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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 171219. September 3, 2012]

ATTY. FE Q. PALMIANO-SALVADOR, *petitioner, vs.* **CONSTANTINO ANGELES, substituted by LUZ G. ANGELES,*** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; COMPLAINT FOR EJECTMENT; AN UNAUTHORIZED COMPLAINT DOES NOT PRODUCE ANY LEGAL EFFECT; APPLICATION IN CASE AT BAR. — In *Tamondong v. Court of Appeals*, the Court categorically stated that "[i]f a complaint is filed for and in behalf of the plaintiff [by one] who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff." This ruling was reiterated in *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, where the Court went on to say that "[i]n order for the court to

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* Respondent Constantino Angeles (deceased) has been substituted by survising spouse Luz G. Angeles, *per* Resolution dated November 20, 2006 (See *rollo*, p. 172).

have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, and to be bound by a decision, a party should first be subjected to the court's jurisdiction. Clearly, since no valid complaint was ever filed with the [MeTC], the same did not acquire jurisdiction over the person of respondent [plaintiff before the lower court]." Pursuant to the foregoing rulings, therefore, the MeTC never acquired jurisdiction over this case and all proceedings before it were null and void. The courts could not have delved into the very merits of the case, because legally, there was no complaint to speak of. The court's jurisdiction cannot be deemed to have been invoked at all.

APPEARANCES OF COUNSEL

Fabros Ulanday Velasco & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) promulgated on September 16, 2005 dismissing the petition before it, and its Resolution[2] dated January 13, 2006, denying petitioner's Motion for Reconsideration, be reversed and set aside.

The records reveal the CA's narration of facts to be accurate, to wit:

xxx xxx xxx

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 14-19.

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

Respondent-appellee ANGELES is one of the registered owners of a parcel of land located at 1287 Castanos Street, Sampaloc, Manila, evidenced by Transfer Certificate of Title No. 150872. The subject parcel of land was occupied by one Jelly Galiga (GALIGA) from 1979 up to 1993, as a lessee with a lease contract. Subsequently, Fe Salvador (SALVADOR) alleged that she bought on September 7, 1993 the subject parcel of land from GALIGA who represented that he was the owner, being one in possession. Petitioner-appellant SALVADOR remained in possession of said subject property from November 1993 up to the present.

On November 18, 1993, the registered owner, the respondent-appellee ANGELES, sent a letter to petitioner-appellant SALVADOR demanding that the latter vacate the subject property, which was not heeded by petitioner-appellant SALVADOR. Respondent-appellee ANGELES, thru one Rosauro Diaz, Jr. (DIAZ), filed a complaint for ejectment on October 12, 1994 with the Metropolitan Trial Court [MeTC] of Manila, Branch 16, docketed as Civil Case No. 146190-CV.

The Assailed Decision of the Trial Courts

The [MeTC] rendered its decision on November 29, 1999 in favor of herein respondent-appellee ANGELES, the dispositive portion of which reads, to wit:

> WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendant ordering the latter and all persons claiming under her to:
>
> 1) vacate the parcel of land located at 1287 Castanos Street, Sampaloc, Manila, and surrender the same to the plaintiff;
>
> 2) pay the plaintiff the sum of Php1,000.00 monthly as reasonable compensation for her use and occupancy of the above parcel of land beginning November 1993 up to the time she has actually vacated the premises;
>
> 3) pay the plaintiff the sum of Php5,000.00 as attorney's fees and the cost of suit.
>
> SO ORDERED.

In the appeal filed by petitioner-appellant SALVADOR, she alleged, among others, that DIAZ, who filed the complaint for ejectment, had no authority whatsoever from respondent-appellee ANGELES at the

time of filing of the suit. Petitioner-appellant SALVADOR's appeal was denied by the [Regional Trial Court] RTC in a Decision dated March 12, 2003. The Motion for Reconsideration filed by SALVADOR was denied in an Order dated March 16, 2004.[3]

Petitioner elevated the case to the CA *via* a petition for review, but in a Decision dated September 16, 2005, said petition was dismissed for lack of merit. The CA affirmed the factual findings of the lower courts that Galiga, the person who supposedly sold the subject premises to petitioner, was a mere lessee of respondent, the registered owner of the land in question. Such being the case, the lower court ruled that Galiga could not have validly transferred ownership of subject property to herein petitioner. It was ruled by the CA that there were no significant facts or circumstances that the trial court overlooked or misinterpreted, thus, it found no reason to overturn the factual findings of the MeTC and the RTC. A motion for reconsideration of said Decision was denied in a Resolution dated January 13, 2006.

Hence, the present petition, where one of the important issues for resolution is the effect of Rosauro Diaz's (respondent's representative) failure to present proof of his authority to represent respondent (plaintiff before the MeTC) in filing the complaint. This basic issue has been ignored by the MeTC and the RTC, while the CA absolutely failed to address it, despite petitioner's insistence on it from the very beginning, *i.e.*, in her Answer filed with the MeTC. This is quite unfortunate, because this threshold issue should have been resolved at the outset as it is determinative of the court's jurisdiction over the complaint and the plaintiff.

Note that the complaint before the MeTC was filed in the name of respondent, but it was one Rosauro Diaz who executed the verification and certification dated October 12, 1994, alleging therein that he was respondent's attorney-in-fact. There was, however, no copy of any document attached to the complaint to prove Diaz's allegation regarding the authority supposedly granted to him. This

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[3] *Rollo*, pp. 15-16.

prompted petitioner to raise in her Answer and in her Position Paper, the issue of Diaz's authority to file the case. On December 11, 1995, more than a year after the complaint was filed, respondent attached to his Reply and/or Comment to Respondent's (herein petitioner) Position Paper,[4] a document entitled Special Power of Attorney (SPA)[5] supposedly executed by respondent in favor of Rosauro Diaz. However, **said SPA was executed only on November 16, 1994, or more than a month after the complaint was filed**, appearing to have been notarized by one Robert F. McGuire of Santa Clara County. Observe, further, that there was no certification from the Philippine Consulate General in San Francisco, California, U.S.A, that said person is indeed a notary public in Santa Clara County, California. Verily, the court cannot give full faith and credit to the official acts of said Robert McGuire, and hence, no evidentiary weight or value can be attached to the document designated as an SPA dated November 16, 1994. Thus, there is nothing on record to show that Diaz had been authorized by respondent to initiate the action against petitioner.

What then, is the effect of a complaint filed by one who has not proven his authority to represent a plaintiff in filing an action? In *Tamondong v. Court of Appeals*,[6] the Court categorically stated that "[i]f a complaint is filed for and in behalf of the plaintiff [by one] who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff."[7] This ruling was reiterated in *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*,[8] where the Court went on to say that "[i]n order for the court to have authority to dispose of the case on the

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[4] Record, pp. 161-171.

[5] *Id*. at 172.

[6] G.R. No. 158397, November 26, 2004, 444 SCRA 509.

[7] *Id*. at 519.

[8] G.R. No. 179488, April 23, 2012.

merits, it must acquire jurisdiction over the subject matter and the parties. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, and to be bound by a decision, a party should first be subjected to the court's jurisdiction. Clearly, since no valid complaint was ever filed with the [MeTC], the same did not acquire jurisdiction over the person of respondent [plaintiff before the lower court]."[9]

Pursuant to the foregoing rulings, therefore, the MeTC never acquired jurisdiction over this case and all proceedings before it were null and void. The courts could not have delved into the very merits of the case, because legally, there was no complaint to speak of. The court's jurisdiction cannot be deemed to have been invoked at all.

IN VIEW OF THE FOREGOING, the Petition is **GRANTED**. The Decision of the Metropolitan Trial Court in Civil Case No. 146190, dated November 29, 1999; the Decision of the Regional Trial Court in Civil Case No. 00-96344, dated March 12, 2003; and the Decision of the Court of Appeals in CA-G.R. SP No. 83467, are **SET ASIDE AND NULLIFIED**. The complaint filed by respondent before the Metropolitan Trial Court is hereby **DISMISSED**.

SO ORDERED.

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

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[9] *Id*.

[**] Designated Additional Member, per Special Order No. 1299 dated August 28, 2012.

EN BANC

[G.R. No. 173425. September 4, 2012]

FORT BONIFACIO DEVELOPMENT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. TAXATION; VALUE ADDED TAX; TRANSITIONAL INPUT TAX CREDIT OF 8%; TO AVAIL THEREOF, PRIOR PAYMENT OF TAXES IS NOT REQUIRED; SUSTAINED. — To require prior payment of taxes, as proposed in the Dissent is not only tantamount to judicial legislation but would also render nugatory the provision in Section 105 of the old NIRC that the transitional input tax credit shall be "8% of the value of [the beginning] inventory or the actual [VAT] paid on such goods, materials and supplies, whichever is higher" because the actual VAT (now 12%) paid on the goods, materials, and supplies would always be higher than the 8% (now 2%) of the beginning inventory which, following the view of Justice Carpio, would have to exclude all goods, materials, and supplies where no taxes were paid. Clearly, limiting the value of the beginning inventory only to goods, materials, and supplies, where prior taxes were paid, was not the intention of the law. Otherwise, it would have specifically stated that the beginning inventory excludes goods, materials, and supplies where no taxes were paid. x x x Moreover, prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund *per se* but a tax credit. Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority. Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability. It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment. Thus, unlike a tax refund, prior payment of taxes is not a prerequisite to avail of a tax credit. In fact, in *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, we declared that prior payment of taxes is not required in

order to avail of a tax credit. x x x In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output VAT it has paid. Hence, it is merely availing of the tax credit incentive given by law to first time VAT taxpayers. As we have said in the earlier case of *Fort Bonifacio*, the provision on transitional input tax credit was enacted to benefit first time VAT taxpayers by mitigating the impact of VAT on the taxpayer. Thus, contrary to the view of Justice Carpio, the granting of a transitional input tax credit in favor of petitioner, which would be paid out of the general fund of the government, would be an appropriation authorized by law, specifically Section 105 of the old NIRC.

2. ID.; ID.; ID.; LIMITATION IN THE APPLICATION THEREOF TO THE VALUE OF IMPROVEMENTS ON REAL PROPERTIES IS A NULLITY; CLARIFIED; APPLICATION IN CASE AT BAR. — As regards Section 4.105-1 of RR 7-95 which limited the 8% transitional input tax credit to the value of the improvements on the land, the same contravenes the provision of Section 105 of the old NIRC, in relation to Section 100 of the same Code, as amended by RA 7716, which defines "goods or properties," x x x In fact, in our Resolution dated October 2, 2009, in the related case of *Fort Bonifacio*, we ruled that Section 4.105-1 of RR 7-95, insofar as it limits the transitional input tax credit to the value of the improvement of the real properties, is a nullity. x x x As we see it then, the 8% transitional input tax credit should not be limited to the value of the improvements on the real properties but should include the value of the real properties as well. In this case, since petitioner is entitled to a transitional input tax credit of ₱5,698,200,256, which is more than sufficient to cover its output VAT liability for the first quarter of 1997, a refund of the amount of ₱359,652,009.47 erroneously paid as output VAT for the said quarter is in order.

ABAD, *J.*, *concurring opinion*:

1. TAXATION; VALUE ADDED TAX (VAT); 8% TRANSITIONAL INPUT TAX CREDIT; THE GRANT THEREOF TO ALL FIRST-TIME VAT PAYERS IS WITHOUT ANY PRECONDITION, DENIAL THEREOF WOULD AMOUNT TO A DENIAL OF THE RIGHT TO FAIRNESS AND EQUAL PROTECTION; CLARIFIED IN CASE AT BAR. — A value added tax is a form of indirect sales tax paid on products and services at each stage of production

or distribution, based on the value added at that stage and included in the cost to the ultimate consumer. x x x But Section 105 grants all first-time VAT payers such transitional input tax credit of 8% without any precondition. It does not say that a taxpayer has to prove that the seller, from whom he bought the goods or the lands, paid sales taxes on them. Consequently, the CIR has no authority to insist that sales tax should have been paid beforehand on FBDC's inventory of lands before it could claim the 8% transitional input tax credit. The Court's decision in G.R. 158885 and G.R. 170680 more than amply explains this point and such explanation need not be repeated here. But there is a point that has apparently been missed. When the Government sold the military lands to FBDC for development into mixed residential and commercial uses, the presumption is that in fixing their price the Government took into account the price that private lands similarly situated would have fetched in the market place at that time. The clear intent was to privatize ownership of those former military lands. It would make no sense for the Government to sell the same to intended private investors at a price lesser than the price of comparable private lands. The presumption is that the sale did not give undue benefit to the buyers in violation of the anti-graft and corrupt practices act. x x x Thus, since the Government sold its lands to investors at market price like they were private lands, the price FBDC paid to it already factored in the cost of sales tax that prices of ordinary private lands included. This means that FBDC, which bought the lands at private-land price, should be allowed like other real estate dealers holding private lands to claim the 8% transitional input tax credit that Section 105 grants with no precondition to first-time VAT payers. Otherwise, FBDC would be put at a gross disadvantage compared to other real estate dealers. It will have to sell at higher prices than market price, to cover the 10% VAT that the BIR insists it should pay. Whereas its competitors will pay only a 2% VAT, given the 8% transitional input tax credit of Section 105. To deny such tax credit to FBDC would amount to a denial of its rights to fairness and to equal protection.

2. ID.; ID.; ID.; ID.; REFUND OF THE VAT ALREADY PAID, PROPER. — The Court was correct in allowing FBDC the right to be refunded the VAT that it already paid, applying instead to the VAT tax due on its sales the transitional input VAT that Section 105 provides. x x x FBDC was forced to pay cash on the VAT due on its sales because the BIR refused to apply the 8% transitional

input VAT tax credits that the law allowed it. Since such tax credits were sufficient to cover the VAT due, FBDC is entitled to a refund of the VAT it already paid. And, contrary to the dissenting opinion, if FBDC will be given a tax refund, it would be sourced, not from public funds, but from the VAT payments which FBDC itself paid to the BIR. Like the previous cases before the Court, the BIR has the option to refund what FBDC paid it with equivalent tax credits. Such tax credits have never been regarded as needing appropriation out of government funds. Indeed, FBDC concedes in its prayers that it may get its refund in the form of a Tax Credit Certificate.

CARPIO, *J., dissenting opinion*:

1. TAXATION; VALUE ADDED TAX; 8% TRANSITIONAL INPUT TAX CREDIT; TAX REFUND OR TAX CREDIT; SOURCE THEREOF IS THE TAX THAT WAS PREVIOUSLY PAID. — A tax refund or credit assumes a tax was previously paid, which means there was a law that imposed the tax. The source of the tax refund or credit is the tax that was previously paid, and this previously paid tax is simply being ***returned*** to the taxpayer due to double, excessive, erroneous, advance or creditable tax payment.

2. ID.; ID.; ID.; ID.; GRANT THEREOF WITHOUT PREVIOUS TAX PAYMENT AS SOURCE WILL VIOLATE THE FUNDAMENTAL PRINCIPLE THAT PUBLIC FUNDS CAN BE USED ONLY FOR A PUBLIC PURPOSE; RATIONALE. — Without such previous tax payment as source, the tax refund or credit will be an expenditure of public funds for the exclusive benefit of a specific private individual or entity. This violates the fundamental principle, as ruled by this Court in several cases, that public funds can be used only for a public purpose. Section 4(2) of the Government Auditing Code of the Philippines mandates that "***Government funds or property shall be spent or used solely for public purposes***." Any tax refund or credit in favor of a specific taxpayer for a tax that was never paid will have to be sourced from government funds. This is clearly an expenditure of public funds for a ***private*** purpose. Congress cannot validly enact a law transferring government funds, raised through taxation, to the pocket of a private individual or entity. A well-recognized inherent limitation on the constitutional power of the State to levy taxes is that taxes can only be used for a ***public*** purpose. Even if only a tax credit is granted, it will still be an expenditure of public funds for the benefit of a private purpose

in the absence of a prior tax payment as source of the tax credit. The tax due from a taxpayer is a public fund. If the taxpayer is allowed to keep a part of the tax as a tax credit even in the absence of a prior tax payment as source, it is in fact giving a public fund to a private person for a private benefit. This is a clear violation of the constitutional doctrine that taxes can only be used for a public purpose.

3. ID.; ID.; ID.; ID.; GRANT THEREOF WITHOUT PRIOR TAX PAYMENT IS AN EXPENDITURE OF PUBLIC FUNDS WITHOUT AN APPROPRIATION LAW. — [R]efund or credit without prior tax payment is an expenditure of public funds without an appropriation law. This violates Section 29(1), Article VI of the Constitution, which mandates that "***No money shall be paid out of the Treasury except in pursuance of an appropriation made by law***." Without any previous tax payment as source, a tax refund or credit will be paid out of the ***general funds of the government***, a payment that requires an appropriation law. The Tax Code, particularly its provisions on the VAT, is a revenue measure, not an appropriation law.

4. ID.; ID.; ID.; ID.; PURPOSE OF TAX CREDITING SYSTEM, EXPLAINED; DOUBLE TAXATION, NOT PRESENT IN CASE AT BAR. — The VAT is levied on the value that is added to goods and services at every link in the chain of transactions. However, a tax credit is allowed for taxes **previously paid** when the same goods and services are sold further in the chain of transactions. The purpose of this tax crediting system is ***to prevent double taxation*** in the subsequent sale of the same product and services that were already previously taxed. Taxes previously paid are thus allowed as input VAT credits, which may be deducted from the output VAT liability. x x x [T]he law grants the taxpayer an 8% input VAT ***without need of substantiating the same***, ***on the legal presumption that the VAT imposed by law prior to the expanded VAT system had been paid***, ***regardless of whether it was actually paid.*** Under the VAT system, a tax refund or credit requires that a previous tax was paid by a taxpayer, or in the case of the transitional input tax, that the tax imposed by law is presumed to have been paid. Not a single centavo of VAT was paid, or could have been paid, by anyone in the sale by the National Government to petitioner of the Global City land for two basic reasons. *First*, the National Government is not subject to any tax, including VAT, when the law authorizes it to sell government property like the

Global City land. *Second*, in 1995 the old VAT law did not yet impose VAT on the sale of land and thus no VAT on the sale of land could have been paid by anyone. Petitioner bought the Global City land from the National Government in 1995, and this sale was of course exempt from any kind of tax, including VAT. The National Government did not pass on to petitioner any previous sales tax or VAT as part of the purchase price of the Global City land. Thus, petitioner is not entitled to claim any transitional input VAT refund or credit when petitioner subsequently sells the Global City land. **In short, since petitioner will not be subject to double taxation on its subsequent sale of the Global City land, petitioner is not entitled to a tax refund or credit under the VAT system**.

5. ID.; ID.; ID.; ID.; BOTH ARE IN THE NATURE OF CLAIM FOR EXEMPTION AND SHOULD BE CONSTRUED IN *STRICTISSIMI JURIS* AGAINST THE PERSON OR ENTITY CLAIMING IT. — Availing of a tax credit and filing for a tax refund are alternative options allowed by the Tax Code. The choice of one option precludes the other. A taxpayer may either (1) apply for a tax refund by filing for a written claim with the BIR within the prescriptive period, or (2) avail of a tax credit subject to verification and approval by the BIR. A claim for tax credit requires that a person who becomes liable to VAT for the first time must submit a list of his inventories existing on the date of commencement of his status as a VAT-registered taxable person. Both claims for a tax refund and credit are in the nature of a claim for exemption and should be construed in *strictissimi juris* against the person or entity claiming it. The burden of proof to establish the factual basis or the sufficiency and competency of the supporting documents of the claim for tax refund or tax credit rests on the claimant.

APPEARANCES OF COUNSEL

Estelito P. Mendoza and Lorenzo G. Timbol for petitioner.

The Solicitor General and *Alberto R. Bomediano* for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Courts cannot limit the application or coverage of a law, nor can it impose conditions not provided therein. To do so constitutes judicial legislation.

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the July 7, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 61436, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby **DISMISSED. ACCORDINGLY,** the Decision dated October 12, 2000 of the Court of Tax Appeals in CTA Case No. 5735, denying petitioner's claim for refund in the amount of Three Hundred Fifty-Nine Million Six Hundred Fifty-Two Thousand Nine Pesos and Forty-Seven Centavos (₱359,652,009.47), is hereby **AFFIRMED.**

SO ORDERED.[2]

Factual Antecedents

Petitioner Fort Bonifacio Development Corporation (FBDC) is a duly registered domestic corporation engaged in the development and sale of real property.[3] The Bases Conversion Development Authority (BCDA), a wholly owned government corporation created under Republic Act (RA) No. 7227,[4] owns 45% of petitioner's issued and outstanding capital stock; while the Bonifacio Land Corporation, a consortium of private domestic corporations, owns the remaining 55%.[5]

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[1] *Rollo*, pp. 317-333; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

[2] *Id.* at 332.

[3] *Id.* at 318.

[4] BASES CONVERSION AND DEVELOPMENT ACT of 1992.

[5] *Rollo*, p. 318.

On February 8, 1995, by virtue of RA 7227 and Executive Order No. 40,[6] dated December 8, 1992, petitioner purchased from the national government a portion of the Fort Bonifacio reservation, now known as the Fort Bonifacio Global City (Global City).[7]

On January 1, 1996, RA 7716[8] restructured the Value-Added Tax (VAT) system by amending certain provisions of the old National Internal Revenue Code (NIRC). RA 7716 extended the coverage of VAT to real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business.[9]

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[6] IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 7227 AUTHORIZING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA) TO RAISE FUNDS THROUGH THE SALE OF METRO MANILA MILITARY CAMPS TRANSFERRED TO BCDA TO FORM PART OF ITS CAPITALIZATION AND TO BE USED FOR THE PURPOSE STATED IN SAID ACT.

[7] *Rollo*, p. 319.

[8] AN ACT RESTRUCTURING THE VALUE ADDED TAX (VAT) SYSTEM, WIDENING ITS TAX BASE AND ENCHANCING ITS ADMINISTRATION AND FOR THESE PURPOSES AMENDING AND REPEALING THE RELEVANT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

[9] Section 2 of Republic Act No. 7716 provides:

> Sec. 2. Section 100 of the National Internal Revenue Code, as amended, is hereby furthere amended to read as follows:
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> "Section 100. Value-added-tax on sale of goods or properties.— (a) Rate and base of tax.— There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a valued-added tax equivalent to 10% of the gross selling price or gross value in money of the goods, or properties sold, bartered or exchange, such tax to be paid by the seller or transferor.
>
> "(1) The term 'goods or properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include;
>
> (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business."
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> x x x x x x x x x

On September 19, 1996, petitioner submitted to the Bureau of Internal Revenue (BIR) Revenue District No. 44, Taguig and Pateros, an inventory of all its real properties, the book value of which aggregated ₱71,227,503,200.[10] Based on this value, petitioner claimed that it is entitled to a transitional input tax credit of ₱5,698,200,256,[11] pursuant to Section 105[12] of the old NIRC.

In October 1996, petitioner started selling Global City lots to interested buyers.[13]

For the first quarter of 1997, petitioner generated a total amount of ₱3,685,356,539.50 from its sales and lease of lots, on which the output VAT payable was ₱368,535,653.95.[14] Petitioner paid the output VAT by making cash payments to the BIR totalling ₱359,652,009.47 and crediting its unutilized input tax credit on purchases of goods and services of ₱8,883,644.48.[15]

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[10] *Rollo*, p. 320.

[11] CTA *rollo*, p. 4.

[12] Now Section 111 (A) of the NATIONAL INTERNAL REVENUE CODE OF 1997 which provides:

SEC 111. *Transitional/Presumptive Input Tax Credits*. —

(A) *Transitional Input Tax Credits*. – A person who becomes liable to value added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. [As amended by Republic Act No. 9337- An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as amended, and for other purposes.]

[13] *Rollo*, p. 319.

[14] *Id.* at 320.

[15] *Id.* at 320-321.

Realizing that its transitional input tax credit was not applied in computing its output VAT for the first quarter of 1997, petitioner on November 17, 1998 filed with the BIR a claim for refund of the amount of ₱359,652,009.47 erroneously paid as output VAT for the said period.[16]

Ruling of the Court of Tax Appeals

On February 24, 1999, due to the inaction of the respondent Commissioner of Internal Revenue (CIR), petitioner elevated the matter to the Court of Tax Appeals (CTA) *via* a Petition for Review.[17]

In opposing the claim for refund, respondents interposed the following special and affirmative defenses:

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8. Under Revenue Regulations No. 7-95, implementing Section 105 of the Tax Code as amended by E.O. 273, the basis of the presumptive input tax, in the case of real estate dealers, is the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after January 1, 1988.

9. Petitioner, by submitting its inventory listing of real properties only on September 19, 1996, failed to comply with the aforesaid revenue regulations mandating that for purposes of availing the presumptive input tax credits under its Transitory Provisions, "an inventory as of December 31, 1995, of such goods or properties and improvements showing the quantity, description, and amount should be filed with the RDO no later than January 31, 1996. x x x"[18]

On October 12, 2000, the CTA denied petitioner's claim for refund. According to the CTA, "the benefit of transitional input tax credit comes with the condition that business taxes should have been paid first."[19] In this case, since petitioner acquired the

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[16] CTA *rollo*, p. 5.

[17] *Id.* at 1-12.

[18] *Id.* at 44.

[19] *Rollo*, p. 148.

Global City property under a VAT-free sale transaction, it cannot avail of the transitional input tax credit.[20] The CTA likewise pointed out that under Revenue Regulations No. (RR) 7-95, implementing Section 105 of the old NIRC, the 8% transitional input tax credit should be based on the value of the improvements on land such as buildings, roads, drainage system and other similar structures, constructed on or after January 1, 1998, and not on the book value of the real property.[21] Thus, the CTA disposed of the case in this manner:

WHEREFORE, in view of all the foregoing, the claim for refund representing alleged overpaid value-added tax covering the first quarter of 1997 is hereby **DENIED** for lack of merit.

SO ORDERED.[22]

Ruling of the Court of Appeals

Aggrieved, petitioner filed a Petition for Review[23] under Rule 43 of the Rules of Court before the CA.

On July 7, 2006, the CA affirmed the decision of the CTA. The CA agreed that petitioner is not entitled to the 8% transitional input tax credit since it did not pay any VAT when it purchased the Global City property.[24] The CA opined that transitional input tax credit is allowed only when business taxes have been paid and passed-on as part of the purchase price.[25] In arriving at this conclusion, the CA relied heavily on the historical background of transitional input tax credit.[26] As to the validity of RR 7-95,

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[20] *Id.* at 149.

[21] *Id.* at 149-150.

[22] *Id.* at 150.

[23] CA *rollo*, pp. 7-66.

[24] *Rollo*, p. 330.

[25] *Id.* at 329.

[26] *Id.* at 325-328.

which limited the 8% transitional input tax to the value of the improvements on the land, the CA said that it is entitled to great weight as it was issued pursuant to Section 245[27] of the old NIRC.[28]

Issues

Hence, the instant petition with the principal issue of whether petitioner is entitled to a refund of ₱359,652,009.47 erroneously paid as output VAT for the first quarter of 1997, the resolution of which depends on:

3.05.a. Whether Revenue Regulations No. 6-97 effectively repealed or repudiated Revenue Regulations No. 7-95 insofar as the latter limited the transitional/presumptive input tax credit which may be claimed under Section 105 of the National Internal Revenue Code to the "improvements" on real properties.

3.05.b. Whether Revenue Regulations No. 7-95 is a valid implementation of Section 105 of the National Internal Revenue Code.

3.05.c. Whether the issuance of Revenue Regulations No. 7-95 by the Bureau of Internal Revenue, and declaration of validity of said Regulations by the Court of Tax Appeals and Court of Appeals, [were] in violation of the fundamental principle of separation of powers.

3.05.d. Whether there is basis and necessity to interpret and construe the provisions of Section 105 of the National Internal Revenue Code.

3.05.e. Whether there must have been previous payment of business tax by petitioner on its land before it may claim

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[27] SEC. 245. *Authority of Secretary of Finance to promulgate rules and regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code. x x x (Now Section 244 of the National Internal Revenue Code of 1997.)

[28] *Rollo,* pp. 331-332.

the input tax credit granted by Section 105 of the National Internal Revenue Code.

3.05.f. Whether the Court of Appeals and Court of Tax Appeals merely speculated on the purpose of the transitional/ presumptive input tax provided for in Section 105 of the National Internal Revenue Code.

3.05.g. Whether the economic and social objectives in the acquisition of the subject property by petitioner from the Government should be taken into consideration.[29]

Petitioner's Arguments

Petitioner claims that it is entitled to recover the amount of ₱359,652,009.47 erroneously paid as output VAT for the first quarter of 1997 since its transitional input tax credit of ₱5,698,200,256 is more than sufficient to cover its output VAT liability for the said period.[30]

Petitioner assails the pronouncement of the CA that prior payment of taxes is required to avail of the 8% transitional input tax credit.[31] Petitioner contends that there is nothing in Section 105 of the old NIRC to support such conclusion.[32] Petitioner further argues that RR 7-95, which limited the 8% transitional input tax credit to the value of the improvements on the land, is invalid because it goes against the express provision of Section 105 of the old NIRC, in relation to Section 100[33] of the same Code, as amended by RA 7716.[34]

Respondents' Arguments

Respondents, on the other hand, maintain that petitioner is not entitled to a transitional input tax credit because no taxes

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

[30] *Id.* at 82.

[31] *Id.* at 84.

[32] *Id.* at 87.

[33] Now Section 106 of the National Internal Revenue Code of 1997.

[34] *Rollo,* pp. 47-61.

were paid in the acquisition of the Global City property.[35] Respondents assert that prior payment of taxes is inherent in the nature of a transitional input tax.[36] Regarding RR 7-95, respondents insist that it is valid because it was issued by the Secretary of Finance, who is mandated by law to promulgate all needful rules and regulations for the implementation of Section 105 of the old NIRC.[37]

Our Ruling

The petition is meritorious.

The issues before us are no longer new or novel as these have been resolved in the related case of *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*.[38]

Prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit

Section 105 of the old NIRC reads:

SEC. 105. *Transitional input tax credits.* – **A person who becomes liable to value-added tax** or **any person who elects to be a VAT-registered person** shall, subject to the filing of an inventory as prescribed by regulations, **be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to 8% of the value of such inventory** or **the actual value-added tax paid on such goods, materials and supplies**, whichever is higher, which shall be creditable against the output tax. (Emphasis supplied.)

Contrary to the view of the CTA and the CA, there is nothing in the above-quoted provision to indicate that prior payment of taxes is necessary for the availment of the 8% transitional input tax credit. Obviously, all that is required is for the taxpayer to file a beginning inventory with the BIR.

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[35] *Id.* at 367.
[36] *Id.* at 357.
[37] *Id.* at 378.
[38] G.R. Nos. 158885 & 170680, April 2, 2009, 583 SCRA 168.

To require prior payment of taxes, as proposed in the Dissent is not only tantamount to judicial legislation but would also render nugatory the provision in Section 105 of the old NIRC that the transitional input tax credit shall be "8% of the value of [the beginning] inventory or the actual [VAT] paid on such goods, materials and supplies, whichever is higher" because the actual VAT (now 12%) paid on the goods, materials, and supplies would always be higher than the 8% (now 2%) of the beginning inventory which, following the view of Justice Carpio, would have to exclude all goods, materials, and supplies where no taxes were paid. Clearly, limiting the value of the beginning inventory only to goods, materials, and supplies, where prior taxes were paid, was not the intention of the law. Otherwise, it would have specifically stated that the beginning inventory excludes goods, materials, and supplies where no taxes were paid. As retired Justice Consuelo Ynares-Santiago has pointed out in her Concurring Opinion in the earlier case of *Fort Bonifacio*:

> If the intent of the law were to limit the input tax to cases where actual VAT was paid, it could have simply said that the tax base shall be the actual value-added tax paid. Instead, the law as framed contemplates a situation where a transitional input tax credit is claimed even if there was no actual payment of VAT in the underlying transaction. In such cases, the tax base used shall be the value of the beginning inventory of goods, materials and supplies.[39]

Moreover, prior payment of taxes is not required to avail of the transitional input tax credit because it is not a tax refund *per se* but a tax credit. Tax credit is not synonymous to tax refund. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority.[40] Tax credit, on the other hand, is an amount subtracted directly from one's total tax liability.[41] It is any amount given to a taxpayer as a subsidy, a refund, or an incentive to encourage investment. Thus, unlike a tax refund, prior payment of taxes is not a prerequisite to avail of a tax credit. In

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[39] *Id.* at 201.

[40] Garner, *Black's Law Dictionary*, 7th Edition, p. 1475.

[41] *Id.* at 1473.

fact, in *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*,[42] we declared that prior payment of taxes is not required in order to avail of a tax credit.[43] Pertinent portions of the Decision read:

> While a tax liability is essential to the *availment or use* of any *tax credit*, prior tax payments are not. On the contrary, for the *existence or grant* solely of such credit, neither a tax liability nor a prior tax payment is needed. The Tax Code is in fact replete with provisions granting or allowing *tax credits*, even though no taxes have been previously paid.
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> For example, in computing the *estate tax due*, Section 86(E) allows a *tax credit* — subject to certain limitations — for estate taxes paid to a foreign country. Also found in Section 101(C) is a similar provision for donor's taxes — again when paid to a foreign country — in computing for the *donor's tax due*. The *tax credits* in both instances allude to the prior payment of taxes, even if not made to our government.
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> Under Section 110, a VAT (Value-Added Tax) - registered person engaging in transactions — whether or not subject to the VAT — is also allowed a *tax credit* that includes a ratable portion of any input tax not directly attributable to either activity. This input tax may *either* be the VAT on the purchase or importation of goods or services that is merely due from — not necessarily paid by — such VAT-registered person in the course of trade or business; *or* the transitional input tax determined in accordance with Section 111(A). The latter type may in fact be an amount equivalent to only eight percent of the value of a VAT-registered person's beginning inventory of goods, materials and supplies, when such amount — as computed — is higher than the actual VAT paid on the said items. Clearly from this provision, the *tax credit* refers to an input tax that is either due only or given a value by mere comparison with the VAT actually paid — then later prorated. No tax is actually paid prior to the availment of such credit.
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> In Section 111(B), a one and a half percent input *tax credit* that is merely presumptive is allowed. For the purchase of primary agricultural products used as inputs — either in the processing of sardines, mackerel and milk, or in the manufacture of refined sugar and cooking oil — and for the contract price of public work[s] contracts entered into with the

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[42] 496 Phil. 307 (2005).

