supplied.)

In view of the foregoing decision of petitioner, respondent filed a complaint for unfair labor practice in the National Labor Relations Commission (NLRC) on August 21, 2001.[21] It alleged that petitioner committed a violation of Article 248(a) and (g) of the Labor Code which provides:

> Article 248. *Unfair labor practices of employers*. It shall be unlawful for an employer to commit any of the following unfair labor practice:
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> (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization.
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> x x x x x x x x x
>
> (d) To initiate, dominate, assist or otherwise interfere with the formation or administrator of any labor organization, including the giving of financial or other support to it or its organizers or supporters.

Respondent union asserted that the creation of escrow accounts was not an act of neutrality as it was influenced by the Aliazas factions' letter and was an act of interference with the internal affairs of the union. Thus, petitioner's non-remittance of union dues and discontinuance of normal relations with it constituted unfair labor practice.

Petitioner, for its defense, denied the allegations of respondent and insisted that its actions were motivated by good faith.

Meanwhile, on March 7, 2002, respondent filed a notice of strike in the National Conciliation and Mediation Board (NCMB).[22]

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[20] *Id.* at 24; Letter dated August 2001 of DLSU Executive Vice President (EVP), Dr. Carmelita L. Quebengco, to the Bañez faction.

[21] *Rollo* (G.R. No. 169254), pp. 230-231; docketed as NLRC NCR South Sector Case No. 30-08-03757-01.

[22] Docketed as NCMB-NCR-NS-03-093-02.

Shortly thereafter, or on July 12, 2002, Labor Arbiter Felipe P. Pati dismissed the August 21, 2001 complaint for unfair labor practice against petitioner for lack of merit in view of the May 23, 2002 decision of the BLR, affirming the need to conduct an election of the union's officers.[23] The labor arbiter, in effect, upheld the validity of petitioner's view that there was a void in the leadership of respondent.

The July 12, 2002 Decision of Labor Arbiter Pati, however, did not settle matters between respondent and petitioner.

On March 15, 2003, respondent sent a letter to petitioner requesting for the renegotiation of the economic terms for the fourth and fifth years of the then current CBA, to wit:

> This refers to the re-negotiation of the economic provisions for the [fourth and fifth] year[s] of the 2000-2005 [CBA] that will commence sometime in March 2003.
>
> In this regard, the [Bañez faction] for and in behalf of [respondent] would like to respectfully request your good office to provide us a copy of the latest Audited Financial Statements of [petitioner,] including its budget performance report so that [petitioner] and [respondent through] their respective authorized representatives could facilitate the negotiations thereof.
>
> We are furnishing [petitioner through] your good self a copy of [our] CBA economic proposals for the [fourth and fifth] year[s] of the 2000-2005 CBA signed by its authorized negotiating panel.
>
> We also request [petitioner] to furnish us a copy of its counter proposals as well as a list of its negotiating panel not later than ten (10) days from receipts of [our] CBA proposals so that [we] and [petitioner] can now proceed with the initial conference to discuss the ground rules that will govern the CBA negotiation.[24]

In a letter dated March 20, 2003,[25] petitioner denied respondent's request. It stated therein:

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[23] *Rollo* (G.R. No. 169254), pp. 247-258.

[24] *Id.* at 533.

[25] *Id.* at 534.

Pursuant to the [d]ecisions of appropriate government authority, and consistent with the position enunciated and conveyed to you by [petitioner] in my letter dated August 16, 2001, **there is a conclusion of fact that there is an absolute void in the leadership of** [**respondent**]. Accordingly, your representation as President or officer of, as well as, that of all persons purporting to be officers and members of the board of the said employees association [will] not [be] recognized**. Normal relations with the union cannot occur until the said void in the leadership of** [**respondent**] **is appropriately filled**. **Affected by the temporary suspension of normal relations with** [**respondent**] **is the renegotiation of the economic provisions of the 2002-2005 CBA**. **No renegotiation can occur given the void in the leadership of** [**respondent.**][26]

As a consequence of the aforementioned letter, respondent filed a second notice of strike on April 4, 2003.[27] Upon the petition filed by petitioner on April 11, 2003,[28] the Secretary of Labor assumed jurisdiction over the matter pursuant to Article 263 of the Labor Code[29] as petitioner, an educational institution, was

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[26] *Contra* note 15, May 16, 2003 memorandum of BLR Director Cacdac regarding the effect of the March 19, 2001 order of the BLR.

[27] *Rollo* (G.R. No. 169254), p. 121; docketed as NCMB-NCR-NS-08-246-03.

[28] *Id.* at 147-162.

[29] LABOR CODE, Article 263. *Strikes, Picketing and Lockouts*. – x x x (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

considered as belonging to an industry indispensable to national interest and docketed the case as OS-AJ-0015-2003.[30]

On June 26, 2003, the Second Division of the NLRC affirmed the July 12, 2002 Decision of Labor Arbiter Pati.[31] Respondent moved for reconsideration but it was denied by the NLRC in a Resolution dated September 30, 2003.[32]

Meanwhile, on July 28, 2003, the Secretary of Labor issued a Decision[33] in OS-AJ-0015-2003, finding petitioner guilty of violating Article 248(g) in relation to Article 252 of the Labor Code.[34] The salient portion thereof stated:

[T]he University [is] guilty of refusal to bargain amounting to an unfair labor practice under Article 248(g) of the Labor Code. Indeed there was a requirement on both parties of the performance of the mutual obligation to meet and convene promptly and expeditiously

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[30] *Rollo* (G.R. No. 169254), pp. 260-270.

[31] *Id.* at 288-291; Resolution dated June 26, 2003. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[32] *Id.* at 409-410.

[33] *Rollo* (G.R. No. 168477), pp. 101-110.

[34] Labor Code, Article 248. *Unfair labor practices of employers*. – It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x x x x x x

(g) To violate the duty to bargain collectively as prescribed by this Code.

x x x x x x x x x

Article 252. *Meaning of Duty to Bargain Collectively*. The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract under such agreements of requested by either party but such duty does not compel any party to agree to a proposal or to make any concessions.

in good faith for the purpose of negotiating an agreement. Undoubtedly, both [petitioner] and [respondent] entered into a [CBA] on [March 20, 2001]. The term of the said CBA commenced on [June 1, 2000] and with the expiration of the economic provisions on the third year, [respondent] initiated negotiation by sending a letter dated March 15, 2003, together with the CBA proposal. In reply to the letter of [respondent], [petitioner] in its letter dated [March 20, 2003] refused.

Such an act constituted an intentional avoidance of a duty imposed by law. There was nothing in the [March 19, 2001 and July 6, 2001 orders] of Director Maraan and Cacdac which restrained or enjoined compliance by the parties with their obligations under the CBA and under the law. The issue of union leadership is distinct and separate from the duty to bargain.

In fact, BLR Director Cacdac clarified that there was no void in [respondent's] leadership. The pertinent decision dated March 19, 2001 x x x reads:[35]

> We take this opportunity to clarify that there is no void in [respondent's] leadership. The [March 19, 2001 decision] x x x should not be construed as an automatic termination of the incumbent officers[']tenure of office. As duly-elected officers of [respondent], their leadership is not deemed terminated by the expiration of their terms of office, for they shall continue their functions and enjoy the rights and privileges pertaining to their respective positions in a hold-over capacity, until their successors shall have been elected and qualified.

It is thus very clear. x x x. This official determination by the BLR Director [Cacdac] removes whatever cloud of doubt on the authority of the incumbent to negotiate for and in behalf of [respondent] as the bargaining agent of all the covered employees. [Petitioner] is duty bound to negotiate collectively pursuant to Art. 252 of the Labor Code, as amended.

x x x x x x x x x

On the question: [i]s [petitioner] guilty of unfair labor practice? This office resolves the issue in the affirmative. Citing the case of

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[35] This should refer to the May 16, 2003 memorandum of BLR Director Cacdac.

the *Divine Word University of Tacloban v. Secretary of Labor*, [petitioner] is guilty of unfair labor practice in refusing to abide by its duty to bargain collectively. The refusal of [petitioner] to bargain is tainted with bad faith amounting to unfair labor practice. There is no other way to resolve the issue given the facts of the case and the law on the matter.

WHEREFORE, premises considered, this Office finds [petitioner] guilty of refusal to bargain collectively in violation of Article 252 in relation to Article 248 of the Labor Code, as amended. Management is hereby directed to cease and desist from refusing to bargain collectively. The parties are therefore directed to commence negotiations effective immediately.[36] (Citations omitted.)

On August 1, 2003, respondent reiterated its demand on petitioner to bargain collectively pursuant to the aforementioned Decision of the Secretary of Labor.[37]

On August 4, 2003, petitioner sent a letter to respondent explaining that it cannot act on the latter's letter. The August 4, 2003 letter of petitioner stated:

[Petitioner's] counsel is preparing a Motion for Reconsideration that would be filed with the Office of the Secretary of Labor and Employment. Under the Rule, [petitioner] still has the remedy of filing such Motion with the Office of the Secretary before elevating the matter to higher authorities should it become necessary.

We, therefore, regret to advise you that [petitioner] cannot accede to your demand to immediately commence negotiations for the CBA with your group or any other group of Union members, as the case may be, until such time that the case before the Secretary is resolved with finality. We will, therefore, continue to defer the CBA negotiations pending final resolution of the matter.

As regards your other demands, [petitioner] is of the position that the matters subject of said demands are still pending before the various offices of the Labor Arbiters and NLRC and, therefore, it cannot act on the same until such time that said cases are likewise

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[36] *Rollo* (G.R. No. 168477), pp. 106-110.

[37] *Rollo* (G.R. No. 169254), pp. 535-536.

resolved with finality. It cannot be assumed that all these cases that you filed have been rendered moot and academic by the Secretary's Decision, otherwise you would, in effect, be admitting that you have engaged in "forum shopping."[38]

Failing to secure a reconsideration of the July 28, 2003 Decision of the Secretary of Labor, petitioner assailed the same in the Court of Appeals via a petition for *certiorari* docketed as CA-G.R. SP No. 81649.

On August 27, 2003, respondent filed the third notice of strike,[39] in the wake of petitioner's August 4, 2003 letter and citing among others petitioner's alleged violation of the CBA and continuing refusal to bargain in good faith. Petitioner, on the other hand, filed a petition for assumption of jurisdiction for this third notice of strike.[40] Again, the Secretary of Labor assumed jurisdiction. This case was docketed as OS-AJ-0033-2003.

On November 17, 2003, the Secretary of Labor, in resolving OS-AJ-0033-2003, cited the July 28, 2003 Decision in OS-AJ-0015-2003, and consequently declared that petitioner committed an unfair labor practice. The salient portions of said Decision stated:

Considering that this case, **docketed as Case No. OS-AJ-0033-2003 is based on the same set of facts with another case**, **involving the same parties numbered as OS-AJ-0015-2003**, **and based on the same factual and legal circumstances**, **we have to consistently hold that the [petitioner] has indeed failed to comply with its obligation under the law**. As a matter of fact, it admits in persisting to refuse despite the fact that there is no more legal obstacle preventing the commencement of the Collective Bargaining Negotiation between the parties. **Anent the so called void in the Union leadership**, **We declared that the same does not constitute a valid ground to refuse to negotiate because** [**petitioner's**] **duty to bargain under the law is due and demandable under the law by** [**respondent**] **as a whole and not by any faction within the union**.

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[38] *Id.* at 537-538.

[39] *Id.* at 135-136.

[40] *Id.* at 147-162.

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x x x [E]vents have lately turned out in favor of [respondent], thereby obliterating any further justification on the part of [petitioner] not to bargain. On **October 29, 2003, the new Regional Director of DOLE-NCR, Ciriaco E. Lagunzad III, issued a resolution declaring the Bañez group as the duly elected officers of the Union. x x x.**

x x x x x x x x x

The above election results were the outcome of a duly-held union election, supervised by the Department's Regional Office. This was the election ordered in the [**July 6**, **2001 and March 19, 2001 orders of the BLR**]. **This was also the same election invoked by** [**petitioners**] **in trying to justify it continuing refusal to bargain.**

The [members of the Bañez faction have] reportedly taken their oath of office and have qualified. [Petitioner] is now under estoppel from recognizing them, considering that it committed in writing to recognize and commence bargaining once a set of duly elected officers [is] proclaimed after an election duly conducted under the supervision of the Department.

x x x x x x x x x

Not only has [petitioner] refused to negotiate with [respondent], it has unduly withheld the money belonging to the bargaining agent. **Both these acts are illegal and are tantamount to Unfair Labor Practice under Article 248 in relation to Article 252 of the Labor Code x x x**.

ACCORDINGLY, all the foregoing premises being duly considered, this Office hereby declares that [petitioner] committed Unfair Labor Practice in violation of [Article 248 in relation to Article 252] of the Labor Code x x x. [Petitioner] and its duly authorized officers and personnel are therefore ordered to cease and desist from committing said acts under pain of legal sanction.

[Petitioner] is therefore specifically directed to commence collective bargaining negotiation with [respondents] without further delay and to immediately turn over to the Bañez group the unlawfully withheld union dues and agency fees with legal interest corresponding to the period of the unlawful withholding. All these specific directives

should be done within ten (10) days from receipt of this Decision and with sufficient proof of compliance herewith to be submitted immediately thereafter.[41]

In accordance with the terms of the aforementioned Decision, petitioner turned over to respondent the collected union dues and agency fees from employees which were previously placed in escrow amounting to ₱441,924.99.[42]

Nonetheless, petitioner moved for the reconsideration of the November 17, 2003 Decision of the Secretary of Labor but it was denied in an Order dated January 20, 2004.

Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals. Petitioner alleged therein that the Secretary of Labor committed grave abuse of discretion by holding that it (petitioner) was liable for unfair labor practice. Taking a contrary stance to the findings of the Secretary of Labor, petitioner stressed that it created the escrow accounts for the benefit of the winning faction and undertook temporary measures in light of the March 19, 2001 and July 6, 2001 Orders of the BLR. Thus, it should not be penalized for taking a hands-off stance in the intra-union controversy between the Aliazas and Bañez factions.

In a Decision dated March 4, 2005, the Court of Appeals affirmed the November 17, 2003 Decision and January 20, 2004 Order of the Secretary of Labor and dismissed the said petition. It held:

[Petitioner] finds reason to refuse to negotiate with [respondent's incumbent officers] because of the alleged "void in the union leadership" declared by the Regional Director in his March 19, 2001 decision, [but] after the election of the union officers held on August 28, 2003, continued refusal by the University to negotiate amounts

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[41] *Id.* at 123-125.

[42] *Id.* at 385; letter and acknowledgment receipt dated November 28, 2008.

to unfair labor practice. **The non-proclamation of the newly elected union officers cannot be used as an excuse to fulfill the duty to bargain collectively**.[43] (Emphasis supplied.)

Petitioner moved for reconsideration but it was denied in a Resolution dated August 5, 2005. The Court of Appeals noted that petitioner's arguments were a mere "rehash of the issues and discussions it presented in its petition and in the relevant pleadings submitted x x x."[44]

Meanwhile, the Court of Appeals dismissed CA-G.R. SP No. 81649 (which assailed the July 28, 2003 Decision in OS-AJ-0015-2003), in a Decision dated March 18, 2005.[45] The said decision likewise found that petitioner erred in unilaterally suspending negotiations with respondent since the pendency of the intra-union dispute was not a justifiable reason to do so.

Petitioner moved for reconsideration of the aforesaid decision in CA-G.R. SP No. 81649 but it was denied in a Resolution dated June 7, 2005[46] due to lack of merit.

Aggrieved, petitioner elevated both the assailed decisions and resolutions in this case and in CA-G.R. SP No. 81649, which was docketed as G.R. No. 168477, to this Court. Petitioner, in both instances, essentially argued that it did not maliciously evade its duty to bargain. On the contrary, it asserts that it merely relied in good faith on the March 19, 2001 Decision of the BLR that there was a void in respondent's leadership.[47]

This Court, through its Third Division, denied G.R. No. 168477 in a minute resolution dated July 20, 2005 due to the petition's

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

[44] *Id.* at 75.

[45] *Rollo* (G.R. No. 168477), pp. 44-55; penned by Associate Justice Rosmari D. Carandang with Associate Justices Remedios Salazar-Fernando and Monina Arevalo-Zenarosa, concurring.

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

[47] *Rollo* (G.R. No. 169254), pp. 3-44 and *rollo* (G.R. No. 168477), pp. 3-43.

"failure x x x to show that a reversible error had been committed by the appellate court."[48] The motion for reconsideration was denied with finality on September 21, 2005[49] and entry of judgment was made on November 3, 2005.[50]

Meanwhile, respondent was ordered to file a comment herein, and, subsequently, this petition was given due course.

We note that both G.R. No. 168477 and this petition are offshoots of petitioner's purported temporary measures to preserve its neutrality with regard to the perceived void in the union leadership. While these two cases arose out of different notices to strike filed on April 3, 2003 and August 27, 2003, it is undeniable that the facts cited and the arguments raised by petitioner are almost identical. **Inevitably, G.R. No. 168477 and this petition seek only one relief, that is, to absolve petitioner from respondent's charge of committing an unfair labor practice, or specifically, a violation of Article 248(g) in relation to Article 252 of the Labor Code.**

For this reason, we are constrained to apply the law of the case doctrine in light of the finality of our July 20, 2005 and September 21, 2005 resolutions in G.R. No. 168477. In other words, our previous affirmance of the Court of Appeals' finding – that petitioner erred in suspending collective bargaining negotiations with the union and in placing the union funds in escrow considering that the intra-union dispute between the Aliazas and Bañez factions was not a justification therefor — is binding herein. Moreover, we note that entry of judgment in G.R. No. 168477 was made on November 3, 2005, and that put to an end to the litigation of said issues once and for all.[51]

The law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably

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[48] *Rollo* (G.R. No. 168477), p. 526.

[49] *Id.* at 550.

[50] *Id.* at 553.

[51] See *Alcantara v. Ponce*, 514 Phil. 222, 244-245 (2005).

established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[52]

In any event, upon our review of the records of this case, we find that the Court of Appeals committed no reversible error in its assailed Decision dated March 4, 2005 and Resolution dated August 5, 2005.

Petitioner's reliance on the July 12, 2002 Decision of Labor Arbiter Pati, and the NLRC's affirmance thereof, is misplaced. The unfair labor practice complaint dismissed by Labor Arbiter Pati questioned petitioner's actions immediately after the March 19, 2001 Decision of BLR Regional Director Maraan, finding that "the reason for the hold-over [of the previously elected union officers] is already extinguished." The present controversy involves petitioner's actions subsequent to (1) the clarification of said March 19, 2001 Maraan Decision by BLR Director Cacdac who opined in a May 16, 2003 memorandum that the then incumbent union officers (*i.e.*, the Bañez faction) continued to hold office until their successors have been elected and qualified, and (2) the July 28, 2003 Decision of the Secretary of Labor in OS-AJ-0015-2003 ruling that the very same intra-union dispute (subject of several notices of strike) is insufficient ground for the petitioner to suspend CBA negotiations with respondent union. We take notice, too, that the aforesaid Decision of Labor Arbiter Pati has since been set aside by the Court of Appeals and such reversal was upheld by this Court's Second Division in its Decision dated April 7, 2009 in G.R. No. 177283, wherein petitioner was found liable for unfair labor practice.[53]

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[52] *Padillo v. Court of Appeals*, 422 Phil. 334, 351-352 (2001); See also *Banco de Oro-EPCI, Inc. v. Tansipek*, G.R. No. 181235, July 22, 2009, 593 SCRA 456, 464.

[53] *De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 177283, April 7, 2009, 584 SCRA 592.

Neither can petitioner seek refuge in its defense that as early as November 2003 it had already released the escrowed union dues to respondent and normalized relations with the latter. The fact remains that from its receipt of the July 28, 2003 Decision of the Secretary of Labor in OS-AJ-0015-2003 until its receipt of the November 17, 2003 Decision of the Secretary of Labor in OS-AJ-0033-2003, petitioner failed in its duty to collectively bargain with respondent union without valid reason. At most, such subsequent acts of compliance with the issuances in OS-AJ-0015-2003 and OS-AJ-0033-2003 merely rendered moot and academic the Secretary of Labor's directives for petitioner to commence collective bargaining negotiations within the period provided.

To conclude, we hold that the findings of fact of the Secretary of Labor and the Court of Appeals, as well as the conclusions derived therefrom, were amply supported by evidence on record. Thus, in line with jurisprudence that such findings are binding on this Court, we see no reason to disturb the same.[54]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

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[54] See *Colegio de San Juan de Letran v. Association of Employees and Faculty of Letran,* 394 Phil. 936, 949 (2000); *Rural Bank of Alaminos Employees Union v. National Labor Relations Commission*, 376 Phil. 18, 27-28 (1999).

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

FIRST DIVISION

[G.R. No. 171182. August 23, 2012]

UNIVERSITY OF THE PHILIPPINES SYSTEM, JOSE V. ABUEVA, RAUL P. DE GUZMAN, RUBEN P. ASPIRAS, EMMANUEL P. BELLO, WILFREDO P. DAVID, CASIANO S. ABRIGO, and JOSEFINA R. LICUANAN, *petitioners, vs.* **HON. AGUSTIN S. DIZON, in his capacity as Presiding Judge of the Regional Trial Court of Quezon City, Branch 80, STERN BUILDERS, INC., and SERVILLANO DELA CRUZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INSTRUMENTALITIES; UNIVERSITY OF THE PHILIPPINES; THE FUNDS THEREOF ARE GOVERNMENT FUNDS NOT SUBJECT TO A WRIT OF EXECUTION OR GARNISHMENT.— [T]he UP is a government instrumentality, performing the State's constitutional mandate of promoting quality and accessible education. As a government instrumentality, the UP administers special funds sourced from the fees and income enumerated under Act No. 1870 and Section 1 of Executive Order No. 714, and from the yearly appropriations, to achieve the purposes laid down by Section 2 of Act 1870, as expanded in Republic Act No. 9500. All the funds going into the possession of the UP, including any interest accruing from the deposit of such funds in any banking institution, constitute a "special trust fund," the disbursement of which should always be aligned with the UP's mission and purpose, and should always be subject to auditing by the COA. Presidential Decree No. 1445 defines a "trust fund" as a fund that officially comes in the possession of an agency of the government or of a public officer as trustee, agent or administrator, or that is received for the fulfillment of some obligation. A trust fund may be utilized only for the "specific purpose for which the trust was created or the funds received." The funds of the UP are government funds that are public in character. They include the income accruing from

the use of real property ceded to the UP that may be spent only for the attainment of its institutional objectives. Hence, the funds subject of this action could not be validly made the subject of the RTC's writ of execution or garnishment. The adverse judgment rendered against the UP in a suit to which it had impliedly consented was not immediately enforceable by execution against the UP, because suability of the State did not necessarily mean its liability. A marked distinction exists between suability of the State and its liability.

2. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; HAS PRIMARY JURISDICTION OVER THE EXECUTION OF MONETARY JUDGMENTS AGAINST THE GOVERNMENT OR ANY OF ITS SUBDIVISIONS, AGENCIES AND INSTRUMENTALITIES.— The execution of the monetary judgment against the UP was within the primary jurisdiction of the COA. This was expressly provided in Section 26 of Presidential Decree No. 1445 x x x. It was of no moment that a final and executory decision already validated the claim against the UP. The settlement of the monetary claim was still subject to the primary jurisdiction of the COA despite the final decision of the RTC having already validated the claim. As such, Stern Builders and dela Cruz as the claimants had no alternative except to first seek the approval of the COA of their monetary claim.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENT; A DECISION THAT HAS ATTAINED FINALITY BECOMES IMMUTABLE AND UNALTERABLE AND CANNOT BE MODIFIED IN ANY RESPECT.— It is true that a decision that has attained finality becomes immutable and unalterable, and cannot be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether the modification is made by the court that rendered it or by this Court as the highest court of the land. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be deprived of the fruits of victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of such judgment sets at naught the role and purpose of the courts to resolve justiciable controversies with finality. Indeed,

all litigations must at some time end, even at the risk of occasional errors.

4. ID.; ID.; ID.; ID.; EXCEPTIONS.— But the doctrine of immutability of a final judgment has not been absolute, and has admitted several exceptions, among them: (*a*) the correction of clerical errors; (*b*) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the decision that render its execution unjust and inequitable. Moreover, in *Heirs of Maura So v. Obliosca*, we stated that despite the absence of the preceding circumstances, the Court is not precluded from brushing aside procedural norms if only to serve the higher interests of justice and equity. Also, in *Gumaru v. Quirino State College*, the Court nullified the proceedings and the writ of execution issued by the RTC for the reason that respondent state college had not been represented in the litigation by the Office of the Solicitor General.

5. ID.; ID.; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; WHERE A PARTY HAS APPEARED BY COUNSEL, SERVICE MUST BE MADE UPON SUCH COUNSEL.— It is settled that where a party has appeared by counsel, service must be made upon such counsel. Service on the party or the party's employee is not effective because such notice is not notice in law. This is clear enough from Section 2, second paragraph, of Rule 13, *Rules of Court*, which explicitly states that: "If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side."

6. ID.; ID.; APPEALS; *FRESH-PERIOD RULE*; RETROACTIVELY APPLIED IN CASE AT BAR.— [E]quity calls for the retroactive application in the UP's favor of the *fresh-period rule* that the Court first announced in mid-September of 2005 through its ruling in *Neypes v. Court of Appeals x x x.* The retroactive application of the *fresh-period rule*, a procedural law that aims "to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration

(whether full or partial) or any final order or resolution," is impervious to any serious challenge. This is because there are no vested rights in rules of procedure. A law or regulation is procedural when it prescribes rules and forms of procedure in order that courts may be able to administer justice. It does not come within the legal conception of a retroactive law, or is not subject of the general rule prohibiting the retroactive operation of statues, but is given retroactive effect in actions pending and undetermined at the time of its passage without violating any right of a person who may feel that he is adversely affected. We have further said that a procedural rule that is amended for the benefit of litigants in furtherance of the administration of justice shall be retroactively applied to likewise favor actions then pending, as equity delights in equality. We may even relax stringent procedural rules in order to serve substantial justice and in the exercise of this Court's equity jurisdiction. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction.

7. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDGMENTS; ESSENTIAL PARTS; EXPLAINED.— The Constitution and the *Rules of Court* apparently delineate two main essential parts of a judgment, namely: the *body* and the *decretal portion*. Although the latter is the controlling part, the importance of the former is not to be lightly regarded because it is there where the court clearly and distinctly states its findings of fact and of law on which the decision is based. To state it differently, one without the other is ineffectual and useless. The omission of either inevitably results in a judgment that violates the letter and the spirit of the Constitution and the *Rules of Court*. The term *findings of fact* that must be found in the body of the decision refers to statements of fact, not to conclusions of law. Unlike in pleadings where ultimate facts alone need to be stated, the Constitution and the *Rules of Court* require not only that a decision should state the ultimate facts but also that it should specify the supporting evidentiary facts, for they are what are called the findings of fact. The importance of the findings of fact and of law cannot be overstated. The reason and purpose of the Constitution and the *Rules of Court* in that regard are obviously to inform the parties why they

win or lose, and what their rights and obligations are. Only thereby is the demand of due process met as to the parties.

8. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; IF ALLOWED IN THE CONCEPT OF ACTUAL DAMAGES, THE AMOUNTS MUST BE FACTUALLY AND LEGALLY JUSTIFIED IN THE BODY OF THE DECISION.— The general rule is that a successful litigant cannot recover attorney's fees 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. Prior to the effectivity of the present *Civil Code*, indeed, 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. Nonetheless, with attorney's fees being allowed in the concept of actual damages, their amounts must be factually and legally justified in the body of the decision and not stated for the first time in the decretal portion. Stating the amounts only in the dispositive portion of the judgment is not enough; a rendition of the factual and legal justifications for them must also be laid out in the body of the decision.

APPEARANCES OF COUNSEL

UP Office of Legal Services for petitioners.
Bonifacio A. Tavera, Jr. for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

Trial judges should not immediately issue writs of execution or garnishment against the Government or any of its subdivisions, agencies and instrumentalities to enforce money judgments.[1] They should bear in mind that the primary jurisdiction to examine, audit and settle all claims of any sort due from the Government or any of its subdivisions, agencies and instrumentalities pertains

[1] Administrative Circular No. 10-2000 dated October 25, 2000.

to the Commission on Audit (COA) pursuant to Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*).

The Case

On appeal by the University of the Philippines and its then incumbent officials (collectively, the UP) is the decision promulgated on September 16, 2005,[2] whereby the Court of Appeals (CA) upheld the order of the Regional Trial Court (RTC), Branch 80, in Quezon City that directed the garnishment of public funds amounting to ₱16,370,191.74 belonging to the UP to satisfy the writ of execution issued to enforce the already final and executory judgment against the UP.

Antecedents

On August 30, 1990, the UP, through its then President Jose V. Abueva, entered into a General Construction Agreement with respondent Stern Builders Corporation (Stern Builders), represented by its President and General Manager Servillano dela Cruz, for the construction of the extension building and the renovation of the College of Arts and Sciences Building in the campus of the University of the Philippines in Los Baños (UPLB).[3]

In the course of the implementation of the contract, Stern Builders submitted three progress billings corresponding to the work accomplished, but the UP paid only two of the billings. The third billing worth ₱273,729.47 was not paid due to its disallowance by the Commission on Audit (COA). Despite the lifting of the disallowance, the UP failed to pay the billing, prompting Stern Builders and dela Cruz to sue the UP and its co-respondent officials to collect the unpaid billing and to recover various damages. The suit, entitled *Stern Builders Corporation*

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[2] *Rollo*, pp. 39-54; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and Member of the Court, but now retired), with Associate Justice Josefina Guevara-Salonga (retired) and Associate Justice Fernanda Lampas-Peralta concurring.

[3] *Id.* at 92-105.

and Servillano R. Dela Cruz v. University of the Philippines Systems, Jose V. Abueva, Raul P. de Guzman, Ruben P. Aspiras, Emmanuel P. Bello, Wilfredo P. David, Casiano S. Abrigo, and Josefina R. Licuanan, was docketed as Civil Case No. Q-93-14971 of the Regional Trial Court in Quezon City (RTC).[4]

After trial, on November 28, 2001, the RTC rendered its decision in favor of the plaintiffs,[5] *viz*:

> Wherefore, in the light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering the latter to pay plaintiff, jointly and severally, the following, to wit:
>
> 1. ₱503,462.74 amount of the third billing, additional accomplished work and retention money
>
> 2. ₱5,716,729.00 in actual damages
>
> 3. ₱10,000,000.00 in moral damages
>
> 4. ₱150,000.00 and ₱1,500.00 per appearance as attorney's fees; and
>
> 5. Costs of suit.
>
> SO ORDERED.

Following the RTC's denial of its motion for reconsideration on May 7, 2002,[6] the UP filed a notice of appeal on June 3, 2002.[7] Stern Builders and dela Cruz opposed the notice of appeal on the ground of its filing being belated, and moved for the execution of the decision. The UP countered that the notice of appeal was filed within the reglementary period because the UP's Office of Legal Affairs (OLS) in Diliman, Quezon City received the order of denial only on May 31, 2002. On September 26, 2002, the RTC denied due course to the notice of appeal

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[4] *Id.* at 75-83.

[5] *Id.* at 133-138.

[6] *Id.* at 162.

[7] *Id.* at 163-164.

for having been filed out of time and granted the private respondents' motion for execution.[8]

The RTC issued the writ of execution on October 4, 2002,[9] and the sheriff of the RTC served the writ of execution and notice of demand upon the UP, through its counsel, on October 9, 2002.[10] The UP filed an urgent motion to reconsider the order dated September 26, 2002, to quash the writ of execution dated October 4, 2002, and to restrain the proceedings.[11] However, the RTC denied the urgent motion on April 1, 2003.[12]

On June 24, 2003, the UP assailed the denial of due course to its appeal through a petition for *certiorari* in the Court of Appeals (CA), docketed as CA-G.R. No. 77395.[13]

On February 24, 2004, the CA dismissed the petition for *certiorari* upon finding that the UP's notice of appeal had been filed late,[14] stating:

> Records clearly show that petitioners received a copy of the Decision dated November 28, 2001 and January 7, 2002, thus, they had until January 22, 2002 within which to file their appeal. On January 16, 2002 or after the lapse of nine (9) days, petitioners through their counsel Atty. Nolasco filed a Motion for Reconsideration of the aforesaid decision, hence, pursuant to the rules, petitioners still had six (6) remaining days to file their appeal. As admitted by the petitioners in their petition (*Rollo*, p. 25), Atty. Nolasco received a copy of the Order denying their motion for reconsideration on May 17, 2002, thus, petitioners still has until May 23, 2002 (the

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[8] *Id.* at 169-171.

[9] *Id.* at 172-173.

[10] *Id.* at 174.

[11] *Id.* at 174-182.

[12] *Id.* at 185-187.

[13] *Id.* at 188-213.

[14] *Id.* at 217-223; penned by Associate Justice B.A. Adefuin-Dela Cruz (retired), with Associate Justice Eliezer R. delos Santos (deceased) and Associate Justice Jose Catral Mendoza (now a Member of the Court) concurring.

remaining six (6) days) within which to file their appeal. Obviously, petitioners were not able to file their Notice of Appeal on May 23, 2002 as it was only filed on June 3, 2002.

In view of the said circumstances, We are of the belief and so holds that the Notice of Appeal filed by the petitioners was really filed out of time, the same having been filed seventeen (17) days late of the reglementary period. By reason of which, the decision dated November 28, 2001 had already become final and executory. "Settled is the rule that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictional, and failure to perfect that appeal renders the challenged judgment final and executory. This is not an empty procedural rule but is grounded on fundamental considerations of public policy and sound practice." (Ram's Studio and Photographic Equipment, Inc. vs. Court of Appeals, 346 SCRA 691, 696). Indeed, Atty. Nolasco received the order of denial of the Motion for Reconsideration on May 17, 2002 but filed a Notice of Appeal only on June 3, 3003 (sic). As such, the decision of the lower court *ipso facto* became final when no appeal was perfected after the lapse of the reglementary period. This procedural caveat cannot be trifled with, not even by the High Court.[15]

The UP sought a reconsideration, but the CA denied the UP's motion for reconsideration on April 19, 2004.[16]

On May 11, 2004, the UP appealed to the Court by petition for review on *certiorari* (G.R. No. 163501).

On June 23, 2004, the Court denied the petition for review.[17] The UP moved for the reconsideration of the denial of its petition for review on August 29, 2004,[18] but the Court denied the motion on October 6, 2004. [19] The denial became final and executory on November 12, 2004.[20]

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[15] *Id.* at 221.

[16] *Id.* at 243.

[17] *Id.* at 282.

[18] *Id.* at 283-291.

[19] *Id.* at 293.

[20] *Id.* at 417.

In the meanwhile that the UP was exhausting the available remedies to overturn the denial of due course to the appeal and the issuance of the writ of execution, Stern Builders and dela Cruz filed in the RTC their motions for execution despite their previous motion having already been granted and despite the writ of execution having already issued. On June 11, 2003, the RTC granted another motion for execution filed on May 9, 2003 (although the RTC had already issued the writ of execution on October 4, 2002).[21]

On June 23, 2003 and July 25, 2003, respectively, the sheriff served notices of garnishment on the UP's depository banks, namely: Land Bank of the Philippines (Buendia Branch) and the Development Bank of the Philippines (DBP), Commonwealth Branch.[22] The UP assailed the garnishment through an urgent motion to quash the notices of garnishment;[23] and a motion to quash the writ of execution dated May 9, 2003.[24]

On their part, Stern Builders and dela Cruz filed their *ex parte* motion for issuance of a release order.[25]

On October 14, 2003, the RTC denied the UP's urgent motion to quash, and granted Stern Builders and dela Cruz's *ex parte* motion for issuance of a release order.[26]

The UP moved for the reconsideration of the order of October 14, 2003, but the RTC denied the motion on November 7, 2003.[27]

On January 12, 2004, Stern Builders and dela Cruz again sought the release of the garnished funds.[28] Despite the UP's

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[21] *Id.* at 172-173; and 301.

[22] *Id.* at 312.

[23] *Id.* at 302-309.

[24] *Id.* at 314-319.

[25] *Id.* at 321-322.

[26] *Id.* at 323-325.

[27] *Id.* at 326-328.

[28] *Id.* at 332-333.

opposition,[29] the RTC granted the motion to release the garnished funds on March 16, 2004.[30] On April 20, 2004, however, the RTC held in abeyance the enforcement of the writs of execution issued on October 4, 2002 and June 3, 2003 and all the ensuing notices of garnishment, citing Section 4, Rule 52, *Rules of Court*, which provided that the pendency of a timely motion for reconsideration stayed the execution of the judgment.[31]

On December 21, 2004, the RTC, through respondent Judge Agustin S. Dizon, authorized the release of the garnished funds of the UP,[32] to wit:

> WHEREFORE, premises considered, there being no more legal impediment for the release of the garnished amount in satisfaction of the judgment award in the instant case, let the amount garnished be immediately released by the Development Bank of the Philippines, Commonwealth Branch, Quezon City in favor of the plaintiff.
>
> SO ORDERED.

The UP was served on January 3, 2005 with the order of December 21, 2004 directing DBP to release the garnished funds.[33]

On January 6, 2005, Stern Builders and dela Cruz moved to cite DBP in direct contempt of court for its non-compliance with the order of release.[34]

Thereupon, on January 10, 2005, the UP brought a petition for *certiorari* in the CA to challenge the jurisdiction of the RTC in issuing the order of December 21, 2004 (CA-G.R. CV No. 88125).[35] Aside from raising the denial of due process, the UP averred that the RTC committed grave abuse of discretion

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[29] *Id.* at 334-336.

[30] *Id.* at 339.

[31] *Id.* at 340.

[32] *Id.* at 341.

[33] *Id.* at 341.

[34] *Id.* at 342-344.

[35] *Id.* at 346-360.

amounting to lack or excess of jurisdiction in ruling that there was no longer any legal impediment to the release of the garnished funds. The UP argued that government funds and properties could not be seized by virtue of writs of execution or garnishment, as held in *Department of Agriculture v. National Labor Relations Commission*,[36] and citing Section 84 of Presidential Decree No. 1445 to the effect that "[r]evenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority;" and that the order of garnishment clashed with the ruling in *University of the Philippines Board of Regents v. Ligot-Telan*[37] to the effect that the funds belonging to the UP were public funds.

On January 19, 2005, the CA issued a temporary restraining order (TRO) upon application by the UP.[38]

On March 22, 2005, Stern Builders and dela Cruz filed in the RTC their amended motion for sheriff's assistance to implement the release order dated December 21, 2004, stating that the 60-day period of the TRO of the CA had already lapsed.[39] The UP opposed the amended motion and countered that the implementation of the release order be suspended. [40]

On May 3, 2005, the RTC granted the amended motion for sheriff's assistance and directed the sheriff to proceed to the DBP to receive the check in satisfaction of the judgment.[41]

The UP sought the reconsideration of the order of May 3, 2005.[42]

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[36] G.R. No. 104269, November 11, 1993, 227 SCRA 693.

[37] G.R. No. 110280, October 21, 1993, 227 SCRA 342.

[38] *Rollo*, pp. 366-367; penned by Associate Justice Reyes, with Associate Justice Tria Tirona (retired) and Associate Justice Jose C. Reyes, Jr. concurring.

[39] *Id.* at 452-453.

[40] *Id.* at 455-460.

[41] *Id.* at 472-476.

[42] *Id.* at 477-482.

On May 16, 2005, DBP filed a motion to consign the check representing the judgment award and to dismiss the motion to cite its officials in contempt of court.[43]

On May 23, 2005, the UP presented a motion to withhold the release of the payment of the judgment award.[44]

On July 8, 2005, the RTC resolved all the pending matters,[45] noting that the DBP had already delivered to the sheriff Manager's Check No. 811941 for ₱16,370,191.74 representing the garnished funds payable to the order of Stern Builders and dela Cruz as its compliance with the RTC's order dated December 21, 2004.[46] However, the RTC directed in the same order that Stern Builders and dela Cruz should not encash the check or withdraw its amount pending the final resolution of the UP's petition for *certiorari*, to wit:[47]

> To enable the money represented in the check in question (No. 00008119411) to earn interest during the pendency of the defendant University of the Philippines application for a writ of injunction with the Court of Appeals the same may now be deposited by the plaintiff at the garnishee Bank (Development Bank of the Philippines), the disposition of the amount represented therein being subject to the final outcome of the case of the *University of the Philippines, et al. vs. Hon. Agustin S. Dizon, et al.*, (CA G.R. 88125) before the Court of Appeals.
>
> Let it be stated herein that the plaintiff is not authorized to encash and withdraw the amount represented in the check in question and enjoy the same in the fashion of an owner during the pendency of the case between the parties before the Court of Appeals which may or may not be resolved in plaintiff's favor.
>
> With the end in view of seeing to it that the check in question is deposited by the plaintiff at the Development Bank of the Philippines

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[43] *Id.* at 484.

[44] *Id.* at 485-489.

[45] *Id.* at 492-494.

[46] *Id.* at 484.

[47] *Id.* at 492-494.

(garnishee bank), Branch Sheriff Herlan Velasco is directed to accompany and/or escort the plaintiff in making the deposit of the check in question.

SO ORDERED.

On September 16, 2005, the CA promulgated its assailed decision dismissing the UP's petition for *certiorari*, ruling that the UP had been given ample opportunity to contest the motion to direct the DBP to deposit the check in the name of Stern Builders and dela Cruz; and that the garnished funds could be the proper subject of garnishment because they had been already earmarked for the project, with the UP holding the funds only in a fiduciary capacity,[48] *viz*:

> Petitioners next argue that the UP funds may not be seized for execution or garnishment to satisfy the judgment award. Citing Department of Agriculture vs. NLRC, University of the Philippines Board of Regents vs. Hon. Ligot-Telan, petitioners contend that UP deposits at Land Bank and the Development Bank of the Philippines, being government funds, may not be released absent an appropriations bill from Congress.
>
> The argument is specious. UP entered into a contract with private respondents for the expansion and renovation of the Arts and Sciences Building of its campus in Los Baños, Laguna. Decidedly, there was already an appropriations earmarked for the said project. The said funds are retained by UP, in a fiduciary capacity, pending completion of the construction project.
>
> We agree with the trial Court [sic] observation on this score:
>
> > "4. Executive Order No. 109 (Directing all National Government Agencies to Revert Certain Accounts Payable to the Cumulative Result of Operations of the National Government and for Other Purposes) Section 9. Reversion of Accounts Payable, provides that, all 1995 and prior years documented accounts payable and all undocumented accounts regardless of the year they were incurred shall be reverted to the Cumulative Result of Operations of the National Government (CROU).

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[48] *Id.* at 51.

> This shall apply to accounts payable of all funds, except fiduciary funds, as long as the purpose for which the funds were created have not been accomplished and accounts payable under foreign assisted projects for the duration of the said project. In this regard, the Department of Budget and Management issued Joint-Circular No. 99-6 4.0 (4.3) Procedural Guidelines which provides that all accounts payable that reverted to the CROU may be considered for payment upon determination thru administrative process, of the existence, validity and legality of the claim. Thus, the allegation of the defendants that considering no appropriation for the payment of any amount awarded to plaintiffs appellee the funds of defendant-appellants may not be seized pursuant to a writ of execution issued by the regular court is misplaced. Surely when the defendants and the plaintiff entered into the General Construction of Agreement there is an amount already allocated by the latter for the said project which is no longer subject of future appropriation."[49]

After the CA denied their motion for reconsideration on December 23, 2005, the petitioners appealed by petition for review.

Matters Arising During the Pendency of the Petition

On January 30, 2006, Judge Dizon of the RTC (Branch 80) denied Stern Builders and dela Cruz's motion to withdraw the deposit, in consideration of the UP's intention to appeal to the CA,[50] stating:

> Since it appears that the defendants are intending to file a petition for review of the Court of Appeals resolution in CA-G.R. No. 88125 within the reglementary period of fifteen (15) days from receipt of resolution, the Court agrees with the defendants stand that the granting of plaintiffs' subject motion is premature.
>
> Let it be stated that what the Court meant by its Order dated July 8, 2005 which states in part that the "disposition of the amount represented therein being subject to the final outcome of the case

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[49] *Id.* at 51-52.

[50] *Id.* at 569.

of the *University of the Philippines, et al. vs. Hon. Agustin S. Dizon, et al.*, (CA G.R. No. 88125 before the Court of Appeals) is that the judgment or resolution of said court has to be final and executory, for if the same will still be elevated to the Supreme Court, it will not attain finality yet until the highest court has rendered its own final judgment or resolution.[51]

However, on January 22, 2007, the UP filed an *Urgent Application for A Temporary Restraining Order and/or A Writ of Preliminary Injunction*,[52] averring that on January 3, 2007, Judge Maria Theresa dela Torre-Yadao (who had meanwhile replaced Judge Dizon upon the latter's appointment to the CA) had issued another order allowing Stern Builders and dela Cruz to withdraw the deposit,[53] to wit:

> It bears stressing that defendants' liability for the payment of the judgment obligation has become indubitable due to the final and executory nature of the Decision dated November 28, 2001. Insofar as the payment of the [sic] judgment obligation is concerned, the Court believes that there is nothing more the defendant can do to escape liability. It is observed that there is nothing more the defendant can do to escape liability. It is observed that defendant U.P. System had already exhausted all its legal remedies to overturn, set aside or modify the decision (dated November 28, 2001) rendered against it. The way the Court sees it, defendant U.P. System's petition before the Supreme Court concerns only with the manner by which said judgment award should be satisfied. It has nothing to do with the legality or propriety thereof, although it prays for the deletion of [sic] reduction of the award of moral damages.
>
> It must be emphasized that this Court's finding, *i.e.*, that there was sufficient appropriation earmarked for the project, was upheld by the Court of Appeals in its decision dated September 16, 2005. Being a finding of fact, the Supreme Court will, ordinarily, not disturb the same was said Court is not a trier of fact. Such being the case, defendants' arguments that there was no sufficient appropriation for the payment of the judgment obligation must fail.

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[51] *Id.*

[52] *Id.* at 556-561.

[53] *Id.* at 562-565.

While it is true that the former Presiding Judge of this Court in its Order dated January 30, 2006 had stated that:

> Let it be stated that what the Court meant by its Order dated July 8, 2005 which states in part that the "disposition of the amount represented therein being subject to the final outcome of the case of the *University of the Philippines, et al. vs. Hon. Agustin S. Dizon, et al.*, (CA G.R. No. 88125 before the Court of Appeals) is that the judgment or resolution of said court has to be final and executory, for if the same will still be elevated to the Supreme Court, it will not attain finality yet until the highest court has rendered its own final judgment or resolution.

it should be noted that neither the Court of Appeals nor the Supreme Court issued a preliminary injunction enjoining the release or withdrawal of the garnished amount. In fact, in its present petition for review before the Supreme Court, U.P. System has not prayed for the issuance of a writ of preliminary injunction. Thus, the Court doubts whether such writ is forthcoming.

The Court honestly believes that if defendants' petition assailing the Order of this Court dated December 31, 2004 granting the motion for the release of the garnished amount was meritorious, the Court of Appeals would have issued a writ of injunction enjoining the same. Instead, said appellate [c]ourt not only refused to issue a writ of preliminary injunction prayed for by U.P. System but denied the petition, as well.[54]

The UP contended that Judge Yadao thereby effectively reversed the January 30, 2006 order of Judge Dizon disallowing the withdrawal of the garnished amount until after the decision in the case would have become final and executory.

Although the Court issued a TRO on January 24, 2007 to enjoin Judge Yadao and all persons acting pursuant to her authority from enforcing her order of January 3, 2007,[55] it appears that on January 16, 2007, or prior to the issuance of the TRO, she had already directed the DBP to forthwith release

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[54] *Id.* at 563-564.

[55] *Id.* at 576-581.

the garnished amount to Stern Builders and dela Cruz; [56] and that DBP had forthwith complied with the order on January 17, 2007 upon the sheriff's service of the order of Judge Yadao.[57]

These intervening developments impelled the UP to file in this Court a supplemental petition on January 26, 2007,[58] alleging that the RTC (Judge Yadao) gravely erred in ordering the immediate release of the garnished amount despite the pendency of the petition for review in this Court.

The UP filed a second supplemental petition[59] after the RTC (Judge Yadao) denied the UP's motion for the redeposit of the withdrawn amount on April 10, 2007,[60] to wit:

> This resolves defendant U.P. System's Urgent Motion to Redeposit Judgment Award praying that plaintiffs be directed to redeposit the judgment award to DBP pursuant to the Temporary Restraining Order issued by the Supreme Court. Plaintiffs opposed the motion and countered that the Temporary Restraining Order issued by the Supreme Court has become moot and academic considering that the act sought to be restrained by it has already been performed. They also alleged that the redeposit of the judgment award was no longer feasible as they have already spent the same.
>
> It bears stressing, if only to set the record straight, that this Court did not – in its Order dated January 3, 2007 (the implementation of which was restrained by the Supreme Court in its Resolution dated January 24, 2002) – direct that that garnished amount "be deposited with the garnishee bank (Development Bank of the Philippines)". In the first place, there was no need to order DBP to make such deposit, as the garnished amount was already deposited in the account of plaintiffs with the DBP as early as May 13, 2005. What the Court granted in its Order dated January 3, 2007 was plaintiff's motion to allow the release of said deposit. It must be

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[56] *Id.* at 625-628.

[57] *Id.* at 687-688.

[58] *Id.* at 605-615.

[59] *Id.* at 705-714.

[60] *Id.* at 719-721.

recalled that the Court found plaintiff's motion meritorious and, at that time, there was no restraining order or preliminary injunction from either the Court of Appeals or the Supreme Court which could have enjoined the release of plaintiffs' deposit. The Court also took into account the following factors:

a) the Decision in this case had long been final and executory after it was rendered on November 28, 2001;

b) the propriety of the dismissal of U.P. System's appeal was upheld by the Supreme Court;

c) a writ of execution had been issued;

d) defendant U.P. System's deposit with DBP was garnished pursuant to a lawful writ of execution issued by the Court; and

e) the garnished amount had already been turned over to the plaintiffs and deposited in their account with DBP.

The garnished amount, as discussed in the Order dated January 16, 2007, was already owned by the plaintiffs, having been delivered to them by the Deputy Sheriff of this Court pursuant to par. (c), Section 9, Rule 39 of the 1997 Rules of Civil Procedure. Moreover, the judgment obligation has already been fully satisfied as per Report of the Deputy Sheriff.

Anent the Temporary Restraining Order issued by the Supreme Court, the same has become *functus officio*, having been issued after the garnished amount had been released to the plaintiffs. The judgment debt was released to the plaintiffs on January 17, 2007, while the Temporary Restraining Order issued by the Supreme Court was received by this Court on February 2, 2007. At the time of the issuance of the Restraining Order, the act sought to be restrained had already been done, thereby rendering the said Order ineffectual.

After a careful and thorough study of the arguments advanced by the parties, the Court is of the considered opinion that there is no legal basis to grant defendant U.P. System's motion to redeposit the judgment amount. Granting said motion is not only contrary to law, but it will also render this Court's final executory judgment nugatory. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final the issue or cause involved

therein should be laid to rest. This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice. In fact, nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

WHEREFORE, premises considered, finding defendant U.P. System's Urgent Motion to Redeposit Judgment Award devoid of merit, the same is hereby DENIED.

SO ORDERED.

Issues

The UP now submits that:

I

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DISMISSING THE PETITION, ALLOWING IN EFFECT THE GARNISHMENT OF UP FUNDS, WHEN IT RULED THAT FUNDS HAVE ALREADY BEEN EARMARKED FOR THE CONSTRUCTION PROJECT; AND THUS, THERE IS NO NEED FOR FURTHER APPROPRIATIONS.

II

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN ALLOWING GARNISHMENT OF A STATE UNIVERSITY'S FUNDS IN VIOLATION OF ARTICLE XIV, SECTION 5(5) OF THE CONSTITUTION.

III

IN THE ALTERNATIVE, THE UNIVERSITY INVOKES EQUITY AND THE REVIEW POWERS OF THIS HONORABLE COURT TO MODIFY, IF NOT TOTALLY DELETE THE AWARD OF ₱10 MILLION AS MORAL DAMAGES TO RESPONDENTS.

IV

THE RTC-BRANCH 80 COMMITTED GRAVE ERROR IN ORDERING THE IMMEDIATE RELEASE OF THE JUDGMENT

AWARD IN ITS ORDER DATED 3 JANUARY 2007 ON THE GROUND OF EQUITY AND JUDICIAL COURTESY.

V

THE RTC-BRANCH 80 COMMITTED GRAVE ERROR IN ORDERING THE IMMEDIATE RELEASE OF THE JUDGMENT AWARD IN ITS ORDER DATED 16 JANUARY 2007 ON THE GROUND THAT PETITIONER UNIVERSITY STILL HAS A PENDING MOTION FOR RECONSIDERATION OF THE ORDER DATED 3 JANUARY 2007.

VI

THE RTC-BRANCH 80 COMMITTED GRAVE ERROR IN NOT ORDERING THE REDEPOSIT OF THE GARNISHED AMOUNT TO THE DBP IN VIOLATION OF THE CLEAR LANGUAGE OF THE SUPREME COURT RESOLUTION DATED 24 JANUARY 2007.

The UP argues that the amount earmarked for the construction project had been purposely set aside only for the aborted project and did not include incidental matters like the awards of actual damages, moral damages and attorney's fees. In support of its argument, the UP cited Article 12.2 of the General Construction Agreement, which stipulated that no deductions would be allowed for the payment of claims, damages, losses and expenses, including attorney's fees, in case of any litigation arising out of the performance of the work. The UP insists that the CA decision was inconsistent with the rulings in *Commissioner of Public Highways v. San Diego*[61] and *Department of Agriculture v. NLRC*[62] to the effect that government funds and properties could not be seized under writs of execution or garnishment to satisfy judgment awards.

Furthermore, the UP contends that the CA contravened Section 5, Article XIV of the Constitution by allowing the garnishment of UP funds, because the garnishment resulted in a substantial reduction of the UP's limited budget allocated for the

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[61] G.R. No. L-30098, February 18, 1970, 31 SCRA 616, 625.

[62] G.R. No. 104269, November 11, 1993, 227 SCRA 693, 701-702.

remuneration, job satisfaction and fulfillment of the best available teachers; that Judge Yadao should have exhibited judicial courtesy towards the Court due to the pendency of the UP's petition for review; and that she should have also desisted from declaring that the TRO issued by this Court had become *functus officio*.

Lastly, the UP states that the awards of actual damages of ₱5,716,729.00 and moral damages of ₱10 million should be reduced, if not entirely deleted, due to its being unconscionable, inequitable and detrimental to public service.

In contrast, Stern Builders and dela Cruz aver that the petition for review was fatally defective for its failure to mention the other cases upon the same issues pending between the parties (*i.e.*, CA-G.R. No. 77395 and G.R No. 163501); that the UP was evidently resorting to forum shopping, and to delaying the satisfaction of the final judgment by the filing of its petition for review; that the ruling in *Commissioner of Public Works v. San Diego* had no application because there was an appropriation for the project; that the UP retained the funds allotted for the project only in a fiduciary capacity; that the contract price had been meanwhile adjusted to ₱22,338,553.25, an amount already more than sufficient to cover the judgment award; that the UP's prayer to reduce or delete the award of damages had no factual basis, because they had been gravely wronged, had been deprived of their source of income, and had suffered untold miseries, discomfort, humiliation and sleepless years; that dela Cruz had even been constrained to sell his house, his equipment and the implements of his trade, and together with his family had been forced to live miserably because of the wrongful actuations of the UP; and that the RTC correctly declared the Court's TRO to be already *functus officio* by reason of the withdrawal of the garnished amount from the DBP.

The decisive issues to be considered and passed upon are, therefore: (*a*) whether the funds of the UP were the proper subject of garnishment in order to satisfy the judgment award; and (*b*) whether the UP's prayer for the deletion of the awards of actual damages of ₱5,716,729.00, moral damages of ₱10,000,000.00 and attorney's fees of ₱150,000.00 plus ₱1,500.00 per

appearance could be granted despite the finality of the judgment of the RTC.

Ruling

The petition for review is meritorious.

I.
UP's funds, being government funds, are not subject to garnishment

The UP was founded on June 18, 1908 through Act 1870 to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training to deserving students.[63] Despite its establishment as a body corporate,[64] the UP remains to be a "chartered institution"[65] performing a legitimate government function. It is an institution of higher learning, not a corporation established for profit and declaring any dividends.[66] In enacting Republic Act No. 9500 (*The University of the Philippines Charter of 2008*), Congress has declared the UP as the national university[67] "dedicated to the search for truth and knowledge as well as the development of future leaders."[68]

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[63] Section 2, Act No. 1870.

[64] Section 1, Act No. 1870.

[65] Section 2(12) of Executive Order No. 292 reads:

x x x x x x x x x

xxx Chartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.

x x x x x x x x x

[66] *University of the Philippines and Anonas v. Court of Industrial Relations,* 107 Phil. 848, 850 (1960).

[67] Section 2, R.A. No. 9500.

[68] Section 3, R.A. No. 9500.

Irrefragably, the UP is a government instrumentality,[69] performing the State's constitutional mandate of promoting quality and accessible education.[70] As a government instrumentality, the UP administers special funds sourced from the fees and income enumerated under Act No. 1870 and Section 1 of Executive Order No. 714,[71] and from the yearly appropriations, to achieve the purposes laid down by Section 2 of Act 1870, as expanded in Republic Act No. 9500.[72] All the funds going into the possession of the UP, including any interest accruing from the deposit of such funds in any banking institution, constitute a "special trust fund," the disbursement of which should always be aligned with the UP's mission and purpose,[73] and should always be subject to auditing by the COA.[74]

Presidential Decree No. 1445 defines a "trust fund" as a fund that officially comes in the possession of an agency of the government or of a public officer as trustee, agent or administrator, or that is received for the fulfillment of some obligation.[75] A trust fund may be utilized only for the "specific

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[69] Section 2(10), of Executive Order No. 292 provides:

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xxx Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

x x x x x x x x x

[70] Section 1, Article XIV, 1987 Constitution.

[71] Entitled *Fiscal Control and Management of the Funds of the University of the Philippines,* promulgated on August 1, 1981.

[72] Section 3, R.A. No. 9500.

[73] Section 13(m), R.A. No. 9500.

[74] Section 13, Act 1870; Section 6, Executive Order No. 714; Section 26, R.A. No. 9500.

[75] Section 3(4), P.D. No. 1445.

purpose for which the trust was created or the funds received."[76]

The funds of the UP are government funds that are public in character. They include the income accruing from the use of real property ceded to the UP that may be spent only for the attainment of its institutional objectives.[77] Hence, the funds subject of this action could not be validly made the subject of the RTC's writ of execution or garnishment. The adverse judgment rendered against the UP in a suit to which it had impliedly consented was not immediately enforceable by execution against the UP,[78] because suability of the State did not necessarily mean its liability.[79]

A marked distinction exists between suability of the State and its liability. As the Court succinctly stated in *Municipality of San Fernando, La Union v. Firme*:[80]

> A distinction should first be made between suability and liability. "Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable.

Also, in *Republic v. Villasor*,[81] where the issuance of an *alias* writ of execution directed against the funds of the Armed Forces

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[76] Section 4(3), P.D. No. 1445.

[77] Section 22(a), R.A. No. 9500.

[78] *Philippine Rock Industries, Inc. v. Board of Liquidators*, G.R. No. 84992, December 15, 1989, 180 SCRA 171, 175.

[79] *Republic v. National Labor Relations Commission*, G.R. No. 120385, October 17, 1996, 263 SCRA 290, 300.

[80] G.R. No. 52179, April 8, 1991, 195 SCRA 692, 697.

[81] G.R. No. L-30671, November 28, 1973, 54 SCRA 83, 87.

of the Philippines to satisfy a final and executory judgment was nullified, the Court said:

> xxx The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

The UP correctly submits here that the garnishment of its funds to satisfy the judgment awards of actual and moral damages (including attorney's fees) was not validly made if there was no special appropriation by Congress to cover the liability. It was, therefore, legally unwarranted for the CA to agree with the RTC's holding in the order issued on April 1, 2003 that no appropriation by Congress to allocate and set aside the payment of the judgment awards was necessary because "there (were) already an appropriations (*sic*) earmarked for the said project."[82] The CA and the RTC thereby unjustifiably ignored the legal restriction imposed on the trust funds of the Government and its agencies and instrumentalities to be used *exclusively* to fulfill the purposes for which the trusts were created or for which the funds were received except upon express authorization by Congress or by the head of a government agency in control of the funds, and subject to pertinent budgetary laws, rules and regulations.[83]

Indeed, an appropriation by Congress was required before the judgment that rendered the UP liable for moral and actual damages (including attorney's fees) would be satisfied considering

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[82] *Rollo*, p. 51.

[83] Section 84(2), P.D. No. 1445.

that such monetary liabilities were not covered by the "appropriations earmarked for the said project." The Constitution strictly mandated that "(n)o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[84]

II
COA must adjudicate private respondents' claim before execution should proceed

The execution of the monetary judgment against the UP was within the primary jurisdiction of the COA. This was expressly provided in Section 26 of Presidential Decree No. 1445, to wit:

> Section 26. *General jurisdiction*. — **The authority and powers of the Commission shall extend to and comprehend all matters relating to** auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as **the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities**. **The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.**

It was of no moment that a final and executory decision already validated the claim against the UP. The settlement of the monetary claim was still subject to the primary jurisdiction of the COA despite the final decision of the RTC having already validated

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[84] Section 29 (1), Article VI, Constitution.

the claim.[85] As such, Stern Builders and dela Cruz as the claimants had no alternative except to first seek the approval of the COA of their monetary claim.

On its part, the RTC should have exercised utmost caution, prudence and judiciousness in dealing with the motions for execution against the UP and the garnishment of the UP's funds. The RTC had no authority to direct the immediate withdrawal of any portion of the garnished funds from the depository banks of the UP. By eschewing utmost caution, prudence and judiciousness in dealing with the execution and garnishment, and by authorizing the withdrawal of the garnished funds of the UP, the RTC acted beyond its jurisdiction, and all its orders and issuances thereon were void and of no legal effect, specifically: (*a*) the order Judge Yadao issued on January 3, 2007 allowing Stern Builders and dela Cruz to withdraw the deposited garnished amount; (*b*) the order Judge Yadao issued on January 16, 2007 directing DBP to forthwith release the garnish amount to Stern Builders and dela Cruz; (*c*) the sheriff's report of January 17, 2007 manifesting the full satisfaction of the writ of execution; and (*d*) the order of April 10, 2007 deying the UP's motion for the redeposit of the withdrawn amount. Hence, such orders and issuances should be struck down without exception.

Nothing extenuated Judge Yadao's successive violations of Presidential Decree No. 1445. She was aware of Presidential Decree No. 1445, considering that the Court circulated to all judges its Administrative Circular No. 10-2000,[86] issued on October 25, 2000, enjoining them "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units" precisely in order to prevent the

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[85] *National Home Mortgage Finance Corporation v. Abayari*, G.R. No. 166508, October 2, 2009, 602 SCRA 242, 256.

[86] Entitled EXERCISE OF UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY JUDGMENTS AGAINST GOVERNMENT AGENCIES AND LOCAL GOVERNMENT UNITS.

circumvention of Presidential Decree No. 1445, as well as of the rules and procedures of the COA, to wit:

In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

Judges should bear in mind that in *Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:

> "The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Court ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture v. NLRC,* 227 SCRA 693, 701-02 [1993] citing *Republic vs. Villasor,* 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect, sue the State thereby (P.D. 1445, Sections 49-50).

However, notwithstanding the rule that government properties are not subject to levy and execution unless otherwise provided for by statute (*Republic v. Palacio*, 23 SCRA 899 [1968]; *Commissioner of Public Highways v. San Diego, supra*) or municipal ordinance (*Municipality of Makati v. Court of Appeals*, 190 SCRA 206 [1990]),

the Court has, in various instances, distinguished between government funds and properties for public use and those not held for public use. Thus, in *Viuda de Tan Toco v. Municipal Council of Iloilo* (49 Phil 52 [1926]), the Court ruled that "[w]here property of a municipal or other public corporation is sought to be subjected to execution to satisfy judgments recovered against such corporation, the question as to whether such property is leviable or not is to be determined by the usage and purposes for which it is held." The following can be culled from *Viuda de Tan Toco v. Municipal Council of Iloilo*:

1. Properties held for public uses – and generally everything held for governmental purposes – are not subject to levy and sale under execution against such corporation. The same rule applies to funds in the hands of a public officer and taxes due to a municipal corporation.

2. Where a municipal corporation owns in its proprietary capacity, as distinguished from its public or government capacity, property not used or used for a public purpose but for quasi-private purposes, it is the general rule that such property may be seized and sold under execution against the corporation.

3. Property held for public purposes is not subject to execution merely because it is temporarily used for private purposes. If the public use is wholly abandoned, such property becomes subject to execution.

This Administrative Circular shall take effect immediately and the Court Administrator shall see to it that it is faithfully implemented.

Although Judge Yadao pointed out that neither the CA nor the Court had issued *as of then* any writ of preliminary injunction to enjoin the release or withdrawal of the garnished amount, she did not need any writ of injunction from a superior court to compel her obedience to the law. The Court is disturbed that an experienced judge like her should look at public laws like Presidential Decree No. 1445 dismissively instead of loyally following and unquestioningly implementing them. That she did so turned her court into an oppressive bastion of mindless tyranny instead of having it as a true haven for the seekers of justice like the UP.

III
Period of appeal did not start without effective service of decision upon counsel of record; *Fresh-period rule* announced in *Neypes v. Court of Appeals* can be given retroactive application

The UP next pleads that the Court gives due course to its petition for review in the name of equity in order to reverse or modify the adverse judgment against it despite its finality. At stake in the UP's plea for equity was the return of the amount of ₱16,370,191.74 illegally garnished from its trust funds. Obstructing the plea is the finality of the judgment based on the supposed tardiness of UP's appeal, which the RTC declared on September 26, 2002. The CA upheld the declaration of finality on February 24, 2004, and the Court itself denied the UP's petition for review on that issue on May 11, 2004 (G.R. No. 163501). The denial became final on November 12, 2004.

It is true that a decision that has attained finality becomes immutable and unalterable, and cannot be modified in any respect,[87] even if the modification is meant to correct erroneous conclusions of fact and law, and whether the modification is made by the court that rendered it or by this Court as the highest court of the land.[88] Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be deprived of the fruits of victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of such judgment sets at naught the role and purpose of the courts to resolve justiciable controversies with finality.[89] Indeed,

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[87] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 168382, June 6, 2011, 650 SCRA 545, 557; *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 528; *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162.

[88] *FGU Insurance Corporation v. Regional Trial Court of Makati, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[89] *Edillo v. Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 602.

all litigations must at some time end, even at the risk of occasional errors.

But the doctrine of immutability of a final judgment has not been absolute, and has admitted several exceptions, among them: (*a*) the correction of clerical errors; (*b*) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the decision that render its execution unjust and inequitable.[90] Moreover, in *Heirs of Maura So v. Obliosca*,[91] we stated that despite the absence of the preceding circumstances, the Court is not precluded from brushing aside procedural norms if only to serve the higher interests of justice and equity. Also, in *Gumaru v. Quirino State College*,[92] the Court nullified the proceedings and the writ of execution issued by the RTC for the reason that respondent state college had not been represented in the litigation by the Office of the Solicitor General.

We rule that the UP's plea for equity warrants the Court's exercise of the exceptional power to disregard the declaration of finality of the judgment of the RTC for being in clear violation of the UP's right to due process.

Both the CA and the RTC found the filing on June 3, 2002 by the UP of the notice of appeal to be tardy. They based their finding on the fact that only six days remained of the UP's reglementary 15-day period within which to file the notice of appeal because the UP had filed a motion for reconsideration on January 16, 2002 *vis-à-vis* the RTC's decision the UP received on January 7, 2002; and that because the denial of the motion for reconsideration had been served upon Atty. Felimon D. Nolasco of the UPLB Legal Office on May 17, 2002, the UP had only until May 23, 2002 within which to file the notice of appeal.

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[90] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, 214.

[91] G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418.

[92] G.R. No. 164196, June 22, 2007, 525 SCRA 412, 426.

The UP counters that the service of the denial of the motion for reconsideration upon Atty. Nolasco was defective considering that its counsel of record was not Atty. Nolasco of the UPLB Legal Office but the OLS in Diliman, Quezon City; and that the period of appeal should be reckoned from May 31, 2002, the date when the OLS received the order. The UP submits that the filing of the notice of appeal on June 3, 2002 was well within the reglementary period to appeal.

We agree with the submission of the UP.

Firstly, the service of the denial of the motion for reconsideration upon Atty. Nolasco of the UPLB Legal Office was invalid and ineffectual because he was admittedly not the counsel of record of the UP. The rule is that it is on the counsel and not the client that the service should be made.[93] That counsel was the OLS in Diliman, Quezon City, which was served with the denial only on May 31, 2002. As such, the running of the remaining period of six days resumed only on June 1, 2002,[94] rendering the filing of the UP's notice of appeal on June 3, 2002 timely and well within the remaining days of the UP's period to appeal.

Verily, the service of the denial of the motion for reconsideration could only be validly made upon the OLS in Diliman, and no other. The fact that Atty. Nolasco was in the employ of the UP at the UPLB Legal Office did not render the service upon him effective. It is settled that where a party has appeared by counsel, service must be made upon such counsel.[95] Service on the party or the party's employee is not effective because such notice is

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[93] *Antonio v. Court of Appeals*, No. L-35434, November 9, 1988, 167 SCRA 127, 131-132.

[94] Pursuant to Section 1, Rule 22 of the *Rules of Court*, "**the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included**."

[95] *Anderson v. National Labor Relations Commission*, G.R. No. 111212, January 22, 1996, 252 SCRA 116, 124.

not notice in law.[96] This is clear enough from Section 2, second paragraph, of Rule 13, *Rules of Court*, which explicitly states that: "If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side." As such, the period to appeal resumed only on June 1, 2002, the date following the service on May 31, 2002 upon the OLS in Diliman of the copy of the decision of the RTC, not from the date when the UP was notified.[97]

Accordingly, the declaration of finality of the judgment of the RTC, being devoid of factual and legal bases, is set aside.

Secondly, even assuming that the service upon Atty. Nolasco was valid and effective, such that the remaining period for the UP to take a timely appeal would end by May 23, 2002, it would still not be correct to find that the judgment of the RTC became final and immutable thereafter due to the notice of appeal being filed too late on June 3, 2002.

In so declaring the judgment of the RTC as final against the UP, the CA and the RTC applied the rule contained in the second paragraph of Section 3, Rule 41 of the *Rules of Court* to the effect that the filing of a motion for reconsideration interrupted the running of the period for filing the appeal; and that the period resumed upon notice of the denial of the motion for reconsideration. For that reason, the CA and the RTC might not be taken to task for strictly adhering to the rule then prevailing.

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[96] *Prudential Bank v. Business Assistance Group, Inc.*, G.R. No. 158806, December 16, 2004, 447 SCRA 187, 193; *Cabili v. Badelles*, No. L-17786, 116 Phil. 494, 497 (1962); *Martinez v. Martinez*, No. L-4075, 90 Phil. 697, 700 (1952); *Vivero v. Santos*, No. L-8105, 98 Phil. 500, 504 (1956); *Perez v. Araneta*, No. L-11788, 103 Phil. 1141 (1958); *Visayan Surety and Insurance Corp. v. Central Bank of the Philippines*, No. L-12199, 104 Phil. 562, 569 (1958).

[97] *Notor v. Daza*, No. L-320, 76 Phil. 850 (1946).

However, equity calls for the retroactive application in the UP's favor of the *fresh-period rule* that the Court first announced in mid-September of 2005 through its ruling in *Neypes v. Court of Appeals*,[98] *viz*:

> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

The retroactive application of the *fresh-period rule*, a procedural law that aims "to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution,"[99] is impervious to any serious challenge. This is because there are no vested rights in rules of procedure.[100] A law or regulation is procedural when it prescribes rules and forms of procedure in order that courts may be able to administer justice.[101] It does not come within the legal conception of a retroactive law, or is not subject of the general rule prohibiting the retroactive operation of statues, but is given retroactive effect in actions pending and undetermined at the time of its passage without violating any right of a person who may feel that he is adversely affected.

We have further said that a procedural rule that is amended for the benefit of litigants in furtherance of the administration of justice shall be retroactively applied to likewise favor actions then pending, as equity delights in equality.[102] We may even

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[98] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[99] *Id.* at 644.

[100] *Jamero v. Melicor,* G.R. No. 140929, May 26, 2005, 459 SCRA 113, 120.

[101] *Lopez v. Gloria,* No. L-13846, 40 Phil. 28 (1919).

[102] *Go v. Sunbanun*, G.R. No. 168240, February 9, 2011, 642 SCRA 367, 370.

relax stringent procedural rules in order to serve substantial justice and in the exercise of this Court's equity jurisdiction.[103] Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction.[104]

It is cogent to add in this regard that to deny the benefit of the *fresh-period rule* to the UP would amount to injustice and absurdity – injustice, because the judgment in question was issued on November 28, 2001 as compared to the judgment in *Neypes* that was rendered in 1998; absurdity, because parties receiving notices of judgment and final orders issued in the year 1998 would enjoy the benefit of the *fresh-period rule* but the later rulings of the lower courts like that herein would not.[105]

Consequently, even if the reckoning started from May 17, 2002, when Atty. Nolasco received the denial, the UP's filing on June 3, 2002 of the notice of appeal was not tardy within the context of the *fresh-period rule*. For the UP, the fresh period of 15-days counted from service of the denial of the motion for reconsideration would end on June 1, 2002, which was a Saturday. Hence, the UP had until the next working day, or June 3, 2002, a Monday, within which to appeal, conformably with Section 1 of Rule 22, *Rules of Court*, which holds that: "If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day."

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[103] *Buenaflor v. Court of Appeals*, G.R. No. 142021, November 29, 2000, 346 SCRA 563, 567; *Soriano v. Court of Appeals*, G.R. No. 100525, May 25, 1993, 222 SCRA 545, 546-547.

[104] *Reyes v. Lim*, G.R. No. 134241, August 11, 2003, 408 SCRA 560, 560-567.

[105] *De los Santos v. Vda. de Mangubat*, G.R. No. 149508, October 10, 2007, 535 SCRA 411, 423.

IV
Awards of monetary damages, being devoid of factual and legal bases, did not attain finality and should be deleted

Section 14 of Article VIII of the Constitution prescribes that express findings of fact and of law should be made in the decision rendered by any court, to wit:

> Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Implementing the constitutional provision in civil actions is Section 1 of Rule 36, *Rules of Court*, *viz*:

> Section 1. *Rendition of judgments and final orders*. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court. (1a)

The Constitution and the *Rules of Court* apparently delineate two main essential parts of a judgment, namely: the *body* and the *decretal portion*. Although the latter is the controlling part,[106] the importance of the former is not to be lightly regarded because it is there where the court clearly and distinctly states its findings of fact and of law on which the decision is based. To state it differently, one without the other is ineffectual and useless. The omission of either inevitably results in a judgment that violates the letter and the spirit of the Constitution and the *Rules of Court*.

The term *findings of fact* that must be found in the body of the decision refers to statements of fact, not to conclusions of

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[106] *Pelejo v. Court of Appeals*, No. 60800, August 31, 1982, 116 SCRA 406, 410.

law.[107] Unlike in pleadings where ultimate facts alone need to be stated, the Constitution and the *Rules of Court* require not only that a decision should state the ultimate facts but also that it should specify the supporting evidentiary facts, for they are what are called the findings of fact.

The importance of the findings of fact and of law cannot be overstated. The reason and purpose of the Constitution and the *Rules of Court* in that regard are obviously to inform the parties why they win or lose, and what their rights and obligations are. Only thereby is the demand of due process met as to the parties. As Justice Isagani A. Cruz explained in *Nicos Industrial Corporation v. Court of Appeals*:[108]

> It is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.

Here, the decision of the RTC justified the grant of actual and moral damages, and attorney's fees in the following terse manner, *viz*:

> xxx The Court is not unmindful that due to defendants' unjustified refusal to pay their outstanding obligation to plaintiff, the same suffered losses and incurred expenses as he was forced to re-mortgage his house and lot located in Quezon City to Metrobank (Exh. "CC") and BPI Bank just to pay its monetary obligations in the form of

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[107] *Braga v. Millora*, No. 1395, 3 Phil. 458 (1904).

[108] G.R. No. 88709, February 11, 1992, 206 SCRA 127, 132.

interest and penalties incurred in the course of the construction of the subject project.[109]

The statement that "due to defendants' unjustified refusal to pay their outstanding obligation to plaintiff, the same suffered losses and incurred expenses as he was forced to re-mortgage his house and lot located in Quezon City to Metrobank (Exh. "CC") and BPI Bank just to pay its monetary obligations in the form of interest and penalties incurred in the course of the construction of the subject project" was only a conclusion of fact and law that did not comply with the constitutional and statutory prescription. The statement specified no detailed expenses or losses constituting the ₱5,716,729.00 actual damages sustained by Stern Builders in relation to the construction project or to other pecuniary hardships. The omission of such expenses or losses directly indicated that Stern Builders did not prove them at all, which then contravened Article 2199, *Civil Code*, the statutory basis for the award of actual damages, which entitled a person to an adequate compensation only for such pecuniary loss suffered by him *as he has duly proved*. As such, the actual damages allowed by the RTC, being bereft of factual support, were speculative and whimsical. Without the clear and distinct findings of fact and law, the award amounted only to an *ipse dixit* on the part of the RTC,[110] and did not attain finality.

There was also no clear and distinct statement of the factual and legal support for the award of moral damages in the substantial amount of ₱10,000,000.00. The award was thus also speculative and whimsical. Like the actual damages, the moral damages constituted another judicial *ipse dixit*, the inevitable consequence of which was to render the award of moral damages incapable of attaining finality. In addition, the

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[109] *Rollo*, p. 137.

[110] Translated, the phrase means: "*He himself said it.*" It refers to an unsupported statement that rests solely on the authority of the individual asserting the statement.

grant of moral damages in that manner contravened the law that permitted the recovery of moral damages as the means to assuage "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury."[111] The contravention of the law was manifest considering that Stern Builders, as an artificial person, was incapable of experiencing pain and moral sufferings.[112] Assuming that in granting the substantial amount of ₱10,000,000.00 as moral damages, the RTC might have had in mind that dela Cruz had himself suffered mental anguish and anxiety. If that was the case, then the RTC obviously disregarded his separate and distinct personality from that of Stern Builders.[113] Moreover, his moral and emotional sufferings as the President of Stern Builders were not the sufferings of Stern Builders. Lastly, the RTC violated the basic principle that moral damages were not intended to enrich the plaintiff at the expense of the defendant, but to restore the plaintiff to his status quo ante as much as possible. Taken together, therefore, all these considerations exposed the substantial amount of ₱10,000,000.00 allowed as moral damages not only to be factually baseless and legally indefensible, but also to be unconscionable, inequitable and unreasonable.

Like the actual and moral damages, the ₱150,000.00, plus ₱1,500.00 per appearance, granted as attorney's fees were factually unwarranted and devoid of legal basis. The general rule is that a successful litigant cannot recover attorney's fees as part of the damages to be assessed against the losing party because of the policy that no premium should be placed on the

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[111] Article 2217, *Civil Code*.

[112] *Crystal v. Bank of the Philippine Islands*, G.R. No. 172428, November 28, 2008, 572 SCRA 697, 705.

[113] Section 2, *Corporation Code*; *Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 149; *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 114286, April 19, 2001, 356 SCRA 671, 682; *Booc v. Bantuas*, A.M. No. P-01-1464, March 13, 2001, 354 SCRA 279, 283.

right to litigate.[114] Prior to the effectivity of the present *Civil Code*, indeed, 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[115] of the *Civil Code* came to be recognized.[116] Nonetheless, with attorney's fees being allowed in the concept of actual damages,[117] their amounts must be factually and legally justified in the body of the decision and

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[114] *Heirs of Justiva v. Gustilo*, L-16396, January 31, 1963, 7 SCRA 72, 73; *Firestone Tire & Rubber Co. of the Phil. v. Ines Chaves & Co., Ltd.*, No. L-17106, October 19, 1996, 18 SCRA 356, 358.

[115] 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.

[116] See *Reyes v. Yatco*, No. L-11425, 100 Phil. 964 (1957); *Tan Ti v. Alvear*, No. 8228, 26 Phil. 566 (1914); *Castueras, et al. v. Hon. Bayona, et al.*, No. L-13657, 106 Phil. 340 (1959).