[43] *Id.* at 322.

government, again, no prior tax payments are needed for the use of the *tax credit*.

More important, a VAT-registered person whose sales are zero-rated or effectively zero-rated may, under Section 112(A), apply for the issuance of a *tax credit* certificate for the amount of creditable input taxes merely due — again not necessarily paid to — the government and attributable to such sales, to the extent that the input taxes have not been applied against output taxes. Where a taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sales, the amount of creditable input taxes due that are not directly and entirely attributable to any one of these transactions shall be proportionately allocated on the basis of the volume of sales. Indeed, in availing of such *tax credit* for VAT purposes, this provision — as well as the one earlier mentioned — shows that the prior payment of taxes is not a requisite.

It may be argued that Section 28(B)(5)(b) of the Tax Code is another illustration of a *tax credit* allowed, even though no prior tax payments are not required. Specifically, in this provision, the imposition of a final withholding tax rate on cash and/or property dividends received by a nonresident foreign corporation from a domestic corporation is subjected to the condition that a foreign *tax credit* will be given by the domiciliary country in an amount equivalent to taxes that are merely deemed paid. Although true, this provision actually refers to the *tax credit* as a *condition* only for the imposition of a lower tax rate, not as a *deduction* from the corresponding tax liability. Besides, it is not our government but the domiciliary country that credits against the income tax payable to the latter by the foreign corporation, the tax to be foregone or spared.

In contrast, Section 34(C)(3), in relation to Section 34(C)(7)(b), categorically allows as credits, against the income tax imposable under Title II, the amount of income taxes merely incurred — not necessarily paid — by a domestic corporation during a taxable year in any foreign country. Moreover, Section 34(C)(5) provides that for such taxes incurred but not paid, a *tax credit* may be allowed, subject to the condition precedent that the taxpayer shall simply give a bond with sureties satisfactory to and approved by petitioner, in such sum as may be required; and further conditioned upon payment by the taxpayer of any tax found due, upon petitioner's redetermination of it.

In addition to the above-cited provisions in the Tax Code, there are also tax treaties and special laws that grant or allow *tax credits*, even though no prior tax payments have been made.

Under the treaties in which the *tax credit* method is used as a relief to avoid double taxation, income that is taxed in the *state of source* is also taxable in the *state of residence*, but the tax paid in the former is merely allowed as a credit against the tax levied in the latter. Apparently, payment is made to the *state of source*, not the *state of residence*. No tax, therefore, has been *previously* paid to the latter.

Under special laws that particularly affect businesses, there can also be *tax credit* incentives. To illustrate, the incentives provided for in Article 48 of Presidential Decree No. (PD) 1789, as amended by Batas Pambansa Blg. (BP) 391, include *tax credits* equivalent to either five percent of the net value earned, or five or ten percent of the net local content of export. In order to avail of such credits under the said law and still achieve its objectives, no prior tax payments are necessary.

From all the foregoing instances, it is evident that prior tax payments are not indispensable to the availment of a *tax credit*. Thus, the CA correctly held that the availment under RA 7432 did not require prior tax payments by private establishments concerned. However, we do not agree with its finding that the carry-over of *tax credits* under the said special law to succeeding taxable periods, and even their application against internal revenue taxes, did not necessitate the existence of a tax liability.

The examples above show that a tax liability is certainly important in the *availment or use*, not the *existence or grant*, of a *tax credit.* Regarding this matter, a private establishment reporting a *net loss* in its financial statements is no different from another that presents a *net income*. Both are entitled to the *tax credit* provided for under RA 7432, since the law itself accords that unconditional benefit. However, for the losing establishment to immediately apply such credit, where no tax is due, will be an improvident usance.[44]

In this case, when petitioner realized that its transitional input tax credit was not applied in computing its output VAT for the 1st quarter of 1997, it filed a claim for refund to recover the output VAT it erroneously or excessively paid for the 1st quarter of 1997. In filing a claim for tax refund, petitioner is simply applying its transitional input tax credit against the output VAT it has paid. Hence, it is merely availing of the tax credit incentive given by

[44] *Id.* at 322-325.

law to first time VAT taxpayers. As we have said in the earlier case of *Fort Bonifacio*, the provision on transitional input tax credit was enacted to benefit first time VAT taxpayers by mitigating the impact of VAT on the taxpayer.[45] Thus, contrary to the view of Justice Carpio, the granting of a transitional input tax credit in favor of petitioner, which would be paid out of the general fund of the government, would be an appropriation authorized by law, specifically Section 105 of the old NIRC.

The history of the transitional input tax credit likewise does not support the ruling of the CTA and CA. In our Decision dated April 2, 2009, in the related case of *Fort Bonifacio*, we explained that:

> If indeed the transitional input tax credit is integrally related to previously paid sales taxes, the purported causal link between those two would have been nonetheless extinguished long ago. Yet Congress has reenacted the transitional input tax credit several times; that fact simply belies the absence of any relationship between such tax credit and the long-abolished sales taxes. Obviously then, the purpose behind the transitional input tax credit is not confined to the transition from sales tax to VAT.
>
> There is hardly any constricted definition of "transitional" that will limit its possible meaning to the shift from the sales tax regime to the VAT regime. Indeed, it could also allude to the transition one undergoes from not being a VAT-registered person to becoming a VAT-registered person. Such transition does not take place merely by operation of law, E.O. No. 273 or Rep. Act No. 7716 in particular. It could also occur when one decides to start a business. Section 105 states that the transitional input tax credits become available either to (1) a person who becomes liable to VAT; or (2) any person who elects to be VAT-registered. The clear language of the law entitles new trades or businesses to avail of the tax credit once they become VAT-registered. The transitional input tax credit, whether under the Old NIRC or the New NIRC, may be claimed by a newly-VAT registered person such as when a business as it commences operations. If we view the matter from the perspective of a starting entrepreneur, greater clarity emerges on the continued utility of the transitional input tax credit.

[45] *Supra* note 38 at 192-193.

Following the theory of the CTA, the new enterprise should be able to claim the transitional input tax credit because it has presumably paid taxes, VAT in particular, in the purchase of the goods, materials and supplies in its beginning inventory. Consequently, as the CTA held below, if the new enterprise has not paid VAT in its purchases of such goods, materials and supplies, then it should not be able to claim the tax credit. However, it is not always true that the acquisition of such goods, materials and supplies entail the payment of taxes on the part of the new business. In fact, this could occur as a matter of course by virtue of the operation of various provisions of the NIRC, and not only on account of a specially legislated exemption.

Let us cite a few examples drawn from the New NIRC. If the goods or properties are not acquired from a person in the course of trade or business, the transaction would not be subject to VAT under Section 105. The sale would be subject to capital gains taxes under Section 24 (D), but since capital gains is a tax on passive income it is the seller, not the buyer, who generally would shoulder the tax.

If the goods or properties are acquired through donation, the acquisition would not be subject to VAT but to donor's tax under Section 98 instead. It is the donor who would be liable to pay the donor's tax, and the donation would be exempt if the donor's total net gifts during the calendar year does not exceed ₱100,000.00.

If the goods or properties are acquired through testate or intestate succession, the transfer would not be subject to VAT but liable instead for estate tax under Title III of the New NIRC. If the net estate does not exceed ₱200,000.00, no estate tax would be assessed.

The interpretation proffered by the CTA would exclude goods and properties which are acquired through sale not in the ordinary course of trade or business, donation or through succession, from the beginning inventory on which the transitional input tax credit is based. This prospect all but highlights the ultimate absurdity of the respondents' position. Again, nothing in the Old NIRC (or even the New NIRC) speaks of such a possibility or qualifies the previous payment of VAT or any other taxes on the goods, materials and supplies as a pre-requisite for inclusion in the beginning inventory.

It is apparent that the transitional input tax credit operates to benefit newly VAT-registered persons, whether or not they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT

status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer. At the very beginning, the VAT-registered taxpayer is obliged to remit a significant portion of the income it derived from its sales as output VAT. The transitional input tax credit mitigates this initial diminution of the taxpayer's income by affording the opportunity to offset the losses incurred through the remittance of the output VAT at a stage when the person is yet unable to credit input VAT payments.

There is another point that weighs against the CTA's interpretation. Under Section 105 of the Old NIRC, the rate of the transitional input tax credit is "8% of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher." If indeed the transitional input tax credit is premised on the previous payment of VAT, then it does not make sense to afford the taxpayer the benefit of such credit based on "8% of the value of such inventory" should the same prove higher than the actual VAT paid. This intent that the CTA alluded to could have been implemented with ease had the legislature shared such intent by providing the actual VAT paid as the sole basis for the rate of the transitional input tax credit.[46]

In view of the foregoing, we find petitioner entitled to the 8% transitional input tax credit provided in Section 105 of the old NIRC. The fact that it acquired the Global City property under a tax-free transaction makes no difference as prior payment of taxes is not a pre-requisite.

Section 4.105-1 of RR 7-95 is inconsistent with Section 105 of the old NIRC

As regards Section 4.105-1[47] of RR 7-95 which limited the 8% transitional input tax credit to the value of the improvements

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[46] *Id.* at 190-193.

[47] Sec. 4.105 –1. Transitional input tax on beginning inventories. – Taxpayers who became VAT-registered persons upon effectivity of RA No. 7716 who have exceeded the minimum turnover of ₱500,000.00 or who voluntarily register even if their turnover does not exceed ₱500,000.00 shall be entitled to a presumptive input tax on the inventory on hand as of December 31, 1995 on the following: (a) goods purchased for resale in their present condition; (b) materials purchased for further processing, but which have not yet undergone

on the land, the same contravenes the provision of Section 105 of the old NIRC, in relation to Section 100 of the same Code, as amended by RA 7716, which defines "goods or properties," to wit:

> SEC. 100. *Value-added tax on sale of goods or properties.* – (a) Rate and base of tax. – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to 10% of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> (1) The term "goods or properties" shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include:
>
> (A) Real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; x x x

In fact, in our Resolution dated October 2, 2009, in the related case of *Fort Bonifacio*, we ruled that Section 4.105-1 of RR 7-95, insofar as it limits the transitional input tax credit to the value of the improvement of the real properties, is a nullity.[48] Pertinent portions of the Resolution read:

> As mandated by Article 7 of the Civil Code, an administrative rule or regulation cannot contravene the law on which it is based. RR 7-95 is inconsistent with Section 105 insofar as the definition of the term "*goods*" is concerned. This is a legislative act beyond the

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processing; (c) goods which have been manufactured by the taxpayer; (d) goods in process and supplies, all of which are for sale or for use in the course of the taxpayer's trade or business as a VAT-registered person.

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of EO 273 (January 1, 1988).

The transitional input tax shall be 8% of the value of the inventory or actual VAT paid, whichever is higher, which amount may be allowed as tax credit against the output tax of the VAT-registered person. x x x (Emphasis supplied.)

[48] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009, 602 SCRA 159.

authority of the CIR and the Secretary of Finance. The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the objects and purposes of the law, and should not be in contradiction to, but in conformity with, the standards prescribed by law.

To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void.

While administrative agencies, such as the Bureau of Internal Revenue, may issue regulations to implement statutes, they are without authority to limit the scope of the statute to less than what it provides, or extend or expand the statute beyond its terms, or in any way modify explicit provisions of the law. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of a discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.

To recapitulate, RR 7-95, insofar as it restricts the definition of "*goods*" as basis of transitional input tax credit under Section 105 is a nullity.[49]

As we see it then, the 8% transitional input tax credit should not be limited to the value of the improvements on the real properties but should include the value of the real properties as well.

In this case, since petitioner is entitled to a transitional input tax credit of ₱5,698,200,256, which is more than sufficient to cover its output VAT liability for the first quarter of 1997, a refund of the amount of ₱359,652,009.47 erroneously paid as output VAT for the said quarter is in order.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated July 7, 2006 of the Court of Appeals in CA-G.R. SP No. 61436 is **REVERSED** and **SET ASIDE.** Respondent Commissioner of Internal Revenue is ordered to refund to petitioner Fort Bonifacio Development Corporation the amount

[49] *Id.* at 166-167.

of ₱359,652,009.47 paid as output VAT for the first quarter of 1997 in light of the transitional input tax credit available to petitioner for the said quarter, or in the alternative, to issue a tax credit certificate corresponding to such amount.

SO ORDERED.

Velasco, Jr., *Leonardo-de Castro*, *Peralta*, *Bersamin*, *Villarama, Jr.*, *Perez*, and *Mendoza, JJ.*, concur.

Sereno, C.J., *Brion*, *Reyes*, and *Perlas-Bernabe*, *JJ.*, join the dissent of *J.* Carpio.

Abad, J., with concurring opinion.

Carpio, J., see dissenting opinion.

CONCURRING OPINION

ABAD, *J.*:

I fully concur in Justice Mariano C. Del Castillo's *ponencia* and disagree with Justice Antonio T. Carpio's points of dissent.

In 1992 Congress enacted Republic Act (R.A.) 7227 creating the Bases Conversion Development Authority (BCDA) for the purpose of raising funds through the sale to private investors of military lands in Metro Manila. To do this, the BCDA established the Fort Bonifacio Development Corp. (FBDC), a registered corporation, to enable the latter to develop the 214-hectare military camp in Fort Bonifacio, Taguig, for mix residential and commercial purposes. On February 8, 1995 the Government of the Republic of the Philippines ceded the land by deed of absolute sale to FBDC for ₱71.2 billion. Subsequently, cashing in on the sale, BCDA sold at a public bidding 55% of its shares in FBDC to private investors, retaining ownership of the remaining 45%.

In October 1996, after the National Internal Revenue Code (NIRC) subjected the sale and lease of real properties to VAT, FBDC began selling and leasing lots in Fort Bonifacio. FBDC filed its first VAT return covering those sales and leases and

subsequently made cash payments for output VAT due. After which, FBDC filed a claim for refund representing transitional input tax credit based on 8% of the value of its beginning inventory of lands or actual value-added tax paid on its goods, whichever is higher, that Section 105 of the NIRC grants to first-time VAT payers like FBDC.

Because of the inaction of the Commissioner of Internal Revenue (CIR) on its claim for refund, FBDC filed a petition for review before the Court of Tax Appeals (CTA), which court denied the petition. On appeal, the Court of Appeals (CA) affirmed the denial. Both the CTA and the CA premised their actions on the fact that FBDC paid no tax on the Government's sale of the lands to it as to entitle it to the transitional input tax credit. Likewise, citing Revenue Regulations 7-95, which implemented Section 105 of the NIRC, the CTA and the CA ruled that such tax credit given to real estate dealers is essentially based on the value of improvements they made on their land holdings after January 1, 1988, rather than on the book value of the same as FBDC proposed.

FBDC subsequently appealed the CA decision to this Court by petition for review in G.R. 158885, "*Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*." Meantime, similar actions involving subsequent FBDC sales subject to VAT, including the present action, took the same route—CTA, CA, and lastly this Court—because of the CIR's refusal to honor FBDC's claim to transitional input tax credit.

On April 2, 2009 the Court *En Banc* rendered judgment in G.R. 158885,[1] declaring FBDC entitled to the transitional input tax credit that Section 105 of the NIRC granted. In the same decision, the Court also disposed of G.R. 170680, "*Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*," which was consolidated with G.R. 158885. The Court directed the CIR in that case to refund to FBDC the VAT which it paid for the third quarter of 1997. Justice Tinga penned the decision with the

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[1] *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, 583 SCRA 168.

concurrence of Justices Martinez, Corona, Nazario, Velasco, Jr., De Castro, Peralta, and Santiago. Justices Carpio, Quisumbing, Morales, and Brion dissented. Chief Justice Puno and Justice Nachura took no part.

The CIR filed a motion for reconsideration but the Court denied the same with finality on October 2, 2009.[2] Justice De Castro penned the resolution of denial with the concurrence of Justices Santiago, Corona, Nazario, Velasco, Jr., Nachura, Peralta, Bersamin, Del Castillo, and Abad. Justices Carpio and Morales dissented. Chief Justice Puno took no part. Justices Quisumbing and Brion were on leave.

Since the Court's April 2, 2009 decision and October 2, 2009 resolution in G.R. 158885 and G.R. 170680 had long become final and executory, they should foreclose the identical issue in the present cases (G.R. 173425 and G.R. 181092) of whether or not FBDC is entitled to the transitional input tax credit granted in Section 105 of the NIRC. Indeed, the rulings in those previous cases may be regarded as the law of the case and can no longer be changed.

Justice Del Castillo's *ponencia* in the present case reiterates the Court's rulings on exactly the same issue between the same parties. But Justice Carpio's dissent would have the Court flip from its landmark ruling, take FBDC's tax credit back, and hold that the Court grossly erred in allowing FBDC, still 45% government-owned, to get an earlier refund of the VAT payments it made from the sale of Fort Bonifacio lands.

A value added tax is a form of indirect sales tax paid on products and services at each stage of production or distribution, based on the value added at that stage and included in the cost to the ultimate consumer.[3]

To illustrate how VAT works, take a lumber store that sells a piece of lumber to a carpentry shop for ₱100.00. The lumber store must pay a 12% VAT or ₱12.00 on such sale but it may charge

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[2] *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 158885 and 170680, 602 SCRA 159.

[3] *Webster's New World College Dictionary*, Third edition, p. 1474.

the carpentry shop ₱112.00 for the piece of lumber, passing on to the latter the burden of paying the ₱12.00 VAT.

When the carpentry shop makes a wooden stool out of that lumber and sells the stool to a furniture retailer for ₱150.00 (which would now consists of the ₱100.00 cost of the lumber, the ₱50.00 cost of shaping the lumber into a stool, and profit), the carpentry shop must pay a 12% VAT of ₱6.00 on the ₱50.00 value it added to the piece of lumber that it made into a stool. But it may charge the furniture retailer the VAT of ₱12.00 passed on to it by the lumber store as well as the VAT of ₱6.00 that the carpentry shop itself has to pay. Its buyer, the furniture retailer, will pay ₱150.00, the price of the wooden stool, and ₱18.00 (₱12.00 + ₱6.00), the passed-on VAT due on the same.

When the furniture retailer sells the wooden stool to a customer for ₱200.00, it would have added to its ₱150.00 acquisition cost of the stool its mark-up of ₱50.00 to cover its overhead and profit. The furniture retailer must, however, pay an additional 12% VAT of ₱6.00 on the ₱50.00 add-on value of the stool. But it could charge its customer all the accumulated VAT payments: the ₱12.00 paid by the lumber store, the ₱6.00 paid by the carpentry shop, and the other ₱6.00 due from the furniture retailer, for a total of ₱24.00. The customer will pay ₱200.00 for the stool and ₱24.00 in passed-on 12% VAT.

Now, would the furniture retailer pay to the BIR the ₱24.00 VAT that it passed on to its customer and collected from him at the store's counter? Not all of the ₱24.00. The furniture retailer could claim a credit for the ₱12.00 and the ₱6.00 in input VAT payments that the lumber store and the carpentry shop passed on to it and that it paid for when it bought the wooden stool. The furniture retailer would just have to pay to the BIR the output VAT of ₱6.00 covering its ₱50.00 mark-up. This payment rounds out the 12% VAT due on the final sale of the stool for ₱200.00.

When the VAT law first took effect, it would have been unfair for a furniture retailer to pay all of the 10% VAT (the old rate) on the wooden stools in its inventory at that time and not be able to claim deduction for any tax on sale that the lumber store and

the carpentry shop presumably passed on to it when it bought those wooden stools. To remedy this unfairness, Section 105 of the NIRC granted those who must pay VAT for the first time a transitional input tax credit of 8% of the value of the inventory of goods they have or actual value-added tax paid on such goods when the VAT law took effect. The furniture retailer would thus have to pay only a 2% VAT on the wooden stools in that inventory, given the transitional input VAT tax credit of 8% allowed it under the old 10% VAT rate.

In the case before the Court, FBDC had an inventory of Fort Bonifacio lots when the VAT law was made to cover the sale of real properties for the first time. FBDC registered as new VAT payer and submitted to the BIR an inventory of its lots. FBDC sought to apply the 8% transitional input tax credit that Section 105 grants first-time VAT payers like it but the CIR would not allow it. The dissenting opinion of Justice Carpio echoes the CIR's reason for such disallowance. When the Government sold the Fort Bonifacio lands to FBDC, the Government paid no sales tax whatsoever on that sale. Consequently, it could not have passed on to FBDC what could be the basis for the 8% transitional input tax credit that Section 105 provides.

The reasoning appears sound at first glance. But Section 105 grants all first-time VAT payers such transitional input tax credit of 8% without any precondition. It does not say that a taxpayer has to prove that the seller, from whom he bought the goods or the lands, paid sales taxes on them. Consequently, the CIR has no authority to insist that sales tax should have been paid beforehand on FBDC's inventory of lands before it could claim the 8% transitional input tax credit. The Court's decision in G.R. 158885 and G.R. 170680 more than amply explains this point and such explanation need not be repeated here.

But there is a point that has apparently been missed. When the Government sold the military lands to FBDC for development into mixed residential and commercial uses, the presumption is that in fixing their price the Government took into account the price that private lands similarly situated would have fetched in the market place at that time. The clear intent was to privatize ownership of

those former military lands. It would make no sense for the Government to sell the same to intended private investors at a price lesser than the price of comparable private lands. The presumption is that the sale did not give undue benefit to the buyers in violation of the anti-graft and corrupt practices act.

Moreover, there is one clear evidence that the former military lands were sold to private investors at market price. After the Government sold the lands to FBDC, then wholly owned by BCDA, the latter sold 55% of its shares in FBDC to private investors in a public bidding where many competed. Since FBDC had no assets other than the lands it bought from the Government, the bidding was essentially for those lands. There can be no better way of determining the market price of such lands than a well-publicized bidding for them, joined in by interested *bona fide* bidders.

Thus, since the Government sold its lands to investors at market price like they were private lands, the price FBDC paid to it already factored in the cost of sales tax that prices of ordinary private lands included. This means that FBDC, which bought the lands at private-land price, should be allowed like other real estate dealers holding private lands to claim the 8% transitional input tax credit that Section 105 grants with no precondition to first-time VAT payers. Otherwise, FBDC would be put at a gross disadvantage compared to other real estate dealers. It will have to sell at higher prices than market price, to cover the 10% VAT that the BIR insists it should pay. Whereas its competitors will pay only a 2% VAT, given the 8% transitional input tax credit of Section 105. To deny such tax credit to FBDC would amount to a denial of its rights to fairness and to equal protection.

The Court was correct in allowing FBDC the right to be refunded the VAT that it already paid, applying instead to the VAT tax due on its sales the transitional input VAT that Section 105 provides.

Justice Carpio also argues that if FBDC will be given a tax refund, it would be sourced from public funds, which violates Section 4(2) of the Government Auditing Code that government funds or property cannot be used in order to benefit private individuals or entities. They shall only be spent or used solely for public purposes.

But the records show that FBDC actually paid to the BIR the amounts for which it seeks a BIR tax refund. The CIR does not deny this fact. FBDC was forced to pay cash on the VAT due on its sales because the BIR refused to apply the 8% transitional input VAT tax credits that the law allowed it. Since such tax credits were sufficient to cover the VAT due, FBDC is entitled to a refund of the VAT it already paid. And, contrary to the dissenting opinion, if FBDC will be given a tax refund, it would be sourced, not from public funds, but from the VAT payments which FBDC itself paid to the BIR.

Like the previous cases before the Court, the BIR has the option to refund what FBDC paid it with equivalent tax credits. Such tax credits have never been regarded as needing appropriation out of government funds. Indeed, FBDC concedes in its prayers that it may get its refund in the form of a Tax Credit Certificate.

For the above reasons, I concur with Justice Del Castillo's *ponencia*.

DISSENTING OPINION

CARPIO, *J.*:

I dissent. I reiterate my view that petitioner is not entitled to a refund or credit of any input VAT, as explained in my dissenting opinions in *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*,[1] involving an input VAT refund of ₱347,741,695.74 and raising the same legal issue as that raised in the present case.

The majority grants petitioner an 8% transitional input VAT refund or credit of **₱359,652,009.47** in relation to petitioner's output VAT for the first quarter of 1997. Petitioner argues that there is nothing in Section 105 of the old National Internal Revenue Code (NIRC) to support the Court of Appeals' conclusion that

[1] G.R. Nos. 158885 & 170680, 2 April 2009, 583 SCRA 168; G.R. Nos. 158885 & 170680, 2 October 2009, 602 SCRA 159.

prior payment of VAT is required to avail of a refund or credit of the 8% transitional input VAT.

Petitioner's argument has no merit.

It is hornbook doctrine that a taxpayer cannot claim a refund or credit of a tax that was never paid because the law never imposed the tax in the first place, as in the present case. A tax refund or credit assumes a tax was previously paid, which means there was a law that imposed the tax. The source of the tax refund or credit is the tax that was previously paid, and this previously paid tax is simply being ***returned*** to the taxpayer due to double, excessive, erroneous, advance or creditable tax payment.

Without such previous tax payment as source, the tax refund or credit will be an expenditure of public funds for the exclusive benefit of a specific private individual or entity. This violates the fundamental principle, as ruled by this Court in several cases,[2] that public funds can be used only for a public purpose. Section 4(2) of the Government Auditing Code of the Philippines mandates that "***Government funds or property shall be spent or used solely for public purposes***." Any tax refund or credit in favor of a specific taxpayer for a tax that was never paid will have to be sourced from government funds. This is clearly an expenditure of public funds for a ***private*** purpose. Congress cannot validly enact a law transferring government funds, raised through taxation, to the pocket of a private individual or entity. A well-recognized inherent limitation on the constitutional power of the State to levy taxes is that taxes can only be used for a ***public*** purpose.[3]

Even if only a tax credit is granted, it will still be an expenditure of public funds for the benefit of a private purpose in the absence

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[2] *Francisco v. Toll Regulatory Board,* G.R. No. 166910, 19 October 2010, 633 SCRA 470; *Yap v. Commission on Audit,* G.R. No. 158562, 23 April 2010, 619 SCRA 154; *Strategic Alliance Development Corporation v. Radstock Securities Limited*, G.R. No. 178158, 4 December 2009, 607 SCRA 412; *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

[3] *Planters Product, Inc. v. Fertiphil Corporation*, G.R. No. 166006, 14 March 2008, 548 SCRA 485; *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960).

of a prior tax payment as source of the tax credit. The tax due from a taxpayer is a public fund. If the taxpayer is allowed to keep a part of the tax as a tax credit even in the absence of a prior tax payment as source, it is in fact giving a public fund to a private person for a private benefit. This is a clear violation of the constitutional doctrine that taxes can only be used for a public purpose.

Moreover, such refund or credit without prior tax payment is an expenditure of public funds without an appropriation law. This violates Section 29(1), Article VI of the Constitution, which mandates that "***No money shall be paid out of the Treasury except in pursuance of an appropriation made by law***." Without any previous tax payment as source, a tax refund or credit will be paid out of the ***general funds of the government***, a payment that requires an appropriation law. The Tax Code, particularly its provisions on the VAT, is a revenue measure, not an appropriation law.

The VAT is a tax on transactions. The VAT is levied on the value that is added to goods and services at every link in the chain of transactions. However, a tax credit is allowed for taxes **previously paid** when the same goods and services are sold further in the chain of transactions. The purpose of this tax crediting system is ***to prevent double taxation*** in the subsequent sale of the same product and services that were already previously taxed. Taxes previously paid are thus allowed as input VAT credits, which may be deducted from the output VAT liability.

The VAT is paid by the seller of goods and services, but the amount of the VAT is passed on to the buyer as part of the purchase price. Thus, the tax burden actually falls on the buyer who is allowed by law a tax credit or refund in the subsequent sale of the same goods and services. The 8% transitional input VAT was introduced to ease the transition from the old VAT to the expanded VAT system that included more goods and services, requiring new documentation not required under the old VAT system. To simplify the transition, the law allows an 8% presumptive input VAT on goods and services newly covered by the expanded VAT system. In short, the law grants the taxpayer an 8% input VAT ***without need of substantiating the same, on the legal presumption that the VAT imposed by law prior to the expanded VAT system***

had been paid, regardless of whether it was actually paid.

Under the VAT system, a tax refund or credit requires that a previous tax was paid by a taxpayer, or in the case of the transitional input tax, that the tax imposed by law is presumed to have been paid. Not a single centavo of VAT was paid, or could have been paid, by anyone in the sale by the National Government to petitioner of the Global City land for two basic reasons. *First*, the National Government is not subject to any tax, including VAT, when the law authorizes it to sell government property like the Global City land. *Second*, in 1995 the old VAT law did not yet impose VAT on the sale of land and thus no VAT on the sale of land could have been paid by anyone.

Petitioner bought the Global City land from the National Government in 1995, and this sale was of course exempt from any kind of tax, including VAT. The National Government did not pass on to petitioner any previous sales tax or VAT as part of the purchase price of the Global City land. Thus, petitioner is not entitled to claim any transitional input VAT refund or credit when petitioner subsequently sells the Global City land. **In short, since petitioner will not be subject to double taxation on its subsequent sale of the Global City land, petitioner is not entitled to a tax refund or credit under the VAT system**.

Section 105 of the old NIRC provides that a taxpayer is "allowed input tax on his beginning inventory x x x equivalent to 8% x x x, ***or the actual value-added tax paid*** x x x, whichever is higher." The 8% transitional input VAT in Section 105 assumes that a previous tax was imposed by law, whether or not it was actually paid. **This is clear from the phrase "or the *actual* value-added tax paid, whichever is higher," which necessarily means that the VAT was already imposed on the previous sale.** The law creates a presumption of payment of the transitional input VAT without need of substantiating the same, provided the VAT is imposed on the previous sale. ***Thus, in order to be entitled to a tax refund or credit, petitioner must point to the existence of a law imposing the tax for which a refund or credit is sought***. Since land was not yet subject to VAT or any other input business

tax at the time of the sale of the Global City land in 1995, the 8% transitional input VAT could never be presumed to have been paid. Hence, petitioner's argument must fail since the transitional input VAT requires a transaction where a tax has been imposed by law.

Moreover, the *ponente* insists that no prior payment of tax is required to avail of the transitional input tax since it is not a tax refund *per se* but a tax credit. The *ponente* claims that in filing a claim for tax refund the petitioner is simply applying its transitional input tax credit against the output VAT it has paid.

I disagree.

Availing of a tax credit and filing for a tax refund are alternative options allowed by the Tax Code. The choice of one option precludes the other. A taxpayer may either (1) apply for a tax refund by filing for a written claim with the BIR within the prescriptive period, or (2) avail of a tax credit subject to verification and approval by the BIR. A claim for tax credit requires that a person who becomes liable to VAT for the first time must submit a list of his inventories existing on the date of commencement of his status as a VAT-registered taxable person. Both claims for a tax refund and credit are in the nature of a claim for exemption and should be construed in *strictissimi juris* against the person or entity claiming it. The burden of proof to establish the factual basis or the sufficiency and competency of the supporting documents of the claim for tax refund or tax credit rests on the claimant.

In the present case, petitioner actually filed with the BIR **a claim for tax refund** in the amount of ₱347,741,695.74. In filing a claim for tax refund, petitioner has the burden to show that **prior tax payments** were made, or at the very least, that there is an existing law imposing the input tax. Similarly, in **a claim for input tax credit**, a VAT taxpayer must submit his beginning inventory showing **previously paid business taxes** on his purchase of goods, materials and supplies. In both claims, prior tax payments should have been made. **Thus, in claiming for a tax refund or credit, prior tax payment must be clearly established and duly proven by a VAT taxpayer in order to be entitled to the claim.** In **a claim for *transitional* input tax credit**, as in

the present case, the VAT taxpayer must point to a **law imposing the input VAT**, without need of proving such input VAT was actually paid.

Petitioner further argues that RR 7-95 is invalid since the Revenue Regulation (1) limits the 8% transitional input VAT to the value of the improvements on the land, and (2) violates the express provision of Section 105 of the old NIRC, in relation to Section 100, as amended by RA 7716.

Petitioner's contention must again fail.

Section 4.105-1 of RR 7-95[4] and its Transitory Provisions[5] provide that the basis of the 8% transitional input VAT is the value of the ***improvements*** on the land and not the value of the taxpayer's land or real properties. This Revenue Regulation finds **statutory basis** in Section 105 of the old NIRC, which provides that input VAT is allowed on the taxpayer's "**beginning inventory of goods, materials and supplies**." Thus, the presumptive input VAT refers to the input VAT paid on "**goods, materials or supplies"** sold by suppliers to the taxpayer, which the taxpayer **used to introduce improvements on the land**.

Under RA 7716 or the Expanded Value-Added Tax Law, the VAT was expanded to include land or real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business. Before this law was enacted, only improvements on land were subject to VAT. Since the Global City land was not yet subject to VAT at the time of the sale in 1995, the Global City

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[4] SEC. 4.105-1. *Transitional input tax on beginning inventories.* – x x x

However, in the case of real estate dealers, the basis of the presumptive input tax shall be the improvements, such as buildings, roads, drainage systems, and other similar structures, constructed on or after the effectivity of E.O. 273 (1 January 1988). x x x

[5] TRANSITORY PROVISIONS. x x x

(b) Presumptive Input Tax Credits – x x x

(iii) For real estate dealers, the presumptive input tax of 8% of the book value of improvements constructed on or after January 1, 1988 (the effectivity of E.O. 273) shall be allowed. x x x

land ***cannot*** be considered as part of the beginning inventory under Section 105. **Clearly, the 8% transitional input tax credit should only be applied to improvements on the land but not to the land itself**.

There is no dispute that if the National Government sells today a parcel of land, the sale is completely tax-exempt. The sale is not subject to VAT, and the buyer cannot claim any input VAT from the sale. Stated otherwise, a taxpayer like petitioner cannot claim any input VAT on its purchase today of land from the National Government, **even when VAT on land for real estate dealers is already in effect**. With greater reason, petitioner cannot claim any input VAT for its 1995 purchase of government land **when VAT on land was still non-existent** and petitioner, as a real estate dealer, was still not subject to VAT on its sale of land. In short, if petitioner cannot claim a tax refund or credit if the same transaction happened today when there is already a VAT on sales of land by real estate developers, then with more reason petitioner cannot claim a tax refund or credit when the transaction happened in 1995 when there was still no VAT on sales of land by real estate developers.