[117] *Fores v. Miranda*, No. L-12163, 105 Phil. 266 (1959).

not stated for the first time in the decretal portion.[118] Stating the amounts only in the dispositive portion of the judgment is not enough;[119] a rendition of the factual and legal justifications for them must also be laid out in the body of the decision.[120]

That the attorney's fees granted to the private respondents did not satisfy the foregoing requirement suffices for the Court to undo them.[121] The grant was ineffectual for being contrary to law and public policy, it being clear that the express findings of fact and law were intended to bring the case within the exception and thereby justify the award of the attorney's fees. Devoid of such express findings, the award was a conclusion without a premise, its basis being improperly left to speculation and conjecture.[122]

Nonetheless, the absence of findings of fact and of any statement of the law and jurisprudence on which the awards of actual and moral damages, as well as of attorney's fees, were based was a fatal flaw that invalidated the decision of the RTC only as to such awards. As the Court declared in *Velarde v. Social Justice Society*,[123] the failure to comply with the constitutional requirement for a clear and distinct statement of the supporting facts and law "is a grave abuse of discretion amounting to lack or excess of jurisdiction" and that "(d)ecisions

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[118] *Buduhan v. Pakurao,* G.R. No. 168237, February 22, 2006, 483 SCRA 116, 127.

[119] *Gloria v. De Guzman, Jr.,* G.R. No. 116183, October 6, 1995, 249 SCRA 126, 136.

[120] *Policarpio v. Court of Appeals*, G.R. No. 94563, March 5, 1991, 194 SCRA 729, 742.

[121] *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.

[122] *Ballesteros v. Abion,* G.R. No. 143361, February 9, 2006, 482 SCRA 23.

[123] G.R. No. 159357, April 28, 2004, 428 SCRA 283.

or orders issued in careless disregard of the constitutional mandate are a patent nullity and must be struck down as void."[124] The other item granted by the RTC (*i.e.*, ₱503,462.74) shall stand, subject to the action of the COA as stated herein.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals under review; **ANNULS** the orders for the garnishment of the funds of the University of the Philippines and for the release of the garnished amount to Stern Builders Corporation and Servillano dela Cruz; and **DELETES** from the decision of the Regional Trial Court dated November 28, 2001 for being void only the awards of actual damages of ₱5,716,729.00, moral damages of ₱10,000,000.00, and attorney's fees of ₱150,000.00, plus ₱1,500.00 per appearance, in favor of Stern Builders Corporation and Servillano dela Cruz.

The Court **ORDERS** Stern Builders Corporation and Servillano dela Cruz to redeposit the amount of ₱16,370,191.74 within 10 days from receipt of this decision.

Costs of suit to be paid by the private respondents.

SO ORDERED.

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

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[124] *Id.* at 309.

FIRST DIVISION

[G.R. No. 173268. August 23, 2012]

ERNESTO A. FAJARDO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION and BUREAU OF CUSTOMS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE 1997 RULES OF COURT; QUESTIONS OF FACT MAY NOT BE THE SUBJECT THEREOF.— [Q]uestions of fact may not be the subject of an appeal by *certiorari* under Rule 45 of the 1997 Rules of Court as the Supreme Court is not a trier of facts. As a rule, findings of fact of the Ombudsman, when affirmed by the CA, are conclusive and binding upon this Court, unless there is grave abuse of discretion on the part of the Ombudsman.

2. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY; PUBLIC OFFICERS OR EMPLOYEES ARE PRESUMED TO HAVE PERFORMED THEIR OFFICIAL DUTIES REGULARLY, IN THE ABSENCE OF CLEAR AND CONVINCING PROOF TO THE CONTRARY.— [I]n the absence of clear and convincing proof to the contrary, public officers or employees are presumed to have performed their official duties regularly, properly and lawfully.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; REQUIRED IN ADMINISTRATIVE PROCEEDINGS.— To us, the discrepancy between the "audit sales" and the actual amount remitted by petitioner is sufficient evidence of dishonesty and grave misconduct warranting his dismissal from public service. We need not belabor the point that unlike in a criminal case where proof beyond reasonable doubt is required, administrative proceedings only require substantial evidence or "such relevant

evidence as a reasonable mind may accept as adequate to support a conclusion."

4. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE POWER OF THE OMBUDSMAN TO DETERMINE AND IMPOSE ADMINISTRATIVE LIABILITY IS NOT MERELY RECOMMENDATORY BUT ACTUALLY MANDATORY.— It is already well-settled that "the power of the Ombudsman to determine and impose administrative liability is not merely recommendatory but actually mandatory." As we have explained in *Atty. Ledesma v. Court of Appeals*, the fact "[t]hat the refusal, without just cause, of any officer to comply with [the] order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action [under Section 15(3) of RA No. 6770], is a strong indication that the Ombudsman's 'recommendation' is not merely advisory in nature but is actually mandatory within the bounds of law."

APPEARANCES OF COUNSEL

Jason Robert C. Josef for petitioner.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Under the "threefold liability rule," any act or omission of any public official or employee can result in criminal, civil, or administrative liability, each of which is independent of the other.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated April 27, 2006

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[1] *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 268.

[2] *Rollo*, pp. 11-581 with Annexes "A" to "V" inclusive.

[3] *Id.* at 58-67; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Magdangal M. De Leon.

and the Resolution[4] dated June 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91021.

Factual Antecedents

Petitioner Ernesto A. Fajardo was employed by respondent Bureau of Customs (BOC) as a Clerk I from February 26, 1982 to February 29, 1988 and as a Clerk II from March 1, 1988.[5] However, due to the exigency of the service, he was designated as a Special Collecting Officer at the Ninoy Aquino International Airport (NAIA) Customs House, Collection Division, Pasay City.[6]

In May 2002, Nancy Marco (Marco), a Commission on Audit (COA) State Auditor detailed at the NAIA Customs House,[7] was directed by her superior, Auditor Melinda Vega-Fria, to conduct a post audit of the abstract of collection of all collecting officers of the NAIA Customs House.[8] In the course of her audit, State Auditor Marco noticed that in petitioner's daily abstract of collection dated August 16, 2002, he received checks in the amounts of ₱295,000.00, ₱247,000.00, ₱122,000.00, ₱108,000.00 and ₱105,000.00.[9] To verify whether it was possible for him to receive such amounts in one day, a daily analysis of the sales of accountable forms with the corresponding documentary stamps was made.[10]

In the Audit Observation Memorandum (AOM No. 2002-008)[11] dated November 26, 2002, State Auditor Prudencia S.

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[4] *Id.* at 69.

[5] See Affidavit of Gladys D. Fontanilla, HRMO III, Bureau of Customs, *id.* at 99-100.

[6] See MIA (Manila International Airport) Customs Personnel Order No. 17-82 dated April 26, 1982, *id.* at 103.

[7] *Id.* at 185-186.

[8] *Id.* at 62.

[9] *Id.* at 528.

[10] *Id.*

[11] *Id.* at 80.

Bautista (Bautista) reported that petitioner has an unremitted collection from sales of accountable forms with money value and stamps in the amount of ₱20,118,355.00 for the period January 2002 to October 2002.[12] Upon further investigation by State Auditor Marco, it was discovered that based on the analysis of the monthly sales of accountable forms and stamps, petitioner failed to remit the total amount of ₱53,214,258.00[13] from January 2000 to October 2002.[14]

On January 6, 2003, Customs Commissioner Antonio M. Bernardo requested respondent National Bureau of Investigation-National Capital Region (NBI-NCR) to conduct an investigation on the reported misappropriation of public funds committed by petitioner.[15]

On January 8, 2003, the resident auditors of NAIA Customs House, namely: Marco, Bautista, and Filomena Tolorio, executed separate "*Sinumpaang Salaysay*"[16] at the NBI. They stated under oath that based on the Analysis of the Monthly Sales of Accountable Forms and Stamps for the years 2000[17] and 2001,[18] and the period January 1, 2002 to October 31, 2002,[19] and the Summary of Analysis of Sale of Stamps and Accountable Forms for the period January 2000 to October 2002,[20] petitioner failed to remit the total amount of ₱53,214,258.00.[21]

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[12] *Id.* at 526.

[13] Amount was later corrected in the COA Final Audit report to ₱53,658,371.00 or an increase of ₱444,113; *id.* at 537.

[14] *Id.* at 526.

[15] *Id.*

[16] *Id.* at 70-75.

[17] *Id.* at 76.

[18] *Id.* at 77.

[19] *Id.* at 78.

[20] *Id.* at 79.

[21] Corrected as ₱53,658,371.00; *id.* at 537.

Thereafter, on January 10, 2003, an Information for violation of Republic Act (RA) No. 7080 (Plunder) was filed against petitioner.[22] The case was raffled to Branch 119 of the Regional Trial Court (RTC) of Pasay City and docketed as Criminal Case No. 03-0043.[23]

On February 8, 2003, Customs District Collector Celso P. Templo demanded from petitioner the unremitted collection but the latter failed to return the money and duly account for the same.[24]

Finding sufficient basis to commence an administrative investigation, Mary Susan S. Guillermo, the Director of the Administrative Adjudication Bureau of the Office of the Ombudsman, in an Order[25] dated February 11, 2003, directed petitioner to file his counter-affidavit.

On May 19, 2003, petitioner filed his Counter-Affidavit[26] categorically denying the accusation hurled against him. He claimed that there was no under remittance on his part because the sale of BOC forms does not automatically result in the sale of documentary stamps from the Documentary Stamp Metering Machine.[27] He likewise assailed the validity of the AOM No. 2002-008 on the ground that it was not referred to the COA Legal and Adjudication Office as mandated by Section 1, subsection 2 of the General Guidelines of COA Memorandum No. 2002-053 dated August 26, 2003.[28]

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[22] *Id.* at 630.

[23] *Id.*

[24] *Id.* at 527.

[25] *Id.* at 81.

[26] *Id.* at 83-94.

[27] *Id.* at 528-530.

[28] *Id.* at 530-531.

Ruling of the Ombudsman

On May 3, 2005, the Ombudsman rendered a Decision[29] finding petitioner guilty of dishonesty and grave misconduct.[30] Pertinent portions of the Decision read:

> The bulk of the evidence presented supports the finding that indeed respondent failed to remit the collection from the sales of accountable forms with money value and of documentary stamps of the Ninoy Aquino International Airport Custom House for the years 2000 and 2001 and from January 01 to October 31, 2002 in the total sum of FIFTY THREE MILLION SIX HUNDRED FIFTY EIGHT THOUSAND THREE HUNDRED SEVENTY-ONE PESOS (₱53,658,371.00) despite demand on February 8, 2003 by the Custom[s] District Collector Celso P. Templo for him to return the same.
>
> The above-mentioned unremitted amount was discovered after representatives from the COA-NAIA Customhouse discovered discrepancies in the collections and remittances of respondent Fajardo during the period covering January 1, 2002 to October 30, 2002 amounting to ₱20,118,355.00 which was initially communicated to District Collector Celso Templo through an Audit Observation Memorandum No. 2002-008 dated November 26, 2002. This leads to a further investigation resulting to the analysis of Monthly Sales of Accountable Forms and Stamps prepared by the COA State Auditors covering the period January 1, 2000 to October 30, 2002, which showed that the total amount of unremitted collections for the sale of accountable forms with money value and customs documentary and BIR stamps amounted to ₱53,658,371.00.
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> The following table shows a comparison of collections and remittances per report of Mr. Ernesto Fajardo and per audit by the

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[29] *Id.* at 525-543; penned by the Investigating Panel composed of Graft Investigation & Prosecution Officer II (Chairman) Joseph L. Licudan, Graft Investigation & Prosecution Officer I (Member) Cherry T. Bautista-Bolo, and Graft Investigation & Prosecution Officer I (Member) Genielyn S. Nataño; reviewed by OIC-Director, PIAB-C Aleu A. Amante; recommended for approval by the Assistant Ombudsman, PAMO Pelagio S. Apostol; and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo.

[30] *Id.* at 542.

team for the period January 2000 to October 30, 2002. As per audit report, the total amount of collections is ₱440,623,111.00, whereas respondent's report disclosed total collections in the amount of ₱387,913,381.00.

x x x x x x x x x

The above-cited comparison focused on the examination and verification of documents covering collections and remittances of Fajardo. The documents composed of liquidated and unliquidated entries coming from the following offices:

1) Liquidation and Billing Division – which has the function of verifying, reviewing and checking computation of formal entries;

2) Cashiers – [who submit] to COA all informal entries after they have collected customs duties, taxes and other charges for the imported good; and also the Bonds Division and Office of the Deputy Collector for Operations which also have custody of various forms without money value such as bonds, clearances, etc., where Customs Documentary Stamps (CDS) [are] required by regulations to be affixed. The audit likewise concentrated on Confirmation with from Brokers regarding the sale of CDS.

In fact, confirmation letters were sent to 212 [b]rokers who purchased BOC Accountable Forms from NAIA for the period January 2000 to October 2002. Selection was based on the volume of purchases made by the brokers. The selected brokers had the highest number of purchases of BOC Accountable Forms with money value requiring payment of CDS.

From the existing procedural flowchart of the Collection Division, NAIA [Customs House], it appeared that the Collection Division has a Section in charge [of] the sale of BOC Forms and CDS. Per Organizational Chart of the Collection Division, Mr. Fajardo is the Collecting Officer assigned to perform such function. The organizational chart also shows that there are three (3) other personnel [under] Fajardo's supervision such as the BC Forms Clerk, CDS Clerk and the one in charge [of] the sale of BC Forms with CDS at Pair Cargo, a Customs Bonded Warehouse. The Flow Chart of Accountable Forms submitted by the Collection Division shows that it is the Collecting Officer (Fajardo) who is authorized to accept payment for the sale of Forms and CDS. The assigned Clerk assists

him in the stamping on the forms of the required CDS, but returns the same to the Collecting Officer already stamped for release to the [b]rokers. The Collecting Officer thereafter prepares Report of Collections and deposit[s] collections to the LBP. He also records transactions in his official cash book where he tallies his collections with the remittances made for the day.

This flow of transactions is also supported by the Sworn Statements executed by Mr. Pica and Ms. Caber who attested that they assisted Fajardo in the performance of his functions. Ms. Caber stamps the forms with required CDS using the franking machine while Mr. Pica has the following duties, among others:

1) Checks correctness of RIV of forms requisitions;

2) Checks serial number of entries to be sold for the day;

3) Assists in the issuance of OR and having it signed by Mr. Fajardo as Collecting Officer.

Both of them further attested that payments are personally received by Fajardo. There are times, however, that they receive the payment but turn the same over to Fajardo.

Since Fajardo is the only Collecting Officer authorized to receive payment from the Sale of BOC Forms and CDS at the Collection Division, NAIA [Customs House], he is accountable for all the collections from the sale by NAIA [Customs House] of Bureau of Customs Accountable Forms and Customs Documentary and BIR Stamps (CDS).

To explain how that total aggregate amount was arrived at, COA State Auditor Nancy Marco said that from her Analysis on the Monthly Sales of Accountable Forms and Stamps of respondent for the period January 1, 2002 to October 31, 2002, said respondent was able to sell accountable forms with money value and stamps in the sum of ₱157,612,585.00 but remitted only ₱137,494,230.00 to the LandBank, NAIA Customs. On January 2001 – December 2001, respondent sold forms and stamps in the sum of ₱237,905,834.00 but remitted only ₱123,753,065.00. For the year 2000 said respondent sold the same forms and stamps in the sum of ₱145,320,000.00 but remitted only ₱126,666,186.00. From her summary, the total forms and stamps which respondent sold for said period was in the total sum of ₱441,127,739.00. However, respondent remitted only the sum of ₱389,913,481.00. Therefor[e], the total sum which respondent failed

to remit amounted to ₱53,214,258.00.00, which was later on corrected in the COA final audit report [to] ₱53,658,371.00 or an increase of ₱444,113.00.

A review of the above analysis initiated by COA State Auditors [Filomena Bascon] Tolorio and Prudencia S. Bautista, confirmed the [foregoing] findings.

The investigating panel is, therefore, of the view that respondent ERNESTO A. FAJARDO, being a special collecting officer of the NAIA Custom[s] House, is duty bound to remit collections of payments from the sale of Bureau of Customs (BOC) accountable forms with money value as well as Customs Documentary Stamps, to the Government via Landbank, the government's authorized depositary bank. Respondent's failure to remit the amount he collected constitutes Dishonesty and Grave Misconduct.

x x x x x x x x x

FOREGOING CONSIDERED, pursuant to Section 52 (A-1) and (A-3), Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent ERNESTO A. FAJARDO is hereby found guilty of DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

SO ORDERED.[31]

Petitioner moved for reconsideration[32] which was denied in an Order[33] dated July 22, 2005, the dispositive portion of which reads:

PREMISES CONSIDERED, the instant motion for reconsideration is hereby **DENIED** and the DECISION dated 03 May 2005, is hereby **AFFIRMED** with finality.

The Honorable **ALEXANDER M. AREVALO**, Commissioner, Bureau of Customs, is hereby directed to implement the Decision

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[31] *Id.* at 531-542.

[32] *Id.* at 544-551.

[33] *Id.* at 554-559.

dated 03 May 2005, with the request to promptly submit to this Office, thru the Preliminary Investigation and Administrative Adjudication Bureau – C, 4th Floor, Ombudsman Bldg., Agham Road, Government Center, North Triangle, Diliman, Quezon City, a Compliance Report thereof, indicating therein the subject OMB case number.

Compliance is respectfully enjoined consistent with Section 15 (3) of Republic Act No. 6770 (Ombudsman Act of 1989).

SO ORDERED.[34]

Ruling of the Court of Appeals

Unfazed, petitioner elevated the case to the CA.

On April 27, 2006, the CA affirmed the dismissal of petitioner. The CA found substantial evidence to support the Ombudsman's finding that petitioner is guilty of dishonesty and grave misconduct.[35] It brushed aside petitioner's allegation that the report on the results of the audit was not lawfully introduced into the records of the case since no evidence was presented to substantiate such allegation.[36] It likewise rejected petitioner's contention that the Ombudsman only has recommendatory powers, and thus, affirmed the power of the Ombudsman to remove erring public officials or employees.[37] The *fallo* of the CA Decision[38] reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition for review on *certiorari* is hereby **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.[39]

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[34] *Id.* at 558.

[35] *Id.* at 62.

[36] *Id.* at 65.

[37] *Id.* at 65-67.

[38] *Id.* at 58-67.

[39] *Id.* at 67.

Petitioner sought reconsideration[40] but the same was unavailing.[41]

Issues

Hence, this petition raising the following issues:

A.

Whether x x x competent evidence was presented before the Office of the Ombudsman to establish dishonesty and grave misconduct on the part of [petitioner].

B.

Whether x x x the [CA] committed grave abuse of discretion in failing to consider and appreciate the following vital evidences [sic]:

1. At the Collecting Division of NAIA Customs House, there is only one documentary stamp metered machine.
2. That documentary stamps are sold at the NAIA Customs House only thru the use of this metered machine.
3. In Marco's own analysis x x x, the proceeds from the actual sale of documentary stamps per metered machine for the period from January 1, 2000 to October 30, 2002 were all remitted and accounted for by [petitioner].
4. The testimony of Nancy Marco on the safeguards used to protect the integrity or reliability of the metered machine.
5. Nancy Marco is not an expert when she testified.
6. The repeated admissions of Nancy Marco that her "Audit" sales can not be possible for the load on the machine per month was less than her monthly "audit" sale.

C.

Whether x x x the [CA] committed grave abuse of discretion in failing to consider and appreciate the findings of the trial court in

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[40] *Id.* at 560-570.

[41] *Id.* at 69.

the related criminal case that the evidence of guilt against [petitioner] was wanting and that there was no direct evidence to [prove] that [petitioner] malversed and/or amassed government funds.

D.

Whether x x x the [CA] committed grave abuse of discretion in relying on documents which were not introduced or offered in evidence before the Office of the Ombudsman.

E.

Whether x x x the Ombudsman can directly dismiss petitioner from government service.[42]

Petitioner's Arguments

Insisting on his innocence, petitioner claims that no competent evidence was presented before the Ombudsman to show that he is guilty of dishonesty and grave misconduct.[43] He asserts that the audit report of State Auditor Marco has no evidentiary weight as the figures stated therein are mere speculations.[44] He likewise contends that the CA and the Ombudsman erred in relying on the report on the results of the audit, which was never formally submitted as evidence during the proceedings before the Ombudsman.[45] Instead, they should have considered the finding of the RTC in the related criminal case that the evidence of guilt against petitioner is wanting.[46] He points out that when State Auditor Marco was cross-examined during the bail hearing in the criminal case filed against him, she allegedly admitted that it was not possible for him to have sold more than the amount loaded in the machine since there is only one metered machine at the Collecting Division of the NAIA Customs House.[47]

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[42] *Id.* at 635-636.

[43] *Id.* at 637.

[44] *Id.* at 637-638.

[45] *Id.* at 662-664.

[46] *Id.* at 661-662.

[47] *Id.* at 637-661.

Lastly, petitioner contends that the Office of the Ombudsman only has the power to recommend the removal of a public official.[48]

Respondents' Arguments

The Solicitor General, as counsel for respondents, maintains that the CA and the Ombudsman correctly found petitioner guilty of dishonesty and grave misconduct as there is substantial evidence to support such finding.[49] Moreover, contrary to the view of petitioner, the Ombudsman has the power to remove an erring public official or employee.[50]

Our Ruling

The petition lacks merit.

At the outset, it must be emphasized that questions of fact may not be the subject of an appeal by *certiorari* under Rule 45 of the 1997 Rules of Court as the Supreme Court is not a trier of facts.[51] As a rule, findings of fact of the Ombudsman, when affirmed by the CA, are conclusive and binding upon this Court, unless there is grave abuse of discretion on the part of the Ombudsman.[52] In this case, there is none.

Presumption of regularity was not overturned.

Petitioner imputes irregularities in the proceedings before the Ombudsman. He claims that the CA and the Ombudsman should not have relied on the report on the results of the audit because it was not lawfully introduced or offered in evidence before the Office of the Ombudsman.[53] Such allegation deserves

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[48] *Id.* at 664-665.

[49] *Id.* at 674-680.

[50] *Id.* at 680-686.

[51] *Medina v. Commission on Audit (COA)*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 698.

[52] *Tolentino v. Loyola,* G.R. No. 153809, July 27, 2011, 654 SCRA 420, 434.

[53] *Rollo,* p. 662.

scant consideration. No evidence was presented by petitioner to prove such allegation. As we have often said, in the absence of clear and convincing proof to the contrary, public officers or employees are presumed to have performed their official duties regularly, properly and lawfully.[54]

Besides, the report on the results of the audit was not the sole basis for his dismissal from public service. Affidavits and testimonies of witnesses taken during the bail hearing in the criminal case were also submitted as evidence in the administrative case to prove the charges against him.[55] In fact, the final report merely confirmed the contents of the audit report of State Auditor Marco as pointed out by Assistant Ombudsman Pelagio S. Apostol in his marginal note in the Order dated July 22, 2005, which reads:

> The findings of discrepancies as contained in the audit observation memorandum prepared by State Auditor Nancy Marco was already verified and validated per COA final audit report which was indubitably considered in the drafting of the questioned Decision.[56]

There is substantial evidence to support the finding that petitioner is guilty of dishonesty and grave misconduct.

The audit report of State Auditor Marco revealed that petitioner's remittance fell short of ₱53,658,371.00.[57] Said figure was arrived at by deducting the total amount remitted by petitioner from the total "audit sales" of all the accountable forms. The "audit sales" of each accountable form was computed by dividing the total sale of each form by the price of the form multiplied

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[54] *Buklod nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.*, G.R. Nos. 131481 & 131624, March 16, 2011, 645 SCRA 401, 440.

[55] *Rollo*, p. 527.

[56] *Id.* at 559.

[57] *Id.* at 79.

by the corresponding amount of the documentary stamps.[58] The computations were made in accordance with Customs Memorandum Order (CMO) No. 19-77[59] dated April 14, 1977 which provides that:

> In order to simplify the processing of entry papers and other customs documents, it is directed that **metered customs documentary stamps be impressed beforehand and the amount thereof added to the cost of the documents when sold**. x x x (Emphasis supplied.)

Thus, contrary to the view of petitioner, the "audit sales" are not based on mere speculations but are based on CMO No. 19-77. In fact, during the initial audit, petitioner and his staff confirmed that "accountable forms, namely: BC 236, BC 177, BC 199, BC 43 and BC 242 are always sold with documentary stamps."[60]

To disprove the correctness of the "audit sales," petitioner harps on the fact that the amount loaded on the machine per month was less than the monthly "audit sales" of State Auditor Marco. He insists that this proves that there was no under remittance on his part. We do not agree. The mere fact that the load in the machine is less than the "audit sale" does not prove his innocence. Rather, it only means that either petitioner sold the accountable forms without the corresponding documentary stamp, which is a clear violation of CMO No. 19-77, or that he used another machine, not authorized by his office, as theorized by State Auditor Marco.[61]

To us, the discrepancy between the "audit sales" and the actual amount remitted by petitioner is sufficient evidence of

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[58] *Id.* at 471; TSN, November 20, 2003, p. 10 (Re-direct Examination of Nancy Marco in Crim. Case No. 03-0049).

[59] Subject: The Sale of Metered Customs Documentary Stamps.

[60] *Rollo*, pp. 80 and 226-228; TSN, September 9, 2003, pp. 13-15 (Direct Examination of Nancy Marco in Crim. Case No. 03-0049).

[61] *Id.* at 470; TSN, November 20, 2003, p. 9 (Re-Direct Examination of Nancy Marco in Crim. Case No. 03-0049).

dishonesty and grave misconduct warranting his dismissal from public service. We need not belabor the point that unlike in a criminal case where proof beyond reasonable doubt is required, administrative proceedings only require substantial evidence or "such relevant evidence as a reasonable mind may accept as adequate to support a conclusion." [62]

Neither do we find any grave abuse of discretion on the part of the CA in not considering the finding of the RTC "that the evidence of guilt of [petitioner] is not strong."[63] To begin with, the Order[64] dated January 6, 2004, granting petitioner's application for bail, was not attached to the Petition[65] he filed with the CA, nor was it submitted as evidence before the Ombudsman.[66] It is likewise significant to mention that the said Order merely resolved petitioner's entitlement to bail. More important, the Ombudsman and the CA are not bound by the RTC's finding because as a rule, administrative cases are independent from criminal proceedings.[67] In fact, the dismissal of one case does not necessarily merit the dismissal of the other.[68]

All told, we find that there is substantial evidence to show that petitioner failed to remit the amount of ₱53,658,371.00 from the sale of accountable forms with money value and documentary stamps for the period January 2000 up to October 2002.

The Ombudsman has the power to dismiss erring public officials or employees.

As a last ditch effort to save himself, petitioner now puts in issue the power of the Ombudsman to order his dismissal from

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[62] *Velasquez v. Hernandez*, 480 Phil. 844, 859 (2004).

[63] *Rollo*, p. 581.

[64] *Id.* at 571-581.

[65] CA *Rollo*, pp. 12-56.

[66] *Rollo*, pp. 97 and 527-528.

[67] *Dr. Barillo v. Hon. Gervacio*, 532 Phil. 267, 279 (2006).

[68] *Regidor, Jr. v. People*, *supra* note 1 at 269.

service. Petitioner contends that the Ombudsman in dismissing him from service disregarded Section 13, subparagraph 3, Article XI of the Constitution as well as Section 15(3) of RA No. 6770,[69] which only vests in the Ombudsman the power to recommend the removal of a public official or employee.

Petitioner's contention has no leg to stand on.

It is already well-settled that "the power of the Ombudsman to determine and impose administrative liability is not merely recommendatory but actually mandatory."[70] As we have explained in *Atty. Ledesma v. Court of Appeals*,[71] the fact "[t]hat the refusal, without just cause, of any officer to comply with [the] order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action [under Section 15(3) of RA No. 6770], is a strong indication that the Ombudsman's 'recommendation' is not merely advisory in nature but is actually mandatory within the bounds of law."[72]

WHEREFORE, the petition is hereby **DENIED**. The Decision dated April 27, 2006 and the Resolution dated June 28, 2006 of the Court of Appeals in CA-G.R. SP No. 91021 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Villarama, Jr., Reyes,*[**] and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[69] Otherwise known as THE OMBUDSMAN ACT of 1989.

[70] *Office of the Ombudsman v. Delijero, Jr.*, G.R. No. 172635, October 20, 2010, 634 SCRA 135, 152.

[71] 503 Phil. 396 (2005).

[72] *Id.* at 407.

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

[**] Per Raffle dated August 6, 2012.

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

FIRST DIVISION

[G.R. No. 175256. August 23, 2012]

LILY LIM, *petitioner, vs.* **KOU CO PING *A.K.A.* CHARLIE CO,** *respondent.*

[G.R. No. 179160. August 23, 2012]

KOU CO PING *A.K.A.* CHARLIE CO, *petitioner, vs.* **LILY LIM,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; CIVIL LIABILITIES; KINDS.— A single act or omission that causes damage to an offended party may give rise to two separate civil liabilities on the part of the offender — (1) ***civil liability ex delicto***, that is, civil liability arising from the criminal offense under Article 100 of the Revised Penal Code, and (2) ***independent civil liability,*** that is, civil liability that may be pursued independently of the criminal proceedings. The independent civil liability may be based on "an obligation not arising from the act or omission complained of as a felony," as provided in Article 31 of the Civil Code (such as for breach of contract or for tort). It may also be based on an act or omission that may constitute felony but, nevertheless, treated independently from the criminal action by specific provision of Article 33 of the Civil Code ("in cases of defamation, fraud and physical injuries").

2. ID.; ID.; ID.; ID.; DISTINGUISHED.— The civil liability arising from the offense or *ex delicto* is based on the acts or omissions that constitute the criminal offense; hence, its trial is inherently intertwined with the criminal action. For this reason, the civil liability *ex delicto* is impliedly instituted with the criminal offense. If the action for the civil liability *ex delicto* is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action. The civil liability based on delict is extinguished when the court hearing the criminal action declares that "the act or omission from which the civil liability may arise did not exist."

On the other hand, the independent civil liabilities are separate from the criminal action and may be pursued independently, as provided in Articles 31 and 33 of the Civil Code x x x .

3. ID.; ID.; ID.; ID.; MAY BE PURSUED SIMULTANEOUSLY OR CUMULATIVELY, WITHOUT OFFENDING THE RULES ON FORUM SHOPPING, *LITIS PENDENTIA*, OR *RES JUDICATA*.— Because of the distinct and independent nature of the two kinds of civil liabilities, jurisprudence holds that the offended party may pursue the two types of civil liabilities simultaneously or cumulatively, without offending the rules on forum shopping, *litis pendentia*, or *res judicata*.

APPEARANCES OF COUNSEL

Yorac+ Arroyo Chua Caedo & Coronel Law Firm for Lily Lim.

Albon & Serrano Law Office for Kou Co Ping.

D E C I S I O N

DEL CASTILLO, *J.*:

Is it forum shopping for a private complainant to pursue a civil complaint for specific performance and damages, while appealing the judgment on the civil aspect of a criminal case for estafa?

Before the Court are consolidated Petitions for Review assailing the separate Decisions of the Second and Seventeenth Divisions of the Court of Appeals (CA) on the above issue.

Lily Lim's (Lim) Petition for Review[1] assails the October 20, 2005 Resolution[2] of the Second Division in CA-G.R. CV No. 85138, which ruled on the above issue in the affirmative:

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[1] *Rollo* of G.R. No. 175256, pp. 9-27.

[2] *Id.* at 29-35; penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Eliezer R. De Los Santos and Jose C. Reyes, Jr.

Due to the filing of the said civil complaint (Civil Case No. 5112396), Charlie Co filed the instant motion to dismiss [Lily Lim's] appeal, alleging that in filing said civil case, Lily Lim violated the rule against forum shopping as the elements of *litis pendentia* are present.

This Court agrees.[3]

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IN VIEW OF THE FOREGOING, the appeal is **DISMISSED**.

SO ORDERED.[4]

On the other hand, Charlie Co's (Co) Petition for Review[5] assails the April 10, 2007 Decision[6] of the Seventeenth Division in CA-G.R. SP No. 93395 for ruling on the same issue in the negative:

We find no grave abuse of discretion committed by respondent judge. The elements of *litis pendentia* and forum-shopping were not met in this case.[7]

x x x x x x x x x

WHEREFORE, in view of the foregoing, the instant petition is **DENIED**. This case is **REMANDED** to the court of origin for further proceedings.

SO ORDERED.[8]

Factual Antecedents

In February 1999, FR Cement Corporation (FRCC), owner/operator of a cement manufacturing plant, issued several

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[3] *Id.* at 32.

[4] *Id.* at 34.

[5] *Rollo* of G.R. No. 179160, pp. 8-45.

[6] *Id.* at 48-61; penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Sixto Marella, Jr.

[7] *Id.* at 56.

[8] *Id.* at 60.

withdrawal authorities[9] for the account of cement dealers and traders, Fil-Cement Center and Tigerbilt. These withdrawal authorities state the number of bags that the dealer/trader paid for and can withdraw from the plant. Each withdrawal authority contained a provision that it is valid for six months from its date of issuance, unless revoked by FRCC Marketing Department.

Fil-Cement Center and Tigerbilt, through their administrative manager, Gail Borja (Borja), sold the withdrawal authorities covering 50,000 bags of cement to Co for the amount of ₱3.15 million or ₱63.00 per bag.[10] On February 15, 1999, Co sold these withdrawal authorities to Lim allegedly at the price of ₱64.00 per bag or a total of ₱3.2 million.[11]

Using the withdrawal authorities, Lim withdrew the cement bags from FRCC on a staggered basis. She successfully withdrew 2,800 bags of cement, and sold back some of the withdrawal authorities, covering 10,000 bags, to Co.

Sometime in April 1999, FRCC did not allow Lim to withdraw the remaining 37,200 bags covered by the withdrawal authorities. Lim clarified the matter with Co and Borja, who explained that the plant implemented a price increase and would only release the goods once Lim pays for the price difference or agrees to receive a lesser quantity of cement. Lim objected and maintained that the withdrawal authorities she bought were not subject to price fluctuations. Lim sought legal recourse after her demands for Co to resolve the problem with the plant or for the return of her money had failed.

The criminal case

An Information for Estafa through Misappropriation or Conversion was filed against Co before Branch 154 of the

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[9] Records of Criminal Case No. 116377, pp. 15-57.

[10] TSN, February 19, 2004, pp. 9, 13; Records of Criminal Case No. 116377, p. 424.

[11] Records of Criminal Case No. 116377, p. 58.

Regional Trial Court (RTC) of Pasig City. The accusatory portion thereof reads:

> On or about between the months of February and April 1999, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with intent to defraud Lily Lim, with grave abuse of confidence, with unfaithfulness, received in trust from Lily Lim cash money in the amount of ₱2,380,800.00 as payment for the 37,200 bags of cement, under obligation to deliver the 37,200 bags of cement to said Lily Lim, but far from complying with his obligation, misappropriated, misapplied and converted to his own personal use and benefit the said amount of ₱2,300,800.00 [sic] and despite demands, the accused failed and refused to return said amount, to the damage and prejudice of Lily Lim in the amount of ₱2,380,800.00.
>
> Contrary to Law.[12]

The private complainant, Lily Lim, participated in the criminal proceedings to prove her damages. She prayed for Co to return her money amounting to ₱2,380,800.00, foregone profits, and legal interest, and for an award of moral and exemplary damages, as well as attorney's fees.[13]

On November 19, 2003, the RTC of Pasig City, Branch 154, rendered its Order[14] acquitting Co of the estafa charge for insufficiency of evidence. The criminal court's Order reads:

> The first and second elements of the crime of estafa [with abuse of confidence under Article 315, paragraph 1(b)] for which the accused is being charged and prosecuted were not established by the prosecution's evidence.
>
> x x x x x x x x x
>
> In view of the absence of the essential requisites of the crime of estafa for which the accused is being charged and prosecuted, as

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[12] CA *rollo* of CA-G.R. CV No. 85138, p. 8.

[13] Records of Criminal Case No. 116377, pp. 487-488.

[14] *Id.* at 328-333; penned by Judge Abraham B. Borreta.

above discussed, the Court has no alternative but to dismiss the case against the accused for insufficiency of evidence.[15]

WHEREFORE, in view of the foregoing, the **Demurrer to Evidence** is **GRANTED**, and the accused is hereby **ACQUITTED** of the crime of estafa charged against him under the present information for insufficiency of evidence. Insofar as the civil liability of the accused is concerned, however, set this case for the reception of his evidence on the matter on December 11, 2003 at 8:30 o'clock [sic] in the morning.

SO ORDERED.[16]

After the trial on the civil aspect of the criminal case, the Pasig City RTC also relieved Co of civil liability to Lim in its December 1, 2004 Order.[17] The dispositive portion of the Order reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered holding the accused **CHARLIE CO not civilly liable** to the private complainant Lily Lim.

SO ORDERED.[18]

Lim sought a reconsideration of the above Order, arguing that she has presented preponderant evidence that Co committed estafa against her.[19]

The trial court denied the motion in its Order[20] dated February 21, 2005.

On March 14, 2005, Lim filed her notice of appeal[21] on the civil aspect of the criminal case. Her appeal was docketed as

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[15] *Id.* at 330-331.

[16] *Id.* at 333.

[17] *Id.* at 514-519.

[18] *Id.* at 519.

[19] *Id.* at 528.

[20] *Id.* at 555-556.

[21] CA *rollo* of CA-G.R. CV No. 85138, p. 18.

CA-G.R. CV No. 85138 and raffled to the Second Division of the CA.

The civil action for specific performance

On April 19, 2005, Lim filed a complaint for specific performance and damages before Branch 21 of the RTC of Manila. The defendants in the civil case were Co and all other parties to the withdrawal authorities, Tigerbilt, Fil-Cement Center, FRCC, Southeast Asia Cement, and La Farge Corporation. The complaint, docketed as Civil Case No. 05-112396, asserted two causes of action: breach of contract and abuse of rights. Her allegations read:

ALLEGATIONS COMMON
TO ALL CAUSES OF ACTION

x x x x x x x x x

23. Charlie Co obligated himself to deliver to Lily Lim 50,000 bags of cement of ₱64.00 per bag on an x-plant basis within 3 months from the date of their transaction, *i.e*. February 15, 1999. Pursuant to said agreement, Lily Lim paid Charlie Co ₱3.2 Million while Charlie Co delivered to Lily Lim FR Cement Withdrawal Authorities representing 50,000 bags of cement.

24. The withdrawal authorities issued by FR Cement Corp. allowed the assignee or holder thereof to withdraw within a six-month period from date a certain amount of cement indicated therein. The Withdrawal Authorities given to Lily Lim were dated either 3 February 1999 or 23 February 1999. The Withdrawal Authorities were first issued to Tigerbilt and Fil-Cement Center which in turn assigned them to Charlie Co. Charlie Co then assigned the Withdrawal Authorities to Lily Lim on February 15, 1999. Through these series of assignments, Lily Lim acquired all the rights (rights to withdraw cement) granted in said Withdrawal Authorities.

25. That these Withdrawal Authorities are valid is established by the fact that FR Cement earlier allowed Lily Lim to withdraw 2,800 bags of cement on the basis thereof.

26. However, sometime 19 April 1999 (within the three (3)-month period agreed upon by Charlie Co and Lily Lim and certainly within the six (6)-month period indicated in the Withdrawal Authorities issued by FR Cement Corp.), Lily Lim attempted but

failed to withdraw the remaining bags of cement on account of FR Cement's unjustified refusal to honor the Withdrawal Authorities. x x x

x x x x x x x x x

FIRST CAUSE OF ACTION:
BREACH OF CONTRACT

30. Charlie Co committed and is therefore liable to deliver to Lily Lim 37,200 bags of cement. If he cannot, then he must pay her the current fair market value thereof.

31. FR Cement Corporation is also liable to deliver to Lily Lim the amount of cement as indicated in the Withdrawal Authorities it issued. xxx FR Cement Corporation has no right to impose price adjustments as a qualification for honoring the Withdrawal Authorities.

32. Fil-Cement Center, Tigerbilt and Gail Borja as the original holders/ assignees of the Withdrawal Authorities repeatedly assured Lily Lim that the same were valid and would be honored. They are liable to make good on their assurances.

SECOND CAUSE OF ACTION:
ABUSE OF RIGHTS AND UNJUST ENRICHMENT

33. Charlie Co's acts of falsely representing to Lily Lim that she may be able to withdraw the cement from FR Cement Corp. caused Lily Lim to incur expenses and losses. Such act was made without justice, without giving Lily Lim what is due her and without observing honesty and good faith, all violative of the law, more specifically Articles 19 and 20 of the Civil Code. Such willful act was also made by Charlie Co in a manner contrary to morals, good customs or public policy, in violation of Article 21 of the Civil Code.

34. FR Cement Corporation's unjust refusal to honor the Withdrawal Authorities they issued also caused damage to Lily Lim. Further, FR Cement Corporation's act of withholding the 37,200 bags of cement despite earning income therefor constitutes as an unjust enrichment because FR Cement Corporation acquired income through an act or performance by another or any other means at the expense of another without just or legal ground in violation of Article 22 of the Civil Code.

35. Fil-Cement Center, Tigerbilt and Gail Borja's false assurances that Lily Lim would be able to withdraw the remaining 37,200 bags of cement caused Lily Lim to incur expenses and losses. x x x Moreover, Fil-Cement Center admitted receiving payment for said amount of cement, thus they are deemed to have come into possession of money at the expense of Lily Lim without just or legal ground, in violation of Article 22 of the Civil Code.

THIRD CAUSE OF ACTION:
MORAL AND EXEMPLARY DAMAGES and
ATTORNEY'S FEES AND COSTS OF SUIT[22]

Lim prayed for Co to honor his contractual commitments either by delivering the 37,200 bags of cement, making arrangements with FRCC to allow Lim to withdraw the cement, or to pay for their value. She likewise asked that the defendants be held solidarily liable to her for the damages she incurred in her failed attempts to withdraw the cement and for the damages they inflicted on her as a result of their abuse of their rights.[23]

Motions to dismiss both actions

In reaction to the filing of the civil complaint for specific performance and damages, Co filed motions to dismiss the said civil case[24] and Lim's appeal in the civil aspect of the estafa case or CA-G.R. CV No. 85138.[25] He maintained that the two actions raise the same issue, which is Co's liability to Lim for her inability to withdraw the bags of cement,[26] and should be dismissed on the ground of *lis pendens* and forum shopping.

Ruling of the Court of Appeals Second Division in CA-G.R CV No. 85138

The appellate court (Second Division) favorably resolved Co's motion and dismissed Lim's appeal from the civil aspect of the

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[22] *Rollo* of G.R. No. 179160, pp. 95-101.

[23] *Id.* at 102-103.

[24] *Id.* at 124-135.

[25] CA *rollo* of CA-G.R. CV No. 85138, pp. 31-37.

[26] *Rollo* of G.R. No. 179160, pp. 128-131.

estafa case. In its Resolution dated October 20, 2005, the CA Second Division held that the parties, causes of action, and reliefs prayed for in Lim's appeal and in her civil complaint are identical. Both actions seek the same relief, which is the payment of the value of the 37,200 bags of cement.[27] Thus, the CA Second Division dismissed Lim's appeal for forum shopping.[28] The CA denied[29] Lim's motion for reconsideration.[30]

Lim filed the instant petition for review, which was docketed as G.R. No. 175256.

Ruling of the Manila Regional Trial Court in Civil Case No. 05-112396

Meanwhile, the Manila RTC denied Co's Motion to Dismiss in an Order[31] dated December 6, 2005. The Manila RTC held that there was no forum shopping because the causes of action invoked in the two cases are different. It observed that the civil complaint before it is based on an obligation arising from contract and quasi-delict, whereas the civil liability involved in the appeal of the criminal case arose from a felony.

Co filed a petition for *certiorari*,[32] docketed as CA-G.R. SP No. 93395, before the appellate court. He prayed for the nullification of the Manila RTC's Order in Civil Case No. 05-112396 for having been issued with grave abuse of discretion.[33]

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[27] *Rollo* of G.R. No. 175256, p. 34.

[28] *Id.*

[29] *Id.* at 37-38; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Marina L. Buzon and Amelita G. Tolentino.

[30] *Id.* at 39-48.

[31] *Rollo* of G.R. No. 179160, pp. 142-144; penned by Judge Amor A. Reyes.

[32] CA *rollo* of CA-G.R. SP No. 93395, pp. 2-24.

[33] *Id.* at 21.

Ruling of the Court of Appeals Seventeenth Division in CA-G.R. SP No. 93395

The CA Seventeenth Division denied Co's petition and remanded the civil complaint to the trial court for further proceedings. The CA Seventeenth Division agreed with the Manila RTC that the elements of *litis pendentia* and forum shopping are not met in the two proceedings because they do not share the same cause of action.[34]

The CA denied[35] Co's motion for reconsideration.[36]

Co filed the instant Petition for Review, which was docketed as G.R. No. 179160.

Upon Co's motion,[37] the Court resolved to consolidate the two petitions.[38]

Kou Co Ping's arguments

Co maintains that Lim is guilty of forum shopping because she is asserting *only one cause of action* in CA-G.R. CV No. 85138 (the appeal from the civil aspect of Criminal Case No. 116377) and in Civil Case No. 05-112396, which is for Co's violation of her right to receive 37,200 bags of cement. Likewise, the reliefs sought in both cases are the same, that is, for Co to deliver the 37,200 bags of cement or its value to Lim. That Lim utilized different methods of presenting her case – a criminal action for estafa and a civil complaint for specific performance and damages – should not detract from the fact that she is attempting to litigate the same cause of action twice.[39]

Co makes light of the distinction between civil liability *ex contractu* and *ex delicto*. According to him, granting that the

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[34] *Rollo* of G.R. No. 179160, pp. 59-60.

[35] CA *rollo* of CA-G.R. SP No. 93395, p. 485.

[36] *Id.* at 448-458.

[37] *Rollo* of G.R. No. 179160, pp. 207-210.

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

[39] *Id.* at 288.

two civil liabilities are independent of each other, nevertheless, the two cases arising from them would have to be decided using the same evidence and going over the same set of facts. Thus, any judgment rendered in one of these cases will constitute *res judicata* on the other.[40]

In G.R. No. 179160, Co prays for the annulment of the CA Decision and Resolution in CA-G.R. SP No. 93395, for a declaration that Lim is guilty of forum shopping, and for the dismissal of Civil Case No. 05-112396.[41]

In G.R. No. 175256, Co prays for the affirmation of the CA Decision in CA-G.R. CV No. 85138 (which dismissed Lim's appeal from the trial court's decision in Criminal Case No. 116377).[42]

Lily Lim's arguments

Lim admits that the two proceedings involve substantially the same set of facts because they arose from only one transaction.[43] She is quick to add, however, that a single act or omission does not always make a single cause of action.[44] It can possibly give rise to two separate civil liabilities on the part of the offender – (1) *ex delicto* or civil liability arising from crimes, and (2) independent civil liabilities or those arising from contracts or intentional torts. The only caveat provided in Article 2177 of the Civil Code is that the offended party cannot recover damages twice for the same act or omission.[45] Because the law allows her two independent causes of action, Lim contends that it is not forum shopping to pursue them.[46]

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[40] *Rollo* of G.R. No. 175256, pp. 213-214; *rollo* of G.R. No. 179160, p. 289.

[41] *Id.* at 215; *id.* at 290.

[42] *Id.*; *id.*

[43] *Rollo* of G.R. No. 175256, p. 232.

[44] *Id.* at 231.

[45] *Id.* at 235; *rollo* of G.R. No. 179160, pp. 303-304.

[46] *Id.* at 232; *id.* at 301.

She then explains the separate and distinct causes of action involved in the two cases. Her cause of action in CA-G.R CV No. 85138 is based on the crime of estafa. Co violated Lim's right to be protected against swindling. He represented to Lim that she can withdraw 37,200 bags of cement using the authorities she bought from him. This is a fraudulent representation because Co knew, at the time that they entered into the contract, that he could not deliver what he promised.[47] On the other hand, Lim's cause of action in Civil Case No. 05-112396 is based on contract. Co violated Lim's rights as a buyer in a contract of sale. Co received payment for the 37,200 bags of cement but did not deliver the goods that were the subject of the sale.[48]

In G.R. No. 179160, Lim prays for the denial of Co's petition.[49] In G.R. No. 175256, she prays for the reversal of the CA Decision in CA-G.R. CV No. 85138, for a declaration that she is not guilty of forum shopping, and for the reinstatement of her appeal in Criminal Case No. 116377 to the CA.[50]

Issue

Did Lim commit forum shopping in filing the civil case for specific performance and damages during the pendency of her appeal on the civil aspect of the criminal case for estafa?

Our Ruling

A single act or omission that causes damage to an offended party may give rise to two separate civil liabilities on the part of the offender[51] — (1) ***civil liability ex delicto***, that is, civil liability arising from the criminal offense under Article 100 of the Revised Penal Code,[52] and (2) ***independent civil liability,***

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[47] *Id.*; *id.* at 301-302.

[48] *Id.*; *id.*

[49] *Rollo* of G.R. No. 179160, p. 309.

[50] *Rollo* of G.R. No. 175256, p. 237.

[51] *Cancio, Jr. v. Isip,* 440 Phil. 29, 34 (2002).

[52] Art. 100. *Civil liability of a person guilty of felony*. — Every person criminally liable for a felony is also civilly liable.

that is, civil liability that may be pursued independently of the criminal proceedings. The independent civil liability may be based on "an obligation not arising from the act or omission complained of as a felony," as provided in Article 31 of the Civil Code (such as for breach of contract or for tort[53]). It may also be based on an act or omission that may constitute felony but, nevertheless, treated independently from the criminal action by specific provision of Article 33 of the Civil Code ("in cases of defamation, fraud and physical injuries").

The civil liability arising from the offense or *ex delicto* is based on the acts or omissions that constitute the criminal offense; hence, its trial is inherently intertwined with the criminal action. For this reason, the civil liability *ex delicto* is impliedly instituted with the criminal offense.[54] If the action for the civil liability *ex delicto* is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action.[55] The civil liability based on delict is extinguished when the court hearing the criminal action declares that "the act or omission from which the civil liability may arise did not exist."[56]

On the other hand, the independent civil liabilities are separate from the criminal action and may be pursued independently, as provided in Articles 31 and 33 of the Civil Code, which state that:

ART. 31. When the civil action is based on an **obligation not arising from the act or omission complained of as a felony**, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter. (Emphasis supplied.)

ART. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the

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[53] See Articles 32, 34, 2176, and 1157 of the Civil Code.

[54] RULES OF COURT, Rule 111, Section 1(a).

[55] *Id.*, Section 2.

[56] *Id.*

criminal action, may be brought by the injured party. Such civil action shall **proceed independently of the criminal prosecution**, and shall require only a preponderance of evidence. (Emphasis supplied.)

Because of the distinct and independent nature of the two kinds of civil liabilities, jurisprudence holds that the offended party may pursue the two types of civil liabilities simultaneously or cumulatively, without offending the rules on forum shopping, *litis pendentia*, or *res judicata*.[57] As explained in *Cancio, Jr. v. Isip*:[58]

> One of the elements of *res judicata* is identity of causes of action. In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. Not being deemed instituted in the criminal action based on *culpa criminal*, a ruling on the culpability of the offender will have no bearing on said independent civil action based on an entirely different cause of action, *i.e.*, *culpa contractual*.
>
> In the same vein, the filing of the collection case after the dismissal of the estafa cases against [the offender] did not amount to forum-shopping. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Although the cases filed by [the offended party] arose from the same act or omission of [the offender], they are, however, based on different causes of action. The criminal cases for estafa are based on *culpa criminal* while the civil action for collection is anchored on *culpa contractual*. Moreover, there can be no forum-shopping in the instant case because the law expressly allows the filing of a separate civil action which can proceed independently of the criminal action.[59]

Since civil liabilities arising from felonies and those arising from *other* sources of obligations are authorized by law to proceed

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[57] *Cancio, Jr. v. Isip, supra* note 51 at 40; *Casupanan v. Laroya*, 436 Phil. 582, 600 (2002).

[58] *Supra* note 51.

[59] *Id.* at 40.

independently of each other, the resolution of the present issue hinges on whether the two cases herein involve different kinds of civil obligations such that they can proceed independently of each other. The answer is in the affirmative.

The first action is clearly a civil action *ex delicto*, it having been instituted together with the criminal action.[60]

On the other hand, the second action, judging by the allegations contained in the complaint,[61] is a civil action arising from a *contractual obligation* and for *tortious conduct* (abuse of rights). In her civil complaint, Lim basically alleges that she entered into a sale contract with Co under the following terms: that she bought 37,200 bags of cement at the rate of ₱64.00 per bag from Co; that, after full payment, Co delivered to her the withdrawal authorities issued by FRCC corresponding to these bags of cement; that these withdrawal authorities will be honored by FRCC for six months from the dates written thereon. Lim then maintains that the defendants breached their contractual obligations to her under the sale contract and under the withdrawal authorities; that Co and his co-defendants wanted her to pay more for each bag of cement, contrary to their agreement to fix the price at ₱64.00 per bag and to the wording of the withdrawal authorities; that FRCC did not honor the terms of the withdrawal authorities it issued; and that Co did not comply with his obligation under the sale contract to deliver the 37,200 bags of cement to Lim. From the foregoing allegations, it is evident that Lim seeks to enforce the defendants' *contractual obligations*, given that she has already performed her obligations. She prays that the defendants either honor their part of the contract or pay for the damages that their breach has caused her.

Lim also includes allegations that the actions of the defendants were committed in such manner as to cause damage to Lim

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[60] RULES OF COURT, Rule 111, Section 1. *Casupanan v. Laroya*, *supra* note 57 at 596; *DMPI-Employees Credit Cooperative, Inc. v. Hon. Velez*, 422 Phil. 381, 387 (2001).

[61] *Cancio, Jr. v. Isip, supra* note 51 at 39.

without regard for morals, good customs and public policy. These allegations, if proven, would constitute *tortious conduct* (abuse of rights under the Human Relations provisions of the Civil Code).

Thus, Civil Case No. 05-112396 involves only the obligations arising from contract and from tort, whereas the appeal in the estafa case involves only the civil obligations of Co arising from the offense charged. They present different causes of action, which, under the law, are considered "separate, distinct, and independent"[62] from each other. Both cases can proceed to their final adjudication, subject to the prohibition on double recovery under Article 2177 of the Civil Code.[63]

WHEREFORE, premises considered, Lily Lim's Petition in G.R. No. 175256 is **GRANTED**. The assailed October 20, 2005 Resolution of the Second Division of the Court of Appeals in CA-G.R. CV No. 85138 is **REVERSED** and **SET ASIDE**. Lily Lim's appeal in CA-G.R. CV No. 85138 is ordered **REINSTATED** and the Court of Appeals is **DIRECTED** to **RESOLVE** the same with **DELIBERATE DISPATCH**.

Charlie Co's Petition in G.R. No. 179160 is **DENIED**. The assailed April 10, 2007 Decision of the Seventeenth Division of the Court of Appeals in CA-G.R. SP No. 93395 is **AFFIRMED** *in toto*.

SO ORDERED.

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

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[62] *Casupanan v. Laroya, supra* note 57 at 596.

[63] ART. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

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

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

FIRST DIVISION

[G.R. No. 177137. August 23, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PEDRO BANIG,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; PRIMORDIAL CONSIDERATION IS GIVEN TO THE CREDIBILITY OF THE VICTIM'S TESTIMONY IN RESOLVING RAPE CASES.— "[I]n resolving rape cases, primordial consideration is given to the credibility of the victim's testimony." This is so because conviction for rape may be solely based on the victim's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.

2. ID.; CRIMINAL PROCEDURE; JUDGMENTS; JUDGMENT OF ACQUITTAL; CONSIDERED FINAL AND IS NO LONGER REVIEWABLE; EXCEPTION; NOT PRESENT IN CASE AT BAR.— A judgment of acquittal is final and is no longer reviewable. As we have previously held in *People v. Court of Appeals*, "[a] verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense." True, the finality of acquittal rule is not one without exception as when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction. In such a case, the judgment of acquittal may be questioned through the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. In the instant case, however, we cannot treat the appeal as a Rule 65 petition as it raises no jurisdictional error that can invalidate the judgment of acquittal. Suffice it to state that the trial court is in the best position to determine the sufficiency of evidence against both appellant and Ginumtad. It is a well-settled rule that this Court accords great respect and full weight to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case. It is not at all irregular for a court to

convict one of the accused and acquit the other. The acquittal of Ginumtad in this case is final and it shall not be disturbed.

3. CRIMINAL LAW; RAPE; MAY NOT ONLY BE COMMITTED IN SECLUSION.— It is well-settled that lust respects neither time nor place. "There is no rule that rape can be committed only in seclusion." What the evidence reveals is that despite the proximity to neighboring houses, the appellant, by means of force or intimidation, did in fact have sexual intercourse with "AAA" against her will. Thus, it is immaterial that an inhabited house was near the place where the crime was committed. This fact will neither render "AAA" any less credible nor make the commission of the crime less conceivable.

4. ID.; ID.; PHYSICAL RESISTANCE; NEED NOT BE ESTABLISHED WHEN THREATS AND INTIMIDATION ARE EMPLOYED AND THE VICTIM SUBMITS HERSELF TO THE EMBRACE OF HER RAPIST OUT OF FEAR.— In *People v. Corpuz*, we ruled that "physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear." When the sharp point of a knife is staring down the eyes of the victim, struggle is futile and the only option left in the mind of a frightened lady is to submit rather than lose her life. That the victim allowed the entry of her aggressor's penis rather than his knife does not detract from the fact that rape was committed by means of force and intimidation and certainly against her will.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY THE VICTIM'S DELAY IN REPORTING THE RAPE INCIDENT.— As to the matter of delay in reporting the rape incident, the same does not affect the credibility of "AAA". "[I]t is not unusual for a rape victim immediately following the sexual assault to conceal at least momentarily the incident x x x." "Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained." "[T]here is no uniform behavior expected of victims after being raped." In this case, the delay in reporting the incident only consists of a little over two weeks. Such a span of time is not unreasonable when coupled by the fact that the victim "AAA" was threatened by her aggressor. In *People v. Dumadag*, we stressed that

"not all rape victims can be expected to act conformably to the usual expectations of everyone.

6. CRIMINAL LAW; RAPE; A MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE.— "It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the [appellant] of the crime."

7. REMEDIAL LAW; EVIDENCE; DEFENSE OF "SWEETHEART THEORY"; HARDLY DESERVES ANY ATTENTION WHEN AN ACCUSED DOES NOT PRESENT ANY EVIDENCE TO SHOW THAT HE AND THE VICTIM ARE SWEETHEARTS.— "The 'sweetheart theory' hardly deserves any attention when an accused does not present any evidence, such as love letters, gifts, pictures, and the like to show that, indeed, he and the victim were sweethearts." Appellant's bare testimony that he and "AAA" are lovers who agreed to get married is insufficient for the defense of "sweetheart theory" to prosper. Moreover, even if it were true that they were sweethearts, mere assertion of a romantic relationship would not necessarily exclude the use of force or intimidation in sexual intercourse. In *People v. Cias*, this Court held that "[a] love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will."

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY AND MORAL DAMAGES; AWARDED IN RAPE CASES.— "The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent."

9. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; SHOULD BE ALLEGED AND PROVED BEYOND REASONABLE DOUBT AS THE CRIME ITSELF.— Under Article 335 of the Revised Penal Code which is the law then in force at the time of the commission of the crime, when the rape is committed with the use of a deadly weapon, the crime takes a qualified form and the imposable penalty is *reclusion*

perpetua to death. In the instant case, we note that the use of the knife, which is a deadly weapon, was not specifically alleged in the Information. However, it was duly proven during the proceedings below that appellant armed himself with a knife which facilitated the commission of the crime. In *People v. Begino*, we held that "the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances." "If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded." Consequently, the use of a deadly weapon may be considered as an aggravating circumstance in this case. As such, exemplary damages may be imposed on the appellant in addition to civil indemnity and moral damages. Thus, exemplary damages in the amount of ₱30,000.00 is hereby awarded.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Weddings are joyous occasions wherein we witness the love and union between a man and a woman. In this case, instead of love, the victim witnessed man's bestiality when during the pre-nuptial dance, herein appellant forcibly had carnal knowledge of her. Worse, appellant used a knife to bring his victim into submission.

On appeal is the Decision[1] dated November 13, 2006 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02439, which

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[1] CA *rollo*, pp. 184-205; penned by Associate Justice Vicente S.E. Veloso and concurred in by Presiding Justice Ruben T. Reyes and Associate Justice Juan Q. Enriquez, Jr.

affirmed with modification the Decision[2] dated July 17, 2000 of the Regional Trial Court (RTC), Branch 31, Cabarroguis, Quirino, in Criminal Case No. 1292, finding appellant Pedro Banig (appellant) guilty beyond reasonable doubt of the crime of rape.

Factual Antecedents

On July 1, 1996, appellant along with one Tony Ginumtad (Ginumtad) were charged with the crime of rape committed against "AAA"[3] in an Information[4] which reads:

> That on or about 3:00 o'clock dawn of March 28, 1996 in *Barangay* "XXX", Municipality of "YYY", Province of Quirino, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with prurient desires, and by means of force and intimidation, after conspiring and mutually helping one another, did then and there wilfully, unlawfully and feloniously have carnal knowledge [of] "AAA" against the latter's will.
>
> CONTRARY TO LAW.[5]

Upon arraignment, appellant and Ginumtad pleaded not guilty to the crime charged. Trial on the merits subsequently followed.

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[2] Records, pp. 176-192; penned by Judge Moises M. Pardo.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And For Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule On Violence Against Women And Their Children, effective November 5, 2004." *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 538.

[4] Records, pp. 1-2.

[5] *Id.* at 1.

Evidence for the Prosecution

The prosecution presented "AAA" as its first witness. She testified that on the night of March 27, 1996, she attended a pre-wedding dance in their barrio which lasted until the early hours of the next day, March 28, 1996. At about 3:00 a.m. of March 28, 1996, "AAA" felt the need to urinate. She thus left the dance hall and went up to a hill about 50-100 meters away.

Suddenly, two persons came out of nowhere, held her hands, poked a knife at her thigh, and warned her not to scream for help or else they would kill her. They then pushed her to the ground with her face up and her hands placed behind her back crosswise.[6] Appellant proceeded to remove her pants and panties while Ginumtad pressed her shoulders down to the ground. When appellant was already on top of her, he spread her legs and inserted his penis into her vagina. Although "AAA" felt pain, she did not shout for fear that the appellant would kill her. After a while, Ginumtad took his turn and also inserted his penis into "AAA's" vagina. After Ginumtad's turn, appellant again had sexual intercourse with "AAA" and that was the time that she lost consciousness.[7]

When "AAA" regained consciousness, appellant was still on top of her making thrusting motions, while Ginumtad was already nowhere in sight. When done, appellant stood up and just left "AAA". Luckily, someone came and brought "AAA" to the house of the bride where she slept. The incident was then reported to the police authorities on April 15, 1996.

The prosecution then presented Dr. Briccio Macabangon (Dr. Macabangon), a medical doctor who examined "AAA" on April 23, 1996 at the "YYY" District Hospital. He issued a Medical Certificate with the following findings:

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[6] TSN, February 18, 1997, p. 5.

[7] *Id.* at 9.

Laceration, old, at 8:00 o'clock. Admits one finger with difficulty.[8]

As its third witness, the prosecution presented "BBB," the father of "AAA". He testified that Alejandro Pugong (Pugong), the brother-in-law of appellant, approached him during the pendency of the preliminary investigation and asked for the settlement of the case. They offered marriage between appellant and his 20-year old daughter, "AAA". This, however, infuriated "BBB," hence, he reported to the police authorities the said offer of settlement. The police then arrested appellant.

The last witness for the prosecution is Noel Dunuan, the *Barangay* Captain of *Barangay* "XXX". He corroborated the testimony of "BBB" and declared that Pugong and appellant's brother, Afeles Banig, came to his office asking for the settlement of the case.

Evidence for the Defense

The appellant denied the charges against him. He unfurled his own version of the events that transpired in this case as follows:

Appellant was invited to a pre-nuptial dance and wedding ceremony of Mercy Ananayo and Fernando Witawit. It was during the said dance in the evening of March 27, 1996 that he met "AAA". He danced with "AAA" several times during that night and eventually courted her by professing his love for her. Sensing that she was attracted to him, appellant concluded that he had a chance of winning her heart.[9]

After dancing for quite some time, appellant and "AAA" stepped away from the dance hall and sat down together in a dimly lit place about 8-10 meters away. Both of them stayed there for about an hour where they chatted and got to know each other better. When appellant sensed that no one was watching, he held "AAA's" hands and kissed her lips five times.

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[8] Records, p. 10.

[9] TSN, January 20, 1998, p. 8.

They soon returned to the dance hall and continued to dance the night away until around 4:00 a.m. He told "AAA" that he loves her and asked her to wait for him to come back since he had another wedding to attend in Pangasinan. He promised her that upon his return, he will talk to her parents and formally ask their permission to marry her.

At around 6:00 a.m., appellant took a bath, accompanied by a certain Fernando Ananayo. Thereafter, he proceeded to have breakfast in the house of the bride and groom where he saw "AAA" also having her breakfast with other companions. After breakfast, appellant asked her permission to leave for Pangasinan to attend another wedding. "AAA" replied that if he really loves her, he will come back and talk to her parents.

Appellant went to Pangasinan and stayed there for a little over two weeks. Upon his return and as promised, he talked with "AAA's" parents. The mother of "AAA" informed appellant that if the two of them were really in love and wanted to marry, then they should start the process of securing the necessary papers for their marriage.[10] Thus, a date was set for the appellant and "AAA" to proceed to the Municipal Hall of "YYY" to apply for a marriage license. On such date, appellant and "AAA" went to "YYY" with "AAA's" mother and aunt. They first had lunch in a restaurant as it was already noon. After finishing their meal, a police officer came over and invited him for interrogation. Appellant obliged but was later arrested and put behind bars.

Appellant later learned that "BBB" filed a criminal case against him. According to the appellant, "BBB" must have felt embarrassed by the fact that people saw him and "AAA" embracing each other during the pre-nuptial dance. On that same day, "AAA" visited the appellant. When asked why they were putting him in jail, "AAA" replied that if she goes against the wishes of her father, her parents might disown her.[11]

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[10] TSN, January 20, 1998, p. 16.

[11] TSN, January 20, 1998, p. 19.

Ruling of the Regional Trial Court

On July 17, 2000, the RTC convicted appellant of the crime of rape while his co-accused Ginumtad was acquitted for insufficiency of evidence. The dispositive portion of the judgment of conviction reads as follows:

> IN VIEW OF THE FOREGOING, this Court finds Pedro Banig guilty beyond reasonable doubt of the crime of rape as provided for under Article 335 of the Revised Penal Code as amended by R.A. 7659 and hereby impose[s] upon him the penalty of ***Reclusion Perpetua***. In addition, said accused Pedro Banig should pay the victim, "AAA", the amount of ₱50,000.00 as indemnity.
>
> As to accused Tony Ginumtad, this Court finds him Not Guilty for insufficiency of evidence.
>
> SO ORDERED.[12]

In finding the appellant guilty, the RTC held that he had sexual intercourse with the victim through the use of force. It gave full credit and weight to the testimony of the prosecution witnesses, especially that of "AAA". On the other hand, it debunked appellant's "sweetheart theory" for being intrinsically weak.

Ruling of the Court of Appeals

On October 20, 2000, appellant filed a Notice of Appeal,[13] which was granted by the RTC.[14] Consequently, the records of this case were forwarded to this Court. Conformably with the ruling of this Court in *People v. Mateo*,[15] however, the case was transferred to the CA for intermediate appellate review. Then on November 13, 2006, the CA rendered its now assailed Decision[16] affirming with modification the RTC's judgment of conviction, thus:

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[12] Records, p. 192.

[13] *Id.* at 212.

[14] See Order dated October 20, 2000, *id.* at 213.

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

[16] CA *rollo*, pp. 184-205.

WHEREFORE, the decision appealed from is **AFFIRMED** with **MODIFICATION** in that the accused-appellant is hereby ordered to pay the victim, "AAA", ₱50,000.00 as moral damages.

SO ORDERED.[17]

Hence, this appeal.

Issue

In his brief, appellant made a single assignment of error that –

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT [OF] THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[18]

Our Ruling

The appeal lacks merit.

"[I]n resolving rape cases, primordial consideration is given to the credibility of the victim's testimony."[19] This is so because conviction for rape may be solely based on the victim's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[20] Both the RTC and the CA agree that "AAA" recounted her ordeal in a candid, straightforward and categorical manner. Thus:

[FISCAL ORIAS]:

Q: And, what transpired after these two persons placed your two hands at your back?

A: When they put my hands at my back they removed my pants and panty, sir.

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[17] *Id.* at 205.

[18] *Id.* at 98.

[19] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 787.

[20] *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

x x x x x x x x x

Q: Who was that person who removed your pants and underwear?

A: They were the ones, sir, Pedro Banig and Tony Ginumtad.

x x x x x x x x x

Q: After removing your pants and underwear, Madam witness, what did Pedro Banig do to you, if any?

A: He insert[ed] his penis, sir.

FISCAL ORIAS -

Q: Where did he insert his penis?

A: [Into my] vagina, sir.

Q: What did you feel when he inserted his penis [into] your vagina?

A: It was painful, sir.

Q: Did you not shout?

A: No, sir, because they told me that if I x x x shout they [would] kill me, sir.

Q: Was Pedro Banig armed at that time?

ATTY. PAWINGI:

Leading, your honor.

[FISCAL ORIAS]:

That is a follow-up to what she answered, your honor.

COURT:

Let her answer.

A: Yes, sir.

[FISCAL ORIAS]:

Q: [With] what?

A: Knife, sir.

Q: What did he do next, Madam witness, when he inserted his penis [into] your vagina?

A: He made up and down movement, sir.[21]

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[21] TSN, February 18, 1997, pp. 5-7.

Aggrieved that he was the only one convicted of the crime charged, appellant argues in his Brief[22] that the trial court erroneously concluded that he is the sole perpetrator of the crime charged. He claims that when his co-accused Ginumtad was acquitted, he was made to be the fall guy, "just because he is unrelated by blood to the private complainant."[23]

A judgment of acquittal is final and is no longer reviewable.[24] As we have previously held in *People v. Court of Appeals*,[25] "[a] verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense."[26] True, the finality of acquittal rule is not one without exception as when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction. In such a case, the judgment of acquittal may be questioned through the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. In the instant case, however, we cannot treat the appeal as a Rule 65 petition as it raises no jurisdictional error that can invalidate the judgment of acquittal. Suffice it to state that the trial court is in the best position to determine the sufficiency of evidence against both appellant and Ginumtad. It is a well-settled rule that this Court

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[22] CA *rollo*, pp. 96-116.

[23] *Id.* at 106. The co-accused Tony Ginumtad is related to the private complainant. In his direct examination, Ginumtad testified that the complainant "AAA" is his relative within the fifth degree of consanguinity. He specifically stated that:

Q: By the way, Mr. Witness, how are you related to the complainant in this case "AAA", if any?

A: There is, sir.

Q: Do you know the degree of your relationship?

A: She and [I are] **fifth cousins**, sir. (TSN, October 6, 1997, pp. 8-9. Emphasis supplied.)

[24] *People v. Terrado*, G.R. No. 148226, July 14, 2008, 558 SCRA 84, 93.

[25] G.R. No. 159261, February 21, 2007, 516 SCRA 383.

[26] *Id.* at 397.

accords great respect and full weight to the trial court's findings, unless the trial court overlooked substantial facts which could have affected the outcome of the case.[27] It is not at all irregular for a court to convict one of the accused and acquit the other. The acquittal of Ginumtad in this case is final and it shall not be disturbed.

The appellant assails "AAA's" credibility by arguing that the place where the alleged rape took place "is not one where no other person would be able to hear her had she opted to cry for help, because it is just ten to fifteen (10-15) meters away from an inhabited house."[28] He also asserts that "AAA's" actuations during the alleged sexual assault failed to show the kind of resistance expected of a young woman defending her virtue and honor.[29] To further cast doubt on "AAA's" credibility, appellant points to the fact that "AAA" did not report the offense at the first opportunity.[30] Moreover, he questions the conduct of "AAA" as she appeared to be not indisposed in the morning after the alleged rape.[31]

The appellant's arguments are misplaced. The CA correctly ruled that "AAA" could not cry for help as she was intimidated and overpowered by her aggressors who threatened her with a sharp-bladed knife.[32] Besides, it is important to underscore that the proximity of an inhabited house to the place where the crime took place does not rule out the possibility of the commission of rape. We have previously held in *People v. Mabonga*[33] that:

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[27] *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412, 427.

[28] CA *rollo,* p. 108.

[29] *Id.* at 108-109.

[30] *Id.* at 114.

[31] *Id.* at 113.

[32] *Id.* at 194-195.

[33] G.R. No. 134773, June 29, 2004, 433 SCRA 51, 65 citing *People v. Belga*, 402 Phil. 734, 742 (2001); *People v. Antonio*, 388 Phil. 869, 877 (2000); and *People v. Lusa*, 351 Phil. 537, 545 (1998).

[I]t is a common judicial experience that 'the presence of people nearby does not deter rapists from committing their odious act. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are several occupants and even in the same room where other members of the family are sleeping'.

It is well-settled that lust respects neither time nor place. "There is no rule that rape can be committed only in seclusion."[34] What the evidence reveals is that despite the proximity to neighboring houses, the appellant, by means of force or intimidation, did in fact have sexual intercourse with "AAA" against her will. Thus, it is immaterial that an inhabited house was near the place where the crime was committed. This fact will neither render "AAA" any less credible nor make the commission of the crime less conceivable.

With respect to "AAA's" actuations during the commission of the crime, it is not necessary on the part of the victim to put up a tenacious physical struggle. As previously pointed out, "AAA" was threatened with a sharp-bladed knife. One shrill cry or a flurry of violent kicks from her could mean the end of her life. In *People v. Corpuz*,[35] we ruled that "physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear." When the sharp point of a knife is staring down the eyes of the victim, struggle is futile and the only option left in the mind of a frightened lady is to submit rather than lose her life. That the victim allowed the entry of her aggressor's penis rather than his knife does not detract from the fact that rape was committed by means of force and intimidation and certainly against her will.

As to the matter of delay in reporting the rape incident, the same does not affect the credibility of "AAA". "[I]t is not unusual

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[34] *People v. Arraz*, G.R. No. 183696, October 24, 2008, 570 SCRA 136, 146.

[35] G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.

for a rape victim immediately following the sexual assault to conceal at least momentarily the incident x x x."[36] "Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained."[37] "[T]here is no uniform behavior expected of victims after being raped."[38] In this case, the delay in reporting the incident only consists of a little over two weeks. Such a span of time is not unreasonable when coupled by the fact that the victim "AAA" was threatened by her aggressor. In *People v. Dumadag*,[39] we stressed that "not all rape victims can be expected to act conformably to the usual expectations of everyone."

Still insisting on his innocence, appellant likewise invites this Court's attention to the findings of Dr. Macabangon in his medical report. He argues that it is "highly abnormal and quite amazing for the victim to incur just a single and quite old laceration."[40]

The contention deserves scant consideration. "It is well entrenched in our jurisprudence that a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the [appellant] of the crime."[41] Be that as it may, in *People v. Ortoa*,[42] where the medico-legal findings showed that the victim is still in a state of virginity when she was examined, we held that:

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[36] *People v. Malana*, G.R. No. 185716, September 29, 2010, 631 SCRA 676, 693.

[37] *People v. Arellano*, G.R. No. 176640, August 22, 2008, 563 SCRA 181, 187.

[38] *People v. Arraz*, *supra* note 34 at 147.

[39] *Supra* note 3 at 546, citing *People v. Madia*, 411 Phil. 666, 673 (2001).

[40] CA *rollo*, p. 110.

[41] *People v. Baring, Jr.*, 425 Phil. 559, 570 (2002).

[42] G.R. No. 174484, February 23, 2009, 580 SCRA 80, 95-96.

> [T]he lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape. Even the fact that the hymen of the victim was still intact does not rule out the possibility of rape. x x x Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape. (Citations omitted.)

The laceration found by Dr. Macabangon in the medical examination confirms the victim's testimony that she was raped. In his testimony, Dr. Macabangon stated that the laceration of the hymen usually heals in less than 10 days. In "AAA's" case, she was examined on April 23, 1996, or more than three weeks after the rape incident occurred on March 28, 1996. This explains why the findings showed that the laceration of the hymen was old.

Appellant further argues that "AAA" agreed to marry him, suggesting that her presence during a meeting with the *barangay* captain is a sign of his innocence of the crime of rape.

We are not convinced. "The 'sweetheart theory' hardly deserves any attention when an accused does not present any evidence, such as love letters, gifts, pictures, and the like to show that, indeed, he and the victim were sweethearts."[43] Appellant's bare testimony that he and "AAA" are lovers who agreed to get married is insufficient for the defense of "sweetheart theory" to prosper. Moreover, even if it were true that they were sweethearts, mere assertion of a romantic relationship would not necessarily exclude the use of force or intimidation in sexual intercourse. In *People v. Cias*,[44] this Court held that "[a] love affair does not justify rape for a man does not have the unbridled license to subject his beloved to his carnal desires against her will."

With respect to the propriety of the award of moral damages, the CA is correct in awarding "AAA" moral damages in the amount of ₱50,000.00, in addition to the award of civil indemnity.

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[43] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 609.

[44] G.R. No. 194379, June 1, 2011, 650 SCRA 326, 341.

"The award of civil indemnity to the rape victim is mandatory upon a finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent." [45]

Under Article 335 of the Revised Penal Code which is the law then in force at the time of the commission of the crime, when the rape is committed with the use of a deadly weapon, the crime takes a qualified form and the imposable penalty is *reclusion perpetua* to death. In the instant case, we note that the use of the knife, which is a deadly weapon, was not specifically alleged in the Information. However, it was duly proven during the proceedings below that appellant armed himself with a knife which facilitated the commission of the crime. In *People v. Begino*,[46] we held that "the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances."[47] "If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded."[48] Consequently, the use of a deadly weapon may be considered as an aggravating circumstance in this case. As such, exemplary damages may be imposed on the appellant

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[45] *People v. Mercado*, G.R. No. 189847, May 30, 2011, 649 SCRA 499, 504; *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 397.

[46] G.R. No. 181246, March 20, 2009, 582 SCRA 189.

[47] *Id.* at 196.

[48] *Id.* at 198. See *People v. Montesclaros*, G.R. No. 181084, June 16, 2009, 589 SCRA 330, 342 where we held: "Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state the qualifying and aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty."

in addition to civil indemnity and moral damages.[49] Thus, exemplary damages in the amount of ₱30,000.00 is hereby awarded.[50]

Finally, on the damages awarded, an interest at the rate of 6% *per annum* shall be imposed, reckoned from the finality of this judgment until fully paid.[51] Appellant is also not eligible for parole pursuant to Republic Act No. 9346.[52]

WHEREFORE, the Decision of the Court of Appeals dated November 13, 2006 in CA-G.R. CR-H.C. No. 02439 is **AFFIRMED WITH MODIFICATIONS** that appellant Pedro Banig is not eligible for parole and ordered to further pay "AAA" ₱30,000.00 as exemplary damages and interest at the rate of 6% *per annum* is imposed on all the damages awarded in this case from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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[49] Article 2230 of the Civil Code provides: "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."

[50] See *People v. Dumadag*, *supra* note 3 at 550.

[51] *Id.*

[52] An Act Prohibiting The Imposition of Death Penalty In The Philippines. Approved June 24, 2006.

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

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

FIRST DIVISION

[G.R. No. 179232. August 23, 2012]

DEL MONTE FRESH PRODUCE N.A. and DEL MONTE FRESH PRODUCE COMPANY, *petitioners, vs.* **DOW CHEMICAL COMPANY, OCCIDENTAL CHEMICAL CORPORATION, CECILIO G. ABENION, *ET AL.*,[*] DOLE FOOD COMPANY, INC., DOLE FRESH FRUIT COMPANY, STANDARD FRUIT COMPANY, STANDARD FRUIT AND STEAMSHIP COMPANY, CHIQUITA BRANDS, INC., and CHIQUITA BRANDS INTERNATIONAL, INC.,** *respondents.*

[G.R. No. 179290. August 23, 2012]

THE DOW CHEMICAL COMPANY and OCCIDENTAL CHEMICAL CORPORATION, *petitioners, vs.* **HON. JESUS L. GRAGEDA, Presiding Judge, Regional Trial Court of Panabo City, Branch 4, Panabo City, Davao del Norte; CECILIO G. ABENION, *ET AL.*; DOLE FRESH FRUIT COMPANY; STANDARD FRUIT COMPANY; STANDARD FRUIT AND STEAMSHIP COMPANY; DEL MONTE FRESH PRODUCE, N.A.; DEL MONTE TROPICAL FRUIT COMPANY;[**] CHIQUITA BRANDS, INC.; and CHIQUITA BRANDS INTERNATIONAL, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; A COURT MAY ALLOW AN OMITTED COUNTERCLAIM OR CROSS-CLAIM BY AMENDMENT; REQUISITES.—

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[*] Composed of 1,843 people whose names and addresses are enumerated in the list attached to the Amended Joint Complaint in Civil Case No. 95-45. [See CA Decision, p. 1, *rollo* (G.R. No. 179290), Vol. I, pp. 9, 303-335.]

[**] Now Del Monte Fresh Produce Company.

[T]here are two requisites for a court to allow an omitted counterclaim or cross-claim by amendment: (1) there was oversight, inadvertence, or excusable neglect, or when justice requires; and (2) the amendment is made before judgment.

2. ID.; ID.; ID.; CROSS-CLAIMS; THE DISMISSAL OF THE COMPLAINT RESULTING FROM THE SETTLEMENT OF THE DEFENDANTS WITH THE PLAINTIFFS DOES NOT CARRY WITH IT THE DISMISSAL OF THE CROSS-CLAIM; CASE AT BAR.— [T]he dismissal of the complaint against the Dow/Occidental defendants does not carry with it the dismissal of the cross-claims against them. The ruling in *Ruiz, Jr. v. Court of Appeals* that the dismissal of the complaint divested the cross-claimants of whatever appealable interest they might have had before, and made the cross-claim itself no longer viable, is not applicable in the instant case because in *Ruiz*, the dismissal of the complaint was based on the ground that it lacked merit. In the case at bar, the dismissal of the complaint against the Dow/Occidental defendants resulted from the settlement with the plaintiffs, which is in effect an admission of liability on the part of the Dow/Occidental defendants.

APPEARANCES OF COUNSEL

Quisumbing Torres for DOW Chemical Co., & Occidental Chemical Corp.

Sycip Salazar Hernandez & Gatmaitan Law Offices for Del Monte Fresh Produce N.A. & Del Monte Tropical Fruit Co.

Villaraza Cruz Marcelo & Angangco for DOLE Fresh Fruit Co., Standard Fruit Co., & Standard Fruit and Steamship Co.

Solis & Medina Law Offices, Randolph C. Parcasio and *Macadangdang Law Office* for C. Abenion, *et al.*

Castillo Laman Tan Pantaleon & San Jose Law Offices for Chiquita Brands, Inc. and Chiquita Brands International, Inc.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court are consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure,

as amended, assailing the May 23, 2006 Decision[1] and August 8, 2007[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 77287.

The antecedents of the case follow:

On August 11, 1995, a Joint Complaint for damages based on quasi-delict was filed before the Regional Trial Court (RTC) of Panabo City, Davao del Norte, by 1,185 individuals against Del Monte Fresh Produce, N.A. and Del Monte Tropical Fruit Company, petitioners in G.R. No. 179232; Dow Chemical Company and Occidental Chemical Corporation, petitioners in G.R. No. 179290; Shell Oil Company; Standard Fruit and Steamship Company; Standard Fruit Company, Dole Food Company, Inc.; Dole Fresh Fruit Company; Chiquita Brands, Inc.; Chiquita Brands International, Inc.; Dead Sea Bromine Company, Ltd.; Ameribrom, Inc.; Bromine Compounds, Ltd.; and Amvac Chemical Corporation. The Joint Complaint, docketed as Civil Case No. 95-45, alleged that said corporations were negligent in the manufacture, distribution, and/or sale, or in not informing users of the hazardous effects, of the chemical dibromochloropropane (DBCP). The plaintiffs, claiming to be banana plantation workers and residents of Davao del Norte, alleged that they were exposed to DBCP in the early 1970s and 1980s and as a result, suffered serious and permanent injuries to their health. The plaintiffs sought to be jointly and solidarily recompensed by the defendant corporations in the total amount of ₱2,700,000.

Prior to the filing of the defendants' Answer, the Joint Complaint was amended to implead other plaintiffs, increasing their number to 1,843 and to drop Dead Sea Bromine Company,

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[1] *Rollo* (G.R. No. 179232), pp. 44-58. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo A. Camello and Ramon R. Garcia, concurring.

[2] *Id.* at 71-73. Penned by Associate Justice Edgardo A. Camello with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring.

Ltd., Ameribrom, Inc., Bromine Compounds, Ltd., and Amvac Chemical Corporation as party-defendants.[3]

Some of the remaining defendants—Del Monte Fresh Produce, N.A. and Del Monte Tropical Fruit Company (Del Monte defendants), Dow Chemical Company and Occidental Chemical Corporation (Dow/Occidental defendants), Dole Food Company, Inc. and Dole Fresh Fruit Company (Dole defendants), Chiquita Brands, Inc. and Chiquita Brands International, Inc. (Chiquita defendants)—filed their respective Answers with Counterclaim on separate dates.

On September 2, 1997, the Dow/Occidental defendants jointly moved for the dismissal of the complaint against them, as well as their counterclaim against the plaintiffs. They alleged that they have already entered into a compromise agreement[4] with the plaintiffs.[5] They likewise filed a Motion for Partial Judgment Based on Compromise. Both motions were opposed by their co-defendants.

The Chiquita defendants, on even date, filed their Motion for Leave to Admit Amended Answer with Counterclaims and Cross-claims,[6] citing inadvertence, oversight, and excusable neglect as grounds for amendment.

The Del Monte defendants also filed a Motion to Admit Amended Answer with Cross-Claim[7] and Amended Answer with Cross-Claim[8] attached thereto, alleging that they inadvertently failed to include in their answer their cross-claims against their co-defendants.

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[3] *Rollo* (G.R. No. 179290) Vol. I, pp. 289-302.

[4] *Id.* at 522-553.

[5] *Id.* at 518-520.

[6] *Id.* at 554-572.

[7] *Id.* at 595-597.

[8] *Id.* at 598-603.

The Dole defendants, on October 1, 1997, filed a Motion to Admit Amended Answer[9] with the Amended Answer with Cross-Claim *Ad Cautelam*.[10] They alleged that since they were in imminent danger of being the only defendants left, they were constrained to file a cross-claim against their co-defendants in order to adequately secure their right to contribution and reimbursement as potential solidary debtors.

The parties thereafter filed numerous oppositions/motions to the pleadings filed by each. Replies and comments were likewise filed in response thereto.

On June 4, 2001, the Del Monte defendants filed a Motion to Dismiss[11] praying that as to them, the Amended Joint Complaint be dismissed in its entirety and with prejudice, on the ground, among others, that the claims or demands of the plaintiffs (except for 16 of them)[12] had been paid, waived, abandoned and extinguished. Attached to its Motion is a copy of the settlement agreement entitled "Release in Full."[13] The Dow/Occidental defendants filed a Manifestation[14] stating that they do not object to Del Monte's Motion to Dismiss.

On July 31, 2001, the Chiquita defendants filed a Motion for Partial Dismissal of the Amended Joint Complaint[15] on the ground that all the plaintiffs, except for James Bagas and Dante Bautista, have settled their claims with them, for which each

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[9] *Id.* at 604-613.

[10] *Id.* at 614-644.

[11] *Rollo* (G.R. No. 179290), Vol. II, pp. 1196-1202.

[12] Romeo Acelo, Jesus Aguelo, Manuel Apas, Antonio Cabulang, Rodrigo Catulong, Enrique Dinoy, Fidel Ebrano, Cairus B. Francisco, Primo Magpatoc, Peter Manica, Ernesto Olleque, Teodoro Pardillo, Federico Pesaña, Desiderio G. Rivas, Patricio Villotes, Ireneo P. Yaras. [*Rollo* (G.R. No. 179290), Vol. II, pp. 1198-1199.]

[13] *Rollo* (G.R. No. 179290), Vol. II, pp. 1203-1218.

[14] *Id.* at 1230-1232.

[15] *Id.* at 1239-1241.

has executed a quitclaim styled "Release in Full." Attached to the motion were copies of some of the individual settlement agreements entitled "Release in Full"[16] signed by those who have settled their claims.

On June 4, 2002, the Dow/Occidental defendants filed a Request for Admissions[17] addressed to the plaintiffs seeking from them the admission that payments were already made to them by the Dow/Occidental defendants.

On December 20, 2002, the RTC issued the assailed Omnibus Order.[18] The portions of the *fallo* of the order pertinent to the instant petitions read:

WHEREFORE, the court, hereby resolves:

Under No. 1, *supra*, to admit: x x x the amended answer dated September 2, 1997 of the Chiquita defendants; x x x the motion to admit new amended answer and the amended answer with cross-claims dated November 3, 1997, noting as well the manifestation of even date of the Del Monte defendants; x x x Dole's motion to admit amended answer and the amended answer itself dated October 1, 1997; x x x

x x x x x x x x x

Under No. 3, *supra*, the joint motion to dismiss and motion for partial judgment between the plaintiffs and defendants Dow and Occidental under the provisions of "compromise settlement, indemnity and hold harmless agreement(s)," embodied in Annexes "A" and "B", which documents by reference are, hereby, incorporated, adopted, and made integral parts hereof, not being contrary to law, good morals, public order or policy are, hereby, approved by way of judgment on compromise and the causes of action of the plaintiffs in their joint amended complaint as well as the counter-claims of defendants Dow and Occidental are dismissed;

x x x x x x x x x

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[16] *Id.* at 1242-1320.

[17] *Id.* at 1687-1690; *rollo* (G.R. No. 179290), Vol. I, p. 60.

[18] *Rollo* (G.R. No. 179232), pp. 94-116.

The cross-claims of all the co-defendants in the above-entitled case between and among themselves, in effect leaving all the said co-defendants cross-claimants ("plaintiffs") and cross defendants ("defendants") against each other shall continue to be taken cognizance of by the court.

x x x x x x x x x

All other motions filed by the parties in relation to or in connection to the issues hereinabove resolved but which have been wittingly or unwittingly left unresolved are hereby considered moot and academic; likewise, all previous orders contrary to or not in accordance with the foregoing resolutions are hereby reconsidered, set aside and vacated.

SO ORDERED.[19]

The Dow/Occidental defendants filed a Motion for Partial Reconsideration[20] of said omnibus order but the same was denied.

On December 26, 2002, the plaintiffs who entered into compromise agreements filed a Motion for Execution[21] alleging:

1. Earlier on, certain plaintiffs had been compelled to file a Motion for Execution because defendants DOW, Shell, Occidental, Del Monte and Chiquita had failed to abide by the terms and conditions of the Compromise Agreements which they entered into with the above named defendants as early as 1997 or five (5) years ago, more or less;

2. Consequently, the said motion for execution dated March 4, 2002 faced stiff opposition from defendants. Almost unending exchanges of comments ensued touching on certain plaintiffs' Motion for Execution. In effect, all parties have been given the chance to be heard. As such, due process of law has been complied with. On their part, defendants DOW and Occidental opposed said motion because the compromise agreements in question have not yet been approved by this Honorable Court;

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[19] *Id.* at 114-116.

[20] *Id.* at 143-173; *rollo* (G.R. No.179290), Vol. I, p. 65.

[21] *Rollo* (G.R. No. 179290), Vol. III, pp. 2850-2854.

3. On December 20, 2002, the Honorable Court issued its Omnibus Order approving the compromise agreements in question executed by defendants Dow, Shell, Occidental, Del Monte and Chiquita x x x;

4. Pursuant to the Omnibus Order dated 20 December 2002, the provisions of "Compromise Settlement, Indemnity and Hold Harmless Agreements" entered into by and between plaintiffs and defendants DOW, Shell, Occidental, Del Monte and Chiquita have been approved by way of judgment on compromise. Significantly, the dispositive portion of the Omnibus Order which provides that: "**The foregoing parties are, hereby, enjoined to strictly abide by the terms and conditions of their respective settlements**" is adequate for purposes of execution x x x;

5. In view of the fact that this Honorable Court has already approved by way of judgment on compromise entered into by and between plaintiffs and defendants DOW, Shell, Occidental, Del Monte and Chiquita, the same is immediately executory. It then becomes ministerial for this Honorable Court to order the execution of its final executory judgment against above named defendants. x x x[22] (Emphasis in the original; underscoring supplied.)

On April 23, 2003, the RTC issued a Writ of Execution[23] which declared that the Compromise Agreements entered into by the Dow/Occidental, Del Monte and Chiquita defendants with the compromising plaintiffs are immediately final and executory. The dispositive portion of the writ reads:

NOW THEREFORE, you are hereby commanded to cause the execution of the Omnibus Order of this court dated December 20, 2002 specifically to collect or demand from each of the herein defendants the following amounts to wit:

1. Defendants Dow Chemical Company ("Dow") and Occidental Chemical Corporation ("Occidental") the amount of:

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[22] *Id.* at 2850-2851.

[23] *Id.* at 2726-2731.

a. $22 million or such amount equivalent to the plaintiffs' claim in this case in accordance with their Compromise Settlement, Indemnity, and Hold Harmless Agreement (Annex "A"); and

b. The amount of $20 million or such amount equivalent to the plaintiffs' claim in this case in accordance with their Compromise Settlement, Indemnity, and Hold Harmless Agreement (Annex "B")

2. Defendants Del Monte Fresh Produce, N.A. and Del Monte Fresh Produce Company (formerly Del Monte Tropical Fruit, Co.) (collectively, the "Del Monte defendants") the amount of One Thousand Eight and No/100 Dollars ($1,008.00) for each plaintiff in accordance with their Release in Full Agreement;

3. Defendants Chiquita Brands, Inc. and Chiquita Brands, International, Inc. (collectively the "Chiquita Defendants") the amount of Two Thousand One Hundred Fifty Seven and No/100 Dollars ($2,157.00) for each plaintiff in accordance with their Release in Full Agreement.[24]

The Dow/Occidental defendants then filed a petition for *certiorari* with the CA seeking the annulment of the omnibus order in so far as it:

(1) Admitted the amended answers with cross-claims filed by the Dole defendants, Del Monte defendants and Chiquita defendants;

(2) Ruled that it shall continue to take cognizance of the cross-claims of the Dole, Del Monte and Chiquita defendants against petitioners; and

(3) Ruled that all the other motions filed by the parties in relation to the issues which have been left unresolved are considered moot and academic relative to the Dow/ Occidental defendants' Request for Admission.

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[24] *Id.* at 2729-2730.

The Dow/Occidental defendants argue, among others, that the RTC gravely abused its discretion when it did not dismiss the cross-claims filed by the Dole, Del Monte and Chiquita defendants despite the following: (1) the cross-claims were already filed beyond the reglementary period; and (2) the complaint against them and the Del Monte and Chiquita defendants, including their respective counterclaims, were already dismissed on the bases of the compromise agreements they each had with the plaintiffs.

On May 23, 2006, the appellate court issued the assailed decision, disposing as follows:

> WHEREFORE, above premises considered, the instant Petition is partially GRANTED. The December 20, 2002 Omnibus Order issued by the Regional Trial Court, Branch 4, Panabo City, Davao del Norte is hereby AFFIRMED with MODIFICATION. As modified, the cross-claims filed by the Chiquita defendants, except [as to] the claims of James Bagas and Dante Bautista, and by the Del Monte defendants, except [as to] the claims of Romeo Acelo, Jesus Aguelo, Manuel Apas, Antonio Cabulang, Rodrigo Catulong, Enrique Dinoy, Fidel Ebrano, Cairus B. Francisco, Primo Magpatoc, Peter Manica, Ernesto Olleque, Teodoro Pardillo, Federico Pesaña, Desiderio G. Rivas, Patricio Villotes, Ireneo P. Yaras, are hereby DISMISSED. No costs.
>
> SO ORDERED.[25]

The CA ruled that the cross-claims of the Dole, Del Monte and Chiquita defendants, which were all filed with leave of court, on the grounds provided under said rule, and before judgment was rendered, clearly complied with the requirements of the law. It held that cross-claims filed at any time before judgment is rendered cannot be considered belatedly filed especially in this case when the compromise agreement submitted by the plaintiffs and the Dow/Occidental defendants has yet to be approved.

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[25] *Rollo* (G.R. No.179232), p. 57.

The CA also held that the dismissal of the complaint as regards the Dow/Occidental defendants in the civil case did not carry with it the dismissal of the cross-claims filed against said defendants. It ruled that the dismissal of the complaint against the Dow/Occidental defendants was not due to any finding by the RTC that the complaint therein was without basis. In fact, the dismissal was because of the compromise agreement the parties entered into. The appellate court likewise held that the Dow/Occidental defendants and the Dole, Del Monte and Chiquita defendants were sought to be held solidarily liable by the plaintiffs. Yet, despite the compromise agreements entered into by the Dow/Occidental, Del Monte, and Chiquita defendants with majority of the plaintiffs below, the civil case was not dismissed nor the amount of damages sought by plaintiffs therein reduced. Thus, if the remaining defendants are made liable to the plaintiffs for the full amount of damages sought, said remaining defendants have a right to proceed against the Dow/Occidental defendants through their cross-claims.

The CA, however, ruled that the RTC gravely abused its discretion when it admitted the cross-claims against the Dow/Occidental defendants without any qualification. It held that only the cross-claims filed by the Dole defendants, the Chiquita defendants (with respect to the claims of James Bagas and Dante Bautista) and the Del Monte defendants (with respect to the 16 non-compromising plaintiffs) against the Dow/Occidental defendants can be rightly admitted by the RTC. Since the Del Monte and Chiquita defendants can no longer be held liable by the compromising plaintiffs, no reason existed for them anymore to sue the Dow/Occidental defendants as far as the compromising plaintiffs are concerned under the cross-claim. The case, however, is different with the Dole defendants. Since the Dole defendants did not enter into a compromise agreement with any of the plaintiffs, their cross-claims against the Dow/Occidental, Chiquita and Del Monte defendants are still viable in its entirety.

With respect to the Request for Admission served by the Dow/Occidental defendants on the compromising plaintiffs, the CA ruled that their belated resort to such mode of discovery was clearly improper since it was made only after a writ of execution

was issued against them. Moreover, the questions propounded pertain to matters that are within the knowledge of the Dow/Occidental defendants. Thus, the best evidence to prove that payments had been made were the receipts which the Dow/Occidental defendants themselves claim to be in the possession of their U.S. counsels.

Unsatisfied, the Dow/Occidental defendants, as petitioners in G.R. No. 179290, come to this Court arguing that the CA committed reversible error in not finding that the cross-claims of the Dole, Del Monte and Chiquita defendants should all be dismissed and the Request for Admission was timely filed and proper.

The Del Monte defendants, as petitioners in G.R. No. 179232, are also before this Court seeking a partial reversal of the CA decision. They submit that their cross-claims against the Dow/Occidental defendants should extend to all the plaintiffs, that is, the 16 plaintiffs who did not settle, as well as those who have settled with them.

Essentially, the issues to be resolved are: (1) Does the dismissal of the civil case against the Dow/Occidental defendants carry with it the dismissal of cross-claims against them? (2) Is the Request for Admission by the Dow/Occidental defendants proper?

We deny the petitions.

Section 10, Rule 11 of the 1997 Rules of Civil Procedure, as amended, provides:

> SEC. 10. *Omitted counterclaim or cross-claim.* — When a pleader fails to set up a counterclaim or a cross-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he may, by leave of court, set up the counterclaim or cross-claim by amendment before judgment.

Based on the above-quoted provision, there are two requisites for a court to allow an omitted counterclaim or cross-claim by amendment: (1) there was oversight, inadvertence, or excusable neglect, or when justice requires; and (2) the amendment is made before judgment.

The CA correctly held that there is basis for allowing the cross-claims of the Dole, Del Monte and Chiquita defendants against the Dow/Occidental defendants as they complied with the rules. It is undisputed that the Dole, Del Monte and Chiquita defendants sought to amend their answers to include their cross-claims before judgment. More importantly, justice requires that they be allowed to do so in consonance with the policy against multiplicity of suits.

We further agree with the appellate court when it ruled that the dismissal of the complaint against the Dow/Occidental defendants does not carry with it the dismissal of the cross-claims against them. The ruling in *Ruiz, Jr. v. Court of Appeals*[26] that the dismissal of the complaint divested the cross-claimants of whatever appealable interest they might have had before, and made the cross-claim itself no longer viable, is not applicable in the instant case because in *Ruiz*, the dismissal of the complaint was based on the ground that it lacked merit. In the case at bar, the dismissal of the complaint against the Dow/Occidental defendants resulted from the settlement with the plaintiffs, which is in effect an admission of liability on the part of the Dow/Occidental defendants. As held in *Bañez v. Court of Appeals*:[27]

> A third-party complaint is indeed similar to a cross-claim, except only with respect to the persons against whom they are directed. However, the ruling in *Ruiz* cannot be successfully invoked by petitioners. In *Ruiz* we declared that the dismissal of the main action rendered the cross-claim no longer viable only because the main action was categorically dismissed for lack of cause of action. Hence, since defendants could no longer be held liable under the main complaint, no reason existed for them anymore to sue their co-party under the cross-claim.
>
> In sharp contrast thereto, the termination of the main action between PESALA and PNB-RB was not due to any finding that it was bereft of any basis. On the contrary, further proceedings were rendered unnecessary only because defendant (third-party plaintiff) PNB-RB,

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[26] G.R. No. 101566, August 17, 1992, 212 SCRA 660, 664.

[27] G.R. No. 119321, March 18, 1997, 270 SCRA 19, 25.

to avoid a protracted litigation, voluntarily admitted liability in the amount of ₱20,226,685.00. Hence, the termination of the main action between PESALA and PNB-RB could not have rendered lifeless the third-party complaint filed against petitioners, as it did the cross-claim in *Ruiz, Jr. v. Court of Appeals*, since it involved a finding of liability on the part of PNB-RB even if it be by compromise.

And as correctly observed by the CA, the plaintiffs are seeking to hold all defendant companies solidarily liable. Thus, even with the compromise agreements entered into by the Dow/ Occidental, Del Monte and Chiquita defendants with majority of the plaintiffs below, the civil case was not dismissed nor the amount of damages sought by plaintiffs therein reduced. Therefore, the remaining defendants can still be made liable by plaintiffs for the full amount. If that happens, the remaining defendants can still proceed with their cross-claims against the compromising defendants, including the Dow/Occidental defendants, for their respective shares.

We also uphold the appellate court's ruling that the RTC gravely abused its discretion when it admitted the cross-claims against the Dow/Occidental defendants without any qualification. The Del Monte and Chiquita defendants' cross-claims against the Dow/Occidental defendants cannot extend to the plaintiffs with whom they had settled, but only with respect to those plaintiffs who refused to enter into a compromise agreement with them, that is, with respect only to James Bagas and Dante Bautista for the Chiquita defendants and the 16 plaintiffs for the Del Monte defendants. Simply put, as the compromising plaintiffs can no longer hold the Del Monte and Chiquita defendants liable, there is no more reason for the latter to sue the Dow/Occidental defendants as far as the compromising plaintiffs are concerned under the cross-claim.

With respect to the Dole defendants, however, as the Dole defendants did not enter into a compromise agreement with any of the plaintiffs, their cross-claims against the Dow/Occidental, Del Monte and Chiquita defendants should be admitted in its totality.

As to the Request for Admission served by the Dow/Occidental defendants, this Court finds that the issue on its propriety has been rendered moot by the compromising plaintiffs' motion for execution and the subsequent issuance of the writ of execution by the RTC on April 23, 2003. The Request for Admission was seeking the compromising plaintiffs' admission that they have received the payments as agreed upon in the compromise agreement. However, in the plaintiffs' Motion for Execution dated December 26, 2002, they alleged that the compromising defendants still have not complied with the terms and conditions of the compromise agreements, thereby forcing said plaintiffs to file the motion. Thus, the admission sought by the Dow/Occidental defendants has already been impliedly responded to by a denial of receipt of payment under the compromise agreement. With said denial, the RTC did not commit grave abuse of discretion in not resolving the Request for Admission. It is incumbent upon the Dow/Occidental defendants to prove that payments have been made to the compromising plaintiffs.

WHEREFORE, the present petitions for review on *certiorari* are **DENIED** for lack of merit. The assailed May 23, 2006 Decision and August 8, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 77287 are **AFFIRMED and UPHELD**.

With costs against the petitioners.

SO ORDERED.

Velasco, Jr.,[***] *Leonardo-de Castro (Acting Chairperson),*[****] *Bersamin,* and *del Castillo, JJ.,* concur.

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

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

FIRST DIVISION

[G.R. No. 190907. August 23, 2012]

VETERANS PHILIPPINE SCOUT SECURITY AGENCY, INC., *petitioner, vs.* **FIRST DOMINION PRIME HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE ON CORPORATE REHABILITATION; CORPORATE REHABILITATION; WARRANTS THE SUSPENSION OF ALL ACTIONS AND CLAIMS AGAINST DISTRESSED CORPORATION.— An essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver. Section 6(c) of PD 902-A mandates that upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended. The actions to be suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of pecuniary nature. Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against the corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. The stay order is effective on all creditors of the corporation without distinction, whether secured or unsecured.

2. ID.; ID.; ID.; ID.; RATIONALE.— The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other actions to continue would only

add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation. It is worthy to note that the stay order remains effective during the duration of the rehabilitation proceedings.

3. ID.; ID.; ID.; REHABILITATION PLAN; BINDING UPON THE DEBTOR AND ALL PERSONS WHO MAY BE AFFECTED BY IT.— [T]he rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether such persons have or have not participated in the proceedings or have opposed the plan or whether their claims have or have not been scheduled.

APPEARANCES OF COUNSEL

HR Rabino and Associates for petitioner.
Sobreviñas Hayudini Navarro & San Juan for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the August 24, 2009 Decision[1] and December 17, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105894. The CA had reversed and set aside the Decision[3] of the Regional Trial Court (RTC), Branch 76, of Quezon City, insofar as it held that the dismissal of petitioner's amended complaint was without prejudice.

The antecedent facts of the case are as follows:

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[1] *Rollo*, pp. 60-73. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Pampio A. Abarintos and Francisco P. Acosta concurring.

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

[3] *Id.* at 271-272. Penned by Presiding Judge Alexander S. Balut.

Petitioner Veterans Philippine Scout Security Agency, Inc. (Veterans) is a corporation duly organized and existing under Philippine laws. It is engaged in the business of providing security services.

Respondent First Dominion Prime Holdings, Inc. (FDPHI), on the other hand, is a holding investment and management company which owns and operates various subsidiaries and affiliates. Among its subsidiaries are Clearwater Tuna Corporation, Maranaw Canning Corporation and Nautica Canning Corporation, collectively referred to as the FDPHI Group of Companies. Said companies are engaged in the production of canned tuna.

On February 15, 2001, respondent FDPHI and its aforementioned subsidiaries jointly filed before the RTC of Pasig City, Branch 158 a Petition for Rehabilitation.[4] Said petition was docketed as Civil Case No. 68343. Attached to the petition was a Schedule of Debts and Liabilities as of January 31, 2001 showing that Clearwater Tuna Corporation (Clearwater) had an outstanding indebtedness to petitioner in the total amount of ₱356,842.42.[5] Said amount represents the security services rendered by petitioner to Clearwater pursuant to a Contract of Guard Services[6] between petitioner and Inglenook Food Corporation (Clearwater's former name) for the latter's manufacturing facility at the Navotas Fish Port Complex.

After finding the petition sufficient in form and substance, the Rehabilitation Court issued a Stay Order[7] on February 22, 2001. The dispositive portion of the order reads:

WHEREFORE, the Petition being sufficient in form and substance, a stay order pursuant to Section 6, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation is issued as follows:

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[4] *Id.* at 77-105.

[5] Records, Vol. I, p. 149.

[6] *Rollo*, pp. 132-136. The contract for security services is dated September 8, 1996.

[7] Records, Vol. I, pp. 150-163.

(a) Staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, including the extra-judicial foreclosure proceedings in EJF Case No. 01-02, entitled "*Metropolitan Bank and Trust Co. vs. Nautica Canning Corporation*", of the Regional Trial Court of General Santos City, against petitioner FDPHI Group of Companies, comprising of petitioners First Dominion Prime Holdings, Inc., and its subsidiaries, petitioners Nautica Canning Corporation, Maranaw Canning Corporation and Clearwater Tuna Corporation, their guarantors and sureties not solidarily liable with the petitioners;

(b) Prohibiting petitioner FDPHI Group of Companies from selling, encumbering, transferring, or disposing in any manner any of its properties, except in the ordinary course of business;

(c) Prohibiting petitioner FDPHI Group of Companies from making any payment of its liabilities outstanding as [of] the date of filing of the Petition;

x x x x x x x x x

Mr. Monico V. Jacob is appointed rehabilitation receiver who can assume the position upon his taking an oath and after posting a bond in the amount of Five Hundred Thousand (₱500,000.00) Pesos, executed in favor of petitioner FDPHI Group of Companies, to guarantee that he will faithfully discharge his duties and the orders of this Court.

Let this Stay Order be published in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks from date of the Order.

All creditors and all interested parties (including the Securities and Exchange Commission) are directed to file and serve on the petitioner FDPHI Group of Companies, their verified comment on, or opposition to, the Petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing. x x x[8]

The FDPHI Group of Companies caused the publication of the stay order to give notice to the whole world of the filing and pendency of the rehabilitation proceedings. Thereafter, after

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[8] *Id.* at 161-163.

due proceedings, the Rehabilitation Court approved the rehabilitation plan submitted by FDPHI and its subsidiaries. On October 24, 2003, the Rehabilitation Court likewise issued an Order[9] approving the Amended Rehabilitation Plan for the FDPHI Group of Companies. The *fallo* of the October 24, 2003 Order reads:

> WHEREFORE, petitioners' Motion to Amend their Rehabilitation Plan is GRANTED and the Amended Rehabilitation Plan (as of August 26, 2003) which is attached as Annex "A" and made integral part of this Order is APPROVED.
>
> All provisions of the original Rehabilitation Plan approved by this Court on February 22, 2002 that are not inconsistent or incompatible with the said Amended Rehabilitation Plan (as of August 26, 2003) shall remain in effect.
>
> Consequently, petitioners are strictly enjoined to abide by the terms and conditions of the original Rehabilitation Plan approved on February 22, 2002 as amended by the Amended Rehabilitation Plan (as of August 26, 2003), and they shall, in consultation with the Rehabilitation Receiver, unless directed otherwise, submit a quarterly report on the progress of the implementation of the Rehabilitation Plan.
>
> The Rehabilitation Receiver is directed to furnish all the concerned parties including the Securities and Exchange Commission, copies of this Order and its Annex "A" within ten (10) days from October 28, 2003. He will then furnish this Court proof of service of his undertaking.
>
> SO ORDERED.[10]

Subsequently, petitioner filed a Complaint[11] for Sum of Money and Damages against Clearwater and/or Atty. Jacob in his capacity as appointed Receiver before the Metropolitan Trial Court (MeTC), Branch 31, of Quezon City. The complaint, which was filed on May 27, 2004, was docketed as Civil Case

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[9] *Id.* at 188-202.

[10] *Id.* at 202.

[11] *Id.* at 2-7.

No. 32932. Essentially, petitioner sought to recover from Clearwater the amount of ₱372,219.80 representing the unpaid security services rendered by petitioner from January 16, 2000 to January 31, 2001 pursuant to their contract. On May 24, 2005, the MeTC dismissed the complaint for failure to prosecute,[12] but later reinstated the same upon motion for reconsideration by petitioner.[13]

On October 20, 2005, petitioner filed an Amended Complaint[14] for Sum of Money and Damages against herein respondent FDPHI averring that Clearwater had changed its business name to First Dominion Prime Holdings, Inc.

Respondent FDPHI filed a Motion to Dismiss[15] anchored on the following grounds: (1) petitioner's claim for payment of security services is barred by *res judicata*; (2) the filing of the complaint constitutes forum shopping; and (3) the complaint fails to state a cause of action against respondent FDPHI. Respondent asserted that petitioner's claim is barred as the same had been settled, determined and finally adjudicated in the Amended Rehabilitation Plan approved by the Rehabilitation Court and that the filing of the complaint constitutes forum shopping since petitioner was fully aware of the pendency of the rehabilitation proceedings involving Clearwater in Civil Case No. 68343. Respondent likewise argued that the complaint failed to state a cause of action against respondent FDPHI since as shown in the allegations in the amended complaint itself, as well as the annexes attached thereto, the obligation sought to be enforced by petitioner is not an obligation contracted by respondent FDPHI but by Clearwater under its former name Inglenook Food Corporation.

Petitioner thereafter duly filed its Comment and/or Opposition to the Motion to Dismiss to which respondent filed a reply.

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[12] *Id.* at 59.

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

[14] *Id.* at 80-86.

[15] *Id.* at 106-118.

On April 23, 2007, the MeTC issued a Resolution[16] granting respondent's motion to dismiss. In dismissing the amended complaint, the trial court noted that despite the publication and notice of the petition for rehabilitation in Civil Case No. 68343, petitioner had not filed any comment or opposition to the petition nor participated in the proceedings. Hence, petitioner was bound by the Rehabilitation Court's February 22, 2001 stay order staying enforcement of all claims against the FDPHI Group of Companies as well as the October 24, 2003 Order approving the Amended Rehabilitation Plan which had already become final. Furthermore, the trial court was convinced that the Amended Complaint failed to state a cause of action against respondent. The trial court noted that the contract for security services was entered into by petitioner and Inglenook Food Corporation, now Clearwater. Respondent FDPHI had no participation whatsoever nor had respondent benefitted from the said contract. The MeTC was also not persuaded by petitioner's claim that respondent FDPHI acted as an "umbrella company" of all the other corporations which filed a petition for rehabilitation.

Aggrieved, petitioner sought reconsideration of the said Resolution, but the MeTC denied the same for lack of merit in a Resolution[17] dated October 23, 2007. The MeTC likewise denied petitioner's alternative prayer that the dismissal be declared to be without prejudice, stressing that the dismissal of the case was not merely for failure to state a cause of action but also for having been barred by the Rehabilitation Court's Stay Order and by its Order finally approving the Amended Rehabilitation Plan.

Unsatisfied, petitioner appealed to the RTC. On June 4, 2008,[18] the RTC partially granted petitioner's appeal. While the RTC dismissed the Amended Complaint for failure to state a cause of action, nevertheless, it found that the dismissal is without

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[16] Records, Vol. II, pp. 388-393.

[17] *Id.* at 529-532.

[18] Records, Vol. III, pp. 728-729.

prejudice to petitioner's reinstitution of a separate action for the enforcement of its claim because purportedly, the Stay Order and the approved Amended Rehabilitation Plan for the FDPHI Group of Companies "cannot operate to deprive [petitioner's] right to present its own case or have the effect of stifling such right."[19]

Respondent FDPHI moved for partial reconsideration of the RTC decision insofar as it declared the dismissal of the Amended Complaint to be "without prejudice," but the motion was denied in an Order[20] dated October 7, 2008. Thus, respondent FDPHI appealed to the CA.

On August 24, 2009, the CA as aforesaid, reversed the trial court's June 4, 2008 Decision and October 7, 2008 Order. The CA agreed with the ruling of the MeTC that the issuance of a stay order and the appointment of a rehabilitation receiver in the petition for rehabilitation jointly filed by FDPHI and its subsidiaries including Clearwater stayed the enforcement of all claims, including petitioner's money claim. Pertinently, the CA ruled that:

> Hence, considering that the obligation under the Contract of Guard Services was contracted solely by Clearwater under its former name, Inglenook Food Corporation, and since the claim is recognized and admitted as debt of Clearwater in the Rehabilitation Proceedings, respondent has no cause of action to bring a separate suit for collection of sum of money against petitioner.
>
> WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision of the RTC, Branch 76, Quezon City dated June 4, 2008 and the Order dated October 7, 2008, in Civil Case No. Q-07-61692 are hereby REVERSED and SET ASIDE. The Resolutions dated April 23, 2007 and October 23, 2007 of the MTC, Branch 31, Quezon City, in Civil Case No. 32932 are hereby AFFIRMED.
>
> SO ORDERED.[21]

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[19] *Id.* at 729.

[20] *Id.* at 787.

[21] *Rollo*, p. 72.

Petitioner sought reconsideration of the CA decision, but its motion was denied by the CA in the assailed Resolution[22] dated December 17, 2009.

Hence, this petition.

Petitioner contends that the dismissal of the Amended Complaint against respondent FDPHI does not bar petitioner from instituting an action for collection of money against Clearwater. Petitioner faults the CA for ruling that Clearwater's debt to petitioner was already covered by the Amended Rehabilitation Plan and insists that said debt was not included in the schedule of payments under the Amended Rehabilitation Plan. According to petitioner, the Amended Rehabilitation Plan only pertains to respondent FDPHI and Maranaw Canning Corporation, which remains operational. It is not applicable to Clearwater considering that there was no mention of how the plan will operate to benefit Clearwater and its creditors. Purportedly, Clearwater's petition for rehabilitation was not pursued or was in effect denied. And the amended plan not being applicable to Clearwater, petitioner argues that its approval will not preclude petitioner from instituting a separate action to enforce its claim.

Respondent FDPHI counters that in the corporate rehabilitation proceedings for the FDPHI Group of Companies, petitioner's claim had already been passed upon by the Rehabilitation Court and factored into the approved Amended Rehabilitation Plan as among its unsecured debts. Hence, it cannot be the subject of a separate action.[23] Respondent avers that petitioner is barred from asserting its payment for security services with Clearwater since the subject claim is already recognized and admitted in the approved rehabilitation plan which is under implementation. Thus, respondent asserts that the CA was correct in holding that the existence of the rehabilitation proceedings effectively barred petitioner from enforcing its money claim against

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

[23] *Id.* at 445.

Clearwater. To respondent, a separate action by petitioner would only result in multiplicity of suits which the law abhors. Respondent stresses that any and all claims against the FDPHI Group of Companies, including that of petitioner, are stayed and barred until the termination of rehabilitation proceedings pursuant to Sections 6 and 11 of the Interim Rules of Procedure on Corporate Rehabilitation.

The issue to be resolved in this case is whether the CA erred in ruling that petitioner's action to enforce the payment of the unpaid security services is covered by the Amended Rehabilitation Plan such that petitioner can no longer institute a separate action to collect the same.

We deny the petition.

First of all, it must not be overlooked that petitioner initially filed its complaint against Clearwater but its complaint was dismissed for failure to prosecute. Petitioner amended its complaint and impleaded respondent FDPHI as defendant, on its own allegation that Clearwater had changed its name to herein respondent First Dominion Prime Holdings, Inc. However, as can be gleaned from the records and pleadings of the parties, respondent FDPHI and Clearwater are two separate corporate entities and the obligation petitioner seeks to enforce was not contracted between petitioner and respondent FDPHI but by petitioner and Clearwater under its former name, Inglenook Foods Corporation. For this reason, both the trial court and the appellate court are in agreement that the Amended Complaint fails to state a cause of action against respondent FDPHI. On this ground alone, the Amended Complaint filed by petitioner against respondent FDPHI was properly dismissed. Indeed, while respondent FDPHI may be the parent company of Clearwater, these two corporations have distinct and separate juridical personalities and therefore respondent FDPHI cannot be held liable for the debts of its subsidiary Clearwater nor can respondent FDPHI assume the liabilities of Clearwater. As aptly found by the CA:

> Clearwater and [FDPHI] have been organized as separate corporate entities, as evidenced by their respective Certificates of Filing of

Amended Articles of Incorporation on file with the Securities and Exchange Commission. The filing of petitioner of Joint Petition for Rehabilitation for the FDPHI Group of Companies cannot in any way be taken as an assumption by petitioner of any liability of Clearwater. It must be noted that in the Consolidated Inventory of Assets and Consolidated Schedule of Accounts Receivables of the FDPHI Group of Companies, Clearwater holds assets entirely separate from its parent company.[24]

Now as to the issue of whether the existence of the corporate rehabilitation proceedings of the FDPHI Group of Companies has the effect of barring petitioner from asserting its claim for the payment of security services against Clearwater by reason of the approved Amended Rehabilitation Plan, we rule in the affirmative.

An essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver.[25] Section 6(c) of PD 902-A mandates that upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended. The actions to be suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of pecuniary nature. Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against the corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business.[26]

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[24] *Id.* at 22.

[25] *Castillo v. Uniwide Warehouse Club, Inc.*, G.R. No. 169725, April 30, 2010, 619 SCRA 641, 647.

[26] *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, August 15, 2011, 655 SCRA 356, 364.

The stay order is effective on all creditors of the corporation without distinction, whether secured or unsecured.

Thus, petitioner's action to collect the sum owed to it is not exempted from the coverage of the stay order. The enforcement of petitioner's claim through court action is likewise suspended to give way to the speedy and effective rehabilitation of the FDPHI Group of Companies.

The justification for the suspension of actions or claims, without distinction, pending rehabilitation proceedings is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company.[27] To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[28] It is worthy to note that the stay order remains effective during the duration of the rehabilitation proceedings.

However, in an attempt to exempt its money claim from the coverage of the rehabilitation proceedings, petitioner claims that Clearwater was denied rehabilitation and asserts that the Amended Rehabilitation Plan did not include Clearwater's obligation to petitioner. This contention, however, is bereft of merit.

Nothing in the records of the case supports petitioner's claim that the petition for rehabilitation of Clearwater was denied or was not pursued. On the contrary, the rehabilitation proceedings involved all the petitioning corporations, *i.e.*, FDPHI, Maranaw Canning Corporation, Clearwater Tuna Corporation and Nautica

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[27] *Pacific Wide Realty & Development Corporation v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, November 25, 2009, 605 SCRA 503, 518.

[28] *Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division*, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 451-452.

Canning Corporation. The stay order issued by the rehabilitation court also stayed the enforcement of all the claims against FDPHI and its subsidiaries including Clearwater. More, the approved Amended Rehabilitation Plan covered all the debts of the FDPHI Group of Companies. The fact that Clearwater was not specifically mentioned in the Amended Rehabilitation Plan does not mean the denial of its rehabilitation. A careful perusal of the Amended Rehabilitation Plan would show that all the assets and liabilities of FDPHI and its subsidiaries undergoing rehabilitation were collectively managed and a payment scheme was introduced for the settlement of all of the FDPHI Group's secured and unsecured creditors. The *Breakdown and Management of the First Dominion Group's Secured and Unsecured Debt*[29] in the Amended Rehabilitation Plan provides:

> 3.3. The First Dominion Group's Unsecured Debt to the bank and trade creditors in the aggregate sum of ₱2,392,095,015.94 shall be managed as follows:
>
> > 3.3.1. One percent (1%) of the First Dominion Group's Unsecured Debt, or **₱23,920,950.16**, shall be paid pro rata, in cash up front **30 days from Infusion Date** to the unsecured creditors by [the Joint Venture Corporation].
> >
> > x x x x x x x x x
> >
> > 3.3.2. A portion of the First Dominion Group's Unsecured Debt amounting to not more than ₱67 Million shall be converted into common shares of the JVC, each having a par value of ₱1.00, and shall be issued to the unsecured creditors; Provided, that the total of these common shares shall not exceed 25% of all issued common shares inclusive of those issued under this clause.
> >
> > x x x x x x x x x
> >
> > 3.3.3. A portion of the First Dominion Group's Unsecured Debt amounting to not more than ₱300 Million shall be converted into Mandatory Convertible Preferred Shares of the JVC, to be issued to and prorated among the unsecured creditors.

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[29] Records, Vol. I, pp. 168-170.

x x x x x x x x x

3.4. The balance of First Dominion Group's Unsecured Debt **after the cash payment and the issuance of common and preferred shares to the unsecured creditors** shall be restructured and paid by First Dominion Group under the following terms and conditions:

x x x x x x x x x (Emphasis in the original)

Thus, contrary to petitioner's claim, Clearwater's debt to petitioner pursuant to their security services was already included as it was specifically included as part of the unsecured debts of the FDPHI Group in the Amended Rehabilitation Plan. The Amended Rehabilitation Plan also provides for a debt-to-equity conversion in favor of the creditors which led to the incorporation of a Joint Venture Corporation (JVC) as vehicle for the repayment of the obligations of the FDPHI Group of Companies.

More importantly, Section 20 of the 2008 Rules of Procedure on Corporate Rehabilitation provides:

SEC. 20. *Effects of Rehabilitation Plan*. – The approval of the rehabilitation plan by the court shall result in the following:

(a) The plan and its provisions shall be binding upon the debtor and all persons who may be affected thereby, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled;

(b) The debtor shall comply with the provisions of the plan and shall take all actions necessary to carry out the plan;

(c) Payments shall be made to the creditors in accordance with the provisions of the plan;

(d) Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and

(e) Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented. (Emphasis ours.)

To stress, the rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether such persons have or have not participated in the proceedings or have opposed the plan or whether their claims have or have not been scheduled. With the approval by the Rehabilitation Court of the plan for the FDPHI Group of Companies, there is nothing left to be done but to enforce the terms and schedule of payment as provided in the said plan.

At the time petitioner filed the complaint before the trial court, the Amended Rehabilitation Plan had been under implementation for two years already. We note that various checks[30] had been tendered to petitioner in connection with the implementation of the plan but these were refused by petitioner. To this date, the Court has not received any notice of termination of the rehabilitation proceedings. Thus, to allow petitioner to separately enforce its claim for unpaid security services while there is an ongoing implementation of the rehabilitation plan would violate the provisions of the law.

WHEREFORE, the present petition for review on *certiorari* is **DENIED** for lack of merit. The Decision dated August 24, 2009 and Resolution dated December 17, 2009 of the Court of Appeals in CA-G.R. SP No. 105894 are hereby **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

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

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[30] *Rollo,* pp. 516-534.

[*] 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.

THIRD DIVISION

[A.M. No. P-12-3080. August 29, 2012]
(Formerly OCA I.P.I. No. 10-3543-P)

JUDGE ARMANDO S. ADLAWAN, Presiding Judge, 6th Municipal Circuit Trial Court, Bonifacio-Don Mariano Marcos, Misamis Occidental, *complainant, vs.* **ESTRELLA P. CAPILITAN, Court Stenographer, 6th Municipal Circuit Trial Court, Bonifacio-Don Mariano Marcos, Misamis Occidental,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; IMMORALITY; DEFINED.— Immorality has been defined to include not only sexual matters but also "*conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.*"

2. ID.; ID.; ID.; COURT PERSONNEL; REQUIRED TO STRICTLY ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY.— The Code of Judicial Ethics mandates that the conduct of court personnel must be free from any whiff of impropriety, not only with respect to his duties in the judicial branch but also to his behavior outside the court as a private individual. There is no dichotomy of morality; a court employee is also judged by his private morals. The exacting standards of morality and decency have been strictly adhered to and laid down by the Court to those in the service of the Judiciary.

3. ID.; ID.; ID.; NO UNTOWARD CONDUCT AFFECTING MORALITY, INTEGRITY, AND EFFICIENCY WHILE HOLDING OFFICE SHOULD BE LEFT WITHOUT PROPER SANCTION.— Time and again, we have stressed adherence to the principle that public office is a public trust. The good of the service and the degree of morality, which

every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct affecting morality, integrity, and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.

4. ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT; PENALTY.— Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense.

D E C I S I O N

PERALTA,[*] *J.*:

Before this Court is a Letter-Complaint[1] filed by Judge Armando S. Adlawan, Presiding Judge, 6th Municipal Circuit Trial Court (MCTC), Bonifacio-Don Mariano Marcos, Misamis Occidental against Estrella P. Capilitan, Stenographer of the same court for Violation of the Code of Conduct and Ethical Standards for Public Officials and Employees.

In his letter, Judge Adlawan stated that respondent Estrella Capilitan was appointed Court Stenographer on February 4, 2008 on account of his recommendation. Respondent was previously married to a Muslim under Muslim laws and the relationship bore two (2) children. She is now single-handedly raising her kids after being separated from her husband.

Complainant recounted that respondent was simple, innocent, soft-spoken, modest, diligent in work and was well-liked. Hence, he and the rest of his staff were surprised when respondent announced to them that she was four (4) months pregnant by a married man. As respondent narrated, in February 2010, she met her former high school classmate who represented himself

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[*] Per Special Order No. 1290 dated August 28, 2012.

[1] *Rollo*, pp. 2-3.

as separated from his wife. She claimed to have given in to temptation. Later on, respondent alleged that the man became elusive when she told him about her pregnancy. Complainant judge noted that respondent was apologetic and acknowledged her mistake.

Complainant averred that while he understands the present condition of respondent, he, however felt duty-bound to report the matter to the court. Being pregnant outside of marriage, respondent had breached the ethical standards in the Judiciary, thus, is administratively liable.

On November 17, 2010, the Office of the Court Administrator (OCA), directed respondent to comment on the complaint against her.[2]

In her letter[3] dated December 30, 2010, respondent opted not to further explain her predicament as she admitted that the statements of complainant-judge in his letter sprung from her own admission. She claimed that she is ready to face the consequences of her action, but prayed for compassion and that the lightest penalty be imposed on her considering that she is single-handedly supporting her children.

In a Memorandum[4] dated May 24, 2011, the OCA recommended that the instant complaint against respondent Capilitan be referred to the Executive Judge for investigation, report and recommendation, to give them ample basis to resolve the complaint, considering that the charge of immorality is a serious offense.

On August 8, 2011, the Court referred this case to Executive Judge Elenita M. Arabejo, Regional Trial Court, Tangub City, for investigation, report and recommendation.

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[2] *Id*. at 4.

[3] *Id*. at 5.

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

During the investigation, respondent refused to further explain and give more information regarding her circumstances. She, however, admitted and confirmed anew the truth of the statements which complainant made regarding her condition.

With respondent's admission of the fact that she was impregnated by a man married to another woman, the Investigating Judge concluded that respondent indeed engaged in extra-marital affairs and committed immoral conduct that is unbecoming of a court employee. Thus, the Investigating Judge recommended that the penalty of suspension for a period of six (6) months and one (1) day be imposed upon respondent.[5]

On the basis of the findings and recommendation of the Investigating Judge, the OCA, in its Memorandum dated March 29, 2012, recommended that the instant administrative complaint be re-docketed as a regular administrative matter and that respondent be meted the penalty of suspension for a period of six (6) months and one (1) day without pay for being guilty of Immorality.

We adopt the findings and recommendation of the Investigating Judge and the OCA.

Immorality has been defined to include not only sexual matters but also "*conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.*"[6]

In the instant case, respondent has been informed of the charge against her and afforded the opportunity to respond thereto. In all instances, respondent admitted the allegation that she is pregnant by a man married to another woman. Indeed, while she initially claimed that the man who impregnated her represented

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[5] Investigation Report, *id.* at 20-21.

[6] *Regir v. Regir*, A.M. No. P-06-2282, August 4, 2009, 595 SCRA 455, 462.

to be separated from his wife, the fact remains that the man is still married. Thus, there is no doubt that respondent engaged in sexual relations with a married man which not only violate the moral standards expected of employees of the Judiciary but is also a desecration of the sanctity of the institution of marriage.

The Code of Judicial Ethics mandates that the conduct of court personnel must be free from any whiff of impropriety, not only with respect to his duties in the judicial branch but also to his behavior outside the court as a private individual. There is no dichotomy of morality; a court employee is also judged by his private morals. The exacting standards of morality and decency have been strictly adhered to and laid down by the Court to those in the service of the Judiciary. Respondent, as a court stenographer, did not live up to her commitment to lead a moral life.[7]

Time and again, we have stressed adherence to the principle that public office is a public trust. The good of the service and the degree of morality, which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct affecting morality, integrity, and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.[8]

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. Considering that this is respondent's first offense, we deem it proper to impose the penalty of suspension in its minimum period to respondent.

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[7] *Burgos v. Aquino*, A.M. No. P-94-1081, October 25, 1995, 249 SCRA 504, 509-510.

[8] *Babante-Caples v. Caples*, A.M. No. HOJ-10-03, November 15, 2010, 634 SCRA 498, 504-505.

WHEREFORE, this Court finds respondent **ESTRELLA P. CAPILITAN GUILTY** of Disgraceful and Immoral Conduct and is hereby **SUSPENDED** from service for a period of six (6) months and one (1) day without pay, and **WARNED** that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

Abad, Villarama, Jr.,[**] *Perez,*[***] and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 137582. August 29, 2012]

JOSE I. MEDINA, *petitioner, vs.* **HON. COURT OF APPEALS and HEIRS OF THE LATE ABUNDIO CASTAÑARES, Represented by ANDRES CASTAÑARES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; PARTIES MAY RAISE ONLY QUESTIONS OF LAW THEREIN.— It is axiomatic that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and

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[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated Additional Member, per Special Order No. 1299 dated August 28, 2012.

weigh the evidence introduced in and considered by the tribunals below.

2. ID.; ID.; ID.; FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS.— When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; ESTATE; AN HEIR'S RIGHT OF OWNERSHIP OVER THE PROPERTIES OF THE DECEDENT IS MERELY INCHOATE AS LONG AS THE ESTATE HAS NOT BEEN FULLY SETTLED AND PARTITIONED.— It has been held that an heir's right of ownership over the properties of the decedent is merely inchoate as long as the estate has not been fully settled and partitioned. This means that the impending heir has yet no absolute dominion over any specific property in the decedent's estate that could be specifically levied upon and sold at public auction. Any encumbrance of attachment over the heir's interests in the estate, therefore, remains a mere probability, and cannot summarily be satisfied without the final distribution of the properties in the estate.

4. ID.; PUBLIC LAND ACT; HOMESTEADS; HOMESTEAD PATENT; PREVAILS OVER A LAND TAX DECLARATION AS EVIDENCE OF OWNERSHIP.— It may not be amiss to state that a tax declaration by itself is not sufficient to prove ownership. x x x As evidence of ownership of land, a homestead patent prevails over a land tax declaration.

5. ID.; ID.; ID.; ID.; THE EXECUTION AND DELIVERY OF PATENT, AFTER THE RIGHT TO A PARTICULAR PARCEL OF LAND HAS BECOME COMPLETE, ARE MERE MINISTERIAL ACTS.— In *Director of Lands v. Court of Appeals,* citing the early case of *Balboa v. Farrales* we ruled that when a homesteader has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, he acquires a vested interest therein, enough to be regarded as the equitable owner thereof. Where the right to a patent to land has once become vested in a purchaser of public lands, it is equivalent to a patent actually issued. The execution and delivery of patent, after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with that duty. Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is still in the government. Such land may be conveyed or inherited.

APPEARANCES OF COUNSEL

Arturo B. Revil for petitioner.
Public Attorney's Office for private respondents.

D E C I S I O N

PEREZ, *J.*:

Subject of this petition for review on *certiorari* are the Decision[1] and Resolution of the Court of Appeals in CA-G.R.

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[1] Penned by Associate Justice Bennie Adefuin-De La Cruz with Associate Justice Consuelo Ynares-Santiago (now a retired Member of this Court) and Associate Justice Presbitero J. Velasco, Jr. (now a Member of this Court), concurring. *Rollo,* pp. 26-49.

CV No. 42634, reversing the Decision[2] of the Regional Trial Court (RTC) of Masbate, Masbate, Branch 46 in Civil Case No. 4080.

The instant case stemmed from a Complaint for Damages with prayer for Preliminary Attachment and docketed as Civil Case No. 3561. In a Decision dated 27 December 1985, the RTC ordered Arles Castañares (Arles), now deceased and represented by his heirs, to pay damages for running over and causing injuries to four-year old Wenceslao Mahilum, Jr. The four-year old victim was left in the custody of petitioner Jose I. Medina, who also represented the victim's father, Wenceslao Mahilum, Sr. in the aforesaid case.

The Decision in Civil Case No. 3561 became final and executory on 3 June 1987. The motion for issuance of a writ of execution[3] filed by petitioner was granted on 29 September 1987 and the corresponding Writ of Execution[4] was issued on 1 October 1987. The *Ex-Officio* Provincial Sheriff of the RTC served a Notice of Levy and Seizure on Arles' two (2) parcels of lands located at Goldbag, Syndicate, Aroroy, Masbate described as follows:

PARCEL- I

A parcel of coconut land located at Goldbag, Syndicate, Aroroy, Masbate, registered in the name of deceased Arles Castañares under Tax Dec. No. 1107, bounded on the North, by Abundio Castañares; East, by public land; South, by Provincial Road and on the West, by Abundio Castañares with an area of 5.0000 hectares and assessed at ₱6,810.00.

PARCEL- II

A parcel of coconut, rice, unirrigated & cogon located at Goldbag, Syndicate, Aroroy, Masbate, registered in the name of Abundio Castañares, under Tax Dec. No. 1106, bounded on the North, by

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[2] Presided by Judge Florante A. Cipres. *Id.* at 58-63.

[3] Records, Vol. II, p. 26.

[4] *Id.* at 27.

Masbate Goldfield Min. C.; East, by Timberland; South, by National Road and on the West, by National Road with an area of 18.8569 hectares and assessed at ₱15,660.00.[5]

When the heirs of Arles failed to settle their account with petitioner, Parcel-I under Tax Declaration No. 1107[6] was sold at a public auction. Only petitioner participated in the bidding, thus the subject lot was awarded to him and a Certificate of Sale was issued on 24 December 1987.[7] In the Sheriff's Final Deed of Sale, Parcel-I was transferred to Wenceslao Mahilum, Sr., represented by Jose I. Medina.[8] A survey was conducted on the property. On 23 January 1989, the Motion for Issuance of Writ of Possession was granted by the trial court commanding the sheriff to physically oust the heirs of Arles and to deliver the subject lot to petitioner.

On 26 April 1991, petitioner applied for the registration of the lot covered by Tax Declaration No. 1107, docketed as LRC Case No. N-374. Petitioner alleged that he is the owner in fee simple of such parcel of land by virtue of a Waiver of Rights and Interests[9] executed by Wenceslao Mahilum, Sr. in his favor. Attached to the application is the Survey Plan which particularly described the land as follows:

A parcel of coconut land containing an area of 5.0000 (sic) hectares located at Goldbag-Syndicate, Aroroy, Masbate, declared for taxation purposes in the name of Wenceslao Mahilum, Sr. (rep. by Jose I. Medina) under Tax Dec. No. 7372, and bounded on the North, by Abundio Castañares, South, by Atlas Mining & Development Corporation and Provincial Road, East, by Public

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[5] *Id.* at 28.

[6] Tax Declaration No. 1107 was superseded by Tax Declaration No. 6953, which was in turn, cancelled by Tax Declaration No. 7372. See Records, Vol. I, p. 7 and Records, Vol. II, p. 47.

[7] Records, Vol. II, pp. 35-36.

[8] *Id.* at 38-39.

[9] Records, Vol. I, p. 16.

Land and on the West, by Provincial Road with the latest assessment at ₱6,810.00.[10]

Andres Castañares (Andres), brother of Arles and representing the heirs of the late Abundio Castañares (Abundio), filed an Opposition claiming that after the death of his father Abundio, the tax declaration of the property was cancelled and in its place, a tax declaration was issued in his favor; that during the lifetime of his father and up to his death, Andres had been in peaceful, open, notorious, public and adverse possession of the lot; that sometime in 1988, petitioner, through stealth and strategy, encroached and occupied practically the entirety of the property in question by encircling it with barbed wires, destroying in the process scores of fruit-bearing coconut trees; and that there is a pending case, Civil Case No. 4051, for recovery of ownership and possession of real estate.[11]

The pending case mentioned by Andres was later dismissed by the trial court without prejudice to refiling the same.[12] Thus, on 28 April 1992, Andres filed another Complaint for Recovery of Possession and Ownership with Damages and with Prayer for Issuance of Writ of Preliminary Injunction docketed as Civil Case No. 4080.[13]

The action for recovery of possession and ownership in Civil Case No. 4080 and the land registration case in LRC No. N-374 were jointly tried.

Andres testified that upon Abundio's death, the latter left his children a parcel of agricultural land with an area of 18

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[10] *Id.* at 1.

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

[12] *Id.* at 69.

[13] The heirs of the late Abundio Castañares are Pastora Vargas, Andres Castañares, Juan Castañares (now deceased with one child), Ildefonso Castañares (now deceased with wife and 5 children) and Arles Castañares (now deceased with wife and 4 children). *Rollo,* pp. 34-35.

hectares,[14] declared for taxation in Abundio's name under Tax Declaration No. 1106, bounded as follows:

North – by Sta. Clara Goldfield (Masbate Goldfield)
East – by Timberland
South – National Road
West – National Road[15]

Andres presented a sketch plan on 26 May 1983 of Lots 224 and 2187, Pls-77[16] and pointed out that the alleged lot of Arles covered by Tax Declaration No. 1107 is outside Lot 224 and lies to the south of Abundio's lot.[17] He averred that petitioner encroached on and fenced a portion of said lot, occupying an area of about five (5) hectares. Based on the sketch plan, petitioner fenced Line 2 to Line 8.[18]

Petitioner presented Tax Declaration No. 1107 under the name of Arles showing the boundaries of his lot as follow:

North – Abundio Castañares
South – Provincial Road
East – Public Land
West – Abundio Castañares[19]

Petitioner insisted that the lots contained in Tax Declaration Nos. 1107 and 1106 are not separate and distinct, but refers to only one parcel of land, Lot 224. The lot in Tax Declaration No. 1107 is denominated as Lot 224-A and is derived from Tax Declaration No. 1106, as certified by the wife of Arles, Patricia Castañares (Patricia).[20] Petitioner likewise submitted

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[14] TSN, 17 September 1992, p. 3.

[15] Records, Vol. II, p. 68.

[16] *Id.* at 64.

[17] *Rollo,* pp. 37-38.

[18] *Id.* at 38.

[19] Records, Vol. II, p. 71.

[20] *Rollo,* p. 40.

a sketch plan prepared on 12 March 1992 to show the real location of the lot described in Tax Declaration No. 1107.

On 10 May 1993, the RTC rendered judgment in favor of petitioner. The dispositive portion reads:

> WHEREFORE, premises considered, decision is hereby rendered in favor of the defendant-applicant, to wit:
>
> 1. Ordering the dismissal of the complaint in Civil Case No. 4080 with costs against the plaintiff-oppositors;
> 2. Declaring the defendant-applicant, Jose I. Medina, the absolute owner of the land subject of his application in L.R.C. Case No. 374;
> 3. Declaring the title of the applicant over the property designated in Plan Csd-05-009053 together with all the improvements thereon, CONFIRMED and REGISTERED pursuant to the provision of P.D. No. 1529; and
> 4. Ordering the plaintiff-oppositors to pay the defendant-applicant the amount of ₱5,000.00 as attorney's fees and ₱5,000.00 as litigation expenses.
>
> Once this decision becomes final and executory, let the corresponding decree of registration issue.[21]

The trial court found that petitioner lawfully acquired the land through a Deed of Waiver of Rights and Interest executed by Wenceslao Mahilum, Sr., the winning party in the damages suit. The trial court gave credence to a Certification[22] issued by the Provincial Sheriff and even signed by Patricia, the wife of Arles, certifying that the sketch plan of Lot 224-A reflects the true location and area of the property subject of the writ of possession and execution.

On appeal, however, the Court of Appeals reversed the findings of the trial court as follows:

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[21] Records, Vol. II, p. 109.

[22] *Id.* at 46.

WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE and a new one is entered, to wit:

1. Ordering the dismissal of the Application of Jose I. Medina in Land Registration Case No. N-374;
2. Declaring the heirs of the late Abundio Castañares represented by Andres Castañares the absolute owner of the land subject of application in L.R.C. Case No. N-374;
3. Ordering the Applicant Jose I. Medina to pay plaintiffs-oppositors Heirs of Abundio Castañares the following sum:
   a. ₱20,000.00 as moral damages;
   b. [₱]1,000.00 rental per month from February 24, 1989 until fully paid;
   c. [₱]1,000.00 refund of the yield of the crops of the land from February 24, 1989 until fully paid, and
   d. Costs of suit.[23]

The Court of Appeals stated that the lot under Tax Declaration No. 1107 in the name of Arles is separate and distinct from Lots 224 and 2187 declared under Tax Declaration No. 1106. The appellate court took into consideration the separate and distinct location of the lots, as well as the difference in their boundaries. It also noted that since there has been no settlement yet of the estate of Abundio, it was premature for Arles to have allocated unto himself a distinct portion of Lots 224 and 2187 as his share in the estate. And even if there was partition among the heirs of Abundio, the appellate court concluded that the share of Arles is only limited to 3.1432 hectares. The Court of Appeals further observed that the boundary on the west of the property sought to be registered by petitioner in the land registration case was changed from "Abundio Castanares" to "Provincial Road," in conflict with the boundary of the property as stated in Tax Declaration No. 1107. The appellate court concluded that the changes in the boundary on the west were

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[23] *Rollo,* pp. 48-49.

purposely made to justify the illegal occupancy and fencing of the southern portion of Lot 224.

Petitioner elevated the case before this Court *via* petition for review on *certiorari* and assigned the following alleged errors committed by the Court of Appeals, to wit:

1. THE HONORABLE RESPONDENT COURT ERRED IN REVERSING THE FINDINGS OF THE REGIONAL TRIAL COURT, BRANCH 46 OF MASBATE.
2. THE HONORABLE RESPONDENT COURT ERRED IN FINDING THAT THE BOUNDARIES IN THE TAX DECLARATION WERE [CHANGED] TO SUIT THE PURPOSE OF JOSE I. MEDINA.
3. THE HONORABLE RESPONDENT COURT ERRED IN NOT REFERRING PROPERLY TO THE SKETCH PLAN OF THE LAND IN ARRIVING AT THE CONCLUSION.
4. THE HONORABLE RESPONDENT COURT ERRED IN STATING THAT THE LAND SUBJECT MATTER OF THE CASE AT BAR STILL FORMS PART OF THE ESTATE OF THE LATE ABUNDIO CASTAÑARES.
5. THE HONORABLE RESPONDENT COURT ERRED IN AWARDING DAMAGES AS AGAINST PETITIONER-DEFENDANT-APPLICANT JOSE I. MEDINA, WHO RECEIVED THE PROPERTY IN GOOD FAITH FROM THE OFFICER OF THE COURT.[24]

Petitioner contends that a comparison of the respective boundaries of the lots covered by Tax Declaration No. 1107 and Tax Declaration No. 1106 readily shows that Lot 224-A in Tax Declaration No. 1107 is well within the boundaries of Lot 224 in Tax Declaration No. 1106. Petitioner dismisses the observation of the appellate court regarding the purported "change in boundaries" as a mere typographical error. Petitioner scores the appellate court for relying on a homestead application of Abundio to establish the latter's ownership on the subject land. Petitioner harps on the inconsistencies of respondent — first,

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[24] *Id.* at 18.

in Civil Case No. 4051 (which was dismissed prior to the filing of Civil Case No. 4080), respondent claimed that the land of Abundio was transferred to him when his father died but he later changed his stand and made it appear that the land is still owned by the heirs of Abundio; second, respondent testified that the share of Arles in the lot was sold to Ildefonso and Juan Castañares; and third, respondent's son, Adrian, had filed a third party claim during the public auction sale, alleging that the land is already owned by him by virtue of a sale by the heirs of Abundio. Petitioner insists that the land is already segregated from the land of Abundio as evidenced by the mortgage executed by Arles in 1966 with Masbate Rural Bank, as shown in Tax Declaration No. 876.

In its Comment, respondent points out that the issues raised by petitioner are factual questions which cannot be reviewed in a petition for review on *certiorari*.

As correctly pointed out by respondent, the assigned errors are factual in character. It is axiomatic that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well

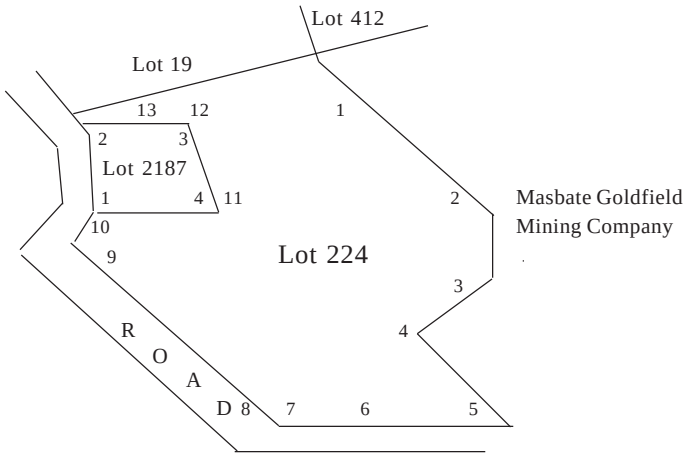
as in the petitioners main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[25]

We find no cogent reason to apply the exceptions. While we slightly deviate from one of the findings of the appellate court, we nonetheless affirm its conclusion. We explain.

The boundaries of the subject lot were clearly delineated and were, as a matter of fact, undisputed. Lot 224, as stated in Tax Declaration No. 1106, is bounded by Sta. Clara Goldfield (Masbate Goldfield) in the North, by Timberland in the East, by National Road in the South, and National Road in the West. On the other hand, Lot 224-A is bounded on the North by the land owned by Abundio, on the South by the Provincial Road, on the East by Public Land, and on the West by Abundio.

As per the Sketch Plans[26] submitted by the parties, Lot 224 and Lot 224-A are illustrated below:

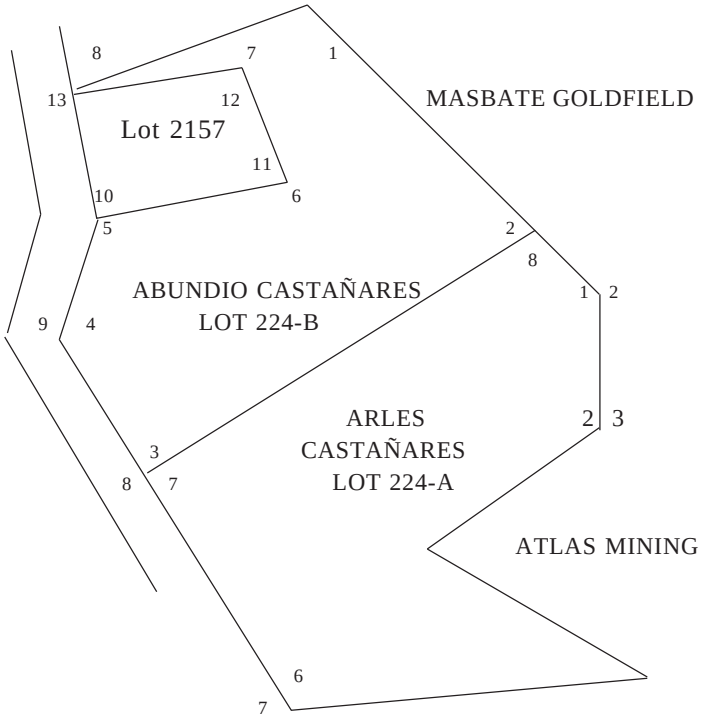
SKETCH PLAN FOR ANDRES CASTAÑARES



[25] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 6 June 2011, 650 SCRA 656, 660.

[26] Records, Vol. II, pp. 45 and 64, respectively.

SKETCH PLAN FOR ARLES CASTAÑARES



Comparing the two sketches, it is unmistakable that Lot 224-A forms part and parcel of Lot 224. Moreover, the boundaries, as admitted by both parties, more or less established the location of Lot 224-A, which location is inside and forms part of Lot 224. While it appears that Lot 224-A was a subdivision of Lot 224, it does not necessarily establish petitioner's ownership over Lot 224-A.

Quite obviously, the two sketches are purportedly referring to only one lot. Hence, the pith and core of the controversy is the ownership of the disputed property.

The appellate court is correct in stating that there was no settlement of the estate of Abundio. There is no showing that

Lot 224 has already been partitioned despite the demise of Abundio. It has been held that an heir's right of ownership over the properties of the decedent is merely inchoate as long as the estate has not been fully settled and partitioned. This means that the impending heir has yet no absolute dominion over any specific property in the decedent's estate that could be specifically levied upon and sold at public auction. Any encumbrance of attachment over the heir's interests in the estate, therefore, remains a mere probability, and cannot summarily be satisfied without the final distribution of the properties in the estate.[27] Therefore, the public auction sale of the property covered by Tax Declaration No. 1107 is void because the subject property is still covered by the Estate of Abundio, which up to now, remains unpartitioned. Arles was not proven to be the owner of the lot under Tax Declaration No. 1107. It may not be amiss to state that a tax declaration by itself is not sufficient to prove ownership.[28]

Against a mere tax declaration, respondents were able to present a more credible proof of ownership over Lot 224. The Court of Appeals relied on the Certification issued by the Community Environment and Natural Resources Office (CENRO) Officer of the Department of Environment and Natural Resources (DENR) which certifies that Abundio, and now the heirs, is the holder of a homestead application and an order for the issuance of patent had already been issued as early as 7 July 1952.[29]

Pertinent portions of the Certification are reproduced hereunder:

This is to certify that per records of this office, Abundio Castañares (deceased) now the heirs represented by Juan Castañares is the holder of Homestead Application No. 178912 (E-96030) which was issued an order: Issuance of Patent on July 7, 1952.

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[27] *Into v. Valle*, 513 Phil. 264, 272 (2005) citing *Estate of Hilario M. Ruiz v. Court of Appeals*, G.R. No. 118671, 29 January 1996, 252 SCRA 541, 552-553.

[28] *Republic v. Lagramada*, G.R. No. 150741, 12 June 2008, 554 SCRA 355, 363.

[29] Records, Vol. II, p. 65.

It is also shown that in BL Conflict No. 220 (N), DLO Conflict No. 274, entitled F.P.A. No. 11-1-1823 of Exequiela Jaca-Claimant-Protestant versus H.A. No. 178912 (E-96030) of Abundio Castañares (deceased), now the heirs rep. by Juan Castañares, B.L. Claim No. 220 (N), R.L.O. Claim No. 473, D.L.O. Claim No. 274, a decision was rendered on May 19, 1976 the dispositive portion reads:

> "WHEREFORE, it is ordered that the Homestead Application No. 178912 (E-96030) of the Heirs of Abundio Castañares, represented by Juan Castañares shall cover only Lots No. 224 and 2187 in Pls-77, Aroroy, Masbate and as thus amended, shall continue to be given further due course. Likewise, the Free Patent Application No. 11-1-1823 of Exequiela Jaca for Lot No. 19, in the same subdivision, shall be given further due course."[30]

The Land Management Bureau of the DENR outlines the steps leading to the issuance of a homestead patent:

1. Filing of application;
2. Preliminary Investigation;
3. Approval of application;
4. Filing of final proof which consists of two (2) parts;
    a. Notice of intention to make Final Proof which is posted for 30 days.
    b. Testimony of the homesteader corroborated by two (2) witnesses mentioned in the notice.

The Final Proof is filed not earlier than 1 year after the approval of the application but within 5 years from the said date.

5. Confirmatory Final Investigation;
6. **Order of Issuance of Patent;**
7. Preparation of patent using Judicial Form No. 67 and 67-D and the technical description duly inscribed at the back thereof;

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[30] *Id.*

8. Transmittal of the Homestead patent to the Register of Deeds concerned.[31] (Emphasis supplied.)

In *Director of Lands v. Court of Appeals*,[32] citing the early case of *Balboa v. Farrales*[33] we ruled that when a homesteader has complied with all the terms and conditions which entitle him to a patent for a particular tract of public land, he acquires a vested interest therein, enough to be regarded as the equitable owner thereof. Where the right to a patent to land has once become vested in a purchaser of public lands, it is equivalent to a patent actually issued. The execution and delivery of patent, after the right to a particular parcel of land has become complete, are the mere ministerial acts of the officer charged with that duty. Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is still in the government. Such land may be conveyed or inherited.

Also, in *Nieto v. Quines and Pio*[34] involving ownership over a contested lot, it was held that:

x x x As a homestead applicant, [Quines had] religiously complied with all the requirements of the Public Land Act and, on August 29, 1930, a homestead patent was issued in his favor. Considering the requirement that the final proof must be presented within 5 years from the approval of the homestead application x x x, it is safe to assume that Bartolome Quines submitted his final proof way back yet in 1923 and that the Director of Lands approved the same not long thereafter or before the land became the subject of the cadastral proceedings in 1927. Unfortunately, there was some delay in the ministerial act of issuing the patent and the same was actually issued only after the cadastral court had adjudicated the land to Maria Florentino. Nevertheless, having complied with all the terms and conditions which would entitle him to a patent, Bartolome Quines,

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[31] http://lmb.gov.ph/Homestead_Patent.aspx. (visited 17 August 2012).

[32] 260 Phil. 477, 486-487 (1990).

[33] 51 Phil. 498, 502-503 (1928).

[34] 110 Phil. 823, 827-828 (1961).

even without a patent actually issued, has unquestionably acquired a vested right on the land and is to be regarded as the equitable owner thereof (citation omitted). Under these circumstances and applying by analogy the principles governing sales of immovable property to two different persons by the same vendor, Bartolome Quines' title must prevail over that of Maria Florentino not only because he had always been in possession of the land but also because he obtained title to the land prior to that of Maria Florentino.

In the instant case, it was clear that there has been an issuance of patent way back in 7 July 1952. The only two acts left for the CENRO to do are to prepare the patent and to transmit it to the Register of Deeds. As to whether these acts have already been complied with is not borne in the records, but the fact remains that these acts are merely ministerial. Respondents have already acquired vested rights to a patent which is equivalent to actual issuance of patent. They have become owners of the land.

As evidence of ownership of land, a homestead patent prevails over a land tax declaration.

WHEREFORE, premises considered, the petition is **DENIED** and the assailed decision of the Court of Appeals dated 11 September 1998 in CA-G.R. CV No. 42634 is hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 157917. August 29, 2012]

SPOUSES TEODORO[1] and NANETTE PEREÑA, *petitioners, vs.* **SPOUSES NICOLAS and TERESITA L. ZARATE, PHILIPPINE NATIONAL RAILWAYS, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRIVATE CARRIER AND COMMON CARRIER, DISTINGUISHED.— A carrier is a person or corporation who undertakes to transport or convey goods or persons from one place to another, gratuitously or for hire. The carrier is classified either as a private/special carrier or as a common/public carrier. A private carrier is one who, without making the activity a vocation, or without holding himself or itself out to the public as ready to act for all who may desire his or its services, undertakes, *by special agreement in a particular instance only*, to transport goods or persons from one place to another either gratuitously or for hire. The provisions on ordinary contracts of the *Civil Code* govern the contract of private carriage. The diligence required of a private carrier is only ordinary, that is, the diligence of a good father of the family. In contrast, a common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, *offering such services to the public*. Contracts of common carriage are governed by the provisions on common carriers of the *Civil Code*, the *Public Service Act*, and other special laws relating to transportation. A common carrier is required to observe extraordinary diligence, and is presumed to be at fault or to have acted negligently in case of the loss of the effects of passengers, or the death or injuries to passengers.

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[1] In the title of the case, the petitioner's name appears as Teodoro Pereña, but he signed his name as Teodorico Pereña in the verification/certification of the petition for review on *certiorari*.

2. MERCANTILE LAW; PUBLIC SERVICE ACT; COMMON CARRIERS; TRUE TEST FOR A COMMON CARRIER.— [T]he true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the individual or the entity rendering such service is a private, not a common, carrier. The question must be determined by the character of the business actually carried on by the carrier, not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMMON CARRIERS; BOUND TO OBSERVE EXTRAORDINARY DILIGENCE IN THE VIGILANCE OVER THE GOODS AND FOR THE SAFETY OF THE PASSENGERS TRANSPORTED BY THEM.— The common carrier's standard of care and vigilance as to the safety of the passengers is defined by law. Given the nature of the business and for reasons of public policy, the common carrier is bound "to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case." Article 1755 of the *Civil Code* specifies that the common carrier should "carry the passengers safely *as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances*." To successfully fend off liability in an action upon the death or injury to a passenger, the common carrier must prove his or its observance of that extraordinary diligence; otherwise, the legal presumption that he or it was at fault or acted negligently would stand. No device, whether by stipulation, posting of notices, statements on tickets, or otherwise, may dispense with or lessen the responsibility of the common carrier as defined under Article 1755 of the *Civil Code*.

4. ID.; ID.; TORTS; NEGLIGENCE; DEFINED.— The omissions of care on the part of the van driver constituted negligence, which, according to *Layugan v. Intermediate Appellate Court*,

is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley defines it, '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"

5. ID.; ID.; ID.; TEST OF NEGLIGENCE.— The test by which to determine the existence of negligence in a particular case has been aptly stated in the leading case of *Picart v. Smith*, thuswise: "The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence**. x x x **The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that. The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case**. x x x **Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger**. x x x **Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist**. x x x **Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences**."

6. ID.; DAMAGES; LOSS OF EARNING CAPACITY; COMPENSATION IS AWARDED NOT FOR THE LOSS OF TIME OR EARNINGS BUT FOR LOSS OF THE DECEASED'S POWER OR ABILITY TO EARN MONEY.— Our law itself states that the loss of the earning capacity of the deceased shall be the liability of the guilty

party in favor of the heirs of the deceased, and shall in every case be assessed and awarded by the court "unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death." Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money.