In sum, granting 8% transitional input VAT in the amount of **₱359,652,009.47** to petitioner is fraught with grave legal infirmities, namely: (1) violation of Section 4(2) of the Government Auditing Code of the Philippines, which mandates that public funds shall be used only for a public purpose; (2) violation of Section 29(1), Article VI of the Constitution, which mandates that no money in the National Treasury, which includes tax collections, shall be spent unless there is an appropriation law authorizing such expenditure; and (3) violation of the fundamental concept of the VAT system, as found in Section 105 of the old NIRC, that before there can be a VAT refund or credit there must be a previously paid input VAT that can be deducted from the output VAT because the purpose of the VAT crediting system is to prevent double taxation.

Accordingly, I vote to **DENY** the petition and **AFFIRM** the 7 July 2006 Decision of the Court of Appeals in CA-G.R. SP No. 61436.

EN BANC

[G.R. Nos. 177857-58. September 4, 2012]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, and RAYMUNDO C. DE VILLA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

WIGBERTO E. TAÑADA, OSCAR F. SANTOS, SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC) and MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS), represented by ROMEO C. ROYANDOYAN, intervenors.

[G.R. No. 178193. September 4, 2012]

DANILO B. URSUA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DUE TO DEVELOPMENT THAT ALTERED THE FACTUAL SITUATION OF THE CASE, THE *FALLO* OF THE DECISION IS CLARIFIED IN ORDER TO RECONCILE WITH THE SAID DEVELOPMENT; CASE AT BAR. — Owing, however, to a certain development that altered the factual situation then obtaining in G.R. Nos. 177857-58, there is, therefore, a compelling need to clarify the *fallo* of the January 24, 2012 Decision to reconcile it, *vis-a-vis* the shares of stocks in SMC which were declared owned by the Government, with this development. x x x The CIIF block of SMC shares, as converted, is the same shares of stocks that are subject matter of, and declared as owned by

the Government in, the January 24, 2012 Decision. Hence, the need to clarify. x x x The Court further resolves to **CLARIFY** that the 753,848,312 SMC Series 1 preferred shares of the CIIF companies converted from the CIIF block of SMC shares, with all the dividend earnings as well as all increments arising from, but not limited to, the exercise of preemptive rights subject of the September 17, 2009 Resolution, shall now be the subject matter of the January 24, 2012 Decision and shall be declared owned by the Government and be used only for the benefit of all coconut farmers and for the development of the coconut industry.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for COCOFED, *et al.*

Estelito P. Mendoza and *Hyacinth E. Rafael* for San Miguel Corporation & Eduardo Cojuangco, Jr.

Cesar G. David and *Francisco B.A. Saavedra* for UCPB.

Efren Moncupa and *Wigberto E. Tañada, et al.* for intervenors in G.R. Nos. 177857-58.

Sycip Salazar Hernandez & Gatmaitan for San Miguel Corp.

Gregorio S. Diño for petitioner in G.R. No. 178193.

R E S O L U T I O N

VELASCO, JR., *J.*:

For consideration is a Motion for Reconsideration of the Decision of the Court dated January 24, 2012 interposed by petitioners in G.R. Nos. 177857-58, namely: Philippine Coconut Producers Federation, Inc. (COCOFED), Manuel V. del Rosario, Domingo P. Espina, Salvador P. Ballares, Joselito A. Moraleda, Paz M. Yason, Vicente A. Cadiz, Cesaria De Luna Titular, and Raymundo C. De Villa.

On March 14, 2012, petitioner-movants filed a Manifestation and Motion stating that they failed to include the Office of the Solicitor General (OSG) in the list of persons to be furnished

with a copy of the Motion for Reconsideration. They accordingly moved that their belated service of a copy of the Motion for Reconsideration on the OSG be considered compliance with the rules on service of motions for reconsideration. This Court noted and accepted the Manifestation and Motion. On March 15, 2012, petitioner-movants filed a Memorandum in support of the instant motion for reconsideration.

To the said motion, intervenors Wigberto E. Tañada, *et al*. filed on June 10, 2012 their Comment and Opposition. The OSG, on the other hand, after filing two motions for extension on May 22, 2012 and June 21, 2012, respectively, filed its Motion to Admit Comment, with Comment attached, on July 13, 2012. This Court noted and admitted the Comment.

As will be recalled, the Court, in its January 24, 2012 Decision, affirmed, with modification, the Partial Summary Judgments (PSJs) rendered by the Sandiganbayan (1) on July 11, 2003 in Civil Case No. 0033-A (PSJ-A), as amended by a Resolution issued on June 5, 2007; and (2) on May 7, 2004 in Civil Case No. 0033-F (PSJ-F), as amended by a Resolution issued on May 11, 2007.

In this recourse, petitioner-movants urge the Court to reconsider its Decision of January 24, 2012 on the ground that it:

1. Made erroneous findings of fact;
2. Erred in affirming the Sandiganbayan's jurisdiction of the subject matter of the subdivided amended complaints;
3. Erred in ruling that due process was not violated;
4. Erred in ruling on the constitutionality of the coconut levy laws;
5. Erred in ruling that the Operative Fact Doctrine does not apply; and
6. Erred in ruling that the right to speedy disposition of cases was not violated.

The instant motion is but a mere reiteration or rehash of the arguments that have already been previously pleaded, discussed

and resolved by this Court in its January 24, 2012 Decision. And considering that the motion's arguments are unsubstantial to warrant a reconsideration or at least a modification, this Court finds no reason to modify or let alone reverse the challenged Decision.

As of 1983,[1] the Class A and B San Miguel Corporation (SMC) common shares in the names of the 14 CIIF Holding Companies are 33,133,266 shares. From 1983 to November 19, 2009 when the Republic of the Philippines representing the Presidential Commission on Good Government (PCGG) filed the "Motion To Approve Sale of CIIF SMC Series I Preferred Shares," the common shares of the CIIF Holding companies increased to 753,848,312 Class A and B SMC common shares.[2]

Owing, however, to a certain development that altered the factual situation then obtaining in G.R. Nos. 177857-58, there is, therefore, a compelling need to clarify the *fallo* of the January 24, 2012 Decision to reconcile it, *vis-a-vis* the shares of stocks in SMC which were declared owned by the Government, with this development. We refer to the Resolution[3] issued by the Court on September 17, 2009 in the then consolidated cases docketed as G.R. Nos. 177857-58, G.R. No. 178193 and G.R. No. 180705. In that Resolution which has long become final and executory, the Court, upon motion of COCOFED and with the approval of the Presidential Commission on Good Government, granted the conversion of 753,848,312 Class "A" and Class "B" SMC common shares registered in the name of the CIIF companies to SMC Series 1 Preferred Shares of 753,848,312, subject to certain terms and conditions. The dispositive portion of the aforementioned Resolution states:

WHEREFORE, the Court **APPROVES** the conversion of the 753,848,312 SMC Common Shares registered in the name of CIIF

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[1] *Rollo* (G.R. Nos. 177857-58), Vol. 1, p. 404, Partial Summary Judgment, Civil Case No. 0033-F.

[2] *Id.*, Vol. 3, p. 2277.

[3] 600 SCRA 102.

companies to **SMC SERIES 1 PREFERRED SHARES** of 753,848,312, the converted shares to be registered in the names of CIIF companies in accordance with the terms and conditions specified in the conversion offer set forth in SMC's Information Statement and appended as Annex "A" of COCOFED's Urgent Motion to Approve the Conversion of the CIIF SMC Common Shares into SMC Series 1 Preferred Shares. The preferred shares shall remain in *custodia legis* and their ownership shall be subject to the final ownership determination of the Court. Until the ownership issue has been resolved, the preferred shares in the name of the CIIF companies shall be placed under sequestration and PCGG management. (Emphasis added.)

The net dividend earnings and/or redemption proceeds from the Series 1 Preferred Shares shall be deposited in an escrow account with the Land Bank of the Philippines or the Development Bank of the Philippines.

Respondent Republic, thru the PCGG, is hereby directed to cause the CIIF companies, including their respective directors, officers, employees, agents, and all other persons acting in their behalf, to perform such acts and execute such documents as required to effectuate the conversion of the common shares into SMC Series 1 Preferred Shares, within ten (10) days from receipt of this Resolution.

Once the conversion is accomplished, the SMC Common Shares previously registered in the names of the CIIF companies shall be released from sequestration.

SO ORDERED.[4]

The CIIF block of SMC shares, as converted, is the same shares of stocks that are subject matter of, and declared as owned by the Government in, the January 24, 2012 Decision. Hence, the need to clarify.

WHEREFORE, the Court resolves to **DENY** with **FINALITY** the instant Motion for Reconsideration dated February 14, 2012 for lack of merit.

The Court further resolves to **CLARIFY** that the 753,848,312 SMC Series 1 preferred shares of the CIIF companies converted

[4] *Id*. at 145-146.

from the CIIF block of SMC shares, with all the dividend earnings as well as all increments arising from, but not limited to, the exercise of preemptive rights subject of the September 17, 2009 Resolution, shall now be the subject matter of the January 24, 2012 Decision and shall be declared owned by the Government and be used only for the benefit of all coconut farmers and for the development of the coconut industry.

As modified, the *fallo* of the January 24, 2012 Decision shall read, as follows:

WHEREFORE, the petitions in G.R. Nos. 177857-58 and 178793 are hereby **DENIED.** The Partial Summary Judgment dated July 11, 2003 in Civil Case No. 0033-A as reiterated with modification in Resolution dated June 5, 2007, as well as the Partial Summary Judgment dated May 7, 2004 in Civil Case No. 0033-F, which was effectively amended in Resolution dated May 11, 2007, are **AFFIRMED WITH MODIFICATION,** only with respect to those issues subject of the petitions in G.R. Nos. 177857-58 and 178193. However, the issues raised in G.R. No. 180705 in relation to Partial Summary Judgment dated July 11, 2003 and Resolution dated June 5, 2007 in Civil Case No. 0033-A, shall be decided by this Court in a separate decision.

The Partial Summary Judgment in Civil Case No. 0033-A dated July 11, 2003, is hereby **MODIFIED,** and shall read as follows:

> WHEREFORE, in view of the foregoing, We rule as follows:
>
> SUMMARY OF THE COURT'S RULING.
>
> A. Re: CLASS ACTION MOTION FOR A SEPARATE SUMMARY JUDGMENT dated April 11, 2001 filed by Defendant Maria Clara L. Lobregat, COCOFED, *et al.*, and Ballares, *et al.*
>
> The Class Action Motion for Separate Summary Judgment dated April 11, 2001 filed by defendant Maria Clara L. Lobregat, COCOFED, *et al.* and Ballares, *et al*., is hereby DENIED for lack of merit.
>
> B. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: COCOFED, *ET AL*. AND BALLARES, *ET AL.)* dated April 22, 2002 filed by Plaintiff.
>
> 1. a. The portion of Section 1 of P.D. No. 755, which reads:

…and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate. taken in relation to Section 2 of the same P.D., is unconstitutional: (i) for having allowed the use of the CCSF to benefit directly private interest by the outright and unconditional grant of absolute ownership of the FUB/UCPB shares paid for by PCA entirely with the CCSF to the undefined "coconut farmers", which negated or circumvented the national policy or public purpose declared by P.D. No. 755 to accelerate the growth and development of the coconut industry and achieve its vertical integration; and (ii) for having unduly delegated legislative power to the PCA.

b. The implementing regulations issued by PCA, namely, Administrative Order No. 1, Series of 1975 and Resolution No. 074-78 are likewise invalid for their failure to see to it that the distribution of shares serve exclusively or at least primarily or directly the aforementioned public purpose or national policy declared by P.D. No. 755.

2. Section 2 of P.D. No. 755 which mandated that the coconut levy funds shall not be considered special and/or fiduciary funds nor part of the general funds of the national government and similar provisions of Sec. 5, Art. III, P.D. No. 961 and Sec. 5, Art. III, P.D. No. 1468 contravene the provisions of the Constitution, particularly, Art. IX (D), Sec. 2; and Article VI, Sec. 29 (3).

3. Lobregat, COCOFED, *et al.* and Ballares, *et al.* have not legally and validly obtained title of ownership over the subject UCPB shares by virtue of P.D. No. 755, the Agreement dated May 25, 1975 between the PCA and defendant Cojuangco, and PCA implementing rules, namely,

Adm. Order No. 1, s. 1975 and Resolution No. 074-78.

4. The so-called "Farmers' UCPB shares" covered by 64.98% of the UCPB shares of stock, which formed part of the 72.2% of the shares of stock of the former FUB and now of the UCPB, the entire consideration of which was charged by PCA to the CCSF, are hereby declared conclusively owned by, the Plaintiff Republic of the Philippines.

xxx xxx xxx

SO ORDERED.

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:

WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK) dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

Wherefore, in view of the foregoing, we hold that:

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

AND THE CONVERTED SMC SERIES 1 PREFERRED SHARES TOTALING 753,848,312 SHARES SUBJECT OF THE RESOLUTION OF THE COURT DATED SEPTEMBER 17, 2009 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID OR ISSUED THEREON AFTER THAT DATE, AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.

THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES, AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.

SO ORDERED.

Costs against petitioners COCOFED, *et al*. in G.R. Nos. 177857-58 and Danilo S. Ursua in G.R. No. 178193.

No further pleadings shall be entertained. Let Entry of Judgment be made in due course.

SO ORDERED.

Sereno, C.J., Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., no part, prior inhibition.

Leonardo-de Castro, J., no part due to prior participation in the Sandiganbayan.

Peralta, J., no part due to prior participation.

EN BANC

[G.R. No. 196231. September 4, 2012]

EMILIO A. GONZALES III, *petitioner, vs.* **OFFICE OF THE PRESIDENT OF THE PHILIPPINES, acting through and represented by EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SENIOR DEPUTY EXECUTIVE SECRETARY JOSE AMOR M. AMORANDO, Officer in Charge, Office of the Deputy Executive Secretary for Legal Affairs, ATTY. RONALDO A. GERON, DIR. ROWENA TURINGAN-SANCHEZ, and ATTY. CARLITO D. CATAYONG,** *respondents.*

[G.R. No. 196232. September 4, 2012]

WENDELL BARRERAS-SULIT, *petitioner, vs.* **ATTY. PAQUITO N. OCHOA, JR., in his capacity as EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT, ATTY. DENNIS F. ORTIZ, ATTY. CARLO D. SULAY and ATTY. FROILAN D.**

MONTALBAN, JR., in their capacities as CHAIRMAN and MEMBERS of the OFFICE OF MALACAÑANG LEGAL AFFAIRS, *respondents.*

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; CONSTRUCTION; IN INTERPRETING A STATUTE CARE SHOULD BE TAKEN THAT EVERY PART THEREOF BE GIVEN EFFECT; APPLICATION IN CASE AT BAR. — It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. A construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole. Otherwise stated, the law must not be read in truncated parts. Every part thereof must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.

2. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); CONCURRENT DISCIPLINARY JURISDICTION OF THE OMBUDSMAN AND THE PRESIDENT OVER DEPUTY OMBUDSMAN AND SPECIAL PROSECUTOR, INTENDED BY CONGRESS; SUSTAINED. — While Section 21 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor. x x x A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. This sharing of authority goes into the wisdom of the legislature, which prerogative falls beyond the pale of judicial inquiry. x x x Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person

of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities. x x x Unquestionably, the Ombudsman is possessed of jurisdiction to discipline his own people and mete out administrative sanctions upon them, including the extreme penalty of dismissal from the service. However, it is equally without question that the President has concurrent authority with respect to removal from office of the Deputy Ombudsman and Special Prosecutor, albeit under specified conditions. Considering the principles attending concurrence of jurisdiction where the Office of the President was the first to initiate a case against petitioner Gonzales, prudence should have prompted the Ombudsman to desist from proceeding separately against petitioner through its Internal Affairs Board, and to defer instead to the President's assumption of authority, especially when the administrative charge involved "demanding and soliciting a sum of money" which constitutes either *graft and corruption* or *bribery*, both of which are grounds reserved for the President's exercise of his authority to remove a Deputy Ombudsman.

3. ID.; ID.; ID.; ID.; DOCTRINE OF *RES JUDICATA*; APPLICATION THEREOF IN THE EXERCISE OF ADMINISTRATIVE POWERS, NOT PROPER; EXEMPLIFIED. — Assuming that the Ombudsman's Internal Affairs Board properly conducted a subsequent and parallel administrative action against petitioner, its earlier dismissal of the charge of graft and corruption against petitioner could not have the effect of preventing the Office of the President from proceeding against petitioner upon the same ground of graft and corruption. After all, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers. In *Montemayor v. Bundalian*, the Court sustained the President's dismissal from service of a Regional Director of the Department of Public Works and Highways (DPWH) who was found liable for unexplained wealth upon investigation by the now defunct Philippine Commission Against Graft and

Corruption (PCAGC). The Court categorically ruled therein that the prior dismissal by the Ombudsman of similar charges against said official did not operate as *res judicata* in the PCAGC case.

4. ID.; ID.; ID.; ID.; POWER OF THE PRESIDENT TO REMOVE DEPUTY OMBUDSMAN AND SPECIAL PROSECUTOR; JUSTIFIED UNDER THE DOCTRINE OF IMPLICATION. — Article XI of the 1987 Constitution confers upon the President the power to appoint the Ombudsman and his Deputies. x x x While the removal of the Ombudsman himself is also expressly provided for in the Constitution, which is by impeachment under Section 2 of the same Article, there is, however, no constitutional provision similarly dealing with the removal from office of a Deputy Ombudsman, or a Special Prosecutor, for that matter. By enacting Section 8(2) of R.A. 6770, Congress simply filled a gap in the law without running afoul of any provision in the Constitution or existing statutes. In fact, the Constitution itself, under Section 2, authorizes Congress to provide for the removal of all other public officers, including the Deputy Ombudsman and Special Prosecutor, who are not subject to impeachment. x x x Under the doctrine of implication, the power to appoint carries with it the power to remove. As a general rule, therefore, all officers appointed by the President are also removable by him. The exception to this is when the law expressly provides otherwise – that is, when the power to remove is expressly vested in an office or authority other than the appointing power. x x x In giving the President the power to remove a Deputy Ombudsman and Special Prosecutor, Congress simply laid down in express terms an authority that is already implied from the President's constitutional authority to appoint the aforesaid officials in the Office of the Ombudsman.

5. ID.; ID.; ID.; ID.; ID.; CONGRESS LAID DOWN RESTRICTIONS IN ORDER NOT TO DIMINISH OR COMPROMISE THE CONSTITUTIONAL INDEPENDENCE OF THE OFFICE OF THE OMBUDSMAN. — Being aware of the constitutional imperative of shielding the Office of the Ombudsman from political influences and the discretionary acts of the executive, Congress laid down two restrictions on the President's exercise of such power of removal over a Deputy Ombudsman, namely: (1) that the removal of the Deputy Ombudsman must be for any of the grounds provided for the removal of the Ombudsman and (2) that there must be

observance of due process. Reiterating the grounds for impeachment laid down in Section 2, Article XI of the 1987 Constitution, paragraph 1 of Section 8 of R.A. No. 6770 states that the Deputy Ombudsman may be removed from office for the same grounds that the Ombudsman may be removed through impeachment, namely, *"culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust."* Thus, it cannot be rightly said that giving the President the power to remove a Deputy Ombudsman, or a Special Prosecutor for that matter, would diminish or compromise the constitutional independence of the Office of the Ombudsman. It is, precisely, a measure of protection of the independence of the Ombudsman's Deputies and Special Prosecutor in the discharge of their duties that their removal can only be had on grounds provided by law.

6. ID.; ID.; ID.; ID.; MAJORITY VOTE IS REQUIRED TO INVALIDATE A LAW; NOT PRESENT IN CASE AT BAR. — The challenge to the constitutionality of Section 8(2) of the Ombudsman Act has, nonetheless, failed to obtain the necessary votes to invalidate the law, thus, keeping said provision part of the law of the land. To recall, these cases involve two distinct issues: (a) the constitutionality of Section 8(2) of the Ombudsman Act; and (b) the validity of the administrative action of removal taken against petitioner Gonzales. While the Court voted unanimously to reverse the decision of the OP removing petitioner Gonzales from office, it was equally divided in its opinion on the constitutionality of the assailed statutory provision in its two deliberations held on April 17, 2012 and September 4, 2012. There being no majority vote to invalidate the law, the Court, therefore, dismisses the challenge to the constitutionality of Section 8(2) of the Ombudsman Act in accordance with Section 2(d), Rule 12 of the Internal Rules of the Court. Indeed, Section 4(2), Article VIII of the 1987 Constitution requires the vote of the majority of the Members of the Court actually taking part in the deliberations to sustain any challenge to the constitutionality or validity of a statute or any of its provisions.

7. ID.; CONSTITUTIONAL; BILL OF RIGHTS; DUE PROCESS; CONSTRUED. — Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings,

the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. Due process is simply having the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. Mere opportunity to be heard is sufficient. As long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.

8. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; ADMINISTRATIVE PROCEEDINGS; THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE; APPLICATION IN CASE AT BAR. — In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The fact, therefore, that petitioner later refused to participate in the hearings before the OP is not a hindrance to a finding of his culpability based on substantial evidence, which only requires that a decision must "have something upon which it is based." Factual findings of administrative bodies are controlling when supported by substantial evidence.

9. ID.; ID.; IMPEACHMENT; BETRAYAL OF PUBLIC TRUST, AS A GROUND; CONSTRUED. — *Betrayal of public trust* is a new ground for impeachment under the 1987 Constitution added to the existing grounds of *culpable violation of the Constitution, treason, bribery, graft and corruption* and *other high crimes*. While it was deemed broad enough to cover any violation of the oath of office, the impreciseness of its definition also created apprehension that "such an overarching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature." Indeed, the catch-all phrase *betrayal of public trust* that referred to "all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office" could be easily utilized for every conceivable misconduct or negligence in office. x x x The Constitutional

Commission eventually found it reasonably acceptable for the phrase *betrayal of public trust* to refer to "[a]cts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers." In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.

10. ID.; ID.; NEGLECT OF DUTY OR MISCONDUCT IN OFFICE; WHEN FINDINGS THEREOF DO NOT AMOUNT TO BETRAYAL OF PUBLIC TRUST, THE PENALTY OF REMOVAL FROM OFFICE IS NOT PROPER; APPLICATION IN CASE AT BAR. — The invariable rule is that administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. In the instant case, while the evidence may show some amount of wrongdoing on the part of petitioner, the Court seriously doubts the correctness of the OP's conclusion that the imputed acts amount to gross neglect of duty and grave misconduct constitutive of *betrayal of public trust*. To say that petitioner's offenses, as they factually appear, weigh heavily enough to constitute *betrayal of public trust* would be to ignore the significance of the legislature's intent in prescribing the removal of the Deputy Ombudsman or the Special Prosecutor for causes that, theretofore, had been reserved only for the most serious violations that justify the removal by impeachment of the highest officials of the land. x x x A Deputy Ombudsman and a Special Prosecutor are not impeachable officers. However, by providing for their removal from office on the same grounds as removal by impeachment, the legislature could not have intended to redefine constitutional standards of *culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes*, as well as *betrayal of public trust*, and apply them less stringently. Hence, where *betrayal of public trust*, for purposes of impeachment, was not intended to cover all kinds of official wrongdoing and plain errors of judgment, this should remain true even for purposes of removing a Deputy Ombudsman and Special Prosecutor from office. Hence, the fact that the grounds for impeachment have

been made statutory grounds for the removal by the President of a Deputy Ombudsman and Special Prosecutor cannot diminish the seriousness of their nature nor the acuity of their scope. Betrayal of public trust could not suddenly "overreach" to cover acts that are not vicious or malevolent on the same level as the other grounds for impeachment. x x x Accordingly, the OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of dismissal must be reversed and set aside, as the findings of neglect of duty or misconduct in office do not amount to a *betrayal of public trust.* Hence, the President, while he may be vested with authority, cannot order the removal of petitioner as Deputy Ombudsman, there being no intentional wrongdoing of the grave and serious kind amounting to a *betrayal of public trust.*

11. ID.; ID.; ID.; PLEA BARGAINING, CONSTRUED. — Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. The essence of a plea bargaining agreement is the allowance of an accused to plead guilty to a lesser offense than that charged against him. Section 2, Rule 116 of the Revised Rules of Criminal Procedure provides the procedure therefor. x x x Plea bargaining is allowable when the prosecution does not have sufficient evidence to establish the guilt of the accused of the crime charged.

CARPIO, *J.*, *concurring opinion:*

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); DELEGATION TO THE PRESIDENT OF THE POWER TO REMOVE A DEPUTY OMBUDSMAN OR THE SPECIAL PROSECUTOR, SUSTAINED. — Section 2, Article XI of the 1987 Constitution prescribes how all public officers and employees, **both impeachable and non-impeachable**, may be removed. x x x Section 2 of Article XI consists of two parts. The first sentence identifies the public officials who are subject to removal only by impeachment. **The second sentence *explicitly* leaves to the discretion of Congress, through an implementing law, the removal of *all other* public officers and employees. In other words, by stating that all other non-impeachable officers and**

employees *"may be removed from office as provided by law"* — the Constitution expressly grants to Congress the power to determine the manner and cause of removal, including who will be the disciplinary authority, of non-impeachable officers and employees. Clearly, Section 8(2) of the Ombudsman Act is valid and constitutional since Congress is expressly empowered to legislate such law pursuant to Section 2, Article XI of the Constitution. x x x Congress has the power and discretion to delegate to the President the power to remove a Deputy Ombudsman or the Special Prosecutor under Section 8(2) of the Ombudsman Act. While the 1987 Constitution already empowers the Ombudsman to investigate and to recommend to remove a Deputy Ombudsman and the Special Prosecutor, this does not preclude Congress from providing other modes of removal. The Deputy Ombudsman and the Special Prosecutor are not among the impeachable officers under the 1987 Constitution. Thus, as expressly provided in Section 2, Article XI of the Constitution, they "**may be removed from office as provided by law**." Congress, pursuant to this constitutional provision and in the exercise of its plenary power, enacted the Ombudsman Act, conferring on the President the power to remove the Deputy Ombudsman and the Special Prosecutor as provided in Section 8(2) of the Ombudsman Act.

2. ID.; ID.; ID.; ID.; THE GRANT OF CONCURRENT JURISDICTION TO THE PRESIDENT AND THE OMBUDSMAN IN THE REMOVAL OF THE DEPUTY OMBUDSMAN AND THE SPECIAL PROSECUTOR IS THE LEGISLATIVE INTENT; JUSTIFIED. — In view of Section 8(2) and Section 21 of the Ombudsman Act, the legislative intent is to grant concurrent jurisdiction to the President and the Ombudsman in the removal of the Deputy Ombudsman and the Special Prosecutor. An "endeavor should be made to harmonize the provisions of a law x x x so that each shall be effective." This is not a hollow precept of statutory construction. This is based not only on democratic principle but also on the separation of powers, that this Court should not be so casual in voiding the acts of the popularly elected legislature unless there is a clear violation of the Constitution. x x x Section 8(2) of the Ombudsman Act is consistent with our system of checks and balances. The provision is a narrow form of delegation which empowers the President to remove only two officers in the Office of the

Ombudsman, *i.e.* the Deputy Ombudsman and the Special Prosecutor. The proposition that an external disciplinary authority compromises the Ombudsman's independence fails to recognize that the Constitution expressly authorizes Congress to determine the mode of removal of all non-impeachable officers and employees. It also fails to recognize that under a system of checks and balances, an external disciplinary authority is desirable and is often the norm. In disciplinary cases, the 1987 Constitution empowers the Ombudsman to direct the proper disciplinary authority "to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith." This is further implemented by the Ombudsman Act which provides that "[a]t its option, the Office of **the Ombudsman may refer certain complaints to the proper disciplinary authority** for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law." Clearly, the Ombudsman is not constitutionally empowered to act alone. Congress can even authorize the Department of Justice or the Office of the President to investigate cases within the jurisdiction of the Ombudsman. Similarly, the Ombudsman can investigate public officers and employees who are under the disciplinary authority of heads of other bodies or agencies.

3. ID.; ID.; NOT ALL BODIES DECLARED BY THE CONSTITUTION AS INDEPENDENT HAVE THE EXCLUSIVE DISCIPLINARY AUTHORITY OVER ALL THEIR RESPECTIVE OFFICIALS AND EMPLOYEES; EXPLAINED. —When the 1987 Constitution speaks of "independent" bodies, it does not mean complete insulation from other offices. The text, history and structure of the Constitution contemplate checks and balances that result in the expansion, contraction or concurrence of powers, a coordinate functioning among different bodies of government that is not limited to the executive, legislative and judicial branches, but includes the "independent" constitutional bodies. The very structure of our government belies the claim that "independent" bodies *necessarily* have exclusive authority to discipline its officers. x x x Any reading of the 1987 Constitution does not warrant the conclusion that all bodies declared by the Constitution as "independent" have exclusive

disciplinary authority over all their respective officials and employees. Unlike the Judiciary where such exclusivity is expressly provided for in the Constitution, there is no reason to read such provision in the Ombudsman where the Constitution is silent. On the contrary, the constitutional provision that non-impeachable officers and employees "**may be removed from office as provided by law**" removes any doubt that Congress can determine the mode of removal of non-impeachable officers and employees of "independent" bodies other than the Judiciary. An "independent" body does not have exclusive disciplinary authority over its officials and employees unless the Constitution expressly so provides, as in the case of the Judiciary.

BRION, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); SEC. 8(2) THEREOF PROVIDING THAT THE PRESIDENT MAY REMOVE A DEPUTY OMBUDSMAN, UNCONSTITUTIONAL; RATIONALE. —The Office of the Ombudsman is a very powerful government constitutional agency tasked to enforce the accountability of public officers. Section 21 of The Ombudsman Act of 1989 (RA No. 6770) concretizes this constitutional mandate x x x The Ombudsman's duty to protect the people from unjust, illegal and inefficient acts of all public officials emanates from Section 12, Article XI of the Constitution. These broad powers include all acts of malfeasance, misfeasance, and nonfeasance of all public officials, **including Members of the Cabinet and key Executive officers**, during their tenure. **To support these broad powers, the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics and from fear of external reprisal by making it an "independent" office.** Section 5, Article XI of the Constitution expressed this intent. x x x **Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman)** clearly runs against the constitutional intent and should, thus, be declared void. x x x **The absence of a constitutional provision providing for the removal of the Commissioners and Deputy Ombudsmen does not mean that Congress can empower the President to discipline or remove them in violation of the independence that the Constitution textually and expressly provides.** As members of independent

constitutional bodies, they should be similarly treated as lower court judges, subject to discipline only by the head of their respective offices and subject to the general power of the Ombudsman to dismiss officials and employees within the government for cause. **No reason exists to treat them differently**. x x x Under this structure providing for terms and conditions fully supportive of "independence," it makes no sense to insulate their appointments and their salaries from politics**, *but not their tenure***. One cannot simply argue that the President's power to discipline them is limited to specified grounds, since the mere filing of a case against them can result in their suspension and can interrupt the performance of their functions, in violation of Section 12, Article XI of the Constitution. With only one term allowed under Section 11, a Deputy Ombudsman or Special Prosecutor removable by the President can be reduced to the very same ineffective Office of the Ombudsman that the framers had foreseen and carefully tried to avoid by making these offices independent constitutional bodies. x x x Given the support of the Constitution, of the Records of the Constitutional Commission, and of previously established jurisprudence, we cannot uphold the validity of Section 8(2) of RA No. 6770 merely because a similar constitutionally-unsupported provision exists under RA No. 7653. Under our legal system, statutes give way to the Constitution, to the intent of its framers and to the corresponding interpretations made by the Court. It is not, and should not be, the other way around.

2. ID.; ID.; ID.; DEPUTY OMBUDSMAN AND SPECIAL PROSECUTORS; WHILE THE ADMINISTRATIVE PROCEEDINGS CONDUCTED BY THE OFFICE OF THE PRESIDENT SHOULD BE VOIDED, THE OMBUDSMAN SHOULD NOT BE PREVENTED FROM CONDUCTING PROPER INVESTIGATION AND FILING OF PROPER ADMINISTRATIVE PROCEEDINGS; WHEN CALLED FOR. — I join the *ponente* in declaring that the Deputy Ombudsmen and Special Prosecutors should not escape accountability for their wrongdoing or inefficiency. I differ only in allowing the President, an elective official whose position is primarily political, to discipline or remove members of independent constitutional bodies such as the Office of the Ombudsman. Thus, the administrative proceedings conducted by the Office of the

President against petitioner Gonzales should be voided and those against petitioner Sulit discontinued. Lastly, while I find the proceedings before the Office of the President constitutionally infirm, nothing in this opinion should prevent the Ombudsman from conducting the proper investigations and, when called for, from filing the proper administrative proceedings against petitioners Gonzales and Sulit. In the case of Gonzales, further investigation may be made by the Ombudsman, but only for aspects of his case not otherwise covered by the Court's Decision.

ABAD, *J., dissenting opinion:*

POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); THE POWER OF THE PRESIDENT TO REMOVE THE DEPUTY OMBUDSMAN AND THE SPECIAL PROSECUTOR IS UNCONSTITUTIONAL AND VOID; RATIONALE. — The Constitution has reasons for making the Office of the Ombudsman "independent." Its primordial duty is to investigate and discipline all elective and appointive government officials. Specifically, Section 13, Article XI of the Constitution vests in that Office the absolute power to investigate any malfeasance, misfeasance, or non-feasance of public officers or employees. This function places it a notch higher than other grievance-handling, investigating bodies. With the exception of those who are removable only by impeachment, the Office of the Ombudsman can investigate and take action against any appointive or elected official for corruption in office, be they Congressmen, Senators, Department Secretaries, Governors, Mayors, or Barangay Captains. Thus, the Office of the Ombudsman needs to be insulated from the pressures, interventions, or vindictive acts of partisan politics. The Court has itself refrained from interfering with the Office of the Ombudsman's exercise of its powers. It is not the Court but the Ombudsman who is the champion of the people and the preserver of the integrity of public service. The Office of the Ombudsman, which includes the Deputy Ombudsman and the Special Prosecutor, cannot be beholden to or fearful of any one, the President included. x x x If the Court were to uphold the Constitutionality of Section 8(2) of R.A. 6770, then the Deputy Ombudsman and the Special Prosecutor will be able to

> openly defy the orders of the Ombudsman and disregard his policies without fear of disciplinary sanction from him. The law makes them subject to investigation and removal only by the President. It is him they have to obey and will obey. Surely, this is not what the Constitution contemplates in an "independent" Office of the Ombudsman. The present cases are precisely in point. The Ombudsman did not herself appear to regard Gonzales and Sulit's actuations in the subject matters of the cases against them worthy of disciplinary action. But, given that the Secretary of Justice, an alter ego of the President, took an opposite view, the President deigned to investigate them. In effect, the President is able to substitute his judgment for that of the Ombudsman in a matter concerning a function of the latter's office. This gives the President a measure of control over the Ombudsman's work.