7. ID.; ID.; MORAL DAMAGES; AWARDED TO ASSUAGE MENTAL ANGUISH AND MORAL SHOCK; CASE AT BAR.— The moral damages of ₱2,500,000.00 were really just and reasonable under the established circumstances of this case because they were intended by the law to assuage the Zarates' deep mental anguish over their son's unexpected and violent death, and their moral shock over the senseless accident. That amount would not be too much, considering that it would help the Zarates obtain the means, diversions or amusements that would alleviate their suffering for the loss of their child. At any rate, reducing the amount as excessive might prove to be an injustice, given the passage of a long time from when their mental anguish was inflicted on them on August 22, 1996.

8. ID.; ID.; EXEMPLARY DAMAGES; AWARDED TO INSTILL IN COMMON CARRIERS THE NEED FOR GREATER AND CONSTANT VIGILANCE IN THE CONDUCT OF A BUSINESS IMBUED WITH PUBLIC INTEREST; CASE AT BAR.— Anent the ₱1,000,000.00 allowed as exemplary damages, we should not reduce the amount if only to render effective the desired example for the public good. As a common carrier, the Pereñas needed to be vigorously reminded to observe their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again. Only by an award of exemplary damages in that amount would suffice to instill in them and others similarly situated like them the ever-present need for greater and constant vigilance in the conduct of a business imbued with public interest.

APPEARANCES OF COUNSEL

Saguisag & Associates for petitioners.
Donato Zarate & Rodriguez for Sps. Zarate.
Ramos Rojo Estrada Licayu Reyes and Bayot for Phil. National Railways.

D E C I S I O N

BERSAMIN, *J.*:

The operator of a school bus service is a common carrier in the eyes of the law. He is bound to observe extraordinary diligence in the conduct of his business. He is presumed to be negligent when death occurs to a passenger. His liability may include indemnity for loss of earning capacity even if the deceased passenger may only be an unemployed high school student at the time of the accident.

The Case

By petition for review on *certiorari*, Spouses Teodoro and Nanette Pereña (Pereñas) appeal the adverse decision promulgated on November 13, 2002, by which the Court of Appeals (CA) affirmed with modification the decision rendered on December 3, 1999 by the Regional Trial Court (RTC), Branch 260, in Parañaque City that had decreed them jointly and severally liable with Philippine National Railways (PNR), their co-defendant, to Spouses Nicolas and Teresita Zarate (Zarates) for the death of their 15-year old son, Aaron John L. Zarate (Aaron), then a high school student of Don Bosco Technical Institute (Don Bosco).

Antecedents

The Pereñas were engaged in the business of transporting students from their respective residences in Parañaque City to Don Bosco in Pasong Tamo, Makati City, and back. In their business, the Pereñas used a KIA Ceres Van (van) with Plate No. PYA 896, which had the capacity to transport 14 students

at a time, two of whom would be seated in the front beside the driver, and the others in the rear, with six students on either side. They employed Clemente Alfaro (Alfaro) as driver of the van.

In June 1996, the Zarates contracted the Pereñas to transport Aaron to and from Don Bosco. On August 22, 1996, as on previous school days, the van picked Aaron up around 6:00 a.m. from the Zarates' residence. Aaron took his place on the left side of the van near the rear door. The van, with its air-conditioning unit turned on and the stereo playing loudly, ultimately carried all the 14 student riders on their way to Don Bosco. Considering that the students were due at Don Bosco by 7:15 a.m., and that they were already running late because of the heavy vehicular traffic on the South Superhighway, Alfaro took the van to an alternate route at about 6:45 a.m. by traversing the narrow path underneath the Magallanes Interchange that was then commonly used by Makati-bound vehicles as a short cut into Makati. At the time, the narrow path was marked by piles of construction materials and parked passenger jeepneys, and the railroad crossing in the narrow path had no railroad warning signs, or watchmen, or other responsible persons manning the crossing. In fact, the bamboo *barandilla* was up, leaving the railroad crossing open to traversing motorists.

At about the time the van was to traverse the railroad crossing, PNR Commuter No. 302 (train), operated by Jhonny Alano (Alano), was in the vicinity of the Magallanes Interchange travelling northbound. As the train neared the railroad crossing, Alfaro drove the van eastward across the railroad tracks, closely tailing a large passenger bus. His view of the oncoming train was blocked because he overtook the passenger bus on its left side. The train blew its horn to warn motorists of its approach. When the train was about 50 meters away from the passenger bus and the van, Alano applied the ordinary brakes of the train. He applied the emergency brakes only when he saw that a collision was imminent. The passenger bus successfully crossed the railroad tracks, but the van driven by Alfaro did not. The train hit the rear end of the van, and the impact threw nine of the 12 students in the rear, including Aaron, out of the van. Aaron landed in

the path of the train, which dragged his body and severed his head, instantaneously killing him. Alano fled the scene on board the train, and did not wait for the police investigator to arrive.

Devastated by the early and unexpected death of Aaron, the Zarates commenced this action for damages against Alfaro, the Pereñas, PNR and Alano. The Pereñas and PNR filed their respective answers, with cross-claims against each other, but Alfaro could not be served with summons.

At the pre-trial, the parties stipulated on the facts and issues, *viz*:

A. FACTS:

(1) That spouses Zarate were the legitimate parents of Aaron John L. Zarate;

(2) Spouses Zarate engaged the services of spouses Pereña for the adequate and safe transportation carriage of the former spouses' son from their residence in Parañaque to his school at the Don Bosco Technical Institute in Makati City;

(3) During the effectivity of the contract of carriage and in the implementation thereof, Aaron, the minor son of spouses Zarate died in connection with a vehicular/train collision which occurred while Aaron was riding the contracted carrier Kia Ceres van of spouses Pereña, then driven and operated by the latter's employee/authorized driver Clemente Alfaro, which van collided with the train of PNR, at around 6:45 A.M. of August 22, 1996, within the vicinity of the Magallanes Interchange in Makati City, Metro Manila, Philippines;

(4) At the time of the vehicular/train collision, the subject site of the vehicular/train collision was a railroad crossing used by motorists for crossing the railroad tracks;

(5) During the said time of the vehicular/train collision, there were no appropriate and safety warning signs and railings at the site commonly used for railroad crossing;

(6) At the material time, countless number of Makati bound public utility and private vehicles used on a daily basis

the site of the collision as an alternative route and short-cut to Makati;

(7) The train driver or operator left the scene of the incident on board the commuter train involved without waiting for the police investigator;

(8) The site commonly used for railroad crossing by motorists was not in fact intended by the railroad operator for railroad crossing at the time of the vehicular collision;

(9) PNR received the demand letter of the spouses Zarate;

(10) PNR refused to acknowledge any liability for the vehicular/train collision;

(11) The eventual closure of the railroad crossing alleged by PNR was an internal arrangement between the former and its project contractor; and

(12) The site of the vehicular/train collision was within the vicinity or less than 100 meters from the Magallanes station of PNR.

B. ISSUES

(1) Whether or not defendant-driver of the van is, in the performance of his functions, liable for negligence constituting the proximate cause of the vehicular collision, which resulted in the death of plaintiff spouses' son;

(2) Whether or not the defendant spouses Pereña being the employer of defendant Alfaro are liable for any negligence which may be attributed to defendant Alfaro;

(3) Whether or not defendant Philippine National Railways being the operator of the railroad system is liable for negligence in failing to provide adequate safety warning signs and railings in the area commonly used by motorists for railroad crossings, constituting the proximate cause of the vehicular collision which resulted in the death of the plaintiff spouses' son;

(4) Whether or not defendant spouses Pereña are liable for breach of the contract of carriage with plaintiff-spouses

in failing to provide adequate and safe transportation for the latter's son;

(5) Whether or not defendants spouses are liable for actual, moral damages, exemplary damages, and attorney's fees;

(6) Whether or not defendants spouses Teodorico and Nanette Pereña observed the diligence of employers and school bus operators;

(7) Whether or not defendant-spouses are civilly liable for the accidental death of Aaron John Zarate;

(8) Whether or not defendant PNR was grossly negligent in operating the commuter train involved in the accident, in allowing or tolerating the motoring public to cross, and its failure to install safety devices or equipment at the site of the accident for the protection of the public;

(9) Whether or not defendant PNR should be made to reimburse defendant spouses for any and whatever amount the latter may be held answerable or which they may be ordered to pay in favor of plaintiffs by reason of the action;

(10) Whether or not defendant PNR should pay plaintiffs directly and fully on the amounts claimed by the latter in their Complaint by reason of its gross negligence;

(11) Whether or not defendant PNR is liable to defendants spouses for actual, moral and exemplary damages and attorney's fees.[2]

The Zarates' claim against the Pereñas was upon breach of the contract of carriage for the safe transport of Aaron; but that against PNR was based on quasi-delict under Article 2176, *Civil Code*.

In their defense, the Pereñas adduced evidence to show that they had exercised the diligence of a good father of the family in the selection and supervision of Alfaro, by making sure that Alfaro had been issued a driver's license and had not been involved

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[2] CA *Rollo*, pp. 47-49.

in any vehicular accident prior to the collision; that their own son had taken the van daily; and that Teodoro Pereña had sometimes accompanied Alfaro in the van's trips transporting the students to school.

For its part, PNR tended to show that the proximate cause of the collision had been the reckless crossing of the van whose driver had not first stopped, looked and listened; and that the narrow path traversed by the van had not been intended to be a railroad crossing for motorists.

Ruling of the RTC

On December 3, 1999, the RTC rendered its decision,[3] disposing:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants ordering them to jointly and severally pay the plaintiffs as follows:
>
> (1) (for) the death of Aaron- Php50,000.00;
>
> (2) Actual damages in the amount of Php100,000.00;
>
> (3) For the loss of earning capacity- Php2,109,071.00;
>
> (4) Moral damages in the amount of (Php)4,000,000.00;
>
> (5) Exemplary damages in the amount of Php1,000,000.00;
>
> (6) Attorney's fees in the amount of Php200,000.00; and
>
> (7) Cost of suit.
>
> SO ORDERED.

On June 29, 2000, the RTC denied the Pereñas' motion for reconsideration,[4] reiterating that the cooperative gross negligence of the Pereñas and PNR had caused the collision that led to the death of Aaron; and that the damages awarded to the Zarates were not excessive, but based on the established circumstances.

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[3] *Id.* at 47-55.

[4] *Id.* at 142.

The CA's Ruling

Both the Pereñas and PNR appealed (C.A.-G.R. CV No. 68916).

PNR assigned the following errors, to wit:[5]

The Court *a quo* erred in:

1. In finding the defendant-appellant Philippine National Railways jointly and severally liable together with defendant-appellants spouses Teodorico and Nanette Pereña and defendant-appellant Clemente Alfaro to pay plaintiffs-appellees for the death of Aaron Zarate and damages.

2. In giving full faith and merit to the oral testimonies of plaintiffs-appellees witnesses despite overwhelming documentary evidence on record, supporting the case of defendants-appellants Philippine National Railways.

The Pereñas ascribed the following errors to the RTC, namely:

The trial court erred in finding defendants-appellants jointly and severally liable for actual, moral and exemplary damages and attorney's fees with the other defendants.

The trial court erred in dismissing the cross-claim of the appellants Pereñas against the Philippine National Railways and in not holding the latter and its train driver primarily responsible for the incident.

The trial court erred in awarding excessive damages and attorney's fees.

The trial court erred in awarding damages in the form of deceased's loss of earning capacity in the absence of sufficient basis for such an award.

On November 13, 2002, the CA promulgated its decision, affirming the findings of the RTC, but limited the moral damages to ₱2,500,000.00; and deleted the attorney's fees because the RTC did not state the factual and legal bases, to wit:[6]

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[5] *Id.* at 25-46.

[6] *Rollo*, pp. 70-80.

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court, Branch 260 of Parañaque City is **AFFIRMED** with the **modification** that the award of **Actual Damages** is reduced to **₱59,502.76**; **Moral Damages** is reduced to **₱2,500,000.00**; and the award for Attorney's Fees is **Deleted**.

SO ORDERED.

The CA upheld the award for the loss of Aaron's earning capacity, taking cognizance of the ruling in *Cariaga v. Laguna Tayabas Bus Company and Manila Railroad Company*,[7] wherein the Court gave the heirs of Cariaga a sum representing the loss of the deceased's earning capacity despite Cariaga being only a medical student at the time of the fatal incident. Applying the formula adopted in the American Expectancy Table of Mortality:–

2/3 *x* (80 - age at the time of death) = life expectancy

the CA determined the life expectancy of Aaron to be 39.3 years upon reckoning his life expectancy from age of 21 (the age when he would have graduated from college and started working for his own livelihood) instead of 15 years (his age when he died). Considering that the nature of his work and his salary at the time of Aaron's death were unknown, it used the prevailing minimum wage of ₱280.00/day to compute Aaron's gross annual salary to be ₱110,716.65, inclusive of the thirteenth month pay. Multiplying this annual salary by Aaron's life expectancy of 39.3 years, his gross income would aggregate to ₱4,351,164.30, from which his estimated expenses in the sum of ₱2,189,664.30 was deducted to finally arrive at ₱ 2,161,500.00 as net income. Due to Aaron's computed net income turning out to be higher than the amount claimed by the Zarates, only ₱2,109,071.00, the amount expressly prayed for by them, was granted.

On April 4, 2003, the CA denied the Pereñas' motion for reconsideration.[8]

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[7] 110 Phil. 346 (1960).

[8] *Id.* at 82.

Issues

In this appeal, the Pereñas list the following as the errors committed by the CA, to wit:

I. The lower court erred when it upheld the trial court's decision holding the petitioners jointly and severally liable to pay damages with Philippine National Railways and dismissing their cross-claim against the latter.

II. The lower court erred in affirming the trial court's decision awarding damages for loss of earning capacity of a minor who was only a high school student at the time of his death in the absence of sufficient basis for such an award.

III. The lower court erred in not reducing further the amount of damages awarded, assuming petitioners are liable at all.

Ruling

The petition has no merit.

1.
Were the Pereñas and PNR jointly and severally liable for damages?

The Zarates brought this action for recovery of damages against both the Pereñas and the PNR, basing their claim against the Pereñas on breach of contract of carriage and against the PNR on quasi-delict.

The RTC found the Pereñas and the PNR negligent. The CA affirmed the findings.

We concur with the CA.

To start with, the Pereñas' defense was that they exercised the diligence of a good father of the family in the selection and supervision of Alfaro, the van driver, by seeing to it that Alfaro had a driver's license and that he had not been involved in any vehicular accident prior to the fatal collision with the train; that they even had their own son travel to and from school on a daily basis; and that Teodoro Pereña himself sometimes accompanied Alfaro in transporting the passengers to and from

school. The RTC gave scant consideration to such defense by regarding such defense as inappropriate in an action for breach of contract of carriage.

We find no adequate cause to differ from the conclusions of the lower courts that the Pereñas operated as a common carrier; and that their standard of care was extraordinary diligence, not the ordinary diligence of a good father of a family.

Although in this jurisdiction the operator of a school bus service has been usually regarded as a private carrier,[9] primarily because he only caters to some specific or privileged individuals, and his operation is neither open to the indefinite public nor for public use, the exact nature of the operation of a school bus service has not been finally settled. This is the occasion to lay the matter to rest.

A carrier is a person or corporation who undertakes to transport or convey goods or persons from one place to another, gratuitously or for hire. The carrier is classified either as a private/special carrier or as a common/public carrier.[10] A private carrier is one who, without making the activity a vocation, or without holding himself or itself out to the public as ready to act for all who may desire his or its services, undertakes, *by special agreement in a particular instance only*, to transport goods or persons from one place to another either gratuitously or for hire.[11] The provisions on ordinary contracts of the *Civil Code* govern the contract of private carriage. The diligence required of a private carrier is only ordinary, that is, the diligence of a good father of the family. In contrast, a common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by

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[9] Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, 1993 Edition, at p. 7.

[10] *Id.* at 4.

[11] Perez, *Transportation Laws and Public Service Act*, 2001 Edition, p. 6.

land, water, or air, for compensation, *offering such services to the public*.[12] Contracts of common carriage are governed by the provisions on common carriers of the *Civil Code*, the *Public Service Act*,[13] and other special laws relating to transportation. A common carrier is required to observe extraordinary diligence, and is presumed to be at fault or to have acted negligently in case of the loss of the effects of passengers, or the death or injuries to passengers.[14]

In relation to common carriers, the Court defined *public use* in the following terms in *United States v. Tan Piaco*,[15] *viz*:

> "Public use" is the same as "use by the public". The essential feature of the public use is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The

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[12] Article 1732 of the *Civil Code* states:

> Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

[13] Commonwealth Act No. 146, as amended, particularly by PD No. 1, Integrated Reorganization Plan and E.O. 546.

[14] Article 1756 of the *Civil Code* reads:

> Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.

[15] 40 Phil. 853, 856 (1920).

true criterion by which to judge the character of the use is whether the public may enjoy it *by right* or only by permission.

In *De Guzman v. Court of Appeals*,[16] the Court noted that Article 1732 of the *Civil Code* avoided any distinction between a person or an enterprise offering transportation on a regular or an isolated basis; and has not distinguished a carrier offering his services to the general public, that is, the general community or population, from one offering his services only to a narrow segment of the general population.

Nonetheless, the concept of a common carrier embodied in Article 1732 of the *Civil Code* coincides neatly with the notion of *public service* under the *Public Service Act*, which supplements the law on common carriers found in the *Civil Code*. Public service, according to Section 13, paragraph (b) of the *Public Service Act*, includes:

> x x x every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, **with general or limited clientèle, whether permanent or occasional, and done for the general business purposes,** any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services. x x x.[17]

Given the breadth of the aforequoted characterization of a common carrier, the Court has considered as common carriers

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[16] G.R. No. L-47822, December 22, 1988, 168 SCRA 612, 617-618.

[17] Public Service Act.

pipeline operators,[18] custom brokers and warehousemen,[19] and barge operators[20] even if they had limited clientèle.

As all the foregoing indicate, the true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation. If the undertaking is a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, the individual or the entity rendering such service is a private, not a common, carrier. The question must be determined by the character of the business actually carried on by the carrier, not by any secret intention or mental reservation it may entertain or assert when charged with the duties and obligations that the law imposes.[21]

Applying these considerations to the case before us, there is no question that the Pereñas as the operators of a school bus service were: (*a*) engaged in transporting passengers generally as a business, not just as a casual occupation; (*b*) undertaking to carry passengers over established roads by the method by which the business was conducted; and (*c*) transporting students for a fee. Despite catering to a limited clientèle, the Pereñas operated as a common carrier because they held themselves out as a ready transportation indiscriminately to the students of a particular school living within or near where they operated the service and for a fee.

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[18] *First Philippine Industrial Corporation v. Court of Appeals*, G.R. No. 125948, December 29, 1998, 300 SCRA 661, 670.

[19] *Calvo v. UCPB General Insurance Co.*, G.R. No. 148496, March 19, 2002, 379 SCRA 510, 516.

[20] *Asia Lighterage and Shipping, Inc. v. Court of Appeals*, G.R. No. 147246, August 9, 2003, 409 SCRA 340.

[21] Agbayani, *supra*, note 9, pp. 7-8.

The common carrier's standard of care and vigilance as to the safety of the passengers is defined by law. Given the nature of the business and for reasons of public policy, the common carrier is bound "to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case."[22] Article 1755 of the *Civil Code* specifies that the common carrier should "carry the passengers safely *as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances*." To successfully fend off liability in an action upon the death or injury to a passenger, the common carrier must prove his or its observance of that extraordinary diligence; otherwise, the legal presumption that he or it was at fault or acted negligently would stand.[23] No device, whether by stipulation, posting of notices, statements on tickets, or otherwise, may dispense with or lessen the responsibility of the common carrier as defined under Article 1755 of the *Civil Code*.[24]

And, secondly, the Pereñas have not presented any compelling defense or reason by which the Court might now reverse the CA's findings on their liability. On the contrary, an examination of the records shows that the evidence fully supported the findings of the CA.

As earlier stated, the Pereñas, acting as a common carrier, were already presumed to be negligent at the time of the accident because death had occurred to their passenger.[25] The presumption of negligence, being a presumption of law, laid the burden of evidence on their shoulders to establish that they had not been negligent.[26]

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[22] Article 1733, *Civil Code*.

[23] Article 1756, *Civil Code*.

[24] Article 1757, *Civil Code*.

[25] *Supra*, note 13.

[26] 31A CJS, Evidence §134, citing *State Tax Commission v. Phelps Dodge Corporation*, 157 P. 2d 693, 62 Ariz. 320; *Kott v. Hilton*, 114 P. 2d 666, 45 C.A. 2d 548; *Lindley v. Mowell*, Civ. Ap. 232 S.W. 2d 256.

It was the law no less that required them to prove their observance of extraordinary diligence in seeing to the safe and secure carriage of the passengers to their destination. Until they did so in a credible manner, they stood to be held legally responsible for the death of Aaron and thus to be held liable for all the natural consequences of such death.

There is no question that the Pereñas did not overturn the presumption of their negligence by credible evidence. Their defense of having observed the diligence of a good father of a family in the selection and supervision of their driver was not legally sufficient. According to Article 1759 of the *Civil Code*, their liability as a common carrier did not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employee. This was the reason why the RTC treated this defense of the Pereñas as inappropriate in this action for breach of contract of carriage.

The Pereñas were liable for the death of Aaron despite the fact that their driver might have acted beyond the scope of his authority or even in violation of the orders of the common carrier.[27] In this connection, the records showed their driver's actual negligence. There was a showing, to begin with, that their driver traversed the railroad tracks at a point at which the PNR did not permit motorists going into the Makati area to cross the railroad tracks. Although that point had been used by motorists as a shortcut into the Makati area, that fact alone did not excuse their driver into taking that route. On the other hand, with his familiarity with that shortcut, their driver was fully aware of the risks to his passengers but he still disregarded the risks. Compounding his lack of care was that loud music was playing inside the air-conditioned van at the time of the accident. The loudness most probably reduced his ability to hear the warning horns of the oncoming train to allow him to correctly appreciate the lurking dangers on the railroad tracks. Also, he sought to overtake a passenger bus on the left side as both vehicles traversed the railroad tracks. In so doing, he lost his view of the train

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[27] Article 1759, *Civil Code*.

that was then coming from the opposite side of the passenger bus, leading him to miscalculate his chances of beating the bus in their race, and of getting clear of the train. As a result, the bus avoided a collision with the train but the van got slammed at its rear, causing the fatality. Lastly, he did not slow down or go to a full stop before traversing the railroad tracks despite knowing that his slackening of speed and going to a full stop were in observance of the right of way at railroad tracks as defined by the traffic laws and regulations.[28] He thereby violated a specific traffic regulation on right of way, by virtue of which he was immediately presumed to be negligent.[29]

The omissions of care on the part of the van driver constituted negligence,[30] which, according to *Layugan v. Intermediate Appellate Court*,[31] is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do,[32] or as Judge Cooley defines it, '(t)he failure to observe for

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[28] *E.g.*, Section 42(*d*) of Republic Act No. 4136 (*Land Transportation and Traffic Code*), which pertinently provides:

Section 42. *Right of way*. — xxx

x x x x x x x x x

(*d*) **The driver of a vehicle upon a highway shall bring to a full stop such vehicle before traversing any "through highway" or railroad crossing**: **provided, that when it is apparent that no hazard exists, the vehicle may be slowed down to five miles per hour instead of bringing it to a full stop**.

[29] Article 2185 of the *Civil Code* provides:

Article 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation. (n)

See also *BLT Bus Company v. Intermediate Appellate Court*, Nos. 74387-90, November 14, 1988, 167 SCRA 379.

[30] *Yamada v. Manila Railroad Co.*, No. 10073, 33 Phil. 8, 11 (1915).

[31] G.R. No. 73998, November 14, 1988, 167 SCRA 363.

[32] Citing *Black Law Dictionary*, Fifth Edition, p. 930.

the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"[33]

The test by which to determine the existence of negligence in a particular case has been aptly stated in the leading case of *Picart v. Smith*,[34] thuswise:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: **Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence**. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. **The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.**
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> **The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case.** Abstract speculation cannot here be of much value but this much can be profitably said: **Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger**. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. **Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist**. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: **Conduct is said to be negligent when a prudent man in**

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[33] Citing Cooley on Torts, Fourth Edition, Volume 3, p. 265.

[34] 37 Phil. 809 (1918).

the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences. (Emphasis supplied)

Pursuant to the *Picart v. Smith* test of negligence, the Pereñas' driver was entirely negligent when he traversed the railroad tracks at a point not allowed for a motorist's crossing despite being fully aware of the grave harm to be thereby caused to his passengers; and when he disregarded the foresight of harm to his passengers by overtaking the bus on the left side as to leave himself blind to the approach of the oncoming train that he knew was on the opposite side of the bus.

Unrelenting, the Pereñas cite *Phil. National Railways v. Intermediate Appellate Court*,[35] where the Court held the PNR solely liable for the damages caused to a passenger bus and its passengers when its train hit the rear end of the bus that was then traversing the railroad crossing. But the circumstances of that case and this one share no similarities. In *Philippine National Railways v. Intermediate Appellate Court*, no evidence of contributory negligence was adduced against the owner of the bus. Instead, it was the owner of the bus who proved the exercise of extraordinary diligence by preponderant evidence. Also, the records are replete with the showing of negligence on the part of both the Pereñas and the PNR. Another distinction is that the passenger bus in *Philippine National Railways v. Intermediate Appellate Court* was traversing the dedicated railroad crossing when it was hit by the train, but the Pereñas' school van traversed the railroad tracks at a point not intended for that purpose.

At any rate, the lower courts correctly held both the Pereñas and the PNR "jointly and severally" liable for damages arising from the death of Aaron. They had been impleaded in the same complaint as defendants against whom the Zarates had the right to relief, whether jointly, severally, or in the alternative, in respect

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[35] G.R. No. 70547, January 22, 1993, 217 SCRA 401.

to or arising out of the accident, and questions of fact and of law were common as to the Zarates.[36] Although the basis of the right to relief of the Zarates (*i.e.*, breach of contract of carriage) against the Pereñas was distinct from the basis of the Zarates' right to relief against the PNR (*i.e.*, quasi-delict under Article 2176, *Civil Code*), they nonetheless could be held jointly and severally liable by virtue of their respective negligence combining to cause the death of Aaron. As to the PNR, the RTC rightly found the PNR also guilty of negligence despite the school van of the Pereñas traversing the railroad tracks at a point not dedicated by the PNR as a railroad crossing for pedestrians and motorists, because the PNR did not ensure the safety of others through the placing of crossbars, signal lights, warning signs, and other permanent safety barriers to prevent vehicles or pedestrians from crossing there. The RTC observed that the fact that a crossing guard had been assigned to man that point from 7 a.m. to 5 p.m. was a good *indicium* that the PNR was aware of the risks to others as well as the need to control the vehicular and other traffic there. Verily, the Pereñas and the PNR were joint tortfeasors.

2.

Was the indemnity for loss of Aaron's earning capacity proper?

The RTC awarded indemnity for loss of Aaron's earning capacity. Although agreeing with the RTC on the liability, the

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[36] The rule on permissive joinder of parties is Section 6, Rule 3, of the *Rules of Court*, to wit:

Section 6. *Permissive joinder of parties.* — All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these Rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest. (6)

CA modified the amount. Both lower courts took into consideration that Aaron, while only a high school student, had been enrolled in one of the reputable schools in the Philippines and that he had been a normal and able-bodied child prior to his death. The basis for the computation of Aaron's earning capacity was not what he would have become or what he would have wanted to be if not for his untimely death, but the minimum wage in effect at the time of his death. Moreover, the RTC's computation of Aaron's life expectancy rate was not reckoned from his age of 15 years at the time of his death, but on 21 years, his age when he would have graduated from college.

We find the considerations taken into account by the lower courts to be reasonable and fully warranted.

Yet, the Pereñas submit that the indemnity for loss of earning capacity was speculative and unfounded. They cited *People v. Teehankee, Jr.*,[37] where the Court deleted the indemnity for victim Jussi Leino's loss of earning capacity as a pilot for being speculative due to his having graduated from high school at the International School in Manila only two years before the shooting, and was at the time of the shooting only enrolled in the first semester at the Manila Aero Club to pursue his ambition to become a professional pilot. That meant, according to the Court, that he was for all intents and purposes only a high school graduate.

We reject the Pereñas' submission.

First of all, a careful perusal of the *Teehankee, Jr.* case shows that the situation there of Jussi Leino was not akin to that of Aaron here. The CA and the RTC were not speculating that Aaron would be some highly-paid professional, like a pilot (or, for that matter, an engineer, a physician, or a lawyer). Instead, the computation of Aaron's earning capacity was premised on him being a lowly minimum wage earner despite his being then enrolled at a prestigious high school like Don Bosco in Makati,

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[37] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

a fact that would have likely ensured his success in his later years in life and at work.

And, secondly, the fact that Aaron was then without a history of earnings should not be taken against his parents and in favor of the defendants whose negligence not only cost Aaron his life and his right to work and earn money, but also deprived his parents of their right to his presence and his services as well. Our law itself states that the loss of the earning capacity of the deceased shall be the liability of the guilty party in favor of the heirs of the deceased, and shall in every case be assessed and awarded by the court "unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death."[38] Accordingly, we emphatically hold in favor of the indemnification for Aaron's loss of earning capacity despite him having been unemployed, because compensation of this nature is awarded not for loss of time or earnings but for loss of the deceased's power or ability to earn money.[39]

This favorable treatment of the Zarates' claim is not unprecedented. In *Cariaga v. Laguna Tayabas Bus Company and Manila Railroad Company*,[40] fourth-year medical student Edgardo Carriaga's earning capacity, although he survived the accident but his injuries rendered him permanently incapacitated, was computed to be that of the physician that he dreamed to become. The Court considered his scholastic record sufficient to justify the assumption that he could have finished the medical course and would have passed the medical board examinations in due time, and that he could have possibly earned a modest income as a medical practitioner. Also, in *People v. Sanchez*,[41] the Court opined that murder and rape victim Eileen Sarmienta

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[38] Article 2206 (1), *Civil Code*.

[39] *People v. Teehankee, Jr., supra*, note 37, at p. 118. See also 25 CJS, Damages, §40.

[40] No. L-11037, 110 Phil. 346 (1960).

[41] G.R. Nos. 121039-121045, October 18, 2001, 367 SCRA 520.

and murder victim Allan Gomez could have easily landed good-paying jobs had they graduated in due time, and that their jobs would probably pay them high monthly salaries from ₱10,000.00 to ₱15,000.00 upon their graduation. Their earning capacities were computed at rates higher than the minimum wage at the time of their deaths due to their being already senior agriculture students of the University of the Philippines in Los Baños, the country's leading educational institution in agriculture.

3.

Were the amounts of damages excessive?

The Pereñas plead for the reduction of the moral and exemplary damages awarded to the Zarates in the respective amounts of ₱2,500,000.00 and ₱1,000,000.00 on the ground that such amounts were excessive.

The plea is unwarranted.

The moral damages of ₱2,500,000.00 were really just and reasonable under the established circumstances of this case because they were intended by the law to assuage the Zarates' deep mental anguish over their son's unexpected and violent death, and their moral shock over the senseless accident. That amount would not be too much, considering that it would help the Zarates obtain the means, diversions or amusements that would alleviate their suffering for the loss of their child. At any rate, reducing the amount as excessive might prove to be an injustice, given the passage of a long time from when their mental anguish was inflicted on them on August 22, 1996.

Anent the ₱1,000,000.00 allowed as exemplary damages, we should not reduce the amount if only to render effective the desired example for the public good. As a common carrier, the Pereñas needed to be vigorously reminded to observe their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again. Only by an award of exemplary damages in that amount would suffice to instill in them and others similarly situated like them the ever-present need for greater and constant vigilance in the conduct of a business imbued with public interest.

WHEREFORE, we **DENY** the petition for review on *certiorari*; **AFFIRM** the decision promulgated on November 13, 2002; and **ORDER** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159508. August 29, 2012]

JUAN B. BAÑEZ, JR., *petitioner, vs.* **HON. CRISANTO C. CONCEPCION, in his capacity as the presiding judge of the RTC-Bulacan, Malolos City, and the estate of the late RODRIGO GOMEZ, represented by its administratrix, TSUI YUK YING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN INTERLOCUTORY ORDER IS NOT A PROPER SUBJECT THEREOF; EXCEPTION.— [A]n order denying a motion to dismiss, being merely interlocutory, cannot be the basis of a petition for *certiorari*. An interlocutory order is not the proper subject of a *certiorari* challenge by virtue of its not terminating the proceedings in which it is issued. To allow such order to be the subject of review by *certiorari* not only delays the administration of justice, but also unduly burdens the courts. But a petition for *certiorari* may be filed to assail an interlocutory order if it is issued without jurisdiction, or with excess of jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction. This is because as to such order there is no appeal, or any

plain, speedy, and adequate remedy in the ordinary course of law.

2. ID.; COURTS; HIERARCHY OF COURTS; STRICT ADHERENCE THERETO IS REQUIRED.— The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy. x x x In *People v. Cuaresma*, the Court has also amplified the need for strict adherence to the policy of hierarchy of courts. There, noting "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land," the Court has cautioned lawyers and litigants against taking a direct resort to the highest tribunal x x x.

3. ID.; CIVIL PROCEDURE; MOTION TO DISMISS; PRESCRIPTION; AN ALLEGATION OF PRESCRIPTION CAN BE USED IN A MOTION TO DISMISS ONLY WHEN THE COMPLAINT ON ITS FACE SHOWS THAT THE ACTION HAS ALREADY PRESCRIBED.— Article 1144 of the *Civil Code* requires, indeed, that an action to revive a judgment must be brought before it is barred by prescription, which was ten years from the accrual of the right of action. It is clear, however, that such a defense could not be determined in the hearing of the petitioner's motion to dismiss considering that the complaint did not show on its face that the period to bring the action to revive had already lapsed. An allegation of prescription, as the Court put it in *Pineda v. Heirs of Eliseo Guevara*, "can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed, [o]therwise, the issue of prescription is one involving evidentiary matters requiring a full blown

trial on the merits and cannot be determined in a mere motion to dismiss."

APPEARANCES OF COUNSEL

Bañez Bañez & Associates for petitioner.

Magsino Bautista Santiano & Associates Law Offices for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

The petitioner has directly come to the Court *via* petition for *certiorari*[1] filed on September 4, 2003 to assail the orders dated March 24, 2003 (reversing an earlier order issued on February 18, 2003 granting his motion to dismiss on the ground of the action being already barred by prescription, and reinstating the action),[2] April 21, 2003 (denying his motion for reconsideration),[3] and August 19, 2003 (denying his second motion for reconsideration and ordering him to file his answer within 10 days from notice despite the principal defendant not having been yet validly served with summons and copy of the complaint),[4] all issued by the Regional Trial Court (RTC), Branch 12, in Malolos City in Civil Case No. 722-M-2002,[5] an action for the recovery of ownership and possession. He alleges that respondent Presiding Judge thereby acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] *Rollo,* pp. 3-23.

[2] *Id.*, at 85-86.

[3] A copy of the order was not attached to the records.

[4] *Rollo,* p. 101.

[5] Entitled *Estate of the Late Rodrigo Gomez, represented by its Administratrix Tsui Yuk Ying v. Leodegario B. Ramos and Atty. Juan B. Bañez, Jr.*

Antecedents

The present controversy started almost four decades ago when Leodegario B. Ramos (Ramos), one of the defendants in Civil Case No. 722-M-2002, discovered that a parcel of land with an area of 1,233 square meters, more or less, which was a portion of a bigger tract of land with an area of 3,054 square meters, more or less, located in Meycauayan, Bulacan that he had adjudicated solely to himself upon his mother's death on November 16, 1982 had been earlier transferred by his mother to one Ricardo Asuncion, who had, in turn, sold it to the late Rodrigo Gomez.

On February 1, 1990, Ramos, alleging that Gomez had induced him to sell the 1,233 square meters to Gomez on the understanding that Gomez would settle Ramos' obligation to three other persons, commenced in the RTC in Valenzuela an action against Gomez, also known as Domingo Ng Lim, seeking the rescission of their contract of sale and the payment of damages, docketed as Civil Case No. 3287-V-90 entitled *Leodegario B. Ramos v. Rodrigo Gomez, a.k.a. Domingo Ng Lim.*[6]

On October 9, 1990, before the Valenzuela RTC could decide Civil Case No. 3287-V-90 on the merits, Ramos and Gomez entered into a compromise agreement.[7] The RTC approved their compromise agreement through its decision rendered on the same date.[8]

The petitioner, being then the counsel of Ramos in Civil Case No. 3287-V-90, assisted Ramos in entering into the compromise agreement "to finally terminate this case." The terms and conditions of the compromise agreement were as follows:

COME NOW, the Parties, assisted by their respective counsels, and before this Honorable Court, most respectfully submit this

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[6] *Rollo,* pp. 39-40.

[7] Records, pp. 15-16.

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

COMPROMISE AGREEMENT for approval, as to finally terminate this case, the terms and conditions of which being as follows:

1. That out of the total area of Three Thousand and Fifty Four (3,054) sq. m., more or less, covered by formerly O.C.T. No. P-2492 (M), Registry of Deeds of Bulacan, known as Lot No. 6821, Cad-337 Lot 4020-E, Csd-04-001618-D, and now by the Reconstituted Transfer Certificate of Title No. T-10179-P (M) defendant shall cause survey of said property, at its own expense, to segregate the area of One Thousand Two Hundred Thirty-Three, (1,233) sq. m. more or less, to take along lines two (2) to three (3), then to four (4) and up to five (5) of said plan, Csd-04-001618-D;

2. That upon completion of the technical survey and plan, defendant shall cause the registration of the Deed of Absolute Sale executed by plaintiff over the 1,233 sq. m. in his favor and that defendant shall deliver the survey and plan pertaining to the 1,821 sq, m. to the plaintiff with both parties defraying the cost of registration and titling over their respective shares;

3. That to carry out the foregoing, plaintiff shall entrust the Owner's Duplicate of said TCT No. T-10179-P (M), Registry of Deeds of Meycauayan, Bulacan, to the defendant, upon approval of this COMPROMISE AGREEMENT by the Court;

4. That upon the approval of this Compromise Agreement plaintiff shall execute a Deed of Absolute Sale in favor of defendant over the 1,233 sq. m. surveyed and segregated from the 1,821 sq. m. which should remain with the plaintiff and to be titled in his name;

5. That plaintiff obligates himself to return his loan obligation to the defendant, in the principal sum of ₱ 80,000.00 plus ₱ 20,000.00 for the use thereof, and an additional sum of ₱ 10,000.00 in the concept of attorney's fees, which sums shall be guaranteed by a post-dated check, in the amount of ₱ 110,000.00 in plaintiff's name with his prior endorsement, drawn and issued by plaintiff's counsel, for a period of Sixty (60) days from October 9, 1990;

6. That in the event the check issued pursuant to paragraph 5 hereof, is dishonored for any reason whatsoever, upon presentment for payment, then this Compromise Agreement, shall be considered null and void and of no effect whatsoever;

7. That upon faithful compliance with the terms and conditions of this COMPROMISE AGREEMENT and the Decision based

thereon, the parties hereto shall have respectively waived, conceded and abandoned all claims and rights of action of whatever kind or nature, against each other over the subject property.

WHEREFORE, premises considered, the parties hereto hereby jointly and severally pray before this Honorable Court to approve this COMPROMISE AGREEMENT and thereupon render its Decision based thereon terminating the case.

One of the stipulations of the compromise agreement was for Ramos to execute a deed of absolute sale in favor of Gomez respecting the parcel of land with an area of 1,233 square meters, and covered by Transfer Certificate of Title (TCT) No. T-13005 P(M) in the name of Ramos.[9] Another stipulation was for the petitioner to issue post-dated checks totaling ₱110,000.00 to guarantee the payment by Ramos of his monetary obligations towards Gomez as stated in the compromise agreement broken down as follows: (*a*) ₱80,000.00 as Ramos' loan obligation to Gomez; (*b*) ₱20,000.00 for the use of the loan; and (*c*) ₱10,000.00 as attorney's fees. Of these amounts, only ₱80,000.00 was ultimately paid to Gomez, because the petitioner's check dated April 23, 1991 for the balance of ₱30,000.00 was dishonored for insufficiency of funds.

Gomez meanwhile died on November 7, 1990. He was survived by his wife Tsui Yuk Ying and their minor children (collectively to be referred to as the Estate of Gomez). The Estate of Gomez sued Ramos and the petitioner *for specific performance* in the RTC in Caloocan City to recover the balance of ₱30,000.00 (Civil Case No. C-15750). On February 28, 1994, however, Civil Case No. C-15750 was amicably settled through a compromise agreement, whereby the petitioner directly bound himself to pay to the Estate of Gomez ₱10,000.00 on or before March 15, 1994; ₱10,000.00 on or before April 15, 1994; and ₱10,000.00 on or before May 15, 1994.

The Estate of Gomez performed the obligations of Gomez under the first paragraph of the compromise agreement of October

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[9] *Rollo*, p. 41.

9, 1990 by causing the survey of the bigger tract of land containing an area of 3,054 square meters, more or less, in order to segregate the area of 1,233 square meters that should be transferred by Ramos to Gomez in accordance with Ramos' undertaking under the second paragraph of the compromise agreement of October 9, 1990. But Ramos failed to cause the registration of the deed of absolute sale pursuant to the second paragraph of the compromise agreement of October 9, 1990 despite the Estate of Gomez having already complied with Gomez's undertaking to deliver the approved survey plan and to shoulder the expenses for that purpose. Nor did Ramos deliver to the Estate of Gomez the owner's duplicate copy of TCT No. T-10179 P(M) of the Registry of Deeds of Meycauayan, Bulacan, as stipulated under the third paragraph of the compromise agreement of October 9, 1990. Instead, Ramos and the petitioner caused to be registered the 1,233 square meter portion in Ramos' name under TCT No. T-13005-P(M) of the Registry of Deeds of Meycauayan, Bulacan.

Accordingly, on July 6, 1995, the Estate of Gomez brought a complaint for specific performance against Ramos and the petitioner in the RTC in Valenzuela (Civil Case No. 4679-V-95)[10] in order to recover the 1,233 square meter lot. However, the Valenzuela RTC dismissed the complaint on April 1, 1996 upon the motion of Ramos and the petitioner on the ground of improper venue because the objective was to recover the ownership and possession of realty situated in Meycauayan, Bulacan, and because the proper recourse was to enforce the judgment by compromise Agreement rendered on October 9, 1990 through a motion for execution.

The Estate of Gomez appealed the order of dismissal to the Court of Appeals (CA), which ruled on July 24, 2001 to affirm the Valenzuela RTC and to dismiss the appeal (CA-G.R. CV No. 54231).

On September 20, 2002, the Estate of Gomez commenced Civil Case No. 722-M-2002 in the Valenzuela RTC, ostensibly

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[10] *Id.* at 71-76.

to revive the judgment by compromise rendered on October 9, 1990 in Civil Case No. 3287-V-90, praying that Ramos be ordered to execute the deed of absolute sale covering the 1,233 square meter lot pursuant to the fourth stipulation of the compromise agreement of October 9, 1990. The petitioner was impleaded as a party-defendant because of his having guaranteed the performance by Ramos of his obligation and for having actively participated in the transaction.

On January 8, 2003, the petitioner moved for the dismissal of Civil Case No. 722-M-2002, alleging that the action was already barred by *res judicata* and by prescription; that he was not a real party-in-interest; and that the amount he had guaranteed with his personal check had already been paid by Ramos with his own money.[11]

Initially, on February 18, 2003,[12] the RTC granted the petitioner's motion to dismiss, finding that the right of action had already prescribed due to more than 12 years having elapsed from the approval of the compromise agreement on October 9, 1990, citing Article 1143 (3) of the *Civil Code* (which provides a 10-year period within which a right of action based upon a judgment must be brought from).

On March 24, 2003,[13] however, the RTC reversed itself upon motion of the Estate of Gomez and set aside its order of February 18, 2003. The RTC reinstated Civil Case No. 722-M-2002, holding that the filing of the complaint for specific performance on July 6, 1995 in the Valenzuela RTC (Civil Case No. 4679-V-95) had interrupted the prescriptive period pursuant to Article 1155 of the *Civil Code*.

The petitioner sought reconsideration, but the RTC denied his motion for that purpose on April 21, 2003.

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[11] *Id.* at 58-62.

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

[13] *Id.* at 85-86.

On May 12, 2003, the petitioner filed a second motion for reconsideration, maintaining that the Estate of Gomez's right of action had already prescribed; and that the judgment by compromise of October 9, 1990 had already settled the entire controversy between the parties.

On August 19, 2003,[14] the RTC denied the second motion for reconsideration for lack of merit.

Hence, this special civil action for *certiorari* commenced on September 4, 2003 directly in this Court.

Issues

The petitioner insists that:

> xxx the lower court acted with grave abuse of discretion, amounting to lack of, or in excess of jurisdiction, when, after having correctly ordered the dismissal of the case below, on the ground of prescription under Art. 1144, par. 3, of the Civil Code, it reconsidered and set aside the same, on the factually baseless and legally untenable Motion for Reconsideration of Private Respondent, insisting, with grave abuse of discretion, if not bordering on ignorance of law, and too afraid to face reality, that it is Art. 1155 of the same code, as invoked by Private Respondents, that applies, and required herein petitioner to file his answer, despite petitioner's first Motion for Reconsideration, which it treated as a mere scrap of paper, yet, at the same [sic] again it insisted that Article 1155 of the Civil Code should apply, and, thereafter when, with like, if not greater grave abuse of discretion, amounting to lack, or in excess of jurisdiction, it again denied petitioner's Second Motion for Reconsideration for lack of merit, and giving petitioner a non-extendible period of ten [10] days from notice, to file his answer.[15]

In his reply to the Estate of Gomez's comment,[16] the petitioner elucidated as follows:

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[14] *Supra,* at note no. 3.

[15] *Rollo,* p. 14.

[16] *Id.* at 180-201.

[1] Whether or not, the Honorable public respondent Judge gravely abused his discretion, amounting to lack of, or in excess of jurisdiction, when, after ordered the dismissal of Civil Case No. 722-M-2002, as prescription has set in, under Art. 1143 of the Civil Code, he set aside and reconsidered his said Order, on motion of plaintiff, by thereafter denied petitioner's Motion for Reconsideration, and Second Motion for Reconsideration, insisting, despite his being presumed to know the law, that the said action is not barred by prescription, under Art. 1145 of the Civil Code;

[2] Whether or not, the present pending action, Civil Case No. 722-M-2002, before Branch 12 of the Regional Trial Court of Malolos, Bulacan, is barred, and should be ordered be dismissed, on the ground of prescription, under the law and the rules, and applicable jurisprudence.

[3] Whether or not, the same action may be dismissed on other valid grounds.[17]

The petitioner submits that Civil Case No. 722-M-2002 was one for the revival of the judgment upon a compromise agreement rendered in Civil Case No. 3287-V-90 that attained finality on October 9, 1990; that considering that an action for revival must be filed within 10 years from the date of finality, pursuant to Article 1144 of the *Civil Code*,[18] in relation to Section 6, Rule 39 of the *Rules of Court*,[19] Civil Case No. 722-M-2002 was already barred by prescription, having been filed beyond

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[17] *Id.* at 190-191.

[18] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1) Upon a written contract;

2) Upon an obligation created by law;

3) Upon a judgment. (n)

[19] Section 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

the 10-year prescriptive period; that the RTC gravely abused its discretion in reinstating the complaint despite prescription having already set in; that the dismissal of Civil Case No. 722-M-2002 was proper also because the judgment had already been fully satisfied; that the claim relative to the 1,233 square meter lot under the compromise agreement had been waived, abandoned, or otherwise extinguished on account of the failure of the Estate of Gomez's counsel to move for the issuance of a writ of execution; and that the Estate of Gomez could not rely upon the pendency and effects of the appeal from the action for specific performance after its dismissal had been affirmed by the CA on grounds of improper venue, the plaintiff's lack of personality, and improper remedy (due to the proper remedy being by execution of the judgment).

The Estate of Gomez countered that the filing on July 6, 1995 of the action for specific performance in the RTC in Valenzuela stopped the running of the prescriptive period; that the period commenced to run again after the CA dismissed that action on July 24, 2001; that the total elapsed period was only five years and 11 months; and that the action for the revival of judgment filed on September 20, 2002 was within the period of 10 years to enforce a final and executory judgment by action.

Ruling

We dismiss the petition for *certiorari*.

The orders that the petitioner seeks to challenge and to annul are the orders denying his motion to dismiss. It is settled, however, that an order denying a motion to dismiss, being merely interlocutory, cannot be the basis of a petition for *certiorari*. An interlocutory order is not the proper subject of a *certiorari* challenge by virtue of its not terminating the proceedings in which it is issued. To allow such order to be the subject of review by *certiorari* not only delays the administration of justice, but also unduly burdens the courts.[20]

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[20] *Atienza v. Court of Appeals*, G.R. No. 85455, June 2, 1994, 232 SCRA 737, 744; *Day v. RTC of Zamboanga City, Br. XIII*, G.R. No. 79119,

But a petition for *certiorari* may be filed to assail an interlocutory order if it is issued without jurisdiction, or with excess of jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction. This is because as to such order there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Rule 65 of the *Rules of Court* expressly recognizes the exception by providing as follows:

> Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> 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. (1a)

The exception does not apply to this challenge. The petitioner has not demonstrated how the assailed orders could have been issued without jurisdiction, or with excess of jurisdiction, or in grave abuse of discretion amounting to lack or excess of jurisdiction. Nor has he convinced us that he had no plain, speedy, and adequate remedy in the ordinary course of law. In fact and in law, he has, like filing his answer and going to pre-trial and trial. In the end, should he still have the need to seek the review of the decision of the RTC, he could also even appeal the denial of the motion to dismiss. That, in reality, was his proper remedy in the ordinary course of law.

November 22, 1990, 191 SCRA 610; *Prudential Bank and Trust Co. v. Macadaez,* 105 Phil. 791 (1959); *People v. Court of Appeals*, No. 51635, December 14, 1982, 119 SCRA 162, 173.

Yet another reason to dismiss the petition for *certiorari* exists. Although the Court, the CA and the RTC have concurrence of jurisdiction to issue writs of *certiorari*, the petitioner had no unrestrained freedom to choose which among the several courts might his petition for *certiorari* be filed in. In other words, he must observe the hierarchy of courts, the policy in relation to which has been explicitly defined in Section 4 of Rule 65 concerning the petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus*, to wit:

> Section 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.
>
> **The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**
>
> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (4a)[21] (Emphasis supplied)

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[21] This rule has been amended, first by A.M. No. 00-2-03-SC (*Re*: *Amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure*) to specify that the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed (effective September 1, 2000); and by A.M. No. 07-7-12-SC, to add the last paragraph reading: "In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction" (effective December 27, 2007).

Accordingly, his direct filing of the petition for *certiorari* in this Court instead of in the CA should be disallowed considering that he did not present in the petition any special and compelling reasons to support his choice of this Court as the forum.

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy. This was why the Court stressed in *Vergara, Sr. v. Suelto*:[22]

> xxx. **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.** (Emphasis supplied)

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[22] No. 74766, December 21, 1987, 156 SCRA 753, 766.

In *People v. Cuaresma*,[23] the Court has also amplified the need for strict adherence to the policy of hierarchy of courts. There, noting "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land," the Court has cautioned lawyers and litigants against taking a direct resort to the highest tribunal, *viz*:

xxx. **This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive.** It is shared by this Court with Regional Trial Courts x x x, which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x, although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed.** There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.** Indeed, the removal of the restriction on the jurisdiction of the Court

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[23] G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-425; see also *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

of Appeals in this regard, *supra*— resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court corresponding jurisdiction, would have had to be filed with it.

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The Court therefore closes this decision with the declaration for the information and evidence of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof. (Emphasis supplied)

There being no special, important or compelling reason that justified the direct filing of the petition for *certiorari* in this Court in violation of the policy on hierarchy of courts, its outright dismissal is unavoidable.

Still, even granting that the petition for *certiorari* might be directly filed in this Court, its dismissal must also follow because its consideration and resolution would unavoidably demand the consideration and evaluation of evidentiary matters. The Court is not a trier of facts, and cannot accept the petition for *certiorari* for that reason.

Although commenced ostensibly for the recovery of possession and ownership of real property, Civil Case No. 722-M-2002 was really an action to revive the judgment by compromise dated October 9, 1990 because the ultimate outcome would be no other than to order the execution of the judgment by compromise. Indeed, it has been held that "there is no substantial difference between an action expressly called one for revival of judgment and an action for recovery of property under a right adjudged under and evidenced by a final judgment."[24] In addition, the parties themselves have treated the complaint in Civil Case No. 722-M-2002 as one for revival. Accordingly, the parties should be fully heard on their respective claims like in any other independent action.

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[24] *Hizon v. Escocio,* 103 Phil. 1106 (1958).

The petitioner's defense of prescription to bar Civil Case No. 722-M-2002 presents another evidentiary concern. Article 1144 of the *Civil Code* requires, indeed, that an action to revive a judgment must be brought before it is barred by prescription, which was ten years from the accrual of the right of action.[25] It is clear, however, that such a defense could not be determined in the hearing of the petitioner's motion to dismiss considering that the complaint did not show on its face that the period to bring the action to revive had already lapsed. An allegation of prescription, as the Court put it in *Pineda v. Heirs of Eliseo Guevara*,[26] "can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed, [o]therwise, the issue of prescription is one involving evidentiary matters requiring a full blown trial on the merits and cannot be determined in a mere motion to dismiss."

At any rate, the mere lapse of the period *per se* did not render the judgment stale within the context of the law on prescription, for events that effectively suspended the running of the period of limitation might have intervened. In other words, the Estate of Gomez was not precluded from showing such events, if any. The Court recognized this possibility of suspension in *Lancita v. Magbanua*:[27]

> In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction,

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[25] Article 1144 of the *Civil Code* states:

> Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
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> (2) Upon an obligation created by law;
>
> (3) Upon a judgment. (n)

[26] G.R. No. 143188, February 14, 2007, 515 SCRA 627, 637.

[27] G.R. No. L-15467, January 31, 1963, 7 SCRA 42, 46.

by the taking of an appeal or writ of error so as to operate as a *supersedeas*, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias.*

Verily, the need to prove the existence or non-existence of significant matters, like supervening events, in order to show either that Civil Case No. 722-M-2002 was barred by prescription or not was present and undeniable. Moreover, the petitioner himself raised factual issues in his motion to dismiss, like his averment of full payment or discharge of the obligation of Ramos and the waiver or abandonment of rights under the compromise agreement. The proof thereon cannot be received in *certiorari* proceedings before the Court, but should be established in the RTC.

WHEREFORE, the Court **DISMISSES** the petition for *certiorari*; and **DIRECTS** the petitioner to pay the cost of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 160444. August 29, 2012]

WALLEM MARITIME SERVICES, INC., *petitioner, vs.* **ERNESTO C. TANAWAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD

EMPLOYMENT CONTRACT; PROVIDES THAT THE ONE TASKED TO DETERMINE WHETHER THE SEAFARER SUFFERS FROM ANY DISABILITY OR IS FIT TO WORK IS THE COMPANY-DESIGNATED PHYSICIAN.— The employment of seafarers, and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Such contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy. While the seafarers and their employers are governed by their mutual agreements, the POEA rules and regulations require that the POEA SEC, which contains the standard terms and conditions of the seafarers' employment in foreign ocean-going vessels, be integrated in every seafarer's contract. The pertinent provision of the 1996 POEA SEC, which was in effect at the time of Tanawan's employment, was Section 20(B) x x x. It is clear from the provision that the one tasked to determine whether the seafarer suffers from any disability or is fit to work is the company-designated physician. As such, the seafarer must submit himself to the company-designated physician for a post employment medical examination within three days from his repatriation. But the assessment of the company-designated physician is not final, binding or conclusive on the seafarer, the labor tribunals, or the courts. The seafarer may request a second opinion and consult a physician of his choice regarding his ailment or injury, and the medical report issued by the physician of his choice shall also be evaluated on its inherent merit by the labor tribunal and the court.

2. ID.; ID.; ID.; ID.; PERMANENT DISABILITY BENEFITS; THE SEAFARER'S ENTITLEMENT THERETO IS DETERMINED BY HIS INABILITY TO WORK FOR MORE THAN 120 DAYS.— That the company-designated physician did not render any finding of disability is of no consequence. Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. Even in the absence of an official finding by the company-designated physician to the effect that the seafarer suffers a disability and is unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days. What clearly determines the seafarer's entitlement to permanent disability benefits is his inability to work for more than 120 days. Although

the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation).

3. **ID.; ID.; ID.; ID.; DISABILITY BENEFITS; REPORTING THE ILLNESS OR INJURY WITHIN THREE DAYS FROM REPATRIATION IS REQUIRED.—** Tanawan's claim for disability benefits due to the eye injury was already barred by his failure to report the injury and to have his eye examined by a company-designated physician. The rationale for the rule is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult. To ignore the rule might set a precedent with negative repercussions, like opening the floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.

4. **ID.; ID.; ID.; ID.; ID.; THE INJURY OR ILLNESS MUST BE SUSTAINED DURING THE TERM OF THE CONTRACT.—** Under the 1996 POEA SEC, it was enough to show that the injury or illness was sustained during the term of the contract. The Court has declared that the unqualified phrase "during the term" found in Section 20(B) thereof covered all injuries or illnesses occurring during the lifetime of the contract. It is the oft-repeated rule, however, that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.

APPEARANCES OF COUNSEL

Lloyd Rey A. Nonato for petitioner.
Romulo P. Valmores for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A seafarer, to be entitled to disability benefits, must prove that the injury was suffered during the term of the employment, and must submit himself to the company-designated physician for evaluation within three days from his repatriation.

The Case

For review on *certiorari* is the decision promulgated on November 29, 2002,[1] whereby the Court of Appeals (CA) annulled the decision rendered on June 13, 2001 by the National Labor Relations Commission (NLRC) and reinstated the decision dated January 21, 2000 of the Labor Arbiter.

Antecedents

On May 12, 1997, the petitioner, then acting as local agent of Scandic Ship Management, Ltd., engaged Ernesto C. Tanawan as dozer driver assigned to the vessel, M/V Eastern Falcon, for a period of 12 months. Under the employment contract, Tanawan was entitled to a basic salary of US$355.00/month, overtime pay of US$2.13/hour, and vacation leave pay of US$35.00/month.[2]

On November 22, 1997, while Tanawan was assisting two co-workers in lifting a steel plate aboard the vessel, a corner of the steel plate touched the floor of the deck, causing the sling to slide and the steel plate to hit his left foot. He was brought to a hospital in Malaysia where his left foot was placed in a cast. His x-ray examination showed he had suffered multiple

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[1] *Rollo*, pp. 35-46; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but now retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo E. Sundiam (deceased) concurring.

[2] Records, p. 2.

left toes fracture (*i.e.*, left 2nd proximal phalanx and 3rd to 5th metatarsal).[3]

Following Tanawan's repatriation on November 28, 1997, his designated physician, Dr. Robert D. Lim, conducted the evaluation and treatment of his foot injury at Metropolitan Hospital, the designated hospital. Tanawan was initially evaluated on December 1, 1997 and was referred to Metropolitan Hospital's orthopedic surgeon who reviewed the x-rays and advised Tanawan to continue with his immobilization to allow good fracture healing.[4]

On December 22, 1997, Tanawan's cast was removed, and he was advised to start motion exercises and partial weight bearing.[5] He underwent physical therapy for two months at the St. Camillus Hospital.[6] On March 26, 1998, the orthopedic surgeon suggested pinning and bone grafting of the 5th metatarsal bone after noticing that there was no callous formation there.[7]

On April 7, 1998, Tanawan underwent bone grafting and was discharged on the next day.[8] On May 21, 1998, conformably with the orthopedic surgeon's findings, Dr. Lim reported that Tanawan was already asymptomatic and pronounced him fit to work.[9] It is noted that from November 30, 1997 until April 1998, Tanawan was paid sickness allowances equivalent to his monthly salary.[10]

On March 31, 1988, while Tanawan was still under treatment by Dr. Lim, he also sought the services of Dr. Rimando Saguin

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[3] *Id.*, at 27.

[4] *Id.*, at 29.

[5] *Id.*, at 30.

[6] *Id.*, at 68-69.

[7] *Id.*, at 33.

[8] *Id.*, at 34.

[9] *Id.*, at 43.

[10] *Id.*, at 37-40.

to assess the extent of his disability due to the same injury. Dr. Saguin categorized the foot injury as Grade 12 based on the Philippine Overseas Employment Administration (POEA) Schedule of Disability.[11]

On August 25, 1998, due to the worsening condition of his right eye, Tanawan also went to the clinic of Dr. Hernando D. Bunuan for a disability evaluation, not of his foot injury but of an eye injury that he had supposedly sustained while on board the vessel.[12]

Tanawan's position paper narrated how he had sustained the eye injury, stating that on October 5, 1997, the Chief Engineer directed him to spray-paint the loader of the vessel; that as he was opening a can of thinner, some of the thinner accidentally splashed into his right eye; that he was rushed to the Office of the Chief Mate for emergency treatment; and that the ship doctor examined him five days later, and told him that there was nothing to worry about and that he could continue working.[13]

Dr. Bunuan referred him to Dr. Tim Jimenez, an ophthalmologist, who diagnosed him to be suffering from a retinal detachment with vitreous hemorrhage on the right eye for which surgical repair was needed. Dr. Bunuan categorized his disability as Grade 7.[14]

On November 26, 1998, Tanawan filed in the Arbitration Branch of the NLRC a complaint for disability benefits for the foot and eye injuries, sickness allowance, damages and attorney's fees against the petitioner and its foreign principal.

In its answer, the petitioner denied Tanawan's claim for disability benefits for his foot injury, averring that he was already fit to work based on Dr. Lim's certification;[15] that he did not

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[11] *Id.*, at 71.

[12] *Id.*, at 72.

[13] *Id.*, at 55.

[14] *Id.*, at 72.

[15] *Id.*, at 19.

sustain the alleged eye injury while on board the vessel because no such injury was reported;[16] that the claim for sickness allowance was already paid when he underwent treatment.[17]

Ruling of the Labor Arbiter

On January 21, 2000, the Labor Arbiter ruled in Tanawan's favor, *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) ORDERING respondents to pay the complainant, jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of actual payment, the following amounts representing the complainant's disability benefits:
>
> a) Foot injury – US$5,225.00
>
> b) Eye injury – US$20,900.00
>
> 2) AND ORDERING, FURTHERMORE, respondents to pay the complainant attorney's fees equivalent to ten percent (10%) of the total monetary awards granted to the aforesaid employee under this Decision.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[18]

The Labor Arbiter found sufficient evidence to support Tanawan's claim for disability benefits for the foot and eye injuries, according credence to the medical certificate issued by Dr. Saguin classifying Tanawan's foot injury as Grade 12; Tanawan's declaration —which was not contradicted by the petitioner—that some paint thinner splashed into his right eye on October 5, 1997; and the letter of Dr. Bunuan to the effect that the disability due to the eye injury was classified as Grade 7.

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[16] *Id.*, at 75.

[17] *Id.*, at 18.

[18] *Id.*, at 108-109.

The Labor Arbiter discounted Dr. Lim's certification declaring Tanawan fit to work on the ground that Dr. Lim had no personal knowledge of such fact because it had been the orthopedic surgeon who had made the finding; hence, the certification was hearsay evidence, not deserving of any probative weight. The Labor Arbiter denied Tanawan's claim for sickness allowance in light of the showing that such claim had already been paid.[19]

The petitioner appealed to the NLRC. In its appeal, the petitioner contended that Dr. Saguin's certification was issued on March 31, 1998 while Tanawan was still under treatment by Dr. Lim;[20] that the disability grading by Dr. Saguin had no factual or legal basis considering that Tanawan was later declared fit to work on May 21, 1998 by the company-designated physician, the only physician authorized to determine whether a seafarer was fit to work or was disabled;[21] that the medical report of the orthopedic surgeon who actually treated Tanawan reinforced Dr. Lim's fit-to-work certification, because the report stated that Tanawan was already asymptomatic and could go back to work anytime;[22] that Tanawan failed to discharge his burden of proof to establish that he had sustained the injury while on board the vessel; that Tanawan did not submit himself to a post-employment medical examination for the eye injury and did not mention such injury while he underwent treatment for his foot injury, an indication that the eye injury was only an afterthought;[23] that there was also no evidence that the alleged eye injury was directly caused by the thinner, the certification of Dr. Bunuan not having stated its cause;[24] and that a certification from an

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[19] *Id.*, at 108.

[20] *Id.*, at 272.

[21] *Id.*, at 120.

[22] *Id.*, at 128.

[23] *Id.*, at 122-123.

[24] *Id.*, at 270.

eye specialist, a certain Dr. Willie Angbue-Te, showed the contrary, because the certification attested that the splashing of some thinner on the eye would not in any way lead to vitreous hemorrhage with retinal detachment, which was usually caused by trauma, pre-existing lattice degeneration, diabetic retinopathy, high myopia, retinal tear or retinal holes.[25]

Ruling of the NLRC

On June 13, 2001, the NLRC reversed the Labor Arbiter's decision and dismissed Tanawan's complaint for lack of merit.[26]

After the NLRC denied his motion for reconsideration,[27] Tanawan commenced a special civil action for *certiorari* in the CA.

Ruling of the CA

On November 29, 2002, the CA rendered its assailed decision in favor of Tanawan,[28] whose dispositive portion reads as follows:

> WHEREFORE, having found that public respondent NLRC committed grave abuse of discretion, the Court hereby ANNULS the assailed Decision and Resolution and REINSTATES the decision of the Labor Arbiter dated January 21, 2000.
>
> SO ORDERED.

The CA discoursed that what was being compensated in disability compensation was not the injury but the incapacity to work; that considering that the foot injury incapacitated Tanawan from further working as dozer driver for the petitioner's principal, he should be given disability benefits; that Dr. Lim's

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[25] *Id.*, at 275.

[26] *Id.*, at 289.

[27] *Id.*, at 318.

[28] *Rollo,* pp. 45-46.

certification had no probative weight because it was self-serving and biased in favor of the petitioner; that Tanawan's claim for the eye injury was warranted because the injury occurred during the term of the employment contract; and that an injury, to be compensable, need not be work-connected.[29]

On October 17, 2003, the CA denied the petitioner's motion for reconsideration for lack of merit.[30]

Issues

Hence, this appeal, with the petitioner tendering the following issues:

1. WHETHER OR NOT THE STANDARD EMPLOYMENT CONTRACT OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION ("POEA") IS THE LAW BETWEEN THE SEAMAN AND THE MANNING AGENT.
2. WHETHER OR NOT A COMPANY-DESIGNATED PHYSICIAN POSSESSES THE LEGAL AUTHORITY TO DECLARE A SEAMAN FIT OR DISABLED UNDER THE LAW.
3. WHETHER OR NOT A SEAMAN CAN CLAIM DISABILITY BENEFITS AFTER HE FAILED TO REPORT HIS ALLEGED INJURY WITHIN THE THREE-DAY REGLEMENTARY PERIOD AS REQUIRED AND IMPOSED BY LAW.[31]

The petitioner insists that under the POEA Standard Employment Contract (POEA SEC), which governed the relationship between the seafarer and his manning agent, it was the company-designated physician who would assess and establish the fitness or disability of the repatriated seaman; that Tanawan's claim for any disability benefit had no basis because the company-designated physician already pronounced him fit to work; that Tanawan should have reported the eye injury to the company-

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[29] *Id.*, at 43-45.

[30] *Id.*, at 48.

[31] *Id.*, at 11.

designated physician within three working days upon his arrival in the country pursuant to Sec. 20(B)(3) of the POEA SEC; that his non-reporting now barred Tanawan from recovering disability benefit for the eye injury; that to ignore the application of the 3-day reglementary period would lead to the indiscriminate filing of baseless claims against the manning agencies and their foreign principals; and that more probative weight should be accorded to the certification of Dr. Lim about the foot injury and the opinion of Dr. Angbue-Te on the alleged eye injury.

On the other hand, Tanawan submits that the determination of the fitness or disability of a seafarer was not the exclusive prerogative of the company-designated physician; and that his failure to undergo a post-employment medical examination for the eye injury within three days from his repatriation did not bar his claim for disability benefits.[32]

Ruling

The petition is partly meritorious.

The employment of seafarers, and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Such contracts have the force of law between the parties as long as their stipulations are not contrary to law, morals, public order or public policy. While the seafarers and their employers are governed by their mutual agreements, the POEA rules and regulations require that the POEA SEC, which contains the standard terms and conditions of the seafarers' employment in foreign ocean-going vessels, be integrated in every seafarer's contract.[33]

The pertinent provision of the 1996 POEA SEC, which was in effect at the time of Tanawan's employment, was Section 20(B), which reads:

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[32] *Id.*, at 131-135.

[33] *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 596.

SECTION 20. COMPENSATION AND BENEFITS

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B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS:

The liabilities of the employer when the seafarer suffers 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.

It is clear from the provision that the one tasked to determine whether the seafarer suffers from any disability or is fit to work is the company-designated physician. As such, the seafarer must submit himself to the company-designated physician for a post employment medical examination within three days from his repatriation. But the assessment of the company-designated

physician is not final, binding or conclusive on the seafarer, the labor tribunals, or the courts. The seafarer may request a second opinion and consult a physician of his choice regarding his ailment or injury, and the medical report issued by the physician of his choice shall also be evaluated on its inherent merit by the labor tribunal and the court.[34]

Tanawan submitted himself to Dr. Lim, the company-designated physician, for a medical examination on December 1, 1997, which was within the 3-day reglementary period from his repatriation. The medical examination conducted focused on Tanawan's foot injury, the cause of his repatriation. Nothing was mentioned of an eye injury. Dr. Lim treated Tanawan for the foot injury from December 1, 1997 until May 21, 1998, when Dr. Lim declared him fit to work. Within that period that lasted 172 days, Tanawan was unable to perform his job, an indication of a permanent disability. Under the law, there is permanent disability if a worker is unable to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.[35]

That the company-designated physician did not render any finding of disability is of no consequence. Disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability.[36] Even in the absence of an official finding by the company-designated physician to the effect that the seafarer suffers a disability and is unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he is unable to work for more than 120 days.[37] What clearly determines the seafarer's entitlement

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[34] Records, p. 308.

[35] *Palisoc v. Easways Marine Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 596-597.

[36] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, April 12, 2006, 487 SCRA 190, 213.

[37] *Palisoc v. Easways Marine Inc.*, *supra*, note 35; *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011.

to permanent disability benefits is his inability to work for more than 120 days.[38] Although the company-designated physician already declared the seafarer fit to work, the seafarer's disability is still considered permanent and total if such declaration is made belatedly (that is, more than 120 days after repatriation).[39]

After the lapse of the 120-day period from his repatriation, Tanawan consulted Dr. Saguin, his own private physician, for the purpose of having an evaluation of the degree of his disability. At that time, he was due to undergo bone grafting and pinning of the 5th metatarsal bone, as Dr. Lim recommended. Dr. Saguin's finding that Tanawan had a Grade 12 disability was, therefore, explicable and plausible.

On the other hand, Tanawan's claim for disability benefits due to the eye injury was already barred by his failure to report the injury and to have his eye examined by a company-designated physician.[40] The rationale for the rule is that reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult.[41] To ignore the rule might set a precedent with negative repercussions, like opening the floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[42]

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[38] *Palisoc v. Easways Marine Inc., supra.*

[39] *Valenzona v. Fair Shipping Corporation, supra,* note 37; *Oriental Shipmanagement Co., Inc. v. Bastol,* G.R. No. 186289, June 29, 2010, 622 SCRA 352, 383-384.

[40] *Maunlad Transport, Inc. v. Manigo, Jr.,* G.R. No. 161416, June 13, 2008, 554 SCRA 446, 459.

[41] *Jebsens Maritime, Inc. v. Undag,* G.R. No. 191491, December 14, 2011, 662 SCRA 670, 680.

[42] *Id.* at 681.

Tanawan did not report the eye injury either to the petitioner or to Dr. Lim while he was undergoing treatment for the foot injury. Curiously, he did not even offer any explanation as to why he had his eye examined only on August 25, 1998, or after almost nine months from his repatriation.

Under the 1996 POEA SEC,[43] it was enough to show that the injury or illness was sustained during the term of the contract. The Court has declared that the unqualified phrase "during the term" found in Section 20(B) thereof covered all injuries or illnesses occurring during the lifetime of the contract.[44]

It is the oft-repeated rule, however, that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[45] As such, Tanawan must present concrete proof showing that he acquired or contracted the injury or illness that resulted to his disability *during the term of his employment contract*.[46] Proof of this circumstance was particularly crucial in view of his non-reporting of the injury to the petitioner. Yet, he did not present any proof of having sustained the eye injury during the term of his contract. All that he submitted was his bare allegation that his eye had been splashed with some thinner while he was on board the vessel. He also did not adduce any proof demonstrating that the splashing of thinner could have caused the retinal detachment with vitreous hemorrhage. At the very least, he should have adduced proof that would tie the accident to the eye injury. We note at this juncture that even the certification by Dr. Bunuan provided no information on the possible cause of the eye injury.

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[43] The POEA SEC was amended in 2000 to include a proviso that the injury or illness must be "work-related."

[44] *Remigio v. National Labor Relations Commission, supra*, note 36, p. 205.

[45] *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 545.

[46] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 606-607.

Consequently, the claim for disability benefit for the eye injury is denied in view of Tanawan's non-reporting of the injury to the petitioner and of his failure to prove that the injury was sustained during the term of his employment.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review; and **DELETES** the award of US$20,900.00 as disability benefits for the eye injury.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 163026. August 29, 2012]

HEIRS OF ARCADIO CASTRO,[*] SR., represented by ARCADIO CASTRO, JR., *petitioners, vs.* **RENATO LOZADA, FELIPE CRUZ, ONOFRE INONCILLO, ALFREDO FRANCISCO, LIBERATO FRANCISCO, FELIPE DE LA CRUZ, HERNANDO HERRERA, GERARDO MIRANDA, FELIX INOVERO, ARCADIO IDAGO and RESTITUTO DE LA CRUZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMMONWEALTH ACT NO. 539; VESTED RIGHT; DEFINED.— A vested right is defined as one which is absolute,

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[*] Also referred to as Arcadio de Castro in some parts of the records.

complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny. To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.

2. REMEDIAL LAW; EVIDENCE; A PARTY CLAIMING A RIGHT GRANTED OR CREATED BY LAW MUST PROVE HIS CLAIM BY COMPETENT EVIDENCE.— A party claiming a right granted or created by law must prove his claim by competent evidence. He must rely on the strength of his evidence and not on the weakness of that of his opponent.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; COMMONWEALTH ACT NO. 539; PERSONAL CULTIVATION, REQUIRED.— [T]here was no retroactive application as regards to personal cultivation which requirement is embodied in x x x Section 1 of C.A. No. 539 x x x. Thus, LTA AO No. 2, series of 1956 merely reiterated or amplified the foregoing primary condition in the award of lots comprising private landed estates acquired by the Government for resale to qualified beneficiaries. x x x On the other hand, DAR AO No. 03-90 on the "Revised Rules and Procedures Governing Distribution and/or Titling of Lots in Landed Estates Administered by DAR" directs the MARO to review and evaluate the list of allocatees/awardees and conduct lot verification to determine whether they are still occupying and tilling the lots subject of Orders of Awards (OAs)/Certificate of Land Transfer (CLT). An awardee or allocatee who is not the cultivator/occupant, such as when he employs tenants prior to full payment of the cost of the lot, the MARO shall cancel the OA/CLT and issue a Certificate of Land Ownership Award (CLOA) to qualified *actual* cultivator/occupant.

4. POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; AGRARIAN REFORM POLICY; ELUCIDATED.— Whereas C.A. No. 539 enacted in 1940 authorized the Government to acquire private lands and to subdivide the same into home lots or small farms for resale to *bona fide* tenants,

occupants or private individuals who will work the lands themselves, the social mandate under the 1987 Constitution is even more encompassing as it commands "[t]he Congress [to] give [the] highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, x x x." To achieve such goal, "the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, *who are landless*, to own directly and collectively the land they till or, in the case of other farm workers, to receive a just share of the fruits thereof." A just distribution of all agricultural lands was undertaken by the State through Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), which was passed by Congress in 1988. It can thus be said that the 1987 Constitution has "a much more expanded treatment of the subject of land reform than was contained in past Constitutions." Moreover, C.A. No. 539 being a social legislation, this Court has previously declared that "in the construction of laws that find its origin in the social justice mandate of the Constitution," the constant policy is "to assure that its beneficient effects be enjoyed by those who have less in life." And in the words of former Chief Justice Ricardo M. Paras, Jr., "[C.A.] No. 539 was conceived to solve a social problem, not merely as a direct or indirect means of allowing accumulation of land holdings."

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN.— The rule is that in a petition for review, only questions of law may be raised for the reason that the Supreme Court is not a trier of facts and generally does not weigh anew the evidence already passed upon by the Court of Appeals.

6. ID.; ID.; ID.; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED RESPECT IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— [I]t is well settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the DAR Secretary, who, by reason of his official position, has acquired expertise in specific matters

within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.

APPEARANCES OF COUNSEL

Ramon N. Casanova for petitioners.
Valeriano D. Relo for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 is the Decision[1] dated March 30, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 56257 affirming the Decision[2] dated August 4, 1999 of the Office of the President (OP) which upheld the ruling of the Department of Agrarian Reform (DAR) giving due course to the applications to purchase of respondents as occupants/tillers of lands under the provisions of Commonwealth Act (C.A.) No. 539.

Respondents are the occupants/tillers of a rice land situated at Upig, San Ildefonso, Bulacan, designated as Lot No. 546, Cad 320-D with an aggregate area of 274,180 square meters, which is part of the Buenavista Estate. In April 1977, respondents filed their respective applications to purchase Lot No. 546 with the DAR-Bulacan Provincial Office. Since the 1940's, respondents recognized Arcadio Castro, Sr. as their landlord who claimed to be the original tenant of the land. However, records of the DAR Region III Office showed that the registered claimant of Lot No. 546 is one "Arcadio Cruz." Consequently, Land Inspector Rogelio I. Estrella reported to the Ministry of Agrarian Reform (MAR) District Officer that Lot No. 546

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[1] *Rollo*, pp. 40-50-A. Penned by Associate Justice Edgardo F. Sundiam (deceased) with Associate Justices Eubulo G. Verzola and Remedios Salazar-Fernando concurring.

[2] *Id.* at 60-67. The decision was rendered in O.P. Case No. 96-K-6651.

applied for by the respondents is disposable and recommended the issuance of corresponding clearance in favor of the applicants.[3]

The processing of respondents' applications was stalled due to the opposition of Arcadio Castro, Sr. who submitted photocopies of certain official receipts and the Affidavit executed by his sister-in-law, Jacobe[**] Galvez. In the said affidavit, Jacobe Galvez attested that upon the instruction of her brother-in-law, she paid on September 27, 1944 the "cost and rental" of Lot No. 546 in the amount of ₱5,091.80. Additional payments were supposedly made in 1961 in the amounts of ₱1,181.77 and ₱530.52. Jacobe Galvez further explained that while the receipts were issued in her name, her payments were made for and in behalf of her brother-in-law who actually owns the land and is the one receiving rentals or share in the harvest from the tenants.[4] Arcadio Castro, Sr. also submitted a Certification dated March 29, 1983 issued by MAR Bulacan District Office in Baliuag, Bulacan stating that per their records, Jacobe Galvez paid cost and rental of ₱5,091.80 under Official Receipt (OR) No. 5429266 dated September 27, 1944.[5] On November 25, 1982, respondents' applications and supporting documents were forwarded to Cesar C. Jimenez, Acting District Officer, Baliuag Bulacan.[6]

On April 22, 1983, Benjamin M. Yambao, Trial Attorney II of the Bureau of Agrarian Legal Assistance in Baliuag, Bulacan issued a Report[7] upholding the right of Arcadio Castro, Sr. over Lot No. 546 subject to compliance with further requirements of the MAR.

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[3] DAR records, pp. 115-126 and 160.

[**] Spelled as Jacove in some parts of the records.

[4] DAR records, p. 154.

[5] *Id.* at 173.

[6] *Id.* at 162.

[7] *Id.* at 171-172.

In 1989, it appears that Arcadio Castro, Sr. has voluntarily offered to sell his properties situated in the Buenavista Estate.[8] At this time also, respondents, who began doubting the ownership of Arcadio Castro, Sr., stopped paying rentals.