APPEARANCES OF COUNSEL

Poncevic M. Ceballos for petitioner in G.R. No. 196231.

Camara Meris & Associates Law Office for petitioner in G.R. No. 196232.

The Solicitor General for public respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Cases

These two petitions have been consolidated not because they stem from the same factual milieu but because they raise a common thread of issues relating to the President's exercise of the power to remove from office herein petitioners who claim the protective cloak of independence of the constitutionally-created office to which they belong – the Office of the Ombudsman.

The first case, docketed as **G.R. No. 196231**, is a Petition for *Certiorari* (with application for issuance of temporary restraining order or status quo order) which assails on jurisdictional

grounds the Decision[1] dated March 31, 2011 rendered by the Office of the President in OP Case No. 10-J-460 dismissing petitioner Emilio A. Gonzales III, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), upon a finding of guilt on the administrative charges of *Gross Neglect of Duty* and *Grave Misconduct* constituting a *Betrayal of Public Trust*. The petition primarily seeks to declare as unconstitutional **Section 8(2) of Republic Act (R.A.) No. 6770**, otherwise known as the Ombudsman Act of 1989, which gives the President the power to dismiss a Deputy Ombudsman of the Office of the Ombudsman.

The second case, docketed as **G.R. No. 196232**, is a Petition for *Certiorari* and Prohibition (with application for issuance of a temporary restraining order or status quo order) seeking to annul, reverse and set aside (1) the undated Order[2] requiring petitioner Wendell Barreras-Sulit to submit a written explanation with respect to alleged acts or omissions constituting serious/ grave offenses in relation to the Plea Bargaining Agreement (PLEBARA) entered into with Major General Carlos F. Garcia; and (2) the April 7, 2011 Notice of Preliminary Investigation,[3] both issued by the Office of the President in OP-DC-Case No. 11-B-003, the administrative case initiated against petitioner as a Special Prosecutor of the Office of the Ombudsman. The petition likewise seeks to declare as unconstitutional Section 8(2) of R.A. No. 6770 giving the President the power to dismiss a Special Prosecutor of the Office of the Ombudsman.

The facts from which these two cases separately took root are neither complicated nor unfamiliar.

In the morning of August 23, 2010, news media scampered for a minute-by-minute coverage of a hostage drama that had slowly unfolded right at the very heart of the City of Manila. While initial news accounts were fragmented it was not difficult

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[1] Annex "A", *rollo* (G.R. No. 196231), pp. 72-86.

[2] Annex "A", *rollo* (G.R. No. 196232), p. 26.

[3] Annex "C", *id.* at 33.

to piece together the story on the hostage-taker, Police Senior Inspector Rolando Mendoza. He was a disgruntled former police officer attempting to secure his reinstatement in the police force and to restore the benefits of a life-long, and erstwhile bemedaled, service. The following day, broadsheets and tabloids were replete with stories not just of the deceased hostage-taker but also of the hostage victims, eight of whom died during the bungled police operation to rescue the hapless innocents. Their tragic deaths triggered word wars of foreign relation proportions. One newspaper headline ran the story in detail, as follows:

MANILA, Philippines - A dismissed policeman armed with an assault rifle hijacked a bus packed with tourists, and killed most of its passengers in a 10 hour-hostage drama shown live on national television until last night.

Former police senior inspector Rolando Mendoza was shot dead by a sniper at past 9 p.m.

Mendoza hijacked the bus and took 21 Chinese tourists hostage, demanding his reinstatement to the police force.

The hostage drama dragged on even after the driver of the bus managed to escape and told police that all the remaining passengers had been killed.

Late into the night assault forces surrounded the bus and tried to gain entry, but a pair of dead hostages handcuffed to the door made it difficult for them. Police said they fired at the wheels of the bus to immobilize it.

Police used hammers to smash windows, door and windshield but were met with intermittent fire from the hostage taker.

Police also used tear gas in an effort to confirm if the remaining hostages were all dead or alive. When the standoff ended at nearly 9 p.m., some four hostages were rescued alive while Mendoza was killed by a sniper.

Initial reports said some 30 policemen stormed the bus. Shots also rang out, sending bystanders scampering for safety.

It took the policemen almost two hours to assault the bus because gunfire reportedly rang out from inside the bus.

Mendoza hijacked the tourist bus in the morning and took the tourists hostage.

Mendoza, who claimed he was illegally dismissed from the police service, initially released nine of the hostages during the drama that began at 10 a.m. and played out live on national television.

Live television footage showed Mendoza asking for food for those remaining in the bus, which was delivered, and fuel to keep the air-conditioning going.

The disgruntled former police officer was reportedly armed with an M-16 rifle, a 9 mm pistol and two hand grenades.

Mendoza posted a handwritten note on the windows of the bus, saying "big deal will start after 3 p.m. today." Another sign stuck to another window said "3 p.m. today deadlock."

Stressing his demand, Mendoza stuck a piece of paper with a handwritten message: "Big mistake to correct a big wrong decision." A larger piece of paper on the front windshield was headed, "Release final decision," apparently referring to the case that led to his dismissal from the police force.

Negotiations dragged on even after Mendoza's self-imposed deadline.

Senior Police Officer 2 Gregorio Mendoza said his brother was upset over his dismissal from the police force. "His problem was he was unjustly removed from service. There was no due process, no hearing, no complaint," Gregorio said.

Last night, Gregorio was arrested by his colleagues on suspicions of being an accessory to his brother's action. Tensions rose as relatives tried to prevent lawmen from arresting Gregorio in front of national television. This triggered the crisis that eventually forced Mendoza to carry out his threat and kill the remaining hostages.

Negotiators led by Superintendent Orlando Yebra and Chief Inspector Romeo Salvador tried to talk Mendoza into surrendering and releasing the 21 hostages, mostly children and three Filipinos, including the driver, the tourist guide and a photographer. Yebra reportedly lent a cellphone to allow communications with Mendoza inside the bus, which was parked in front of the Quirino Grandstand.

Children could be seen peeking from the drawn curtains of the bus while police negotiators hovered near the scene.

Manila Police District (MPD) director Chief Superintendent Rodolfo Magtibay ordered the deployment of crack police teams and snipers near the scene. A crisis management committee had been activated with Manila Vice Mayor Isko Moreno coordinating the actions with the MPD.

Earlier last night, Ombudsman Merceditas Gutierrez had a meeting with Moreno to discuss Mendoza's case that led to his dismissal from the service. Ombudsman spokesman Jose de Jesus said Gutierrez gave a "sealed letter" to Moreno to be delivered to Mendoza. De Jesus did not elaborate on the contents of the letter but said Moreno was tasked to personally deliver the letter to Mendoza.

MPD spokesman Chief Inspector Edwin Margarejo said Mendoza was apparently distraught by the slow process of the Ombudsman in deciding his motion for reconsideration. He said the PNP-Internal Affairs Service and the Manila Regional Trial Court had already dismissed criminal cases against him.

The hostage drama began when Mendoza flagged down the Hong Thai Travel Tourist bus (TVU-799), pretending to hitch a ride. Margarejo said the bus had just left Fort Santiago in Intramuros when Mendoza asked the driver to let him get on and ride to Quirino Grandstand. Upon reaching the Quirino Grandstand, Mendoza announced to the passengers that they would be taken hostage. "Having worn his (police) uniform, of course there is no doubt that he already planned the hostage taking," Margarejo said. – Sandy Araneta, Nestor Etolle, Delon Porcalla, Amanda Fisher, Cecille Suerte Felipe, Christina Mendez, AP [Grandstand Carnage, The Philippine Star, Updated August 24, 2010 12:00 AM, Val Rodriguez].[4]

In a completely separate incident much earlier in time, more particularly in December of 2003, 28-year-old Juan Paolo Garcia and 23-year-old Ian Carl Garcia were caught in the United States smuggling $100,000 from Manila by concealing the cash in their luggage and making false statements to US Customs Officers. The Garcia brothers pleaded guilty to bulk cash smuggling and agreed to forfeit the amount in favor of the US Government

[4] Val Rodriguez, *Grandstand Carnage*. The Philippine Star, August 24, 2010<http://www.philstar.com /Article.aspx?articleId =60563&publicationSubCategoryId=63> (visited January 5, 2011).

in exchange for the dismissal of the rest of the charges against them and for being sentenced to time served. Inevitably, however, an investigation into the source of the smuggled currency conducted by US Federal Agents and the Philippine Government unraveled a scandal of military corruption and amassed wealth — the boys' father, Retired Major General Carlos F. Garcia, former Chief Procurement Officer of the Armed Forces, had accumulated more than ₱300 Million during his active military service. Plunder and Anti-Money Laundering cases were eventually filed against Major General Garcia, his wife and their two sons before the Sandiganbayan.

G.R. No. 196231

Sometime in 2008, a formal charge[5] for *Grave Misconduct* (robbery, grave threats, robbery extortion and physical injuries) was filed before the Philippine National Police-National Capital Region (PNP-NCR) against Manila Police District Senior Inspector (P/S Insp.) Rolando Mendoza, and four others, namely, Police Inspector Nelson Lagasca, Senior Police Inspector I Nestor David, Police Officer III Wilson Gavino, and Police Officer II Roderick Lopena. A similar charge was filed by the private complainant, Christian M. Kalaw, before the Office of the City Prosecutor, Manila, docketed as I.S. No. 08E-09512.

On July 24, 2008, while said cases were still pending, the Office of the Regional Director of the National Police Commission (NPC) turned over, upon the request of petitioner Emilio A. Gonzales III, all relevant documents and evidence in relation to said case to the Office of the Deputy Ombudsman for appropriate administrative adjudication.[6] Subsequently, Case No. OMB-P-A-08-0670-H for *Grave Misconduct* was lodged against P/S Insp. Rolando Mendoza and his fellow police officers, who filed their respective verified position papers as directed.

Meanwhile, on August 26, 2008, I.S. No. 08E-09512 was dismissed[7] upon a finding that the material allegations made by

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[5] Charge Sheet, *rollo* (G.R. No. 196231), p. 87.

[6] *Id.* at 231.

[7] Resolution dated August 26, 2008, *id.* at 233-235.

the complainant had not been substantiated "by any evidence at all to warrant the indictment of respondents of the offenses charged." Similarly, the Internal Affairs Service of the PNP issued a Resolution[8] dated October 17, 2008 recommending the dismissal *without prejudice* of the administrative case against the same police officers, for failure of the complainant to appear in three (3) consecutive hearings despite due notice.

However, on February 16, 2009, upon the recommendation of petitioner Emilio Gonzales III, a Decision[9] in Case No. OMB-P-A-08-0670-H finding P/S Insp. Rolando Mendoza and his fellow police officers guilty of *Grave Misconduct* was approved by the Ombudsman. The dispositive portion of said Decision reads:

WHEREFORE, it is respectfully recommended that respondents **P/S Insp. ROLANDO DEL ROSARIO MENDOZA and PO3 WILSON MATIC GAVINO** of PRO-ARMM, Camp Brig. Gen. Salipada K. Pendatun, Parang, Shariff Kabunsuan; **P/INSP. NELSON URBANO LAGASCA, SPO1 NESTOR REYES DAVID and PO2 RODERICK SALVA LOPEÑA** of Manila Police District, Headquarters, United Nations Avenue, Manila, be meted the penalty of **DISMISSAL** from the Service, pursuant to Section 52 (A), Rule IV, Uniform Rules on Administrative Cases in the Civil Service, with the accessory penalties of forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service pursuant to Section 58, Rule IV of the same Uniform Rules of Administrative Cases in the Civil Service, for having committed **GRAVE MISCONDUCT.**

On November 5, 2009, they filed a Motion for Reconsideration[10] of the foregoing Decision, followed by a Supplement to the Motion for Reconsideration[11] on November 19, 2009. On December 14, 2009, the pleadings mentioned and the records of the case were assigned for review and

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[8] *Id.* at 128.

[9] *Id.* at 153-158.

[10] *Id.* at 203-216.

[11] Annex "F", *id.* at 132-136.

recommendation to Graft Investigation and Prosecutor Officer Dennis L. Garcia, who released a draft Order[12] on April 5, 2010 for appropriate action by his immediate superior, Director Eulogio S. Cecilio, who, in turn, signed and forwarded said Order to petitioner Gonzalez's office on April 27, 2010. Not more than ten (10) days after, more particularly on May 6, 2010, petitioner endorsed the Order, together with the case records, for final approval by Ombudsman Merceditas N. Gutierrez, in whose office it remained pending for final review and action when P/S Insp. Mendoza hijacked a bus-load of foreign tourists on that fateful day of August 23, 2010 in a desperate attempt to have himself reinstated in the police service.

In the aftermath of the hostage-taking incident, which ended in the tragic murder of eight HongKong Chinese nationals, the injury of seven others and the death of P/S Insp. Rolando Mendoza, a public outcry against the blundering of government officials prompted the creation of the Incident Investigation and Review Committee (IIRC),[13] chaired by Justice Secretary Leila de Lima and vice-chaired by Interior and Local Government Secretary Jesus Robredo. It was tasked to determine accountability for the incident through the conduct of public hearings and executive sessions. However, petitioner, as well as the Ombudsman herself, refused to participate in the IIRC proceedings on the assertion that the Office of the Ombudsman is an independent constitutional body.

Sifting through testimonial and documentary evidence, the IIRC eventually identified petitioner Gonzales to be among those in whom culpability must lie. In its Report,[14] the IIRC made the following findings:

Deputy Ombudsman Gonzales committed serious and inexcusable negligence and gross violation of their own rules of procedure by

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[12] Annex "N", *id.* at 244-249.

[13] The President issued Joint Department Order No. 01-2010 creating the IIRC.

[14] As quoted in the Petition in G.R. No. 196231, *rollo*, pp. 17-20.

allowing Mendoza's motion for reconsideration to languish for more than nine (9) months without any justification, in violation of the Ombudsman prescribed rules to resolve motions for reconsideration in administrative disciplinary cases within five (5) days from submission. The inaction is gross, considering there is no opposition [t]hereto. The prolonged inaction precipitated the desperate resort to hostage-taking.

More so, Mendoza's demand for immediate resolution of his motion for reconsideration is not without legal and compelling bases considering the following:

(a) PSI Mendoza and four policemen were investigated by the Ombudsman involving a case for alleged robbery (extortion), grave threats and physical injuries amounting to grave misconduct allegedly committed against a certain Christian Kalaw. The same case, however, was previously dismissed by the Manila City Prosecutors Office for lack of probable cause and by the PNP-NCR Internal Affairs Service for failure of the complainant (Christian Kalaw) to submit evidence and prosecute the case. On the other hand, the case which was filed much ahead by Mendoza *et al*. against Christian Kalaw involving the same incident, was given due course by the City Prosecutors Office.

(b) The Ombudsman exercised jurisdiction over the case based on a letter issued *motu proprio* for Deputy Ombudsman Emilio A. Gonzalez III, directing the PNP-NCR - without citing any reason - to endorse the case against Mendoza and the arresting policemen to his office for administrative adjudication, thereby showing undue interest on the case. He also caused the docketing of the case and named Atty. Clarence V. Guinto of the PNP-CIDG-NCR, who indorsed the case records, as the nominal complainant, in lieu of Christian Kalaw. During the proceedings, Christian Kalaw did not also affirm his complaint-affidavit with the Ombudsman or submit any position paper as required.

(c) Subsequently, Mendoza, after serving preventive suspension, was adjudged liable for grave misconduct by Deputy Ombudsman Gonzales (duly approved on May 21, 2009) based on the sole and uncorroborated complaint-affidavit of Christian Kalaw, which was not previously sustained by the City Prosecutor's Office and the PNP Internal Affairs

Service. From the said Resolution, Mendoza interposed a timely motion for reconsideration (dated and filed November 5, 2009) as well as a supplement thereto. No opposition or comment was filed thereto.

(d) Despite the pending and unresolved motion for reconsideration, the judgment of dismissal was enforced, thereby abruptly ending Mendoza's 30 years of service in the PNP with forfeiture of all his benefits. As a result, Mendoza sought urgent relief by sending several hand-written letter-requests to the Ombudsman for immediate resolution of his motion for reconsideration. But his requests fell on deaf ears.

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By allowing Mendoza's motion for reconsideration to languish for nine long (9) months without any justification, Ombudsman Gutierrez and Deputy Ombudsman Gonzales committed complete and wanton violation of the Ombudsman prescribed rule to resolve motions for reconsideration in administrative disciplinary cases within five (5) days from submission (Sec. 8, Ombudsman Rules of Procedure). The inaction is gross, there being no opposition to the motion for reconsideration. Besides, the Ombudsman, without first resolving the motion for reconsideration, arbitrarily enforced the judgment of dismissal and ignored the intervening requests for immediate resolution, thereby rendering the inaction even more inexcusable and unjust as to amount to gross negligence and grave misconduct.

SECOND, Ombudsman Gutierrez and Deputy Ombudsman Gonzales committed serious disregard of due process, manifest injustice and oppression in failing to provisionally suspend the further implementation of the judgment of dismissal against Mendoza pending disposition of his unresolved motion for reconsideration.

By enforcing the judgment of dismissal without resolving the motion for reconsideration for over nine months, the two Ombudsman officials acted with arbitrariness and without regard to due process and the constitutional right of an accused to the speedy disposition of his case. As long as his motion for reconsideration remained pending and unresolved, Mendoza was also effectively deprived of the right to avail of the ordinary course of appeal or review to challenge the judgment of dismissal before the higher courts and seek a temporary restraining order to prevent the further execution thereof.

As such, if the Ombudsman cannot resolve with dispatch the motion for reconsideration, it should have provisionally suspended the further enforcement of the judgment of dismissal without prejudice to its re-implementation if the reconsideration is eventually denied. Otherwise, the Ombudsman will benefit from its own inaction. Besides, the litigant is entitled to a stay of the execution pending resolution of his motion for reconsideration. Until the motion for reconsideration is denied, the adjudication process before the Ombudsman cannot be considered as completely finished and, hence, the judgment is not yet ripe for execution.

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When the two Ombudsman officials received Mendoza's demand for the release of the final order resolving his motion for reconsideration, they should have performed their duty by resolving the reconsideration that same day since it was already pending for nine months and the prescribed period for its resolution is only five days. Or if they cannot resolve it that same day, then they should have acted decisively by issuing an order provisionally suspending the further enforcement of the judgment of dismissal subject to revocation once the reconsideration is denied and without prejudice to the arrest and prosecution of Mendoza for the hostage-taking. Had they done so, the crisis may have ended peacefully, without necessarily compromising the integrity of the institution. After all, as relayed to the negotiators, Mendoza did express willingness to take full responsibility for the hostage-taking if his demand for release of the final decision or reinstatement was met.

But instead of acting decisively, the two Ombudsman officials merely offered to review a pending motion for review of the case, thereby prolonging their inaction and aggravating the situation. As expected, Mendoza – who previously berated Deputy Gonzales for allegedly demanding Php150,000 in exchange for favorably resolving the motion for reconsideration – rejected and branded as trash ("basura") the Ombudsman [*sic*] letter promising review, triggering the collapse of the negotiations. To prevent the situation from getting out of hand, the negotiators sought the alternative option of securing before the PNP-NCRPO an order for Mendoza's provisional reinstatement pending resolution of the motion for reconsideration. Unfortunately, it was already too late. But had the Ombudsman officials performed their duty under the law and acted decisively, the entire crisis may have ended differently.

The IIRC recommended that its findings with respect to petitioner Gonzales be referred to the Office of the President (OP) for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings.

On October 15, 2010, the OP instituted a Formal Charge[15] against petitioner Gonzales for *Gross Neglect of Duty* and/or *Inefficiency in the Performance of Official Duty* under Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent Civil Service Laws, rules and regulations, and for *Misconduct in Office* under Section 3 of the Anti-Graft and Corrupt Practices Act.[16] Petitioner filed his Answer[17] thereto in due time.

Shortly after the filing by the OP of the administrative case against petitioner, a complaint dated October 29, 2010 was filed by Acting Assistant Ombudsman Joselito P. Fangon before the Internal Affairs Board of the Office of the Ombudsman charging petitioner with *"directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law"* under Section 3(b) of the Anti-Graft and Corrupt Practices Act, and also, with *solicitation or acceptance of gifts* under Section 7(d) of the Code of Conduct and Ethical Standards.[18] In a Joint Resolution[19] dated February 17, 2011, which was approved by Ombudsman Ma. Merceditas N. Gutierrez, the complaint was dismissed, as follows:

WHEREFORE, premises considered, finding no probable cause to indict respondent Emilio A. Gonzales III for violations of Section

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[15] Annex "Q", *id.* at 322.

[16] R. A. No. 3019.

[17] *Rollo* (G.R. No. 196231), pp. 324-346.

[18] R.A. No. 6713.

[19] Annex "W", *rollo* (G.R. No. 196231), pp. 386-408.

3(b) of R.A. No. 3019 and Section 7(d) of R.A. No. 6713, the complaint is hereby be [sic] **DISMISSED**.

Further, finding no sufficient evidence to hold respondent administratively liable for Misconduct, the same is likewise **DISMISSED**.

Meanwhile, the OP notified[20] petitioner that a Preliminary Clarificatory Conference relative to the administrative charge against him was to be conducted at the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) on February 8, 2011. Petitioner Gonzales alleged,[21] however, that on February 4, 2011, he heard the news that the OP had announced his suspension for one year due to his delay in the disposition of P/S Insp. Mendoza's motion for reconsideration. Hence, believing that the OP had already prejudged his case and that any proceeding before it would simply be a charade, petitioner no longer attended the scheduled clarificatory conference. Instead, he filed an Objection to Proceedings[22] on February 7, 2011. Despite petitioner's absence, however, the OP pushed through with the proceedings and, on March 31, 2011, rendered the assailed Decision,[23] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Office finds Deputy Ombudsman Emilio A. Gonzales III guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust, and hereby meted out the penalty of **DISMISSAL** from service.

SO ORDERED.

Hence, the petition.

G.R. No. 196232

In April of 2005, the Acting Deputy Special Prosecutor of the Office of the Ombudsman charged Major General Carlos

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[20] Annex "S", *id.* at 377.

[21] Petition, *id.* at 8.

[22] Annex "V", *id.* at 380-383.

[23] Annex "A", *id.* at 72-86.

F. Garcia, his wife Clarita D. Garcia, their sons Ian Carl Garcia, Juan Paulo Garcia and Timothy Mark Garcia and several unknown persons with *Plunder* (Criminal Case No. 28107) and *Money Laundering* (Criminal Case No. SB09CRM0194) before the Sandiganbayan.

On January 7, 2010, the Sandiganbayan denied Major General Garcia's urgent petition for bail holding that strong prosecution evidence militated against the grant of bail. On March 16, 2010, however, the government, represented by petitioner, Special Prosecutor Wendell Barreras-Sulit ("Barreras-Sulit") and her prosecutorial staff sought the Sandiganbayan's approval of a Plea Bargaining Agreement (hereinafter referred to as "PLEBARA") entered into with the accused. On May 4, 2010, the Sandiganbayan issued a Resolution finding the change of plea warranted and the PLEBARA compliant with jurisprudential guidelines.

Outraged by the backroom deal that could allow Major General Garcia to get off the hook with nothing but a slap on the hand notwithstanding the prosecution's apparently strong evidence of his culpability for serious public offenses, the House of Representatives' Committee on Justice conducted public hearings on the PLEBARA. At the conclusion of these public hearings, the Committee on Justice passed and adopted Committee Resolution No. 3,[24] recommending to the President the dismissal of petitioner Barreras-Sulit from the service and the filing of appropriate charges against her Deputies and Assistants before the appropriate government office for having committed acts and/or omissions tantamount to *culpable violations of the Constitution* and *betrayal of public trust*, which are violations under the Anti-Graft and Corrupt Practices Act and grounds for removal from office under the Ombudsman Act.

The Office of the President initiated OP-DC-Case No. 11-B-003 against petitioner Barreras-Sulit. In her written explanation, petitioner raised the defenses of prematurity and the lack of

[24] Annex "B", *rollo* (G.R. No. 196232), pp. 27-30.

jurisdiction of the OP with respect to the administrative disciplinary proceeding against her. The OP, however, still proceeded with the case, setting it for preliminary investigation on April 15, 2011.

Hence, the petition.

The Issues

In **G.R. No. 196231**, petitioner Gonzales raises the following grounds, to wit:

(A)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE OTHER INDIVIDUAL RESPONDENTS, HAS NO CONSTITUTIONAL OR VALID STATUTORY AUTHORITY TO SUBJECT PETITIONER TO AN ADMINISTRATIVE INVESTIGATION AND TO THEREAFTER ORDER HIS REMOVAL AS DEPUTY OMBUDSMAN.

(B)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE OTHER INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CONDUCTED ITS INVESTIGATION AND RENDERED ITS DECISION IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS.

(C)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER COMMITTED DELAY IN THE DISPOSITION OF MENDOZA'S MOTION FOR RECONSIDERATION.

(D)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONER TOOK UNDUE INTEREST IN MENDOZA'S CASE.

(E)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAULTING PETITIONER FOR NOT RELEASING THE RESOLUTION ON MENDOZA'S MOTION FOR RECONSIDERATION OR FOR NOT SUSPENDING MENDOZA'S DISMISSAL FROM SERVICE DURING THE HOSTAGE CRISIS.

(F)

RESPONDENT OFFICE OF THE PRESIDENT, ACTING THROUGH THE INDIVIDUAL RESPONDENTS, GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SHOW THAT PETITIONER DEMANDED A BRIBE FROM MENDOZA.[25]

On the other hand, in **G.R. No. 196232**, petitioner Barreras-Sulit poses for the Court the question –

AS OF THIS POINT IN TIME, WOULD TAKING AND CONTINUING TO TAKE ADMINISTRATIVE DISCIPLINARY PROCEEDING AGAINST PETITIONER BE LAWFUL AND JUSTIFIABLE?[26]

Re-stated, the primordial question in these two petitions is whether the Office of the President has jurisdiction to exercise administrative disciplinary power over a Deputy Ombudsman and a Special Prosecutor who belong to the constitutionally-created Office of the Ombudsman.

The Court's Ruling

Short of claiming themselves immune from the ordinary means of removal, petitioners asseverate that the President has no disciplinary jurisdiction over them considering that the Office of the Ombudsman to which they belong is clothed with constitutional independence and that they, as Deputy Ombudsman

[25] Petition, *rollo* (G.R. No. 196231), pp. 23-24.

[26] Petition, *rollo* (G.R. No. 196232), p. 10.

and Special Prosecutor therein, necessarily bear the constitutional attributes of said office.

The Court is not convinced.

The Ombudsman's administrative disciplinary power over a Deputy Ombudsman and Special Prosecutor is not exclusive.

It is true that the authority of the Office of the Ombudsman to conduct administrative investigations proceeds from its constitutional mandate to be an effective protector of the people against inept and corrupt government officers and employees,[27] and is subsumed under the broad powers "explicitly conferred" upon it by the 1987 Constitution and R.A. No. 6770.[28]

The ombudsman traces its origins to the primitive legal order of Germanic tribes. The Swedish term, which literally means "agent" or "representative," communicates the concept that has been carried on into the creation of the modern-day ombudsman, that is, someone who acts as a neutral representative of ordinary citizens against government abuses.[29] This idea of a people's protector was first institutionalized in the Philippines under the 1973 Constitution with the creation of the *Tanodbayan*, which wielded the twin powers of investigation and prosecution. Section 6, Article XIII of the 1973 Constitution provided thus:

> Sec. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

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[27] *Ledesma v. Court of Appeals*, 503 Phil. 396 (2005).

[28] *Office of the Ombudsman v. Masing and Tayactac*, G.R. No. 165416, January 22, 2008, 542 SCRA 253.

[29] De Leon, 2 *Philippine Constitutional Law Principles and Cases*, 855 (2004).

The framers of the 1987 Constitution later envisioned a more effective ombudsman vested with authority to "act in a quick, inexpensive and effective manner on complaints against administrative officials", and to function purely with the "prestige and persuasive powers of his office" in correcting improprieties, inefficiencies and corruption in government freed from the hampering effects of prosecutorial duties.[30] Accordingly, Section 13, Article XI of the 1987 Constitution enumerates the following powers, functions, and duties of the Office of the Ombudsman, *viz*:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

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[30] Bernas, S.J., *The Intent of the 1986 Constitution Writers*, 771 (1995).

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.[31]

Congress thereafter passed, on November 17, 1989, Republic Act No. 6770, the *Ombudsman Act of 1989*, to shore up the Ombudsman's institutional strength by granting it "full administrative disciplinary power over public officials and employees,"[32] as follows:

Sec. *21. Officials Subject to Disciplinary Authority; Exceptions*. - The Office of the Ombudsman shall have disciplinary authority over ***all elective and appointive officials*** of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, ***except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary***.(Emphasis supplied)

In the exercise of such full administrative disciplinary authority, the Office of the Ombudsman was explicitly conferred the statutory power to conduct administrative investigations under Section 19 of the same law, thus:

Sec. 19. *Administrative complaints*. - The Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which:

1. Are contrary to law or regulation;
2. Are unreasonable, unfair, oppressive or discriminatory;
3. Are inconsistent with the general course of an agency's functions, though in accordance with law;
4. Proceed from a mistake of law or an arbitrary ascertainment of facts;

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[31] *Id.* at 143-144.

[32] *Office of the Ombudsman v. Delijero, Jr.*, G.R. No. 172635, October 20, 2010, 634 SCRA 135.

5. Are in the exercise of discretionary powers but for an improper purpose; or
6. Are otherwise irregular, immoral or devoid of justification.

While the Ombudsman's authority to discipline administratively is extensive and covers all government officials, whether appointive or elective, with the exception only of those officials removable by impeachment, the members of congress and the judiciary, such authority is by no means exclusive. Petitioners cannot insist that they should be solely and directly subject to the disciplinary authority of the Ombudsman. For, while Section 21 declares the Ombudsman's disciplinary authority over all government officials, Section 8(2), on the other hand, grants the President express power of removal over a Deputy Ombudsman and a Special Prosecutor. Thus:

> Section 8. *Removal; Filling of Vacancy.* —
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> xxx xxx xxx
>
> (2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. A construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.[33] Otherwise stated, the law must not be read in truncated parts. Every part thereof must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[34]

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[33] *Malaria Employees and Workers Association of the Philippines, Inc. (MEWAP) v. Executive Secretary Romulo*, G.R. No. 160093, July 31, 2007, 528 SCRA 673, 682.

[34] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461, citing *Land Bank of the Philippines v. AMS Farming Corporation*, 569 SCRA 154, 183 (2008) and *Mactan-Cebu International Airport Authority v. Urgello*, 520 SCRA 515, 535 (2007).

A harmonious construction of these two apparently conflicting provisions in R.A. No. 6770 leads to the inevitable conclusion that Congress had intended the Ombudsman and the President to exercise concurrent disciplinary jurisdiction over petitioners as Deputy Ombudsman and Special Prosecutor, respectively. This sharing of authority goes into the wisdom of the legislature, which prerogative falls beyond the pale of judicial inquiry. The Congressional deliberations on this matter are quite insightful, *viz*:

> x x x Senator Angara explained that the phrase was added to highlight the fact that the Deputy Tanodbayan may only be removed for cause and after due process. He added that **the President alone has the power to remove the Deputy Tanodbayan.**
>
> Reacting thereto, Senator Guingona observed that this might impair the independence of the Tanodbayan and suggested that the procedural removal of the Deputy Tanodbayan...; and that he can be removed not by the President but by the Ombudsman.
>
> However, the Chair expressed apprehension that the Ombudsman and the Deputy Ombudsman may try to protect one another. The Chair suggested the substitution of the phrase "after due process" with the words **after due notice and hearing with the President as the ultimate authority**.
>
> Senator Guingona contended, however, that the Constitution provides for an independent Office of the [T]anodbayan[,] and to allow the Executive to have disciplinary powers over the Tanodbayan Deputies would be an encroachment on the independence of the Tanodbayan.
>
> Replying thereto, Senator Angara stated that originally, he was not averse to the proposal, however, considering the Chair's observation that **vesting such authority upon the Tanodbayan itself could result in mutual protection, it is necessary that an outside official should be vested with such authority to effect a check and balance.**[35]

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[35] *See* Comment of the Office of the Solicitor General, *rollo* (G.R. No. 196231), pp. 709-710.

Indubitably, the manifest intent of Congress in enacting both provisions - Section 8(2) and Section 21 - in the same Organic Act was to provide for an external authority, through the person of the President, that would exercise the power of administrative discipline over the Deputy Ombudsman and Special Prosecutor without in the least diminishing the constitutional and plenary authority of the Ombudsman over all government officials and employees. Such legislative design is simply a measure of "check and balance" intended to address the lawmakers' real and valid concern that the Ombudsman and his Deputy may try to protect one another from administrative liabilities.

This would not be the first instance that the Office of the President has locked horns with the Ombudsman on the matter of disciplinary jurisdiction. An earlier conflict had been settled in favor of shared authority in *Hagad v. Gozo Dadole*.[36] In said case, the Mayor and Vice-Mayor of Mandaue City, and a member of the Sangguniang Panlungsod, were charged before the Office of the Deputy Ombudsman for the Visayas with violations of R.A. No. 3019, R.A. No. 6713, and the Revised Penal Code. The pivotal issue raised therein was whether the Ombudsman had been divested of his authority to conduct administrative investigations over said local elective officials by virtue of the subsequent enactment of the Local Government Code of 1991 (R.A. No. 7160), the pertinent provision of which states:

> Sec. 61. *Form and Filing of Administrative Complaints*. — A verified complaint against any erring local elective official shall be prepared as follows:
>
> (a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President.

The Court resolved said issue in the negative, upholding the ratiocination of the Solicitor General that R.A. No. 7160 should be viewed as having conferred on the Office of the President,

[36] 321 Phil. 604 (1995).

but not on an exclusive basis, disciplinary authority over local elective officials. Despite the fact that R.A. No. 7160 was the more recent expression of legislative will, no repeal of pertinent provisions in the Ombudsman Act was inferred therefrom. Thus said the Court:

> Indeed, there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent, let alone irreconcilable, as to compel us to only uphold one and strike down the other. Well settled is the rule that repeals of laws by implication are not favored, and that courts must generally assume their congruent application. The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretendi, i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not to have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[37]

While *Hagad v. Gozodadole*[38] upheld the plenary power of the Office of the Ombudsman to discipline elective officials over the same disciplinary authority of the President under R.A. No. 7160, the more recent case of the *Office of the Ombudsman v. Delijero*[39] tempered the exercise by the Ombudsman of such plenary power invoking Section 23(2)[40] of R.A. No. 6770,

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[37] *Id.* at 613-614.

[38] *Id*.

[39] *Supra* note 31.

[40] Section 23. *Formal Investigation.* —

x x x x x x x x x

(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law. x x x

which gives the Ombudsman the option to "refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees." The Court underscored therein the clear legislative intent of imposing "a standard and a separate set of procedural requirements in connection with administrative proceedings involving public school teachers"[41] with the enactment of R.A. No. 4670, otherwise known as "*The Magna Carta for Public School Teachers.*" It thus declared that, while the Ombudsman's administrative disciplinary authority over a public school teacher is concurrent with the proper investigating committee of the Department of Education, it would have been more prudent under the circumstances for the Ombudsman to have referred to the DECS the complaint against the public school teacher.

Unquestionably, the Ombudsman is possessed of jurisdiction to discipline his own people and mete out administrative sanctions upon them, including the extreme penalty of dismissal from the service. However, it is equally without question that the President has concurrent authority with respect to removal from office of the Deputy Ombudsman and Special Prosecutor, albeit under specified conditions. Considering the principles attending concurrence of jurisdiction where the Office of the President was the first to initiate a case against petitioner Gonzales, prudence should have prompted the Ombudsman to desist from proceeding separately against petitioner through its Internal Affairs Board, and to defer instead to the President's assumption of authority, especially when the administrative charge involved "demanding and soliciting a sum of money" which constitutes either *graft and corruption* or *bribery*, both of which are grounds reserved for the President's exercise of his authority to remove a Deputy Ombudsman.

In any case, assuming that the Ombudsman's Internal Affairs Board properly conducted a subsequent and parallel administrative action against petitioner, its earlier dismissal of the charge of

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[41] *Supra* note 31, at 146.

graft and corruption against petitioner could not have the effect of preventing the Office of the President from proceeding against petitioner upon the same ground of graft and corruption. After all, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers.[42] In *Montemayor v. Bundalian*,[43] the Court sustained the President's dismissal from service of a Regional Director of the Department of Public Works and Highways (DPWH) who was found liable for unexplained wealth upon investigation by the now defunct Philippine Commission Against Graft and Corruption (PCAGC). The Court categorically ruled therein that the prior dismissal by the Ombudsman of similar charges against said official did not operate as *res judicata* in the PCAGC case.

By granting express statutory power to the President to remove a Deputy Ombudsman and a Special Prosecutor, Congress merely filled an obvious gap in the law.

Section 9, Article XI of the 1987 Constitution confers upon the President the power to appoint the Ombudsman and his Deputies, *viz*:

> Section 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.

While the removal of the Ombudsman himself is also expressly provided for in the Constitution, which is by impeachment under Section 2[44] of the same Article, there is, however, no constitutional

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[42] *Montemayor v. Bundalian*, G.R. No. 149335, July 1, 2003, 405 SCRA 264.

[43] *Id*.

[44] Sec.2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the **Ombudsman** may be removed from office, on impeachment for, and

provision similarly dealing with the removal from office of a Deputy Ombudsman, or a Special Prosecutor, for that matter. By enacting Section 8(2) of R.A. 6770, Congress simply filled a gap in the law without running afoul of any provision in the Constitution or existing statutes. In fact, the Constitution itself, under Section 2, authorizes Congress to provide for the removal of all other public officers, including the Deputy Ombudsman and Special Prosecutor, who are not subject to impeachment.

That the Deputies of the Ombudsman were intentionally excluded from the enumeration of impeachable officials is clear from the following deliberations[45] of the Constitutional Commission, thus:

> MR. REGALADO. Yes, thank you. On Section 10, regarding the Ombudsman, there has been concern aired by Commissioner Rodrigo about who will see to it that the Ombudsman will perform his duties because he is something like a guardian of the government. This recalls the statement of Juvenal that while the Ombudsman is the guardian of the people, "Quis custodiet ipsos custodies", who will guard the guardians? ***I understand here that the Ombudsman who has the rank of a chairman of a constitutional commission is also removable only by impeachment***.
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> MR. ROMULO. ***That is the intention, Madam President.***
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> MR. REGALADO. ***Only the Ombudsman?***
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> MR. MONSOD. ***Only the Ombudsman.***
> MR. REGALADO. ***So not his deputies***, because I am concerned with the phrase "have the rank of". We know, for instance, that the City Fiscal of Manila has the rank of a justice of the Intermediate Appellate Court, and yet he is not a part of the judiciary. So I think we should clarify that also and read our discussions into the Record for purposes of the Commission and the Committee.[46]

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conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[45] As quoted in *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, 493 Phil. 63, 77-80 (2005).

[46] Records of the 1986 Constitutional Commission, Vol. II, July 26, 1986, pp. 273-274.

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THE PRESIDENT. ***The purpose of the amendment of Commissioner Davide is not just to include the Ombudsman among those officials who have to be removed from office only on impeachment.*** Is that right?

MR. DAVIDE. ***Yes, Madam President.***

MR. RODRIGO. Before we vote on the amendment, may I ask a question?

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. ***The Ombudsman, is this only one man?***

MR. DAVIDE. ***Only one man.***

MR. RODRIGO. ***Not including his deputies.***

MR. MONSOD. ***No.***[47]
(Emphasis supplied)

The Power of the President to Remove a Deputy Ombudsman and a Special Prosecutor is Implied from his Power to Appoint.

Under the doctrine of implication, the power to appoint carries with it the power to remove.[48] As a general rule, therefore, all officers appointed by the President are also removable by him.[49] The exception to this is when the law expressly provides otherwise – that is, when the power to remove is expressly vested in an office or authority other than the appointing power. In some cases, the Constitution expressly separates the power to remove from the President's power to appoint. Under Section 9, Article VIII of the 1987 Constitution, the Members of the

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[47] Records of the 1986 Constitutional Commission, Vol. II, July 26, 1986, p. 305.

[48] *Aguirre, Jr. v. De Castro*, 378 Phil. 714 (1999).

[49] Cruz, Carlo L., *The Law of Public Officers*, 154-155 (1992).

Supreme Court and judges of lower courts shall be appointed by the President. However, Members of the Supreme Court may be removed after impeachment proceedings initiated by Congress (Section 2, Article XI), while judges of lower courts may be removed only by the Supreme Court by virtue of its administrative supervision over all its personnel (Sections 6 and 11, Article VIII). The Chairpersons and Commissioners of the Civil Service Commission [Section 1(2), Article IX(B)], the Commission on Elections [Section 1(2), Article IX(C)], and the Commission on Audit [Section 1(2), Article IX(D)] shall likewise be appointed by the President, but they may be removed only by impeachment (Section 2, Article XI). As priorly stated, the Ombudsman himself shall be appointed by the President (Section 9, Article XI) but may also be removed only by impeachment (Section 2, Article XI).

In giving the President the power to remove a Deputy Ombudsman and Special Prosecutor, Congress simply laid down in express terms an authority that is already implied from the President's constitutional authority to appoint the aforesaid officials in the Office of the Ombudsman.

The Office of the Ombudsman is charged with monumental tasks that have been generally categorized into investigatory power, prosecutorial power, public assistance, authority to inquire and obtain information and the function to adopt, institute and implement preventive measures.[50] In order to ensure the effectiveness of his constitutional role, the Ombudsman was provided with an over-all deputy as well as a deputy each for Luzon, Visayas and Mindanao. However, well into the deliberations of the Constitutional Commission, a provision for the appointment of a *separate deputy for the military establishment* was necessitated by Commissioner Ople's lament against the rise within the armed forces of "fraternal associations outside the chain of command" which have become the common

[50] Sec. 13, Article XI; De Leon, Hector, 2 *Philippine Constitutional Law*, 860 (2004), citing *Concerned Officials of the MWSS v. Velasquez*, 310 Phil. 549 (1995) and *Garcia-Rueda v. Pascasio*, 344 Phil. 323 (1997).

soldiers' "informal grievance machinery" against injustice, corruption and neglect in the uniformed service,[51] thus:

> In our own Philippine Armed Forces, there has arisen in recent years a type of fraternal association outside the chain of command proposing reformist objectives. They constitute, in fact, an informal grievance machinery against injustices to the rank and file soldiery and perceive graft in higher rank and neglect of the needs of troops in combat zones. The Reform the Armed Forces Movement of RAM has kept precincts for pushing logistics to the field, the implied accusation being that most of the resources are used up in Manila instead of sent to soldiers in the field. The Guardians, the El Diablo and other organizations dominated by enlisted men function, more or less, as grievance collectors and as mutual aid societies.
>
> This proposed amendment merely seeks to extend the office of the Ombudsman to the military establishment, just as it champions the common people against bureaucratic indifference. The Ombudsman can designate a deputy to help the ordinary foot soldier get through with his grievance to higher authorities. This deputy will, of course work in close cooperation with the Minister of National Defense because of the necessity to maintain the integrity of the chain of command. Ordinary soldiers, when they know they can turn to a military Ombudsman for their complaints, may not have to fall back on their own informal devices to obtain redress for their grievances. The Ombudsman will help raise troop morale in accordance with a major professed goal of the President and the military authorities themselves. x x x

The add-on now forms part of Section 5, Article XI which reads as follows:

> Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one over-all Deputy and at least one Deputy each for Luzon, Visayas and Mindanao. ***A separate deputy for the military establishment shall likewise be appointed.*** (Emphasis supplied)

The integrity and effectiveness of the Deputy Ombudsman for the MOLEO as a military watchdog looking into abuses

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[51] Bernas, S.J., *The Intent of the 1986 Constitution Writers*, 773-774 (1995).

and irregularities that affect the general morale and professionalism in the military is certainly of primordial importance in relation to the President's own role as Commander-in-Chief of the Armed Forces. It would not be incongruous for Congress, therefore, to grant the President concurrent disciplinary authority over the Deputy Ombudsman for the military and other law enforcement offices.

Granting the President the Power to Remove a Deputy Ombudsman does not Diminish the Independence of the Office of the Ombudsman.

The claim that Section 8(2) of R.A. No. 6770 granting the President the power to remove a Deputy Ombudsman from office totally frustrates, if not resultantly negates the independence of the Office of the Ombudsman is tenuous. The independence which the Office of the Ombudsman is vested with was intended to free it from political considerations in pursuing its constitutional mandate to be a protector of the people. What the Constitution secures for the Office of the Ombudsman is, essentially, political independence. This means nothing more than that "the terms of office, the salary, the appointments and discipline of all persons under the office" are "reasonably insulated from the whims of politicians."[52] And so it was that Section 5, Article XI of the 1987 Constitution had declared the creation of the independent Office of the Ombudsman, composed of the Ombudsman and his Deputies, who are described as "protectors of the people" and constitutionally mandated to act promptly on complaints filed in any form or manner against public officials or employees of the Government [Section 12, Article XI]. Pertinent provisions under Article XI prescribes a term of office of seven years without reappointment [Section 11], prohibits a decrease in salaries during the term of office

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[52] De Leon, 2 *Philippine Constitutional Law Principles and Cases*, 857 (2004), citing Del. R.D. ROBLES, The Ombudsman, in C.R. Montejo, On the 1973 Constitution, 232.

[Section 10], provides strict qualifications for the office [Section 8], grants fiscal autonomy [Section 14] and ensures the exercise of constitutional functions [Sections 12 and 13]. The cloak of independence is meant to build up the Office of the Ombudsman's institutional strength to effectively function as official critic, mobilizer of government, constitutional watchdog[53] and protector of the people. It certainly cannot be made to extend to wrongdoings and permit the unbridled acts of its officials to escape administrative discipline.

Being aware of the constitutional imperative of shielding the Office of the Ombudsman from political influences and the discretionary acts of the executive, Congress laid down two restrictions on the President's exercise of such power of removal over a Deputy Ombudsman, namely: (1) that the removal of the Deputy Ombudsman must be for any of the grounds provided for the removal of the Ombudsman and (2) that there must be observance of due process. Reiterating the grounds for impeachment laid down in Section 2, Article XI of the 1987 Constitution, paragraph 1 of Section 8 of R.A. No. 6770 states that the Deputy Ombudsman may be removed from office for the same grounds that the Ombudsman may be removed through impeachment, namely, *"culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust."* Thus, it cannot be rightly said that giving the President the power to remove a Deputy Ombudsman, or a Special Prosecutor for that matter, would diminish or compromise the constitutional independence of the Office of the Ombudsman. It is, precisely, a measure of protection of the independence of the Ombudsman's Deputies and Special Prosecutor in the discharge of their duties that their removal can only be had on grounds provided by law.

In *Espinosa v. Office of the Ombudsman*,[54] the Court elucidated on the nature of the Ombudsman's independence in this wise –

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[53] *Id.* at 859-860.

[54] 397 Phil. 829, 831 (2000), cited in *Angeles v. Desierto*, 532 Phil. 647, 656 (2006).

The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as RA 6770 has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, 'beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.

Petitioner Gonzales may not be removed from office where the questioned acts, falling short of constitutional standards, do not constitute betrayal of public trust.

Having now settled the question concerning the validity of the President's power to remove the Deputy Ombudsman and Special Prosecutor, we now go to the substance of the administrative findings in OP Case No. 10-J-460 which led to the dismissal of herein petitioner, Deputy Ombudsman Emilio A. Gonzales, III.

At the outset, the Court finds no cause for petitioner Gonzales to complain simply because the OP proceeded with the administrative case against him despite his non-attendance thereat. Petitioner was admittedly able to file an Answer in which he had interposed his defenses to the formal charge against him. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.[55] Due process is simply having the opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[56]

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[55] *Cayago v. Lina*, 489 Phil. 735 (2005).

[56] *Libres v. NLRC*, 367 Phil. 180 (1999).

The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[57] Mere opportunity to be heard is sufficient. As long as petitioner was given the opportunity to explain his side and present evidence, the requirements of due process are satisfactorily complied with because what the law abhors is an absolute lack of opportunity to be heard.[58] Besides, petitioner only has himself to blame for limiting his defense through the filing of an Answer. He had squandered a subsequent opportunity to elucidate upon his pleaded defenses by adamantly refusing to attend the scheduled Clarificatory Conference despite notice. The OP recounted as follows –

> It bears noting that respondent Deputy Ombudsman Gonzalez was given two separate opportunities to explain his side and answer the Formal Charge against him.
>
> In the first instance, respondent was given the opportunity to submit his answer together with his documentary evidence, which opportunity respondent actually availed of. In the second instance, this Office called a Clarificatory Conference on 8 February 2011 pursuant to respondent's express election of a formal investigation. Despite due notice, however, respondent Deputy Ombudsman refused to appear for said conference, interposing an objection based on the unfounded notion that this Office has prejudged the instant case. Respondent having been given actual and reasonable opportunity to explain or defend himself in due course, the requirement of due process has been satisfied.[59]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence,[60] which is more than

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[57] *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995).

[58] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 654 citing *Casimiro v. Tandog*, 498 Phil. 660, 666 (2005).

[59] OP Decision, p. 7, *rollo* (G.R. No. 196231), p. 78.

[60] Funa, Dennis B., *The Law on the Administrative Accountability of Public Officers*, 509 (2010), citing *Office of the Court Administrator v. Bucoy*, A.M. No. P-93-953, August 25, 1994, 235 SCRA 588; *Tolentino v. CA*, 234 Phil. 28 (1987), *Biak na Bato Mining Co. v. Tanco*, 271 Phil. 339 (1991).

a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[61] The fact, therefore, that petitioner later refused to participate in the hearings before the OP is not a hindrance to a finding of his culpability based on substantial evidence, which only requires that a decision must "have something upon which it is based."[62]

Factual findings of administrative bodies are controlling when supported by substantial evidence.[63] The OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of removal from office was based on the finding of gross neglect of duty and grave misconduct in office amounting to a *betrayal of public trust*, which is a constitutional ground for the removal by impeachment of the Ombudsman (Section 2, Article XI, 1987 Constitution), and a statutory ground for the President to remove from office a Deputy Ombudsman and a Special Prosecutor [Section 8(2) of the Ombudsman Act].

The OP held that petitioner's want of care and wrongful conduct consisted of his unexplained action in directing the PNP-NCR to elevate P/S Insp. Mendoza's case records to his office; his failure to verify the basis for requesting the Ombudsman to take over the case; his pronouncement of administrative liability and imposition of the extreme penalty of dismissal on P/S Insp. Mendoza based upon an unverified complaint-affidavit; his inordinate haste in implementing P/S Insp. Mendoza's dismissal notwithstanding the latter's non-receipt of his copy of the Decision and the subsequent filing of a motion for reconsideration; and his apparent unconcern that the pendency of the motion for reconsideration for more than five months had deprived P/S Insp. Mendoza of available remedies against the immediate implementation of the Decision dismissing him from the service.

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[61] Rules of Court, Rule 133, Sec.5; *Nicolas v. Desierto*, 488 Phil. 158 (2004); *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

[62] *Supra* note 60, at 511.

[63] *Dadubo v. CSC*, G.R. No. 106498, June 28, 1993, 223 SCRA 747.

Thus, taking into consideration the factual determinations of the IIRC, the allegations and evidence of petitioner in his Answer as well as other documentary evidence, the OP concluded that: (1) petitioner failed to supervise his subordinates to act with dispatch on the draft resolution of P/S Insp. Mendoza's motion for reconsideration and thereby caused undue prejudice to P/S Insp. Mendoza by effectively depriving the latter of the right to challenge the dismissal before the courts and prevent its immediate execution, and (2) petitioner showed undue interest by having P/S Insp. Mendoza's case endorsed to the Office of the Ombudsman and resolving the same against P/S Insp. Mendoza on the basis of the unverified complaint-affidavit of the alleged victim Christian Kalaw.

The invariable rule is that administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law.[64] In the instant case, while the evidence may show some amount of wrongdoing on the part of petitioner, the Court seriously doubts the correctness of the OP's conclusion that the imputed acts amount to gross neglect of duty and grave misconduct constitutive of *betrayal of public trust*. To say that petitioner's offenses, as they factually appear, weigh heavily enough to constitute *betrayal of public trust* would be to ignore the significance of the legislature's intent in prescribing the removal of the Deputy Ombudsman or the Special Prosecutor for causes that, theretofore, had been reserved only for the most serious violations that justify the removal by impeachment of the highest officials of the land.

Would every negligent act or misconduct in the performance of a Deputy Ombudsman's duties constitute *betrayal of public trust* warranting immediate removal from office? The question calls for a deeper, circumspective look at the nature of the

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[64] *Assistant Executive Secretary for Legal Affairs of the Office of the President v. Court of Appeals*, 251 Phil. 26 (1989), citing *Lovina v. Moreno*, 118 Phil. 1401 (1963).

grounds for the removal of a Deputy Ombudsman and a Special Prosecutor *vis-a-vis* common administrative offenses.

Betrayal of public trust is a new ground for impeachment under the 1987 Constitution added to the existing grounds of *culpable violation of the Constitution, treason, bribery, graft and corruption* and *other high crimes*. While it was deemed broad enough to cover any violation of the oath of office,[65] the impreciseness of its definition also created apprehension that "such an overarching standard may be too broad and may be subject to abuse and arbitrary exercise by the legislature."[66] Indeed, the catch-all phrase *betrayal of public trust* that referred to "all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office"[67] could be easily utilized for every conceivable misconduct or negligence in office. However, deliberating on some workable standard by which the ground could be reasonably interpreted, the Constitutional Commission recognized that human error and good faith precluded an adverse conclusion.

MR. VILLACORTA: x x x One last matter with respect to the use of the words "betrayal of public trust" as embodying a ground for impeachment that has been raised by the Honorable Regalado. I am not a lawyer so I can anticipate the difficulties that a layman may encounter in understanding this provision and also the possible abuses that the legislature can commit in interpreting this phrase. It is to be noted that this ground was also suggested in the 1971 Constitutional Convention. A review of the Journals of that Convention will show that it was not included; it was construed as encompassing acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers. I understand from the earlier discussions that these constitute violations of the oath of office, and also I heard

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[65] Joaquin G. Bernas, *The 1987 Constitution of the Philippines: A Commentary*, 992 (1996).

[66] Records of the 1986 Constitutional Commission, Vol. II, p. 286.

[67] *Supra* note at 65.

the Honorable Davide say that even the criminal acts that were enumerated in the earlier 1973 provision on this matter constitute betrayal of public trust as well. In order to avoid confusion, would it not be clearer to stick to the wording of Section 2 which reads: "may be removed from office on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, and other high crimes, graft and corruption or VIOLATION OF HIS OATH OF OFFICE", because if betrayal of public trust encompasses the earlier acts that were enumerated, then it would behoove us to be equally clear about this last provision or phrase.

MR. NOLLEDO: x x x I think we will miss a golden opportunity if we fail to adopt the words "betrayal of public trust" in the 1986 Constitution. But I would like him to know that we are amenable to any possible amendment. Besides, I think **plain error of judgment, where circumstances may indicate that there is good faith, to my mind, will not constitute betrayal of public trust** if that statement will allay the fears of difficulty in interpreting the term."[68] (Emphasis supplied)

The Constitutional Commission eventually found it reasonably acceptable for the phrase *betrayal of public trust* to refer to "[a]cts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers."[69] In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.

A Deputy Ombudsman and a Special Prosecutor are not impeachable officers. However, by providing for their removal from office on the same grounds as removal by impeachment, the legislature could not have intended to redefine constitutional standards of *culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes,* as well as *betrayal of public trust,* and apply them less stringently. Hence,

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[68] Records of the 1986 Constitutional Commission, Vol. II, pp. 283-284.

[69] *Id.* at 286.

where *betrayal of public trust*, for purposes of impeachment, was not intended to cover all kinds of official wrongdoing and plain errors of judgment, this should remain true even for purposes of removing a Deputy Ombudsman and Special Prosecutor from office. Hence, the fact that the grounds for impeachment have been made statutory grounds for the removal by the President of a Deputy Ombudsman and Special Prosecutor cannot diminish the seriousness of their nature nor the acuity of their scope. Betrayal of public trust could not suddenly "overreach" to cover acts that are not vicious or malevolent on the same level as the other grounds for impeachment.

The tragic hostage-taking incident was the result of a confluence of several unfortunate events including system failure of government response. It cannot be solely attributed then to what petitioner Gonzales may have negligently failed to do for the quick, fair and complete resolution of the case, or to his error of judgment in the disposition thereof. Neither should petitioner's official acts in the resolution of P/S Insp. Mendoza's case be judged based upon the resulting deaths at the Quirino Grandstand. The failure to immediately act upon a party's requests for an early resolution of his case is not, by itself, gross neglect of duty amounting to *betrayal of public trust*. Records show that petitioner took considerably less time to act upon the draft resolution after the same was submitted for his appropriate action compared to the length of time that said draft remained pending and unacted upon in the Office of Ombudsman Merceditas N. Gutierrez. He reviewed and denied P/S Insp. Mendoza's motion for reconsideration within nine (9) calendar days reckoned from the time the draft resolution was submitted to him on April 27, 2010 until he forwarded his recommendation to the Office of Ombudsman Gutierrez on May 6, 2010 for the latter's final action. Clearly, the release of any final order on the case was no longer in his hands.

Even if there was inordinate delay in the resolution of P/S Insp. Mendoza's motion and an unexplained failure on petitioner's part to supervise his subordinates in its prompt disposition, the same cannot be considered a vicious and malevolent act warranting

his removal for *betrayal of public trust*. More so because the neglect imputed upon petitioner appears to be an isolated case.

Similarly, petitioner's act of directing the PNP-IAS to endorse P/S Insp. Mendoza's case to the Ombudsman without citing any reason therefor cannot, by itself, be considered a manifestation of his undue interest in the case that would amount to wrongful or unlawful conduct. After all, taking cognizance of cases upon the request of concerned agencies or private parties is part and parcel of the constitutional mandate of the Office of the Ombudsman to be the "champion of the people." The factual circumstances that the case was turned over to the Office of the Ombudsman upon petitioner's request; that administrative liability was pronounced against P/S Insp. Mendoza even without the private complainant verifying the truth of his statements; that the decision was immediately implemented; or that the motion for reconsideration thereof remained pending for more than nine months cannot be simply taken as evidence of petitioner's undue interest in the case considering the lack of evidence of any personal grudge, social ties or business affiliation with any of the parties to the case that could have impelled him to act as he did. There was likewise no evidence at all of any bribery that took place, or of any corrupt intention or questionable motivation.

Accordingly, the OP's pronouncement of administrative accountability against petitioner and the imposition upon him of the corresponding penalty of dismissal must be reversed and set aside, as the findings of neglect of duty or misconduct in office do not amount to a *betrayal of public trust*. Hence, the President, while he may be vested with authority, cannot order the removal of petitioner as Deputy Ombudsman, there being no intentional wrongdoing of the grave and serious kind amounting to a *betrayal of public trust*.

This is not to say, however, that petitioner is relieved of all liability for his acts showing less than diligent performance of official duties. Although the administrative acts imputed to petitioner fall short of the constitutional standard of *betrayal*

of public trust, considering the OP's factual findings of negligence and misconduct against petitioner, the Court deems it appropriate to refer the case to the Office of the Ombudsman for further investigation of the charges in OP Case No. 10-J-460 and the imposition of the corresponding administrative sanctions, if any.

Inasmuch as there is as yet no existing ground justifying his removal from office, petitioner is entitled to reinstatement to his former position as Deputy Ombudsman and to the payment of backwages and benefits corresponding to the period of his suspension.

The Office of the President is vested with statutory authority to proceed administratively against petitioner Barreras-Sulit to determine the existence of any of the grounds for her removal from office as provided for under the Constitution and the Ombudsman Act.

Petitioner Barreras-Sulit, on the other hand, has been resisting the President's authority to remove her from office upon the averment that without the Sandiganbayan's final approval and judgment on the basis of the PLEBARA, it would be premature to charge her with acts and/or omissions "tantamount to culpable violations of the Constitution and betrayal of public trust," which are grounds for removal from office under Section 8, paragraph (2) of the Ombudsman Act of 1989; and which also constitute a violation of Section 3, paragraph (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) – causing undue injury to the Government or giving any private party any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence. With reference to the doctrine of prejudicial procedural antecedent, petitioner Barreras-Sulit asserts that the propriety of taking and continuing to take administrative disciplinary proceeding against her must depend on the final disposition by the Sandiganbayan of the PLEBARA, explaining that if the Sandiganbayan would uphold the PLEBARA, there would no longer be any cause of complaint against her; if not, then the situation becomes ripe for the determination of her failings.

The argument will not hold water. The incidents that have taken place subsequent to the submission in court of the PLEBARA shows that the PLEBARA has been practically approved, and that the only thing which remains to be done by the Sandiganbayan is to promulgate a judgment imposing the proper sentence on the accused Major General Garcia based on his new pleas to lesser offenses. On May 4, 2010, the Sandiganbayan issued a resolution declaring that the change of plea under the PLEBARA was warranted and that it complied with jurisprudential guidelines. The Sandiganbayan, thereafter, directed the accused Major General Garcia to immediately convey in favor of the State all the properties, both real and personal, enumerated therein. On August 11, 2010, the Sandiganbayan issued a resolution, which, in order to put into effect the reversion of Major General Garcia's ill-gotten properties, ordered the corresponding government agencies to cause the transfer of ownership of said properties to the Republic of the Philippines. In the meantime, the Office of the Special Prosecutor (OSP) informed the Sandiganbayan that an Order[70] had been issued by the Regional Trial Court of Manila, Branch 21 on November 5, 2010 allowing the transfer of the accused's frozen accounts to the Republic of the Philippines pursuant to the terms of the PLEBARA as approved by the Sandiganbayan. Immediately after the OSP informed the Sandiganbayan that its May 4, 2010 Resolution had been substantially complied with, Major General Garcia manifested[71] to the Sandiganbayan on November 19, 2010 his readiness for sentencing and for the withdrawal of the criminal information against his wife and two sons. Major General Garcia's Motion to Dismiss,[72] dated December 16, 2010 and filed with the Sandiganbayan, reads:

1.0 The Co-Accused were impleaded under the theory of conspiracy with the Principal Accused MGen. Carlos F. Garcia (AFP Ret.), (Principal Accused) with the allegation that the act of one is the act of the others. Therefore, with the approval by the Honorable Court

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[70] Annex "2" of the Supplemental Comment on the Petition, *rollo* (G.R. No. 196232), p. 212.

[71] Annex "1", *id.* at 210-211.

[72] Annex "3", *id.* at 213-215.

of the Plea Bargaining Agreement executed by the Principal Accused, the charges against the Co-Accused should likewise be dismissed since the charges against them are anchored on the same charges against the Principal Accused.

On December 16, 2010, the Sandiganbayan allowed accused Major General Garcia to plead guilty to the lesser offenses of direct bribery and violation of Section 4(b), R.A. No. 9160, as amended. Upon Major General Garcia's motion, and with the express conformity of the OSP, the Sandiganbayan allowed him to post bail in both cases, each at a measly amount of ₱30,000.00.

The approval or disapproval of the PLEBARA by the Sandiganbayan is of no consequence to an administrative finding of liability against petitioner Barreras-Sulit. While the court's determination of the propriety of a plea bargain is on the basis of the existing prosecution evidence on record, the disciplinary authority's determination of the prosecutor's administrative liability is based on whether the plea bargain is consistent with the conscientious consideration of the government's best interest and the diligent and efficient performance by the prosecution of its public duty to prosecute crimes against the State. Consequently, the disciplining authority's finding of ineptitude, neglect or willfulness on the part of the prosecution, more particularly petitioner Special Prosecutor Barreras-Sulit, in failing to pursue or build a strong case for the government or, in this case, entering into an agreement which the government finds "grossly disadvantageous," could result in administrative liability, notwithstanding court approval of the plea bargaining agreement entered into.

Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.[73] The essence of a plea bargaining agreement is the allowance of an accused to plead guilty to a lesser offense than that charged against

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[73] *Daan v. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, citing *People v. Villarama, Jr.*, 210 SCRA 246, 251-252 (1992).

him. Section 2, Rule 116 of the Revised Rules of Criminal Procedure provides the procedure therefor, to wit:

> SEC. 2. *Plea of guilty to a lesser offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, Cir. 38-98)

Plea bargaining is allowable when the prosecution does not have sufficient evidence to establish the guilt of the accused of the crime charged.[74] However, if the basis for the allowance of a plea bargain in this case is the evidence on record, then it is significant to state that in its earlier Resolution[75] promulgated on January 7, 2010, the Sandiganbayan had evaluated the testimonies of twenty (20) prosecution witnesses and declared that "the conglomeration of evidence presented by the prosecution is viewed by the Court to be of strong character that militates against the grant of bail."

Notwithstanding this earlier ruling by the Sandiganbayan, the OSP, unexplainably, chose to plea bargain with the accused Major General Garcia as if its evidence were suddenly insufficient to secure a conviction. At this juncture, it is not amiss to emphasize that the "standard of strong evidence of guilt which is sufficient to deny bail to an accused is markedly higher than the standard of judicial probable cause which is sufficient to initiate a criminal case."[76] Hence, in light of the apparently strong case against accused Major General Garcia, the disciplining authority would

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[74] *People v. Villarama, Jr.*, G.R. No. 99287, June 23, 1992, 210 SCRA 246; *People v. Parohinog*, 185 Phil. 266 (1980); *People v. Kayanan*, 172 Phil. 728 (1978).

[75] Annex "7" of the Supplemental Comment on the Petition, *rollo* (G.R. No. 196232), pp. 225-268.

[76] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 608; *Cabrera v. Marcelo*, 487 Phil. 427 (2004).

be hard-pressed not to look into the whys and wherefores of the prosecution's turnabout in the case.

The Court need not touch further upon the substantial matters that are the subject of the pending administrative proceeding against petitioner Barreras-Sulit and are, thus, better left to the complete and effective resolution of the administrative case before the Office of the President.

The challenge to the constitutionality of Section 8(2) of the Ombudsman Act has, nonetheless, failed to obtain the necessary votes to invalidate the law, thus, keeping said provision part of the law of the land. To recall, these cases involve two distinct issues: (a) the constitutionality of Section 8(2) of the Ombudsman Act; and (b) the validity of the administrative action of removal taken against petitioner Gonzales. While the Court voted unanimously to reverse the decision of the OP removing petitioner Gonzales from office, it was equally divided in its opinion on the constitutionality of the assailed statutory provision in its two deliberations held on April 17, 2012 and September 4, 2012. There being no majority vote to invalidate the law, the Court, therefore, dismisses the challenge to the constitutionality of Section 8(2) of the Ombudsman Act in accordance with Section 2(d), Rule 12 of the Internal Rules of the Court. Indeed, Section 4(2), Article VIII of the 1987 Constitution requires the vote of the majority of the Members of the Court actually taking part in the deliberations to sustain any challenge to the constitutionality or validity of a statute or any of its provisions.

WHEREFORE, in **G.R. No. 196231,** the decision of the Office of the President in OP Case No. 10-J-460 is **REVERSED** and **SET ASIDE.** Petitioner Emilio A. Gonzales III is ordered **REINSTATED** with payment of backwages corresponding to the period of suspension effective immediately, even as the Office of the Ombudsman is directed to proceed with the investigation in connection with the above case against petitioner. In **G.R. No. 196232,** We **AFFIRM** the continuation of OP-DC Case No. 11-B-003 against Special Prosecutor Wendell Barreras-Sulit for alleged acts and omissions tantamount to

culpable violation of the Constitution and a betrayal of public trust, in accordance with Section 8(2) of the Ombudsman Act of 1989.

The challenge to the constitutionality of Section 8(2) of the Ombudsman Act is hereby **DENIED**.