On June 19, 1990, Municipal Agrarian Reform Officer (MARO) Jose S. Danganan forwarded to Erlinda Pearl V. Armada, Provincial Agrarian Reform Officer (PARO) of Bulacan, the documents pertaining to the conflicting claims over the subject landholding. In his letter MARO Danganan stated –

> The undersigned upon review and evaluation of the documents submitted by Mr. Castro, has noted the following:
>
> 1. That, per certification of payment it appears that only the excess area of 31,300 square meters was paid by Jacobe Galvez sister of deceased Arcadio Castro Sr. sometime in 1961;
> 2. That, the total area of lot 546 is 274,180 square meters;
> 3. That, the xerox copy of official receipt submitted (O.R. No. 3664086) was blard [sic] and unreadable;
> 4. That, the report of Atty. Benjamin Yambao dated April 22, 1983 was based only on the certification of Mr. Oscar M. Trinidad wherein, the actual payment made by Jacobe Galvez is only ₱1,181.77 representing 31,300 square meters only;
> 5. That, no application nor any documents (Order of Award, Application to Purchase) to support the claim of Mr. Castro was submitted[;]
> 6. That, no receipt of payment on the remaining area of lot 546 was presented/submitted.
>
> In view of the above facts, the undersign *[sic]* honestly believe that the Legal Affairs Division is more in a position to review and resolve the said conflict.[9]

On December 20, 1990, Atty. Yambao, as directed by PARO Armada, reported on his findings, maintaining his earlier finding

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[8] *Id.* at 163-165.

[9] *Id.* at 150.

that Arcadio Castro, Sr. has already acquired a vested right over Lot 546 by paying for the same in 1944 and 1961, the latter payment having been made for the increase in area of 31,300 square meters after the final survey. Citing the letter of OIC Trinidad, Atty. Yambao stated that Lot 546 was listed in the name of "Arcadio Cruz" instead of "Arcadio Castro, Sr."[10]

On November 14, 1990, Legal Officer II Jose R. Joven of the Legal Assistance Division of the PARO rendered a legal opinion stating that: (1) there is no evidence or public document to show that registrant "Arcadio Cruz" and claimant Arcadio Castro, Sr. are one and the same person, and no legal action was taken to correct the discrepancy in name as to vest unto the claimant legal personality to be the proper party-in-interest; (2) the recognition and giving of rentals by tenant-applicants to Arcadio Castro, Sr. and subsequently to his heirs for several years, do not constitute estoppel; (3) granting without admitting that "Arcadio Cruz" and Arcadio Castro, Sr. are one and the same person, the latter was more than compensated by the payments made by the tenants who are still immersed in poverty; (4) payments made by Jacobe Galvez did not specify the lot for which these were intended, considering that Jacobe Galvez, Nieves Castro and Arcadio Castro, Sr. were all registrants over several lots, and also because from the payment for "excess area" made by Jacobe Galvez it cannot be presumed that it is one for the main parcel absent any documentary evidence; and (5) in case of doubt, it is more in keeping with justice and equity to resolve the issue in favor of the actual tenants of the land. Said office thus recommended that respondents' application over Lot 546 may be processed subject to guidelines provided in Administrative Order (AO) No. 3, series of 1990.[11]

On May 16, 1991, DAR Regional Director Antonio M. Nuesa issued the following Order[12]:

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[10] *Id.* at 178, 180.

[11] *Id.* at 138-139.

[12] CA *rollo*, pp. 79-80.

WHEREFORE, premises considered, Order is hereby issued:

1. Declaring Lot No. 546, Cad 320-D, Case I, Buenavista Estate vacant;

2. Rejecting the claims of the heirs of Arcadio Castro, Sr., to the lot;

3. Giving due course to the applications of Renato Lozada and his co-applicants.

SO ORDERED.[13]

The Regional Director noted that the records do not show that efforts were exerted by Arcadio Castro, Sr. or his heirs to rectify what they claimed was an error in the listing of Arcadio Cruz as tenant of the land. While the tenant-applicants recognized Arcadio Castro, Sr. as their landlord, such acquiescence does not bind the DAR. Regarding the payments made by Jacobe Galvez in her name but which she later disclaimed in favor of her brother-in-law, the Regional Director found it not credible. Arcadio Castro, Sr.'s hiring of tenants was also found to be in contravention of AO No. 3, series of 1990, which is applicable to all landed estates. It was further noted that Arcadio Castro, Sr. appears in the records of the Municipal Assessor of San Rafael, Bulacan as declared owner of five other parcels of land.

The heirs of Arcadio Castro, Sr. represented by Arcadio Castro, Jr., filed a motion for reconsideration which was treated as an appeal by the Office of the DAR Secretary.

In his Order[14] dated August 12, 1996, Secretary Ernesto D. Garilao affirmed the Regional Director's ruling. Secretary Garilao concurred with the Regional Director's finding that Arcadio Castro, Sr., assuming him to be the *bona fide* tenant of Lot 546, had violated Land Tenure Administration (LTA) AO No. 2, series of 1956 when he leased the subject landholding already allocated to him without prior consent of the DAR.

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[13] *Id.* at 80.

[14] *Id.* at 72-78.

Citing the investigation report of Land Inspector-Designate Rogelio I. Estrella, the *Sinumpaang Salaysay* of the tenants-applicants and the Joint *Sinumpaang Salaysay* of *barangay kagawads* Renato Inovero and Luisito Sabarriaga confirming that it is the tenants-applicants who are in possession and actual cultivators of Lot 546, Secretary Garilao ruled that Arcadio Castro, Sr. failed to comply with the requirement of personal cultivation under LTA AO No. 2, series of 1956. The arguments on non-retroactivity of administrative rules and regulations, as well as Arcadio Castro, Sr.'s alleged vested right to acquire Lot 546, were rejected by Secretary Garilao who ruled that the tenant-applicants have the right of preference to purchase their respective portions of the said landholding.

Dissatisfied, the heirs of Arcadio Castro, Sr. appealed to the OP which dismissed their appeal. The OP declared that the assailed ruling is in accord with the policy of giving preference to the landless under C.A. No. 539 which is a social legislation. Considering that Arcadio Castro, Sr., as found by the DAR officials, is already the registered owner of several other real properties, Lot 546, applied for by the tenants-tillers who are landless, should therefore be awarded to the latter.[15]

The OP likewise denied the motion for reconsideration filed by the heirs of Arcadio Castro, Sr. who then elevated the case to the CA in a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

By Decision dated March 30, 2004, the CA concurred with the finding of the OP and DAR that Arcadio Castro, Sr. and his heirs failed to show that they personally cultivated the subject landholding. Neither did Arcadio Castro, Sr. acquire a vested right over Lot 546 by payments allegedly made on his behalf by Jacobe Galvez, the amount of which was found by DAR to be insufficient and no document or application whatsoever supports the claim of Arcadio Castro, Sr. The CA also sustained the OP and DAR in ruling that Arcadio Castro, Sr. should be

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[15] *Id.* at 64-71.

disqualified from claiming Lot 546 as he already is the declared owner of several other properties. Finally, the CA held that the award of Lot 546 to the tenants-applicants is consistent with the policy under the 1987 Constitution upholding the right of landless farmers and farm workers to own directly or collectively the lands they till, and the State's duty to undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as Congress may prescribe.[16]

Before this Court, petitioners assail the CA in affirming the ruling of the OP and DAR that Arcadio Castro, Sr. has not acquired a vested right over Lot 546, which is erroneous and illegal being based on the report of MARO Jose S. Danganan which is incomplete and defective. Petitioners averred that the fact that MARO Danganan at the time had no record of legal opinions concerning the subject landholding was admitted by him during the September 11, 1990 meeting. Petitioners thus contend that the DAR Secretary's reliance on the baseless report by the MARO violated their constitutional right to due process as laid down in the case of *Ang Tibay v. CIR*[17] declaring that the tribunal must consider the evidence presented and that the decision rendered must be on the evidence presented at the hearing and to use authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. They claim that the DAR Secretary ignored vital documentary evidence showing that Arcadio Castro, Sr. was really the listed claimant of Lot 546 and that he had made payments for it.

Petitioners argue that contrary to the conclusions of the DAR Secretary and OP, Arcadio Castro, Sr. had the legal and equitable title to Lot 546 since the receipt by the government of payments made by him resulted in a perfected contract of sale between them over the said lot. Further, petitioners contend that independent of such contract of sale, Arcadio Castro, Sr. obtained legal title over Lot 546 by virtue of acquisitive prescription

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[16] *Rollo,* pp. 44-50-A.

[17] 69 Phil. 635 (1940).

from the time he paid for it in 1944 and has since possessed it adversely, openly and publicly. In any event, petitioners impute bad faith on the part of respondents who, after all the years of having a tenancy agreement with Arcadio Castro, Sr. and subsequently his heirs, would later repudiate the same and question the title of the landowner. They stress that under Section 2 (b), Rule 131 of the Rules of Court, a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of tenant and landlord between them.

As to the qualifications of Arcadio Castro, Sr. as the original tenant under C.A. No. 539, petitioners argue that assuming LTA AO No. 2, series of 1956 has retroactive application, it must be presumed that official duty had been regularly performed so that by the government's acceptance of payments, it may be presumed that they found him to possess all qualifications set by law for the purchase of Lot 546. Hence, it is a clear blunder on the part of the CA to uphold the erroneous findings of the DAR Secretary that Arcadio Castro, Sr. violated Section 21 of LTA AO No. 2, series of 1956. Petitioners assert that at the time respondents applied for Lot 546 in 1977, the said rule applies to them but not to Arcadio Castro, Sr. because the latter was no longer a "claimant" or "applicant" but rather the legal or equitable owner of the land.

Petitioners also stress that C.A. No. 539 does not impose any restrictions on the exercise of the rights and attributes of ownership of tenants who purchase and acquire land under Section 1 thereof. It was therefore erroneous for the DAR Secretary to conclude that Arcadio Castro, Sr.'s act of leasing the subject landholding allocated to him without the prior consent of the DAR is a violation of LTA AO No. 2, series of 1956, with the effect of cancellation of the agreement to sell executed by the government in favor of the transferor or assignor, the reversion of the lot covered thereby and the forfeiture of all payments made to the government. Such conclusion is based on the erroneous assumption that LTA AO No. 2 is applicable to tenants who have already purchased and acquired lands under C.A. No. 539.

From the facts established, the Court is presented with the following issues for resolution: (1) whether Arcadio Castro, Sr. acquired a vested or preferential right over Lot 546; (2) whether LTA AO No. 2, series of 1956 was retroactively applied in this case; and (3) whether the DAR and OP erred in giving due course to the applications of respondents.

We deny the petition.

A vested right is defined as one which is absolute, complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency.[18] The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny. To be vested, a right must have become a title—legal or equitable—to the present or future enjoyment of property.[19]

In this case, the DAR and OP rejected petitioners' claim of a vested right anchored on the payments made in 1944 and 1961 by Jacobe Galvez allegedly for Lot 546 and in behalf of Arcadio Castro, Sr. The DAR Secretary's finding that petitioners failed to prove that the registered claimant of said land, "Arcadio Cruz" and Arcadio Castro, Sr. are one and the same person is based on the fact that Arcadio Castro, Sr. and his heirs never exerted efforts to correct the supposed error in the LTA/DAR files, and the absence of any document to show that Arcadio Castro, Sr. filed an application to purchase Lot 546. These findings of fact are binding upon the courts and may not now be disturbed unless it can be shown that the official concerned acted arbitrarily or with grave abuse of discretion.[20]

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[18] *Bernabe v. Alejo*, G.R. No. 140500, January 21, 2002, 374 SCRA 180, 186.

[19] *Go, Jr. v. Court of Appeals*, G.R. No. 172027, July 29, 2010, 626 SCRA 180, 199.

[20] *Galvez v. Vda. de Kangleon*, No. L-17197, September 29, 1962, 6 SCRA 162, 169.

Perusing the records, we find that the photocopies of OR Nos. 3664087 and 3664088 are unreadable,[21] the Certification[22] dated March 15, 1976 issued by Cesar C. Jimenez of Agrarian Reform Team II No. 03-11-092-A based on said receipts indicated payment of only ₱1,181.77 in the name of Jacobe Galvez, the letter[23] dated March 8, 1983 of Oscar M. Trinidad indicated payments of ₱1,712.29 also based on the same receipts, and the Certification[24] dated March 29, 1983 issued by Corazon P. del Rosario (Accountant I, MAR Bulacan District Office) stated only that Jacobe Galvez paid in 1944 the amount of ₱5,091.80 as cost and rental under OR No. 5429266 without any reference to Lot 546 of the Buenavista Estate and without any copy of such receipt attached to it. Were it true, indeed, as petitioners claimed, that MARO Danganan simply did not have complete records before him, petitioners could have submitted those documents to the DAR Secretary or attached them to their petition for review before the OP. But except for their bare allegation of violation of due process with the non-consideration of documentary evidence, petitioners have not adduced competent proof that Arcadio Castro, Sr. or his heirs had made full payment for Lot 546. As it is, petitioners failed to present any document to show that Arcadio Castro, Sr. filed an application to purchase or have a contract to sell executed by the government in his favor. From the MARO, to PARO and DAR Secretary, petitioners' evidence were duly considered and evaluated by said officials and all were one in concluding that Arcadio Castro, Sr. has not acquired any vested right over the subject land.

A party claiming a right granted or created by law must prove his claim by competent evidence. He must rely on the strength of his evidence and not on the weakness of that of his opponent.[25]

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[21] DAR records, p. 169.

[22] *Id.* at 170.

[23] *Id.* at 141.

[24] *Id.* at 173.

[25] *Pornellosa v. Land Tenure Administration*, No. L-14040, January 31, 1961, 1 SCRA 375, 379.

The petitioners having failed to prove their right to acquire Lot 546 under C.A. No. 539, they cannot compel the DAR to convey the lot to them. Hence, no reversible error was committed by the CA in sustaining the DAR Secretary's findings and conclusions as affirmed by the OP.

We likewise find no arbitrariness in the CA's affirmance of the DAR and OP's ruling that the requirement of personal cultivation under LTA AO No. 2, series of 1956 applies to Arcadio Castro, Sr. Indeed, even assuming that Arcadio Castro, Sr. was actually the registered claimant on Lot 546, his act of entering into tenancy contracts with respondents prior to the award of the land to him without the prior consent of LTA/ DAR violated the said AO.

Contrary to petitioners' submission, there was no retroactive application as regards to personal cultivation which requirement is embodied in the law itself. Section 1 of C.A. No. 539 explicitly provides that:

> SECTION 1. The President of the Philippines is authorized to acquire private lands or any interest therein, through purchase or expropriation, and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their *bona fide* tenants or occupants or to private individuals ***who will work the lands themselves*** and who are qualified to acquire and own lands in the Philippines. (Emphasis supplied.)

Thus, LTA AO No. 2, series of 1956 merely reiterated or amplified the foregoing primary condition in the award of lots comprising private landed estates acquired by the Government for resale to qualified beneficiaries. The pertinent provisions of said AO are herein reproduced:

> SECTION 14. ***Persons Qualified to Purchase: Number of Lots Granted.*** — Subject to the provisions of Section 16 hereof, any private individual who is qualified to acquire and own lands in the Philippines and **who will personally cultivate and/or occupy the lot or lots which may be sold to him**, may be allowed to purchase not more than one (1) home lot and/or farm lot except that in case of farm lots with areas less than six (6) hectares, more than one (1)

lot may be purchased provided, however, that the total area of the lots which may be sold to one person shall not exceed six (6) hectares.

x x x x x x x x x

SECTION 21. ***Transfer of Encumbrance of Rights.*** — A person having a right of preference to purchase a subdivision lot shall not be allowed to transfer, assign, alienate or encumber said right and any transfer, assignment, alienation or encumbrance made in violation of this prohibition shall be null and void. A *bona-fide* tenant, however, may transfer, assign, alienate or encumber his leasehold rights over a subdivision lot to persons who will personally cultivate and/or occupy said lot and are qualified to acquired and own lands in the Philippines **with the prior written consent of the Chairman of the Land Tenure Administration;** x x x

x x x Any transfer, assignment, alienation or encumbrance made without the approval of the Chairman of the Land Tenure Administration, as herein provided, is null and void and shall be **sufficient ground for the Chairman of the Land Tenure Administration to cancel the agreement to sell** executed in favor of the transferor or assignor, and to order the reversion of the lot covered thereby and the forfeiture of all payments made on account thereof to the government. Said payments shall be considered as rentals for the occupation of said lot by the transferor and as payment for administration expenses.

x x x x x x x x x

SECTION 24. ***Conditions in Agreements to Sell, Deeds of Sale and Torrens Title.*** — **It shall be a condition in all agreements to sell** and deeds of sale covering lots acquired under these rules and regulations **that said lots shall be personally occupied and/or cultivated by the purchasers thereof.** x x x A purchaser of a farm lot who shall fail to start cultivation of said lot within six (6) months after the execution of his agreements to sell or deed of sale therefor shall be deemed not to have complied with said condition.

x x x x x x x x x

SECTION 25. ***Violation of Any of the Conditions in the Preceding Section; Its Effect.*** — The violation of any of the conditions set forth in the preceding section **shall be sufficient ground for the Chairman of the Land Tenure Administration to cancel an agreement to sell or deed of sale, and to order the reversion of**

the lot covered thereby and the forfeiture of all payments made on account thereof to the government. In case, however, a transfer certificate of title has already been issued, the violation of any of said conditions shall be sufficient ground for the Chairman of the Land Tenure Administration to initiate and prosecute the proper action in court for the cancellation of said title and for the reversion of the lot involved to the government. (Emphases supplied.)

On the other hand, DAR AO No. 03-90 on the "Revised Rules and Procedures Governing Distribution and/or Titling of Lots in Landed Estates Administered by DAR" directs the MARO to review and evaluate the list of allocatees/awardees and conduct lot verification to determine whether they are still occupying and tilling the lots subject of Orders of Awards (OAs)/Certificate of Land Transfer (CLT).[26] An awardee or allocatee who is not the cultivator/occupant, such as when he employs tenants prior to full payment of the cost of the lot, the MARO shall cancel the OA/CLT and issue a Certificate of Land Ownership Award (CLOA) to qualified *actual* cultivator/occupant. DAR AO No. 03-90 also laid down the following qualifications of a beneficiary in these landed estates:

V. Qualifications of a beneficiary are as follows:

1. Landless;

2. Filipino citizen;

3. **Actual occupant/tiller** who is at least 15 years of age or head of the family at the time of filing of application; and

4. Has the willingness, ability and aptitude to cultivate and make the land productive. (Emphasis supplied.)

Since Arcadio Castro, Sr. and his heirs (petitioners) were not the actual occupants or tillers of Lot 546 and merely employed tenants (respondents) to work on said land, the CA did not err in sustaining the ruling of the DAR and OP. Thus, even assuming Arcadio Castro, Sr. to be the legitimate claimant of Lot 546,

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[26] DAR AO No. 03-90, VII (Operating Procedures), A, 1.2.

petitioners have no right of preference in the acquisition of said land as they failed to comply with the requirement of personal cultivation. As correctly observed by the OP, from the admission by petitioners that they leased the lands to the respondents in 1955, petitioners continued the lease even after LTA AO No. 2 already took effect. The OP likewise found no impairment of rights in applying retroactively the implementing rules because these are merely enforcing C.A. No. 539 which was already in effect in 1940.

It must also be mentioned that this case does not fall under the exceptional circumstances when the hiring of laborers and employment of tenants will not result in the cancellation of agreements to sell or orders of award under C.A. No. 539. Assuming Arcadio Castro, Sr. was indeed the original listed claimant/tenant of the land and the real "Arcadio Cruz," evidence on record clearly established that Arcadio Castro, Sr. had never been an awardee or allocatee. In fact, investigation by DAR officials revealed that there was not even any application to purchase filed by Arcadio Castro, Sr. while the supposed official receipts issued in 1944 to Jacobe Galvez did not indicate the payments as intended for Lot 546 and which payments are insufficient for the entire area of said land.

There being no agreement to sell or order of award yet issued over Lot 546, DAR officials declared them available for disposition to qualified beneficiaries. Since Arcadio Castro, Sr. was not an *awardee* or allocatee, this case clearly falls under the general rule of personal cultivation as requirement to qualify for award of lots under C.A. No. 539. As we held in *Vitalista v. Perez*:[27]

> In this case, the general rule requires personal cultivation in accordance with LTA Administrative Order No. 2 and DAR Administrative Order No. 3, Series of 1990. However, Land Authority Circular No. 1, Series of 1971 clearly makes three exceptions on the personal cultivation requirement in cases where land is acquired

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[27] G.R. No. 164147, June 16, 2006, 491 SCRA 127, 146.

under C.A. No. 539: (1) when the **awardee or promisee** dies; or (2) when the awardee or promisee is physically incapacitated; or (3) when the land is fully paid for but the government fails to issue the corresponding deed of sale. By specifying these excepted cases and limiting them to three, the said circular recognizes that outside these exceptions, **any deed of sale or agreement to sell involving lands acquired under C.A. No. 539 should be cancelled in cases where the awardee fails to comply with the requirement of personal cultivation.** (Emphasis and underscoring supplied.)

Finally, the Court holds that no reversible error was committed by the CA when it ruled that the order of DAR Regional Director giving due course to the application of respondents is consistent with the agrarian reform policy under the 1987 Constitution. Whereas C.A. No. 539 enacted in 1940 authorized the Government to acquire private lands and to subdivide the same into home lots or small farms for resale to *bona fide* tenants, occupants or private individuals who will work the lands themselves, the social mandate under the 1987 Constitution is even more encompassing as it commands "[t]he Congress [to] give [the] highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, x x x."[28]

To achieve such goal, "the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, *who are landless*, to own directly and collectively the land they till or, in the case of other farm workers, to receive a just share of the fruits thereof." A just distribution of all agricultural lands was undertaken by the State through Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), which was passed by Congress in 1988. It can thus be said that the 1987 Constitution has "a much more expanded treatment of the subject of land reform than was contained in past Constitutions."[29]

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[28] CONSTITUTION, Art. XIII, Section 1.

[29] Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 ed., p. 1198.

Moreover, C.A. No. 539 being a social legislation, this Court has previously declared that "in the construction of laws that find its origin in the social justice mandate of the Constitution," the constant policy is " to assure that its beneficient effects be enjoyed by those who have less in life."[30] And in the words of former Chief Justice Ricardo M. Paras, Jr., "[C.A.] No. 539 was conceived to solve a social problem, not merely as a direct or indirect means of allowing accumulation of land holdings."[31] In this sense, the law discourages absentee "tenants" or lessees. So it is in this case, the DAR found it more in keeping with the policy of the law to give preference to respondents who are *landless tenants* (or sub-lessees) of Arcadio Castro, Sr. and later his heirs, and *actual tillers* of Lot 546 in Buenavista Estate, over Arcadio Castro, Sr. who may have been the original "tenant" but an absentee one and who has other parcels of land declared in his name.

That the respondents are actual tillers and qualified beneficiaries under C.A. No. 539 and its implementing rules — to the extent of the portions of Lot 546 they respectively occupy and cultivate for decades already — who should be given preference in the distribution of said land, is a factual question beyond the scope of this petition. The rule is that in a petition for review, only questions of law may be raised for the reason

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Sec. 4, Art. XIII reads in part:

"The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. x x x"

[30] *Tañag v. The Executive Secretary,* No. L-30223, February 27, 1971, 37 SCRA 806, 811, cited in *Rosario v. Court of Appeals,* G.R. No. 89554, July 10, 1992, 211 SCRA 384, 388.

[31] See Dissenting Opinion of *CJ* Paras in *Bernardo, et al. v. Bernardo, et al.,* 96 Phil. 202, 215 (1954).

that the Supreme Court is not a trier of facts and generally does not weigh anew the evidence already passed upon by the Court of Appeals.[32]

Finally, it is well settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence.[33] The factual findings of the DAR Secretary, who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.[34] In this case, petitioners utterly failed to show justifiable reason to warrant the reversal of the decision of the DAR Secretary, as affirmed by the OP and the CA.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated March 30, 2004 of the Court of Appeals in CA-G.R. SP No. 56257 is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

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[32] *National Power Corporation v. Court of Appeals*, G.R. No. 124378, March 8, 2005, 453 SCRA 47, 53-54.

[33] *Alangilan Realty & Development Corporation v. Office of the President*, G.R. No. 180471, March 26, 2010, 616 SCRA 633, 644, citing *Department of Agrarian Reform v. Samson*, G.R. Nos. 161910 & 161930, June 17, 2008, 554 SCRA 500, 511.

[34] *Id.*

THIRD DIVISION

[G.R. No. 166660. August 29, 2012]

DOROTEA CATAYAS, *petitioner, vs.* **HON. COURT OF APPEALS, SPECIAL FORMER TWENTIETH (20TH) DIVISION, CEBU CITY, HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 58, NEGROS OCCIDENTAL, HON. PRESIDING JUDGE OF THE MUNICIPAL TRIAL COURT IN CITIES, ESCALANTE CITY, NEGROS OCCIDENTAL and THE INTESTATE ESTATE OF JUAN CAMINOS, represented by FELOMINO CAMINOS, PERLA VARCA, CRISPINA ESPARCIA and AMADO PARREÑO, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING, DEFINED.—** "Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari.* It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances, and must raise identical causes of actions, subject matter, and issues."

2. **ID.; ID.; ID.; WHEN PRESENT.—** Forum shopping exists where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties representing the same interests in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.

3. ID.; ID.; RULE AGAINST FORUM SHOPPING; VIOLATION THEREOF RESULTS IN THE DISMISSAL OF A CASE.— The filing of an action simultaneously with another, involving the same resolutions, is an act of malpractice precisely prohibited by the rules against forum shopping because it adds to the congestion of the dockets of the Court, trifles with the Court's rules, and hampers the administration of justice. x x x "The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case."

APPEARANCES OF COUNSEL

Edgardo J. Mayol for petitioner.
Linus G. Abaquin for private respondents.

R E S O L U T I O N

MENDOZA, *J.*:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking the reversal of the April 30, 2004[1] and October 25, 2004[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 83191, which denied petitioner Dorotea Catayas' *(Catayas)* second motion for extension of time to file petition. The October 25, 2004 Resolution denied her motion for reconsideration thereof.

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[1] *Rollo*, pp. 159-160. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Estela M. Perlas-Bernabe (now member of this Court) and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 220-221.

The Facts:

Juan Caminos *(Caminos)* was the registered owner of several real properties located in Escalante City, Negros Occidental, specifically: Lot No. 3928 covered by Original Certificate of Title *(OCT)* No. N-993; Lot No. 2466, covered by OCT No. N-1008; and Lot No. 3924, covered by OCT No. N-991.

When Caminos died, the administrators of his estate filed with the Municipal Trial Court in Cities, Escalante City, Negros Occidental *(MTCC)* a complaint for ejectment against several individuals *(defendants)* who were occupying the above-stated real properties. One of the defendants was Catayas, who was occupying Lot No. 3928. For failure of the defendants to show their legal right to occupy the subject lot, the MTCC, on December 18, 2001, rendered a judgment[3] ordering the defendants, including Catayas, to vacate the subject lot and to turn over the possession of the estate of Caminos to the administrators.

On appeal, the Regional Trial Court, Branch 58, San Carlos City, Negros Occidental *(RTC)*, in its Decision,[4] dated December 4, 2002, affirmed *in toto* the Decision of the MTCC.

On March 31, 2004, Catayas filed before the CA, a motion[5] for extension of time to file a petition. In its Resolution, dated April 20, 2004, the CA granted the motion and gave Catayas a 15-day extension or until April 2, 2004 within which to file it.

On April 21, 2004, Catayas filed a *second* motion for extension of time to file the petition. This time, the CA, in its April 30, 2004 Resolution, denied the motion for being violative of Section 1, Rule 42 of the Rules of Court, which generally allowed only one extension, reasoning out that the right to appeal was a statutory right that must be exercised only in a manner provided by law. The CA observed that Catayas was represented

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[3] *Id.* at 81-98.

[4] *Id.* at 99-116.

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

by two counsels, thus, the inability of one counsel to do the pleadings within the time specified by law was not a compelling reason to grant another extension because Catayas had another counsel who could have completed and filed the petition.

Catayas filed a motion for reconsideration, but it was denied in the October 25, 2004 Resolution.[6]

On February 1, 2005, Catayas filed this petition for *certiorari* contending that the CA acted with grave abuse of discretion when it denied the motion for second extension to file the petition for review. She asserts that the negligence of her counsel, who allowed the 15-day extension to lapse, should not bind her. She claims that she was neither a lawyer nor a law student; thus, she did not know how detrimental to her case was the failure of her counsel to file the petition within the time allowed by law.

In their memorandum,[7] the private respondents moved for the dismissal of the Petition on the ground that Catayas was engaging in forum shopping. They claimed that Catayas had previously filed a petition for review under Rule 45 before this Court, docketed as G.R. No. 166396, questioning the same CA resolutions which was already denied by the Court in its Resolution, dated January 24, 2005.

The Court resolves to dismiss the petition.

"Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances,

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[6] *Id.* at 220-221.

[7] *Id.* at 456-477.

and must raise identical causes of actions, subject matter, and issues."[8]

Forum shopping exists where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties representing the same interests in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[9]

In this case, Catayas clearly violated the rule on forum shopping when she filed this petition before the Court on February 1, 2005. A verification of the records would show that Catayas indeed filed a petition for review before this Court on January 18, 2005, as claimed by the private respondents, involving the same parties and questioning the same resolutions issued by the CA in CA-G.R. SP No. 83191. It further disclosed that the said petition, docketed as G.R. No. 166396, was denied by the Court in its January 24, 2005 Resolution,[10] and became final and executory on March 9, 2005.[11] The filing of an action simultaneously with another, involving the same resolutions, is an act of malpractice precisely prohibited by the rules against forum shopping because it adds to the congestion of the dockets of the Court, trifles with the Court's rules, and hampers the administration of justice.[12]

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[8] *Cruz v. Caraos*, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 520-521.

[9] *Sameer Overseas Placement Agency, Inc. v. Santos*, G.R. No. 152579, August 4, 2009, 595 SCRA 67, 76-77.

[10] *Rollo* (G.R. No. 166396), p. 98.

[11] *Id.* at 113.

[12] *Mendoza v. Comelec*, G.R. No. 191084, March 25, 2010, 616 SCRA 443, 502.

In the case of *Prubankers Association v. Prudential Bank & Trust Company*,[13] the Court explained the consequences of forum shopping in this wise:

> xxx. Where a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are pending, the defense of *litis pendencia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest.[14]

"The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case."[15]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

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[13] 361 Phil. 744 (1999).

[14] *Id.* at 755.

[15] *Dy v. Mandy Commodities Co., Inc.,* G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450.

[*] Per Special Order No. 1290 dated August 28, 2012.

[**] Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated additional member, per Special Order No. 1299 dated August 28, 2012.

THIRD DIVISION

[G.R. Nos. 166948-59. August 29, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **MEINRADO ENRIQUE A. BELLO, MANUEL S. SATUITO,[*] MINVILUZ S. CAMINA, JOELITA TRABUCO, ABELIO JUANEZA, ROSALINDA D. TROPEL, FELIPE Y. VILLAROSA, RAUL APOSAGA, HERMIE BARBASA and ROSARIO BARBASA-PERLAS,** *respondents.*

SYLLABUS

REMEDIAL LAW; SANDIGANBAYAN; JURISDICTION; THE SANDIGANBAYAN HAS JURISDICTION OVER THE "MANAGER" OF THE ARMED FORCES OF THE PHILIPPINES-RETIREMENT AND SEPARATION BENEFIT SYSTEM (AFP-RSBS); CASE AT BAR.— [T]he Sandiganbayan ruled that Armed Forces of the Philippines-Retirement and Separation Benefit System (AFP-RSBS), is a government-owned and controlled corporation, having been created by special law to perform a public function. However, the Sandiganbayan held that Section 4(a)(1)(g) cannot apply to the accused Bello who held the highest rank among those who allegedly conspired to commit the crime charged [since he] did not hold any of the government positions enumerated under that section, [thus:] Sec. 4. *Jurisdiction*. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving: a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

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[*] His name was omitted, through oversight or inadvertence, in the title of the Petition, but is actually a party to the case.

x x x (g) **Presidents, directors or trustees, or managers of government-owned or controlled corporations**, state universities or educational institutions or foundations. [T]he Sandiganbayan defined the word "manager" used above as one who has charge of a corporation and control of its businesses or of its branch establishments, and who is vested with a certain amount of discretion and independent judgment. The Sandiganbayan cited *Black's Law Dictionary, Revised 4th Ed., 1968* to support this definition. After a quick check of the same dictionary source but of a later edition, however, the Court finds this additional definition of "manager:" A manager is one who has charge of corporation and control of its businesses, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment. x x x Under this definition, respondent Bello would fit into the term "manager," he having charge of the AFP-RSBS Legal Department when the questioned transactions took place. x x x [A]s the OMB puts it, the enumeration of the officials in each of the categories in Section 4(a)(1) should be understood to refer to a range of positions within a government corporation. By the variety of the functions they perform, the "presidents, directors or trustees, or managers" cannot be taken to refer only to those who exercise "overall" control and supervision of such corporations. The directors or trustees of government-owned and controlled corporations do not, for example, exercise overall supervision and control; when they act collectively as a board, the directors or trustees merely lay down policies for the operating officers to implement. Since "managers" definitely do not have the same responsibilities as directors and trustees or as presidents, they belong to a distinct class of corporate officers that, under the definition above, has charge of a corporation's "divisions or departments." This brings Bello's position within the definition. x x x He is rather charged for offenses he committed in relation to his office, namely, that of a "manager" of the Legal Department of AFP-RSBS, a government-owned and controlled corporation. [Indeed] what is needed is that the public officials mentioned by law must commit the offense described in Section 3(e) of R.A. 3019 while in the performance of official duties or in relation to the office being held. Here, the OMB charged Bello of using his office as Legal Department Head to manipulate

the documentations of AFP-RSBS land acquisitions to the prejudice of the government.

APPEARANCES OF COUNSEL

Alcantara Law Office for Minviluz Camina.
Raul A. Muyco for Raul Aposaga.
Perlas and Macaldo Law Offices for Barbasa-Perlas and Hermie Barbasa.

D E C I S I O N

ABAD, *J.*:

This case is about the Sandiganbayan's criminal jurisdiction over graft charges filed against the Legal Department Head of the Armed Forces of the Philippines-Retirement and Separation Benefit System (AFP-RSBS) and his co-accused.

The Facts and the Case

In 1998 the Senate Blue Ribbon Committee (the Committee) inquired into alleged anomalies at the AFP-RSBS. After investigation, the Committee found that when acquiring lands, the AFP-RSBS would execute two sets of deeds of sale: one, an unnotarized bilateral deed of sale that showed a higher price and the other, a unilateral deed of sale that showed a discounted purchase price. The first would be kept by the AFP-RSBS Legal Department while the second would be held by the vendors. The latter would then use these unilateral deeds of sale in securing titles in the name of AFP-RSBS. This was done, according to the Committee, to enable the AFP-RSBS to draw more money from its funds and to enable the vendors to pay lesser taxes.

The Committee recommended to the Ombudsman (OMB) the prosecution of General Jose Ramiscal, Jr. (Ret.), former AFP-RSBS president, who signed the unregistered deeds of sale covering acquisitions of lands in General Santos, Tanauan, Calamba, and Iloilo for falsification of public documents or violation of Article 172, paragraph 1, in relation to Article 171,

paragraphs 4 to 6 of the Revised Penal Code (RPC), and violation of Republic Act (R.A.) 3019,[1] Sections 3(e) and 3(g).

Acting on the Committee's recommendation, the OMB filed with respect to the acquisition of lands in Iloilo City informations before the Sandiganbayan in Criminal Cases 26770-75 and 26826-31 against respondents Meinrado Enrique A. Bello, Manuel S. Satuito, Rosario Barbasa-Perlas, Hermie Barbasa, Minviluz Camina, Joelita Trabuco, Rosalinda Tropel, Felipe Villarosa, Abelio Juaneza, and Raul Aposaga for six counts of violation of R.A. 3019, Section 3(e), and six counts of falsification of public documents under Article 171, RPC.

Satuito and Bello filed a motion to dismiss and a motion to quash the informations on the ground that the Sandiganbayan had no jurisdiction over the case. On February 12, 2004 the Sandiganbayan granted the motions and ordered the remand of the records to the proper courts, hence, this petition by the People of the Philippines, represented by the OMB, which challenges such order.

The Issue Presented

The only issue presented in this case is whether or not the Sandiganbayan erred in holding that it has no jurisdiction over offenses involving the heads of the legal departments of government-owned and controlled corporations.

The Ruling of the Court

In its February 12, 2004 decision, the Sandiganbayan held that, not being a stock or non-stock corporation, AFP-RSBS cannot be regarded as a government-owned and controlled corporation. Consequently, respondent AFP-RSBS legal department officers did not fall under Section 4(a)(1)(g) of R.A. 8249 that defines the jurisdiction of the Sandiganbayan.[2] On motion for reconsideration by the prosecution, however, the Sandiganbayan changed its position and ruled that AFP-RSBS

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[1] Entitled ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[2] *Rollo,* pp. 55-56.

is after all a government-owned and controlled corporation, having been created by special law to perform a public function.

Still, the Sandiganbayan held that Section 4(a)(1)(g) cannot apply to the accused since Bello, who held the highest rank among those who allegedly conspired to commit the crime charged, did not hold any of the government positions enumerated under that section, the pertinent portion of which reads:

> Sec. 4. Section 4 of the same decree is hereby further amended to read as follows:
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> Sec. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
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> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> x x x x x x x x x
>
> (g) **Presidents, directors or trustees, or managers of government-owned or controlled corporations**, state universities or educational institutions or foundations. (Emphasis ours)

Notably, in its February 2, 2005 Resolution, the Sandiganbayan defined the word "manager" used above as one who has charge of a corporation and control of its businesses or of its branch establishments, and who is vested with a certain amount of discretion and independent judgment. The Sandiganbayan cited *Black's Law Dictionary, Revised 4th Ed., 1968* to support this definition.[3]

After a quick check of the same dictionary source but of a later edition, however, the Court finds this additional definition of "manager:"

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[3] *Id.* at 67.

A manager is one who has charge of corporation and control of its businesses, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment.[4]

The Sandiganbayan apparently overlooked the above definition that includes "divisions, or departments," which are corporate units headed by managers. The United States case of *Braniff v. McPherren*[5] also referred to "divisions" and "departments" in relation to the position of "manager." Under this definition, respondent Bello would fit into the term "manager," he having charge of the AFP-RSBS Legal Department when the questioned transactions took place.

In clarifying the meaning of the term "manager" as used in Section 4(a)(1)(g), the Sandiganbayan also invoked the doctrine of *noscitur a sociis*. Under this doctrine, a proper construction may be had by considering the company of words in which the term or phrase in question is founded or with which it is associated.[6] Given that the word "manager" was in the company of the words "presidents, directors or trustees," the clear intent, according to the Sandiganbayan, is to limit the meaning of the term "manager" to officers who have overall control and supervision of government-owned and controlled corporations.

But as the OMB puts it, the enumeration of the officials in each of the categories in Section 4(a)(1) should be understood to refer to a range of positions within a government corporation. By the variety of the functions they perform, the "presidents, directors or trustees, or managers" cannot be taken to refer only to those who exercise "overall" control and supervision of such corporations.

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[4] *Black's Law Dictionary* (5th ed., 1979), p. 865, citing *Braniff v. McPherren*, 177 Okl. 292, 58 P.2d 871, 872.

[5] *Supra, Braniff v. McPherren.*

[6] *Government Service Insurance System v. Commission on Audit*, G.R. No. 162372, October 19, 2011.

The directors or trustees of government-owned and controlled corporations do not, for example, exercise overall supervision and control; when they act collectively as a board, the directors or trustees merely lay down policies for the operating officers to implement. Since "managers" definitely do not have the same responsibilities as directors and trustees or as presidents, they belong to a distinct class of corporate officers that, under the definition above, has charge of a corporation's "divisions or departments." This brings Bello's position within the definition.

Respondent Bello also argues that the Sandiganbayan does not exercise jurisdiction over him because his rank at the time of the acts complained of was merely that of Police Superintendent in the Philippine National Police. But the criminal information does not charge him for offenses relating to the regular police work of a police officer of his rank. He is rather charged for offenses he committed in relation to his office, namely, that of a "manager" of the Legal Department of AFP-RSBS, a government-owned and controlled corporation.

What is needed is that the public officials mentioned by law must commit the offense described in Section 3(e) of R.A. 3019 while in the performance of official duties or in relation to the office being held.[7] Here, the OMB charged Bello of using his office as Legal Department Head to manipulate the documentations of AFP-RSBS land acquisitions to the prejudice of the government.

WHEREFORE, the Court **GRANTS** the petition, **REVERSES** the Sandiganbayan decision dated February 12, 2004 and resolution dated February 2, 2005 in Criminal Cases 26770-75 and 26826-31, and **DIRECTS** the Sandiganbayan to **REINSTATE** these cases, immediately **ARRAIGN** all the accused, and resolve accused Raul Aposaga's motion for reinvestigation.

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[7] Boado, L., *Compact Reviewer in Criminal Law*, 246 (2d ed. 2007).

SO ORDERED.

Peralta (Acting Chairperson),[**] *Villarama, Jr.,*[***] *Perez,*[****] and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 168856. August 29, 2012]

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **THE COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION LAWS; NATIONAL INTERNAL REVENUE CODE (NIRC); THE SECRETARY OF FINANCE HAS AUTHORITY TO PROMULGATE RULES AND REGULATIONS SUCH AS INVOICING REQUIREMENTS TO BE COMPLIED WITH BY ALL VAT-REGISTERED TAXPAYERS.— Section 244 of the NIRC explicitly grants the Secretary of Finance the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the tax code. Such rules and regulations "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields." Consequently, the invoicing requirements enumerated in Section

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[**] Per Special Order 1290 dated August 28, 2012.

[***] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1291 dated August 28, 2012.

[****] Designated Additional Member, per Special Order 1299 dated August 28, 2012.

4.108-1 of Revenue Regulations No. 7-95 must be observed by all VAT-registered taxpayers.

2. ID.; ID.; ID.; NEED FOR TAXPAYERS TO INDICATE IN THEIR INVOICES AND RECEIPTS THAT THEY ARE ZERO-RATED; FAILURE TO COMPLY WITH INVOICING REQUIREMENTS RESULTS IN DENIAL OF CLAIM FOR TAX REFUND/CREDIT.— The need for taxpayers to indicate in their invoices and receipts the fact that they are zero-rated or that its transactions are zero-rated became more apparent upon the integration of the abovequoted provisions of Revenue Regulations No. 7-95 in Section 113 of the NIRC enumerating the invoicing requirements of VAT-registered persons when the tax code was amended by Republic Act *(R.A.)* No. 9337. A consequence of failing to comply with the invoicing requirements is the denial of the claim for tax refund or tax credit, as stated in Revenue Memorandum Circular No. 42-2003.

3. ID.; TAX REFUNDS; STRICTLY CONSTRUED.— [T]he well-established rule is that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.

4. ID.; COURT OF TAX APPEALS (CTA); FINDINGS OF FACT AND THE DECISION OF THE CTA ARE GENERALLY CONCLUSIVE UPON THE SUPREME COURT.— The CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems. As such, its findings of fact are accorded the highest respect and are generally conclusive upon this Court, in the absence of grave abuse of discretion or palpable error. Its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.

APPEARANCES OF COUNSEL

Salvador Guevarra and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the April 19, 2005 Decision[1] and the July 8, 2005 Resolution[2] of the Court of Tax Appeals *En Banc (CTA-En Banc)* in CTA E.B. No. 11 (CTA Case No. 6255) entitled "*Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*."

The Facts

Petitioner Eastern Telecommunications Philippines, Inc. *(ETPI)* is a duly authorized corporation engaged in telecommunications services by virtue of a legislative franchise. It has entered into various international service agreements with international non-resident telecommunications companies and it handles incoming telecommunications services for non-resident foreign telecommunication companies and the relay of said international calls within the Philippines. In addition, to broaden the coverage of its distribution of telecommunications services, it executed several interconnection agreements with local carriers for the receipt of foreign calls relayed by it and the distribution of such calls to the intended local end-receiver.[3]

From these services to non-resident foreign telecommunications companies, ETPI generates foreign currency revenues which are inwardly remitted in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas to its US dollar accounts in banks such as the Hong Kong and Shanghai Banking Corporation, Metrobank and Citibank. The manner and mode of payments follow the international standard as set forth in the Blue Book

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[1] *Rollo,* pp. 57-87.

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

[3] *Id.* at 11-13.

or Manual prepared by the Consultative Commission of International Telegraph and Telephony.[4]

ETPI seasonably filed its Quarterly Value-Added Tax *(VAT)* Returns for the year 1999, but these were later amended on February 22, 2001, to wit:

Quarter	VAT Output	Zero-Rated Sales	Exempt Sales	Vat Input Domestic	Excess Input VAT
First	₱ 246,493.67	₱ 117,492,585.78	₱ 68,961,171.91	₱ 6,646,624.35	₱ 6,400,130.68
Second	396,701.57	406,216,049.26	238,424,702.46	5,955,933.54	11,959,362.65
Third	243,620.78	245,267,026.51	143,957,182.21	6,108,825.34	17,833,567.22
Fourth	975,939.54	279,851,242.11	164,256,063.38	6,759,948.00	23,617,575.67
Total	₱ 1,853,755.56	₱ 1,048,826,903.66	₱615,599,119.96	₱25,471,331.23	

Both ETPI and respondent Commissioner of Internal Revenue *(CIR)* confirmed the veracity of the entries under Excess Input VAT in the table above, pursuant to their Joint Stipulation of Facts and Issues dated June 13, 2001.[5]

Of the total excess input tax for the period from January 1999 to December 1999, ETPI claims that the following are allocable to its zero-rated transactions:[6]

Quarter	Excess Input Taxes Attributable to Zero-Rated Transactions
First	₱ 6,020,246.15
Second	5,394,646.08
Third	5,533,129.35
Fourth	6,122,890.17
Total	₱ 23,070,911.75

Believing that it is entitled to a refund for the unutilized input VAT attributable to its zero-rated sales, ETPI filed with the

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[4] *Id.* at 14, 150-151.

[5] *Id.* at 105-108 and 151.

[6] *Id.* at 133.

Bureau of Internal Revenue (*BIR*) an administrative claim for refund and/or tax credit in the amount of ₱ 23,070,911.75 representing excess input VAT derived from its zero-rated sales for the period from January 1999 to December 1999.[7]

On March 26, 2001, without waiting for the decision of the BIR, ETPI filed a petition for review before the Court of Tax Appeals *(CTA)* to toll the running of the two-year prescriptive period.[8]

In its Decision,[9] dated December 12, 2003, the Division[10] of the CTA *(CTA-Division)* denied the petition for lack of merit, finding that ETPI failed to imprint the word "zero-rated" on the face of its VAT invoices or receipts, in violation of Revenue Regulations No. 7-95. In addition, ETPI failed to substantiate its taxable and exempt sales, the verification of which was not included in the examination of the commissioned independent certified public accountant.

Aggrieved, ETPI elevated the case to the CTA-*En Banc*, which promulgated its Decision[11] on April 19, 2005 dismissing the petition and affirming the decision of the CTA-Division. The CTA-*En Banc* ruled that in order for a zero-rated taxpayer to claim a tax credit or refund, the taxpayer must first comply with the mandatory invoicing requirements under the regulations. One such requirement is that the word "zero-rated" be imprinted on the invoice or receipt. According to the CTA-*En Banc*, the

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[7] *Id.* at 16.

[8] *Id.* at 152.

[9] *Id.* at 149-160; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Juanito C. Castañeda, Jr.

[10] Unspecified.

[11] *Rollo*, pp. 57-87; penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy and Associate Justice Caesar A. Casanova with a dissenting opinion by Presiding Justice Ernesto D. Acosta which Associate Justice Lovell R. Bautista concurred with.

purpose of this requisite is to avoid the danger that the purchaser of goods or services may be able to claim input tax on the sale to it by the taxpayer of goods or services despite the fact that no VAT was actually paid thereon since the taxpayer is zero-rated. Also, it agreed with the conclusion of the CTA-Division that ETPI failed to substantiate its taxable and exempt sales.

ETPI filed a motion for reconsideration, but it was denied by the CTA-*En Banc* in its July 8, 2005 Resolution.[12]

Hence, this petition.

The Issues

ETPI presents the following grounds for the grant of its petition:

I

The CTA-*En Banc* erred when it sanctioned the denial of petitioner's claim for refund on the ground that petitioner's invoices do not bear the imprint "zero-rated," and disregarded the evidence on record which clearly establishes that the transactions giving rise to petitioner's claim for refund are indeed zero-rated transactions under Section 108(B)(2) of the 1997 Tax Code.

II

The CTA-*En Banc* erred when it denied petitioner's claim for refund based on petitioner's alleged failure to substantiate its taxable and exempt sales.

III

Petitioner presented substantial evidence that unequivocally proved petitioner's zero-rated transactions and its consequent entitlement to a refund/tax credit.

IV

In civil cases, such as claims for refund, strict compliance with technical rules of evidence is not required. Moreover, a mere preponderance of evidence will suffice to justify the grant of a claim.[13]

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

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

The central issue to be resolved in this case is whether ETPI's failure to imprint the word "zero-rated" on its invoices or receipts is fatal to its claim for tax refund or tax credit for excess input VAT.

The Court's Ruling

The petition is bereft of merit.

Imprinting of the word "zero-rated" on the invoices or receipts is required

ETPI argues that the National Internal Revenue Code of 1997 *(NIRC)* allows VAT-registered taxpayers to file a claim for refund of input taxes directly attributable to, or otherwise allocable to, zero-rated transactions subject to compliance with certain conditions.[14] Nowhere in the NIRC does it appear that the invoices or receipts must have been printed with the word "zero-rated" on its face or that failure to do so would result in the denial of the claim.[15] Such a requirement only appears in Revenue Regulations No. 7-95 which, ETPI insists, cannot prevail over a taxpayer's substantive right to claim a refund or tax credit for input taxes attributable to its zero-rated transactions.[16] Moreover, the lack of the word "zero-rated" on ETPI's invoices and receipts does not justify the outright denial of its claim for refund, considering that the zero-rated nature of the transactions has been sufficiently established by other equally relevant and competent evidence.[17] Finally, ETPI points out that the danger to be avoided by the questioned requirement, as mentioned by the CTA-*En Banc*, is more theoretical than real. This is because ETPI's clients for its zero-rated transactions are non-resident foreign corporations which are not covered by the Philippine VAT system. Thus, there is no possibility that they will be able

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[14] *Id.* at 381.

[15] *Id.* at 382.

[16] *Id.* at 386.

[17] *Id.* at 384.

to unduly take advantage of ETPI's omission to print the word "zero-rated" on its invoices and receipts.[18]

ETPI is mistaken.

Section 244 of the NIRC explicitly grants the Secretary of Finance the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the tax code. Such rules and regulations "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."[19]

Consequently, the following invoicing requirements enumerated in Section 4.108-1 of Revenue Regulations No. 7-95 must be observed by all VAT-registered taxpayers:

Sec. 4.108-1. *Invoicing Requirements.* – **All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show**:

1. the name, TIN and address of seller;
2. date of transaction;
3. quantity, unit cost and description of merchandise or nature of service;
4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;
5. **the word "zero-rated" imprinted on the invoice covering zero-rated sales**; and
6. the invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

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[18] *Id.* at 392.

[19] *Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo,* G.R. No. 160756, March 9, 2010, 614 SCRA 605, 639-640.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as a "VAT invoice." All purchases covered by invoices other than a "VAT Invoice" shall not give rise to any input tax. (Emphasis supplied)

The need for taxpayers to indicate in their invoices and receipts the fact that they are zero-rated or that its transactions are zero-rated became more apparent upon the integration of the abovequoted provisions of Revenue Regulations No. 7-95 in Section 113 of the NIRC enumerating the invoicing requirements of VAT-registered persons when the tax code was amended by Republic Act *(R.A.)* No. 9337.[20]

A consequence of failing to comply with the invoicing requirements is the denial of the claim for tax refund or tax credit, as stated in Revenue Memorandum Circular No. 42-2003, to wit:

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (*e.g.* failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer. (Emphasis supplied)

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[20] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010, 636 SCRA 166, 177-178.

In this regard, the Court has consistently held that the absence of the word "zero-rated" on the invoices and receipts of a taxpayer will result in the denial of the claim for tax refund. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[21] the Court affirmed the decision of the CTA denying a claim by petitioner for refund on input VAT attributable to zero-rated sales for its failure to print the word "zero-rated" on its invoices, ratiocinating that:

Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, **the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid.** If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.

Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund. (Emphases supplied)[22]

The pronouncement in *Panasonic* has since been repeatedly cited in subsequent cases, reiterating the rule that the failure of a taxpayer to print the word "zero-rated" on its invoices or receipts is fatal to its claim for tax refund or tax credit of input VAT on zero-rated sales.[23]

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[21] G.R. 178090, February 8, 2010, 612 SCRA 28.

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

[23] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 177127, October 11, 2010, 632 SCRA 517, 527; *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

Tax refunds are strictly construed against the taxpayer; ETPI failed to substantiate its claim

ETPI contends that there is no need for it to substantiate the amounts of its taxable and exempt sales because its quarterly VAT returns, which clearly show the amounts of taxable sales, zero-rated sales and exempt sales, were not refuted by the CIR.[24] As regards its accumulated input VAT paid on purchases of goods and service allocable to its zero-rated sales, ETPI asserts that its submission of invoices and receipts, as well as the verification of the commissioned independent certified public accountant, should be sufficient to support its claim for refund.[25]

The Court disagrees.

ETPI should be reminded of the well-established rule that tax refunds, which are in the nature of tax exemptions, are construed strictly against the taxpayer and liberally in favor of the government. This is because taxes are the lifeblood of the nation. Thus, the burden of proof is upon the claimant of the tax refund to prove the factual basis of his claim.[26] Unfortunately, ETPI failed to discharge this burden.

The CIR is correct in pointing out that ETPI is engaged in mixed transactions and, as a result, its claim for refund covers not only its zero-rated sales but also its taxable domestic sales and exempt sales. Therefore, it is only reasonable to require ETPI to present evidence in order to substantiate its claim for input VAT.[27]

Considering that ETPI reported in its annual return its zero-rated sales, together with its taxable and exempt sales, the CTA

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[24] *Rollo*, p. 395.

[25] *Id.* at 398-399.

[26] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, 500 Phil. 149, 163 (2005).

[27] *Rollo*, pp. 356-357.

ruled that ETPI should have presented the necessary papers to validate all the entries in its return. Only its zero-rated sales, however, were accompanied by supporting documents. With respect to its taxable and exempt sales, ETPI failed to substantiate these with the appropriate documentary evidence.[28] Noteworthy also is the fact that the commissioned independent certified public account did not include in his examination the verification of such transactions.[29]

The Court finds no cogent reason to disturb the decision of the tax court. The CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems.[30] As such, its findings of fact are accorded the highest respect and are generally conclusive upon this Court, in the absence of grave abuse of discretion or palpable error.[31] Its decisions shall not be lightly set aside on appeal, unless this Court finds that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.[32]

WHEREFORE, the petition is **DENIED.** The April 19, 2005 Decision and the July 8, 2005 Resolution of the Court of Tax Appeals *En Banc*, in CTA E.B. No. 11 (CTA Case No. 6255) are hereby **AFFIRMED.**

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[28] *Id.* at 75.

[29] *Id.* at 74.

[30] *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999).

[31] *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010, 634 SCRA 205, 213.

[32] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561-562.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173474. August 29, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO BELOCURA *Y* PEREZ,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PROTECTION AGAINST ILLEGAL ARREST, SEARCH AND SEIZURE; PROPRIETY OF WARRANTLESS ARREST, SEARCH AND SEIZURE.— No arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. So sacred are the right of personal security and privacy and the right from unreasonable searches and seizures that no less than the Constitution ordains in Section 2 of its Article III. x x x The consequence of a violation of the guarantees against a violation of personal security and privacy and against unreasonable searches and seizures is the exclusion of the evidence thereby obtained. This rule of exclusion is set down in Section 3(2), Article III of the Constitution. x x x Even so, the right against

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[*] Per Special Order No. 1290 dated August 28, 2012.

[**] Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated additional member, per Special Order No. 1299 dated August 28, 2012.

warrantless arrest, and the right against warrantless search and seizure are not absolute. There are circumstances in which the arrest, or search and seizure, although warrantless, are nonetheless valid or reasonable. Among the circumstances are those mentioned in Section 5, Rule 113 of the *Rules of Court*, which lists down when a warrantless arrest may be lawfully made by a peace officer or a private person. x x x On the other hand, the constitutional proscription against warrantless searches and seizures admits of the following exceptions, namely: (*a*) warrantless search incidental to a lawful arrest recognized under Section 13, Rule 126 of the *Rules of Court*; (*b*) seizure of evidence under plain view; (*c*) search of a moving vehicle; (*d*) consented warrantless search; (*e*) customs search; (*f*) stop-and-frisk situations (Terry search); and (*g*) exigent and emergency circumstances. In these exceptional situations, the necessity for a search warrant is dispensed with.

2. ID.; ID.; ID.; ID.; ID.; WHERE ACCUSED WAS CAUGHT *IN FLAGRANTE DELICTO* AS IN CASE AT BAR.— Belocura was caught *in flagrante delicto* violating Section 31 of Republic Act No. 4139 (*The Land Transportation and Traffic Code*). *In flagrante delicto* means *in the very act of committing the crime*. To be caught *in flagrante delicto* necessarily implies the positive identification of the culprit by an eyewitness or eyewitnesses. Such identification is a direct evidence of culpability, because it "proves the fact in dispute without the aid of any inference or presumption." Even by his own admission, he was actually committing a crime in the presence or within the view of the arresting policemen. Such manner by which Belocura was apprehended fell under the first category in Section 5, Rule 113 of the *Rules of Court*. The arrest was valid, therefore, and the arresting policemen thereby became cloaked with the authority to validly search his person and effects for weapons or any other article he might use in the commission of the crime or was the fruit of the crime or might be used as evidence in the trial of the case, and to seize from him and the area within his reach or under his control, like the jeep, such weapon or other article. The evident purpose of the incidental search was to protect the arresting policemen from being harmed by him with the use of a concealed weapon. Accordingly, the warrantless character of the arrest could not by itself be the basis of his acquittal.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL POSSESSION OF MARIJUANA; ELEMENTS.— The elements of illegal possession of *marijuana* under Republic Act No. 6425, as amended, are that: (*a*) the accused is in possession of an item or object that is identified to be *marijuana*, a prohibited drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. What must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself. This may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession.

4. ID.; ID.; ID.; CAN ONLY BE ESTABLISHED BY THE POLICE OFFICER WHO ACTUALLY RECOVERED THE MARIJUANA BRICKS IN CASE AT BAR.— Chief Insp. Divina who headed the team of policemen disclosed that it was PO2 Santos, a member of the team, who had discovered and had actually recovered the red plastic bag containing the bricks of *marijuana* from the jeep. x x x As the arresting officer who alone actually seized the *marijuana* bricks from Belocura's vehicle beyond the viewing distance of his fellow arresting officers, PO2 Santos was the Prosecution's only witness who could have reliably established the recovery from Belocura of the *marijuana* bricks contained in the red plastic bag labeled as "SHIN TON YON." Without PO2 Santos' testimony, Chief Insp. Divina's declaration of seeing PO2 Santos recover the red plastic bag from under the driver's seat of Belocura's jeep was worthless. The explanation why none of the other police officers could credibly attest to Belocura's possession of the *marijuana* bricks was that they were at the time supposedly performing different tasks during the operation. Under the circumstances, only PO2 Santos was competent to prove Belocura's possession.

5. ID.; ID.; ID.; CHAIN OF CUSTODY; BROKEN IN CASE AT BAR.— In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with

the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto. This is the reason why authentication and laying a foundation for the introduction of evidence are important. x x x The Prosecution thereby failed to establish the linkage between the bricks of *marijuana* supposedly seized by PO2 Santos from Belocura's jeep following his arrest and the bricks of *marijuana* that the Prosecution later presented as evidence in court. That linkage was not dispensable, because the failure to prove that the specimens of *marijuana* submitted to the forensic chemist for examination were the same *marijuana* allegedly seized from Belocura irreparably broke the chain of custody that linked the confiscated *marijuana* to the *marijuana* ultimately presented as evidence against Belocura during the trial. Proof beyond reasonable doubt demanded that unwavering exactitude must be observed in establishing the *corpus delicti* – the body of the crime whose core was the confiscated prohibited substances. Thus, every fact necessary to constitute the crime must be established.

6. REMEDIAL LAW; EVIDENCE; RELEVANCY.— It is basic under the *Rules of Court*, indeed, that evidence, to be relevant, must throw light upon, or have a logical relation to, the facts in issue to be established by one party or disproved by the other. The test of relevancy is whether an item of evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it would reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.

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 credibility of the evidence of the *corpus delicti* in a prosecution for illegal possession of *marijuana* under Republic Act No. 6425, as amended, depends on the integrity of the chain of custody of the *marijuana* from the time of its seizure until the time of its presentation as evidence in court. Short of that, the accused is entitled to an acquittal because the State fails to establish the guilt of the accused beyond reasonable doubt.

The Case

Reynaldo Belocura *y* Perez, a police officer charged with illegal possession of 1,789.823 grams of *marijuana* in violation of Republic Act No. 6425 (*Dangerous Drugs Act of 1972*), as amended by Republic Act No. 7659, was found guilty of the crime charged on April 22, 2003 by the Regional Trial Court (RTC) in Manila, and sentenced to suffer *reclusion perpetua* and to pay a fine of ₱500,000.00. [1]

On appeal, the Court of Appeals (CA) affirmed the conviction on January 23, 2006.[2] Hence, this final appeal for his acquittal.

Antecedents

Belocura was charged on April 13, 1999 by the Office of the City Prosecutor of Manila with a violation of Section 8 of Republic Act No. 6425, as amended by Republic Act No. 7659, in the Manila RTC through the information:

> That on or about March 22, 1999, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1)

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[1] Records, pp. 210-215.

[2] CA *Rollo*, pp. 132-140; penned by Associate Justice Aurora Santiago-Lagman (retired), with Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, since retired) and Associate Justice Rebecca Guia-Salvador, concurring.

plastic bag colored red and white, with label "SHIN TON YON", containing the following:

One (1) newspaper leaf used to wrap one (1) brick of dried marijuana fruiting tops weighing 830.532 grams;

One (1) newspaper leaf used to wrap one (1) brick of dried marijuana fruiting tops weighing 959.291 grams.

With a total weight of 1,789.823 grams, a prohibited drug.

Contrary to law.[3]

After Belocura pleaded *not guilty*,[4] the State presented three witnesses, namely: Insp. Arlene Valdez Coronel, Chief Insp. Ferdinand Ortales Divina, and SPO1 Gregorio P. Rojas. On the other hand, the Defense presented Belocura as its sole witness.

I
The State's Evidence

On March 22, 1999, at 11 o'clock in the morning, Chief Insp. Divina was in his office in the headquarters of the Western Police District (WPD) on United Nations Avenue in Manila when he received a call from a male person who refused to identify himself for fear of reprisal. The caller tipped him off about a robbery to be staged along Lopez Street, Tondo, Manila. After relaying the tip to his superior officer, he was immediately ordered to form a team composed of operatives of the District Intelligence Group and to coordinate with the Special Weapons and Attack Team (SWAT) and the Mobile Patrol of the WPD.

After a briefing, Chief Insp. Divina and the other operatives proceeded to Lopez Street, reaching the site before 1:00 pm. Chief Insp. Divina and PO2 Eraldo Santos positioned themselves along Vitas Street. At around 2:00 pm, Chief Insp. Divina spotted an owner-type jeep bearing a spurious government plate (SBM-510) cruising along Vitas Street and told the rest of the team about it. The numbers of the car plate were painted white. The

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[3] Records, p. 1.

[4] *Id.* at 15.

driver was later identified as Belocura. Chief Insp. Divina signaled for Belocura to stop for verification but the latter ignored the signal and sped off towards Balut, Tondo. The team pursued Belocura's jeep until they blocked its path with their Tamaraw FX vehicle, forcing Belocura to stop. At this point, Chief Insp. Divina and the rest of the team approached the jeep and introduced themselves to Belocura as policemen. Chief Insp. Divina queried Belocura on the government plate. SPO1 Rojas confiscated Belocura's Berreta 9 mm. pistol (Serial Number M13086Z) that was tucked in his waist and its fully loaded magazine when he could not produce the appropriate documents for the pistol and the government plate. They arrested him.

PO2 Santos searched Belocura's jeep, and recovered a red plastic bag under the driver's seat. Chief Insp. Divina directed PO2 Santos to inspect the contents of the red plastic bag, which turned out to be two bricks of *marijuana* wrapped in newspaper.

Afterwards, the team returned with Belocura to the WPD Headquarters on board the Tamaraw FX. The team turned over the jeep and the red plastic bag with its contents to the General Assignment Section for proper disposition.[5]

Chief Insp. Divina said that the caller did not mention anything about any vehicle; that he and his men were in civilian clothes at the time; that it was PO2 Santos who recovered the red plastic bag containing the *marijuana* bricks; and that SPO1 Rojas examined the contents of the bag in his presence.[6]

SPO1 Rojas confirmed his part in the operation.[7] He conceded that he was not present when the red plastic bag containing the bricks of *marijuana* was seized, and saw the *marijuana* bricks for the first time only at the police station.[8]

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[5] TSN dated April 4, 2000, pp. 3-10.

[6] TSN dated April 10, 2000, pp. 5-14.

[7] Records, p. 212.

[8] *Id.*

Forensic Chemist Insp. Coronel attested that her office received from the General Assignment Section of the WPD one red plastic bag labeled "SHIN TON YON" containing two bricks of dried suspected *marijuana* fruiting tops individually wrapped in newspaper at about 12:30 pm of March 23, 1999. The first brick bore the marking "RB-1" and weighed 830.532 grams while the other bore the marking "RB-2" and weighed 959.291 grams, for a total weight of 1,789.823 grams. She conducted a chemical examination of the *marijuana* bricks pursuant to the request for laboratory examination from Chief Insp. Nelson Yabut of the WPD; and concluded as the result of three qualitative examinations that the submitted specimen tested positive for *marijuana*, a prohibited drug.[9]

II

Evidence of the Defense

Belocura denied the charge. His version, which differed from that of the Prosecution, was as follows.

On March 22, 1999, Belocura was a police officer assigned in Police Station 6 of the WPD with a tour of duty from 3:00 pm to 11:00 pm. At 2:00 pm of that day, he was on his way to work on board his owner-type jeep when about thirty police officers blocked his path. He introduced himself to them as a police officer, but they ignored him. Instead, they disarmed and handcuffed him, and confiscated the memorandum receipt covering his firearm, his money and his police ID card. He recognized some of his arrestors as former members of the CIS. They forced him into their jeep, and brought him to the WPD headquarters, where they locked him up in a room that looked like a *bodega*. They subjected him to interrogation on his alleged involvement in a robbery hold-up. They informed him of the drug-related charge to be filed against him only three days later.

Belocura denied owning or possessing the bricks of *marijuana*, saying that he saw the bricks of *marijuana* for the first time only in court. He insisted that it was physically impossible for

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[9] *Id.* at 210-211.

the bricks of *marijuana* to be found under the driver's seat of his jeep on account of the clearance from the flooring being only about three inches. At the time of his arrest, he was in Type-B uniform (*i.e.*, blue pants with white side piping and blue T-shirt) because he was reporting to work that afternoon.

Belocura said that his arrest was effected possibly because he had incurred the ire of a superior; that it was not unusual for a policeman like him to incur the ire of a superior officer or a fellow policeman; that he had arrested a suspect for drug pushing and had detained him in Police Precinct 2, but the suspect turned out to be the nephew of Captain Sukila of Precinct 2 who admitted to him that Captain Sukila owned the drugs; that on the day following the arrest of the suspect, Captain Sukila called Belocura to request the release of the suspect (*ina-arbor ang huli ko*); that he told Captain Sukila that they should meet the next day so that he could turn over the suspect; and that on the next day, he was surprised to learn that the suspect had already been released.[10]

Belocura did not personally know Chief Insp. Divina prior to his arrest,[11] or the other arresting policemen. He mentioned that his owner-type jeep had been assembled in 1995, and that he had attached the plate number assigned to his old vehicle pending the registration of the jeep despite knowing that doing so was a violation of law; and that the incident involving the arrest of the nephew of Captain Sukila was the only reason he could think of why charges were filed against him.[12]

On re-direct examination, Belocura replied that he did not see the bricks of *marijuana* whether at the time of his arrest, or at the police precinct, or during the inquest proceedings. On re-cross, he clarified that while the driver's seat were fixed to the jeep, the bricks of *marijuana* could nevertheless be placed under the driver's seat only if pressed hard enough, but in that

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[10] *Id.* at 212-213.

[11] *Id.*

[12] *Id.*

case the wrappings would get torn because the wirings of the car underneath the seat were exposed. He recalled that the wrappings of the bricks of *marijuana* were intact.[13]

On April 22, 2003, the RTC convicted Belocura of the crime charged and sentenced him to suffer *reclusion perpetua* and to pay the fine of ₱500,000.00.[14]

As already stated, the CA affirmed the conviction.[15]

Issues

Belocura now submits that:[16]

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE PHYSICIAL IMPOSSIBILITY FOR THE DRIED BRICKS OF MARIJUANA PLACED UNDER THE DRIVER'S SEAT *(sic).*

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED BASED ON THE INCONSISTENT AND CONTRADICTORY STATEMENTS OF THE PROSECUTION WITNESS.

III.

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE MARIJUANA DESPITE THE ILLEGALITY OF ITS SEIZURE DUE TO THE ABSENSE *(sic)* OF A VALID SEARCH WARRANT.

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[13] *Id.*

[14] *Id.* at 215.

[15] CA *Rollo*, pp. 132-140 (the appeal was originally made directly to the Court, but the Court referred the appeal to the CA for intermediate review).

[16] *Rollo*, pp. 40-59.

IV.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

Belocura argues that the Prosecution did not establish his guilt for the crime charged beyond reasonable doubt; that his warrantless arrest was unlawful considering that his only violation was only a breach of traffic rules and regulations involving the illegal use of a government plate on his newly-assembled jeep; that the warrantless search of his jeep was contrary to law for violating his right against illegal search and seizure protected under Section 17, Article III (*Bill of Rights*) of the 1987 Constitution;[17] and that the bricks of *marijuana* supposedly seized from him, being the fruit of a poisonous tree, were inadmissible against him.

The Office of the Solicitor General (OSG) counters that Belocura's arrest and the ensuing search of the jeep were valid, the search being incidental to a valid, albeit warrantless, arrest; that the arresting policemen had a reasonable ground to effect his warrantless arrest; that it became their duty following the lawful arrest to conduct the warrantless search not only of the person of Belocura as the arrestee but also of the areas within his reach, which then resulted in the recovery of the dried bricks of *marijuana* from under the driver's seat; and that any irregularity attendant to the arrest was cured by Belocura's failure to object to the validity of his arrest before entering his plea and by his submission to the jurisdiction of the RTC when he entered his plea and participated in the trial.[18]

Ruling

After a meticulous examination of the records, the Court concludes that a reversal of the conviction is justified and called for.

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[17] *Id.* at 56.

[18] *Id.* at 102-111.

No arrest, search and seizure can be made without a valid warrant issued by a competent judicial authority. So sacred are the right of personal security and privacy and the right from unreasonable searches and seizures that no less than the Constitution ordains in Section 2 of its Article III, *viz*:

> 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 complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

The consequence of a violation of the guarantees against a violation of personal security and privacy and against unreasonable searches and seizures is the exclusion of the evidence thereby obtained. This rule of exclusion is set down in Section 3(2), Article III of the Constitution, to wit:

> Section 3. xxx
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Even so, the right against warrantless arrest, and the right against warrantless search and seizure are not absolute. There are circumstances in which the arrest, or search and seizure, although warrantless, are nonetheless valid or reasonable. Among the circumstances are those mentioned in Section 5, Rule 113 of the *Rules of Court*, which lists down when a warrantless arrest may be lawfully made by a peace officer or a private person, namely:

> (*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 has 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.

On the other hand, the constitutional proscription against warrantless searches and seizures admits of the following exceptions, namely: (*a*) warrantless search incidental to a lawful arrest recognized under Section 13, Rule 126 of the *Rules of Court*;[19] (*b*) seizure of evidence under plain view; (*c*) search of a moving vehicle; (*d*) consented warrantless search; (*e*) customs search; (*f*) stop-and-frisk situations (Terry search); and (*g*) exigent and emergency circumstances.[20] In these exceptional situations, the necessity for a search warrant is dispensed with.

Belocura argues that his arrest and the ensuing search of his vehicle and recovery of the incriminating bricks of *marijuana* were in violation of his aforementioned rights under the Constitution because he was then violating only a simple traffic rule on the illegal use of a government plate. He claims that the arresting policemen had no probable cause to search his vehicle for anything.

The argument of Belocura does not persuade.

Belocura was caught *in flagrante delicto* violating Section 31 of Republic Act No. 4139 (*The Land Transportation and Traffic Code*).[21] *In flagrante delicto* means *in the very act of*

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[19] Rule 126, *Rules of Court*, provides:

Section 13. *Search incident to lawful arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

[20] *Caballes v. Court of Appeals*, G.R. No. 136292, January 15, 2002, 373 SCRA 221.

[21] Section 31. *Imitation and false representations.* — No person shall make or use attempt to make or use a driver's license, badge, certificate of registration, number plate, tag, or permit in imitation or similitude of those issued under this Act, or intended to be used as or for a legal license,

committing the crime. To be caught *in flagrante delicto* necessarily implies the positive identification of the culprit by an eyewitness or eyewitnesses. Such identification is a direct evidence of culpability, because it "proves the fact in dispute without the aid of any inference or presumption."[22] Even by his own admission, he was actually committing a crime in the presence or within the view of the arresting policemen. Such manner by which Belocura was apprehended fell under the first category in Section 5, Rule 113 of the *Rules of Court*. The arrest was valid, therefore, and the arresting policemen thereby became cloaked with the authority to validly search his person and effects for weapons or any other article he might use in the commission of the crime or was the fruit of the crime or might be used as evidence in the trial of the case, and to seize from him and the area within his reach or under his control, like the jeep, such weapon or other article. The evident purpose of the incidental search was to protect the arresting policemen from being harmed by him with the use of a concealed weapon. Accordingly, the warrantless character of the arrest could not by itself be the basis of his acquittal.[23]

In convicting Belocura as charged, the RTC relied on the testimonies of Chief Insp. Divina and SPO1 Rojas to establish the fact of possession of the *marijuana* bricks. An evaluation of the totality of the evidence on record indicates, however, that the *corpus delicti* of the crime charged was not established beyond reasonable doubt.

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badge, certificate, plate, tag or permit, or with intent to sell or otherwise dispose of the same to another. No person shall falsely or fraudulently represent as valid and in force any driver's license, badge, certificate, plate, tag or permit issued under this Act which is delinquent or which has been revoked or suspended.

[22] *Go v. Leyte II Electric Cooperative, Inc.*, G.R. No. 176909, February 18, 2008, 546 SCRA 187, 195.

[23] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611.

The elements of illegal possession of *marijuana* under Republic Act No. 6425, as amended, are that: (*a*) the accused is in possession of an item or object that is identified to be *marijuana*, a prohibited drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[24] What must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself. This may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession.

Chief Insp. Divina who headed the team of policemen disclosed that it was PO2 Santos, a member of the team, who had discovered and had actually recovered the red plastic bag containing the bricks of *marijuana* from the jeep. Excerpts of Chief Insp. Divina's relevant declarations follow:

ATTY LEE:

q Mr. Witness, it was SPO1 Rojas who examined the contents of the plastic bag. That is correct?

a I had testified that it was SPO1 Rojas who examined the contents.

q Okay, it was Mr. Rojas who retrieved the plastic bag? Is that correct?

a No sir, It was not SPO1 Rojas.

q It was not you who retrieved that plastic bag from the jeep?

a No, Sir. I was not the one.

q It was Dela Cruz?

a No, Sir.

q Who retrieved the plastic bag from the jeep?

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[24] *Manalili v. Court of Appeals*, G.R. No. 113447, October 9, 1997, 280 SCRA 400.

WITNESS:

A It was PO2 Reynaldo Santos, Sir.

ATTY LEE:

q It was Santos who brought the plastic bag to the headquarters. Is that correct?

A Yes, Sir.

q And you never had a chance to examine that plastic bag, the contents of that plastic bag is that correct?

a I had a chance to see it at the place where we had flagged down a vehicle.

q You saw only the plastic bag. Is that correct?

a No, Sir. When the bag was recovered from under the driver's seat and when it was opened, I had the chance to see it.

THE COURT:

q Including the contents?

WITNESS:

a Yes, your Honor.

ATTY LEE:

q It was not you who bring that bag to xxx

THE COURT:

Already answered.

ATTY LEE:

q And after that, you never had the chance to see that bag again. Is that correct?

a Not anymore Sir.[25]

The Prosecution also presented SPO1 Rojas, another member of the team, but he provided no direct evidence about the possession by Belocura of the confiscated *marijuana* bricks, and actually stated that he did not witness the recovery of the *marijuana* bricks from Belocura, *viz*:

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[25] TSN, April 10, 2000, pp. 13-15.

PUB. PROS. TAN, JR:

q While you were taking the gun of this accused what were your other companion specifically Major Divina doing?

WITNESS:

a Since I was the first one who approached Reynaldo Belocura I was the one who took the gun from his waistline and I informed Major Divina that I already took the gun and place it inside the Tamaraw FX and when I left the members of the SWAT arrive at the scene and I don't know what transpired.

PUB. PROS. TAN, JR:

q And where was Major Divina then?

a Beside the owner type jeep, sir.

q You are referring to the owner type jeep of the accused?

a Yes, sir.

q Did you go back to the said jeep?

a I did not return there anymore sir because the members of the other group surrounded the place, sir.

q **Since you were then at that scene did you come to know if there is any other thing that was retrieved from the herein accused in the said vehicle**?[26]

x x x x x x x x x

WITNESS:

a Yes. When I was there according to them marijuana was taken from the owner type jeep.

PUB. PROS. TAN, JR:

q Who said that?[27]

x x x x x x x x x

WITNESS:

a The member of the SWAT and other team, sir were there.

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[26] TSN, October 3, 2000, pp. 9-10.

[27] *Id.* at 10.

q And then what else happen after such recovery?

a Actually sir at the scene I did not see anything recovered but it was only in the office that I heard their conversation about it.

q What did you see or observe while in your office?

a He was investigated.

q Investigated for what?

a According to them the recovery of the plate number and the expired MR of the gun and the marijuana recovered.

PUB. PROS. TAN, JR:

q Before whom was he investigated?

WITNESS:

a General Assignment Section, sir.[28]

x x x x x x x x x

On further examination, SPO1 Rojas reiterated that he did not actually witness the seizure of the *marijuana* bricks from Belocura's possession, to wit:

ATTY LEE:

q Mr. Witness, so you did not see the actual the alleged recovery of marijuana, is that correct?

WITNESS:

a Yes sir.

ATTY LEE:

q And you have never that marijuana?

WITNESS:

a Yes sir. But only in the office.

q What do you only took from the accused is a gun, is that correct?

a Yes sir.

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[28] *Id.* at 11-12.

q So you cannot say positively that there was a marijuana recovered from the accused because you did not see?

a I just got the information from my co-police officer, sir.[29]

x x x x x x x x x

PUB. PROS TAN, JR:

q Were you able to see the marijuana in the police station?

WITNESS:

a Yes sir.

q You mean to say that was the first time that you saw the marijuana?

a Yes, sir.[30]

The Prosecution presented no other witnesses to establish the seizure of the *marijuana* bricks from Belocura.

Based on the foregoing, Chief Insp. Divina and SPO1 Rojas' declarations were insufficient to incriminate Belocura, much less to convict him. If neither of them was personally competent to be an eyewitness regarding the seizure of the *marijuana* bricks from Belocura, their testimonies could not be accorded probative value, considering that the *Rules of Court* requires that a witness could testify only to facts that he knew of his own knowledge, *that is*, only to those facts derived from his *own* perception.[31]

Indeed, only PO2 Santos could reliably establish Belocura's illegal possession of the *marijuana* bricks, if Chief Insp. Divina's account was to be believed. Surprisingly, the RTC did not give due and proper significance to the failure to present PO2 Santos as a witness against Belocura.

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

[30] *Id.* at 15.

[31] Section 36, Rule 130, *Rules of Court*; *Philippine Free Press Inc. v. Court of Appeals*, G.R. No. 132864, October 24, 2005, 473 SCRA 639, 656.