SO ORDERED.

Sereno, C.J., Peralta, del Castillo, Villarama, Jr., and *Reyes, JJ.,* concur.

Carpio, J., see concurring opinion.

Velasco, Jr., Leonardo-de Castro, Perez, and Mendoza, JJ., join the dissent of Justice Brion.

Brion, J., see concurring and dissenting opinion.

Bersamin, J., joins the dissent of *J.* Brion and *J.* Abad.

Abad, J., see dissenting opinion.

CONCURRING OPINION

CARPIO, *J.*:

Our Constitution does not impart a fixed and rigid concept of independence among the offices that it creates. While it declares certain bodies as "independent", we cannot assume that the independence of the Ombudsman[1] is the same as the independence of the Judiciary. Neither is the independence of the Constitutional Commissions the same as that of the National Economic and Development Authority, the *Bangko Sentral ng Pilipinas* or the Commission on Human Rights.[2] This Court

[1] CONSTITUTION, Art. XI, Sec. 5: There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

[2] These are the bodies that the 1987 Constitution considers as "independent." See CONSTITUTION, Art. IX-A, Sec.1; Art. XII, Secs. 9 and 20; Art. XIII, Sec. 17.

cannot make a "one size fits all" concept of independence because the Constitution itself differentiates the degree of independence of these bodies.

In this case, the petitions seek to strike down Section 8(2) of Republic Act No. 6770 or the Ombudsman Act of 1989 which delegates to the President the power to remove a Deputy Ombudsman or the Special Prosecutor "for any of the grounds provided for the removal of the Ombudsman, and after due process." The provision allegedly compromises the independence of the Ombudsman by imposing an external disciplinary authority, namely the President.

I agree with the *ponencia* that Section 8(2) of the Ombudsman Act does not violate the Constitution. The constitutional principle of independence does not obviate the possibility of a check from another body. After all, one of the constitutive principles of our constitutional structure is the system of checks and balances — a check that is not within a body, but outside of it. This is how our democracy operates — on the basis of distrust.[3]

I.

Section 2, Article XI of the 1987 Constitution prescribes how all public officers and employees, **both impeachable and non-impeachable**, may be removed. Section 2 provides:

> The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law, but not by impeachment. (**Boldfacing and underscoring supplied)

Section 2 of Article XI consists of two parts. The first sentence identifies the public officials who are subject to removal only

[3] See J. ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (2002).

by impeachment. **The second sentence *explicitly* leaves to the discretion of Congress, through an implementing law, the removal of *all other* public officers and employees. In other words, by stating that all other non-impeachable officers and employees "*may be removed from office as provided by law*" — the Constitution expressly grants to Congress the power to determine the manner and cause of removal, including who will be the disciplinary authority, of non-impeachable officers and employees**. Clearly, Section 8(2) of the Ombudsman Act is valid and constitutional since Congress is expressly empowered to legislate such law pursuant to Section 2, Article XI of the Constitution.

The original text of Section 2[4] of Article XI did not include the second sentence.[5] Its subsequent inclusion was only meant to exclude "all other public officers and employees" from removal through impeachment. Otherwise, Congress would have the plenary power to remove public officers and employees through impeachment or through any other mode of removal. Thus, at the outset, the framers of the 1987 Constitution saw no need to textualize this power — for it was already taken for granted as part of the plenary power of Congress. However, to limit this plenary power of Congress, the framers expressly excluded impeachment as a mode of removing "all other public officers and employees."

This Court has repeatedly declared that the Constitution "confer[s] plenary legislative x x x powers subject only to limitations provided in the Constitution."[6] Thus, in inserting the second sentence in Section 8(2), Article XI of the 1987 Constitution, the framers

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[4] As amended and consolidated by the Committee on Accountability of Public Officers of the 1986 Constitutional Commission.

[5] II RECORD, CONSTITUTIONAL COMMISSION 263 (26 July 1986).

[6] *Marcos v. Manglapus*, 258 Phil. 479, 499 (1989); *Vera v. Avelino*, G.R. No. L-543, 31 August 1946, 77 Phil. 192; *Ople v. Torres*, G.R. No. 127685, 23 July 1998, 354 Phil. 948.

intended to limit impeachment only to public officers enumerated in the first sentence of Section 2:

MR. REGALADO. I propose to add in Section 2 as a last sentence thereof as already amended the following: ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT. The reason for the amendment is this: **While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.**

Under Section 1 of P.D. No. 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. They are, therefore, a privileged class on the level of the Supreme Court. In the Committee on Constitutional Commissions and Agencies, there are many commissions which are sought to be constitutionalized – if I may use the phrase – and the end result would be that if they are constitutional commissions, the commissioners there could also be removed only by impeachment. **What is there to prevent the Congress later – because of the lack of this sentence that I am seeking to add – from providing that officials of certain offices, although nonconstitutional, cannot also be removed except by impeachment?**

THE PRESIDING OFFICER (Mr. Treñas). What does the Committee say on the proposed amendment of Commissioner Regalado?

MR. MONSOD. May we ask Commissioner Regalado a few questions?

Does this mean that with this provision, the other officers in the case of the Sandiganbayan would not be removable by impeachment?

MR. REGALADO. For the present and during the interim and until the new Congress amends P.D. No. 1606, that provision still stands. But the proposed amendment will not prevent the legislature from subsequently repealing or amending that portion of the law. Also, it will prevent the legislature from providing for favoured public officials as not removable except by impeachment.

MR. MONSOD. Mr. Presiding Officer, the Committee is willing to accept the amendment of Commissioner Regalado.

THE PRESIDING OFFICER (Mr. Treñas). The proposed amendment of Commissioner Regalado has been accepted by the Committee.[7] (Emphasis supplied)

Clearly, Congress has the power and discretion to delegate to the President the power to remove a Deputy Ombudsman or the Special Prosecutor under Section 8(2) of the Ombudsman Act. While the 1987 Constitution already empowers the Ombudsman to investigate[8] and to recommend to remove[9] a Deputy Ombudsman and the Special Prosecutor, this does not preclude Congress from providing other modes of removal.

The Deputy Ombudsman and the Special Prosecutor are not among the impeachable officers under the 1987 Constitution. Thus, as expressly provided in Section 2, Article XI of the Constitution, they "**may be removed from office as provided by law**." Congress, pursuant to this constitutional provision and in the exercise of its plenary power, enacted the Ombudsman Act, conferring on the President the power to remove the Deputy Ombudsman and the Special Prosecutor as provided in Section 8(2) of the Ombudsman Act.

However, the Ombudsman Act also grants the Ombudsman the authority to remove a Deputy Ombudsman and the Special Prosecutor through the general grant of disciplinary authority over all elective and appointive officials, in reiteration of Sections 13(1) and (2), Article XI of the Constitution:[10]

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[7] II RECORD, CONSTITUTIONAL COMMISSION 356-357 (28 July 1986).

[8] CONSTITUTION, Art. XI, Sec. 13(1): Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[9] CONSTITUTION, Art. XI, Sec. 13(3): Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend his removal**, suspension, demotion, fine, censure, or prosecution, and **ensure compliance therewith.** (Emphasis supplied)

[10] See notes 8 and 9.

Section 21. Officials Subject to Disciplinary Authority; Exceptions. – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.[11]

In view of Section 8(2) and Section 21 of the Ombudsman Act, the legislative intent is to grant concurrent jurisdiction to the President and the Ombudsman in the removal of the Deputy Ombudsman and the Special Prosecutor. An "endeavor should be made to harmonize the provisions of a law x x x so that each shall be effective."[12] This is not a hollow precept of statutory construction. This is based not only on democratic principle but also on the separation of powers, that this Court should not be so casual in voiding the acts of the popularly elected legislature unless there is a clear violation of the Constitution.

II.

When the 1987 Constitution speaks of "independent" bodies, it does not mean complete insulation from other offices. The text, history and structure of the Constitution contemplate checks and balances that result in the expansion, contraction or concurrence of powers, a coordinate functioning among different bodies of government that is not limited to the executive, legislative and judicial branches, but includes the "independent" constitutional bodies. The very structure of our government belies the claim that "independent" bodies *necessarily* have exclusive authority to discipline its officers.

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[11] R.A. No. 6770, Sec. 21.

[12] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948). See also *Mactan-Cebu International Airport Authority v. Urgello*, G.R. No. 162288, 4 April 2007, 520 SCRA 515, 535, citing *Civil Service Commission v. Joson, Jr.*, G.R. No. 154674, 27 May 2004, 429 SCRA 773, 786.

Not all constitutional declarations are enforceable by courts.[13] We declared some of them as not self-executing such as the Declaration of Principles and State Policies under Article II.[14] However, the independence of constitutional bodies is a judicially enforceable norm. Textually, the Constitution does not define the term "independent" and thus, the contours of this principle may not be immediately clear. The question therefore arises: to what extent can this Court enforce the independence of bodies like the Ombudsman? Can we impose a particular notion of independence, amidst the silence of the constitutional text, to the extent of nullifying an act of Congress?

The answer lies in the Constitution itself which circumscribes the exercise of judicial power. The Constitution clearly intended different degrees of independence among the "independent" bodies that it created. For some, such as the National Economic and Development Authority, *Bangko Sentral ng Pilipinas* and Commission on Human Rights, the operationalization of independence is constitutionally committed to the discretion of Congress.[15] For the others, like the Civil Service Commission, the Commission on Audit and the Commission on Elections, legislative power is decidedly more limited,[16] with express guarantees like fiscal autonomy[17] and rule-making power on pleadings and practice.[18]

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[13] *Tañada v. Angara*, 338 Phil. 546 (1997); *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82 (1997); *Kilosbayan, Inc. v. Morato*, 316 Phil. 652 (1995).

[14] *Id*.

[15] CONSTITUTION, Art. XII, Secs. 9 and 20; Art. XIII, Sec. 17.

[16] See CONSTITUTION, Art. IX-A, Sec. 3 (the salaries of the Chairman and the Commissioners are fixed by law but shall not be decreased during their tenure), Sec. 4 (appointment of other officials and employees in accordance with law) and Sec. 8 (the constitutional commissions may perform other functions as may be provided by law).

[17] CONSTITUTION, Art. IX-A, Sec. 5.

[18] CONSTITUTION, Art. IX-A, Sec. 6.

The Constitution does not enumerate in detail all the possible legislative powers. The Constitution has vested Congress with plenary powers — as the general repository of the police power of the State — to fill-in gaps in the Constitution for the governance of this country. However, when the Constitution expressly empowers Congress to do a specific act — like expressly empowering Congress to provide the mode of removal of all non-impeachable government officers and employees, there can be no doubt whatsoever that Congress can enact such a law.

Any reading of the 1987 Constitution does not warrant the conclusion that all bodies declared by the Constitution as "independent" have exclusive disciplinary authority over all their respective officials and employees. Unlike the Judiciary where such exclusivity is expressly provided for in the Constitution,[19] there is no reason to read such provision in the Ombudsman where the Constitution is silent. On the contrary, the constitutional provision that non-impeachable officers and employees "**may be removed from office as provided by law**" removes any doubt that Congress can determine the mode of removal of non-impeachable officers and employees of "independent" bodies other than the Judiciary. An "independent" body does not have exclusive disciplinary authority over its officials and employees unless the Constitution expressly so provides, as in the case of the Judiciary.

There are other constitutional bodies declared "independent,"[20] but disciplinary authority is statutorily lodged somewhere else.[21] Under the New Central Bank Act (Republic Act No. 7653),

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[19] CONSTITUTION, Art. VIII, Sec. 6 ("The Supreme Court shall have administrative supervision over all courts and the personnel thereof.") and Sec. 11 ("x x x The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.").

[20] *Supra*, note 2.

[21] *Id*.

the President also has the power to remove a member of the Monetary Board on specified grounds.[22] There is nothing anomalous in this mode of removal because the Constitution expressly authorizes the legislature to provide for such mode of removal. This Court cannot enforce a speculative notion of independence — that an "independent" body has exclusive disciplinary authority — for doing so would be a species of judicial legislation or a disguised constitutional amendment.

III.

This Court has no business limiting the plenary power of Congress unless the Constitution expressly so limits it. The fact that different constitutional bodies are treated differently

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[22] R.A. No. 7653, Sec. 10. *Removal*. — The President may remove any member of the Monetary Board for any of the following reasons:

> (a) If the member is subsequently disqualified under the provisions of Section 8 of this Act; or
>
> (b) If he is physically or mentally incapacitated that he cannot properly discharge his duties and responsibilities and such incapacity has lasted for more than six (6) months; or
>
> (c) If the member is guilty of acts or operations which are of fraudulent or illegal character or which are manifestly opposed to the aims and interests of the Bangko Sentral; or
>
> (d) If the member no longer possesses the qualifications specified in Section 8 of this Act.

See also III RECORDS, CONSTITUTIONAL COMMISSION 611 (22 August 1986):

> THE PRESIDENT. Commissioner Rodrigo is recognized.
>
> MR. RODRIGO. Madam President, may I ask a question for clarification? The section says, "The Congress shall establish an independent central monetary authority." My question has reference to the word "independent." How is independence of this authority supported by the Constitution?
>
> In the case of the judiciary, the Members are independent because they have a fixed term and they may not be removed except by impeachment or some very difficult process. This applies to the different constitutional commissions. But in the case of this central monetary authority which we call "independent", how is this independence maintained?

under the Constitution shows that independence is a broadly delineated norm. With this level of generality, the constitutional meaning of independence is only that of independent decision-making that is free from partisanship and political pressures. It does not even mean fiscal autonomy unless the Constitution says so.[23] Thus, it is generally left to Congress to particularize the meaning of independence, subject only to specific constitutional limitations. Nothing in the Constitution tells us that an "independent" body necessarily has exclusive disciplinary authority over its officials and employees.

A completely "independent" body is alien to our constitutional system. There is no office that is insulated from a possible correction from another office. The executive, legislative and judicial branches of government operate through the system of checks and balances. All independent constitutional bodies are subject to review by the courts. A fiscally autonomous body is subject to audit by the Commission on Audit, and Congress

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> MR. VILLEGAS. The thinking is: Congress, in establishing that independent central monetary authority, should provide a fixed term. Actually that was contained in the original Davide amendment but we thought of leaving it up to Congress to determine that term — a fixed term of probably five years or seven years serving in the monetary board.
>
> MR. RODRIGO. Does this include that they may not be removed except by impeachment by the Congress?
>
> MR. VILLEGAS. Exactly.
>
> MR. RODRIGO. Just like the members of the other constitutional commissions?
>
> MR. VILLEGAS. Yes. That is why we say that they shall be subject to the same disabilities or disqualifications as the members of the constitutional commissions.
>
> MR. RODRIGO. Are we leaving that to Congress?
>
> MR. VILLEGAS. That is right.
>
> MR. RODRIGO: Thank you.

[23] *Commission on Human Rights Employees' Association v. Commission on Human Rights*, G.R. No. 155336, 21 July 2006, 496 SCRA 226.

cannot be compelled to appropriate a bigger budget than that of the previous fiscal year.[24]

Section 8(2) of the Ombudsman Act is consistent with our system of checks and balances. The provision is a narrow form of delegation which empowers the President to remove only two officers in the Office of the Ombudsman, *i.e.* the Deputy Ombudsman and the Special Prosecutor. The proposition that an external disciplinary authority compromises the Ombudsman's independence fails to recognize that the Constitution expressly authorizes Congress to determine the mode of removal of all non-impeachable officers and employees. It also fails to recognize that under a system of checks and balances, an external disciplinary authority is desirable and is often the norm.

In disciplinary cases, the 1987 Constitution empowers the Ombudsman to direct the proper disciplinary authority "to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith."[25] This is further implemented by the Ombudsman Act which provides that "[a]t its option, the Office of **the Ombudsman may refer certain complaints to the proper disciplinary authority** for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law."[26]

Clearly, the Ombudsman is not constitutionally empowered to act alone. Congress can even authorize the Department of Justice or the Office of the President to investigate cases within the jurisdiction of the Ombudsman. Similarly, the Ombudsman can investigate public officers and employees who are under

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[24] See CONSTITUTION, Art. VIII, Sec. 3; Art. IX-A, Sec. 5; Art. XI, Sec. 14.

[25] CONSTITUTION, Art. XI, Sec. 13, par. (3). Emphasis supplied.

[26] R.A. No. 6770, Sec. 23(2).

the disciplinary authority of heads of other bodies or agencies.[27] The cases cited in the *ponencia, i.e. Hagad v. Gozo-Dadole*[28] and *Office of the Ombudsman v. Delijero, Jr.*[29] — illustrate that concurrent jurisdiction does not impair the independence of the Ombudsman. Duplication of functions may not at all times promote efficiency, but it is not proscribed by the Constitution.

Accordingly, I vote to **DENY** the petition in G.R. No. 196232, and to **GRANT** in part the petition in G.R. No. 196231, in accordance with the *ponencia* of Justice Estela M. Perlas-Bernabe.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

The present case consists of two consolidated petitions, G.R. No. 196231 and G.R. No. 196232.

I concur with the *ponencia*'s main conclusion that petitioner Emilio Gonzales III (in G.R. No. 196231, referred to as *Gonzales* or *petitioner Gonzales*) is not guilty of the charges leveled against him. But with due respect, ***I disagree with the conclusion that Section 8(2) of Republic Act (RA) No. 6770 (which empowers the President to remove a Deputy Ombudsman or a Special Prosecutor) is constitutionally valid***.

The petition of Wendell Barreras-Sulit (in G.R. No. 196232, referred to as *Sulit* or *petitioner Sulit*) commonly shares with G.R. No. 196231 the issue of the constitutionality of Section 8(2) of RA No. 6770. For the same reasons of unconstitutionality

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[27] The Administrative Code of 1987 (Executive Order No. 292) provides that the heads of agencies are generally empowered to investigate and decide matters involving disciplinary actions against officers and employees under their jurisdiction. ADMINISTRATIVE CODE, BOOK V, Title I, Substitute A, Chapter 7, Secs. 47, par. (2) and 48, par (I).

[28] G.R. No. 108072, 12 December 1995, 251 SCRA 242.

[29] G.R. No. 172635, 20 October 2010, 634 SCRA 135.

discussed below, the administrative proceedings against Sulit should be halted and nullified as she prays for in her petition.

G.R. No. 196231 is a petition questioning the validity of the administrative proceedings conducted by the Office of the President against Gonzales who was the Deputy Ombudsman for Military and Other Law Enforcement Offices.

The action against him before the Office of the President consists of an administrative charge for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty (under Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other pertinent Civil Service laws, rules and regulations), and of Misconduct in Office (under Section 3 of the Anti-Graft and Corrupt Practices Act [RA No. 3019]).[1] The administrative case against Gonzales was recommended by the Incident Investigation and Review Committee (*IIRC*) in connection with the hijacking of a tourist bus resulting in the death of the hijacker and of some passengers; the hijacker then accused Gonzales of illegal exactions and of delaying the disposition of his Ombudsman case.

On March 31, 2011, the Office of the President found[2] Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust, and penalized him with dismissal from office.

In **G.R. No. 196232**, petitioner Sulit, a Special Prosecutor in the Office of the Ombudsman, seeks to halt and nullify the ongoing administrative proceedings conducted by the Office of the President against her. Sulit was charged with violating Section 3(e) of RA No. 3019 and for having committed acts and/or omissions tantamount to culpable violations of the Constitution, and betrayal of public trust.

In behalf of the Office of the Ombudsman, Sulit entered into a plea bargain with Major General Carlos F. Garcia who

[1] *Rollo,* Vol. 1, p. 322.

[2] *Id.* at 72-86.

had been charged with Plunder and Money Laundering. Because of the plea bargain, Sulit was required to show cause why an administrative case should not be filed against her. She raised in her Written Explanation of March 24, 2011 the impermissibility and impropriety of administrative disciplinary proceedings against her because the Office of the President has no jurisdiction to discipline and penalize her.[3]

The two petitions – G.R. No. 196231 and G.R. No. 196232 - share a common issue: whether the President has the power to discipline or remove a Deputy Ombudsman or a Special Prosecutor in the Office of the Ombudsman from office. While the *ponencia* resolves this issue in favor of the President, **it is my considered view that the power to discipline or remove an official of the Office of the Ombudsman should be lodged only with the Ombudsman and not with the Office of the President, in light of the independence the Constitution guarantees the Office of the Ombudsman.**

The Office of the Ombudsman is a very powerful government constitutional agency tasked to enforce the accountability of public officers. Section 21 of The Ombudsman Act of 1989 (RA No. 6770) concretizes this constitutional mandate by providing that:

> Section 21. *Official Subject to Disciplinary Authority; Exceptions.* — The Office of the Ombudsman **shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries**, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. (Emphasis ours.)

The Ombudsman's duty to protect the people from unjust, illegal and inefficient acts of all public officials emanates from Section 12, Article XI of the Constitution. These broad powers include all acts of malfeasance, misfeasance, and nonfeasance of all

[3] *Rollo*, Vol. 2, p. 8.

public officials, **including Members of the Cabinet and key Executive officers**, during their tenure.

To support these broad powers, the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics[4] **and from fear of external reprisal by making it an "independent" office.** Section 5, Article XI of the Constitution expressed this intent, as follows:

> Section 5. There is hereby created the **independent** Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis ours.)

It is in this light that the general authority of the Office of the President to discipline all officials and employees the President has the authority to appoint,[5] should be considered.

In more concrete terms, **subjecting the officials of the Office of the Ombudsman to discipline and removal by the President, *whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority*, cannot but seriously place at risk the independence of the Ombudsman and her officials, and must consequently run counter to the independence that the Constitution guarantees the Office of the Ombudsman. What is true for the Ombudsman must be equally true, not only for her Deputies but for other lesser officials of that Office who act as delegates and agents of the Ombudsman in the performance of her duties.** The Ombudsman can hardly be expected to place her complete

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[4] See *Department of Justice v. Hon. Liwag*, 491 Phil. 270, 283 (2005); and *Deloso v. Domingo*, G.R. No. 90591, November 21, 1990, 191 SCRA 545, 550-551.

[5] *Atty. Aguirre, Jr. v. De Castro*, 378 Phil. 714, 726 (1999); *Hon. Bagatsing v. Hon. Melencio-Herrera*, 160 Phil. 449, 458 (1975); and *Lacson v. Romero*, 84 Phil. 740, 749 (1949).

trust in subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, **Section 8(2) of RA No. 6770**[6] **(providing that the President may remove a Deputy Ombudsman)** clearly runs against the constitutional intent and should, thus, be declared void.

Significantly, the possible unconstitutional effects of Section 8(2) of RA No. 6770 were not unknown to the framers of this law. These possibilities were brought by then Senator Teofisto Guingona to the framers' attention as early as the congressional deliberations:

> Reacting thereto, Senator Guingona observed that this might impair the independence of the Tanodbayan and suggested that the procedural removal of the Deputy Tanodbayan xxx be not by the President but by the Ombudsman.
>
> xxx xxx xxx
>
> Senator Guingona contended, however, that the Constitution provides for an independent Office of the Tanodbayan, and to allow the Executive to have disciplinary powers over the Tanodbayan Deputies would be an encroachment on the independence of the Tanodbayan.[7]

Despite Senator Guingona's objections, Congress passed RA No. 6770 and the objected Section 8(2) into law.[8] While it may be claimed that the congressional intent is clear after the Guingona

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[6] Section 8. *Removal; Filling of Vacancy.*—

> x x x x x x x x x
>
> (2) A Deputy or the Special Prosecutor may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

[7] *Ponencia,* p. 22.

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

objection was considered and rejected by Congress, such clarity and the overriding congressional action are not enough to insulate the assailed provision from constitutional infirmity if one, in fact, exists. This is particularly true if the infirmity relates to a core constitutional principle – the independence of the Ombudsman – that belongs to the same classification as the constitutionally-guaranteed independence that the Judiciary enjoys. To be sure, neither the Executive nor the Legislative can create the power that Section 8(2) grants where the Constitution confers none.[9] When exercised authority is drawn from a vacuum, more so when the authority runs counter to constitutional intents, this Court is obligated to intervene under the powers and duties granted and imposed on it by Article VIII of the Constitution.[10] The alternative for the Court is to be remiss in the performance of its own constitutional duties.

More compelling and more persuasive than the reason expressed in the congressional deliberations in discerning constitutional intent should be the **deliberations of the Constitutional Commission** itself on the independence of the Ombudsman. Commissioner Florenz Regalado of the Constitutional Commission openly expressed his concerns on the matter, fearing that any form of presidential control over the Office of the Ombudsman would diminish its independence:

> In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, **because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people**.

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[9] *Bautista v. Senator Salonga*, 254 Phil. 156, 179 (1989).

[10] CONSTITUTION, Article VIII, Sections 1 and 5(2).

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It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him **independent of the Office of the President** because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. x x x. There is supposed to be created a constitutional office — constitutionalized to free it from those tentacles of politics — and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.

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x x x. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support.[11] (Emphases ours.)

The intention of the Constitutional Commission to keep the Office of the Ombudsman independent from the President could not have been made any clearer than when Commissioner Christian Monsod vehemently rejected the recommendation of Commissioner Blas Ople who had suggested to the Committee that the Office of the Ombudsman be placed under the Executive:

MR. OPLE. x x x

May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, by way of designating the office of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

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[11] Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294.

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is — that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal.

The whole purpose of the our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.[12]

The statements made by Commissioner Monsod emphasized a very logical principle: **the Executive power to remove and discipline members of the Office of the Ombudsman, or to exercise any power over them, would result in an *absurd* situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members**. Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.

These views, to my mind, demolish the concern raised in Congress to justify Section 8(2) of RA No. 6770 — *i.e.*, that vesting the authority to remove the Tanodbayan on the Ombudsman would result in mutual protection.[13] This

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[12] *Id.* at 294.

[13] *Ponencia*, p. 22.

congressional concern, too, is a needless one as it is inconsistent with the system of checks and balance that our legal structure establishes.

At the practical constitutional level, the Tanodbayan (now the Office of the Special Prosecutor) cannot protect the Ombudsman who is an impeachable officer, as the power to remove the Ombudsman rests with Congress as the representative of the people.[14] On the other hand, should the Ombudsman attempt to shield the Tanodbayan from answering for any violation, the matter may be raised with the Supreme Court on appeal[15] or by Special Civil Action for *Certiorari*,[16] whichever may be applicable, in addition to the impeachment proceedings to which the Ombudsman may be subjected. For its part, the Supreme Court is a non-political independent body mandated by the Constitution to settle judicial and quasi-judicial disputes, whose judges and employees are not subject to the disciplinary authority of the Ombudsman and whose neutrality would be less questionable. In these lights, the checks and balance principle that underlies the Constitution can be appreciated to be fully operational.

I find it significant that the Office of the Ombudsman is not the only governmental body labeled as "independent" in our Constitution. The list includes the Judiciary,[17] the Constitutional Commissions (Commission on Elections, Commission on Audit, and the Civil Service Commission),[18] the Commission on Human Rights,[19] a central monetary authority,[20] and, to a certain extent, the National Economic Development Authority.[21] These bodies,

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[14] CONSTITUTION, Article XI, Section 2.

[15] RA No. 6770, Section 27.

[16] RULES OF COURT, Rule 65.

[17] CONSTITUTION, Article VIII, Sections 1, 2, 3, 6, 10 and 11.

[18] *Id.*, Article IX(A), Section 1.

[19] *Id.*, Article XIII, Section 17(1).

[20] *Id.*, Article XII, Section 20.

[21] *Ibid.*

however, are granted various degrees of "independence" and these variations must be clarified to fully understand the context and meaning of the "independent" status conferred on the office of the Ombudsman.

The independence enjoyed by the Office of the Ombudsman, by the Constitutional Commissions, and by the Judiciary shares certain characteristics – they do not owe their existence to any act of Congress, but are created by the Constitution itself; additionally, they all enjoy fiscal autonomy.[22]

For most, if not for all of these "independent" bodies, the framers of the Constitution intended that they be insulated from political pressure. As a checks and balance mechanism, the Constitution, the Rules of Court, and their implementing laws provide measures to check on the "independence" granted to the Constitutional Commissions and the Office of the Ombudsman; the Supreme Court, as the final arbiter of all legal questions, may review the decisions of the Constitutional Commissions and the Office of the Ombudsman, especially when there is grave abuse of discretion.[23] Of course, foisted over the Members of the Supreme Court is the power of impeachment that Congress has the authority to initiate, and carry into its logical end a meritorious impeachment case.[24] Such is the symmetry that our Constitution provides for the harmonious balance of all its component and "independent" parts.

In *Bengzon v. Drilon*,[25] we ruled on the fiscal autonomy of the Judiciary, and ruled against the interference that the President may bring. In doing so, we maintained that the independence, and the flexibility of the Judiciary, the Constitutional Commissions and the Office of the Ombudsman are crucial to our legal system:

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[22] *Id.*, Article VIII, Section 3; Article IX(A), Section 5; and Article XI, Section 14.

[23] *Id.*, Article VIII, Section 5.

[24] *Id.*, Article XI, Section 2.

[25] G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 150.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

As in the case of the Office of the Ombudsman, the constitutional deliberations explain the Constitutional Commissions' need for independence.

In the deliberations for the **1973 Constitution**, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, based on the precept that the effectivity of this body is dependent on its freedom from the tentacles of politics:

DELEGATE GUNIGUNDO x x x

[b] because we believe that the Civil Service created by law has not been able to eradicate the ills and evils envisioned by the framers of the 1935 Constitution; because we believe that the Civil Service created by law is beholden to the creators of that law and is therefore not politics-free, not graft-free and not corruption-free; because we believe that as long as the law is the reflection of the will of the ruling class, the Civil Service that will be created and recreated by law will not serve the interest of the people but only the personal interest of the few and the enhancement of family power, advancement and prestige.[26]

The deliberations of the **1987 Constitution** on the Commission on Audit, on the other hand, highlighted the developments in the past Constitutions geared towards insulating the Commission on Audit from political pressure:

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[26] Speech, Session of February 18, 1972, as cited in "The 1987 Constitution of the Republic of the Philippines: A Commentary" by Joaquin Bernas, 2003 ed., p. 1009.

MR. JAMIR. x x x

When the 1935 Constitution was enacted, the auditing office was constitutionalized because of the increasing necessity of empowering the auditing office to withstand political pressure. Finding a single Auditor to be quite insufficient to withstand political pressure, the 1973 Constitution established the Commission consisting of three members — a chairman and two commissioners.[27]

In *Brillantes, Jr. v. Yorac*,[28] we pointedly emphasized that the Constitutional Commissions, which have been characterized under the Constitution as "independent," are *not under the control of the President, even if they discharge functions that are executive in nature*. Faced with a temporary presidential appointment in the Commission on Elections, this Court vigorously denied the President the authority to interfere in these constitutional bodies:

The lack of a statutory rule covering the situation at bar is no justification for the President of the Philippines to fill the void by extending the temporary designation in favor of the respondent. This is still a government of laws and not of men. The problem allegedly sought to be corrected, if it existed at all, did not call for presidential action. The situation could have been handled by the members of the Commission on Elections themselves without the participation of the President, however well-meaning.

xxx xxx xxx

x x x. But while conceding her goodwill, we cannot sustain her act because it conflicts with the Constitution.

The Commission on Human Rights, also created by the Constitution as an "independent" office,[29] enjoys lesser independence since it was not granted fiscal autonomy, in the

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[27] Record of the Constitutional Commission, Vol. 1, July 15, 1986, pp. 532-533.

[28] G.R. No. 93867, December 18, 1990, 192 SCRA 358, 361.

[29] Section 17(1), Article XIII of the 1987 Constitution reads:

Section 17. (1) There is hereby created an independent office called the Commission on Human Rights.

manner fiscal autonomy was granted to the offices above-discussed. The lack of fiscal autonomy notwithstanding, the framers of the 1987 Constitution clearly expressed their desire *to keep the Commission independent from the executive branch and other political leaders*:

MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. **We also want a commission to function even under the worst circumstance when the executive may not be very cooperative.** However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. **We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.**

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MR. GARCIA. Thank you very much, Madame President.

Before we address the procedural question which Commissioner Rodrigo requested, I would like to touch on a very important question which I think is at the very heart of what we are trying to propose — the independence of this Commission on Human Rights. xxx

When I was working as a researcher for Amnesty International, one of my areas of concern was Latin America. I headed a mission to Colombia in 1980. I remember the conversation with President Julio Cesar Turbay Ayala and he told me that in Colombia, there were no political prisoners. This is a very common experience when one goes to governments to investigate human rights. From there, we proceeded to the Procuraduria General to the Attorney-General, to the Ministry of Justice, to the Ministry of Defense, and normally the answers that one will get are: "There are no political prisoners in our country"; "Torture is not committed in this country." Very often, when international commissions or organizations on human

rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. **In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because it is independent of the present administration.** Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. **Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.**[30] (Emphases ours.)

Similarly, the Constitution grants Congress the authority to establish an independent central monetary authority.[31] Under these terms, this office is not constitutionally-created nor does it possess fiscal autonomy. When asked what "independence" means in this provision, Commissioner Bernardo Villegas again reiterated the intention of various framers for it to be *independent of the executive branch*:

MR. VILLEGAS. No, this is a formula intended to prevent what happened in the last regime when the fiscal authorities sided with the executive branch and were systematically in control of monetary policy. This can lead to disastrous consequences. When the fiscal and the monetary authorities of a specific economy are combined,

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[30] Records of the Constitutional Commission, Vol. 3, August 27, 1986, pp. 748-749.

[31] Section 20, Article XII of the 1987 Constitution reads:

Section 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector.

then there can be a lot of irresponsibility. So, this word "independent" refers to the executive branch.[32]

The National Economic Development Authority, nominally designated as "independent," differs from the other similarly-described agencies because the constitutional provision that provides for its creation immediately puts it under the control of the executive.[33] This differing shade of "independence" is supported by the statements made during the constitutional deliberations:

MR. MONSOD. I believe that the word "independent" here, as we answered Commissioner Azcuna, was meant to be independent of the legislature because the NEDA under the present law is under the Office of the President.

MR. COLAYCO. Yes. In other words, the members of that agency are appointed by the President?

MR. VILLEGAS. That is right.

MR. MONSOD. Yes.

MR. VILLEGAS. The President heads the NEDA.[34]

Commissioner Monsod continues by explaining that they did not constitutionalize the National Economic Development

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[32] Record of the Constitutional Commission, Vol. 3, August 13, 1986, p. 268.

[33] Section 9, Article 12 of the 1987 Constitution reads:

> Section 9. The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.
>
> Until Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

[34] Record of the Constitutional Commission, Vol. 3, August 13, 1986, p. 263.

Authority, and, in accordance with the second paragraph of Section 9, Article XII of the 1987 Constitution, even left to Congress the discretion to abolish the office:

> MR. MONSOD. During the Committee hearings, there were proposals to change the composition of the governing body not only of the Monetary Board but also of the NEDA. That is why if we notice in this Article, we did not constitutionalize the NEDA anymore unlike in the 1973 Constitution. We are leaving it up to Congress to determine whether or not the NEDA is needed later on. The idea of the Committee is that if we are going for less government and more private sector initiative, later on it may not be necessary to have a planning agency. Thus, it may not be necessary to constitutionalize a planning agency anymore.
>
> So this provision leaves room for the legislature not only to revise the composition of the governing body, but also to remove the NEDA once it is no longer needed in its judgment.[35]

These deliberative considerations make it abundantly clear that with the exception of the National Economic Development Authority, the independent constitutional bodies were consistently intended by the framers to be ***independent from executive control or supervision or any form of political influence.***

This perspective abundantly clarifies that the cases cited in the *ponencia – Hon. Hagad v. Hon. Gozodadole*[36] and *Office of the Ombudsman v. Delijero, Jr.*[37] – are not in point. These cases refer to the disciplinary authority of the Executive over a public school teacher and a local elective official. Neither of these officials belongs to independent constitutional bodies whose actions should not even be tainted with any appearance of political influence.

In my view, the closest and most appropriate case to cite as exemplar of independence from executive control is *Bautista*

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[35] *Id.* at 263-264.

[36] 321 Phil. 604 (1995).

[37] G.R. No. 172635, October 20, 2010, 634 SCRA 135.

v. Senator Salonga,[38] where this Court categorically stated, with respect to the independent Commission on Human Rights, that the tenure of its Commissioners could not be placed under the discretionary power of the President:

> Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent – as the Commission on Human Rights – and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.[39]

Also in point as another "independence" case is *Atty. Macalintal v. Comelec*,[40] this time involving the Commission on Elections, which gave the Court the opportunity to consider ***even the mere review of the rules of the Commission on Elections by Congress a "trampling" of the constitutional mandate of independence*** of these bodies. Obviously, the mere review of rules places considerably less pressure on these bodies than the Executive's power to discipline and remove key officials of the Office of the Ombudsman. The caution of, and the strong words used by, this Court in protecting the Commission on Elections' independence should – in addition to those expressed before the Constitutional Commissions and in Congress in the course of framing RA No. 6770 – speak for themselves as reasons to invalidate the more pervasive authority granted by Section 8(2) of RA No. 6770.

Thus, in the case of independent constitutional bodies, with the exception of the National Economic Development Authority,

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[38] *Supra* note 9.

[39] *Id.* at 183-184.

[40] 453 Phil. 586, 658-659 (2003).

the principle that the President should be allowed to remove those whom he is empowered to appoint (because of the implied power to dismiss those he is empowered to appoint[41]) should find no application. **Note that the withholding of the power to remove is not a stranger to the Philippine constitutional structure**.

For example, while the President is empowered to appoint the Members of the Supreme Court and the judges of the lower courts,[42] he cannot remove any of them; the Members of the Supreme Court can be removed only by impeachment and the lower court judges can be removed only by the Members of the Supreme Court *en banc*. This is one of the modes by which the independence of the Judiciary is ensured and is an express edge of the Judiciary over the other "independent" constitutional bodies.

Similarly, the President can appoint Chairmen and Commissioners of the Constitutional Commissions, and the Ombudsman and her Deputies,[43] but the Constitution categorically provides that the Chairmen of the Constitutional Commissions and the Ombudsman can only be removed by impeachment.[44] **The absence of a constitutional provision providing for the removal of the Commissioners and Deputy Ombudsmen does not mean that Congress can empower the President to discipline or remove them in violation**

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[41] *Supra* note 5. Section 17, Article VII, and Section 4, Article X of the Constitution likewise provide that:

> Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.
>
> Section 4. The President of the Philippines shall exercise general supervision over local governments.

[42] CONSTITUTION, Article VIII, Section 9.

[43] *Id.*, Article IX(B), Section 1(2); Article IX(C), Section 1(2); Article IX(D), Section 1(2); and Article XI, Section 9.

[44] *Id.*, Article XI, Section 2.

of the independence that the Constitution textually and expressly provides.[45] As members of independent constitutional bodies, they should be similarly treated as lower court judges, subject to discipline only by the head of their respective offices and subject to the general power of the Ombudsman to dismiss officials and employees within the government for cause. **No reason exists to treat them differently**.

While I agree with Justice Carpio's opinion that the Constitution empowered Congress to determine the manner and causes for the removal of non-impeachable officers, we cannot simply construe Section 2, Article XI of the Constitution to be a blanket authority for Congress to empower the President to remove all other public officers and employees, including those under the independent constitutional bodies. When the Constitution states that Congress may provide for the removal of public officers and employees by law, it does not mean that the law can violate the provisions and principles laid out in the Constitution. The provision reads:

> The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law, <u>but not by impeachment</u>.** [emphasis and underscoring ours]

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[45] *Id.*, Article IX(A), Section 1 and Article XI, Section 5 read:

> Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.
>
> Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

The deliberations of the Constitutional Commissions, as quoted by Justice Carpio, explain an important aspect of the **second sentence of Section 2, Article XI of the Constitution — that it was not the intent to widen the discretion of Congress in providing for the removal of a public officer; the intent was to limit its powers. The second sentence of *Section 2, Article XI was provided to limit the public officers who can only be removed by impeachment***. This limitation is one made necessary by past experiences. In an earlier law, Presidential Decree No. 1606, Congress provided, by law, that justices of the Sandiganbayan (who are not included in the enumeration) may only be removed by impeachment. **Commissioner Regalado insisted on adding the second sentence of Section 2, Article XI of the Constitution to prevent Congress from extending the more stringent rule of "removal only by impeachment" to favored public officers**.[46]

Ultimately, the question now before this Court goes back to whether the Constitution intended to allow political entities, such as the Executive, to discipline public officers and employees of independent constitutional bodies. If this is the intent, then Congress cannot have the authority to place the power to remove officers of these "independent constitutional bodies" under

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[46] Record of the Constitutional Commission, Vol. 2, July 28, 1986, p. 356 reads:

MR. REGALADO. xxx The reason for the amendment is this: While Section 2 enumerates the impeachable officers, there is nothing that will prevent the legislature as it stands now from providing also that other officers not enumerated therein shall also be removable only by impeachment, and that has already happened.

Under Section 1 of P.D. No,, 1606, the Sandiganbayan Decree, justices of the Sandiganbayan may be removed only by impeachment, unlike their counterparts in the then Court of Appeals. They are, therefore, a privileged class xxx

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MR. REGALADO. xxx But the proposed amendment with not prevent the legislature from subsequently repealing or amending that portion of the law [PD No. 1606]. Also, it will prevent the legislature from providing for favored public officials as not removable except by impeachment.

executive disciplinary authority unless otherwise expressly authorized by the Constitution itself. I firmly take this position because the drafters repeatedly and painstakingly drafted the constitutional provisions on the independent constitutional bodies to separate them from executive control. Even after the other delegates made it clear that the easier path would be to place these bodies under the control of the President, the majority nevertheless voted against these moves and emphatically expressed its refusal to have these offices be made in any way under the disciplinary authority of the Executive.

This constitutional intent rendered it necessary for the Constitution to provide the instances ***when executive interference may be allowed***. In the case of the National Economic Development Authority, the Constitution explicitly provided that the President may exert control over this body. The Constitution was also explicit when it empowered the President to appoint the officers of the other "independent" bodies, and even then, this power was qualified: (1) in the cases of the Constitutional Commissions, by giving the chairmen and the members staggered terms of seven years to lessen the opportunity of the same President to appoint the majority of the body;[47] and (2) in the case of the Ombudsman and his Deputies, by limiting the President's choice from a list prepared by the Judicial and Bar Council.[48]

Thus, we cannot maintain a light and cavalier attitude in our constitutional interpretation and merely say that the "independence" of the constitutional bodies is whatever Congress would define it at any given time. In the cases I have cited – *Bautista v. Senator Salonga*,[49] *Atty. Macalintal v. Comelec*,[50] and *Brillantes, Jr. v. Yorac*[51] – this Court did not merely leave it to the Legislature or the Executive to freely interpret what "independence" means.

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[47] CONSTITUTION, Article IX-B, C, and D, Section 1(2).
[48] *Id.*, Article XI, Section 9.
[49] *Supra* note 9.
[50] *Supra* note 39.
[51] *Supra* note 27.

We recognized in the term a meaning fully in accord with the intent of the Constitution.

This intent was the same guiding light that drove this Court to rule that the President cannot determine the tenure of the Commission on Human Rights Chairman and Members; that Congress cannot enact a law that empowers it to review the rules of the Commission on Elections; and that the President cannot even make interim appointments in the Commission on Elections.

After halting these lesser infractions based on the constitutional concept of "independence," it would be strange – in fact, it would be inconsistent and illogical for us – to rule at this point that Congress can actually allow the President to exercise the power of removal that can produce a chilling effect in the performance of the duties of a Special Prosecutor or of the Deputy Ombudsman.

I draw attention to the fact that Sections 9, 10, 11 and 12, Article XI of the Constitution do not only refer to the Ombudsman, but also to the Ombudsman's Deputies. **Section 9** provides for their appointment process. While the President can appoint them, the appointment should be made from the nominations of the Judicial and Bar Council and the appointments do not require confirmation. **Section 10** gives the Ombudsman and the Deputies the same rank and salary as the Chairmen and Members of the Constitutional Commission. The salary may not be diminished during their term. **Section 11** disqualifies them from reappointment and participation in the immediately succeeding elections, in order to insulate them further from politics. **Section 12** designates the Ombudsman and the Deputies as "protectors of the people" and directs them to act promptly on all complaints against public officials or employees.

Under this structure providing for terms and conditions fully supportive of "independence," it makes no sense to insulate their appointments and their salaries from politics***, but not their tenure***. One cannot simply argue that the President's power to discipline them is limited to specified grounds, since the mere filing of a case against them can result in their suspension and can interrupt the performance of their functions, in violation of

Section 12, Article XI of the Constitution. With only one term allowed under Section 11, a Deputy Ombudsman or Special Prosecutor removable by the President can be reduced to the very same ineffective Office of the Ombudsman that the framers had foreseen and carefully tried to avoid by making these offices independent constitutional bodies.

At the more practical level, we cannot simply turn a blind eye or forget that the work of the Office of the Ombudsman, like the Constitutional Commissions, can place the officers of the Executive branch and their superior in a bad light. We cannot insist that the Ombudsman and his Deputies look into all complaints, even against those against Executive officials, and thereafter empower the President to stifle the effectiveness of the Ombudsman and his or her Deputies through the grant of disciplinary authority and the power of removal over these officers. Common and past experiences tell us that the President is only human and, like any other, can be displeased. At the very least, granting the President the power of removal can be counterproductive, especially when other less political officers, such as the Ombudsman and the Judiciary, already have the jurisdiction to resolve administrative cases against public officers under the Office of the Ombudsman.

Given the support of the Constitution, of the Records of the Constitutional Commission, and of previously established jurisprudence, we cannot uphold the validity of Section 8(2) of RA No. 6770 merely because a similar constitutionally-unsupported provision exists under RA No. 7653. Under our legal system, statutes give way to the Constitution, to the intent of its framers and to the corresponding interpretations made by the Court. It is not, and should not be, the other way around.

I join the *ponente* in declaring that the Deputy Ombudsmen and Special Prosecutors should not escape accountability for their wrongdoing or inefficiency. I differ only in allowing the President, an elective official whose position is primarily political, to discipline or remove members of independent constitutional bodies such as the Office of the Ombudsman. Thus, the administrative proceedings conducted by the Office of the President against petitioner Gonzales should be voided and those against petitioner Sulit discontinued.

Lastly, while I find the proceedings before the Office of the President constitutionally infirm, nothing in this opinion should prevent the Ombudsman from conducting the proper investigations and, when called for, from filing the proper administrative proceedings against petitioners Gonzales and Sulit. In the case of Gonzales, further investigation may be made by the Ombudsman, but only for aspects of his case not otherwise covered by the Court's Decision.

DISSENTING OPINION

ABAD, *J.*:

This case is not too complicated. Section 8(2) of Republic Act (R.A.) 6770 gave the Office of the President (OP) the power to investigate and remove from office the Deputies Ombudsman and the Special Prosecutor who work directly under the supervision and control of the Ombudsman. Using this power, the OP investigated and found petitioner Emilio Gonzales III, Deputy Ombudsman for the Military and Other Law Enforcement Offices, guilty of gross neglect in handling the pending case against a police officer who subsequently hijacked a tourist bus. Using the same power, the OP initiated a similar investigation of a case against petitioner Wendell Barreras-Sulit, the Special Prosecutor, for alleged corruption, she having allowed her office to enter into a plea-bargaining agreement with Major General Carlos F. Garcia who had been charged with plunder.

Gonzales and Sulit filed separate petitions, the first in G.R. 196231 and the second in G.R. 196232. Gonzales assails the correctness of the OP decision that dismissed him from the service. Both challenges the constitutionality of Section 8(2) of R.A. 6770 which gave the President the power to investigate and remove them.

The *ponencia* would have the Court uphold the constitutionality of Section 8(2), R.A. 6770 that empowers the President to investigate and remove Deputy Ombudsman Gonzales and Special Prosecutor Sulit from office. It argues that, although the Constitution expressly provides for the removal of the Ombudsman himself, which is by impeachment, it fails to provide a procedure for the removal from

office of a Deputy Ombudsman or Special Prosecutor. By enacting Section 8(2) of R.A. 6770, Congress simply filled in a void that the Constitution itself authorizes.

The *ponencia* relies on Section 2, Article XI of the Constitution for support:

> *Section 2.* The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law**, but not by impeachment. (Emphasis ours)

The removal from office of a Deputy Ombudsman or a Special Prosecutor, says the *ponencia*, falls in the category of public officers and employees that "may be removed from office as provided by law."

True enough, the above Section 2 above provides that only the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed by impeachment and that other public officers and employees may be removed by law. But this cannot literally be taken to mean that Congress may authorize the President to investigate and remove all non-impeachable public officers and employees.

Surely, Congress may not authorize the President to exercise this power against those that the Constitution expressly or implicitly shields from his influence or intervention. For instance, Congress cannot authorize the President to remove lower court judges, although they are not subject to impeachment, since such authority is reserved by the Constitution to the Supreme Court.[1] Further, as the Court

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[1] Section 11, Article VIII of the 1987 Constitution –

"The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. **The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order**

held in *Bautista v. Salonga*,[2] although the Chairman and Members of the Commission on Human Rights are not impeachable public officials, their terms cannot be made to depend on the pleasure of the President since the Constitution perceives them as exercising functions independent of him.

Actually, there was no existing "void" in the matter of the removal of the Deputy Ombudsman and the Special Prosecutor when Congress enacted R.A. 6770. Administrative Code of 1987, then in force, already vested in heads of offices, including the Ombudsman, the power to investigate and take disciplinary action against all officers and employees under him, the Deputy Ombudsman and the Special Prosecutor included.[3]

In subsequently enacting R.A. 6770, Congress in effect removed such power of investigation and removal, insofar as the Deputy Ombudsman and the Special Prosecutor were concerned, from the Ombudsman and transferred the same to the President. As will shortly be shown below, such wresting of power from the Ombudsman is an appalling blow to his constitutionally mandated independence from the influence and threats of the other departments and agencies of government.

Section 5, Article XI of the 1987 Constitution provides:

Section 5. There is hereby created the **independent Office of the Ombudsman**, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

The Constitution has reasons for making the Office of the Ombudsman "independent." Its primordial duty is to investigate and discipline all elective and appointive government officials.[4]

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their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." (Emphasis ours)

[2] 254 Phil. 156, 183-184 (1989).

[3] Sec. 47, par. (2), Chapter 6, Subtitle A, Title IX.

[4] The Ombudsman Act of 1989, Section 21.

Specifically, Section 13, Article XI of the Constitution vests in that Office the absolute power to investigate any malfeasance, misfeasance, or non-feasance of public officers or employees. This function places it a notch higher than other grievance-handling, investigating bodies. With the exception of those who are removable only by impeachment, the Office of the Ombudsman can investigate and take action against any appointive or elected official for corruption in office, be they Congressmen, Senators, Department Secretaries, Governors, Mayors, or Barangay Captains.

Thus, the Office of the Ombudsman needs to be insulated from the pressures, interventions, or vindictive acts of partisan politics.[5] The Court has itself refrained from interfering with the Office of the Ombudsman's exercise of its powers. It is not the Court but the Ombudsman who is the champion of the people and the preserver of the integrity of public service.[6] The Office of the Ombudsman, which includes the Deputy Ombudsman and the Special Prosecutor, cannot be beholden to or fearful of any one, the President included.[7]

The power to impeach is a function of check and balance under the Constitution. But the power to remove "public officers and employees" from office, in the realm of administrative law, is a function of supervision, if not control. Keeping the Deputies in the Office of the Ombudsman and the Special Prosecutor independent as the Constitution commands and subjecting them to the President's control or supervision are incompatible ideas.

To say that the Deputy Ombudsman and the Special Prosecutor will remain independent of the President notwithstanding that he can investigate and remove them from office at any time is the equivalent of saying that monkeys grow out of trees. If there is any one that the holder of public office fears, it is that person who has the power to remove him.

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[5] *Department of Justice v. Liwag*, 491 Phil. 270, 283 (2005).

[6] *Dimayuga v. Office of the Ombudsman*, 528 Phil. 42, 48 (2006).

[7] *Id*.

If the Court were to uphold the Constitutionality of Section 8(2) of R.A. 6770, then the Deputy Ombudsman and the Special Prosecutor will be able to openly defy the orders of the Ombudsman and disregard his policies without fear of disciplinary sanction from him. The law makes them subject to investigation and removal only by the President. It is him they have to obey and will obey. Surely, this is not what the Constitution contemplates in an "independent" Office of the Ombudsman.

The present cases are precisely in point. The Ombudsman did not herself appear to regard Gonzales and Sulit's actuations in the subject matters of the cases against them worthy of disciplinary action. But, given that the Secretary of Justice, an alter ego of the President, took an opposite view, the President deigned to investigate them. In effect, the President is able to substitute his judgment for that of the Ombudsman in a matter concerning a function of the latter's office. This gives the President a measure of control over the Ombudsman's work.

From here on, if the Court chooses to uphold the constitutionality of Section 8(2) of R.A. 6770, the Deputy Ombudsman and the Special Prosecutor would be consulting the Office of the President or the Secretary of Justice before they act in any case in which the latter has an interest. This is the ludicrous and unpalatable situation that the framers of the Constitution envisaged and sought to avoid when they granted the Office of the Ombudsman independence from others who wield governmental powers.[8]

I, therefore, vote to grant the petitions, declare Section 8(2) of Republic Act 6770 that empowers the President to remove the Deputy Ombudsman and the Special Prosecutor unconstitutional and void, annul the decision of the Office of the President against Deputy Ombudsman Emilio Gonzales III dated March 31, 2011, and permanently enjoin that Office from further proceeding with the administrative case against Special Prosecutor Wendell Barreras-Sulit.

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[8] Section 12, Article XI of the 1987 Constitution.

THIRD DIVISION

[A.C. No. 6753. September 5, 2012]

MILA VIRTUSIO, *complainant, vs.* **ATTY. GRENALYN V. VIRTUSIO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; GROSS MISCONDUCT AS GROUND FOR SUSPENSION OR DISBARMENT FROM THE PRACTICE OF LAW; RATIONALE. — Lawyers are, as officers of the court and instruments for the administration of justice, expected to maintain not only legal proficiency but also a high standard of morality, honesty, and fair dealing. A lawyer's gross misconduct, whether in his professional or private capacity, is ground for suspension or disbarment under the principle that, since good moral character is an essential qualification for the admission to the practice of law, maintaining such trait is a condition for keeping the privilege.

2. ID.; ID.; USE FOR PERSONAL PURPOSE OF MONEY ENTRUSTED TO A LAWYER CONSTITUTES DISHONEST AND DECEITFUL CONDUCT; PRESENT IN CASE AT BAR. — By her own account, Atty. Virtusio admitted misusing the money that Mila entrusted to her for payment to Stateland. Her excuse is that she lost track of her finances and mixed up her office funds with her personal funds. But this excuse is too thin. She admitted misusing ₱165,000.00 of Mila's money, which is not petty cash. Indeed she tried to borrow money from a third person to cover it up rather than just offer her shallow excuse to Mila. Atty. Virtusio's use for personal purpose of money entrusted to her constitutes dishonest and deceitful conduct under the Code of Professional Responsibility.

3. ID.; ID.; A LAWYER WHO NOTARIZES A DOCUMENT WITHOUT A PROPER COMMISSION VIOLATES HIS LAWYER'S OATH TO OBEY THE LAW; IMPOSABLE PENALTY. — A lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law.

He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well. A proper sanction is authorized. Considering, however, that based on the evidence Atty. Virtusio had notarized only two documents without a proper notarial commission, the Court finds her suspension from notarial practice for one year adequate.

4. ID.; ID.; AS A RULE, VIOLATION THEREOF IS NOT SUBJECT TO COMPROMISE; APPLICATION IN CASE AT BAR. – That Mila had agreed after some financial settlement to withdraw her complaint against Atty. Virtusio cannot exempt the latter from the prescribed sanction. She has outraged the country's professional code and this demands a measure of justice. As the Court said in *Spouses Soriano v. Atty. Reyes*, disbarment is a disciplinary action taken for the public good. Consequently, it is as a rule not subject to some compromise entered into with the complainant. Besides, Mila's evidence is already a matter of record and the Court cannot simply ignore the same.

D E C I S I O N

ABAD, *J.*:

This administrative case concerns a lawyer who failed to use the money given by another to fund the checks she issued as accommodation party in payment for the property that was purchased by such person and performed a notarial act without commission.

The Facts and the Case

On June 14, 2005, Mila Virtusio (Mila) filed with this Court a complaint[1] for disbarment against her husband's distant relative, Atty. Grenalyn V. Virtusio.

[1] *Rollo*, pp. 1-5.

Mila alleged that sometime in 1999 Atty. Virtusio convinced her to buy a house and lot at North Olympus Subdivision in Novaliches, Quezon City, from its developer, Stateland Investment Corporation (Stateland). Mila agreed for Atty. Virtusio to use her personal checks in paying the seller with Mila reimbursing her. Under this arrangement, Mila gave Atty. Virtusio the following amounts: ₱95,000.00, ₱25,000.00, ₱65,000.00, ₱64,000.00 and ₱64,000.00. All of these were properly receipted except for the ₱95,000.00 for which she got a receipt from her for only ₱90,000.00.[2] On October 25 and November 24, 1999, Mila deposited identical amounts of ₱64,000.00 each in Atty. Virtusio's checking account with Equitable Bank.[3] In all, Mila gave her ₱441,000.00.

To her surprise, however, Mila began receiving letters from Stateland, demanding that she make good the dishonored checks that it got. When she confronted Atty. Virtusio regarding this, the latter assured her that she would take care of the problem. But the demand letters persisted.

For fear of losing the property, Mila directly dealt with Stateland in January 2000. She then found out that her arrearages had come close to ₱200,000.00, inclusive of penalty and interest. In order not to lose the property, Mila and her husband decided to settle their overdue obligation with money they borrowed at high interest.[4] In turn, Stateland turned over to her three checks of Atty. Virtusio, each for ₱71,944.97, with the notation "DAIF."[5]

Mila further alleged that Atty. Virtusio declined to return to her the money the latter misappropriated despite demand. Only when Mila threatened to file a case against her did Atty. Virtusio agree to pay her on February 20, 2001 by executing a deed of sale in her favor covering her Mazda car. Despite the sale,

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[2] *Id.* at 7-10.

[3] *Id.* at 1-2, 90-91.

[4] *Id.* at 2-3, 91.

[5] *Id.* at 13 (including dorsal side).

however, Atty. Virtusio pleaded with Mila and her husband to let her keep the car meanwhile since she needed it in her work. When she refused to give up the car, Mila filed a replevin case against Atty. Virtusio that the court eventually decided in Mila's favor.[6] But, as it turned out, Atty. Virtusio had managed to register the car in her children's name and sold it to a third person. Mila filed a case of estafa against Atty. Virtusio[7] apart from the present disbarment case.

Mila claimed that Atty. Virtusio evaded the return of money she misappropriated, impeded the execution of a final judgment, and engaged in conduct that discredits the legal profession, all in violation of the Code of Professional Responsibility, rendering her unfit to remain a member of the bar.[8]

In a July 27, 2005 Resolution,[9] the Court required Atty. Virtusio to comment on the complaint. She asked for extension of time to comply but did not file her comment just the same.[10] On Mila's motion,[11] the Court again required Atty. Virtusio to file her comment and to show cause why she had not complied with its previous orders.[12] Still, she did not file any comment, prompting the Court to impose on her on November 15, 2006 a ₱500.00 fine. The court again reiterated its order for her to file her comment.[13]

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[6] *Id.* at 16-20.

[7] *Id.* at 3-5, 92.

[8] *Id.* at 5, 98.

[9] *Id.* at 21.

[10] *Id.* at 23-24, 26.

[11] *Id.* at 29.

[12] Resolution dated May 3, 2006, *id.* at 31.

[13] *Id.* at 39.

With no response, on August 1, 2007, the Court directed the Clerk of Court to resend its November 15, 2006 Resolution to Atty. Virtusio[14] but this was returned unserved with the notation, "RTS-Person moved out." On December 3, 2007 the Court ordered the resending of the May 3 and November 15, 2006 Resolutions to Atty. Virtusio, this time at an address in Sta. Mesa that Mila furnished. When this last resolution was returned unserved with the notation, "RTS-Unclaimed," the Court issued a Resolution[15] on April 30, 2008 that considered Atty. Virtusio to have waived her right to file a comment considering that she filed none despite having sought an extension from the Court. The Court also referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP Investigating Commissioner directed Atty. Virtusio to file a position paper. She filed a motion for extension of time to file the same but did not.[16]

Based on the pleadings on hand, the IBP Investigating Commissioner reported having found that Atty. Virtusio appropriated portions of the money that Mila gave her for payment to Stateland, thus evidencing her moral unfitness to practice the profession. The Commissioner recommended the imposition of the penalty of one year suspension from the practice of law[17] with a two-year disqualification from reappointment as Notary Public, given that she had notarized documents despite the expiration of her notarial commission.[18] The IBP Board of Governors approved the report and recommendation.[19]

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[14] *Id.* at 60.

[15] *Id.* at 74.

[16] *Id.* at 372-373.

[17] *Id.* at 367-369.

[18] *Id.* at 52, 56-58, 369.

[19] Resolution XVIII-2008-626 dated December 11, 2008, *id.* at 359.

Atty. Virtusio filed a motion for reconsideration of the IBP Investigating Commissioner's action on April 30, 2009.[20] She explained that her failure to file her position paper was brought about by her belief that she needed to wait for the IBP's action on her motion for extension of time to file the same. Thus, she prayed that her attached position paper be admitted and considered in resolving her motion for reconsideration.[21]

In her version of the facts, Atty. Virtusio wants to convince the Court that she committed no intentional wrongs and that she was but a victim of circumstances. Although she admitted using Mila's money rather than pay Stateland with it, she explained that, having been busy attending to her sick son in Manila, she failed to monitor her check disbursements, entrusting it to an office staff. Only in December 1999 was she able to audit the same and discover the mismanagement of her funds and its co-mingling with office funds, resulting in overlapping of accountabilities and non-funding of the checks for Stateland when they fell due.[22]

On becoming aware of the lapses, however, Atty. Virtusio borrowed ₱165,000.00 from Engr. Marciano de Guzman so she could pay Mila but, having failed to pay him as well, he went after Mila who was co-maker of the loan. When Atty. Virtusio tried to make further arrangements to pay what she owed Mila, the latter refused to negotiate and did not acknowledge the past payments she had already made. When Atty. Virtusio refused to yield to Mila's demand for payment of the entire ₱165,000.00, she filed a replevin case, a complaint for estafa, and disbarment charge against her.[23]

Atty. Virtusio averred that in October 2006 she and Mila entered into a verbal agreement whereby she would pay her

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[20] *Id.* at 370-394.

[21] *Id.* at 372-373.

[22] *Id.* at 374, 418-419.

[23] *Id.* at 375-379, 419-422.

₱200,000.00, with ₱87,500.00 up front, in exchange for Mila's dismissal of all her actions. Notwithstanding that the compromise agreement had not been formalized, Atty. Virtusio claimed that it obliterated her liabilities, given that she substantially settled her obligations to Mila.[24]

Atty. Virtusio also pointed out, that the charges against her were not born of some professional relation between Mila and her. She had acted as an accommodation party, allowing Mila to make use of her personal checks to facilitate the purchase of a property from Stateland. And, assuming that the predicament she finds herself in has a bearing on her professional conduct, the same does not amount to grossly immoral conduct since she owned up to her responsibilities and exerted tireless effort to settle her accounts.[25]

Further, Atty. Virtusio claimed that she should not be penalized for violation of the notarial law since this offense did not form part of the original complaint to which she was required to respond. At any rate, she merely committed an oversight. She had religiously renewed her notarial commission yearly since May 1995. When she notarized the questioned documents, she believed in good faith that she had renewed her notarial commission for 2006 and 2007 just as before. She asked not to be punished for her mistake since it was brought about by her sincere commitment to extend free legal service to the disadvantaged.[26]

Lastly, Atty. Virtusio asked the Court to reconsider the harsh penalty imposed on her in the light of the peculiar circumstances of her case and the good faith she showed.[27]

On June 26, 2011, the IBP Board of Governors issued Resolution XIX-2011-477[28] denying the motion despite an affidavit

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[24] *Id.* at 380-381, 388, 422.
[25] *Id.* at 384-389.
[26] *Id.* at 389-391.
[27] *Id.* at 391-393.
[28] *Id.* at 360.

of desistance that Mila filed in the meantime.[29] As provided in Section 12(b),[30] Rule 139-B of the Rules of Court, the IBP forwarded the instant case to this Court for final action.

Questions Presented

The questions presented in this case are:

1. Whether or not the IBP erred in finding Atty. Virtusio guilty of grave misconduct in her dealings with Mila and in notarizing documents without a renewed commission; and

2. Assuming Atty. Virtusio was guilty of some offenses, whether or not the IBP imposed the appropriate penalties on her.

Rulings of the Court

Lawyers are, as officers of the court and instruments for the administration of justice, expected to maintain not only legal proficiency but also a high standard of morality, honesty, and fair dealing. A lawyer's gross misconduct, whether in his professional or private capacity, is ground for suspension or disbarment under the principle that, since good moral character is an essential qualification for the admission to the practice of law, maintaining such trait is a condition for keeping the privilege.[31]

By her own account, Atty. Virtusio admitted misusing the money that Mila entrusted to her for payment to Stateland. Her excuse is that she lost track of her finances and mixed up her office funds with her personal funds. But this excuse is too

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[29] *Id.* at 150, 152.

[30] Sec. 12. *Review and decision by the Board of Governors.* —

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(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[31] *Tomlin II v. Atty. Moya II*, 518 Phil. 325, 330 (2006).

thin. She admitted misusing ₱165,000.00 of Mila's money, which is not petty cash. Indeed she tried to borrow money from a third person to cover it up rather than just offer her shallow excuse to Mila. Atty. Virtusio's use for personal purpose of money entrusted to her constitutes dishonest and deceitful conduct under the Code of Professional Responsibility. It provides:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Atty. Virtusio cannot absolve herself of liability by claiming that she failed to attend to her finances because she had to look after a sick child at that time. Assuming she had such a child, the fact is that it was not by mere oversight that she failed to finance the checks for Stateland. For, if this were so, she could have easily rectified her mistake by using her other funds. In truth, she spent the money that Mila entrusted to her because she had no other funds. Indeed, she had to borrow money from a third party later to remedy her financial problems.

What is more, supposedly to cover up for her fault, Atty. Virtusio executed a deed of sale covering her car in Mila's favor rather than return the money she defalcated. But, again acting with guile, she withheld possession of the car and transferred its registration in the name of her children.

Atty. Virtusio is guilty by her above acts of gross misconduct that warrants her suspension for one year from the practice of law following Section 27,[32] Rule 138 of the Rules of Court.

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[32] Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended

The Court cannot also countenance Atty. Virtusio's notarization of documents after her notarial commission had expired. Although the IBP discovered this violation of the notarial law only in the course of the proceedings and was not a subject matter of Mila's complaint, it cannot close its eyes to the same. Besides, Atty. Virtusio had an opportunity to defend herself against this additional charge.[33] Her defense is that she thought that she had renewed her commission.

Again, Atty. Virtusio's defense is unsubstantial. She did not renew her notarial commission for two years, 2006 and 2007, not just one. She could not have missed that fact considering that, as she said, she had been renewing her commission yearly from 1995 to 2005.

A lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law. He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well.[34] A proper sanction is authorized.[35]

Considering, however, that based on the evidence Atty. Virtusio had notarized only two documents without a proper notarial commission, the Court finds her suspension from notarial practice for one year adequate.[36]

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from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any unlawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a part to a case without authority to do so.

[33] *Bayonla v. Atty. Reyes*, A.C. No. 4808, November 22, 2011, 660 SCRA 490, 504. See also *Cojuangco, Jr. v. Atty. Palma*, 501 Phil. 1, 8-9 (2005).

[34] *Uy v. Saño*, A.C. No. 6505, September 11, 2008, 564 SCRA 447, 453.

[35] *Saquing v. Atty. Mora*, 535 Phil. 1, 7 (2006).

[36] See *Uy v. Saño, supra* note 34, at 453-454.