Nonetheless, the OSG contends that the State had no need to present PO2 Santos because his testimony would only be corroborative; and that the testimonies of Chief Insp. Divina and SPO1 Rojas sufficed to establish Belocura's guilt beyond reasonable doubt.

The OSG's contention is grossly erroneous.

As the arresting officer who alone actually seized the *marijuana* bricks from Belocura's vehicle beyond the viewing distance of his fellow arresting officers, PO2 Santos was the Prosecution's only witness who could have reliably established the recovery from Belocura of the *marijuana* bricks contained in the red plastic bag labeled as "SHIN TON YON." Without PO2 Santos' testimony, Chief Insp. Divina's declaration of seeing PO2 Santos recover the red plastic bag from under the driver's seat of Belocura's jeep was worthless. The explanation why none of the other police officers could credibly attest to Belocura's possession of the *marijuana* bricks was that they were at the time supposedly performing different tasks during the operation. Under the circumstances, only PO2 Santos was competent to prove Belocura's possession.

Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.

In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence.[32] It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The

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[32] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 323, citing *Black's Law Dictionary*, citing *Com. v. White*, 353 Mass 409, 232 N.E. 2d 335.

evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto. This is the reason why authentication and laying a foundation for the introduction of evidence are important.[33]

Yet, no such accounting was made herein, as the following excerpts from the testimony of Chief Insp. Divina bear out, to wit:

PUB. PROS TAN, JR:

q How about the plastic bag containing the suspected stuff, what did you do with the same? You did not know?

WITNESS:

a **I think it was turned over to the investigator of the General Assignment Section who made the proper disposition.**

q Who is the investigator again, Mr. witness?

a I remember SPO4 Boy Guzman

q Did you know what SPO4 Boy Guzman did with the accused as well as the confiscated stuff?

x x x x x x x x x

WITNESS:

a The items upon turn over to the investigator on case were handed to the custodian with proper receipt and after those disposition, there were case filed against the subject.

PUB. PROS. TAN, JR:

q Were you able to know what did they do with the accused as well as the confiscated stuff if you know?

a I remember appearing in the MTC court Br, 20, I saw the exhibits, firearm and plate number, two blocks of marijuana. I don't have any idea where did the investigator brought them or have done.[34]

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[33] *Id.*

[34] TSN, April 4, 2000, pp. 11-12.

x x x x x x x x x

q You never had a knowledge of what happened to that bag and the contents thereof?

a I learned later that the items that were confiscated were turned over to the General Assignment Section which held the investigation.

q So, it was not your group who conducted the examination and the alleged things that were recovered from the alleged accused?[35]

x x x x x x x x x

a No, Sir.

q How about the things that were allegedly recovered from the accused?

a I just said that it was the General Assignment Section who handled the investigation.[36]

The Prosecution thereby failed to establish the linkage between the bricks of *marijuana* supposedly seized by PO2 Santos from Belocura's jeep following his arrest and the bricks of *marijuana* that the Prosecution later presented as evidence in court. That linkage was not dispensable, because the failure to prove that the specimens of *marijuana* submitted to the forensic chemist for examination were the same *marijuana* allegedly seized from Belocura irreparably broke the chain of custody that linked the confiscated *marijuana* to the *marijuana* ultimately presented as evidence against Belocura during the trial. Proof beyond reasonable doubt demanded that unwavering exactitude must be observed in establishing the *corpus delicti* – the body of the crime whose core was the confiscated prohibited substances. Thus, every fact necessary to constitute the crime must be established.[37]

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[35] TSN, April 10, 2000, p. 15.

[36] *Id.*

[37] *People v. Pagaduan, supra,* note 32 at 322.

The chain-of-custody requirement ensures that all doubts concerning the identity of the evidence are removed.[38] The requirement has come to be associated with prosecutions for violations of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*),[39] by reason of Section 21[40] of Republic Act No.

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[38] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212; *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51.

[39] The effectivity of the law is from July 4, 2002.

[40] Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending 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 (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

(2) Within twenty-four hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA forensic laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four hours after the receipt of the subject item/s: *Provided,* that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory. *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized

9165 expressly regulating the actual custody and disposition of confiscated and surrendered dangerous drugs, controlled precursors, essential chemicals, instruments, paraphernalia, and

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and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/ paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided,* That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes; *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDE, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the pubic attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the OPDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision. A) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

laboratory equipment. Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 issued by the Dangerous Drugs Board pursuant to its mandate under Section 94 of Republic Act No. 9165 reiterates the requirement, stating:

x x x x x x x x x

(a) 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 (DOJ), 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 x x x x x x

That this case was a prosecution brought under Republic Act No. 6425 (*Dangerous Drugs Act of 1972*), as amended by Republic Act No. 7659, did not matter. The chain-of-custody requirement applied under both laws by virtue of the universal need to competently and sufficiently establish the *corpus delicti*. It is basic under the *Rules of Court*, indeed, that evidence, to be relevant, must throw light upon, or have a logical relation to, the facts in issue to be established by one party or disproved by the other.[41] The test of relevancy is whether an item of evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it would reasonably and actually tend to prove or

[41] Section 3 and Section 4, Rule 128, *Rules of Court*.

disprove any matter of fact in issue, or corroborate other relevant evidence. The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.[42]

The chain of custody is essential in establishing the link between the article confiscated from the accused to the evidence that is ultimately presented to the court for its appreciation. As the Court said in *Mallillin v. People*:[43]

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.[44]

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[42] 31A CJS, Evidence, §199.

[43] G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[44] *Id.* at 632-633.

The first link in the chain of custody started with the seizure from the jeep of Belocura of the red plastic bag said to contain the *marijuana* bricks. The first link was immediately missing because the Prosecution did not present PO2 Santos, the only person with direct knowledge of the seizure and confiscation of the *marijuana* bricks. Without his testimony, proof that the *marijuana* bricks were really taken from the jeep of Belocura did not exist. The second link was the turnover of the *marijuana* bricks by PO2 Santos to another officer back at the WPD Headquarters. As to this, Chief Insp. Divina stated that he learned following the seizure by PO2 Santos that the *marijuana* bricks were turned over to the General Assignment Section for investigation. *That was all*. On the other hand, SPO1 Rojas' testimony contributed nothing to the establishment of the second link because he had immediately left after seizing the gun from Belocura. As for the subsequent links, the records[45] showed that the *marijuana* bricks were forwarded to the General Assignment Section on March 22, 1999, but the Prosecution did not prove the identities of the officer from the General Assignment Section who received the red plastic bag containing the *marijuana* bricks, and the officer from whom the receiving officer received the *marijuana* bricks. Although Chief Insp. Nelson Yabut prepared the request for laboratory examination of the *marijuana* bricks,[46] which were thereafter examined by Forensic Chemist Valdez, the records did not show if Chief Insp. Yabut was the officer who had received the *marijuana* bricks from the arresting team. The request for laboratory examination was dated March 23, 1999, or the day following Belocura's arrest and the seizure of the *marijuana* bricks from his jeep; however, the Prosecution did not identify the person from whom Chief Insp. Yabut had received the *marijuana* bricks.

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[45] Joint Affidavit of Arrest executed on March 22, 1999 by Santos, Rojas and Divina, Records, p. 4; Booking Sheet & Arrest Report executed by SPO3 Guzman and signed by Belocura, Records, p. 5.

[46] Records, p. 43.

Sadly, the Prosecution did not establish the links in the chain of custody. This meant that the *corpus delicti* was not credibly proved. This further meant that the seizure and confiscation of the *marijuana* bricks might easily be open to doubt and suspicion, and thus the incriminatory evidence would not stand judicial scrutiny.

Thirdly, Belocura's denial assumed strength in the face of the Prosecution's weak incriminating evidence. In that regard, Belocura denied possession of the *marijuana* bricks and knowledge of them as well, to wit:

q Were you able to view the alleged marijuana that were confiscated from you?

a: I saw it for the first time when it was presented in Court, Sir.

q: Now, according to Inspector Divina, it was police officer Santos who was able to recover from your vehicle these two bricks of marijuana. What can you say about this?

a: **At first, I did not see this marijuana, Sir, that they are saying because they immediately handcuffed me and disarmed me even before I could board my owner type jeepney**.[47]

The Court holds that the guilt of Belocura for the crime charged was not proved beyond reasonable doubt. Mere suspicion of his guilt, no matter how strong, should not sway judgment against him. Every evidence favoring him must be duly considered. Indeed, the presumption of innocence in his favor was not overcome. Hence, his acquittal should follow, for, as the Court fittingly said in *Patula v. People*:[48]

xxx in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each

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[47] TSN, May 7, 2002, pp. 15-16.

[48] G.R. No. 164457, April 11, 2012.

and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. **In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.**[49]

WHEREFORE, we **REVERSE** and **SET ASIDE** the decision promulgated on January 23, 2006; **ACQUIT** accused **REYNALDO BELOCURA *y* PEREZ** for failure of the Prosecution to prove his guilt beyond reasonable doubt; **DIRECT** the immediate release from detention of **REYNALDO BELOCURA *y* PEREZ,** unless he is also detained for some other lawful cause; and **ORDER** the Director of the Bureau of Corrections to forthwith implement this decision upon receipt, and to report his action hereon to this Court within 10 days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[49] Bold emphasis supplied.

THIRD DIVISION

[G.R. No. 176984. August 29, 2012]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **SERVANDO ARGUELLES (Deceased) & CLAUDIO ARGUELLES and MARILOU TRINIDAD, for herself and as guardian *ad litem* of her minor children namely, LLOYD, MARK, ADRIAN, and GEORGIA, all surnamed TRINIDAD, TRISTAN TRINIDAD and EDGARDO TRINIDAD, JR.,** *respondents.*

[G.R. No. 179131. August 29, 2012]

MARILOU TRINIDAD, for herself and as guardian *ad litem* of her minor children LLOYD, MARK, ADRIAN & GEORGIA, all surnamed TRINIDAD, EDGARDO TRINIDAD, JR. and TRISTAN TRINIDAD, *petitioners, vs.* **SERVANDO ARGUELLES (Deceased) and CLAUDIO ARGUELLES, and METROPOLITAN BANK & TRUST COMPANY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT APPARENTLY FLAWED, RECONSIDERED.—** Ordinarily, being a question of fact, the RTC's finding, affirmed by the CA, carries great weight. But, here, since such finding appears to be based on a flawed drawing of conclusions from the facts, the Court is justified in taking a second look.

2. **ID.; EVIDENCE; DOCUMENTS; NOTARIZED DOCUMENT NOT INVALIDATED WHEN NOTARY PUBLIC COULD NOT REMEMBER THE FACES OF THE PARTIES IN THE QUESTIONED DOCUMENT.—** [T]he notary public, Atty. Saulog, Jr. could not remember if the Arguelleses, present in court as he testified, were the same persons who appeared and acknowledged the [questioned] document before him. But it is too much to expect a notary public who had but a brief time with the Arguelleses during the notarial ceremony to

remember their faces 12 years later. What matters is Atty. Saulog, Jr.'s testimony respecting the ritual of notarization that he invariably followed. He gave unbending assurance that he ascertained the identities of the parties to documents who appeared before him, including the Arguelleses, by requiring them to show documentary proofs of the same and to sign the documents in his presence.

3. ID.; ID.; WITNESSES; GOVERNMENT HANDWRITING EXPERT IS COMPETENT AND A NEUTRAL SOURCE OF OPINION.— [W]hile the trial court generally has discretion to determine the weight to be given to an expert testimony, it erroneously disregarded Azores' findings. Azores, as government handwriting expert, was a neutral source of opinion. The Chief of the Questioned Documents Division of the NBI concurred in his findings. Azores' findings should be treated as an official act performed with accepted competence and cloaked with the mantle of impartiality and neutrality. Atty. Pagui, on the other hand, was a private practitioner paid for by the Arguelleses. It was but natural for him to support the position of his client, bringing up tiny details to make up for lack of substance.

APPEARANCES OF COUNSEL

Edito A. Rodriguez and *Aquino Regino Palma Raagas Olarte Paas & Associates* for Marilou Trinidad and her minor children.

Balisado Law Firm for Claudio Arguelles.

Sedigo & Associates for Metrobank.

D E C I S I O N

ABAD, *J.*:

These cases involve an action for the annulment of a transfer certificate of title (TCT) over a parcel of land on the basis of an allegedly falsified deed of sale transferring title over the property.

The Facts and the Case

Respondent brothers, Servando and Claudio Arguelles (the Arguelleses), were registered owners of a parcel of land in Imus,

Cavite, under TCT T-115897. On November 23, 1983 the Arguelleses entered into a conditional sale of the land to Edgardo Trinidad and his wife Marilou (the Trinidads). In accordance with the terms of the sale, the Trinidads gave the Arguelleses ₱50,000.00 as down payment. The balance of ₱396,720.00 was to be paid in monthly installments.

The Trinidads occupied and began developing the property in 1986. They paid the real estate taxes due on it from 1987 to 1997. With a deed of sale in their favor, the Trinidads eventually had the land titled in their names on August 15, 1991 under TCT T-316427. In that same year, they applied with Metropolitan Bank & Trust Company (Metrobank) for a loan, offering the land as collateral. Satisfied that the Trinidads owned the property, Metrobank accepted it as collateral and lent them money. Subsequently, Metrobank granted the couple several more loans, totaling more than ₱11 million, all secured by the land.

On January 7, 1997 the Arguelleses filed a complaint against the Trinidads with the Regional Trial Court (RTC) of Imus, Cavite[1] for the cancellation of TCT T-316427 in the latter's names. Subsequently, the complaint was amended to implead Metrobank and sought the cancellation of the real estate mortgages over the property in its favor.

The Arguelleses denied having executed a deed of sale in favor of the Trinidads. They alleged that they entrusted their owner's duplicate copy of title to Atty. Alejandro Saulog, Sr., who assisted the parties in executing a conditional sale covering the land. The Trinidads used a fictitious deed of sale, notarized by a certain Atty. Saulog, Jr. to effect the transfer of title in their names.

In answer, the Trinidads claimed that they paid for the land by installments, completing the payment on June 24, 1986 with the result that the Arguelleses executed the deed of sale in their favor. For its part, Metrobank filed a cross-claim against the

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[1] Docketed as Civil Case 1465-97.

Trinidads for litigation expenses, alleging that the Trinidads were answerable for such expenses under the mortgage contracts.

In its decision of December 27, 2005 the RTC ruled in favor of the Arguelleses and cancelled both the title in the name of the Trinidads and the mortgages in Metrobank's favor. The primordial issue, said the RTC, was whether or not the Trinidads paid the balance of the agreed purchase price by installments. It found that they did not since they could not present proof of the payments they supposedly made. When asked on cross-examination, Marilou Trinidad could not even remember when they made those installment payments.

Two handwriting experts testified during the trial on the authenticity of the Arguelleses' signatures appearing on the deed of sale: 1) Atty. Desiderio Pagui whom the Arguelleses hired and 2) Rogelio Azores of the National Bureau of Investigation (NBI). Their opinions differed. Atty. Pagui concluded that the signatures were forged, while Azores maintained that the signatures were authentic. The RTC adopted the conclusion of Atty. Pagui, finding that he presented a more thorough and detailed analysis. He compared both similarities and differences between the questioned signatures and specimen signatures; whereas, Azores gave emphasis to the similarities.

In addition to annulling the Trinidads' title, the RTC awarded the Arguelleses moral damages of ₱1,000,000.00 and attorney's fees of ₱200,000.00. It denied Metrobank's cross-claim against the Trinidads, holding that Metrobank was a mortgagee in bad faith, having had prior notice of the irregularity in the Trinidads' title. The defendants appealed the decision to the Court of Appeals (CA).[2]

In its decision of March 6, 2007,[3] the CA affirmed that of the RTC but reduced the award of moral damages to ₱50,000.00

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[2] Docketed as CA-G.R. CV 86714.

[3] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Jose C. Mendoza (now a member of this Court) and Ramon M. Bato, Jr.

each in favor of Servando and Claudio Arguelles. As for Metrobank, the CA held that it was not a mortgagee in good faith as it appears that Metrobank compelled the Trinidads to acquire title over the property before the initial loan could be approved.

The Trinidads filed their motion for reconsideration while Metrobank appealed the CA Decision to this Court. Upon the denial of their motion, the Trinidads filed their own petition with this Court as well. Both cases were then consolidated on November 21, 2007. During the pendency of these cases, Servando Arguelles passed away and was substituted by his heirs.

The Issues Presented

The issues in these cases are:

1. Whether or not the CA erred in holding that the deed of sale, which the Arguelleses supposedly executed and that the Trinidads used for the transfer of the property in their names, was a falsified document; and

2. Whether or not the CA erred in holding that the real estate mortgages that the Trinidads executed in favor of Metrobank are not binding on the Arguelleses.

The Court's Rulings

The key question in these cases is the authenticity of the deed of sale that the Arguelleses supposedly executed in favor of the Trinidads and that the latter used in transferring the property title in their names. Both the RTC and the CA held that the deed was not authentic. Ordinarily, being a question of fact, the RTC's finding, affirmed by the CA, carries great weight. But, here, since such finding appears to be based on a flawed drawing of conclusions from the facts, the Court is justified in taking a second look.[4]

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[4] *Miguel J. Ossorio Pension Foundation, Inc. v. Court of Appeals*, G.R. No. 162175, June 28, 2010, 621 SCRA 606, 621.

The courts below concluded that the subject deed of sale is not authentic based on the following:

1. The notary public who notarized the document could not recall if the Arguelleses personally appeared and signed the deed of sale before him;
2. Two copies of the deed of sale, one dated 1986 and the other 1991, were presented;
3. The Trinidads failed to prove that they paid the Arguelleses the full purchase price mentioned in the conditional sale; and
4. The testimony of the expert witness for the Arguelleses sufficiently proved that the two brothers' signatures were forged.

First. Both the RTC and the CA held that the presumption of regularity of a public document[5] did not attach to the subject deed of sale, given that the notary public, Atty. Saulog, Jr. failed to establish the authenticity of the signatures on it. He could not remember if the Arguelleses, present in court as he testified, were the same persons who appeared and acknowledged the document before him.

But it is too much to expect a notary public who had but a brief time with the Arguelleses during the notarial ceremony to remember their faces 12 years later. What matters is Atty. Saulog, Jr.'s testimony respecting the ritual of notarization that he invariably followed. He gave unbending assurance that he ascertained the identities of the parties to documents who appeared before him, including the Arguelleses, by requiring them to show documentary proofs of the same[6] and to sign the documents in his presence.[7]

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[5] *Calma v. Santos*, G.R. No. 161027, June 22, 2009, 590 SCRA 359, 371.

[6] *Lustestica v. Bernabe*, A.C. No. 6258, August 24, 2010, 628 SCRA 613, 620.

[7] TSN, September 11, 1998, p. 7.

Besides, the theory of the Arguelleses is that it was Atty. Saulog, Jr. who facilitated the preparation of the falsified deed of sale for the benefit of the Trinidads. But, if this were so, it would have made more sense for Atty. Saulog, Jr. to testify in defense of the genuineness of the transaction by claiming that he recalled the faces of those who appeared before him 12 years ago and that they were no other than the Arguelleses.

Second. The Arguelleses point out that the residence certificates on the acknowledgment portion of the deed of sale did not belong to them since these did not tally with their 1991 residence certificates. Further, they presented evidence that Atty. Saulog, Jr. did not have a notarial commission in 1991.

But two copies of the deed of sale were presented in this case, identical in every way except that the first, the Trinidad's original copy of the deed of sale, Exhibit "4", carried the date June 24, 1986 while the second, a certified copy of the deed of sale from the Register of Deeds, Exhibit "D" of the Arguelleses, bore the date June 24, 1991. Evidently, it is the first document, original, unblemished, and bearing the year 1986 that is the correctly dated copy. On the other hand, the year typewritten on the second document, the certified copy, had been crudely altered by erasure with the digits "91" superimposed to make the year read "1991." In other words, the deed of sale was executed in 1986, not 1991.

The Arguelleses merely claim that their residence certificate numbers on the copies of the deed of sale did not reflect their 1991 residence certificates. They do not state, however, that those numbers do not represent their 1986 residence certificates, the correct year when the deed of sale was executed. Further, they do not also claim that Atty. Saulog, Jr. did not have a notarial commission in 1986 the year that the clean deed of sale was actually notarized.

Third. Both the RTC and the CA held that what is crucial in determining the authenticity of the deed of sale is the question of whether or not the Trinidads paid the balance of the purchase

price after November 23, 1983. The two courts point out that the Trinidads not only failed to present proof of payment, but Marilou Trinidad was also unable to say specifically when they paid their installments to the Arguelleses.

But, firstly, the fact that Marilou Trinidad did not have any receipt evidencing payment of the balance of the price cannot give rise to the assumption that they had not paid the same. Marilou testified that she in fact asked the Arguelleses to issue receipts for the payments made but the latter declined, saying that they would be executing a deed of sale upon full payment and that this would be better proof of payment than ordinary receipts.[8] That the Trinidads trusted the Arguelleses sufficiently to waive the receipts is evidenced by Claudio Arguelles' own admission that they also did not issue any receipt for the ₱50,000.00 down payment that the Trinidads made.[9]

Secondly, while the conditional sale contained an undertaking by the Trinidads to pay the balance of the purchase price in installments, such payment may be assumed to have been made from the fact that the Trinidads were subsequently found in possession of a deed of sale that the Arguelleses executed in their favor. Not only this, unquestionably, the Arguelleses gave up possession of their owner's duplicate copy of the title and this subsequently found its way into the hands of the Trinidads. There can be no better proof than these that the Trinidads had already paid their obligation to the Arguelleses. Indeed, in 1991 the Trinidads succeeded in registering the title to the land in their names.

Actually, as plaintiffs, the Arguelleses carried the burden of proving the affirmative of their claims (1) that the Trinidads had not fully paid for the land and (2) that they caused the falsification of a deed of sale supposedly executed by the Arguelleses in their favor and used it to transfer the title to the property in their names. Further, by the nature of their action,

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[8] TSN, May 29, 1998, p. 19 and TSN, June 24, 2003, p. 15.

[9] TSN, September 11, 1997, p. 26.

the Arguelleses must rely on the strength of their evidence and not on the weakness of the evidence of the defendants.[10]

The Court finds it difficult to believe the Arguelleses' version that the Trinidads did not pay even one centavo of the ₱396,720.00 balance of the purchase price that they undertook to pay by installments. Consider the following:

a. If the Arguelleses were to be believed, they endured the fact that the Trinidads did not bother to pay them even one installment after the down payment made in November 1983.[11] The Arguelleses supposedly contented themselves with just waiting for when the payment would come.[12] And they did not bother to make any demand from 1983 to 1996 on the Trinidads for what was due them.[13] Indeed, it was only after some 13 years that Claudio Arguelles went to the Registry of Deeds to check on the standing of their title.[14] Incredible!

b. According to the Arguelleses, they turned over their owner's duplicate copy of the title to Atty. Saulog, Sr. who assisted them in 1983 in preparing the conditional sale they entered into with the Trinidads. But it makes no sense for the Arguelleses to entrust their original title to Atty. Saulog, Sr. who was practically a stranger to them. And, although the Trinidads supposedly failed for 13 years to pay the monthly installment due, they made no effort to demand from the lawyer the return of their duplicate owner's copy of the title.

c. The Arguelleses had all along been aware that the Trinidads took possession of the land as early as 1983 after supposedly making a mere down payment. Claudio Arguelles who lived about half a kilometer from the property, passed by it almost every day, and observed the presence of the Trinidads on it[15] and the fact they had

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[10] *Heirs of Pedro de Guzman v. Perona*, G.R. No. 152266, July 2, 2010, 622 SCRA 653, 661.

[11] TSN, August 29, 2000, p. 19.

[12] TSN, September 4, 1997, pp. 55-56.

[13] TSN, September 11, 1997, p. 24.

[14] TSN, September 4, 1997, pp. 26-28.

[15] TSN, September 11, 1997, pp. 21-23.

built improvements.[16] Yet, Claudio never bothered to drop in and demand payments of what was due him and his brother or ask the Trinidads to leave the property. Claudio's mere excuse was that he was very busy.[17]

d. Further, the Arguelleses ceased paying real estate taxes on the property after 1986. The Trinidads were the ones who paid those taxes from 1987 to 1996. Only in 1997 when the Arguelleses filed their action to recover the property did they begin to pay the taxes.[18]

Fourth. Of two handwriting experts who examined the questioned signatures, Atty. Desiderio Pagui and Rogelio Azores, both the RTC and the CA gave more credence to the opinion of the first because he identified both the similarities and the differences and gave more details. Pagui was a private handwriting expert that the Arguelleses presented. Azores was an expert from the NBI.

In essence, Atty. Pagui gave the opinion that, whereas the specimen signatures were clumsily written, the questioned signatures were done with greater dexterity. He imputed the similarities between the two sets of signatures to simulation through practice.[19]

Azores found, on the other hand, significant similarities between the questioned signatures and the specimen: the structural pattern of elements, the directions of strokes, and the manner of execution. He also observed allowable natural variations between the sets of signatures. Finally, he held the view that there were no indications or symptoms of forgery, such as hesitations and tremors in writing, and that the questioned signatures were written with free and spontaneous strokes, made unconsciously without attention given to the act of writing.[20]

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

[17] *Id.* at 21.

[18] *Id.* at 18-19; Exhibits "H" to "M", "W", and "11".

[19] TSN, July 16, 1999, pp. 69-89; Exhibit "Z".

[20] TSN, April 19, 2002, pp. 28-29; Exhibit "14".

The RTC gave greater weight to the report of Atty. Pagui because it gave more details and extensively discussed both differences and similarities between the questioned signatures and specimen; whereas Azores focused mainly on the similarities.

But, while the trial court generally has discretion to determine the weight to be given to an expert testimony, it erroneously disregarded Azores' findings. Azores, as government handwriting expert, was a neutral source of opinion. The Chief of the Questioned Documents Division of the NBI concurred in his findings. Azores' findings should be treated as an official act performed with accepted competence and cloaked with the mantle of impartiality and neutrality.[21] Atty. Pagui, on the other hand, was a private practitioner paid for by the Arguelleses. It was but natural for him to support the position of his client, bringing up tiny details to make up for lack of substance.

For the foregoing reasons, the Court concludes that the Arguelleses have failed to overcome the presumed validity of the Trinidads' title over the property in dispute.

Fifth. With the Court's above conclusion, there is no further need to determine whether or not the real estate mortgages that the Trinidads executed in favor of Metrobank are binding on the Arguelleses. They are, based on such conclusion.

WHEREFORE, the Court **GRANTS** the petitions, **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals dated March 6, 2007 and resolution dated August 8, 2007 in CA-G.R. CV 86714 as well as the decision of the Regional Trial Court of Imus, Cavite in Civil Case 1465-97 dated December 27, 2005, and **DENIES** the action for the annulment of Transfer Certificate of Title T-316427 of the Register of Deeds of the Province of Cavite and of the real estate mortgages entered into by the Trinidad spouses and Metrobank and the cross-claim of Metrobank.

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[21] *Spouses Co v. Court of Appeals*, 271 Phil. 205, 218 (1991).

SO ORDERED.

Peralta (Acting Chairperson),[*] *del Castillo,*[**] *Villarama, Jr.,*[***] and *Perez,*[****] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 177907. August 29, 2012]

FAIR SHIPPING CORP., and/or KOHYU MARINE CO., LTD., *petitioners, vs.* **JOSELITO T. MEDEL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PROVISIONS ON PERMANENT TOTAL DISABILITY AND TEMPORARY TOTAL DISABILITY BENEFITS APPLICABLE TO THE CONTRACTS OF SEAFARERS.— The application of the provisions of the Labor Code to the contracts of seafarers had long been settled by this Court. x x x The Labor Code defines **permanent total disability** under Article 192(c)(1) as x x x Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules[.] This concept of **permanent total disability** is further explained in Section 2(b), Rule VII

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[*] Per Special Order 1290 dated August 28, 2012.

[**] Designated Additional Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated August 29, 2012.

[***] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1291 dated August 28, 2012.

[****] Designated Additional Member, per Special Order 1299 dated August 28, 2012.

of the Implementing Rules of Book IV of the Labor Code (Amended Rules on Employees Compensation) as follows: A disability is **total and permanent** if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. The exception in Rule X of the Implementing Rules of Book IV (Amended Rules on Employees Compensation) as mentioned above, on the other hand, pertains to an employee's entitlement to **temporary total disability benefits** under Section 2 of the aforesaid Rule X, to wit: 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 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.

2. ID.; ID.; ID.; TEMPORARY TOTAL DISABILITY BECAME PERMANENT UPON THE EXPIRATION OF THE MAXIMUM 240-DAY MEDICAL TREATMENT PERIOD WITHOUT DECLARATION OF FITNESS TO WORK; CASE AT BAR.— Medel's entitlement to permanent total disability [is] clear. Medel was accidentally injured on board the M/V Optima on March 1, 1999, where he sustained an open depressed fracture on the left frontal side of his forehead, as well as damage to his left eye and frontal sinus. Since his repatriation to the Philippines on March 13, 1999, Medel underwent medical treatment for his condition under the supervision of Dr. Lim, the company-designated physician, at the Metropolitan Hospital. He was initially given medications to manage his condition and he went through surgical procedures to repair the damage to his left eye on April 22, 1999, July 14, 1999 and July 19, 1999. Medel's condition was continuously evaluated by the hospital's ophthalmologist and neurologist. On October 20, 1999, Medel went through the procedure of cranioplasty to repair his fractured skull. According to Dr. Lim, Medel was seen by the hospital neurologist and

neurosurgeon on February 11, 2000, on which date he was pronounced fit to resume sea duties. Unmistakably, from the time Medel signed off from the vessel on March 13, 1999 up to the time his fitness to work was declared on February 11, 2000, more than eleven (11) months, or approximately 335 days, have lapsed. During this period, Medel was totally unable to pursue his occupation as a seafarer. Following the guidelines laid down in *Vergara [v. Hammonia Maritime Services, Inc.]*, it is evident that the maximum 240-day medical treatment period expired in this case without a declaration of Medel's fitness to work or the existence of his permanent disability determined. Accordingly, Medel's temporary total disability should be deemed permanent and thus, he is entitled to permanent total disability benefits.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioner.
Linsangan Linsangan & Linsangan Law Office for respondent.

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45, the Court is asked to reverse and set aside the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 75893 dated November 20, 2006 and May 15, 2007, respectively. In the assailed Decision, the Court of Appeals held that the Second Division of the National Labor Relations Commission (NLRC) committed grave abuse of discretion amounting to lack or excess

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[1] *Rollo*, pp. 9-36.

[2] *Id.* at 38-61; penned by Associate Justice Lucenito N. Tagle with Associate Justices Roberto A. Barrios and Mario L. Guariña III, concurring.

[3] *Id.* at 63-65; penned by Associate Justice Lucenito N. Tagle with Associate Justices Remedios Salazar Fernando and Mario L. Guariña III, concurring.

of jurisdiction in issuing the Decision[4] dated July 31, 2002 in NLRC OFW (M) 99-09-01462 (CA No. 029790-01). In the assailed resolution, the Court of Appeals denied for lack of merit the Motion for Reconsideration[5] of herein petitioners Fair Shipping Corporation and Kohyu Marine Co., Ltd. and the Partial Motion for Reconsideration filed by herein respondent Joselito T. Medel.

From the records of the case, we culled the following material facts:

On November 23, 1998, Medel was hired by Fair Shipping Corporation, for and in behalf of its foreign principal Kohyu Marine Co., Ltd. Under the Contract of Employment[6] signed by Medel, the latter was employed as an Able Seaman of the vessel M/V Optima for a period of 12 months with a basic monthly salary of US$335.00, plus fixed overtime pay of US$136.00 and vacation leave with pay of two and a half (2.5) days per month. The contract expressly stated that the terms and conditions of the revised Employment Contract governing the employment of all seafarers, as approved per Department Order No. 33 and Memorandum Circular No. 55, both series of 1996 [the 1996 POEA SEC],[7] were to be strictly and faithfully observed by the parties.

Medel boarded the M/V Optima on November 27, 1998 and commenced the performance of his duties therein.[8] On March 1, 1999, while the M/V Optima was docked at the Port of Vungtao

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[4] *Id.* at 184-194; penned by Presiding Commissioner Raul T. Aquino with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring.

[5] *Id.* at 276-293.

[6] *Id.* at 82.

[7] The Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC). The said POEA SEC has been revised by the Department of Labor and Employment (DOLE) Order No. 4, Series of 2000 (the 2000 POEA SEC).

[8] *Rollo*, p. 185.

in Ho Chi Minh City, Vietnam, Medel figured in an unfortunate accident. During the conduct of emergency drills aboard the vessel, one of Medel's co-workers lost control of the manual handle of a lifeboat, causing the same to turn uncontrollably; and it struck Medel in the forehead. Medel was given first aid treatment and immediately brought to the Choray Hospital in Ho Chi Minh City on said date.[9]

After undergoing surgical procedure to treat his fractured skull, Medel was discharged from the hospital on March 13, 1999. Medel's Discharge Summary disclosed that he underwent the following treatment:

> 1/ Surgical procedure: An open wound, 5 cm long, in the left frontal region. Extend [of] the wound [up] to 10 cm. The underlying frontal bone is found completely shattered. The frontal sinus is broken. The fracture in the frontal bone extends beyond the midline to the right parietal bone. The fractured skull is depressed 1 cm. Frontal sinus is cleansed, its mucosa is cauterized. A Gelfoam is packed into the frontal sinus. The broken fragments of the frontal bone are removed. The remaining depressed frontal bone is elevated to normal position. The fractured fronto-parietal bone is gouged out. A rubber tube drain is placed into the wound. Skin is closed in 2 layers.
>
> Post-op is uneventful. Left palpebral ptosis and dimmed vision are recorded. Eye examination shows scattered retinal hemorrhages. Surgical incision heals well. Left palpebral ptosis recovers nearly completely. Retinal hemorrhage is markedly reduced, however, left vision is not yet fully recovered.[10]

Medel's attending physician then recommended his "[r]epatriation for further treatment (at the patient's request)" and that he should "[s]ee a neurosurgeon and an ophthalmologist in the Philippines."[11]

Medel was repatriated to the Philippines on March 13, 1999 and was admitted to the Metropolitan Hospital on the said date.

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[9] *Id.* at 85.

[10] *Id.* at 86.

[11] *Id.*

In a letter dated March 16, 1999, Dr. Robert D. Lim, the company-designated physician and Medical Coordinator of the Metropolitan Hospital, informed petitioners that Medel was seen by a neurologist, an ENT specialist, and an ophthalmologist.[12] Medel subsequently underwent a cranial CT scan and an ultrasound on his left eye, which was also injured during the accident.[13] On April 22, 1999, a posterior vitrectomy was performed on Medel's left eye;[14] and on July 14 and July 19, 1999, Medel's left eye was likewise subjected to two sessions of argon laser retinopexy.[15] Dr. Lim then reported to petitioners that Medel's condition was re-evaluated on July 22, 1999 and, after consulting with the neurosurgeon at the Metropolitan Hospital, Medel was advised to undergo cranioplasty to treat the bony defect in his skull.[16] On October 20, 1999, Medel was admitted to the hospital and underwent the said surgical procedure.[17] On October 25, 1999, Dr. Daniel L. Ong, a neurologist at the Metropolitan Hospital, sent a report to Dr. Lim stating thus:

> DEAR DR. LIM,
>
> RE: DELAY OF CRANIOPLASTY OF LEFT FRONTAL SINUS OPEN DEPRESSED FRACTURE; S/P POST-CRANIOTOMY (MR. JOSELITO MEDEL)
>
> THE REASON FOR THE DELAY IS DUE TO THE POOR SKIN CONDITION AND THE POTENTIAL INFARCTION IN THIS PARTICULAR AREA IF DONE TOO QUICKLY. THIS IS ALSO THE REASON FOR PROLONGED AN[T]IBIOTIC COVERAGE AS PART OF THE INITIAL PREPARATORY TREATMENT, USUALLY SIX MONTHS WAIT BEFORE A CRANIOPLASTY IN THIS CASE.

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[12] *Id.* at 87.

[13] *Id.* at 88.

[14] *Id.* at 89.

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

[16] *Id.* at 93.

[17] *Id.* at 95.

I THINK PATIENT CAN RESUME SEA DUTIES WITHOUT ANY DISABILITY.

THANK YOU.

(SIGNED)
DANIEL ONG, M.D.[18]

Months after, in a letter dated February 15, 2000, Dr. Lim informed petitioners of Medel's condition, the relevant portion of which states:

RE : MR. JOSELITO MEDEL
MV OPTIMA
FAIR SHIP. CORP.

: PATIENT WAS SEEN AND RE-EVALUATED FEBRUARY 11, 2000.

: HE WAS SEEN BY OUR NEUROLOGIST AND NEURO-SURGEON. HIS WOUND IS HEALED. HIS PERIMETRY RESULT WAS GIVEN TO OUR NEUROLOGIST AND HE OPINES THAT PATIENT IS NOW FIT TO WORK.

: HE WAS PRONOUNCED FIT TO RESUME SEA DUTIES AS OF FEBRUARY 11, 2000.

: HOWEVER, THE PATIENT REFUSED TO SIGN HIS CERTIFICATE OF FITNESS TO WORK.

: FOR YOUR PERUSAL.[19]

In the interregnum, before Medel actually underwent the procedure of cranioplasty, he claimed from petitioners the payment of permanent total disability benefits. Petitioners, however, refused to grant the same.[20] Consequently, on September 7, 1999, Medel filed before the Arbitration Branch of the NLRC a complaint[21]

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[18] *Id.* at 96.

[19] *Id.* at 121.

[20] *Id.* at 219.

[21] *Id.* at 67-68.

against petitioners for disability benefits in the amount of US$60,000.00, medical expenses, loss of earning capacity, damages and attorney's fees. The case was docketed as NLRC OFW (M) No. 99-09-01462. Medel claimed entitlement to permanent total disability benefits as more than 120 days had passed since he was repatriated for medical treatment but he was yet to be declared fit to work or the degree of his disability determined by the company-designated physician.

On July 30, 2001, the Labor Arbiter issued a Decision[22] in favor of Medel, holding that:

> Upon the records, this Office is more than convinced that [Medel] is entitled to a [sic] disability benefits which is equivalent to 120% of US$50,000.00 or US$60,000.00 or its peso equivalent at the [e]xchange rate prevailing at the time of its payment.
>
> As held by [petitioners] to be an undisputed fact, [Medel] suffered injury that was sustained by him during the effectivity of his shipboard employment contract and while engaged in the performance of his contracted duties.
>
> Upon [Medel's] arrival, [petitioners] referred [him] to the company designated physician at Metropolitan Hospital on March 13, 1999, with impression, "Head Injury with Open Fracture of the Left Frontal Bone: S/P Open Reduction & Internal Fixation of Frontal Bone and Sinus; Cerebral Concussion; Vitreous Hemorrhage, left eye secondary to trauma." Suggested procedure was Ultrasound of the left eye. Subsequently, [Medel] was referred to a neuro-surgeon. His cranial CT scan showed "Minimal Pneumocephalus; Inferior Frontal Region; Comminuted Fracture, Frontal Bone; Post craniotomy Defect, Left Frontal Bone; changed within the Sphenoid which may relate to previous hemorrhage and Negative for Mass effect nor Intracranial Intracerebral Hemorrhage." His ultrasound of the left eye confirmed the presence of Vitreous Hemorrhage. Suggestion was Vitrectomy, Left eye. On June 28, 1999, [Medel] was re-evaluated, however, the ophthalmologist [s]uggested Argon Laser Retinopexy since he was noted to have Wrinkled Macula and Areas of weakness in the Retina secondary to Trauma. He was then seen July 14, 1999 when he underwent first session of Argon Laser Retinopexy and for re-

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[22] *Id.* at 129-135.

evaluation on July 19, 1999 for second session. On July 23, 1999, he was seen by the neurosurgeon who advised him [to undergo the procedure of] cranioplasty to cover the bony defect of the skull to be done [i]n October 1999.

With the foregoing, we are persuaded by [Medel's] arguments that the claim for disability benefits is not solely premised on the extent of his injury but also on the consequences of the same to his profession as a seafarer which was his only means of livelihood. We could imagine the nature of these undertakings of seafarers where manual and strenuous activities are part of the days work. Moreso, with the position of [Medel] being an ordinary seaman which primarily comprises the vessel manpower and labor. Thus, to us, we are convinced that [Medel] is entitled to the benefits under Section 20 B of the POEA Memorandum Circular No. 55 and Section 30 A thereof which was deemed incorporated to his POEA approved employment contract.

Further, the claim for attorney's fees is justified considering the above discussed circumstances which in effect has constrained [Medel] to hire the services of a legal counsel to protect his interest.[23]

The Labor Arbiter decreed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding [petitioners] jointly and severally liable to:

1) To pay [Medel] the amount of US$60,000.00 or its peso equivalent at the prevailing exchange rate at the time of payment, representing permanent and total disability; [and]

2) To pay [Medel] the equivalent amount of ten (10%) percent of the total judgment award, as and for attorney's fees;

All other claims are hereby dismissed for lack of merit.[24]

Petitioners filed a Memorandum of Appeal[25] before the NLRC, which was docketed as NLRC CA No. 029790-01. In their appeal, petitioners alleged that the disability compensation granted

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[23] *Id.* at 133-135.

[24] *Id.* at 135.

[25] *Id.* at 136-172.

to Medel was improper because the same was not based on a disability assessment issued by the company-designated physician. As Medel was not disabled, they argued that he was not entitled to any compensation, including attorney's fees.

In its Decision dated July 31, 2002, the Second Division of the NLRC found merit in the petitioners' appeal and disposed of the same thus:

> WHEREFORE, the appealed decision is SET ASIDE and a new one entered by ordering [Medel's] claim DISMISSED for lack of merit.[26]

The NLRC ruled that under Section 20(B)(2) of the 1996 POEA SEC, the disability of a seafarer should be assessed by the company-designated physician. The employer shall be liable for the seafarer's medical treatment until the latter is declared fit to work or his disability is assessed. Should the seafarer recover, the NLRC posited that the contractual obligation of the employer should cease. However, if the seafarer is found to be incapacitated, the employer's contractual obligation shall terminate only after the latter pays the seafarer's disability benefits. Furthermore, the NLRC stated that the 120 days referred to in Section 20(B)(3) of the POEA SEC[27] pertained to "the

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[26] *Id.* at 193.

[27] SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

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

maximum number of days to which a seafarer who signed-off from the vessel for medical treatment is entitled to sickness wages."[28] The NLRC ruled that there was no evidence to prove that Medel was disabled, other than his contention that his treatment had gone beyond 120 days. Medel was even declared fit to resume sea duty. Thus, the NLRC held that Medel had no basis for his claim of disability benefits.

Medel filed a Motion for Reconsideration[29] of the above NLRC Decision but the same was denied in the NLRC Resolution[30] dated November 21, 2002.

Medel, thus, filed a Petition for *Certiorari*[31] before the Court of Appeals, which sought the reversal of the NLRC rulings for having been allegedly issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Medel's petition was docketed as CA-G.R. SP No. 75893.

On November 20, 2006, the Court of Appeals rendered the assailed decision, the dispositive portion of which provides:

> **WHEREFORE,** in view of the foregoing, the NLRC Decision dated July 31, 2002 is hereby **REVERSED and SET ASIDE**. The decision of the Labor Arbiter dated July 30, 2001 is hereby **REINSTATED** with respect only to the award of disability benefits. The award of attorney's fees in the Labor Arbiter's decision is deleted.[32]

Citing the Court's ruling in *Crystal Shipping, Inc. v. Natividad*,[33] the Court of Appeals stated that an award of permanent total disability benefits is proper when an employee

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reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[28] *Rollo*, p. 192.

[29] *Id.* at 195-205.

[30] *Id.* at 207-208.

[31] *Id.* at 209-242.

[32] *Id.* at 60.

[33] 510 Phil. 332, 340-341 (2005).

is unable to perform his customary work for more than 120 days. Since Medel's accident rendered him incapable of performing his usual or customary work for more than 120 days, the Court of Appeals concluded that he was entitled to permanent total disability benefits. The Court of Appeals also refused to accept the veracity of the medical certificate attesting to Medel's fitness to resume sea duties as the same was issued by Dr. Lim, a physician who the appellate court deemed as not privy to Medel's condition. The Court of Appeals did not, however, heed Medel's claims for moral and exemplary damages since petitioners neither abandoned him during his period of disability, nor were they negligent in providing for his medical treatment. Lastly, the Court of Appeals deleted the award of attorney's fees.

Medel filed a Partial Motion for Reconsideration[34] of the above decision as regards the award of attorney's fees. On the other hand, petitioners filed their Motion for Reconsideration,[35] arguing that the provisions alone of the POEA SEC should apply in determining what constitutes permanent total disability, to the exclusion of the Labor Code provisions on disability compensation. In the assailed Resolution dated May 15, 2007, the Court of Appeals denied for lack of merit the respective motions of the parties.

Hence, petitioners instituted this petition, citing the following issues:

I.

WHETHER OR NOT THE DISABILITY BENEFITS PROVIDED UNDER THE POEA CONTRACT ARE SEPARATE AND DISTINCT FROM THOSE PROVIDED UNDER THE LABOR CODE.

II.

WHETHER OR NOT UNDER THE POEA CONTRACT THE INABILITY TO WORK FOR MORE THAN ONE HUNDRED TWENTY (120) DAYS IS TOTAL AND PERMANENT DISABILITY.

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[34] *Rollo*, pp. 270-275.

[35] *Id.* at 276-293.

III.

WHETHER OR NOT, IN DISABILITY COMPENSATION CLAIMS, THE CONDITIONS PRECEDENT REQUIRED UNDER THE POEA CONTRACT SHOULD BE LIGHTLY DISREGARDED ON MERE APPEAL TO THE LIBERALITY OF LAWS TOWARDS FILIPINO SEAFARERS.[36]

Petitioners argue that Medel's claims for disability benefits should be resolved by applying exclusively the provisions of the POEA SEC and the relevant jurisprudence interpreting the same, without resorting to the provisions of the Labor Code on disability benefits. Moreover, petitioners aver that the 1996 POEA SEC does not state that the mere lapse of 120 days automatically makes a seafarer permanently and totally disabled. In spite of the lapse of 120 days, petitioners posit that the entitlement to disability benefits would only come as a matter of course after the degree of the seafarer's disability had been established, which assessment shall be made after the seafarer no longer responds to any medication or treatment. Thus, a seafarer is entitled to receive permanent total disability benefits only if the seafarer was declared by the company-designated physician to be suffering from a Grade 1 impediment.

In the present case, petitioners insist that there was no disability assessment from the company-designated physician. On the contrary, Medel was even assessed to be physically fit to resume work. Petitioners then faulted the Court of Appeals for rejecting the certification of Dr. Ong that Medel was fit to resume sea duties. Petitioners insist that said doctor had personal knowledge of Medel's condition, as he was a member of a team of physicians tasked to treat Medel. Petitioners maintain that Medel did not present evidence to prove his incapacity, which would entitle him to the disability benefits that he sought.

After thoroughly reviewing the records of this case, the Court concludes and so declares that the instant petition lacks merit.

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[36] *Id.* at 389.

The Applicable Law and Jurisprudence

in the Award of Disability Benefits of Seafarers

The application of the provisions of the Labor Code to the contracts of seafarers had long been settled by this Court. In *Remigio v. National Labor Relations Commission*,[37] we emphatically declared that:

> The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under E.O. 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 SEC 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. x x x.[38]

The Labor Code defines **permanent total disability** under Article 192(c)(1), which states:

> ART. 192. PERMANENT TOTAL DISABILITY. – x x x
>
> 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 in the Rules[.] (Emphasis ours.)

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[37] 521 Phil. 330 (2006).

[38] *Id.* at 346.

This concept of **permanent total disability** is further explained in Section 2(b), Rule VII of the Implementing Rules of Book IV of the Labor Code (Amended Rules on Employees Compensation) as follows:

SEC. 2. *Disability*. – x x x

(b) A disability is **total and permanent** if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. (Emphasis ours.)

The exception in Rule X of the Implementing Rules of Book IV (Amended Rules on Employees Compensation) as mentioned above, on the other hand, pertains to an employee's entitlement to **temporary total disability benefits** under Section 2 of the aforesaid Rule X, to wit:

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 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. (Emphasis ours.)

In *Vergara v. Hammonia Maritime Services, Inc.*,[39] the Court discussed how the above-mentioned provisions of the Labor Code and its implementing rules should be read in conjunction with the first paragraph of Section 20(B)(3) of the 2000 POEA SEC, which states:

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

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[39] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

Correlating the aforementioned provision of the POEA SEC with the pertinent labor laws and rules, *Vergara* teaches that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. **For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work.** He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended 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**.
>
> x x x x x x x x x
>
> As we outlined above, **a temporary total disability only becomes permanent when so declared by the company 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**. x x x.[40] (Emphases ours.)

Incidentally, although the contract involved in *Vergara* was the 2000 POEA SEC, the Court applied the ruling therein to the case of *Magsaysay Maritime Corporation v. Lobusta*,[41] which involved the 1996 POEA SEC. As noted in *Lobusta*, the first paragraph of Section 20(B)(3) of the 2000 POEA SEC was

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[40] *Id.* at 628-629.

[41] G.R. No. 177578, January 25, 2012.

copied verbatim from the first paragraph of Section 20(B)(3) of the 1996 POEA SEC.

From the foregoing exposition, Medel's entitlement to permanent total disability benefits becomes clear. Medel was accidentally injured on board the M/V Optima on March 1, 1999, where he sustained an open depressed fracture on the left frontal side of his forehead, as well as damage to his left eye and frontal sinus. Since his repatriation to the Philippines on March 13, 1999, Medel underwent medical treatment for his condition under the supervision of Dr. Lim, the company-designated physician, at the Metropolitan Hospital. He was initially given medications to manage his condition and he went through surgical procedures to repair the damage to his left eye on April 22, 1999, July 14, 1999 and July 19, 1999. Medel's condition was continuously evaluated by the hospital's ophthalmologist and neurologist. On October 20, 1999, Medel went through the procedure of cranioplasty to repair his fractured skull.[42] According to Dr. Lim, Medel was seen by the hospital neurologist and neurosurgeon on February 11, 2000, on which date he was pronounced fit to resume sea duties.

Unmistakably, from the time Medel signed off from the vessel on March 13, 1999 up to the time his fitness to work was declared on February 11, 2000, more than eleven (11) months, or approximately 335 days, have lapsed. During this period, Medel was totally unable to pursue his occupation as a seafarer. Following the guidelines laid down in *Vergara*, it is evident that the maximum 240-day medical treatment period expired in this case without a declaration of Medel's fitness to work or the existence of his permanent disability determined. Accordingly, Medel's temporary total disability should be deemed permanent and thus, he is entitled to permanent total disability benefits.

With respect to the alleged earlier pronouncement of Dr. Ong as to the fitness of Medel for sea duties, the Court is not thereby persuaded. To recall, the said pronouncement was made on

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[42] *Rollo*, pp. 88-95.

October 25, 1999 in a letter addressed to Dr. Lim after the cranioplasty of Medel was undertaken on October 20, 1999. After explaining the delay in the conduct of the said procedure, Dr. Ong stated that he "**think[s] patient can resume sea duties without any disability**."[43] The statement of Dr. Ong, however, was not a categorical attestation as to the actual fitness of Medel to resume his occupation as a seafarer. Plainly, after Medel underwent cranioplasty to repair the fracture in his skull, it is not farfetched to assume that he still needed additional time for his wound to heal and to recuperate in order to restore himself to his former state of health. In their Memorandum, petitioners even acknowledged that despite the above opinion of Dr. Ong, Medel continued to avail of further medical treatment and rehabilitation.[44] Medel also had to be evaluated by specialists to assess his condition. In their Memorandum, petitioners related that "[u]ltimately, the company-designated physicians declared that petitioner was 'fit to resume sea duties' by Medical Certificate dated 15 February 2000."[45] The certificate signed by Dr. Lim pertinently stated that "**[Medel] was seen by our neurologist and neuro-surgeon. His wound is healed. His perimetry result was given to our neurologist and he opines that patient is now fit to work.**"[46] The same certificate declared that "**[Medel] was pronounced fit to resume sea duties as of February 11, 2000.**"[47] To our mind, the medical certificate of Dr. Lim dated February 15, 2000 is the definitive declaration on the physical condition of Medel. Unfortunately for petitioners, however, this declaration was issued beyond the 240-day period as mandated in *Vergara*.

Consequently, we find no reason to overturn the Court of Appeals' conclusion regarding Medel's right to disability benefits, albeit on different legal grounds.

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[43] *Id.* at 96.

[44] *Id.* at 387-388.

[45] *Id.* at 388.

[46] *Id.* at 121.

[47] *Id.*

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. Petitioners Fair Shipping Corporation and Kohyu Marine Co., Ltd. are held jointly and severally liable to pay Joselito T. Medel permanent total disability benefits of US$60,000.00, to be paid in Philippine Peso at the exchange rate prevailing at the time of actual payment. Costs against petitioners.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 180614. August 29, 2012]

LEONARDO NOTARTE, GUILLERMO NOTARTE, REGALADO NOTARTE and HEIRS OF FELIPE NOTARTE, *petitioners, vs.* **GODOFREDO NOTARTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBLE WHEN THE SAME IS RELEVANT TO THE ISSUE, COMPETENT AND IS NOT EXCLUDED BY THE LAW OR THE RULES.— Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules or is competent. The exclusion of previous documents of transfer executed by Patrocenia Gamboa's predecessors-in-interest, based merely on the MTC's impression that they do not clearly indicate it was the same parcel sold by her to respondent, was improper considering that the parties stipulated at the pre-trial that the lands involved in this controversy form part of the property covered by OCT No. 48098. x x x Even assuming that the

MTC had reservations about the relevancy of some exhibits offered by the respondent, still, it should have admitted the same subject to judicial evaluation as to their probative value. In connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, this Court has held that: [I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.

2. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; PARTITION; MAY BE INFERRED FROM CIRCUMSTANCES SUFFICIENTLY STRONG TO SUPPORT PRESUMPTION THEREOF; CASE AT BAR.— Under Article 1082 of the Civil Code, every act which is intended to put an end to indivision among co-heirs is deemed to be a partition even though it should purport to be a sale, an exchange, or any other transaction. Partition may thus be inferred from circumstances sufficiently strong to support the presumption. In this case, the original registered owners had either mortgaged or sold their respective 1/7 shares, in whole or in part. Although the deeds of conveyances and those early entries in OCT No. 48098 indicated the portions being mortgaged or sold as pertaining to *pro indiviso* shares, the said owners' successors-in-interest eventually took possession of the respective portions acquired by them beginning 1951 or thereabouts. These transferees who are mostly relatives likewise introduced improvements on their respective lots, and have also exercised acts of ownership thereon. That these respective shares of the original registered owners were merely designated orally – their individual portions having been simply pointed to them, as testified to by respondent and Patrocenia – is immaterial. x x x The validity of an oral partition is already well-settled. It is not required, x x x that the partition agreement be registered or annotated to be valid. In another case, we have held that after exercising acts of ownership over their respective portions of the contested estate, petitioners are estopped from denying the existence of an oral partition.

3. ID.; PROPERTY; OWNERSHIP; IN ACTION TO RECOVER, PROPERTY MUST BE IDENTIFIED AND PARTY MUST RELY ON THE STRENGTH OF HIS TITLE.— Article 434 of the Civil Code provides: In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim. The first requisite: the identity of the land. In an *accion reinvindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof. Anent the second requisite, *i.e.*, the claimant's title over the disputed area, the rule is that a party can claim a right of ownership only over the parcel of land that was the object of the deed.

4. ID.; ID.; ID.; ID.; ON OVERLAPPING OF BOUNDARIES, IDENTITY OF THE LAND MAY BE ESTABLISHED THROUGH A SURVEY PLAN.— It is settled that what really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. We have held, however, that in controversial cases where there appears to be an overlapping of boundaries, the actual size of the property gains importance. x x x The identity of the land sought to be recovered may be established through the survey plan of the property. In this case, a survey could have settled the issue of overlapping boundaries especially since the properties involved are all unregistered and, apparently unsurveyed. Even assuming that the portions occupied by petitioners have already been surveyed, the non-presentation of any approved survey plan would raise a presumption that if presented, such piece of evidence would be adverse to their claim.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Filipina C. Rivera for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed under Rule 45 which seeks to set aside the Decision[1] dated August 10, 2007 and Resolution[2] dated November 14, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92591 and to reinstate the Decision[3] dated September 1, 2004 of the Municipal Trial Court (MTC) of Bani, Pangasinan dismissing respondent's complaint for recovery of possession and damages. The CA affirmed the Decision[4] dated March 21, 2005 of the Regional Trial Court (RTC) of Alaminos City, Pangasinan, Branch 54 reversing the MTC judgment.

As culled from the records, the facts of this case follow:

The properties subject of controversy form part of a 263,233-square meter land situated in Barrio Quinaoayanan, Municipality of Bani, Province of Pangasinan, and covered by Original Certificate of Title (OCT) No. 48098 issued on November 6, 1931. The original registered owners with 1/7 share each are Vicenta Notarte, the wife of Hilario Hortaleza; Paulino Notarte, married to Maria Camba; Juan Notarte, married to Gregoria Castillo; Bernardo Notarte, married to Dorotea Orasa; Cirila Notarte, the wife of Luis Castelo; Fausto Notarte, married to Martina Natino; and spouses Ricardo Namoca and Eusebia Ortaleza. Vicenta, Paulino, Juan, Bernardo, Cirila and Fausto, all surnamed Notarte, are brothers and sisters, while Ricardo Namoca is their cousin.[5]

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[1] *Rollo*, pp. 257-271. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Jose C. Reyes, Jr. and Ramon R. Garcia, concurring.

[2] *Id.* at 279-280.

[3] *Id.* at 142-164. Penned by Judge Benjamin N. Abella.

[4] *Id.* at 198-204. Penned by Judge Jules A. Mejia.

[5] Pre-Trial Order, records, p. 94; Exhibit "O", records, p. 183; TSN, March 2, 1999, pp. 9-10.

The parties in this case are close relatives. Petitioner Felipe Notarte is the uncle of respondent Godofredo Notarte whose father, Alejandro Notarte, is the brother of Felipe. Felipe and Alejandro are the sons of Juan Notarte. Petitioner Guillermo Notarte is the brother of Godofredo while petitioner Leonardo Notarte is their cousin, being the son of Felipe. Petitioner Regalado Notarte is the son of Leonardo.[6]

On October 15, 1984, Godofredo bought from Patrocenia Nebril-Gamboa a parcel of land, as evidenced by the Deed of Absolute Sale[7] she executed in his favor and describing the property sold as follows:

> A parcel of land, situated in Quinaoayanan, Bani, Pangasinan, consisting of pasture and unirrigated riceland, containing an area of **29,482 sq. m.**, more or less. Bounded on the N. by Leonardo Notarte; on the NE. by Nenita Notarte; on the SE. by Jose Nano; on the S. by Guillermo Notarte; and on the W. by Leonardo Notarte, which limits are indicated by fences on all sides. Declared under Tax Declaration Nos. 255 and 256 still in the name of Emiliano Gamboa who donated it to Procopio Gamboa and Desiderio Gamboa and in turn Desiderio and Procopio sold it to Antonio Gamboa and Patrocenia Nebril who has adjudicated the entire parcel of land unto herself, the herein vendor; assessed *in toto* at ₱1,120.00. **This is part of the land covered by Original Certificate of Title No. 48098, Pangasinan**. (Emphases supplied.)

On the same date, Godofredo filed his Affidavit of Adverse Claim in the Registry of Deeds to protect his rights on the land he acquired from Patrocenia "pending the completion of all proper documents for the segregation of *separate portions* of the whole parcel of land under aforesaid title [OCT No. 48098]." Thereafter, Godofredo declared the land in his name under Tax Declaration No. 982 for the year 1985, indicating its area as 29,482 sq. m.[8]

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[6] TSN, March 2, 1999, pp. 7-9; TSN, June 29, 2000, p. 11.

[7] Exhibit "K", records, p. 176.

[8] Records, pp. 177, 181 (Exhibits "L" and "N-2").

Godofredo initially filed in the MTC a complaint for "Partition, Subdivision Survey and Recovery of Possession With Damages" against Felipe and Guillermo (Civil Case No. 36). An Amended Complaint for "Recovery of Possession With Damages" was admitted by the said court on January 10, 1997, whereby the prayer for subdivision survey of the adjoining lots respectively occupied by the parties was abandoned. The Second Amended Complaint which included as additional defendants Leonardo and Regalado, was likewise admitted on September 16, 1997.[9]

In his Second Amended Complaint, Godofredo described the property he acquired from Patrocenia, as follows:

> A parcel of unirrigated riceland and pasture land situated in Quinaoayanan, Bani, Pangasinan, containing an area of **27,604.714 sq. m.**, more or less. Bounded on the North and West by Felipe Notarte; on the East by Jose Nano; and on the South by Guillermo Notarte and Leonardo Notarte. Assessed at ₱6,900 under tax declaration No. 8341 in the name of the plaintiff. **This was part of Bernardo Notarte's 1/7 share of the land covered by Original Certificate of Title No. 48098.**[10] (Emphases supplied.)

Godofredo claimed that his land was acquired by Patrocenia from Procopio Gamboa and Desiderio Gamboa who acquired the same from Emiliano Gamboa who in turn acquired it from Bernardo Notarte in separate transactions and conveyances in writing. He likewise averred that the heirs of Bernardo have executed pertinent documents renouncing their interest, action and participation over the subject land in favor of Godofredo and/or his predecessors-in-interest.

Godofredo alleged that the above-described land used to be intact but the petitioners, taking advantage of his absence, took possession of portions of his land thereby reducing it to barely 13,000 sq. m., with Guillermo occupying 6,333 sq. m. more or less on the southern side, while Leonardo and Regalado jointly encroached over 8,272 sq. m. more or less on the western side.

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[9] *Id.* at 1-15, 45 and 78.

[10] *Id.* at 1.

Godofredo claimed that all demands upon the petitioners to return the aforesaid portions and conciliations before the *Barangay* authorities failed.

In their Answer with Counterclaim,[11] petitioners denied having encroached on respondent's land, contending that respondent instituted this complaint to increase the actual size of his land at the expense of the adjoining owners. Petitioners asserted that they have been in actual, notorious, public and exclusive possession of their respective parcels for a very long time even before respondent bought his property from Patrocenia Gamboa. They claimed that their common ascendant, Felipe, owned 10 hectares of the property covered by OCT No. 48098 which he acquired by purchase as early as 1951 and the latest in 1967. The 37,604-sq. m. portion of Felipe's land being occupied by petitioners, which area adjoins respondent's property on the west, was acquired by Felipe from James Turner by virtue of a Quitclaim Deed dated April 2, 1951. Petitioners also alleged that there are other co-owners of the whole undivided land covered by OCT No. 48098 who are indispensable for the final and complete determination of this case.

In his Reply,[12] respondent pointed out that he had purchased a portion with a definite area of 27,604.714 sq. m. which is within the 1/7 share of Bernardo Notarte. Petitioners knew about this because one of them (Leonardo) bought only one hectare of the said share. Being a registered land, their possession of the encroached portion they do not own is illegal, no matter how long. As to the property of Felipe, respondent argued that its alleged area is immaterial even if it were true that he acquired 10 hectares because the fact is that he had not acquired any portion of Bernardo's 1/7 share; why then did Felipe take possession of a western portion of Bernardo's 1/7 share which belongs to respondent? Respondent also claimed that what Felipe acquired from Turner was the 1/7 share of Juan Notarte, which

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[11] *Id.* at 51-54, 79-82.

[12] *Id.* at 83-85.

is situated north of Bernardo's 1/7 share, one hectare of which was bought by Leonardo. Thus, petitioners are occupying not only the 37,604 sq. m. acquired from Turner but also the western portion of respondent's land measuring almost one hectare north of and adjacent to Leonardo's one hectare. Respondent further averred that the land covered by OCT No. 48098 is no longer undivided as it had been physically segregated into the designated shares of the registered owners, and various transfer certificates of title have been issued. Since Bernardo's 1/7 share was segregated in metes and bounds, the controversy lies in the boundaries of said share minus the one hectare of Leonardo. Since petitioners are illegally possessing portions of that share which respondent as present owner wants to recover, there are no indispensable parties other than those who have taken possession of the encroached portion. Respondent added that a survey to determine the extent of his land based on the documents he would present will certainly solve the case with finality.

Respondent filed a motion for the conduct of survey on the disputed lands "to correct and remove overlapping of boundaries of the parties' adjacent lots" which was opposed by the petitioners. The MTC denied the motion stating that this would pre-empt the issues under contention because of the ongoing trial to determine the boundaries of the subject properties which are in dispute.[13]

At the trial, respondent testified that he had known the land covered by OCT No. 48098 since 1951. The shares of Juan and Paulino Notarte were foreclosed by Turner, and were later redeemed by Felipe and Manuel Urbano, respectively. Manuel Urbano also bought the share of Fausto Notarte. The shares of Paulino and Fausto were already transferred in the name of Urbano (TCT Nos. 4927 and 4928). Cornelio Gamboa acquired a portion of the share of Ricardo Namoca while another portion thereof went to Godofredo Namoca. Vicenta Notarte's share went to Juan, Felipe and Virgilio Tugas. The present owners of the portion representing Cirila Notarte's share are petitioner

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[13] *Id.* at 138-139, 141-143 and 146.

Guillermo and Lopercio Orilla. As to Bernardo Notarte's share, respondent testified that one hectare was sold to petitioner Leonardo while the remaining 27,604 sq. m. was bought by him. Respondent likewise presented a Deed of Extrajudicial Partition with Quitclaim and Confirmation of Sale dated April 28, 1995 executed in his favor by the heirs of Bernardo. Respondent presented other documents evidencing the transfer from the original registered owner Bernardo to him as the present owner, and thereafter proceeded to draw a sketch on yellow paper and described to the court the limits of his land, including the areas encroached by the respondents. On May 8, 1985, he had the land surveyed but Felipe and Guillermo did not agree. Respondent stated that Guillermo encroached 6,233 sq. m. on the southern portion of his land, a rice land which produces 15 sacks of *palay* a year valued at ₱5,000.00 while Leonardo and Regalado are occupying 8,272 sq. m. of forest land on the western side of his land which are planted with *madre cacao* and tamarind trees that yields ₱3,000 harvest per year since 1985.[14]

On cross-examination, respondent admitted that the signatories to the Deed of Extrajudicial Partition With Quitclaim and Confirmation of Sale were some of the alleged heirs of Bernardo, and that OCT No. 48098 is still existing. He saw the land for the first time in 1951 when he was 15 years old. The whole land had been partitioned among the original owners even prior to 1951; their respective shares have been pointed to them by their father, Eriberto Notarte. The share of Vicenta on the west is presently owned by Felipe and Nely Mendoza; Paulino's share on the east was acquired by Manuel Urbano; however, as to the portion now owned by Jose Doctor, he does not know who was the original owner. It was in 1985 that he found out about the encroachment on his land by Guillermo and Leonardo. At the time he bought the land in October 1984, it was Patrocenia Gamboa who was in possession. When he occupied the land in 1985, there was no fence yet but upon returning from Pampanga, the encroached areas were already fenced. Respondent affirmed

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[14] TSN, March 2, 1999, pp. 9-14; TSN, May 4, 1999, pp. 3-20.

that he had resided in Pampanga for more than 20 years from 1961 to 1985. In 1984, his brother Guillermo convinced him to buy the land that adjoins the rice land occupied by him (Guillermo) as a tenant of Patrocenia. On the other hand, Leonardo's house was built on his father's land and it is Leonardo's son Regalado who is residing on the encroached portion. Respondent admitted that when he bought the land from Patrocenia, she did not point to him the boundaries of his land and just handed him the document; he was the one who tried to locate the boundaries of the land.[15] He knew that the whole property covered by OCT No. 48098 had already been partitioned because his grandparents have been in possession of their share and they sold it, and because there were dispositions already made. The land under his possession pertains to the share of Bernardo. He affirmed that the well is situated about 100 meters west from the house of Guillermo and that one hectare of Bernardo's share is already owned by Leonardo. However, Leonardo encroached on his land, in excess of the said one hectare by removing the fence. Leonardo through his son Regalado is also in possession of the land of Felipe on the western side.[16]

Respondent presented as witness Leila P. Pamo, an employee of the Municipal Assessor's Office. She testified on the status of the property covered by OCT No. 48098, verified as Lot 1 PSU-25967, Cad. Lot 6035. This property had already been subdivided as per the Certification issued by the Municipal Assessor listing several tax declarations obtained by the present owners. She identified the said certification as well as 15 tax declarations covering various parcels of the land under OCT No. 48098 in the names of various individuals. However, she admitted on cross-examination that she did not secure a subdivision plan of Lot No. 6035 as there was none on file with their office and neither did she verify if there was such document on file with the Registry of Deeds.[17]

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[15] TSN, May 6, 1999, pp. 7, 10-27; TSN, August 24, 1999, pp. 3-4.

[16] TSN, August 24, 1999, pp. 5-15.

[17] TSN, October 5, 1999, pp. 2-8.

Petitioners' first witness was Patrocenia Nebril Gamboa who testified that Guillermo is the son of her cousin, and has been working as her tenant since 1968. She claimed that she has already donated to Guillermo the land he had been farming and presented a Deed of Donation dated February 21, 1997. This 450-sq. m. land she donated to Guillermo lies on the western side near the property of Felipe. Previously, she donated two parcels to Guillermo in 1977 and 1983. She then clarified that the transaction in 1983 was a Deed of Absolute Sale. These two parcels (1 ½ or 2 hectares) which she conveyed to Guillermo adjoin each other and are separated by a fence from that parcel she sold to Godofredo; the boundaries between these properties are also marked by coconuts (east) and bamboos (west). There is a well that was dug up by Guillermo who uses it as a source of water; Guillermo's house was erected about five meters away from this well. She described the metes and bounds of her property as follows: North - Felipe, West - Felipe, East - pathway, South - she forgot. The western and northern sides of her land that adjoins the property of Felipe are rice lands with bamboos as boundary on the west. She also stated that there are many who erected their houses on the property and their respective areas were just pointed to them. Her own parcel still has no separate title from the mother title (OCT No. 48098). However, she maintained that there is no clear partition. As to the precise area, it may be that she had occupied less than what is stated in her documents but she did not complain; they cannot resolve the matter because of several owners and she had no time.[18]

On cross-examination, Patrocenia confirmed that in 1984 she sold a parcel of land to Godofredo which is the same land she bought from Procopio and Desiderio Gamboa. She likewise confirmed her signature in the Deed of Absolute Sale in favor of Godofredo but not as to the area stated. She remembered having sold her land separately to Godofredo and Guillermo. The land she sold to Guillermo was acquired by her from Bienvenido Cortez who in turn bought the same from Cirila

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[18] TSN, May 18, 2000, pp. 4-18.

Notarte. As to the land she sold to Godofredo, it came from Bernardo Notarte. When Guillermo became her tenant on her land which she subsequently donated to him, he constructed his house thereon (1968), which house still remains in the same place.[19]

The second witness for petitioners was Epefanio C. Camba, Jr., Municipal Assessor of Bani, Pangasinan. When presented with the Certification dated October 1, 1999 regarding OCT No. 48098, he said he could not recall having issued the same although it may have indeed been issued by him. He does not know who are the present owners of the land covered by said title, nor if the same was already subdivided. The basis of the aforesaid certification are the tax declarations issued but he could not remember if there was proof of subdivision or partition on file with their office. He explained that when a property is subdivided, it means there is already a tax declaration on file but without reference to a subdivision plan or instrument of partition.[20]

Petitioner Leonardo Notarte testified that he knows the boundaries of the land bought by Godofredo from Patrocenia which adjoins his own property. The boundaries of Godofredo's land are: North - Leonardo, East - Jose Nano, South - Guillermo, and West - Leonardo. Leonardo claimed that the land west of Godofredo's land was given to him by his parents as "*sab-ong*"; he also owns another lot southwest which he bought from Bernardo Notarte. He described the boundaries of the lot sold to him by Bernardo as follows: North – Felipe, East – Guillermo, South – Godofredo Namoca, and West – Narcisa Oblanca (now Mely Mendoza). Said land is covered by a tax declaration in his name. As to his property adjoining that of Godofredo Notarte, Leonardo said it is bounded on the west by "*bayog*," fence and bamboos. This property was acquired by his father from James Turner as evidenced by a Deed of Quitclaim executed by Turner dated April 2, 1951. His father acquired the southwestern portion of

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[19] *Id.* at 18; TSN, June 8, 2000, pp. 2-9.

[20] TSN, June 29, 2000, pp. 3-7.

the 2/7 parcel from Turner while the northern portion went to Celestino Ortaleza. He maintained that the original land covered by OCT No. 48098 was never partitioned; their respective areas of possession were just pointed to them. There was no extrajudicial or judicial partition executed. On the land of Guillermo, Leonardo testified that he knows it was bought by Guillermo from Patrocenia but he does not know how Guillermo was able to buy it. The boundary of the lands of Guillermo and Godofredo consists of bamboo, coconut and star apple trees. Leonardo further claimed that his son Regalado had a dispute with Godofredo's wife a long time ago about the cutting of the fence.[21]

On cross-examination, Leonardo said that after buying one hectare from Bernardo in 1964, he immediately took possession and declared it in his name. As to the other land he had acquired from his father which is north of Godofredo's property, he admitted that they have not yet executed a document. Four years after acquiring the parcel of land from James Turner, his father Felipe and Celestino divided the same between themselves. His father declared it for tax purposes before but he cannot locate it. The portion that went to Celestino is now occupied by Manuel Urbano. Leonardo further claimed that Guillermo twice bought land from Patrocenia; the sale to Godofredo of his parcel came first. The land acquired from Cirila Notarte was exclusively possessed by Patrocenia. He admitted that Bernardo originally owned the parcel of land that was eventually bought by Godofredo, although such portion presently owned by Godofredo used to be occupied by Feliciano Gamboa to whom Bernardo mortgaged the same. However, Leonardo claimed he does not know who else acquired the remaining portion of Bernardo's land aside from the 10,000 sq. m. he bought from Bernardo whose lots are not in one place. He insisted that the 1/7 share of Juan Notarte which was acquired by his father Felipe is not yet partitioned. While admitting that he was in possession thereof and already given to him by his father, Leonardo said *he does not know the exact area occupied by him*, only the specific

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[21] *Id.* at 11-16, 19, 21-25.

location because his house was constructed on the western part. As to the boundaries of Godofredo's property surrounded by a fence, Leonardo described it as follows: North - Felipe, East - Nano, South - Guillermo and West - Felipe.[22]

Petitioner Guillermo Notarte testified that her aunt Patrocenia was his former landlord. Patrocenia donated one hectare of her land to him as his homelot before he accepted the tenancy in 1968. He identified his signature in the Deed of Confirmation of Donation in his favor dated February 21, 1997. He also bought from Patrocenia more than one hectare of land in 1977, and another parcel in 1983. When Godofredo returned from Pampanga looking for land to buy, he told Godofredo to buy the remaining part of the land being tenanted by him (Guillemo), which is more than one and a half hectares 3 meters from his land on the north. He and Godofredo went around the land before the latter bought it. The boundaries of the land purchased by Godofredo are as follows: North - Felipe, West - Felipe, South - Guillermo, and East - Nano. Their lands are separated by bamboo and "*bayog*" (west), fence (made by their "ancestors"), *madre cacao* (in-between), coconut (east), star apple tree and dike (north). He further claimed that he does not know the actual area of the property bought by Godofredo from Patrocenia; its western side adjoining Felipe's property is a rice land. He insisted that the whole 263,000 was never partitioned; his neighbors just told him about the boundaries of his land. He believes that Godofredo wanted to get their land.[23]

On cross-examination, Guillermo said that of the two parcels owned by Patrocenia, the one she bought from Emiliano Gamboa was acquired first. These two parcels are adjoined on the north and south. The parcel on the north was the one given to him in 1968 where he constructed his house, dug the well and planted coconut and star apple trees. Almost a year after, Patrocenia again instituted him as tenant on her second parcel of land. He does not know from whom Patrocenia acquired the first parcel,

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[22] *Id.* at 25-34; TSN, July 27, 2000, pp. 3-10.

[23] TSN, August 3, 2000, pp. 3-25.

but he knows the second parcel to have been acquired by her from Cortez. The first lot he acquired from Patrocenia is covered by a tax declaration stating the area as 4,227 sq. m. while the second lot he bought has an area of 5,773 sq. m. However, he does not know the actual area of the land he is presently occupying, and its metes and bounds.[24]

The last witness was petitioner Regalado Notarte who testified that the land he is occupying belongs to his grandfather Felipe which lies northwest of Godofredo's land. Before Godofredo acquired the said land, it was Guillermo who was cultivating the same. He described the then visible boundary limits of the property as follows: North and South - dike, bamboo, "*bayog*," and *madre cacao*; West - fence made of bamboo, *madre cacao* and *aludig*; and East - pathway for carabao carts. He constructed his house in 1990 on this land owned by Felipe and nobody then prevented him from doing so.[25]

On cross-examination, Regalado admitted that it was his father Leonardo who told him to build his house on the land which he said is owned by Felipe.[26]

Respondent made the following formal offer of evidence:

[Exhibit] "A"	-	[TCT] No. 4927 in the name of Manuel C. Urbano [II] covering a segregated portion of 33,737 sq.m. of the parcel of land under OCT No. 48098.
[Exhibit] "B"	-	[TCT] No. 4928 in the name of Manuel C. Urbano [II] covering a segregated portion of 30,650 sq.m. of the parcel of land under OCT No. 48098.
[Exhibit] "C"	-	[TCT] No. 3517 in the name of Cornelio Gamboa covering a segregated portion of 15,684 sq.m. of the parcel of land under OCT No. 48098.
[Exhibit] "D"	-	*Escritura de Compra-venta*, dated July 1, 1929 executed by Bernardo Notarte in favor of Emiliano

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[24] *Id.* at 27-34; TSN, October 5, 2000, pp. 2-7.

[25] TSN, March 14, 2002, pp. 3-7.

[26] *Id.* at 8.

Gamboa covering the land that was ultimately sold to [Godofredo Notarte].

[Exhibit] "E" - *Escritura de Donacion Esponsalicia*, dated January 21, 1948 executed by Emiliano Gamboa in favor of his son Procopio Gamboa covering 14,741 sq.m. of the land under Exhibit "D".

[Exhibit] "F" - Deed of Donation *Propter Nuptias* dated April 17, 1957 executed by Emiliano Gamboa in favor of his son Desiderio Gamboa covering 13[,]586 sq.m. of the land under Exhibit "D".

[Exhibit] "G" - Deed of Sale of Realty dated April 2, 1963 executed by Desiderio Gamboa and Procopio Gamboa in favor of Antonio Gamboa, married to Patrocenia Nebril-Gamboa covering the lands under Exhibits "E" and "F".

[Exhibit] "H" - Affidavit of Quitclaim dated April 30, 1973 executed by Primitivo Notarte, surviving child of Bernardo Notarte, in favor of Patrocenia Nebril, wife of Antonio Gamboa over the parcels of land covered by Exhibit "D".

[Exhibit] "I" - Affidavit of Adjudication dated May 10, 1983 executed by Patrocenia N. Gamboa covering the land under Exhibit "G".

[Exhibit] "J" - Affidavit of Adverse Claim dated March 10, 1983 executed by Patrocenia Nebril, then widow of Antonio Gamboa stating antecedent facts leading to their acquisition of Bernardo Notarte's land under OCT No. 48098 of which she has an adverse claim, and registered it on March 23, 1983.

[Exhibit] "K" - Deed of Absolute Sale dated October 15, 1984 executed by Patrocenia N. Gamboa in favor of the plaintiff Godofredo Notarte covering the land that is the subject of Exhibits "D" to "J".

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[Exhibit] "L" - Affidavit of Adverse Claim dated October 15, 1984 executed by Godofredo Notarte stating that he bought the portion of 29,483 sq.m. of the land

under OCT No. 48098. The affidavit was registered on October 15, 1984.

[Exhibit] "M" - Extrajudicial Settlement With [Q]uitclaim and Confirmation of Sale dated April 28, 1995 executed by heirs of Bernardo Notarte whereby they confirmed the sale executed by Bernardo Notarte to Emiliano Gamboa, and so on and so forth up to the sale in favor of x x x Godofredo Notarte.

[Exhibit] "N" - [TD] No. 18884, effective 2000 in the name of Godofredo Notarte covering the land he bought from Patrocenia Nebril.

[Exhibit] "N-1" - [TD] No. 3449, effective 1952 in the name of Emiliano Gamboa covering the land he bought from Bernardo Notarte. (Exh. "D")

[Exhibit] "N-2" - [TD] No. 98, effective 1985 in the name of Godofredo Notarte, x x x covering the same land under Exhibit "N".

[Exhibit] "N-3" - [TD] No. 237, effective 1983 in the name of Emiliano Gamboa covering the land under Exh. N-1.

[Exhibit] "N-4" - [TD] No. 255, effective 1980 in the name of Emiliano Gamboa covering the same land under Exh. N-3.

[Exhibit] "N-5" - [TD] No. 2981, effective 1974 in the name of Emiliano Gamboa covering the same land under Exh. N-4.

[Exhibit] "N-6" - [TD] No. 3953, effective 1966 in the name of Emiliano Gamboa covering the same land under Exh. N-5.

[Exhibit] "O" - Co-owner's Duplicate copy of OCT No. 48098 issued to Godofredo Notarte.

[Exhibit] "P" - Sketch made by Godofredo Notarte on the witness stand showing his land.

[Exhibit] "P-1" to "P-6" - The visible limits of [Godofredo Notarte's] land in all the cardinal directions.

[Exhibit] "Q" - The Barangay Certification to file action. x x x

[Exhibit] "R" - The encircled portion in Exhibit "1" for the defendants, the land claimed by [Godofredo Notarte].

[Exhibit] "R-1" - The blue shaded portion north of Leonardo Notarte which is the portion encroached by Felipe, Leonardo and Regalado.

[Exhibit] "R-2" - The place marked "X" in Exh R-1 where the house of Regalado Notarte stands.

[Exhibit] "R-3" - The blue shaded elongated portion which is encroached by Guillermo Notarte.

[Exhibit] "R-4" - The dug well on the southern side of Godofredo's land. It is within the portion encroached by Guillermo Notarte.

[Exhibit] "R-5" - The stamps of dead madre cacao trees on the northern side of [Godofredo's] land.

[Exhibit] "R-6" - The live madre cacao trees also on the northern side of [Godofredo's] land.

[Exhibit] "R-7" - The trail on the western side of [Godofredo's] land.

Exhibits R and series are within Exhibit "1" of the defendants x x x.

[Exhibit] "S" - The Certification issued by the Municipal Assessor of Bani, Pangasinan stating that Lot 1, Psu-25967 or Psd-4816 is identical to cadastral lot No. 6035 and the same had been subdivided into several lots for various lot owners.

[Exhibit] "T" - [TD] No. 8181 in the name of Charles and Clark Mendoza covering a segregated portion of the land under OCT No. 48098.

[Exhibit] "T-1" - [TD] No. 8347 in the name of Leonardo Notarte also covering a segregated portion[.]

[Exhibit] "T-2" - Patrocenia G. Castillo's [TD] No. 7928 likewise covering a segregated portion.

[Exhibit] "T-3" - [TD] No. 8765 in the name of Manuel Urbano II covering another segregated portion.

[Exhibit] "T-4" - [TD] No. 8764 in the name of Manuel Urbano covering another segregated portion.

[Exhibit] "T-5" - [TD] No. 8354 in the name of Nenita Notarte covering another segregated portion.

[Exhibit] "T-6" - [TD] No. 8254 in the name of Godofredo Nam[o]ca covering another segregated portion.

[Exhibit] "T-7" - [TD] No. 8346 in the name of Helardo Notarte covering another separate portion.

[Exhibit] "T-8" - [TD] No. 8348 in the name of Leonardo Notarte covering another separate portion.

[Exhibit] "T-9" - [TD] No. 8334 in the name of Fausto Notarte covering another separate portion.

[Exhibit] "T-10" - [TD] No. 8335 in the name of Felipe Notarte covering a segregated portion.

[Exhibit] "T-11" - Godofredo Notarte's [TD] No. 8341 covering a segregated portion.

[Exhibit] "T-12" - [TD] No. 8343 in the name of Guillermo Notarte covering another separate portion.

[Exhibit] "T-13" - [TD] No. 8526 in the name of Lupercio Orilla covering another separated portion.

[Exhibit] "T-14" - [TD] No. 8342 in the name of Guillermo Notarte covering another segregated portion.[27]

In its Order[28] dated May 16, 2000, the MTC denied admission of the following documentary evidence and stating the reasons for its ruling: (1) Exhibits "A", "B", "C", "S", "T", "T-1" to "T-4", for lack of showing of any written formal partition entered into by the registered owners and because the memorandum of encumbrances of OCT No. 48098 does not show any previous

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[27] Records, pp. 160-163.

[28] *Id.* at 211-213.

partition to bind their transferees/assigns; (2) Exhibit "D" as there is no showing that the land subject matter thereof is the same land owned by Bernardo Notarte covered by OCT No. 48098; (3) Exhibit "E" being in Ilocano dialect and carries no translation; (4) Exhibit "F" for lack of showing that the land donated is part of the land bought from Bernardo Notarte; (5) Exhibit "G" in the absence of proof that the two lands were the same land earlier donated and subject matter of the case; (6) Exhibits "H", "I" and "J" for being hearsay, the affiants not having testified thereto; (7) Exhibit "K" there being no proof that the land conveyed to Godofredo emanated from Bernardo Notarte and then to Emiliano Gamboa; (8) Exhibit "M" for being hearsay, the extrajudicial settlement is more of a sworn statement; (9) Exhibits "N-1", "N-3" to "N-6", there being no clear showing that these were formally identified in court and covers the land in question; these are simply photocopies with no chance for comparison in the alleged original; (10) Exhibits "D" to "M" which were already denied admission.

On September 1, 2004, the MTC rendered judgment dismissing the complaint. Citing its non-admission of Exhibits "D", "E", "F", "G", "H", "I", "J", "K" and "M", the said court ruled that respondent has not proven his claim that he acquired 27,604.714 sq. m. from the 1/7 share of Bernardo Notarte. On the other hand, it found petitioners to have established their actual possession of their respective portions even long before respondent acquired his land.

On appeal by respondent, the RTC reversed the MTC. The RTC found that from the evidence it is convincingly clear that respondent owns the 27,604 sq. m. described in his second amended complaint and identified his land with the statement of its metes and bounds and the visible limits thereof. Because there is overlapping of boundaries in this case, the RTC said that the area of the adjoining parcels gains significance. The *fallo* of the RTC Decision reads:

WHEREFORE, the appealed decision of the court *a quo* is Set Aside, and this Honorable Court renders judgment, to wit:

1. ORDERING the defendant GUILLERMO NOTARTE to vacate and surrender the southern portion containing an area of 6,333 square meters of plaintiff's land and to pay actual damages of ₱40,000.00;

2. ORDERING the defendants LEONARDO NOTARTE, REGALADO NOTARTE AND FELIPE NOTARTE to vacate and surrender EIGHT THOUSAND TWO HUNDRED SEVENTY TWO (8,272) square meters western portion of plaintiff's land and to pay jointly and severally actual damages of ₱20,000.00;

3. ORDERING the defendants jointly and severally to pay the plaintiff attorney's fees and litigation expenses of ₱10,000.00.

IT IS SO ORDERED.[29]

Petitioners elevated the case to the CA which dismissed their appeal. The CA held that it was a palpable mistake on the part of the MTC to conclude that no partition had been made by the registered owners and their successors-in-interest, and on the basis of that conclusion denied admission of most of the material exhibits of respondent. The CA found that as early as 1951 and even before the issuance of OCT No. 48098, the registered owners have effected an oral or informal partition of the big parcel of land, complete with the demarcation of its boundaries as pertaining to the respective owners thereof by visible boundary limits such as dike, "*mojon*," live trees and the like. Assessing the evidence on record, the CA made the following observations:

The statement of facts as presented herein is mainly culled from the decision of the MTC. On the face of the said decision, respondent Godofredo testified clearly and graphically as to the location and physical description of the subject land, in relation to the big parcel of land covered by OCT No. 48098. The series of conveyances from the registered owner Bernardo Notarte up to Antonio and Patrocenia Gamboa were related by Godofredo in painstaking details, all supported by documentary evidence. The trial court however precipitately concluded that the land being described in the said series of conveyances is not clearly referred to as the subject land,

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[29] *Rollo,* p. 204.

despite the stipulation of the parties at the pre-trial that the lands being referred to by the parties in the present case all form part of the big parcel of land covered by OCT No. 48098. Certainly, by the said conclusion formed by the trial court, and thereby sweeping aside all the material exhibits of respondent, the latter stood no chance at all in proving his claim, notwithstanding the clarity of his testimony, as bolstered by his documentary evidence.[30]

Their motion for reconsideration having been denied by the CA, petitioners are now before us alleging grave error committed by said court in affirming the RTC which rendered judgment based on exhibits that were denied admission by the MTC.

Petitioners reiterate that there was no legal formal partition of the whole parcel of land covered by OCT No. 48098. They cite several entries in the said title which will show that the transactions referred to therein pertain to undivided portions of the entire land. In particular, petitioners point out that Exhibit "M" (Deed of Extrajudicial Settlement With Quitclaim and Confirmation of Sale) cannot be used as basis for an adverse ruling against them as said document was correctly determined by the MTC as a mere sworn statement and hearsay evidence.

Petitioners emphasize that the issue of whether the whole parcel of land covered by OCT No. 48098 has been legally partitioned is material to respondent's claim that the portions of land allegedly encroached by petitioners belong to him. They argue that a partition must be a concerted act of all the heirs and not only individual acts of each of the co-heirs. Citing a portion of respondent's appellant's brief filed before the RTC, petitioners point out that respondent stated the reason behind the execution of Exhibit "M" which is the fact that "[t]he chain of documents covering the transactions beginning with Bernardo Notarte to Emiliano Gamboa, to Procopio Gamboa and Desiderio Gamboa, to Antonio Gamboa and to Godofredo Notarte do not clearly identify the land in question as part of [the] registered land under OCT No. 48098. x x x"[31]

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[30] *Id.* at 268-269.

[31] *Id.* at 29.

The issues to be resolved are: (1) whether the MTC erred in not admitting most of the documentary exhibits formally offered by the respondent as indicated in its May 16, 2000 Order; (2) whether the 263,000 sq. m. land covered by OCT No. 48098 had been partitioned by the registered owners; and (3) whether petitioners have encroached on respondent's land.

On the *first issue,* we agree with the CA that most of the documentary exhibits not admitted by the MTC are material to respondent's claim. Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules[32] or is competent. The exclusion of previous documents of transfer executed by Patrocenia Gamboa's predecessors-in-interest, based merely on the MTC's impression that they do not clearly indicate it was the same parcel sold by her to respondent, was improper considering that the parties stipulated at the pre-trial that the lands involved in this controversy form part of the property covered by OCT No. 48098.

It may be recalled that what respondent sought to establish is the previous ownership by Bernardo, one of the original registered owners, of the specific parcel (1/7 share in the property covered by OCT No. 48098) from which Patrocenia acquired a portion, as well as the actual area of such portion acquired by Patrocenia. The relevance of those documents evidencing this series of conveyances from Bernardo to Emiliano Gamboa, the latter's donation to his sons Procopio and Desiderio Gamboa, the latter's sale of the same lots to Antonio Gamboa, husband of Patrocenia who later adjudicated unto herself all properties left by her husband – was thus plainly obvious. Besides, Patrocenia *admitted* while testifying on cross-examination, that the land she sold to respondent came from the share of Bernardo. Thus:

Q- So there were series of transactions could you still remember, is that right?

A- Yes, sir.

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[32] RULES OF COURT, Rule 128, Sec. 3.

Q- Now, but why you cannot remember anymore transactions regarding to the acquisition of a parcel of land by Godofredo Notarte?

A- **The land that was sold to Godofredo Notarte came from Bernardo Notarte, sir**.

Q- And you remember now, that Bernardo Notarte sold that land to Emeliano Gamboa?

A- What I know is that, the land I sold to Godofredo came from Bernardo Notarte, sir.[33] (Emphasis supplied.)

The non-admission of copies of tax declarations in the name of Emiliano Gamboa was likewise erroneous because these were in fact presented and identified in court by respondent and his counsel during his direct testimony.[34] The MTC further said these tax declarations do not show that they cover the subject land, the same reason it cited for denying admission to the previous documents of transfer. The rest of the documentary exhibits of respondent were denied admission on the ground of absence of a formal partition of the property covered by OCT No. 48098, which is again erroneous because what respondent sought to prove is an oral partition among the registered owners that may be inferred from various transactions on certain segregated portions as evidenced by those documents.

As aptly observed by the CA, respondent stood no chance of being able to establish his claim after the MTC precipitately denied admission to almost all his documentary evidence which are actually relevant and competent to prove his ownership and identity of his land. The MTC thus erred in rejecting the formal offer of documentary evidence that is clearly relevant to respondent's cause of action.

Even assuming that the MTC had reservations about the relevancy of some exhibits offered by the respondent, still, it should have admitted the same subject to judicial evaluation as

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[33] TSN, June 8, 2000, pp. 7-8.

[34] TSN, May 4, 1999, pp. 11-12.

to their probative value. In connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, this Court has held that:

> [I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.[35]

On the *second issue*, we sustain the RTC and CA in finding that the property covered by OCT No. 48098 had already been partitioned long before respondent purchased his lot. Under Article 1082 of the Civil Code, every act which is intended to put an end to indivision among co-heirs is deemed to be a partition even though it should purport to be a sale, an exchange, or any other transaction. Partition may thus be inferred from circumstances sufficiently strong to support the presumption.[36]

In this case, the original registered owners had either mortgaged or sold their respective 1/7 shares, in whole or in part. Although the deeds of conveyances and those early entries in OCT No. 48098 indicated the portions being mortgaged or sold as pertaining to *pro indiviso* shares, the said owners' successors-in-interest eventually took possession of the respective portions acquired by them beginning 1951 or thereabouts. These transferees who are mostly relatives likewise introduced improvements on their respective lots, and have also exercised acts of ownership thereon. That these respective shares of the original registered owners were merely designated orally – their individual portions having

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[35] *Atienza v. Board of Medicine,* G.R. No. 177407, February 9, 2011, 642 SCRA 523, 529, citing Francisco, *EVIDENCE RULES OF COURT IN THE PHILIPPINES RULES* 128-134 (3rd ed. 1996) p. 9 and *People v. Jaca, et al.,* 106 Phil. 572, 575 (1959).

[36] *Maglucot-Aw v. Maglucot,* G.R. No. 132518, March 28, 2000, 329 SCRA 78, 95, citing *Hunt v. Rabitoay,* 125 Mich. 137, 84 NW 59.

been simply pointed to them, as testified to by respondent and Patrocenia – is immaterial.

The existence of early annotations (Spanish) on OCT No. 48098, cited by the MTC, indicating that the subject of foreclosure sale in favor of James Turner as 2/7 *pro indiviso* or undivided portion, do not support the petitioners' contention that the property remains un-partitioned. This is because subsequent entries clearly show that the co-owners have either mortgaged or disposed *specific* portions of the land, as in fact three transfer certificates of title were issued separately to Manuel Urbano II and Cornelio Gamboa covering physically segregated areas with their respective technical descriptions.[37] Patrocenia herself testified that she took possession of her lots acquired from the shares of Bernardo and Cirila, and that she had instituted Guillermo as tenant on her land in 1968. Petitioner Leonardo, on his part, testified that he has been residing on the land since he was a child, and that he bought a hectare of land from Bernardo in 1964. He likewise named the present owners of adjoining lots pertaining to the shares of the other original registered owners. Leonardo and Guillermo further testified on the visible boundaries of their respective lands which they have fenced, as well as that acquired by the respondent. Also, specific portions under possession and claim of ownership by various persons are already covered by individual tax declarations as evidenced by the Certification dated October 1, 1999 issued by the Office of the Municipal Assessor. Tax Declaration No. 8449 in the name of Emiliano Gamboa was issued in 1962. Clearly, petitioners' insistence that the whole parcel under OCT No. 48098 remains undivided and un-partitioned is contradicted by the documentary evidence and their own declarations.

The validity of an oral partition is already well-settled.[38] It is not required, contrary to the MTC's stated reason for denying some documentary exhibits to prove partition, such as the individual TCTs obtained by Manuel Urbano II and Cornelio

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[37] Exhibits "A", "B" and "C", records, pp. 166-168.

[38] *Maglucot-Aw v. Maglucot, supra* note 36 at 97.

Gamboa over portions they have acquired, that the partition agreement be registered or annotated in OCT No. 48098 to be valid.[39] In another case, we have held that after exercising acts of ownership over their respective portions of the contested estate, petitioners are estopped from denying the existence of an oral partition.[40]

Here, none of the original co-owners has disputed the fact of partition, as it is only petitioners, as present owners and successors-in-interest of Juan Notarte, who are insisting that no partition had yet taken place merely because OCT No. 48098 was only partially cancelled and many of the present owners have not yet secured their own separate transfer certificates of title. Petitioners' stance is unreasonable and seems to be more of an afterthought aimed solely at defeating respondent's claim. Notably, Leonardo categorically testified that his father Felipe Notarte acquired the 1/7 share of Juan Notarte which was redeemed from James Turner, and that he was occupying the said parcel, with his father even donating to him a portion as a wedding gift ("*sab-ong*") and another one hectare was bought by him from Bernardo; these portions were already declared in his name for tax purposes indicating therein *the areas* under their possession. It is indeed unbelievable for the registered owners' successors-in-interest, which include petitioners, to have taken possession of their respective portions for which they paid valuable consideration, introduced improvements and paid the realty taxes due thereon, if those lots have not been physically segregated. In any event, estoppel had set in as to bar petitioners as present owners from denying an oral partition in view of acquiescence thereto by their predecessors-in-interest, as well as their own acts of ownership over those portions they have been occupying.

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[39] See *Maglucot-Aw v. Maglucot, id.* at 96.

[40] *Crucillo v. Intermediate Appellate Court,* G.R. No. 65416, October 26, 1999, 317 SCRA 351, 366, citing *Barcelona, et al. v. Barcelona and Ct. of Appeals,* 100 Phil. 251 (1956) and *Hernandez v. Andal*, 78 Phil. 196 (1947).

On this point, this Court has ruled that:

> On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed.
>
> **Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder**. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.
>
> In numerous cases it has been held or stated that parol partition may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.
>
> A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.
>
> A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to enforce such partition agreed to by the parties.[41] (Emphasis supplied.)

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[41] *Hernandez v. Andal*, 78 Phil. 196, 203 (1947) cited in *Tan v. Lim*, G.R. No. 128004, September 25, 1998, 296 SCRA 455, 473-474.

On the *third issue*, we hold that respondent has established by preponderance of evidence the identity and his ownership of the subject land.

The governing law is Article 434 of the Civil Code which provides:

> Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

The first requisite: the identity of the land. In an *accion reinvindicatoria,* the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof. Anent the second requisite, *i.e.,* the claimant's title over the disputed area, the rule is that a party can claim a right of ownership only over the parcel of land that was the object of the deed.[42]

To prove the identity of the land he bought from Patrocenia, respondent submitted in evidence deeds of conveyances from the original sale made by Bernardo in 1929 in favor of Emiliano Gamboa, up to the acquisition thereof by Patrocenia. As can be gleaned from the proceedings before the MTC, ownership by respondent was not disputed but only the exact area because the deeds presented by him showed only the area and location with respect to adjoining owners, but did not describe the boundaries of the land sold in metes and bounds.

We note the discrepancies in the areas stated in the 1929 *Escritura de Compra-Venta* (27,172 sq. m.), deeds of donation executed by Emiliano Gamboa (total of 28,327 sq. m.), Deed of Absolute Sale executed by Desiderio and Procopio Gamboa (27,172 sq. m.), and the Deed of Absolute Sale executed by

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[42] *Hutchison v. Buscas,* G.R. No. 158554, May 26, 2005, 459 SCRA 214, 220, citing *Heirs of Anastacio Fabela v. Court of Appeals,* G.R. No. 142546, August 9, 2001, 362 SCRA 531, 542 and *Veterans Federation of the Philippines v. Court of Appeals,* G.R. No. 119281, November 22, 2000, 345 SCRA 348, 357.

Patrocenia (29,482 sq. m.). However, since respondent traces ownership of his land to Bernardo, the area and boundaries stated in the 1929 *Escritura de Compra-Venta* should control. Respondent sought to recover 27,604 sq. m., a figure he arrived at by deducting the 10,000 sq. m. subsequently sold by Bernardo to Leonardo in 1964, from the 37,604.714 sq. m. which corresponds to the actual area of Bernardo's 1/7 share under OCT No. 48098. However, any increase in the statement of the area in the subsequent deeds of conveyances executed by Bernardo's successors-in-interest should not affect the area specified by Bernardo himself in the 1929 sale to Emiliano Gamboa, which was only 27,172 sq. m. Thus, respondent is entitled to **27,172 sq. m.** only, as this is the actual area acquired by Patrocenia from her predecessors-in-interest.

As to the claims of Leonardo and Guillermo over certain portions in excess of the areas lawfully acquired by them from Bernardo and Patrocenia (pertaining to the portion she bought from the share of Cirila Notarte), the RTC correctly rejected the same. Leonardo failed to show any document evidencing the supposed donation of his father and admitted he does not even know its exact area. Guillermo, on the other hand, claimed to have received 450-sq. m. from Patrocenia by virtue of an oral donation in 1968 when he was instituted as a tenant on her land. However, the Deed of Confirmation of Donation dated February 21, 1997 mentioned a previous donation made in January 1983, and not 1968. In any case, the requirement as to form for contracts of donation to be valid and enforceable, are absolute and indispensable.[43] The alleged prior oral donation by Patrocenia

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[43] See *Unchuan v. Lozada,* G.R. No. 172671, April 16, 2009, 585 SCRA 421, 433.

Art. 749 of the Civil Code reads:

In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

was thus void and ineffective; it is not binding upon third parties like respondent who purchased a definite portion of Patrocenia's land in good faith, for value and evidenced by a duly notarized deed of sale. Guillermo also supposedly bought 4,227 sq. m. from Patrocenia but the latter testified that this parcel she sold to Guillermo actually came from the 1/7 share of Cirila and different from the property she sold to respondent.

It is settled that what really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.[44] We have held, however, that in controversial cases where there appears to be an overlapping of boundaries, the actual size of the property gains importance.[45]

As already stated, the location of respondent's land is not in dispute because the adjoining owners are clearly identified. Petitioners in their Answer with Counterclaim merely contended that respondent just wants to increase the actual area of his property. And while petitioners insisted on the visible physical boundaries to mark the limits of respondent's land, petitioners Leonardo and Guillermo could not tell the exact areas under their possession. These portions, still unregistered land, were also not described in metes and bounds under their deeds of conveyances. The controversy then lies in the delineation of the physical boundaries of the subject properties by metes and bounds, notwithstanding that the documentary evidence adduced by respondent established his ownership over a portion of Bernardo's share, in an area *enclosed by specified adjoining lots/owners,* to the extent of 27,172 sq. m.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

[44] *Heirs of Anastacio Fabela v. Court of Appeals*, *supra* note 42, at 543, citing *Vda. de Tan v. Intermediate Appellate Court*, G.R. No. 65532, August 31, 1992, 213 SCRA 95, 102.

[45] *Heirs of Juan Oclarit v. Court of Appeals*, G.R. No. 96644, June 17, 1994, 233 SCRA 239, 248.

The identity of the land sought to be recovered may be established through the survey plan of the property.[46] In this case, a survey could have settled the issue of overlapping boundaries especially since the properties involved are all unregistered and, apparently unsurveyed. Even assuming that the portions occupied by petitioners have already been surveyed, the non-presentation of any approved survey plan would raise a presumption that if presented, such piece of evidence would be adverse to their claim. The MTC did not grant respondent's motion for the conduct of a survey to correct the "overlapping boundaries" of the subject lots, stating that it would "pre-empt the issues under contention." However, the MTC in its decision ruled that respondent has not established his cause of action for the reason that most of his documentary evidence were denied admission, but upheld the claims of petitioners based on the latter's long possession and occupation of their portions.

Having ruled that respondent has established the identity and ownership of the land he acquired from Patrocenia with an area of 27,172 sq. m., this Court deems it just and proper to give him the opportunity to prove the alleged encroachment by petitioners and the extent of such encroachment. For this purpose, a survey is necessary to ascertain the physical boundaries of the subject lands by metes and bounds. Hence, remand of this case to the MTC for the conduct of a survey by qualified geodetic engineers, is in order.

As to the grant of actual damages in favor of respondent, we find no legal or factual basis for such award, being based merely on respondent's bare testimony in court. In any case, it would be premature to affirm any pronouncement on damages resulting from encroachment being claimed by the respondent pending the resolution of the factual issue of overlapping boundaries.

WHEREFORE, the Decision dated August 10, 2007 of the Court of Appeals in CA-G.R. SP No. 92591 is **AFFIRMED in**

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[46] Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. II, 1992 ed., p. 72, citing *Director of Lands v. Funtilar,* No. 68533, May 23, 1986, 142 SCRA 57.

PART. The Decision dated March 21, 2005 of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54 in Civil Case No. A-2964 is **MODIFIED,** as follows:

1. Respondent Godofredo Notarte is hereby declared the lawful owner of 27,172 square meters of the lot which is a portion of the 1/7 share of Bernardo Notarte in the property covered by OCT No. 48098, the boundaries thereof as described in the Second Amended Complaint are as follows: North - Felipe Notarte; West - Felipe Notarte; East - Jose Nano; South - Leonardo Notarte and Guillermo Notarte.

2. The award of actual damages is **DELETED**. The order to vacate the alleged areas encroached by petitioners is likewise **SET ASIDE**, subject to the outcome of the survey and resolution on the issue of overlapping boundaries, consistent with our dispositions herein.

3. This case is hereby **REMANDED** to the Municipal Trial Court of Bani, Pangasinan for further proceedings. Said court is directed to order the conduct of a survey of the properties involved in this case. For this purpose, the said court shall appoint commissioners and proceed in accordance with Sections 2 to 13, Rule 32 of the 1997 Rules of Civil Procedure, as amended.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 187451. August 29, 2012]

JESUS VIRTUCIO, represented by ABDON VIRTUCIO, *petitioner, vs.* **JOSE ALEGARBES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS; IN CASE OF CONTRARY FINDINGS BY THE COURTS BELOW.— [I]t is fundamental that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law distinctly set forth shall be raised in the petition. Here, the main issue is the alleged acquisition of ownership by Alegarbes through acquisitive prescription and the character and length of possession of a party over a parcel of land subject of controversy is a factual issue. The Court, however, is not precluded from reviewing facts when the case falls within the recognized exceptions, [as] x x x (*g*) ***When the CA's findings are contrary to those by the trial court***; x x x

2. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; ACQUISITIVE AND EXTINCTIVE PRESCRIPTION.— Article 1106 of the New Civil Code, in relation to its Article 712, provides that prescription is a mode of acquiring ownership through the lapse of time in the manner and under the conditions laid down by law. Under the same law, it states that acquisitive prescription may either be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten years, while extraordinary acquisitive prescription requires uninterrupted adverse possession of thirty years, without need of title or of good faith. There are two kinds of prescription provided in the Civil Code. One is **acquisitive**, that is, the acquisition of a right by the lapse of time as expounded in par. 1, Article 1106. Other names for acquisitive prescription are adverse possession and *usucapcion*. The other kind is **extinctive** prescription whereby rights and actions are lost by the lapse of time as defined in Article 1106 and par. 2, Article

1139. Another name for extinctive prescription is litigation of action. These two kinds of prescription should not be interchanged.

3. ID.; ID.; ID.; ID.; INTERRUPTION OF ACQUISITIVE PRESCRIPTION; CIVIL INTERRUPTION PRESENT ONLY WITH THE SERVICE OF JUDICIAL SUMMONS TO A POSSESSOR.— The only kinds of interruption that effectively toll the period of acquisitive prescription are natural and civil interruption. Civil interruption takes place only with the service of judicial summons to the possessor. When no action is filed, then there is no occasion to issue a judicial summons against the respondents. The period of acquisitive prescription continues to run. x x x [A] protest filed before an administrative agency and even the decision resulting from it cannot effectively toll the running of the period of acquisitive prescription.

4. REMEDIAL LAW; PRINCIPLE OF *'STARE DECISIS,'* EXPLAINED.— "The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by **this Court** in its final decisions. It 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."

APPEARANCES OF COUNSEL

Ferrer Law Office for petitioner.
Climaco De Fiesta & Canete Law Firm for respondent.

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 February 25, 2009 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CV No. 72613, reversing

[1] Penned by Associate Justice Romulo V. Borja, with Associate Justice Mario V. Lopez and Associate Justice Elihu A. Ybañez, concurring, *rollo*, pp. 22-34 and 93-105.

and setting aside the February 19, 2001 Decision[2] of the Regional Trial Court, Branch 1, Isabela, Basilan *(RTC)*, in Civil Case No. 685-627, an action for "Recovery of Possession and Ownership with Preliminary Injunction."

The Facts

Respondent Jose Alegarbes *(Alegarbes)* filed Homestead Application No. V-33203 (E-V-49150) for a 24-hectare tract of unsurveyed land situated in Bañas, Lantawan, Basilan in 1949. His application was approved on January 23, 1952.[3] In 1955, however, the land was subdivided into three (3) lots – Lot Nos. 138, 139 and 140, Pls-19 – as a consequence of a public land subdivision. Lot 139 was allocated to Ulpiano Custodio *(Custodio)*, who filed Homestead Application No. 18-4493 (E-18-2958). Lot 140 was allocated to petitioner Jesus Virtucio *(Virtucio)*, who filed Homestead Application No. 18-4421 (E-18-2924).[4]

Alegarbes opposed the homestead applications filed by Custodio and Virtucio, claiming that his approved application covered the whole area, including Lot Nos. 139 and 140.[5]

On October 30, 1961, the Director of Lands rendered a decision denying Alegarbes' protest and amending the latter's application to exclude Lots 139 and 140. Only Lot 138 was given due course. The applications of Custodio and Virtucio for Lots 139 and 140, respectively, were likewise given due course.[6]

Alegarbes then appealed to the Secretary of Agriculture and Natural Resources, who dismissed his appeal on July 28, 1967. He then sought relief from the Office of the President *(OP)*, which, however, affirmed the dismissal order of the Secretary

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[2] Penned by Judge Felisberto C. Gonzales, CA *rollo*, pp. 258-271.

[3] Records, pp. 9 and 262.

[4] *Id.* at 9.

[5] *Rollo*, pp. 11-12.

[6] *Id.* at 12.

of Agriculture and Natural Resources in a decision, dated October 25, 1974. Alegarbes moved for a reconsideration, but the motion was subsequently denied.[7]

On May 11, 1989, an order of execution[8] was issued by the Lands Management Bureau of the Department of Environment and Natural Resources to enforce the decision of the OP. It ordered Alegarbes and all those acting in his behalf to vacate the subject lot, but he refused.

On September 26, 1997, Virtucio then filed a complaint[9] for "Recovery of Possession and Ownership with Preliminary Injunction" before the RTC.

In his Answer,[10] Alegarbes claimed that the decision of the Bureau of Lands was void *ab initio* considering that the Acting Director of Lands acted without jurisdiction and in violation of the provisions of the Public Land Act. Alegarbes argued that the said decision conferred no rights and imposed no duties and left the parties in the same position as they were before its issuance. He further alleged that the patent issued in favor of Virtucio was procured through fraud and deceit, thus, void *ab initio*.

Alegarbes further argued, by way of special and/or affirmative defenses, that the approval of his homestead application on January 23, 1952 by the Bureau of Lands had already attained finality and could not be reversed, modified or set aside. His possession of Lot Nos. 138, 139 and 140 had been open, continuous, peaceful and uninterrupted in the concept of an owner for more than 30 years and had acquired such lots by acquisitive prescription.

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[7] *Id.*

[8] Records, pp. 16-17.

[9] *Id.* at 1-15.

[10] *Id.* at 42-52.

In his Amended and Supplemental Answer,[11] Alegarbes also averred that his now deceased brother, Alejandro Alegarbes, and the latter's family helped him develop Lot 140 in 1955. Alejandro and his family, as well as Alegarbes' wife and children, had been permanently occupying the said lot and, introducing permanent improvements thereon since 1960.

The RTC Ruling

The RTC rendered its decision on February 19, 2001, favoring Virtucio. The decretal portion of which reads:

> WHEREFORE, upon the merit of this case, this court finds for the plaintiff and against the defendant by:
>
> 1. Ordering the defendant and all those acting in his behalf to vacate Lot No. 140, Pls-19, located at Lower Bañas, Lantawan, Basilan and surrender the possession and ownership thereof to plaintiff;
>
> 2. Ordering the defendant to pay the plaintiff the amount of Fifteen Thousand Pesos (₱15,000.00) as attorney's fees and another Ten Thousand Pesos (₱10,000.00) as expenses for litigation; and
>
> 3. To pay the cost of the suit in the amount of Five Hundred Pesos (₱500.00).
>
> SO ORDERED.[12]

Not in conformity, Alegarbes appealed his case before the CA.

The CA Ruling

On February 25, 2009, the CA promulgated its decision declaring Alegarbes as the owner of Lot No. 140, Pls-19, thereby reversing and setting aside the decision of the RTC. The CA ruled that Alegarbes became *ipso jure* owner of Lot 140 and, therefore, entitled to retain possession of it. Consequently, the

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[11] *Id.* at 67-69.

[12] CA *rollo*, pp. 270-271.

awards of attorney's fees, litigation expenses and costs of suit were deleted.

In so ruling, the CA explained that even if the decision to approve Virtucio's homestead application over Lot 140 had become final, Alegarbes could still acquire the said lot by acquisitive prescription. The decisions on the issues of the approval of Virtucio's homestead application and its validity were impertinent as Alegarbes had earlier put in issue the matter of ownership of Lot 140 which he claimed by virtue of adverse possession.

The CA also found reversible error on the part of the RTC in disregarding the evidence before it and relying entirely upon the decisions of the administrative bodies, none of which touched upon the issue of Alegarbes' open, continuous and exclusive possession of over thirty (30) years of an alienable land. The CA held that the Director of Lands, the Secretary of Agriculture and Natural Resources and the OP did not determine whether Alegarbes' possession of the subject property had *ipso jure* segregated Lot 140 from the mass of public land and, thus, was beyond their jurisdiction.

Aggrieved, Virtucio filed this petition.

ISSUES

Virtucio assigned the following errors in seeking the reversal of the assailed decision of the CA, to wit:

1. **The Court of Appeals erred in setting aside the judgment of the trial court, which awarded the lot in question to the respondent by virtue of acquisitive prescription and ordered herein petitioner to surrender the ownership and possession of the same to them.**[13]

2. **The Court of Appeals gravely erred in disregarding the decision in CA-G.R. CV-26286 for Recovery of Possession and Ownership, Custodio vs. Alegarbes which contains same**

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[13] *Rollo*, p. 14.

factual circumstances as in this case and ruled against JOSE ALEGARBES.[14]

3. **The Court of Appeals erred in deleting the award of attorney's fees to the petitioner.**[15]

The lone issue in this case is whether or not Alegarbes acquired ownership over the subject property by acquisitive prescription.

Ruling of the Court

The petition must fail.

Indeed, it is fundamental that questions of fact are not reviewable in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Only questions of law distinctly set forth shall be raised in the petition.[16]

Here, the main issue is the alleged acquisition of ownership by Alegarbes through acquisitive prescription and the character and length of possession of a party over a parcel of land subject of controversy is a factual issue.[17] The Court, however, is not precluded from reviewing facts when the case falls within the recognized exceptions, to wit:

(*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;

(*b*) When the inference made is manifestly mistaken, absurd, or impossible;

(*c*) When there is grave abuse of discretion;

(*d*) When the judgment is based on a misapprehension of facts;

(*e*) When the findings of facts are conflicting;

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[14] *Id.* at 16.

[15] *Id.* at 17.

[16] Sec. 1, Rule 45 of the Rules of Court.

[17] *Heirs of Bienvenido and Araceli Tanyag v. Gabriel*, G.R. No. 175763, April 11, 2012.

(*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(*g*) ***When the CA's findings are contrary to those by the trial court***;

(*h*) When the findings are conclusions without citation of specific evidence on which they are based;

(*i*) 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;

(*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[18] [Emphasis supplied]

In the case at bench, the findings and conclusions of the CA are apparently contrary to those of the RTC, hence, the need to review the facts in order to arrive at the proper conclusion.

On Acquisitive Prescription

Virtucio insists that the period of acquisitive prescription was interrupted on October 30, 1961 (or in 1954 when Alegarbes filed the protest) when the Director of Lands rendered a decision giving due course to his homestead application and that of Ulpiano Custodio. Virtucio further claims that since 1954, several extrajudicial demands were also made upon Alegarbes demanding that he vacate said lot. Those demands constitute the "extrajudicial demand" contemplated in Article 1155, thus, tolling the period of acquisitive prescription.[19]

Article 1106 of the New Civil Code, in relation to its Article 712, provides that prescription is a mode of acquiring ownership

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[18] *Abalos and Sps. Salazar v. Heirs of Vicente Torio*, G.R. No. 175444, December 14, 2011, 662 SCRA 450, 456-457, citing *Spouses Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10.

[19] *Rollo*, p. 152.

through the lapse of time in the manner and under the conditions laid down by law. Under the same law, it states that acquisitive prescription may either be ordinary or extraordinary.[20] Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten years,[21] while extraordinary acquisitive prescription requires uninterrupted adverse possession of thirty years, without need of title or of good faith.[22]

There are two kinds of prescription provided in the Civil Code. One is **acquisitive**, that is, the acquisition of a right by the lapse of time as expounded in par. 1, Article 1106. Other names for acquisitive prescription are adverse possession and *usucapcion*. The other kind is **extinctive** prescription whereby rights and actions are lost by the lapse of time as defined in Article 1106 and par. 2, Article 1139. Another name for extinctive prescription is litigation of action.[23] These two kinds of prescription should not be interchanged.

Article 1155 of the New Civil Code refers to the **interruption** of prescription of *actions*. Interruption of *acquisitive* prescription, on the other hand, is found in Articles 1120-1125 of the same Code. Thus, Virtucio's reliance on Article 1155 for purposes of tolling the period of acquisitive prescription is misplaced. The only kinds of interruption that effectively toll the period of acquisitive prescription are natural and civil interruption.[24]

Civil interruption takes place with the service of judicial summons to the possessor.[25] When no action is filed, then there

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[20] Art. 1117, New Civil Code.

[21] *Id.*, in relation to Art. 1134 of the New Civil Code.

[22] Art. 1137, New Civil Code.

[23] *De Morales v. CFI*, 186 Phil. 596, 598 (1980).

[24] Art. 1120, New Civil Code.

[25] *Heirs of Bienvenido and Araceli Tanyag v. Gabriel*, *supra* note 17, citing *Heirs of Marcelina Azardon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 406-407.

is no occasion to issue a judicial summons against the respondents. The period of acquisitive prescription continues to run.

In this case, Virtucio claims that the protest filed by Alegarbes against his homestead application interrupted the thirty (30)-year period of acquisitive prescription. The law, as well as jurisprudence, however, dictates that only a judicial summons can effectively toll the said period.

In the case of *Heirs of Marcelina Azardon-Crisologo v. Rañon*,[26] the Court ruled that a mere Notice of Adverse Claim did not constitute an effective interruption of possession. In the case of *Heirs of Bienvenido and Araceli Tanyag v. Gabriel*,[27] which also cited the *Rañon Case*, the Court stated that the acts of declaring again the property for tax purposes and obtaining a Torrens certificate of title in one's name cannot defeat another's right of ownership acquired through acquisitive prescription.[28]

In the same vein, a protest filed before an administrative agency and even the decision resulting from it cannot effectively toll the running of the period of acquisitive prescription. In such an instance, no civil interruption can take place. Only in cases filed before the courts may judicial summons be issued and, thus, interrupt possession. Records show that it was only in 1997 when Virtucio filed a case before the RTC. The CA was, therefore, correct in ruling that Alegarbes became *ipso jure* owner of Lot 140 entitling him to retain possession of it because he was in open, continuous and exclusive possession for over thirty (30) years of alienable public land.

Virtucio emphasizes that the CA erred in disregarding the decisions of the administrative agencies which amended Alegarbes' homestead application excluding Lot 140 and gave due course to his own application for the said lot, which decisions were affirmed by the RTC.

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[26] G.R. No. 171068, September 5, 2007, 532 SCRA 391.

[27] *Supra* note 17, citing *Heirs of Marcelina Azardon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 406-407.

[28] *Id.*

Well-settled is the rule that factual findings of the lower courts are entitled to great weight and respect on appeal and, in fact, are accorded finality when supported by substantial evidence on the record.[29] It appears, however, that the conclusion made by the RTC was not substantially supported. Even the RTC itself noted in its decision:

> The approval of a Homestead Application merely authorizes the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor – what divests the government of title to the land is the issuance of a patent and its subsequent registration with the Register of Deeds.[30]

A perusal of the records would reveal that there was no issuance of any patent in favor of either parties. This simply means that the land subject of the controversy remains to be in the name of the State. Hence, neither Virtucio nor Alegarbes can claim ownership. There was, therefore, no substantial and legal basis for the RTC to declare that Virtucio was entitled to possession and ownership of Lot 140.

It can be argued that the lower court had the decisions of the administrative agencies, which ultimately attained finality, as legal bases in ruling that Virtucio had the right of possession and ownership. In fact, the Department of Environment and Natural Resources *(DENR)* even issued the Order of Execution[31] on May 11, 1989 ordering Alegarbes to vacate Lot 140 and place Virtucio in peaceful possession of it. The CA, however, was correct in finding that:

> But appellant had earlier put in issue the matter of ownership of Lot 140 which he claims by virtue of adverse possession. On this issue, the cited decisions are impertinent. Even if the decision to

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[29] *Spouses Patricio and Myrna Bernales v. Heirs of Julian Sambaan*, G.R. No. 163271, January 15, 2010, 610 SCRA 90, 104-105, citing *Xentrex Motors, Inc. v. Court of Appeals,* 353 Phil. 258, 262 (1998).

[30] CA *rollo*, p. 268.

[31] Records, pp. 16-17.

approve appellee's homestead application over Lot 140 had become final, appellant could still acquire the said lot by acquisitive prescription.[32]

In the case of *Heirs of Gamos v. Heirs of Frando,*[33] the Court ruled that the mere application for a patent, coupled with the fact of exclusive, open, continuous and notorious possession for the required period, is sufficient to vest in the applicant the grant applied for.[34] It likewise cited the cases of *Susi v. Razon*[35] and *Pineda v. CA,*[36] where the Court ruled that the possession of a parcel of agricultural land of the public domain for the prescribed period of 30 years *ipso jure* converts the lot into private property.[37]

In this case, Alegarbes had applied for homestead patent as early as 1949. He had been in exclusive, open, continuous and notorious possession of Lot 140 for at least 30 years. By the time the DENR issued its order of execution in 1989, Alegarbes had Lot 140 in his possession for more than 30 years. Even more so when Virtucio filed the complaint before the RTC in 1997, Alegarbes was already in possession of the subject property for forty-eight (48) years.

The CA correctly observed that the RTC erred in disregarding the evidence before it and relying entirely upon the decisions of the Director of Lands, the Secretary of Agriculture and Natural Resources and the OP, which never touched the issue of whether Alegarbes' open, continuous and exclusive possession of over thirty (30) years of alienable land had *ipso jure* segregated Lot 140 from the mass of public land and beyond the jurisdiction of these agencies.[38]

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[32] *Rollo,* p. 29.

[33] 488 Phil. 140 (2004).

[34] *Id.* at 153.

[35] 48 Phil. 424 (1925).

[36] 262 Phil. 658, 665 (1990).

[37] *Heirs of Gamos v. Heirs of Frando, Supra* note 33 at 152.

[38] *Rollo,* p. 33.

When the CA ruled that the RTC was correct in relying on the abovementioned decisions, it merely recognized the primary jurisdiction of these administrative agencies. It was of the view that the RTC was not correct in the other aspects of the case. Thus, it declared Alegarbes as owner *ipso jure* of Lot 140 and entitled to retain possession of it. There is no reason for the Court to disturb these findings of the CA as they were supported by substantial evidence, hence, are conclusive and binding upon this Court.[39]

On the CA Decision involving a similar case

Virtucio insists that the CA gravely erred in disregarding its decision in *Custodio v. Alegarbes*, CA-G.R. CV 26286, for Recovery of Possession and Ownership, which involved the same factual circumstances and ruled against Alegarbes.

It must be noted that the subject property in the said case was Lot 139 allocated to Custodio and that Virtucio was not a party to that case. The latter cannot enjoy whatever benefits said favorable judgment may have had just because it involved similar factual circumstances. The Court also found from the records that the period of acquisitive prescription in that case was effectively interrupted by Custodio's filing of a complaint, which is wanting in this case.

Moreover, it is settled that a decision of the CA does not establish judicial precedent.[40] "The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by **this Court** in its final decisions. It 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."[41]

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[39] *Lynvil Fishing Enterprises, Inc. v. Ariola*, G.R. No. 181974, February 1, 2012, 664 SCRA 679.

[40] *Nepomuceno v. City of Surigao*, G.R. No. 146091, July 28, 2008, 560 SCRA 41, 47.

[41] *Land Bank v. Hon. Pagayatan*, G.R. No. 177190, February 23, 2011, 644 SCRA 133, 142-143, citing *Ting v. Velez-Ting*, G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704.

The Court agrees with the position of Alegarbes that by Virtucio's insistence that it was erroneous for the CA to disregard its earlier decision in CA-G.R. CV 26286, he, in effect, calls upon this Court to adhere to that decision by invoking the *stare decisis* principle, which is not legally possible because only final decisions of this Court are considered precedents.[42]

In view of the foregoing, the Court need not dwell on the complaint of Virtucio with regard to the deletion of the award of attorney's fees in his favor. It is ludicrous for the CA to order Alegarbes to pay attorney's fees, as a measure of damages, and costs, after finding him to have acquired ownership over the property by acquisitive prescription.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 187734. August 29, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO OSMA, JR. *Y* AGATON,** *accused-appellant.*

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[42] *Rollo,* p. 132.

[*] Per Special Order No. 1290 dated August 28, 2012.

[**] Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated additional member, per Special Order No. 1299 dated August 28, 2012.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** In the determination of credibility of witnesses, this Court, as a general rule, will not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. This is mainly due to the fact that it was the trial court that heard the witnesses and observed their deportment and manner of testifying during the trial.

2. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.—** Since AAA was born on March 9, 1990, as evidenced by the Certification from the Civil Registrar's Office, she was 10 years and 9 months old when the crime charged in Criminal Case No. 4467 was committed. As such, the crime charged and proven is one of statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Proof of force and consent is immaterial if the woman is under 12 years of age, not only because force is not an element of statutory rape, but also because the absence of free consent is presumed. Conviction will lie provided sexual intercourse is proven. x x x [I]n Criminal Case No. 4468, [however] x x x AAA was 12 years and five days old when the second incident of rape occurred. Consequently, accused-appellant cannot be convicted in Criminal Case No. 4468 for statutory rape, which requires that the victim be below 12 years of age. However, even though accused-appellant cannot be convicted of statutory rape in Criminal Case No. 4468, and despite the absence of evidence of resistance on the part of AAA on said count, his criminal liability for rape nevertheless remains.

3. **ID.; RAPE; PROPER PENALTY AND CIVIL LIABILITY.—** Both counts of rape, even the statutory rape in Criminal Case No. 4467, would have been punishable by death under Article 266-B of the Revised Penal Code, if not for the enactment of Republic Act No. 9346 which prohibits the imposition of the death penalty. Article 266-B provides: Art. 266-B. *Penalties*. – x x x The death penalty shall 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. Pursuant therefore to Republic Act No. 9346, the penalty that should be imposed is *reclusion perpetua*. In *People v. Lauga*, the Court held that where the rape is committed with any of the qualifying/aggravating circumstances warranting the imposition of the death penalty, the victim is entitled to ₱75,000.00 as civil indemnity *ex delicto* and ₱75,000.00 as moral damages. These amounts were correctly imposed by the Court of Appeals. In *Lauga*, however, where the thirteen-year-old victim was raped by her father, the exemplary damages awarded to the victim was increased to ₱30,000.00. We are adopting this determination.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02917 dated December 19, 2008, affirming the conviction of accused-appellant for statutory rape in Criminal Case No. 4467 and modifying his conviction in Criminal Case No. 4468 from statutory rape to qualified rape.

The two separate informations were filed on September 26, 2002, charging accused-appellant as follows:

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

Criminal Case No. 4467

That sometime in the month of December 2000 in XXX[2] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 10 years old, against her will and consent, to her damage and prejudice.[3]

Criminal Case No. 4468

That at or about 10:00 o'clock in the morning of March 14, 2002 at XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 12 years old, against her will and consent, to her damage and prejudice.[4]

Accused-appellant pleaded not guilty to both charges. During pre-trial, the parties agreed to stipulate on the following, among other things: (1) the victim, AAA, is the legitimate daughter of accused-appellant and his wife, BBB; (2) accused-appellant, BBB and their family lived in XXX; AAA, however, stayed with her grandparents, who are paying for her education; and (3) accused-appellant never left their residence during the whole month of December, 2000. He was in their residence on March 14, 2002 at ten in the morning.

The prosecution presented the following as witnesses: (1) Dr. Joana Manatlao, the Municipal Health Officer of XXX; (2) CCC, the maternal grandfather of the private complainant; and (3) AAA, the private complainant.

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[2] The real name and personal circumstances of the complainant and any other information tending to establish or compromise her identity are withheld pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006). Fictitious initials shall be used in their stead.

[3] Records (Crim. Case No. 4467), p. 26.

[4] Records (Crim. Case No. 4468), p. 26.

Dr. Manatlao examined AAA on April 30, 2002 and found old lacerations on her vagina. According to Dr. Manatlao, the lacerations appear to have been inflicted several months prior to the examination.[5]

CCC testified that he is the father of BBB, the latter being the mother of AAA and wife of accused-appellant. His wife, DDD, died recently. The family of accused-appellant resided in XXX, but AAA lived with her grandparents, CCC and DDD, since she was four years old. Her grandparents paid for her education. AAA went home to her parents' house occasionally on weekends and holidays. CCC's residence was around 20 kilometers away from accused-appellant's.[6]

On April 27, 2002, after the wedding of another daughter of CCC, DDD told CCC that AAA was raped by accused-appellant. The following day, DDD and AAA went to the Department of Social Welfare and Development (DSWD) office in their locality but were advised to bring AAA to a doctor for examination. CCC and AAA went to their Municipal Health Office where Dr. Manatlao conducted her examination. When they received the medical certificate, CCC and AAA went to the Philippine National Police (PNP) Station to file a complaint against accused-appellant. On cross-examination, CCC admitted that he had no personal knowledge of the crime that was committed.[7]

AAA testified that she was the eldest of six children of accused-appellant and BBB. AAA was born on March 9, 1990,[8] as evidenced by a Certification from the Civil Registrar's Office.[9] She was thus ten years old in December 2000.

One night in the aforementioned month of December 2000, while AAA was in the residence of her parents, she slept in the

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[5] TSN, January 21, 2003, pp. 4-10.

[6] TSN, December 1, 2004, pp. 4-11.

[7] *Id.*

[8] TSN, March 6, 2006, p. 4.

[9] Records (Crim. Case No. 4468), p. 4.

sala with her father, her six-year-old brother, and younger sisters. Her mother slept in an adjoining room. When AAA was awakened, her shorts were already pulled down. She saw accused-appellant's face as he was already on top of her. Accused-appellant inserted his penis into her vagina, causing pain. When accused-appellant was through, he placed her shorts back on and they went to sleep. [10]

On March 14, 2002, AAA was in the residence of her parents. While she was gathering pilinuts with her uncle, the latter asked her to get the scythe. She went into the house to get it. Accused-appellant, who was waiting for her, pulled her into a corner. He removed her shorts and inserted his penis into her vagina. During this time, accused-appellant and AAA were the only people in the house as her mother, BBB, was washing clothes and her siblings were with her mother. Accused-appellant thereafter placed back her shorts. AAA proceeded to get the scythe.[11]

During a wedding ceremony, AAA reported the incidents to her grandmother, DDD, who got angry and informed one of AAA's aunts. DDD and the aunt informed CCC. AAA and CCC went to the DSWD to report the incidents. AAA and CCC thereafter went to a doctor at the health center, Dr. Manatlao.[12]

AAA further testified that she did not immediately tell her mother, BBB, about the incidents because she was afraid of her father, who she claimed was very cruel and was fond of beating them.[13]

The defense carefully scrutinized AAA's account with a cross-examination that took four trial dates to conclude. During cross, AAA testified that as of December 2000, she was still unaware that it was wrong for a father to have sexual intercourse with

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[10] TSN, March 6, 2006, pp. 7-12.

[11] *Id.* at 12-13; TSN, September 5, 2006, p. 5.

[12] TSN, March 6, 2006, pp. 14-16.

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

her daughter as she was just in Grade V then.[14] She admitted that after the alleged incident in December 2000, she just continued sleeping.[15] AAA's mother did not assist her in filing and pursuing the complaints, as she might be confronted by accused-appellant. It was her grandparents, CCC and DDD, who assisted her in initiating the cases. At the time of her testimony on June 6, 2006, however, both CCC and DDD were already dead.[16]

AAA was confronted about her sworn statement during preliminary investigation where the word "rape" or the Bicolano *"linupigan"* was used, despite her earlier testimony that she did not yet understand the said word at that time. AAA answered that she merely narrated what happened.[17]

On redirect, AAA clarified that she identified her father in December 2000 when she was being raped when he spoke, saying the word "*masiram*." She also recognized the odor of her father.

The defense presented accused-appellant as its lone witness. Accused-appellant testified that AAA was his and BBB's daughter. AAA was the eldest of his and BBB's six children. AAA was in her kindergarten years when she started living with her grandparents CCC and DDD, in their residence which was twenty kilometers from that of accused-appellant's home. Accused-appellant claims, however, that he spent for the school expenses of AAA.[18]

Accused-appellant's house, which was made of bamboo and *anahaw*, had dimensions of 9 meters by 5 meters. The house was situated in a lot owned by his in-laws, CCC and DDD. During nighttime, the house was illuminated by a kerosene lamp in front of the bedroom.[19]

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[14] TSN, April 17, 2006, p. 12.

[15] *Id.* at 14.

[16] TSN, June 6, 2006, pp. 7-9.

[17] *Id.* at 11-15; TSN, September 5, 2006, pp. 12-13.

[18] TSN, November 27, 2006, pp. 5-11.

[19] *Id.* at 5-11.

According to accused-appellant, it was impossible for him to have raped AAA in December 2000 since there were other persons inside the bedroom at that time. It was also impossible for him to have raped AAA on March 14, 2002, since there were many people around at that time, including his wife, children, and AAA's uncle. It was CCC and DDD who initiated the cases against him because of their grudge against him as he was asking for their share in a parcel of land that was transferred to his sister-in-law.[20]

He only learned of the cases filed against him when the police officers apprehended him in May 2002. His children cried when he was arrested in their own residence.[21]

On July 23, 2007, the RTC rendered its Joint Judgment convicting accused-appellant. The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, accused ANTONIO OSMA *Y* AGATUN, JR. is found by this court GUILTY beyond reasonable doubt for two (2) counts of statutory rape and for each count, hereby sentence him to suffer the penalty of *reclusion perpetua*, and to pay the victim, [AAA], the amount of FIFTY THOUSAND PESOS (Php50,000.00) each for the two (2) cases as civil indemnity and FIFTY THOUSAND PESOS (Php50,000.00) each for the two (2) cases as moral damages or in the total amount of TWO HUNDRED THOUSAND PESOS (Php200,000.00) for the two (2) cases.
>
> In the service of his sentence, the accused shall be entitled to the full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, he shall be credited only in the service of his sentence of four fifths (4/5) of the time during which he has undergone preventive imprisonment in accordance with Article 29 of the Revised Penal Code.[22]

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

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

[22] CA *rollo*, p. 79.

On appeal, the Court of Appeals modified the RTC Decision as follows:

> WHEREFORE, the trial court's Decision dated July 23, 2007 is affirmed, subject to the modification that accused-appellant is found guilty of qualified rape in Criminal Case No. 4468. In both Criminal Cases Nos. 4467 and 4468, the civil indemnity and moral damages are each increased to ₱75,000.00 and accused-appellant is further ordered to pay AAA exemplary damages of ₱25,000.00 in each case.[23]

Accused-appellant adopts before this Court his Appellant's Brief before the Court of Appeals, which proffered the following Assignment of Errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED, DESPITE THE WEAKNESS OF THE PROSECUTION'S EVIDENCE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[24]

Criminal Case No. 4467

Accused-appellant assails the Decisions of the courts *a quo* primarily on the basis of the alleged lack of credibility on the part of the private complainant, AAA. Accused-appellant cites an instance in AAA's testimony when she was smiling. According to accused-appellant, it is surprising that a daughter who was sexually abused by his father would take such matter lightly, considering the gravity of the accusation.[25]

Accused-appellant further argues that AAA's testimony that she was raped sometime in December 2000 is incredible,

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[23] *Id.* at 154.

[24] *Id.* at 57.

[25] *Id.* at 58.

considering the size of the sleeping area where the act supposedly occurred. The defense points out AAA's statement that a mere stretching of an arm during the time the supposed rape happened would disturb the person sleeping beside her.[26]

This Court is unswayed by the foregoing arguments. In the determination of credibility of witnesses, this Court, as a general rule, will not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. This is mainly due to the fact that it was the trial court that heard the witnesses and observed their deportment and manner of testifying during the trial.[27] In the case at bar specifically, the trial court was in the best position to determine whether AAA's facial expressions and demeanor manifested a blithe unconcern about the alleged injustice done to her, or merely an effort to appear courteous to the judge and lawyers. AAA's smiling can hardly be considered a fact of substance and value that should affect the outcome of the case, especially since she is a very young witness with little or no experience in court proceedings. The trial court regarded the following narration of AAA during her testimony as having been "made in a clear, convincing and straight forward manner":[28]

PROSECUTOR NAZ:

Q- Now, [AAA], tell us, where were you sometime in the month of December 2000?
A- I was in our house at [XXX].

Q- What unusual incident happened on said date and time, if you recall?
A- I was raped.

Q- Who raped you?
A- My father.

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[26] *Id.* at 60.

[27] *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 783.

[28] CA *rollo*, p. 35.

Q- Is that father you are referring to the one you pointed to a while ago?
A- Yes, sir.

Q- Where did it happen?
A- In our house.

Q- Where is that house situated?
A- In [XXX].

Q- Do you remember who were the other persons present on that date?
A- My brothers and sisters.

Q- How many brothers and sisters do you have?
A- One (1) brother and four (4) sisters.

x x x x x x x x x

Q- You were raped as you said, by your father on that day, December 2000 at [XXX]. Tell us how it was done.

ATTY. BARREDA:

Witness Your Honor is smiling. For the record.

WITNESS:

A- It was nighttime. We were sleeping with my brother and sisters and I was sleeping beside my father and my brother and sisters.

PROSECUTOR NAZ:

Q- So, what happened while you were sleeping together with your father, brother and sisters?
A- When I was awakened, my shorts was already removed.

Q- What followed next?
A- I was raped.

Q- How was it done to you?

ATTY. BARREDA:

Witness Your Honor is smiling.

COURT:

Take note of the manifestation of Atty. Barreda.

WITNESS:

A- His penis was inserted into my vagina.

PROSECUTOR NAZ:

Q- So, what did you feel?
A- It was painful.

Q- So, what happened, if any?
A- After that, my shorts was again put back.

Q- Who put back your shorts?
A- My father.[29]

Since AAA was born on March 9, 1990, as evidenced by the Certification from the Civil Registrar's Office, she was 10 years and 9 months old when the crime charged in Criminal Case No. 4467 was committed. As such, the crime charged and proven is one of statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age.[30] Proof of force and consent is immaterial if the woman is under 12 years of age, not only because force is not an element of statutory rape, but also because the absence of free consent is presumed. Conviction will lie provided sexual intercourse is proven.[31]

Criminal Case No. 4468

The trial court likewise found the following testimony of AAA as regards the alleged rape committed on March 14, 2002 credible:

Q- Now, on March 14, 2002 at about 10:00 o'clock in the morning, do you remember where were you?
A- I was at home.

Q- Where is that house again situated?

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[29] TSN, March 6, 2006, pp. 7-11.

[30] *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423, 430.

[31] *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 225.

A- In XXX.

Q- What happened while you were there on that date and time?
A- When my uncle requested me to get a scythe there, I was pulled by my father.

Q- With your or is this father of yours the same father you mentioned a while ago?
A- Yes, sir.

Q- What happened next after you were pulled?
A- My shorts was again removed.

Q- In what particular place were you brought?
A- In our house.

Q- Who were there at that time aside from you and your father?
A- None, sir.

Q- Why, where was your mother then?
A- She was washing clothes.

Q- Where?
A- Ahead of our house.

Q- How about your brother and sisters, where were they?
A- They were with my mother.

Q- So, will you tell us how was that rape you mentioned done to you by your father?
A- When I was pulled and my shorts was removed, he again inserted his penis into my vagina.

Q- What happened next?
A- He again put back my shorts and I proceeded getting the scythe.[32]

Accused-appellant similarly argued in Criminal Case No. 4467 that it was impossible for him to have raped AAA when the latter's uncle, mother and siblings were within 50 meters from them. We disagree. We have held time and again that:

[R]ape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house

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[32] TSN, March 6, 2006, pp. 12-13.

where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.[33]

The insinuations of the defense that the rape charges were falsities fabricated by AAA's grandparents as shown by their participation in the proceedings deserve scant consideration. As held by the trial court, there was nothing improper in the assistance given by CCC and DDD to AAA in the rape case. AAA was merely 12 years old when the cases were initiated. AAA's personal determination to pursue the charges against her father was likewise shown by her coming to court to testify even after both CCC and DDD died.

We have also repeatedly held that "no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive [was] other than a fervent desire to seek justice."[34]

As observed by the Court of Appeals, however, the trial court erred in convicting accused-appellant in Criminal Case No. 4468 for statutory rape. As clearly stated in the Certification by the Civil Registrar's Office of the Municipality where AAA was born, AAA was born on March 9, 1990. AAA was thus 12 years and five days old when the second incident of rape occurred. Consequently, accused-appellant cannot be convicted in Criminal Case No. 4468 for statutory rape, which requires that the victim be below 12 years of age.

However, even though accused-appellant cannot be convicted of statutory rape in Criminal Case No. 4468, and despite the

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[33] *People v. Cabral*, G.R. No. 179946, December 23, 2009, 609 SCRA 160, 165-166.

[34] *People v. Isang*, G.R. No. 183087, December 4, 2008, 573 SCRA 150, 161.

absence of evidence of resistance on the part of AAA on said count, his criminal liability for rape nevertheless remains. In *People v. Fragante*,[35] we held:

> It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent. In *People v. Orillosa*, we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.[36]

Proper Penalty and Civil Liability

Both counts of rape, even the statutory rape in Criminal Case No. 4467, would have been punishable by death under Article 266-B of the Revised Penal Code, if not for the enactment of Republic Act No. 9346[37] which prohibits the imposition of the death penalty. Article 266-B provides:

> Art. 266-B. *Penalties.* – x x x
>
> x x x x x x x x x
>
> The death penalty shall 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.

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[35] G.R. No. 182521, February 9, 2011, 642 SCRA 566.

[36] *Id.* at 579-580.

[37] An Act Prohibiting the Imposition of Death Penalty in the Philippines, enacted on June 24, 2006.

Pursuant therefore to Republic Act No. 9346, the penalty that should be imposed is *reclusion perpetua*. In *People v. Lauga*,[38] the Court held that where the rape is committed with any of the qualifying/aggravating circumstances warranting the imposition of the death penalty, the victim is entitled to ₱75,000.00 as civil indemnity *ex delicto* and ₱75,000.00 as moral damages. These amounts were correctly imposed by the Court of Appeals. In *Lauga*, however, where the thirteen-year-old victim was raped by her father, the exemplary damages awarded to the victim was increased to ₱30,000.00. We are adopting this determination and hereby modify the exemplary damages accordingly.

WHEREFORE, the present appeal is hereby **DENIED.** The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02917 dated December 19, 2008, affirming the conviction of accused-appellant for statutory rape in Criminal Case No. 4467 and modifying his conviction in Criminal Case No. 4468 from statutory rape to qualified rape is **AFFIRMED.** The exemplary damages awarded to AAA in both Criminal Case Nos. 4467 and 4468 are hereby **MODIFIED,** and increased to ₱30,000.00.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[38] G.R. No. 186228, March 15, 2010, 615 SCRA 548, 563.

FIRST DIVISION

[G.R. No. 189998. August 29, 2012]

MAKATI SHANGRI-LA HOTEL AND RESORT, INC., *petitioner, vs.* **ELLEN JOHANNE HARPER, JONATHAN CHRISTOPHER HARPER, and RIGOBERTO GILLERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; PROOF OF OFFICIAL RECORD; WHAT ATTESTATION OF COPY MUST STATE; SUBSTANTIAL COMPLIANCE APPRECIATED IN CASE AT BAR.— Petitioner assails the CA's ruling that respondents substantially complied with the rules on the authentication of the proofs of marriage and filiation set by Section 24 and Section 25 of Rule 132 of the *Rules of Court* when they presented Exhibits Q, Q-1, R and R-1, because the legal custodian did not duly attest that Exhibits Q-1 and R-1 were the correct copies of the originals on file, and because no certification accompanied the documents stating that "such officer has custody of the originals." x x x Petitioner's challenge against respondents' documentary evidence on marriage and heirship is not well-taken. x x x At the minimum, [the documents] substantially met the requirements of [the law] as a condition for their admission as evidence in default of a showing by petitioner that the authentication process was tainted with bad faith. x x x In *Constantino-David v. Pangandaman-Gania*, the Court has said that substantial compliance, by its very nature, is actually inadequate observance of the requirements of a rule or regulation that are waived under equitable circumstances in order to facilitate the administration of justice [effectively and efficiently], there being no damage or injury caused by such flawed compliance. x x x There are, indeed, such equitable conditions attendant here, the foremost of which is that respondents had gone to great lengths to submit the documents. As the CA observed, respondents' compliance with the requirements on attestation and authentication of the documents had not been easy; they had to contend with many difficulties.

x x x It would be inequitable if the sincerity of respondents in obtaining and submitting the documents despite the difficulties was ignored.

2. ID.; CIVIL PROCEDURE; APPEALS; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— The Court concurs entirely with the findings and conclusions of the CA, which the Court regards to be thorough and supported by the records of the trial. Moreover, the Court cannot now review and pass upon the uniform findings of negligence by the CA and the RTC because doing so would require the Court to delve into and revisit the factual bases for the finding of negligence, something fully contrary to its character as not a trier of facts. In that regard, the factual findings of the trial court that are supported by the evidence on record, especially when affirmed by the CA, are conclusive on the Court. Consequently, the Court will not review unless there are exceptional circumstances for doing so.

3. CIVIL LAW; DAMAGES; HOTEL OWNER LIABLE FOR CIVIL DAMAGES TO THE SURVIVING HEIRS OF ITS HOTEL GUEST WHOM STRANGERS MURDERED INSIDE HIS HOTEL ROOM.— The hotel owner is liable for civil damages to the surviving heirs of its hotel guest whom strangers murder inside his hotel room. x x x The hotel business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for their guests but also security to the persons and belongings of their guests. The twin duty constitutes the essence of the business. Applying by analogy Article 2000, Article 2001 and Article 2002 of the *Civil Code* (all of which concerned the hotelkeepers' degree of care and responsibility as to the personal effects of their guests), we hold that there is much greater reason to apply the same if not greater degree of care and responsibility when the lives and personal safety of their guests are involved. Otherwise, the hotelkeepers would simply stand idly by as strangers have unrestricted access to all the hotel rooms on the pretense of being visitors of the guests, without being held liable should anything untoward befall the unwary guests. That would be absurd, something that no good law would ever envision.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for petitioner.
Barbers Molina & Molina for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The hotel owner is liable for civil damages to the surviving heirs of its hotel guest whom strangers murder inside his hotel room.

The Case

Petitioner, the owner and operator of the 5-star Shangri-La Hotel in Makati City (Shangri-La Hotel), appeals the decision promulgated on October 21, 2009,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment rendered on October 25, 2005 by the Regional Trial Court (RTC) in Quezon City holding petitioner liable for damages for the murder of Christian Fredrik Harper, a Norwegian national.[2] Respondents Ellen Johanne Harper and Jonathan Christopher Harper are the widow and son of Christian Harper, while respondent Rigoberto Gillera is their authorized representative in the Philippines.

Antecedents

In the first week of November 1999, Christian Harper came to Manila on a business trip as the Business Development Manager for Asia of ALSTOM Power Norway AS, an engineering firm with worldwide operations. He checked in at the Shangri-La Hotel and was billeted at Room 1428. He was due to check out on November 6, 1999. In the early morning of that date, however,

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[1] *Rollo*, pp. 58-83; penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justice Fernanda Lampas Peralta and Associate Justice Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 109-118.

he was murdered inside his hotel room by still unidentified malefactors. He was then 30 years old.

How the crime was discovered was a story in itself. A routine verification call from the American Express Card Company to cardholder Harper's residence in Oslo, Norway (*i.e.*, Bygdoy Terasse 16, 0287 Oslo, Norway) led to the discovery. It appears that at around 11:00 am of November 6, 1999, a Caucasian male of about 30–32 years in age, 5'4" in height, clad in maroon long sleeves, black denims and black shoes, entered the Alexis Jewelry Store in Glorietta, Ayala Center, Makati City and expressed interest in purchasing a Cartier lady's watch valued at ₱320,000.00 with the use of two Mastercard credit cards and an American Express credit card issued in the name of Harper. But the customer's difficulty in answering the queries phoned in by a credit card representative sufficiently aroused the suspicion of saleslady Anna Liza Lumba (Lumba), who asked for the customer's passport upon suggestion of the credit card representative to put the credit cards on hold. Probably sensing trouble for himself, the customer hurriedly left the store, and left the three credit cards and the passport behind.

In the meanwhile, Harper's family in Norway must have called him at his hotel room to inform him about the attempt to use his American Express card. Not getting any response from the room, his family requested Raymond Alarcon, the Duty Manager of the Shangri-La Hotel, to check on Harper's room. Alarcon and a security personnel went to Room 1428 at 11:27 a.m., and were shocked to discover Harper's lifeless body on the bed.

Col. Rodrigo de Guzman (de Guzman), the hotel's Security Manager, initially investigated the murder. In his incident report, he concluded from the several empty bottles of wine in the trash can and the number of cigarette butts in the toilet bowl that Harper and his visitors had drunk that much and smoked that many cigarettes the night before.[3]

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[3] *Id.* at 60.

The police investigation actually commenced only upon the arrival in the hotel of the team of PO3 Carmelito Mendoza[4] and SPO4 Roberto Hizon. Mendoza entered Harper's room in the company of De Guzman, Alarcon, Gami Holazo (the hotel's Executive Assistant Manager), Norge Rosales (the hotel's Executive Housekeeper), and Melvin Imperial (a security personnel of the hotel). They found Harper's body on the bed covered with a blanket, and only the back of the head could be seen. Lifting the blanket, Mendoza saw that the victim's eyes and mouth had been bound with electrical and packaging tapes, and his hands and feet tied with a white rope. The body was identified to be that of hotel guest Christian Fredrik Harper.

Mendoza subsequently viewed the closed circuit television (CCTV) tapes, from which he found that Harper had entered his room at 12:14 a.m. of November 6, 1999, and had been followed into the room at 12:17 a.m. by a woman; that another person, a Caucasian male, had entered Harper's room at 2:48 a.m.; that the woman had left the room at around 5:33 a.m.; and that the Caucasian male had come out at 5:46 a.m.

On November 10, 1999, SPO1 Ramoncito Ocampo, Jr. interviewed Lumba about the incident in the Alexis Jewelry Shop. During the interview, Lumba confirmed that the person who had attempted to purchase the Cartier lady's watch on November 6, 1999 had been the person whose picture was on the passport issued under the name of Christian Fredrik Harper and the Caucasian male seen on the CCTV tapes entering Harper's hotel room.

Sr. Insp. Danilo Javier of the Criminal Investigation Division of the Makati City Police reflected in his Progress Report No. 2[5] that the police investigation showed that Harper's passport, credit cards, laptop and an undetermined amount of cash had been missing from the crime scene; and that he had learned

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[4] Also referred to by petitioner as PO3 Carmelito Valiente.

[5] *Rollo*, p. 26 (entitled *Re: Death of Christian Harper, dated January 17, 2000, of the Criminal Investigation Division of the Makati Police Station*).

during the follow-up investigation about an unidentified Caucasian male's attempt to purchase a Cartier lady's watch from the Alexis Jewelry Store in Glorietta, Ayala Center, Makati City with the use of one of Harper's credit cards.

On August 30, 2002, respondents commenced this suit in the RTC to recover various damages from petitioner,[6] pertinently alleging:

x x x x x x x x x

7. The deceased was to check out and leave the hotel on November 6, 1999, but in the early morning of said date, while he was in his hotel room, he was stabbed to death by an (sic) still unidentified male who had succeeded to intrude into his room.

8. The murderer succeeded to trespass into the area of the hotel's private rooms area and into the room of the said deceased on account of the hotel's gross negligence in providing the most basic security system of its guests, the lack of which owing to the acts or omissions of its employees was the immediate cause of the tragic death of said deceased.

x x x x x x x x x

10. Defendant has prided itself to be among the top hotel chains in the East claiming to provide excellent service, comfort and security for its guests for which reason ABB Alstom executives and their guests have invariably chosen this hotel to stay.[7]

x x x x x x x x x

Ruling of the RTC

On October 25, 2005, the RTC rendered judgment after trial,[8] *viz*:

WHEREFORE, finding the defendant hotel to be remiss in its duties and thus liable for the death of Christian Harper, this Court orders the defendant to pay plaintiffs the amount of:

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[6] *Id.* at 84-89.

[7] *Id.* at 86.

[8] *Id.* at 109-118.

PhP 43,901,055.00 as and by way of actual and compensatory damages;

PhP 739,075.00 representing the expenses of transporting the remains of Harper to Oslo, Norway;

PhP 250,000.00 attorney's fees;

and to pay the cost of suit.

SO ORDERED.

Ruling of the CA

Petitioner appealed, assigning to the RTC the following errors, to wit:

I

THE TRIAL COURT ERRED IN RULING THAT THE PLAINTIFFS-APPELLEES ARE THE HEIRS OF THE LATE CHRISTIAN HARPER, AS THERE IS NO COMPETENT EVIDENCE ON RECORD SUPPORTING SUCH RULING.

II

THE TRIAL COURT ERRED IN RULING THAT THE DEFENDANT-APPELLANT'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE DEATH OF MR. HARPER, OR IN NOT RULING THAT IT WAS MR. CHRISTIAN HARPER'S OWN NEGLIGENCE WHICH WAS THE SOLE, PROXIMATE CAUSE OF HIS DEATH.

III

THE TRIAL COURT ERRED IN AWARDING TO THE PLAINTIFFS-APPELLEES THE AMOUNT OF PHP43,901,055.00, REPRESENTING THE ALLEGED LOST EARNING OF THE LATE CHRISTIAN HARPER, THERE BEING NO COMPETENT PROOF OF THE EARNING OF MR. HARPER DURING HIS LIFETIME AND OF THE ALLEGATION THAT THE PLAINTIFFS-APPELLEES ARE MR. HARPER'S HEIRS.

IV

THE TRIAL COURT ERRED IN AWARDING TO THE PLAINTIFFS-APPELLEES THE AMOUNT OF PHP739,075.00, REPRESENTING THE ALLEGED COST OF TRANSPORTING THE

REMAINS OF MR. CHRISTIAN HARPER TO OSLO, NORWAY, THERE BEING NO PROOF ON RECORD THAT IT WAS PLAINTIFFS-APPELLEES WHO PAID FOR SAID COST.

V

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AND COST OF SUIT TO THE PLAINTIFFS-APPELLEES, THERE BEING NO PROOF ON RECORD SUPPORTING SUCH AWARD.

On October 21, 2009, the CA affirmed the judgment of the RTC with modification,[9] as follows:

WHEREFORE, the assailed Decision of the Regional Trial Court dated October 25, 2005 is hereby **AFFIRMED** with **MODIFICATION.** Accordingly, defendant-appellant is ordered to pay plaintiffs-appellees the amounts of ₱52,078,702.50, as actual and compensatory damages; ₱25,000.00, as temperate damages; ₱250,000.00, as attorney's fees; and to pay the costs of the suit.

SO ORDERED.[10]

Issues

Petitioner still seeks the review of the judgment of the CA, submitting the following issues for consideration and determination, namely:

I.

WHETHER OR NOT THE PLAINTIFFS-APPELLEES WERE ABLE TO PROVE WITH COMPETENT EVIDENCE THE AFFIRMATIVE ALLEGATIONS IN THE COMPLAINT THAT THEY ARE THE WIDOW AND SON OF MR. CHRISTIAN HARPER.

II.

WHETHER OR NOT THE APPELLEES WERE ABLE TO PROVE WITH COMPETENT EVIDENCE THE AFFIRMATIVE ALLEGATIONS IN THE COMPLAINT THAT THERE WAS NEGLIGENCE ON THE PART OF THE APPELLANT AND ITS

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[9] *Id.* at 58-83.

[10] *Id.* at 82-83.

SAID NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE DEATH OF MR. CHRISTIAN HARPER.

III.

WHETHER OR NOT THE PROXIMATE CAUSE OF THE DEATH OF MR. CHRISTIAN HARPER WAS HIS OWN NEGLIGENCE.

Ruling

The appeal lacks merit.

1.

Requirements for authentication of documents establishing respondents' legal relationship with the victim as his heirs were complied with

As to the first issue, the CA pertinently held as follows:

The documentary evidence that plaintiffs-appellees offered relative to their heirship consisted of the following –

1. Exhibit "Q" - Birth Certificate of Jonathan Christopher Harper, son of Christian Fredrik Harper and Ellen Johanne Harper;
2. Exhibit "Q-1" - Marriage Certificate of Ellen Johanne Clausen and Christian Fredrik Harper;
3. Exhibit "R" - Birth Certificate of Christian Fredrick Harper, son of Christopher Shaun Harper and Eva Harper; and
4. Exhibit "R-1" - Certificate from the Oslo Probate Court stating that Ellen Harper was married to the deceased, Christian Fredrick Harper and listed Ellen Harper and Jonathan Christopher Harper as the heirs of Christian Fredrik Harper.

Defendant-appellant points out that plaintiffs-appellees committed several mistakes as regards the above documentary exhibits, resultantly making them incompetent evidence, to wit, (a) none of the plaintiffs-appellees or any of the witnesses who testified for the plaintiffs gave evidence that Ellen Johanne Harper and Jonathan Christopher Harper are the widow and son of the deceased Christian Fredrik Harper; (b) Exhibit "Q" was labeled as Certificate of Marriage in plaintiffs-appellees' Formal Offer of Evidence, when it appears to

be the Birth Certificate of the late Christian Harper; (c) Exhibit "Q-1" is a translation of the Marriage Certificate of Ellen Johanne Harper and Christian Fredrik Harper, the original of which was not produced in court, much less, offered in evidence. Being a mere translation, it cannot be a competent evidence of the alleged fact that Ellen Johanne Harper is the widow of Christian Fredrik Harper, pursuant to the Best Evidence Rule. Even assuming that it is an original Marriage Certificate, it is not a public document that is admissible without the need of being identified or authenticated on the witness stand by a witness, as it appears to be a document issued by the Vicar of the Parish of Ullern and, hence, a private document; (d) Exhibit "R" was labeled as Probate Court Certificate in plaintiffs-appellees' Formal Offer of Evidence, when it appears to be the Birth Certificate of the deceased, Christian Fredrik Harper; and (e) Exhibit "R-1" is a translation of the supposed Probate Court Certificate, the original of which was not produced in court, much less, offered in evidence. Being a mere translation, it is an incompetent evidence of the alleged fact that plaintiffs-appellees are the heirs of Christian Fredrik Harper, pursuant to the Best Evidence Rule.

Defendant-appellant further adds that Exhibits "Q-1" and "R-1" were not duly attested by the legal custodians (by the Vicar of the Parish of Ullern for Exhibit "Q-1" and by the Judge or Clerk of the Probate Court for Exhibit "R-1") as required under Sections 24 and 25, Rule 132 of the Revised Rules of Court. Likewise, the said documents are not accompanied by a certificate that such officer has the custody as also required under Section 24 of Rule 132. Consequently, defendant-appellant asseverates that Exhibits "Q-1" and "R-1" as private documents, which were not duly authenticated on the witness stand by a competent witness, are essentially hearsay in nature that have no probative value. Therefore, it is obvious that plaintiffs-appellees failed to prove that they are the widow and son of the late Christian Harper.

Plaintiffs-appellees make the following counter arguments, *viz*, (a) Exhibit "Q-1", the Marriage Certificate of Ellen Johanne Harper and Christian Fredrik Harper, was issued by the Office of the Vicar of Ullern with a statement that "this certificate is a transcript from the Register of Marriage of Ullern Church." The contents of Exhibit "Q-1" were translated by the Government of the Kingdom of Norway, through its authorized translator, into English and authenticated by the Royal Ministry of Foreign Affairs of Norway, which in turn, was also authenticated by the Consul, Embassy of the Republic of

the Philippines in Stockholm, Sweden; (b) Exhibit "Q", the Birth Certificate of Jonathan Christopher Harper, was issued and signed by the Registrar of the Kingdom of Norway, as authenticated by the Royal Ministry of Foreign Affairs of Norway, whose signature was also authenticated by the Consul, Embassy of the Republic of the Philippines in Stockholm, Sweden; and (c) Exhibit "R-1", the Probate Court Certificate was also authenticated by the Royal Ministry of Foreign Affairs of Norway, whose signature was also authenticated by the Consul, Embassy of the Republic of the Philippines in Stockholm, Sweden.

They further argue that since Exhibit "Q-1", Marriage Certificate, was issued by the vicar or parish priest, the legal custodian of parish records, it is considered as an exception to the hearsay rule. As for Exhibit "R-1", the Probate Court Certificate, while the document is indeed a translation of the certificate, it is an official certification, duly confirmed by the Government of the Kingdom of Norway; its contents were lifted by the Government Authorized Translator from the official record and thus, a written official act of a foreign sovereign country.

WE rule for plaintiffs-appellees.

The Revised Rules of Court provides that public documents may be evidenced by a copy attested by the officer having the legal custody of the record. 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.

If the record is not kept in the Philippines, the attested copy must be accompanied 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.

The documents involved in this case are all kept in Norway. These documents have been authenticated by the Royal Norwegian Ministry of Foreign Affairs; they bear the official seal of the Ministry and signature of one, Tanja Sorlie. The documents

are accompanied by an Authentication by the Consul, Embassy of the Republic of the Philippines in Stockholm, Sweden to the effect that, Tanja Sorlie is duly authorized to legalize official documents for the Ministry.

Exhibits "Q" and "R" are extracts of the register of births of both Jonathan Christopher Harper and the late Christian Fredrik Harper, respectively, wherein the former explicitly declares that Jonathan Christopher is the son of Christian Fredrik and Ellen Johanne Harper. Said documents bear the signature of the keeper, Y. Ayse B. Nordal with the official seal of the Office of the Registrar of Oslo, and the authentication of Tanja Sorlie of the Royal Ministry of Foreign Affairs, Oslo, which were further authenticated by Philippine Consul Marian Jocelyn R. Tirol. In addition, the latter states that said documents are the birth certificates of Jonathan Christopher Harper and Christian Fredrik Harper issued by the Registrar Office of Oslo, Norway on March 23, 2004.

Exhibits "Q-1", on the other hand, is the Marriage Certificate of Christian Fredrik Harper and Ellen Johanne Harper issued by the vicar of the Parish of Ullern while Exhibit "R-1" is the Probate Court Certificate from the Oslo Probate Court, naming Ellen Johanne Harper and Jonathan Christopher Harper as the heirs of the deceased Christian Fredrik Harper. The documents are certified true translations into English of the transcript of the said marriage certificate and the probate court certificate. They were likewise signed by the authorized government translator of Oslo with the seal of his office; attested by Tanja Sorlie and further certified by our own Consul.

In view of the foregoing, WE conclude that plaintiffs-appellees had substantially complied with the requirements set forth under the rules. WE would also like to stress that plaintiffs-appellees herein are residing overseas and are litigating locally through their representative. While they are not excused from complying with our rules, WE must take into account the attendant reality that these overseas litigants communicate with their representative and counsel via long distance communication. Add to this is the fact that compliance with the requirements on attestation and authentication or certification is no easy process and completion thereof may vary depending on different factors such as the location of the requesting party from the consulate and the office of the record custodian, the volume of transactions in said offices

and even the mode of sending these documents to the Philippines. With these circumstances under consideration, to OUR minds, there is every reason for an equitable and relaxed application of the rules on the issuance of the required attestation from the custodian of the documents to plaintiffs-appellees' situation. Besides, these questioned documents were duly signed by the officers having custody of the same.[11]

Petitioner assails the CA's ruling that respondents substantially complied with the rules on the authentication of the proofs of marriage and filiation set by Section 24 and Section 25 of Rule 132 of the *Rules of Court* when they presented Exhibit Q, Exhibit Q-1, Exhibit R and Exhibit R-1, because the legal custodian did not duly attest that Exhibit Q-1 and Exhibit R-1 were the correct copies of the originals on file, and because no certification accompanied the documents stating that "such officer has custody of the originals." It contends that respondents did not competently prove their being Harper's surviving heirs by reason of such documents being hearsay and incompetent.

Petitioner's challenge against respondents' documentary evidence on marriage and heirship is not well-taken.

Section 24 and Section 25 of Rule 132 provide:

Section 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, 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.

Section 25. *What attestation of copy must state*.—Whenever a copy of a document or record is attested for the purpose of evidence,

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[11] *Rollo*, pp. 64-68 (bold emphasis supplied).

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.

Although Exhibit Q,[12] Exhibit Q-1,[13] Exhibit R[14] and Exhibit R-1[15] were not attested by the officer having the legal custody of the record or by his deputy in the manner required in Section 25 of Rule 132, and said documents did not comply with the requirement under Section 24 of Rule 132 to the effect that if the record was not kept in the Philippines a certificate of the person having custody must accompany the copy of the document that was duly attested stating that such person had custody of the documents, the deviation was not enough reason to reject the utility of the documents for the purposes they were intended to serve.

Exhibit Q and Exhibit R were extracts from the registry of births of Oslo, Norway issued on March 23, 2004 and signed by Y. Ayse B. Nordal, Registrar, and corresponded to respondent Jonathan Christopher Harper and victim Christian Fredrik Harper, respectively.[16] Exhibit Q explicitly stated that Jonathan was the son of Christian Fredrik Harper and Ellen Johanne Harper, while Exhibit R attested to the birth of Christian Fredrik Harper on December 4, 1968. Exhibit Q and Exhibit R were authenticated on March 29, 2004 by the signatures of Tanja Sorlie of the Royal Ministry of Foreign Affairs of Norway as well as by the official seal of that office. In turn, Consul Marian Jocelyn R. Tirol of the Philippine Consulate in Stockholm, Sweden authenticated the signatures of Tanja Sorlie and the official seal of the Royal Ministry of Foreign Affairs of Norway on

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[12] *Id.* at 98.

[13] *Id.* at 100.

[14] *Id.* at 101.

[15] *Id.* at 104.

[16] *Id.* at 98-101.

Exhibit Q and Exhibit R, explicitly certifying to the authority of Tanja Sorlie "to legalize official documents for the Royal Ministry of Foreign Affairs of Norway."[17]

Exhibit Q-1,[18] the Marriage Certificate of Ellen Johanne Clausen Harper and Christian Fredrik Harper, contained the following data, namely: (*a*) the parties were married on June 29, 1996 in Ullern Church; and (*b*) the certificate was issued by the Office of the Vicar of Ullern on June 29, 1996. Exhibit Q-1 was similarly authenticated by the signature of Tanja Sorlie of the Royal Ministry of Foreign Affairs of Norway, with the official seal of that office. Philippine Consul Tirol again expressly certified to the capacity of Sorlie "to legalize official documents for the Royal Ministry of Foreign Affairs of Norway,"[19] and further certified that the document was a true translation into English of a transcript of a Marriage Certificate issued to Christian Frederik Harper and Ellen Johanne Clausen by the Vicar of the Parish of Ullern on June 29, 1996.

Exhibit R-1,[20] a Probate Court certificate issued by the Oslo Probate Court on February 18, 2000 through Morten Bolstad, its Senior Executive Officer, was also authenticated by the signature of Tanja Sorlie and with the official seal of the Royal Ministry of Foreign Affairs of Norway. As with the other documents, Philippine Consul Tirol explicitly certified to the capacity of Sorlie "to legalize official documents for the Royal Ministry of Foreign Affairs of Norway," and further certified that the document was a true translation into English of the Oslo Probate Court certificate issued on February 18, 2000 to the effect that Christian Fredrik Harper, born on December 4, 1968, had reportedly died on November 6, 1999.[21]

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[17] *Id.* at 101 and 103 (Annexes D-2 and D-3).

[18] *Id.* at 100.

[19] *Id.* at 99.

[20] *Id.* at 104.

[21] *Id.* at 103.

The Oslo Probate Court certificate recited that both Ellen Johanne Harper and Christopher S. Harper were Harper's heirs, to wit:

> The above names surviving spouse has accepted responsibility for the commitments of the deceased in accordance with the provisions of Section 78 of the Probate Court Act (Norway), and the above substitute guardian has agreed to the private division of the estate.
>
> The following heir and substitute guardian will undertake the private division of the estate:
>
> Ellen Johanne Harper
> Christopher S. Harper
>
> This probate court certificate relates to the entire estate.
>
> Oslo Probate Court, 18 February 2000.[22]

The official participation in the authentication process of Tanja Sorlie of the Royal Ministry of Foreign Affairs of Norway and the attachment of the official seal of that office on each authentication indicated that Exhibit Q, Exhibit R, Exhibit Q-1 and Exhibit R-1 were documents of a public nature in Norway, not merely private documents. It cannot be denied that based on Philippine Consul Tirol's official authentication, Tanja Sorlie was "on the date of signing, duly authorized to legalize **official documents** for the Royal Ministry of Foreign Affairs of Norway." Without a showing to the contrary by petitioner, Exhibit Q, Exhibit R, Exhibit Q-1 and Exhibit R-1 should be presumed to be themselves official documents under Norwegian law, and admissible as *prima facie* evidence of the truth of their contents under Philippine law.

At the minimum, Exhibit Q, Exhibit R, Exhibit Q-1 and Exhibit R-1 substantially met the requirements of Section 24 and Section 25 of Rule 132 as a condition for their admission as evidence in default of a showing by petitioner that the authentication

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[22] *Id.* at 104.

process was tainted with bad faith. Consequently, the objective of ensuring the authenticity of the documents prior to their admission as evidence was substantially achieved. In *Constantino-David v. Pangandaman-Gania*,[23] the Court has said that substantial compliance, by its very nature, is actually inadequate observance of the requirements of a rule or regulation that are waived under equitable circumstances in order to facilitate the administration of justice, there being no damage or injury caused by such flawed compliance.

The Court has further said in *Constantino-David v. Pangandaman-Gania* that the focus in every inquiry on whether or not to accept substantial compliance is always on the presence of equitable conditions to administer justice effectively and efficiently without damage or injury to the spirit of the legal obligation.[24] There are, indeed, such equitable conditions attendant here, the foremost of which is that respondents had gone to great lengths to submit the documents. As the CA observed, respondents' compliance with the requirements on attestation and authentication of the documents had not been easy; they had to contend with many difficulties (such as the distance of Oslo, their place of residence, from Stockholm, Sweden, where the Philippine Consulate had its office; the volume of transactions in the offices concerned; and the safe transmission of the documents to the Philippines).[25] Their submission of the documents should be presumed to be in good faith because they did so in due course. It would be inequitable if the sincerity of respondents in obtaining and submitting the documents despite the difficulties was ignored.

The principle of substantial compliance recognizes that exigencies and situations do occasionally demand some flexibility in the rigid application of the rules of procedure and the laws.[26]

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[23] G.R. No. 156039, August 14, 2003, 409 SCRA 80.

[24] *Id.*, at 94.

[25] *Rollo*, p. 68.

[26] *Hadji-Sirad v. Civil Service Commission*, G.R. No. 182267, August 28, 2009, 597 SCRA 475.

That rules of procedure may be mandatory in form and application does not forbid a showing of substantial compliance under justifiable circumstances,[27] because substantial compliance does not equate to a disregard of basic rules. For sure, substantial compliance and strict adherence are not always incompatible and do not always clash in discord. The power of the Court to suspend its own rules or to except any particular case from the operation of the rules whenever the purposes of justice require the suspension cannot be challenged.[28] In the interest of substantial justice, even procedural rules of the most mandatory character in terms of compliance are frequently relaxed. Similarly, the procedural rules should definitely be liberally construed if strict adherence to their letter will result in absurdity and in manifest injustice, or where the merits of a party's cause are apparent and outweigh considerations of non-compliance with certain formal requirements.[29] It is more in accord with justice that a party-litigant is given the fullest opportunity to establish the merits of his claim or defense than for him to lose his life, liberty, honor or property on mere technicalities. Truly, the rules of procedure are intended to promote substantial justice, not to defeat it, and should not be applied in a very rigid and technical sense.[30]

Petitioner urges the Court to resolve the apparent conflict between the rulings in *Heirs of Pedro Cabais v. Court of Appeals*[31]

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[27] *Prince Transport, Ind. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 326.

[28] *De Guzman v. Sandiganbayan*, G.R. No. 103276, April 11, 1996, 256 SCRA 171, 177.

[29] *Department of Agrarian Reform v. Republic*, G.R. No. 160560, July 29, 2005, 465 SCRA 419, 428; *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 221.

[30] *Angel v. Inopiquez*, G.R. No. 66712, January 13, 1989, 69 SCRA 129, 136; *Calasiao Farmers Cooperative Marketing Association, Inc. v. Court of Appeals*, No. 50633, August 17, 1981, 106 SCRA 630, 637; *Director of Lands v. Romamban*, No. L-36948, August 28, 1984, 131 SCRA 431, 438.

[31] G.R. Nos. 106314-15, October 8, 1999, 316 SCRA 338.

(*Cabais*) and in *Heirs of Ignacio Conti v. Court of Appeals*[32] (*Conti*) establishing filiation through a baptismal certificate.[33]

Petitioner's urging is not warranted, both because there is no conflict between the rulings in *Cabais* and *Conti*, and because neither *Cabais* nor *Conti* is relevant herein.

In *Cabais*, the main issue was whether or not the CA correctly affirmed the decision of the RTC that had relied mainly on the baptismal certificate of Felipa C. Buesa to establish the parentage and filiation of Pedro Cabais. The Court held that the petition was meritorious, stating:

> A birth certificate, being a public document, offers *prima facie* evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained in such public document. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are *prima facie* evidence of the facts therein stated. The evidentiary nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity.
>
> On the contrary, a baptismal certificate is a private document, which, being hearsay, is not a conclusive proof of filiation. It does not have the same probative value as a record of birth, an official or public document. In *US v. Evangelista*, this Court held that church registers of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68 and the passage of Act No. 190 are no longer public writings, nor are they kept by duly authorized public officials. Thus, in this jurisdiction, a certificate of baptism such as the one herein controversy is no longer regarded with the same evidentiary value as official records of birth. Moreover, on this score, jurisprudence is consistent and uniform in ruling that the canonical certificate of baptism is not sufficient to prove recognition.[34]

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[32] G.R. No. 118464, December 21, 1998, 300 SCRA 345.

[33] *Rollo*, p. 12.

[34] *Supra*, note 31, at pp. 343-344.

The Court sustained the *Cabais* petitioners' stance that the RTC had apparently erred in relying on the baptismal certificate to establish filiation, stressing the baptismal certificate's limited evidentiary value as proof of filiation inferior to that of a birth certificate; and declaring that the baptismal certificate did not attest to the veracity of the statements regarding the kinsfolk of the one baptized. Nevertheless, the Court ultimately ruled that it was respondents' failure to present the birth certificate, more than anything else, that lost them their case, stating that: "The unjustified failure to present the birth certificate instead of the baptismal certificate now under consideration or to otherwise prove filiation by any other means recognized by law weigh heavily against respondents."[35]

In *Conti*, the Court affirmed the rulings of the trial court and the CA to the effect that the *Conti* respondents were able to prove by preponderance of evidence their being the collateral heirs of deceased Lourdes Sampayo. The *Conti* petitioners disagreed, arguing that baptismal certificates did not prove the filiation of collateral relatives of the deceased. Agreeing with the CA, the Court said:

> We are not persuaded. Altogether, the documentary and testimonial evidence submitted xxx are competent and adequate proofs that private respondents are collateral heirs of Lourdes Sampayo.
>
> x x x x x x x x x
>
> Under Art. 172 of the Family Code, the filiation of legitimate children shall be proved by any other means allowed by the Rules of Court and special laws, in the absence of a record of birth or a parent's admission of such legitimate filiation in a public or private document duly signed by the parent. 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. By analogy, this method of proving filiation may also be utilized in the instant case.

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[35] *Id.*

Public documents are the written official acts, or records of the official act of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or a foreign country. **The baptismal certificates presented in evidence by private respondents are public documents. Parish priests continue to be the legal custodians of the parish records and are authorized to issue true copies, in the form of certificates, of the entries contained therein.**

The admissibility of baptismal certificates offered by Lydia S. Reyes, absent the testimony of the officiating priest or the official recorder, was settled in *People v. Ritter*, citing *U.S. v. de Vera* (28 Phil. 105 [1914], thus:

> …. The entries made in the Registry Book may be considered as entries made in the course of business under Section 43 of Rule 130, which is an exception to the hearsay rule. The baptisms administered by the church are one of its transactions in the exercise of ecclesiastical duties and recorded in the book of the church during this course of its business.

It may be argued that baptismal certificates are evidence only of the administration of the sacrament, but in this case, there were four (4) baptismal certificates which, when taken together, uniformly show that Lourdes, Josefina, Remedios and Luis had the same set of parents, as indicated therein. Corroborated by the undisputed testimony of Adelaida Sampayo that with the demise of Lourdes and her brothers Manuel, Luis and sister Remedios, the only sibling left was Josefina Sampayo Reyes, such baptismal certificates have acquired evidentiary weight to prove filiation.[36]

Obviously, *Conti* did not treat a baptismal certificate, standing alone, as sufficient to prove filiation; on the contrary, *Conti* expressly held that a baptismal certificate had evidentiary value to prove filiation if *considered alongside other evidence of filiation*. As such, a baptismal certificate alone is not sufficient to resolve a disputed filiation.

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[36] *Heirs of Ignacio Conti v. Court of Appeals*, G.R. No. 118464, December 21, 1998, 300 SCRA 345, 356-358.

Unlike *Cabais* and *Conti*, this case has respondents presenting *several* documents, like the birth certificates of Harper and respondent Jonathan Harper, the marriage certificate of Harper and Ellen Johanne Harper, and the probate court certificate, all of which were presumably regarded as public documents under the laws of Norway. Such documentary evidence sufficed to competently establish the relationship and filiation under the standards of our *Rules of Court*.

II

Petitioner was liable due to its own negligence

Petitioner argues that respondents failed to prove its negligence; that Harper's own negligence in allowing the killers into his hotel room was the proximate cause of his own death; and that hotels were not insurers of the safety of their guests.

The CA resolved petitioner's arguments thuswise:

> Defendant-appellant contends that the pivotal issue is whether or not it had committed negligence and corollarily, whether its negligence was the immediate cause of the death of Christian Harper. In its defense, defendant-appellant mainly avers that it is equipped with adequate security system as follows: (1) keycards or vingcards for opening the guest rooms, (2) two CCTV monitoring cameras on each floor of the hotel and (3) roving guards with handheld radios, the number of which depends on the occupancy rate of the hotel. Likewise, it reiterates that the proximate cause of Christian Harper's death was his own negligence in inviting to his room the two (2) still unidentified suspects.
>
> Plaintiffs-appellees in their Brief refute, in that, the liability of defendant-appellant is based upon the fact that it was in a better situation than the injured person, Christian Harper, to foresee and prevent the happening of the injurious occurrence. They maintain that there is no dispute that even prior to the untimely demise of Christian Harper, defendant-appellant was duly forewarned of its security lapses as pointed out by its Chief Security Officer, Col. Rodrigo De Guzman, who recommended that one roving guard be assigned on each floor of the hotel considering the length and shape of the corridors. They posit that defendant-appellant's inaction constitutes negligence.

This Court finds for plaintiffs-appellees.

As the action is predicated on negligence, the relevant law is Article 2176 of the Civil Code, which states that –

> "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 was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter."

Negligence is defined as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. The Supreme Court likewise ruled that negligence is want of care required by the circumstances. It is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require. In determining whether or not there is negligence on the part of the parties in a given situation, jurisprudence has laid down the following test: Did defendant, in doing the alleged negligent act, use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, the person is guilty of negligence. The law, in effect, adopts the standard supposed to be supplied by the imaginary conduct of the discreet *pater familias* of the Roman law.

The test of negligence is objective. WE measure the act or omission of the tortfeasor with a perspective as that of an ordinary reasonable person who is similarly situated. The test, as applied to the extant case, is whether or not defendant-appellant, under the attendant circumstances, used that reasonable care and caution which an ordinary reasonable person would have used in the same situation.

WE rule in the negative.

In finding defendant-appellant remiss in its duty of exercising the required reasonable care under the circumstances, the court a *quo* reasoned-out, to wit:

> "Of the witnesses presented by plaintiffs to prove its (*sic*) case, the only one with competence to testify on the issue of adequacy or inadequacy of security is Col. Rodrigo De Guzman who was then the Chief Security Officer of defendant hotel

for the year 1999. He is a retired police officer and had vast experience in security jobs. He was likewise a member of the elite Presidential Security Group.

He testified that upon taking over the job as the chief of the security force of the hotel, he made an assessment of the security situation. Col. De Guzman was not satisfied with the security set-up and told the hotel management of his desire to improve it. In his testimony, De Guzman testified that at the time he took over, he noticed that there were few guards in the elevated portion of the hotel where the rooms were located. The existing security scheme then was one guard for 3 or 4 floors. He likewise testified that he recommended to the hotel management that at least one guard must be assigned per floor especially considering that the hotel has a long "L-shaped" hallway, such that one cannot see both ends of the hallway. He further opined that "even one guard in that hallway is not enough because of the blind portion of the hallway."

On cross-examination, Col. De Guzman testified that the security of the hotel was adequate at the time the crime occurred because the hotel was not fully booked. He qualified his testimony on direct in that his recommendation of one guard per floor is the "ideal" set-up when the hotel is fully-booked.

Be that as it may, it must be noted that Col. De Guzman also testified that the reason why the hotel management disapproved his recommendation was that the hotel was not doing well. It is for this reason that the hotel management did not heed the recommendation of Col. De Guzman, no matter how sound the recommendation was, and whether the hotel is fully-booked or not. It was a business judgment call on the part of the defendant.

Plaintiffs anchor its (*sic*) case on our law on quasi-delicts.

> 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 relation between the parties, is called quasi-delict.

Liability on the part of the defendant is based upon the fact that he was in a better situation than the injured person to foresee and prevent the happening of the injurious occurrence.

There is no dispute that even prior to the untimely demise of Mr. Harper, defendant was duly forewarned of the security lapses in the hotel. Col. De Guzman was particularly concerned with the security of the private areas where the guest rooms are. He wanted not just one roving guard in every three or four floors. He insisted there must be at least one in each floor considering the length and the shape of the corridors. The trained eyes of a security officer was (sic) looking at that deadly scenario resulting from that wide security breach as that which befell Christian Harper.

The theory of the defense that the malefactor/s was/were known to Harper or was/were visitors of Harper and that there was a shindig among [the] three deserves scant consideration.

The NBI Biology Report (Exh. "C" & "D") and the Toxicology Report (Exh. "E") belie the defense theory of a joyous party between and among Harper and the unidentified malefactor/s. Based on the Biology Report, Harper was found negative of prohibited and regulated drugs. The Toxicology Report likewise revealed that the deceased was negative of the presence of alcohol in his blood.

The defense even suggests that the malefactor/s gained entry into the private room of Harper either because Harper allowed them entry by giving them access to the vingcard or because Harper allowed them entry by opening the door for them, the usual gesture of a room occupant to his visitors.

While defendant's theory may be true, it is more likely, under the circumstances obtaining that the malefactor/s gained entry into his room by simply knocking at Harper's door and the latter opening it probably thinking it was hotel personnel, without an inkling that criminal/s could be in the premises.

The latter theory is more attuned to the dictates of reason. If indeed the female "visitor" is known to or a visitor of Harper, she should have entered the the room together with Harper. It is quite unlikely that a supposed "visitor" would wait three minutes to be with a guest when he/she could go with the guest directly to the room. The interval of three minutes in Harper's entry and that of the alleged female visitor belies the "theory of acquaintanceship". It is most likely that the female "visitor" was the one who opened the door to the male "visitor", undoubtedly, a co-conspirator.

In any case, the ghastly incident could have been prevented had there been adequate security in each of the hotel floors. This, coupled with the earlier recommendation of Col. De Guzman to the hotel management to act on the security lapses of the hotel, raises the presumption that the crime was foreseeable.

Clearly, defendant's inaction constitutes negligence or want of the reasonable care demanded of it in that particular situation.

In a case, the Supreme Court defined negligence as:

> The failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance, which the circumstances justly demand, whereby such person suffers injury.
>
> Negligence is want of care required by the circumstances. It is a relative or comparative, not an absolute term, and its application depends upon the situation of the parties, and the degree of care and vigilance which the circumstances reasonably impose. Where the danger is great, a high degree of care is necessary.

Moreover, in applying the premises liability rule in the instant case as it is applied in some jurisdiction (sic) in the United States, it is enough that guests are injured while inside the hotel premises to make the hotelkeeper liable. With great caution should the liability of the hotelkeeper be enforced when a guest died inside the hotel premises.

It also bears stressing that there were prior incidents that occurred in the hotel which should have forewarned the hotel management of the security lapses of the hotel. As testified to by Col. De Guzman, "there were 'minor' incidents" (loss of items) before the happening of the instant case.

These "minor" incidents may be of little significance to the hotel, yet relative to the instant case, it speaks volume. This should have served as a caveat that the hotel security has lapses.

Makati Shangri-La Hotel, to stress, is a five-star hotel. The "reasonable care" that it must exercise for the safety and comfort of its guests should be commensurate with the grade and quality

> of the accommodation it offers. If there is such a thing as "five-star hotel security", the guests at Makati Shangri-La surely deserves just that!
>
> When one registers (as) a guest of a hotel, he makes the establishment the guardian of his life and his personal belongings during his stay. It is a standard procedure of the management of the hotel to screen visitors who call on their guests at their rooms. The murder of Harper could have been avoided had the security guards of the Shangri-La Hotel in Makati dutifully observed this standard procedure."

WE concur.

Well settled is the doctrine that "the findings of fact by the trial court are accorded great respect by appellate courts and should not be disturbed on appeal unless the trial court has overlooked, ignored, or disregarded some fact or circumstances of sufficient weight or significance which, if considered, would alter the situation." After a conscientious sifting of the records, defendant-appellant fails to convince US to deviate from this doctrine.

It could be gleaned from findings of the trial court that its conclusion of negligence on the part of defendant-appellant is grounded mainly on the latter's inadequate hotel security, more particularly on the failure to deploy sufficient security personnel or roving guards at the time the ghastly incident happened.

A review of the testimony of Col. De Guzman reveals that on direct examination he testified that at the time he assumed his position as Chief Security Officer of defendant-appellant, during the early part of 1999 to the early part of 2000, he noticed that some of the floors of the hotel were being guarded by a few guards, for instance, 3 or 4 floors by one guard only on a roving manner. He then made a recommendation that the ideal-set up for an effective security should be one guard for every floor, considering that the hotel is L-shaped and the ends of the hallways cannot be seen. At the time he made the recommendation, the same was denied, but it was later on considered and approved on December 1999 because of the Centennial Celebration.

On cross-examination, Col. De Guzman confirmed that after he took over as Chief Security Officer, the number of security guards was increased during the first part of December or about the last week of November, and before the incident happened, the security

was adequate. He also qualified that as to his direct testimony on "ideal-set up", he was referring to one guard for every floor if the hotel is fully booked. At the time he made his recommendation in the early part of 1999, it was disapproved as the hotel was not doing well and it was not fully booked so the existing security was adequate enough. He further explained that his advice was observed only in the late November 1999 or the early part of December 1999.

It could be inferred from the foregoing declarations of the former Chief Security Officer of defendant-appellant that the latter was negligent in providing adequate security due its guests. With confidence, it was repeatedly claimed by defendant-appellant that it is a five-star hotel. Unfortunately, the record failed to show that at the time of the death of Christian Harper, it was exercising reasonable care to protect its guests from harm and danger by providing sufficient security commensurate to it being one of the finest hotels in the country. In so concluding, WE are reminded of the Supreme Court's enunciation that the hotel business like the common carrier's business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for hotel guests but also security to their persons and belongings. The twin duty constitutes the essence of the business.

It is clear from the testimony of Col. De Guzman that his recommendation was initially denied due to the fact that the business was then not doing well. The "one guard, one floor" recommended policy, although ideal when the hotel is fully-booked, was observed only later in November 1999 or in the early part of December 1999, or needless to state, after the murder of Christian Harper. The apparent security lapses of defendant-appellant were further shown when the male culprit who entered Christian Harper's room was never checked by any of the guards when he came inside the hotel. As per interview conducted by the initial investigator, PO3 Cornelio Valiente to the guards, they admitted that nobody know that said man entered the hotel and it was only through the monitor that they became aware of his entry. It was even evidenced by the CCTV that before he walked to the room of the late Christian Harper, said male suspect even looked at the monitoring camera. Such act of the man showing wariness, added to the fact that his entry to the hotel was unnoticed, at an unholy hour, should have aroused suspicion on the part of the roving guard in the said floor, had there been any. Unluckily for Christian Harper, there was none at that time.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces, the injury, and without which the result would not have occurred. More comprehensively, proximate cause is that cause acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.

Defendant-appellant's contention that it was Christian Harper's own negligence in allowing the malefactors to his room that was the proximate cause of his death, is untenable. To reiterate, defendant-appellant is engaged in a business imbued with public interest, ergo, it is bound to provide adequate security to its guests. As previously discussed, defendant-appellant failed to exercise such reasonable care expected of it under the circumstances. Such negligence is the proximate cause which set the chain of events that led to the eventual demise of its guest. Had there been reasonable security precautions, the same could have saved Christian Harper from a brutal death.

The Court concurs entirely with the findings and conclusions of the CA, which the Court regards to be thorough and supported by the records of the trial. Moreover, the Court cannot now review and pass upon the uniform findings of negligence by the CA and the RTC because doing so would require the Court to delve into and revisit the factual bases for the finding of negligence, something fully contrary to its character as not a trier of facts. In that regard, the factual findings of the trial court that are supported by the evidence on record, especially when affirmed by the CA, are conclusive on the Court.[37] Consequently, the Court will not review unless there are exceptional circumstances for doing so, such as the following:

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[37] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285, 290.

(a) When the findings are grounded entirely on speculation, surmises or conjectures;

(b) When the inference made is manifestly mistaken, absurd or impossible;

(c) When there is grave abuse of discretion;

(d) When the judgment is based on a misapprehension of facts;

(e) When the findings of facts are conflicting;

(f) When in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(g) When the findings are contrary to the trial court;

(h) When the findings are conclusions without citation of specific evidence on which they are based;

(i) 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;

(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(k) When the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[38]

None of the exceptional circumstances obtains herein. Accordingly, the Court cannot depart from or disturb the factual findings on negligence of petitioner made by both the RTC and the CA.[39]

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[38] *Heirs of Carlos Alcaraz v. Republic*, G.R. No. 131667, July 28, 2005, 464 SCRA 280, 289.

[39] *Cuizon v. Remoto*, G.R. No. 143027, March 31, 2006, 486 SCRA 196.

Even so, the Court agrees with the CA that petitioner failed to provide the basic and adequate security measures expected of a five-star hotel; and that its omission was the proximate cause of Harper's death.

The testimony of Col. De Guzman revealed that the management practice prior to the murder of Harper had been to deploy only one security or roving guard for every three or four floors of the building; that such ratio had not been enough considering the L-shape configuration of the hotel that rendered the hallways not visible from one or the other end; and that he had recommended to management to post a guard for each floor, but his recommendation had been disapproved because the hotel "was not doing well" at that particular time.[40]

Probably realizing that his testimony had weakened petitioner's position in the case, Col. De Guzman soon clarified on cross-examination that petitioner had seen no need at the time of the incident to augment the number of guards due to the hotel being then only half-booked. Here is how his testimony went:

ATTY MOLINA:

I just forgot one more point, Your Honor please. Was there ever a time, Mr. Witness, that your recommendation to post a guard in every floor ever considered and approved by the hotel?

A: Yes, Sir.

Q: When was this?

A: That was on December 1999 because of the Centennial Celebration when the hotel accepted so many guests wherein most of the rooms were fully booked and I recommended that all the hallways should be guarded by one guard.[41]

x x x x x x x x x

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[40] TSN, November 26, 2004, p. 23.

[41] *Rollo*, pp. 135-136 (TSN, February 13, 2004, pp. 17-18).

ATTY COSICO:

Q: So at that time that you made your recommendation, the hotel was half-filled.

A: Maybe.

Q: And even if the hotel is half-filled, your recommendation is that each floor shall be maintained by one security guard per floors?

A: Yes sir.

Q: Would you agree with me that even if the hotel is half-filled, there is no need to increase the guards because there were only few customers?

A: I think so.

Q: So you will agree with me that each floor should be maintained by one security guard if the rooms are filled up or occupied?

A: Yes sir.

Q: Now, you even testified that from January 1999 to November 1999 thereof, only minor incidents were involved?

A: Yes sir.

Q: So it would be correct to say that the security at that time in February was adequate?

A: I believe so.

Q: Even up to November when the incident happened for that same reason, security was adequate?

A: Yes, before the incident.

Q: Now, you testified on direct that the hotel posted one guard each floor?

A: Yes sir.

Q: And it was your own recommendation?

A: Yes, because we are expecting that the hotel will be filled up.

Q: In fact, the hotel was fully booked?

A: Yes sir.[42]

Petitioner would thereby have the Court believe that Col. De Guzman's initial recommendation had been rebuffed due to the hotel being only half-booked; that there had been no urgency to adopt a one-guard-per-floor policy because security had been adequate at that time; and that he actually meant by his statement that "the hotel was not doing well" that the hotel was only half-booked.

We are not convinced.

The hotel business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for their guests but also security to the persons and belongings of their guests. The twin duty constitutes the essence of the business.[43] Applying by analogy Article 2000,[44] Article 2001[45] and Article 2002[46] of the *Civil Code* (all of which concerned the hotelkeepers' degree of care and responsibility as to the personal effects of their guests), we hold that there is much greater reason to apply the same if not greater degree of care

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[42] *Id.*, at 154-156 (TSN, February 27, 2004, pp. 5-7).

[43] *YHT Realty Corporation v. Court of Appeals*, G.R. No. 126780, February 17, 2005, 451 SCRA 638, 658.

[44] Article 2000. The responsibility referred to in the two preceding articles shall include the loss of, or injury to the personal property of the guests caused by the servants or employees of the keepers of hotels or inns as well as strangers; but not that which may proceed from any *force majeure*. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotels or inns shall be considered in determining the degree of care required of him.

[45] Article 2001. The act of a thief or robber, who has entered the hotel is not deemed *force majeure*, unless it is done with the use of arms or through an irresistible force. (n)

[46] Article 2002. The hotel-keeper is not liable for compensation if the loss is due to the acts of the guest, his family, servants or visitors, or if the loss arises from the character of the things brought into the hotel. (n)

and responsibility when the lives and personal safety of their guests are involved. Otherwise, the hotelkeepers would simply stand idly by as strangers have unrestricted access to all the hotel rooms on the pretense of being visitors of the guests, without being held liable should anything untoward befall the unwary guests. That would be absurd, something that no good law would ever envision.

In fine, the Court sees no reversible error on the part of the CA.

WHEREFORE, the Court **AFFIRMS** the judgment of the Court of Appeals; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195243. August 29, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAUL BERIBER *Y* FUENTES @ JERRY FUENTES *Y* IGNACIO @ GERRY BERIBER @ BONG @ RAUL FUENTES,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— [R]obbery with homicide is a special complex crime against property which exists when a homicide is committed either by reason, or on occasion, of the robbery. In charging Robbery with Homicide, the *onus probandi* is to

establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.

2. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES.— [D]irect evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community. Thus, Section 4, Rule 133 of the Revised Rules of Court on 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. We have ruled that circumstantial evidence suffices to convict an accused only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

3. ID.; ID.; FLIGHT; INFERENCE OF GUILT.— The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt might be established, for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence. x x x Appellant's argument that it was natural for him to be at the house of the victim at around the time of the incident as he lives there does not persuade. True, the mere presence of appellant at the scene is inadequate to support the conclusion that he committed the crime. However, his presence there becomes an indicium of his commission of the offense when coupled with his unexplained act of fleeing from the *situs* instead of reporting the incident to the police authorities, as well as with his act of hiding until he was arrested. Taken together, the foregoing circumstances are highly indicative of guilt.

4. ID.; ID.; SILENCE ABOUT THE ACCUSATION IS AGAINST THE PRINCIPLE OF INNOCENCE.— Although appellant's

> silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, we have consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time."

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA,[*] *J.*:

Before us is an appeal from the Decision[1] dated July 9, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 01623, which affirmed with modification the Judgment[2] dated July 7, 2005 of the Regional Trial Court (RTC), Branch 32, San Pablo City, finding appellant Raul Beriber *y* Fuentes @ Jerry Fuentes *y* Ignacio @ Gerry Beriber @ Bong @ Raul Fuentes, guilty of the crime of Robbery with Homicide.

On March 22, 2001, a Second Amended Information[3] was filed before the RTC of San Pablo City charging appellant of Robbery with Homicide.[4] The accusatory portion of the Information reads:

That on or about October 3, 2000, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court,

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[*] Per Special Order No. 1290 dated August 28, 2012.

[1] Penned by Associate Justice Jose C. Reyes, Jr, with Associate Justices Antonio L. Villamor and Manuel M. Barrios, concurring; CA *rollo*, pp. 126-140.

[2] Penned by Judge Zorayda Herradura-Salcedo; *id.* at 59-81.

[3] Records, p. 15.

[4] Docketed as Criminal Case No. 12621-SP (00).

the accused above-named, with intent to gain, did then and there willfully, unlawfully, and feloniously enter the premises of SPOUSES HENRY and MA. LOURDES VERGARA, located at Brgy. San Cristobal, this city, and once inside and finding an opportune time, did then and there take, steal and carry away cash money amounting to ₱2,000.00, Philippine Currency, belonging to said Spouses Henry and Ma. Lourdes Vergara, by means of violence against or intimidation of persons and by reason of or on the occasion of said robbery, said accused attack[ed] and stab[bed] to death his immediate employer Ma. Lourdes Vergara with a bladed weapon with which the accused was then conveniently provided, thereby inflicting wounds upon the person of said Ma. Lourdes Vergara which caused her immediate death.

CONTRARY TO LAW.[5]

When arraigned on April 17, 2001, appellant, with the assistance of a counsel *de oficio*, entered a plea of not guilty.[6]

Trial on the merits thereafter ensued.

The evidence for the prosecution is aptly summarized by the Solicitor General in the Appellee's Brief as follows:

> The prosecution presented six (6) witnesses, as well as documentary evidence to prove its case.
>
> The first witness for the prosecution was Dr. Lucy Andal Celino (Celino), the physician who examined the remains of the victim, Lourdes Vergara. Celino is the Health Officer of San Pablo City. She testified that she conducted a necropsy of the victim on October 3, 2000 at 4:15 p.m., and that she prepared a Necropsy Report which states that the victim died of shock and hemorrhage secondary to multiple stab wounds all over her body, some of which damaged her heart, lungs, and liver. Celino also stated that the location of stab wounds, abrasions and lacerations on the victim's body indicated that the latter struggled against her killer. The physician added that the perpetrator used two kinds of instruments in inflicting wounds on the victim: a sharp-pointed instrument and a pointed rounded instrument.

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[5] Records, p. 15.

[6] *Id.* at 26.

On cross-examination, Celino confirmed that the wounds sustained by the victim were inflicted using two different pointed instruments.

The prosecution also presented police officer Armando Demejes (Demejes), who testified that while he was on duty on October 3, 2000, he went to the house of Henry Vergara (Henry) in Barangay San Cristobal, San Pablo City to investigate a stabbing incident which occurred thereat. When Demejes arrived at the scene of the crime, Vergara informed him that [his wife], Lourdes, was stabbed to death. Demejes entered the house and saw a cadaver lying on a bamboo bed. He also looked around the house and saw that the place was in disarray. In the sala, about five to six meters away from the corpse, was an open drawer containing coins, and on the floor near the said drawer were more coins. Another drawer was pulled out from its original location and left on a couch. Demejes likewise found a blue tote bag on top of the center of the table and a passbook on top of the bed. He also saw that the door leading to the stairs was open. Demejes prepared a sketch of the crime scene to document what he saw during his investigation.

Thereafter, the prosecution presented Neville Bomiel (Bomiel), a resident of Barangay San Cristobal, San Pablo City. Bomiel testified that he had known the appellant for less than a month prior to October 3, 2000. He knew that the appellant was working for the Vergaras and resided at the latter's rice mill. Bomiel recalled that while he was standing in front of his house in the morning of October 3, 2000, at around 10:00 a.m., he saw the appellant leave the house of the Vergaras and walk towards the direction of the school. When appellant passed by Bomiel's house, he asked appellant where the latter was going. Appellant replied that he was on his way to Batangas for medical treatment. Bomiel noticed that appellant was wearing a yellow collared t-shirt, blue denims, and shoes. Later, he saw appellant return to the house of the Vergaras and enter the place. Afterwards, appellant left the house and passed by Bomiel's residence a second time. Bomiel again greeted the appellant and asked him why he (appellant) had not yet left for Batangas. Appellant replied that he was still waiting for Henry. Appellant again proceeded to the direction of the school. Subsequently, Bomiel saw the appellant return to the house of the Vergaras a third time. That was the last time Bomiel saw him. Bomiel observed that on that day, appellant looked restless. ("*balisa at hindi mapakali*.")

The fourth witness for the prosecution, Rolando Aquino (Aquino), likewise a resident of Barangay San Cristobal, San Pablo City, testified that he had known appellant for less than a month on October 3, 2000. He knew the appellant was hired by the Vergaras as a helper in their rice mill. In the morning of October 3, 2000, Aquino was able to talk to the appellant at the house of a certain Lola Rosy, the victim's mother. Appellant told Aquino that he was going to Batangas that day for medical treatment. Thereafter, appellant, then wearing short pants and a t-shirt with cut-off sleeves, left the house of Lola Rosy to go [to] the rice mill. At around 8:30 a.m., Aquino again saw appellant at Lola Rosy's house, but appellant was already wearing a mint green-colored shirt and khaki pants. Aquino asked appellant why he had not yet left, but the latter did not answer and appeared restless. Later that morning, at around 11:30 a.m., Aquino learned that Lourdes had been killed. He rushed to the house of the Vergaras and saw the victim lying on a bamboo bed, drenched in blood. Aquino then noticed that the appellant's personal belongings which were kept by the appellant underneath the bamboo bed were no longer there. He further testified that he did not see appellant return to San Cristobal after October 3, 2000.

Henry Vergara also testified before the trial court. He said that he and the victim hired appellant as a helper in their rice mill in September 2000. Appellant slept in the house of Henry's mother-in-law, Rosy, but kept his personal belongings in their house (the Vergaras house), specifically under the bamboo bed where Lourdes' corpse was discovered on October 3, 2000 at past 11:00 a.m.

At around 5:30 in the morning of October 3, 2000, appellant asked Henry for permission to go to Batangas. Henry asked appellant to fetch a certain Junjun to be his replacement as Henry's helper in their store in Dolores, Quezon that day. Henry left their house in San Cristobal at 6:00 a.m. to tend their store in Quezon and stayed in the store until 11:00 a.m. before heading back home.

When he arrived at their house in San Cristobal, he noticed that the door was slightly open. He called for Lourdes, but nobody answered. He immediately entered their house and saw that the door of their rice mill was closed. This caused him to suspect that something was wrong. He then noticed that coins were scattered on the floor. He proceeded to the kitchen and saw Lourdes lying on the bamboo bed, lifeless and bloodied in the chest and stomach areas.

Henry thereafter ran to the house of his brother-in-law, Wanito Avanzado (Avanzado), who also resided in San Cristobal. Henry told Avanzado that Lourdes was already dead. Avanzado then ran to the house of the Vergaras.

Henry recalled that before he left for their store in Quezon that day, he left appellant, his wife and their children in their house. He also remembered that cash amounting to Two Thousand Pesos (₱2,000.00) was left inside the drawer in their rice mill. However, when he looked for the money after he discovered that his wife was killed, he could no longer find it.

Henry also testified that he did not see the appellant in their house when he went home from Quezon and that appellant's personal effects were no longer under the bamboo bed where appellant used to keep them. He did not see appellant anymore after he left their house on October 3, 2000.

Lastly, the prosecution presented as witness Avanzado, the brother of the victim. Avanzado testified that at around 11:00 a.m. on October 3, 2000, he saw his brother-in-law, Henry, running towards his (Avanzado's) house and shouting "*Si Aloy*", the victim's nickname. He ran to the house of the Vergaras and saw his sister's bloodied body on the bamboo bed. Avanzado tried to lift her body, but her neck was already stiff. After he was sure that Lourdes was indeed dead, he called up the police and requested them to investigate the incident. When the police arrived, they took pictures of the crime scene and conducted an investigation.

Avanzado further stated that he knew that the appellant was a helper of the Vergaras. He said that he was told by several residents of San Cristobal that they saw appellant leaving the scene of the crime with a bag.

He also narrated that as Barangay Chairman of San Cristobal, he coordinated with the police for the apprehension of the appellant. Avanzado went with some police officers to Talisay, Batangas to search for appellant in the house of his uncle, but appellant was not there. Later, Avanzado received information that appellant was apprehended in Capiz, but was released by police authorities because the latter were worried that they would be charged with illegal detention. Avanzado then sought the assistance of the staff of *Kabalikat*, a program aired by the ABS-CBN Broadcasting Company.

Appellant was subsequently apprehended and brought back to San Pablo City to face the charge against him.[7]

Except for Dr. Celino, the defense waived its right to cross-examine the prosecution witnesses. Appellant's counsel further waived the presentation of evidence.[8] Both parties failed to file their respective memoranda despite being ordered to do so; thus, the RTC resolved the case on the basis of the evidence presented by the prosecution.

On October 22, 2001, the RTC rendered its Decision,[9] the dispositive portion of which reads:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds accused RAUL BERIBER *y* FUENTES @ JERRY FUENTES *y* IGNACIO @ GERRY BERIBER @ "Bong", @ "Raul Fuentes" guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code and he is hereby sentenced the supreme and capital penalty of DEATH, with costs.
>
> He is further sentenced to pay the heirs of the deceased:
>
> a) the sum of ₱50,000.00 as death indemnity;
>
> b) the sum of ₱2,000.00 representing the stolen cash;
>
> c) the sum of ₱200,000.00 as moral and exemplary damages; and
>
> d) the sum of ₱100,000.00 representing burial and other incidental expenses of the victim.
>
> SO ORDERED.[10]

The case was then elevated to us on automatic review. However, in a Decision[11] dated June 8, 2004, we had set aside the Judgment

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[7] CA *rollo*, pp. 102-108. (Citations omitted.)

[8] Records, p. 82.

[9] CA *rollo*, pp. 82-92.

[10] *Id.* at 92.

[11] G.R. No. 151198, June 8, 2004, 431 SCRA 332.

of the RTC and remanded the case to the same court for further proceedings. The *fallo* of our Decision reads:

> WHEREFORE, the *Decision* of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 12621-SP (00), is hereby VACATED and SET ASIDE, and the case REMANDED to said court for its proper disposition, including the conduct of further appropriate proceedings and the reception of evidence. For this purpose, the proper law enforcement officers are directed to TRANSFER appellant RAUL BERIBER *y* FUENTES from the New Bilibid Prison where he is presently committed to the BJMP Jail in San Pablo City, with adequate security escort, where he shall be DETAINED for the duration of the proceedings in the trial court.
>
> The Regional Trial Court of San Pablo City, Branch 32 is directed to dispose of the case with dispatch.
>
> SO ORDERED.[12]

In compliance, the RTC scheduled the case for hearing. On July 27, 2004, appellant's same counsel submitted a Manifestation that the defense is again waiving its right not to adduce evidence and with appellant's conformity. On August 10, 2004, appellant's counsel reiterated her manifestation. The RTC then ordered to place appellant on the stand, wherein appellant stood firm not to present any evidence for his defense.[13]

The RTC then forwarded to us the transcripts and the records of the proceedings held on August 10, 2004. In a Resolution[14] dated January 18, 2005, we ordered the RTC to render its decision on the case based on the evidence that had been presented.

On July 7, 2005, the RTC rendered a Judgment convicting appellant of the crime of Robbery with Homicide based on circumstantial evidence, the dispositive portion which reads:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds accused RAUL BERIBER *y*

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[12] *Id.* at 344-345.

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

[14] Records, p. 112.

FUENTES @ JERRY FUENTES *y* IGNACIO @ GERRY BERIBER @ "Bong," @ "Raul Fuentes" guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code, and considering the absence of any aggravating circumstance which merits the imposition of the maximum penalty of death, and conformably with Article 63 (2) of the Revised Penal Code which provides that when the law prescribes two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied, accused RAUL BERIBER *y* FUENTES @ JERRY FUENTES *y* IGNACIO @ GERRY BERIBER @ "Bong", @ "Raul Fuentes" is sentenced to suffer the penalty of *RECLUSION PERPETUA* with costs.

He is further sentenced to pay the heirs of the deceased:

a) the sum of ₱50,000.00 as death indemnity;

b) the sum of ₱2,000.00 representing the stolen cash;

c) the sum of ₱200,000.00 as moral and exemplary damages; and

d) the sum of ₱100,000.00 representing burial and other incidental expenses of the victim.

SO ORDERED.[15]

In so ruling, the RTC enumerated the pieces of circumstantial evidence which established appellant's culpability for the crime charged, to wit:

x x x 1. accused was at the *locus criminis* at around the time of the stabbing incident; 2. witnesses testified seeing him at the scene of the crime going in and going out of the house of the victim at the time of the perpetration of the crime; 3. accused, in his own admission mentioned that he was going to Batangas for medical treatment, however, when the policemen, together with the Barangay Chairman went to Talisay, Batangas where he lives, he was nowhere to be found; 4. immediately after the incident, the witnesses and the offended party noticed that all his clothes kept underneath the bamboo bed where the victim was found sprouted with blood were all gone because

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[15] CA *rollo*, pp. 80-81.

he took everything with him although his intention was merely for medical treatment in Batangas; 5. he mentioned that he was then still waiting for Kuya Henry, husband of Lourdes, when he had already a talk with Henry Vergara that he will go to Batangas for medical treatment that did not materialize; 6. after the killing incident, accused simply disappeared and did not return anymore; 7. when he was confronted by Henry Vergara concerning the killing, he could not talk to extricate himself from the accusation; and 8. that he has been using several aliases to hide his true identity.[16]

Appellant filed his appeal with the Court of Appeals (CA). The Solicitor General filed his Appellee's Brief praying that except for the modification of the damages awarded, the RTC decision be affirmed.

On July 9, 2010, the CA issued the assailed Decision, which affirmed with modification the RTC decision, the dispositive portion of which reads:

WHEREFORE, the appeal is DENIED for lack of merit. The Judgment dated July 7, 2005 of the Regional Trial Court, Branch 32 of San Pablo City in Criminal Case No. 12621-SP (00) finding Raul Beriber *y* Fuentes, @ Jerry Fuentes *y* Ignacio, @ Gerry Beriber, @ "Bong", @ "Raul Fuentes" GUILTY beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized under Article 294 of the Revised Penal Code, for which he is sentenced to suffer the penalty of *RECLUSION PERPETUA* is hereby AFFIRMED with the MODIFICATION in that the damages to be awarded the heirs of Ma. Lourdes Vergara shall be: a) ₱50,000.00 as civil indemnity; b) ₱2,000.00 as actual damages; c) ₱25,000.00 as temperate damages; and d) ₱50,000.00 as moral damages.[17]

Appellant filed his Appeal with us. In a Resolution[18] dated March 9, 2011, we required the parties to file their respective Supplemental Briefs, if they so desire. Both parties filed their Manifestations stating that they were dispensing with the filing

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[16] *Id.* at 78-79.

[17] *Id.* at 139-140.

[18] *Rollo,* p. 23.

of Supplemental Briefs as their Briefs earlier filed were sufficient.[19]

Appellant's lone assignment of error alleges that:

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[20]

Appellant contends that to sustain a conviction for the crime of robbery with homicide, it is necessary that robbery itself must be proved as conclusively as any other essential element of the crime which was not established in this case. He argues that the eight (8) circumstantial evidence found by the RTC can be summarized into two circumstances, *i.e.*, (1) the appellant was at the scene of the crime at approximately the same time that the crime was committed; and (2) that he fled the *locus criminis* thereafter. He claims that the first circumstance cannot be taken against him, since it is natural for him to be at the victim's house as he resides therein. As to the second circumstance, appellant claims that witnesses even testified that he told them that he was going to Batangas for a medical check-up, thus, the finding that he fled the crime scene is a conclusion without sufficient basis; and that assuming he indeed escaped and flight be an indication of guilt, such circumstance is not enough to prove his guilt beyond reasonable doubt.

We find no merit in the appeal.

The crime for which appellant was charged and convicted was robbery with homicide. It is a special complex crime against property.[21] Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. In charging Robbery with Homicide, the *onus probandi* is to

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[19] *Id.* at 25-31.

[20] CA *rollo*, p. 47.

[21] *People v. Jarandilla*, G.R. Nos. 115985-86, August 31, 2000, 339 SCRA 381, 394.

establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.[22]

Admittedly, there was no direct evidence to establish appellant's commission of the crime charged. However, direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[23] At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.[24] Thus, Section 4, Rule 133 of the Revised Rules of Court on 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. We have ruled that circumstantial evidence suffices to convict an accused only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.[25]

We agree with the RTC as affirmed by the CA that the circumstantial evidence proven by the prosecution sufficiently establishes that appellant committed the offense charged.

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[22] *People v. Uy*, G.R. No. 174660, May 30, 2011, 649 SCRA 236, 249, citing *People v. Baron*, G.R. No. 185209, June 28, 2010, 621 SCRA 646, 656; *People v. De Jesus*, 473 Phil. 405, 426-427 (2004), citing *People v. Pedroso*, G.R. No. 125158, July 19, 2000, 336 SCRA 163, 174.

[23] *Id.* at 251, citing *Salvador v. People*, G.R. No. 164266, July 23, 2008, 559 SCRA 461, 469-470; *People v. Almoguerra*, 461 Phil. 340, 356 (2003).

[24] *Id.*, citing *Salvador v. People*, *supra*, at 469-470, citing *People v. Padua*, G.R. No. 169075, February 23, 2007, 516 SCRA 590, 600-601.

[25] *Id.*

The prosecution had established that around 6:00 a.m. of October 3, 2000, Henry went to his store in Dolores, Quezon, leaving his wife (the victim) and appellant in their house at Barangay San Cristobal, San Pablo City. He remembered leaving a cash amounting to ₱2,000.00 inside the drawer in their rice mill.[26] Around 10:00 a.m., Bomiel, the victim's neighbor who lived around 15 to 20 meters from the victim's house, saw appellant leave the house. When appellant passed by his house, Bomiel asked the former where he was going to, which appellant answered that he was going to Batangas for a medical treatment. Later, Bomiel saw appellant return to the victim's house and left after a while. When appellant passed by his house again, Bomiel asked appellant why he had not yet left for Batangas, to which appellant answered that he was waiting for Kuya Henry and went ahead. After a while, Bomiel saw appellant again going back to the victim's house.[27] Around 11:00 a.m., Henry, who came back from his store in Dolores, entered their house and found his lifeless wife with several stab wounds lying on a bamboo bed. Henry saw drawers and coins scattered on the floor, and the drawer, where he put the ₱2,000.00 cash which was nowhere to be found, was pulled out.[28]

Appellant, who was supposed to have gone to Batangas for a medical treatment on the same day, never came back. In fact, appellant's belongings, which were kept under the bamboo bed where the victim's body was found lying, were no longer there when the incident was discovered.[29] Moreover, when the victim's brother, Avanzado, went to the house of appellant's uncle in Batangas, appellant was nowhere to be found. Appellant was later apprehended in October 2000 in Capiz, so Avanzado went to Capiz to verify this but appellant was already released as the police feared that they might be charged with illegal detention. Notably, appellant knew that he was being arrested

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[26] TSN, August 3, 2001, pp. 4-9.

[27] TSN, August 2, 2001, pp. 7-13.

[28] TSN, August 3, 2001, pp. 5-7, 9.

[29] TSN, August 2, 2001, p. 23.

for the crime of robbery with homicide, yet he did not present himself to the authorities or to the victim's family to establish that he had nothing to do with the crime. In fact, he was not seen by the victim's family since the incident and it was only on March 25, 2001, after he was again apprehended in Capiz and brought to San Pablo City that Henry saw him at the police station.[30] These circumstances denote flight. The flight of an accused, in the absence of a credible explanation, would be a circumstance from which an inference of guilt might be established, for a truly innocent person would normally grasp the first available opportunity to defend himself and assert his innocence.[31]

Appellant offered no explanation on why he never returned to his employer after his alleged medical treatment in Batangas and why he was in Capiz when arrested. In fact, worth quoting was the narration of the RTC in its decision on what transpired during the hearing of August 10, 2004, thus:

> x x x The Court found the accused to be firm in his stand not to present any evidence as both manifested by his counsel and by himself. The Court therefore ordered the accused Raul Beriber *y* Fuentes to be placed on the witness stand and questions were propounded on him by the Court. x x x he reiterated his stand on waiver to present evidence as his defense; when asked by the Court why, he answered "none"; he does not know of any reason why he should defend himself despite the fact that the charge against him is very serious and punishable by death; he could not tell of any reason why he would not like to bring out his defense in this case; he is aware that by not presenting and waiving his right to present evidence for his defense, he knew that he could be sentenced to death as the Court did.[32]

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[30] TSN, August 3, 2001, p. 13.

[31] *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 161, citing *People v. Diaz*, G.R. No. 133737, January 13, 2003, 395 SCRA 52.

[32] CA *rollo*, pp. 69-70.

Although appellant's silence and refusal to testify, let alone refusal to present evidence, cannot be construed as evidence of guilt, we have consistently held that the fact that an accused never testified in his defense even in the face of accusations against him goes against the principle that "the first impulse of an innocent man when accused of wrongdoing is to express his innocence at the first opportune time."[33]

Appellant's contention that there is no evidence of robbery is devoid of merit. The element of taking and the existence of the money stolen by appellant were adequately established by the prosecution. Henry positively testified that he left ₱2,000.00 in the drawer in the ricemill in the morning of October 3, 2000 which was no longer found upon discovery of his wife's lifeless body.[34] Moreover, Investigator Demejes testified that when he came to the crime scene, he saw the place in disarray, *i.e.*, drawers and coins were scattered on the floor, another drawer was pulled out from its original location and left on a couch; and that a blue tote bag was also seen on top of a table and a passbook on top of the bed.[35] Intent to rob is an internal act, but may be inferred from proof of violent unlawful taking of personal property. The prosecution was able to establish that the motive for killing the victim was robbery.

Appellant's argument that it was natural for him to be at the house of the victim at around the time of the incident as he lives there does not persuade. True, the mere presence of appellant at the scene is inadequate to support the conclusion that he committed the crime.[36] However, his presence there becomes an indicium of his commission of the offense when coupled with

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[33] *People v. Tonog*, *supra* note 31, at 161-162, citing *People v. Castillo*, G.R. Nos. 111734-35, June 16, 2000, 333 SCRA 506.

[34] TSN, August 3, 2001, p. 9.

[35] TSN, July 18, 2001, pp. 4-6.

[36] *People v. Corre, Jr.*, G.R. No. 137271, August 15, 2001, 363 SCRA 165, 180, citing *Abad v. Court of Appeals*, G.R. No. 119739, June 18, 1998, 291 SCRA 56.

his unexplained act of fleeing from the *situs* instead of reporting the incident to the police authorities, as well as with his act of hiding until he was arrested.[37] Taken together, the foregoing circumstances are highly indicative of guilt.[38]

WHEREFORE, the appeal is hereby **DENIED.** The Decision dated July 9, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 01623, which affirmed with modification the Judgment of the Regional Trial Court, finding appellant Raul Beriber *y* Fuentes @ Jerry Fuentes *y* Ignacio @ Gerry Beriber @ Bong @ Raul Fuentes, guilty beyond reasonable doubt of the crime of Robbery with Homicide, is hereby **AFFIRMED.**

SO ORDERED.

Abad, Villarama, Jr.,[**] *Perez,*[***] and *Mendoza, JJ.,* concur.

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[37] *Id.*, citing *People v. Obello*, G.R. No. 108772, January 14, 1998, 284 SCRA 79.

[38] *Id.*, citing *People v. Macuha*, G.R. No. 130372, July 20, 1999, 310 SCRA 819.

[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated Additional Member, per Special Order No. 1299 dated August 28, 2012.

THIRD DIVISION

[G.R. No. 195428. August 29, 2012]

JOMAR S. VERDADERO, *petitioner, vs.* **BARNEY AUTOLINES GROUP OF COMPANIES TRANSPORT, INC., and/or BARNEY D. CHITO, ROSELA F. CHITO and GERARDO GIMENEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; CONSTRUCTIVE DISMISSAL.— Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.

2. ID.; ID.; ILLEGAL DISMISSAL; NOT PRESENT WHERE THERE IS NO DISMISSAL AND THUS THE REMEDY OF REINSTATEMENT AND BACKWAGES ARE NOT AVAILABLE; CASE AT BAR.— Well-settled is the rule in illegal dismissal case that while the employer bears the burden of proving that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of his dismissal from service. x x x Reinstatement and backwages are reliefs available to an illegally dismissed employee. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, these two remedies give meaning and substance to the constitutional right of labor

to security of tenure. In the case at bench, considering that there has been no dismissal at all, there can be no reinstatement. One cannot be reinstated to a position he is still holding. As there is no reinstatement to speak of, Verdadero cannot invoke the doctrine of strained relations. It is only applied when there is an order for reinstatement that is no longer feasible. In the same vein, no separation pay can be awarded as it is given only in lieu of reinstatement. Consequently, there is likewise no justification for the award of backwages.

APPEARANCES OF COUNSEL

Escobido & Pulgar Law Offices for petitioner.
Victor P. Gimenez for respondents.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 assails the October 19, 2010 Decision[1] and the January 13, 2011 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 113270, which reversed and set aside the December 8, 2009 Decision[3] and the February 26, 2010 Resolution[4] of the National Labor Relations Commission *(NLRC)*.

The Facts

The present case stemmed from the Complaint for Illegal Dismissal filed by petitioner Jomar Verdadero *(Verdadero)*. On September 10, 2004, respondent Barney Autolines Group of Companies Transport, Inc. *(BALGCO)* hired Verdadero as bus

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[1] *Rollo*, pp. 70-84. Penned by Associate Justice Rosmari D. Carandang, with Associate Justice Ramon R. Garcia and Associate Justice Manuel M. Barrios, concurring.

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

[3] CA *rollo*, pp. 33-52.

[4] *Id.* at 30-32.

conductor and paid him a salary on commission basis at the rate of 12% of the gross ticket sales per day.[5]

On January 27, 2008, an altercation took place between Verdadero and respondent Atty. Gerardo Gimenez *(Gimenez)*, BALGCO's Disciplinary Officer. Gimenez was on board BALGCO Bus. No. 55455, together with his wife and four other companions, travelling from Mulanay to Macalelon, Quezon. Verdadero was then the assigned bus conductor. BALGCO has a company policy of granting free rides to company employees and their wives. The story started when Verdadero began issuing fare tickets to passengers, including the wife of Gimenez. The wife informed Verdadero who she was[6] and the incidents thereafter took two versions as both parties told a different story.

On January 28, 2008, Gimenez filed an unverified complaint for serious misconduct against Verdadero before the BALGCO Management. He requested Barney D. Chito *(Barney)* and Rosela F. Chito *(Rosela)*, owners of BALGCO, to preside over the conciliation proceedings. Verdadero, accompanied by his father, appeared at the BALGCO Office on February 8, 2008. Verdadero was said to have shown willingness to be penalized for his misconduct provided no record of the proceedings would be made. Gimenez, on the other hand, was willing to waive the imposition of any penalty if Verdadero would give a simple letter of apology, which the latter supposedly agreed with his father guaranteeing the same.[7]

On February 16, 2008, Verdadero, instead, submitted his counter-affidavit refuting all allegations in the written complaint against him. Rosela told Verdadero she was not expecting that piece of paper, to which the latter was said to have replied, *"Sabi mo papel, yan papel yan!"*[8]

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[5] *Rollo*, pp. 9-10.

[6] *Id.* at 10.

[7] *Id.* at 11.

[8] *Id.* at 11-12.

Thereafter, Verdadero furtively reported for work for fear of having another confrontation with Gimenez. Rosela sent Verdadero a letter, dated February 25, 2008, requiring him to immediately report for work and finish the pending disciplinary proceedings against him. On March 28, 2008, Verdadero submitted his Letter-Reply, explaining that he had been receiving threats. He likewise believed he was already illegally dismissed as he was not given any work assignment since January 28, 2008. Rosela responded to Verdadero's letter and reminded him of the letter of apology which he was yet to submit as compliance. On April 15, 2008, however, Verdadero filed a complaint for illegal dismissal before the Labor Arbiter *(LA)*, claiming, as well, non-payment of holiday pay, premium on holiday, 13th month pay, separation pay, retirement benefits, moral and exemplary damages, and reinstatement plus backwages.[9]

Respondents' Version

Gimenez's wife related that when Verdadero was about to issue her a bus ticket, she informed him that she was the wife of Gimenez, to which he replied, *"Hindi ko kilala yon."* Upon reaching General Luna, Quezon, for a brief meal stop, she told Gimenez that *"[h]indi ka pala kilala ng konduktor."* Thereafter, her husband confronted Verdadero as to the truth of the matter, and Verdadero arrogantly replied, *"Marami namang Gerry at disciplinary officers."* The arrogant comment and other loud words uttered by Verdadero, upon boarding the bus for the onward trip, were heard by Rey Formaran *(Formaran)*, another BALGCO bus driver who was in Gimenez's group. As Gimenez and his group were getting off the bus in Macalelon, Quezon, Verdadero allegedly pulled out a baggage compartment opener and shouted, *"Putang ina mo attorney, papatayin kita."* Gimenez was not able to react as the bus sped off.[10]

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

[10] *Id.* at 10-11.

Petitioner's Version

Verdadero claimed that when he started to collect fares, he approached Gimenez's wife to issue her a bus ticket. She said, *"Asawa ako ng officer."* Because of the surrounding noises, he did not clearly hear what the woman said, and so, he asked her again as to whom she was referring. The woman replied, *"Asawa ako ni Gerry na Disciplinary Officer."* He then turned away and did not issue a ticket anymore. When the bus took a meal stop in General Luna, Verdadero was surprised when Gimenez shouted at him, *"Hoy! Verdadero parito ka!"* He approached Gimenez and the latter scolded him, saying *"Hindi mo ba ako kilala?"* Verdadero replied, *"Kilala ko nga po kayo, ang problema lang po ay hindi kayo katabi ng misis ninyo nang tinanong ko kaya pasensiya na po."* He further claimed that he moved away to avoid Gimenez as the latter continued to berate and threaten him. Upon disembarking at Macalelon, Quezon, Gimenez shouted at him, *"Verdadero! Hindi mo ako ginagalang!"* and grabbed his feet in an attempt to pull him down from the bus. He struggled to hold tight until Gimenez lost grip of his foot. Formaran tried to return to the bus to confront him, but was intercepted by the driver. Verdadero further denied having agreed to write Gimenez a letter of apology and be penalized for his alleged misconduct.[11]

Labor Arbiter's Ruling

On November 6, 2008, the LA rendered a Decision dismissing Verdadero's complaint and declaring that no dismissal took place but merely an administrative investigation. The LA reasoned that Verdadero made it impossible for BALGCO to give him any trip assignment as he reported for work only when the respondents were not around.

Further, the LA dismissed Verdadero's monetary claims such as holiday pay and overtime pay, explaining that, being a bus conductor, Verdadero belonged to the category of field personnel who were excepted from the enjoyment of the benefits claimed.

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

The claim for 13th month pay was likewise denied because he was a field personnel and was paid on a purely commission basis.[12]

NLRC's Ruling

Aggrieved, Verdadero filed an appeal before the NLRC. The sworn statement[13] of BALGCO Electrician Marvin Mascarina *(Mascarina)*, who witnessed the incident, was given weight by the NLRC. It apparently found Mascarina's sworn affidavit to be corroborative of Verdadero's testimonies. For said reason, the NLRC partially granted the appeal. It ruled that Verdadero was illegally dismissed, but affirmed the LA insofar as the holiday and overtime pays were concerned. On December 8, 2009, the NLRC rendered its decision as follows:

WHEREFORE, the questioned Decision is hereby MODIFIED. Respondents Barney Autolines Group of Companies Transport Inc., Barney A. Chito, Rosela P. Chito and Atty. Gerardo Gimenez are hereby declared liable to pay complainant his full backwages from January 28, 2008 until to date and his separation pay equivalent to one month salary per year of service at the rate of ₱8,000.00 per month salary, computed as follows:

I. BACKWAGES

01/28/08 – 06/13/08 = 4.15 mos. or 4.50
NCR# 13 ₱362
₱362 x 26 days x 4.50 mos.
₱9,412.00 x 4.50 days = **₱ 42,354.00**

06/14/08 – 08/27/08 = 2.13 or 2.43 mos.
NCR# 14 ₱377
₱377 x 26 days x 2.43 mos.
₱9,802.00 x 2.43 days = **₱ 23,818.86**

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[12] CA *rollo*, pp. 136-137.

[13] *Id.* at 118-119.

08/28/08 – 10/15/09 = 13.57 mos.
₱382 x 26 days x 13.57 mos.
₱9,932.00 x 13.57 days = ₱ **134,777.24**

₱ **200,950.10**

II. ECOLA
NCR# 10 ₱5.00
06/14/08 – 10/15/09 = 16.03 mos.
₱5.00 x 26 days x 16.03 mos.
₱130 x 16.03 mos. = ₱ **2,083.90**

III. 13th MONTH PAY
₱200,950.10/12 = ₱ **16,745.84**

IV. SEPARATION PAY
09/10/2004 – 10/15/09 = 5 yrs and one month
₱8,000.00 x 5 yrs. = ₱ **40,000.00**

GRAND TOTAL ₱ **259,779.84**
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Other dispositions are Affirmed.[14]

BALGCO moved for reconsideration, but its motion was denied. BALGCO then filed a petition for *certiorari* before the CA.

The Ruling of the CA

The CA ruled that there was no constructive dismissal despite Mascarina's testimony. In so ruling, the CA reiterated the definition of constructive dismissal, citing *Peñaflor v. Outdoor Clothing Manufacturing Corporation*,[15] as follows:

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[14] *Id.* at 51.

[15] G.R. No. 177114, April 13, 2010, 618 SCRA 208.

Constructive dismissal is an involuntary resignation by the employee due to the harsh, hostile, and unfavorable conditions set by the employer and which arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee.[16]

Neither was there abandonment on the part of Verdadero, reiterating the well-settled rule that the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment. The CA, thus, wrote:

xxx. The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon BALGCO in the absence of any evidence that it promotes such ill-treatment of its lowly employees or has itself committed an overt act of illegality. In the present case, petitioner BALGCO may have failed to immediately resolve the pending disciplinary case after private respondent filed his counter-affidavit and unfairly insisted that private respondent apologize for a misconduct that the latter vehemently denies having committed. But the meeting that was attended by his father was not denied by private respondent and petitioners relied on Verdadero's commitment to submit the letter-apology. Under that circumstance, what petitioners BALGCO, Barney Chito and Rosela Chito may have shown was indecisiveness, in the handling of the disciplinary case but there was clearly no vicious and malicious intention on their part to force private respondent to resign from his employment, which would amount to constructive dismissal. If private respondent had felt that his continued employment with petitioner BALGCO had been rendered *"impossible, unreasonable or unlikely,"* this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney Chito and Rosela Chito. Petitioners had not shown any manifest intention to terminate the employment of private respondent. Based on the records, instead of a notice of termination petitioners sent private respondent a letter-directive to report for work and to immediately attend to the disciplinary proceedings filed against him.

There is also no abandonment that can be inferred from the actuation of private respondent. Notwithstanding the dreadfully hostile

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[16] *Rollo*, pp. 19-20.

conditions that faced him at work and the charge of serious misconduct filed against him, private respondent dutifully showed up at the BALGCO office, albeit in a furtive manner, in the hope that he would be given a work assignment while he awaited the resolution of his case. His persistence in reporting for work and, more so, in subsequently filing an illegal dismissal case belies any intention on the part of private respondent to abandon his employment. It is well-settled that the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment.[17]

The CA stated that because there was neither dismissal nor abandonment, the *status quo* between the parties should be maintained and their previous employment relations be restored.[18] The CA, thus, disposed:

WHEREFORE, premises considered, the December 8, 2009 Decision and the February 26, 2010 Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondent is hereby ordered **REINSTATED**. No payment of back salaries can be awarded, following the no work/no pay principle.

SO ORDERED.[19]

Not in conformity, Verdadero raised before this Court, the following

Issues

Verdadero raised the following errors in seeking the reversal of the assailed decision of the CA, to wit:

a. The Honorable Court of Appeals erred when it ruled that Petitioner was not constructively terminated on January 27, 2008 as Bus Conductor;

b. The Honorable Court of Appeals erred when it ruled constructive dismissal could not be attributed to respondents

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[17] *Id.* at 20-22.

[18] *Id.* at 22.

[19] *Id.* at 83.

except Gimenez when they proceeded to cure the illegal dismissal by conducting a bogus hearing;

c. The Honorable Court of Appeals failed to discern that the letter-directive to report for work and the order to participate in the disciplinary proceedings are indicative of further harassing petitioner; and

d. The Honorable Court of Appeals failed to recognize that reinstatement is impractical.[20]

The Court's Ruling

The petition fails.

The only issue in this case is whether or not petitioner Verdadero was constructively dismissed.

On Constructive Dismissal

Verdadero alleges that he was employed as bus conductor of BALGCO from September 10, 2004 until January 28, 2008 when he was no longer allowed to report for work. He claims that he was not given any trip assignment since the January 27, 2008 incident. He argues that when Gimenez committed the verbal abuse against him in the presence of the bus passengers and threatened him with physical harm, there was termination by the employee of his employment under the doctrine of constructive dismissal.[21]

BALGCO contends that Verdadero was not given any trip assignment because he was surreptitiously reporting for work and would come to the office only when Gimenez was not around. This was confirmed in the letter-reply[22] by Rosela to Verdadero, dated April 18, 2008, stating that *"Bukod pa dito, napansin ko mula sa logbook ng ating tanggapan na ikaw ay may lagda doon at ang dahilan mo ay upang mag-report, subalit hindi*

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[20] *Id.* at 47-48.

[21] *Id.* at 50.

[22] CA *rollo*, p. 72.

ka naman nagpapakita sa akin at sinadya mo na pumunta sa araw na wala ang ating Disciplinary Officer."[23]

In his Memorandum,[24] Verdadero admitted not reporting for work after the incident "because of his mortal fear of being harmed by the Disciplinary Officer and his friends."[25]

Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[26]

In this case, Verdadero cannot be deemed constructively dismissed. Records do not show any demotion in rank or a diminution in pay made against him. Neither was there any act of clear discrimination, insensibility or disdain committed by BALGCO against Verdadero which would justify or force him to terminate his employment from the company.

To support his contention of constructive dismissal, Verdadero considers the verbal abuse by Gimenez against him as an act which rendered his continued employment impossible, unreasonable or unlikely. The claimed abuse was corroborated by the sworn written statement executed by Mascariña, which was given credence by the NLRC and the CA. With the alleged

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[23] *Id.*

[24] *Rollo*, pp. 139-175.

[25] *Id.* at 152.

[26] *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, citing *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 766 (2002), *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236, and *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).

threats of Gimenez, Verdadero believed that he could no longer stay and work for BALGCO.

It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee. Unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal.

Assuming *arguendo* that, Gimenez did commit the alleged unlawful acts, still, this fact will not suffice to conclude that constructive dismissal was proper. Contrary to the arguments of Verdadero, Gimenez is not the employer. He may be the "disciplinary officer," but his functions as such, as can be gleaned from the BALGCO Rules and Regulations,[27] do not involve the power or authority to dismiss or even suspend an employee. Such power is exclusively lodged in the BALGCO management. Gimenez remains to be a mere employee of BALGCO and, thus, cannot cause the dismissal or even the constructive dismissal of Verdadero. The employers are BALGCO and its owners, Barney and Rosela. As correctly put by the CA:

> Petitioner BALGCO, however, cannot be blamed for the existing hostile conditions that beset private respondent. The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon petitioner BALGCO in the absence of any evidence that it promotes such ill-treatment of its lowly employees or has itself committed an overt act of illegality. x x x If private respondent had felt that his continued employment with petitioner BALGCO had been rendered *"impossible, unreasonable or unlikely"* this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney Chito and Rosela Chito.[28] xxx.

Moreover, it was not established that BALGCO itself or its owners had been, in any way, forcing Verdadero to resign from his employment. In fact, records show that the management had been urging him to report back to work, not only to face the administrative charge against him, but also because of the

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[27] CA *rollo*, pp. 80-89.

[28] *Rollo*, p. 81.

scarcity and necessity of bus conductors in the company. Verdadero, however, failed to present himself before the management, more specifically, to Rosela. This situation provided no opportunity for BALGCO to give him any trip assignment. The abovementioned act of BALGCO was even misinterpreted by Verdadero as yet another means of harassment. The Court disagrees with the petitioner and finds his charges of harassment as nothing but empty imputation of a fact that could hardly be given any evidentiary weight.[29]

Furthermore, records are bereft of any showing that Verdadero was no longer allowed to report for work starting January 28, 2008,[30] when Gimenez lodged a complaint for serious misconduct against him before the BALGCO management. Records, in fact, show that after the incident with Gimenez, Verdadero even signed in BALGCO's logbook during the days he surreptitiously reported for work. There is no showing that BALGCO prohibited Verdadero from reporting for work or claimed that he was dismissed. In their Memorandum,[31] the respondents even categorically stated that Verdadero's employment was never terminated and he "is still part of its workforce notwithstanding this case and it is willing to accept him without any demotion should he report for work."[32]

It was Verdadero himself who terminated his employment. It was, in fact, his position that the January 27, 2008 bus incident gave rise to constructive dismissal. Verdadero, however, clearly made inconsistencies in struggling to find a justification for his own mistaken belief, and to prove constructive dismissal and, thus, be afforded the reliefs and other monetary awards resulting therefrom.

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[29] *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236-237, citing *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364.

[30] *Rollo*, p. 38.

[31] *Id.* at 178-204.

[32] *Id.* at 199.

Well-settled is the rule in illegal dismissal case that while the employer bears the burden of proving that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of his dismissal from service.[33] In this case, however, the employer should not be belabored to prove a valid dismissal as BALGCO itself has not terminated the employment of Verdadero.

On Reinstatement and Backwages

Article 279 of the Labor Code, as amended, 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 backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989)

Reinstatement and backwages are reliefs available to an illegally dismissed employee. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.[34]

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[33] *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256, citing *Ledesma, Jr. v. NLRC*, G.R. No. 174585, October 19, 2007, 537 SCRA 358.

[34] *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 8, 2010, 627 SCRA 192, 206-207, citing *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*, G.R. No. 162538, June 4, 2009, 588 SCRA 238, 247-248.

In the case at bench, considering that there has been no dismissal at all, there can be no reinstatement. One cannot be reinstated to a position he is still holding. As there is no reinstatement to speak of, Verdadero cannot invoke the doctrine of strained relations. It is only applied when there is an order for reinstatement that is no longer feasible. In the same vein, no separation pay can be awarded as it is given only in lieu of reinstatement. Consequently, there is likewise no justification for the award of backwages. The CA was correct in ruling against the payment of backwages following the "no work, no pay" principle.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[*] Per Special Order No. 1290 dated August 28, 2012.

[**] Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

[***] Designated additional member, per Special Order No. 1299 dated August 28, 2012.

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Relevancy of — The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved. (People *vs*. Belocura, G.R. No. 173474, Aug. 29, 2012) p. 476

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FORUM SHOPPING

Concept — The act of litigants who repetitively avail themselves of multiple judicial remedies in different fora, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; raising substantially similar issues either pending in or already resolved adversely by some other court or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another.
(Catayas *vs*. CA, G.R. No. 166660, Aug. 29, 2012) p. 451

Elements — Forum shopping exists when: (a) there is identity of parties, or at least such parties representing the same interests in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered

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— Findings of the trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court; exceptions. (People *vs*. Banig, G.R. No. 177137, Aug. 23, 2012) p. 303

— 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 *vs*. Osma, G.R. No. 187734, Aug. 29, 2012) p. 580

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