That Mila had agreed after some financial settlement to withdraw her complaint against Atty. Virtusio cannot exempt the latter from the prescribed sanction. She has outraged the country's professional code and this demands a measure of justice. As the Court said in *Spouses Soriano v. Atty. Reyes*,[37] disbarment is a disciplinary action taken for the public good. Consequently, it is as a rule not subject to some compromise entered into with the complainant. Besides, Mila's evidence is already a matter of record and the Court cannot simply ignore the same.[38]

WHEREFORE, the Court **FINDS** Atty. Grenalyn V. Virtusio **GUILTY** of gross misconduct and violation of the Code of Professional Responsibility and **IMPOSES** on her the penalty of **SUSPENSION** from the practice of law for one year, effective immediately. In addition, the Court **REVOKES** any Notarial Commission she may presently have and **DISQUALIFIES** her from applying for it for one year also effective immediately. Further, she is **WARNED** of a more severe penalty should she commit a similar infraction in the future.

Let copies of this Decision be furnished the Office of the Court Administrator, the Integrated Bar of the Philippines, and the Office of the Bar Confidant. Finally, let this judgment be made part of Atty. Virtusio's personal record in the latter office.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,[*] and *Mendoza, JJ.*, concur.

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[37] 523 Phil. 1, 12 (2006).

[38] See *Garrido v. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508, 517.

[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

FIRST DIVISION

[A.M. No. MTJ-07-1666. September 5, 2012]
(Formerly A.M. OCA I.P.I. No. 05-1761-MTJ)

GERLIE M. UY and MA. CONSOLACION T. BASCUG, *complainants, vs.* **JUDGE ERWIN B. JAVELLANA, MUNICIPAL TRIAL COURT, LA CASTELLANA, NEGROS OCCIDENTAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; REVISED RULE ON SUMMARY PROCEDURE; APPLICABLE TO CASES INVOLVING THE CRIME OF MALICIOUS MISCHIEF; CLARIFIED IN CASE AT BAR. — The crime of malicious mischief is committed by any person who deliberately causes damage to the property of another through means not constituting arson. There are special cases of malicious mischief which are specifically covered by Article 328 of the Revised Penal Code. x x x All other cases of malicious mischief shall be governed by Article 329 of the same Code. x x x Without any showing that the accused in *People v. Cornelio* and *People v. Lopez, et al.* were charged with the special cases of malicious mischief particularly described in Article 328 of the Revised Penal Code, then Article 329 of the same Code should be applied. If the amounts of the alleged damage to property in *People v. Cornelio* and *People v. Lopez, et al.*, ₱6,000.00 and ₱3,000.00, respectively, are proven, the appropriate penalty for the accused would be *arresto mayor* in its medium and maximum periods which under Article 329(a) of the Revised Penal Code, would be imprisonment for two (2) months and one (1) day to six (6) months. Clearly, these two cases should be governed by the Revised Rule on Summary Procedure.

2. ID.; ID.; THE ISSUANCE OF A WARRANT OF ARREST IS A VIOLATION THEREOF; EXPLAINED. — Judge Javellana's issuance of a Warrant of Arrest for the accused in *People v. Cornelio* is in violation of Section 16 of the Revised Rule on Summary Procedure, categorically stating that "[t]he court shall not order the arrest of the accused except for failure to appear whenever required." Judge Javellana never claimed that the

accused failed to appear at any hearing. His justification that the accused was wanted for the crime of attempted homicide, being tried in another case, Crim. Case No. 04-096, is totally unacceptable and further indicative of his ignorance of law. *People v. Cornelio*, pending before Judge Javellana's court as Crim. Case No. 04-097, is for malicious mischief, and is distinct and separate from Crim. Case No. 04-096, which is for attempted homicide, although both cases involved the same accused. Proceedings in one case, such as the issuance of a warrant of arrest, should not be extended or made applicable to the other.

3. ID.; ID.; PRELIMINARY INVESTIGATION, NOT REQUIRED. — The Revised Rule on Summary Procedure does not provide for a preliminary investigation prior to the filing of a criminal case under said Rule. x x x Section 1, Rule 112 of the Revised Rules of Criminal Procedure only requires that a preliminary investigation be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least **four (4) years, two (2) months and one (1) day** without regard to the fine. As has been previously established herein, the maximum penalty imposable for malicious mischief in *People v. Lopez, et al.* is just **six (6) months**. Judge Javellana did not provide any reason as to why he needed to conduct a preliminary investigation in *People v. Lopez, et al*. We stress that the Revised Rule on Summary Procedure was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases. Judge Javellana cannot be allowed to arbitrarily conduct proceedings beyond those specifically laid down by the Revised Rule on Summary Procedure, thereby lengthening or delaying the resolution of the case, and defeating the express purpose of said Rule.

4. ID.; ID.; MOTION TO DISMISS ON THE GROUND OF FAILURE TO COMPLY WITH THE *LUPON* REQUIREMENT, EXCEPTION TO PROHIBITED PLEADINGS. — A case which has not been previously referred to the *Lupong Tagapamayapa* shall be dismissed without prejudice. A motion to dismiss on the ground of failure to comply with the *Lupon* requirement is an exception to the pleadings prohibited by the Revised Rule on Summary Procedure. Given the express provisions of the Revised Rule on Summary Procedure, we find irrelevant Judge Javellana's argument that referral to the *Lupon* is not a

jurisdictional requirement. The following facts are undisputed: *People v. Celeste, et al.* was not referred to the *Lupon*, and the accused filed a Motion to Dismiss based on this ground. Judge Javellana should have allowed and granted the Motion to Dismiss (albeit without prejudice) filed by the accused in *People v. Celeste, et al*.

5. ID.; DISCIPLINE OF JUDGES; FAILURE TO APPLY THE REVISED RULE ON SUMMARY PROCEDURE IN CASES SO OBVIOUSLY COVERED BY THE SAME IS A GROUND FOR DISCIPLINARY ACTION; CASE AT BAR. — The Revised Rule on Summary Procedure has been in effect since November 15, 1991. It finds application in a substantial number of civil and criminal cases pending before Judge Javellana's court. Judge Javellana cannot claim to be unfamiliar with the same. Every judge is required to observe the law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law. In *Agunday v. Judge Tresvalles*, we called the attention of Judge Tresvalles to Section 2 of the Revised Rule on Summary Procedure which states that a "patently erroneous determination to avoid the application of the [Revised] Rule on Summary Procedure is a ground for disciplinary action." x x x Resultantly, Judge Javellana cannot invoke good faith or lack of deliberate or malicious intent as a defense. His repeated failure to apply the Revised Rule on Summary Procedure in cases so obviously covered by the same is detrimental to the expedient and efficient administration of justice, for which we hold him administratively liable.

6. ID.; ID.; JUDGES ARE PROSCRIBED FROM ENGAGING IN SELF-PROMOTION AND INDULGING THEIR VANITY AND PRIDE; VIOLATION THEREOF CONSTITUTED GROSS MISCONDUCT. — Judge Javellana himself admitted that he often mentioned his previous accomplishments as counsel in big and controversial cases, claiming that he only did so to impress upon the parties that he meant business and that he relied greatly upon God to survive the trials and threats to his life. We are not persuaded. The previous Code of Judicial Conduct specifically warned the judges against seeking publicity for personal vainglory. *Vainglory*, in its ordinary meaning, refers to an individual's excessive or ostentatious

pride especially in one's own achievements. Even no longer explicitly stated in the New Code of Judicial Conduct, judges are still proscribed from engaging in self-promotion and indulging their vanity and pride by Canons 1 (on Integrity) and 2 (on Propriety) of the New Code. x x x Judge Javellana's actuations as described above run counter to the mandate that judges behave at all times in such a manner as to promote public confidence in the integrity and impartiality of the judiciary. We cannot stress enough that "judges are the visible representations of law and justice. They ought to be embodiments of competence, integrity and independence. In particular, municipal judges are frontline officers in the administration of justice. It is therefore essential that they live up to the high standards demanded by the Code of Judicial Conduct." For his violations of the New Code of Professional Conduct, Judge Javellana committed gross misconduct. We have defined *gross misconduct* as a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

7. ID.; ID.; GROSS IGNORANCE OF THE LAW AND GROSS MISCONDUCT; WHEN FOUND GUILTY; PENALTY. – Gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct are classified as serious charges under Rule 140, Section 8 of the Revised Rules of Court, and penalized under Rule 140, Section 11(a) of the same Rules by: 1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2) Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3) A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. The OCA recommended that Judge Javellana be suspended without salary and benefits for three months. Given the gravity and number of violations committed by Judge Javellana, we deem it appropriate to impose suspension without salary and benefits for a period of three months and one day.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case arose from a verified complaint[1] for "gross ignorance of the law and procedures, gross incompetence, neglect of duty, conduct improper and unbecoming of a judge, grave misconduct and others," filed by Public Attorneys Gerlie[2] M. Uy (Uy) and Ma. Consolacion T. Bascug (Bascug) of the Public Attorney's Office (PAO), La Carlotta District, against Presiding Judge Erwin[3] B. Javellana (Javellana) of the Municipal Trial Court (MTC), La Castellana, Negros Occidental.

Public Attorneys Uy and Bascug alleged the following in their complaint:

First, Judge Javellana was grossly ignorant of the Revised Rule on Summary Procedure. Public Attorneys Uy and Bascug cited several occasions as examples: (a) In Crim. Case No. 04-097, entitled *People v. Cornelio*, for Malicious Mischief, Judge Javellana issued a warrant of arrest after the filing of said case despite Section 16 of the Revised Rule on Summary Procedure; (b) In Crim. Case No. 04-075, entitled *People v. Celeste, et al.*, for Trespass to Dwelling, Judge Javellana did not grant the motion to dismiss for non-compliance with the *Lupon* requirement under Sections 18 and 19(a) of the Revised Rule on Summary Procedure, insisting that said motion was a prohibited pleading; (c) Also in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint even when the same was patently without basis or merit, as the affidavits of therein complainant and her witnesses were all hearsay evidence; and (d) In Crim. Case No. 02-056, entitled *People v. Lopez, et al.*, for Malicious Mischief, Judge Javellana did

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[1] *Rollo*, pp. 2-24; received by the Court's Docket and Clearance Division on August 22, 2005.

[2] "GIRLIE" in some parts of the *rollo*.

[3] "EDWIN" in some parts of the *rollo*.

not apply the Revised Rule on Summary Procedure and, instead, conducted a preliminary examination and preliminary investigation in accordance with the Revised Rules of Criminal Procedure, then set the case for arraignment and pre-trial, despite confirming that therein complainant and her witnesses had no personal knowledge of the material facts alleged in their affidavits, which should have been a ground for dismissal of said case.

Second, Judge Javellana gave the impression that he was a co-agent in a surety company with a certain Leilani "Lani" Manunag (Manunag). Judge Javellana had conveyed to the public on several occasions that Manunag was in a special position to influence him in granting provisional liberty to the accused.[4] In different cases, Judge Javellana (a) instructed the wife of an accused to file the Motion to Reduce Bond prepared by the PAO with Manunag, leading the wife to believe that Manunag was a court personnel, hence, said Motion was never filed with the MTC and, instead of the cash bond the accused intended to post, the accused was released on a surety bond issued by Manunag's company for which the accused still had to pay premium;[5] (b) reduced the bail from ₱40,000.00 to ₱30,000.00, consistent with the reduced bail amount Manunag instructed the representative of the accused to seek, not to ₱10,000.00 as prayed for by the PAO in the Motion for Reduction of Bail or to ₱20,000.00 as recommended by the Chief of Police;[6] (c) did not warn Manunag against getting involved in court processes as she was engaged in surety insurance and did not even question a counter-affidavit of an accused prepared by "Lani";[7] (d) instructed the relatives of the accused to go to Manunag who knew how to "process" an affidavit of desistance, and when said relatives did approach Manunag, the latter charged them fees;[8] (e) did not set the Motion to Reduce Bail for hearing

[4] *Rollo*, pp. 6-7.

[5] *Id.* at 7; Crim. Case No. 05-030, entitled *People v. Mesias*.

[6] *Id.* at 7-8; Crim. Case No. 02-061, entitled *People v. Javier*.

[7] *Id.* at 8-9; Crim. Case No. 03-097, entitled *People v. Bautista*.

[8] *Id.* at 9; Crim. Case No. 04-097, entitled *People v. Cornelio*.

but granted the same because it was filed by "the intimate friend of judge who is an agent of surety" and took cognizance of the amount of premium for the surety bond in determining the amount of bail;[9] (f) denied the Motion to Extend Time to File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail facilitated by Manunag even when it was filed in violation of the same rule;[10] and (g) issued warrants of arrest under questionable circumstances, more particularly described in the immediately succeeding paragraph, in which cases, the bail bonds of the accused were facilitated by Manunag.

Third, Judge Javellana violated Section 6(b), Rule 112 of the Revised Rules of Criminal Procedure and issued warrants of arrest without propounding searching questions to the complainants and their witnesses to determine the necessity of placing the accused under immediate custody. As a result, Judge Javellana issued warrants of arrest even when the accused had already voluntarily surrendered or when a warrantless arrest had been effected.

Fourth, Judge Javellana failed to observe the constitutional rights of the accused as stated in Section 12(1), Article III of the Constitution. Judge Javellana set Crim. Case No. 03-097, entitled *People v. Bautista*,[11] for preliminary investigation even when the accused had no counsel, and proceeded with said investigation without informing the accused of his rights to remain silent and to have a counsel.

Fifth, Judge Javellana was habitually tardy. The subpoena in Civil Case No. 05-001, entitled *Villanueva v. Regalado*,[12] only stated that the hearing would be "in the morning," without indicating the time. Judge Javellana failed to arrive for the pre-

[9] *Id.*; Crim. Case No. 03-108, entitled *People v. Panaguiton*.

[10] *Id.* at 10; Crim. Case No. 03-011, entitled *People v. Bandon*.

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

[12] *Id.* at 13.

trial of the case set in the morning of April 14, 2005. Judge Javellana was still a no-show when the pre-trial was reset in the morning of April 15, 2005 and May 3, 2005. Finally, anticipating Judge Javellana's tardiness, the pre-trial was rescheduled at 1:30 in the afternoon of another date.

Sixth, Judge Javellana whimsically or inconsistently implemented laws and rules depending on stature of the parties, persons accompanying the parties, lawyers of the parties, and his personal relations with the parties/lawyers. Judge Javellana, in several cases,[13] denied or refused to receive Motions for Extension of Time to File Counter-Affidavits signed only by the accused, yet in other cases,[14] granted such motions. In another case,[15] Judge Javellana denied the Motion to Extend Time to File Counter-Affidavit for violation of the three-day notice rule, but granted the Motion to Reduce Bail, which was in violation of the same rule. Judge Javellana's inconsistent and irregular ruling could be due to the fact that the former motion was filed by Public Attorney Bascug, with whom Judge Javellana had an axe to grind, while the latter motion was facilitated by Manunag.

Seventh, Judge Javellana also adopted the mantra that the "litigants are made for the courts" instead of "courts for the litigants." In Crim. Case No. 03-104, entitled *People v. Fermin*, the accused, assisted by Public Attorney Uy, pleaded guilty to the crime of attempted homicide. The accused filed a Petition/Application for Probation, prepared by the PAO but signed only by the accused. Judge Javellana refused to accept said Petition/Application and required the father of the accused to return the Petition/Application all the way from the MTC in La Castellana to the PAO in La Carlota, despite the great distance

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[13] *Id.* at 14; Crim. Case No. 03-090, entitled *People v. Earnshaw* and Crim. Case No. 04-092, entitled *People v. Estubo*.

[14] *Id.*; *People v. Javier*; *People v. Lopez, et al.*; and Crim. Case No.05-002, entitled *People v. Seguiza*.

[15] *People v. Bandon*.

between these two cities. The PAO already adopted the practice of preparing the motions for extension of time to file counter-affidavit, motions for release of minor, or applications for probation, but letting the accused themselves or their parents (in case the accused were minors) sign the motions/applications, thus, enabling the PAO to serve as many clients as possible despite the lack of lawyers. Such practice is not prohibited considering that under Rule 138, Section 34 of the Rules of Court, a party may conduct his litigation in a municipal court "in person, with an aid of an agent or friend appointed by him for the purpose or with aid of an attorney."[16]

Eighth, Judge Javellana did not observe the proper procedure in airing his complaints against public attorneys. Judge Javellana rebuked the public attorneys in the Orders he issued. In one such Order,[17] Judge Javellana misleadingly stated that Public Attorney Uy "has already express[ed] her desire not to attend today's hearing," when Public Attorney Uy actually waived her personal appearance at said hearing as she had to attend the hearing of a criminal case at the MTC of Pontevedra. In another Order,[18] Judge Javellana reported, prior to confirmation, that the PAO lawyer refused to prepare the motion for extension of time to file counter-affidavit, thus, prompting the accused to hire a special counsel. Additionally, Judge Javellana improperly filed his complaints against the public attorneys appearing before his court with the Department of Justice or the District Public Attorney (DPA) of Bacolod City, instead of the appropriate authorities, namely, the DPA of La Carlota City or the PAO Regional Director. Moreover, Judge Javellana had required Public Attorney Bascug to explain why she allowed the accused in Crim. Case No. 03-090, entitled *People v. Earnshaw*, to sign the Motion for Extension of Time to File Counter-Affidavits, even when she was the one who prepared said Motion. Judge

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[16] *Rollo*, pp. 15-16.

[17] *Id.* at 148; dated April 29, 2005, in *People v. Mesias*.

[18] *Id.* at 146; dated January 31, 2003, in *People v. Bandon*.

Javellana did not verify first whether it was indeed Public Attorney Bascug who prepared the Motion in question, thus, violating her right to due process. Also, Judge Javellana was already encroaching upon the domain of the PAO. It is the concern of the PAO and not the court "[a]s to how the Public Attorney's Office will be managed, specifically, what policies to use in the acceptance of cases brought to its Office, how one could avail of its legal services, at what point in time one is considered a client of said Office x x x [.]"[19]

Lastly, to support their complaint, Public Attorneys Uy and Bascug attached a hand-written note[20] relating the observations of an anonymous member of Judge Javellana's staff, *viz*:

[Page One]

1. Honorable Judge reports to duty at past 11:00 A.M. and hurriedly conducts preliminary investigations or preliminary examinations after making party litigants wait from 8:00 A.M. until 11:00 A.M. There had been occasions when litigants became impatient for waiting for several hours for the Judge's arrival and would leave the court. Judge then would forego the examination.

2. Judge spends more time conversing in cafeterias than stay in the court. Litigants who are in a hurry to go home would bring the affidavits to the cafeteria for Judge's signature.

3. Most of the time, in Court, in front of litigants as audience and even while solemnizing civil marriage Judge would keep repeating these remarks:

> I am a criminal lawyer.
> I did not come from the DAR or the COMELEC.
> I am an intelligent Judge.
> I am the counsel of the famous Gargar-Lumangyao and Spider Hunter cases and I have caused the execution of Col. Torres.
> I am not under the Mayor or the Chief of Police.

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[19] *Id.* at 20.

[20] *Id.* at 150-152; Exh. "PP".

and other remarks as if he is the only intelligent, credible and qualified judge in the whole world.

4. Judge tolerates the negligence of duty of his court utility [w]orker. Said utility worker never reports to open or close the court; he never cleans the courtroom; most of the time he stays in his Karaoke bar which is some few meters away from the MTC of La Castellana. As a matter of fact the MTC of La Castellana is the dirtiest of all the courtrooms in the whole province.

[Page Two]

5. Motion for Extension of Time to File Counter Affidavit in CC 03-090-*Pp. vs. Efraim Earnshaw* made by Atty. Bascug was denied by Judge on the ground that it was the accused who signed the Motion and Atty. Bascug was ordered to explain. Other motions had been denied for not meeting the 3-day rule but others were granted.

6. Motion to Reduce Bail received by court on January 7, 2004 was not set for hearing but was ordered granted because it was filed by the intimate friend of the judge who is an agent of Surety. This did not meet the 3-day rule CC 03-108 *Pp. vs. Lowell Panaguiton* for "Homicide."

[Page Three]

1. Criminal Case No. 03-102- Julius Villanueva "Frustrated Homicide" Urgent Motion to Stay Transfer to Provincial Jail - Filed 1/21/2004 was not heard but order was issued January 21, [20]04 also.

2. Criminal Case No. 03-090- Efraim Earnshaw "Less Serious Physical Injuries" January 26, 2004 - Scheduled for arraignment but upon order of Judge on affidavit of Desistance of Melanie Pabon and Motion to Dismiss was filed and case dismissed.

3. Deonaldo Lopez Case - Motion for Extension of Time to File Counter Affidavit dated 10-3-02 was signed by accused namely Deonaldo Lopez, Jojo Balansag, Junnel Jorge, and Bernie Bello - granted by judge.[21]

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[21] *Id*.

Based on the foregoing, Public Attorneys Uy and Bascug prayed that Judge Javellana be removed from the MTC of La Castellana.

In his Comment[22] on the complaint against him, Judge Javellana discounted the allegations of Public Attorneys Uy and Bascug as "baseless, untruthful, intrigues, malicious and a harassment tending to intimidate [him]," and countered as follows:

First, Judge Javellana asserted that he was not grossly ignorant of the rules of procedure and explained his actions in particular cases: (a) In *People v. Cornelio*, Judge Javellana issued a warrant of arrest for the two accused charged with Malicious Mischief in the exercise of his judicial discretion, and the necessity of holding the accused in detention became evident when it was revealed during trial that the same accused were wanted for Attempted Homicide in Crim. Case No. 04-096; (b) In *People v. Celeste, et al.*, Judge Javellana insisted that referral of the dispute (involving an alleged Trespass to Dwelling) to the *Lupong Tagapamayapa* was not a jurisdictional requirement and the Motion to Dismiss on said ground was a prohibited pleading under the Revised Rule on Summary Procedure; (c) Still in *People v. Celeste, et al.*, Judge Javellana refused to dismiss outright the complaint as prayed for by Public Attorney Uy as the Judge had to accord due process to the complainant in said case; and (d) In *People v. Lopez, et al.* another case for Malicious Mischief, Judge Javellana reiterated that a motion to dismiss is a prohibited pleading under the Revised Rule on Summary Procedure and added that he could not dismiss the case outright since the prosecution has not yet fully presented its evidence.

Second, Judge Javellana denied acting as the co-agent of Manunag. Manunag was an Authorized Surety Bond Agent of Commonwealth Insurance and Surety Bond Company, a bonding company duly accredited by the Office of the Court Administrator (OCA). The relationship between Judge Javellana and Manunag

[22] *Id.* at 165-190; received by the OCA on October 28, 2005.

was "purely on official business." That Manunag influenced Judge Javellana in fixing the amount of bail in several cases was a malicious and deliberate lie, based on mere speculation and suspicion. Judge Javellana had consistently granted the reduction of the amount of bail to only 75%, and not as low as 25%, of the amount stated in Department Circular No. 89 dated August 29, 2000 of the Department of Justice (DOJ). Judge Javellana even chided Public Attorneys Uy and Bascug that as officers of the court, said public attorneys were duty bound not to demand outrageous reduction of bail. In addition, Judge Javellana could not warn Manunag to stay away from "the processes (sic) premises in the Court" because "everybody are allowed to attend Court proceedings unless otherwise the attendance of the public is prohibited."[23] Judge Javellana likewise stated that he could not interfere with the processing of surety insurance and bond for such was a private matter between the insurance and bonding company and its authorized agents. Referring to case records, Judge Javellana pointed out that he only granted the motions to reduce bail that complied with the three-day notice rule.

Third, Judge Javellana claimed to have conducted preliminary examination, asking the complainants and their witnesses searching questions, before issuing warrants of arrest. According to Judge Javellana, he would sign the official form of the warrant of arrest right after the preliminary examination. In some cases, Judge Javellana was not aware that the accused had already voluntarily surrendered or was already taken into custody by virtue of a warrantless arrest because police officers did not timely inform the court of such fact.

Fourth, Judge Javellana did not violate the constitutional rights of the accused in *People v. Bautista*. Judge Javellana argued that while a judge can ask clarificatory questions during the preliminary investigation, a preliminary investigation is mandatory only when the law imposes the penalty of imprisonment of at

[23] *Id.* at 173.

least four years, two months, and one day. Judge Javellana further averred that he always advised litigants to secure the services of a counsel or that of a public attorney from the PAO. However, even when the public attorney failed or refused to appear before the court, Judge Javellana still proceeded with his clarificatory questions since there was yet no full blown trial for which the accused already needed the services of a competent lawyer.

Fifth, Judge Javellana explained his failure to arrive for the pre-trial in *Villanueva v. Regalado* scheduled on April 14, 2005. Judge Javellana averred that he had been suffering from diabetes, as evinced by his medical records from the Supreme Court Health and Welfare Plan, and on said date, his blood sugar rose to 300, which caused him to be lethargic, weak, and drowsy.

Sixth, Judge Javellana repudiated the allegation that he applied the law and ruled whimsically and inconsistently. Judge Javellana asserted that he "applied the law and the rules according to what he believes is fair, just and equitable in the exercise of his judicial discretion."[24] Judge Javellana never favored Manunag and in all criminal cases involving homicide, he had granted the reduction of bail to ₱30,000.00 (75% of the recommended bail of ₱40,000.00).

Seventh, Judge Javellana admitted not accepting petitions, applications, and motions prepared by the PAO but signed only by the accused, asseverating that public attorneys should affix their signatures and state their Roll of Attorneys number in every pleading they file in court. Judge Javellana asked that "if all courts admits (sic) any pleading filed by any litigant then what will happen to the practice of law?"[25]

Eighth, Judge Javellana emphasized that government lawyers, such as Public Attorneys Uy and Bascug, are paid with people's

[24] *Id.* at 178.

[25] *Id.* at 180.

money, so they should be sincere and dedicated to their work and, whenever possible, go the extra mile to serve poor litigants. Thus, Judge Javellana reported Public Attorneys Uy and Bascug to higher PAO officials to guide said public attorneys and not to interfere with the performance of their functions.

And ninth, Judge Javellana identified the member of his staff who wrote the note containing more allegations against him as Mr. Ray D. Pineda (Pineda), Process Server. Judge Javellana described Pineda as "very abnormal, eccentric and queer in his relationship with his fellow staff as shown by his quarrelsome attitude and fond of inciting litigants to criticize the Clerk of Court and other personnel and most of all his loyalty to the Official of the Municipality rather than to this Court x x x."[26] Judge Javellana clarified that he often mentioned the *Gargar-Lumangyao Kidnapping with Double Murder Case* and the *Spider Hunters Multiple Murder and Multiple Frustrated Murder Case* not to boast but to relay the impression that he meant business as Presiding Judge. These cases were dubbed as the "Case of the Century" by then Executive Judge Bernardo Ponferrada of the Regional Trial Court of Bacolod City (who later became Deputy Court Administrator) because the same involved big time personalities. Judge Javellana mentioned the said cases even when solemnizing marriages because he would then be reading the Holy Scriptures and he had to highlight that he survived the trials and threats to his life because of the Holy Bible. Judge Javellana also did not have a Court Aide who owned a Karaoke Bar whose negligence the judge was tolerating. Pineda was just "jealous" because he was not designated by Judge Javellana as Acting Docket Clerk in lieu of Mr. Vee Caballero who was already on terminal leave prior to retirement. Judge Javellana further narrated that he had reprimanded Pineda several times, even in open court. In one of these instances, it was because Pineda submitted a falsified information sheet to the Supreme Court Personnel Division, stating therein that he had never been charged with a criminal

[26] *Id.* at 180-181.

offense, when in truth, he was previously charged with "Physical Injury." Judge Javellana advised Pineda to rectify the latter's records by executing an affidavit to be submitted to the Supreme Court Personnel Division, but Pineda did not heed the same.

In the end, Judge Javellana stressed that the charges against him were baseless and malicious; and the acts being complained of involved judicial discretion and, thus, judicial in nature and not the proper subject of an administrative complaint. Judge Javellana hinted about a conspiracy between the Municipal Mayor, on one hand, and Public Attorneys Uy and Bascug, on the other. The Municipal Mayor was purportedly angry at Judge Javellana because the latter caused the arrest of and heard the cases against the former's supporters and employees; while Public Attorney Bascug was suffering from a "Losing Litigant's Syndrome" and "Prosecution Complex," and was influencing Public Attorney Uy, a neophyte lawyer.

Consequently, Judge Javellana sought the dismissal of the instant complaint against him.

The Office of the Court Administrator (OCA), in its report[27] dated January 2, 2006, found Judge Javellana liable for gross ignorance of the law or procedure when he did not apply the Revised Rule on Summary Procedure in cases appropriately covered by said Rule; and (2) gross misconduct when he got involved in business relations with Manunag, implemented the law inconsistently, and mentioned his accomplishments for publicity. The OCA thus recommended that:

1. The instant administrative complaint be REDOCKETED as a regular administrative matter; and

2. Judge Edwin B. Javellana, MTC, La Castellana, Negros Occidental be SUSPENDED from office without salary and other benefits for three (3) months with a STERN WARNING that repetition of the same or similar acts in the future shall be dealt with more severely.[28]

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[27] *Id.* at 307-320; received by the Court on January 4, 2007.

[28] *Id.* at 319-320.

In a Resolution[29] dated February 5, 2007, the Court re-docketed the complaint as a regular administrative matter and required parties to manifest their willingness to submit the case for resolution on the basis of the pleadings filed.

On separate dates,[30] the parties manifested their willingness to submit the case for resolution based on the pleadings already filed.

We agree with the findings and conclusions of the OCA, except for the penalty imposed.

I
Gross Ignorance of the Law

The Revised Rule of Summary Procedure shall govern the following criminal cases:

SECTION 1. *Scope*. — This Rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction.

xxx xxx xxx

B. *Criminal Cases:*

(1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) Violations of Batas Pambansa Bilang 22 (Bouncing Checks Law).

(5) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (₱1,000.00), or both, irrespective of other imposable penalties, accessory or

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[29] *Id.* at 321-322.

[30] *Id.* at 323, 325-327. Respondent manifested in an undated letter received by the OCA on March 26, 2007. Complainants' manifestation on the other hand was received on April 17, 2007.

otherwise, or of the civil liability arising therefrom: *Provided, however,* That in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (₱10,000.00). (Emphasis supplied.)

The cases *People v. Cornelio*[31] and *People v. Lopez, et al.*[32] pending before Judge Javellana were both for malicious mischief.

The crime of malicious mischief is committed by any person who deliberately causes damage to the property of another through means not constituting arson.[33] There are special cases of malicious mischief which are specifically covered by Article 328 of the Revised Penal Code, which provides:

ART. 328. *Special cases of malicious mischief.* – Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public, shall be punished:

1. By *prision correccional* in its minimum and medium periods, if the value of the damage caused exceeds 1,000 pesos;

2. By *arresto mayor*, if such value does not exceed the above-mentioned amount but is over 200 pesos; and

3. By *arresto menor*, if such value does not exceed 200 pesos. (Emphasis ours.)

All other cases of malicious mischief shall be governed by Article 329 of the same Code, which reads:

ART. 329. *Other mischiefs.* – The mischiefs not included in the next preceding article shall be punished:

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[31] *Id.* at 307, Criminal Case No. 04-097.

[32] *Id.* at 308, Criminal Case No. 02-056.

[33] REVISED PENAL CODE, Article 327.

1. **By *arresto mayor* in its medium and maximum periods, if the value of the damage caused exceeds 1,000 pesos;**

2. By *arresto mayor* in its minimum and medium periods, if such value is over 200 pesos but does not exceed 1,000 pesos; and

3. By *arresto menor* or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated. (Emphasis ours.)

Without any showing that the accused in *People v. Cornelio* and *People v. Lopez, et al.* were charged with the special cases of malicious mischief particularly described in Article 328 of the Revised Penal Code, then Article 329 of the same Code should be applied. If the amounts of the alleged damage to property in *People v. Cornelio* and *People v. Lopez, et al.*, ₱6,000.00[34] and ₱3,000.00,[35] respectively, are proven, the appropriate penalty for the accused would be *arresto mayor* in its medium and maximum periods which under Article 329(a) of the Revised Penal Code, would be imprisonment for two (2) months and one (1) day to six (6) months. Clearly, these two cases should be governed by the Revised Rule on Summary Procedure.

Judge Javellana's issuance of a Warrant of Arrest for the accused in *People v. Cornelio* is in violation of Section 16 of the Revised Rule on Summary Procedure, categorically stating that "[t]he court shall not order the arrest of the accused except for failure to appear whenever required." Judge Javellana never claimed that the accused failed to appear at any hearing. His justification that the accused was wanted for the crime of attempted homicide, being tried in another case, Crim. Case No. 04-096, is totally unacceptable and further indicative of his ignorance of law. *People v. Cornelio*, pending before Judge Javellana's court as Crim. Case No. 04-097, is for malicious mischief, and is distinct and separate from Crim. Case No. 04-

[34] *Rollo,* pp. 25-33; Exhibits "A" to "E".

[35] *Id.* at 43; Exhibits "I".

096, which is for attempted homicide, although both cases involved the same accused. Proceedings in one case, such as the issuance of a warrant of arrest, should not be extended or made applicable to the other.

In *People v. Lopez, et al.*, Judge Javellana conducted a preliminary investigation even when it was not required or justified.[36]

The Revised Rule on Summary Procedure does not provide for a preliminary investigation prior to the filing of a criminal case under said Rule. A criminal case within the scope of the Rule shall be commenced in the following manner:

SEC. 11. *How commenced.* – The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information; *Provided, however,* That in Metropolitan Manila and in Chartered Cities, such cases shall be commenced only by information, except when the offense cannot be prosecuted *de oficio.*

The complaint or information shall be accompanied by the affidavits of the complainant and of his witnesses in such number of copies as there are accused plus two (2) copies for the court's files. If this requirement is not complied with within five (5) days from date of filing, the case may be dismissed.

SEC. 12. *Duty of Court.* –

(a) *If commenced by complaint.* – On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) *If commenced by information.* – When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall issue an order which, together with copies of the affidavits and other evidence submitted by the prosecution,

[36] *Id.* at 50; Exhibit "J".

shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

SEC. 13. *Arraignment and trial*. – Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the accused for trial, it shall order the dismissal of the case; otherwise, the court shall set the case for arraignment and trial.

If the accused is in custody for the crime charged, he shall be immediately arraigned and if he enters a plea of guilty, he shall forthwith be sentenced.

Section 1, Rule 112 of the Revised Rules of Criminal Procedure only requires that a preliminary investigation be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least **four (4) years, two (2) months and one (1) day** without regard to the fine. As has been previously established herein, the maximum penalty imposable for malicious mischief in *People v. Lopez, et al.* is just **six (6) months**.

Judge Javellana did not provide any reason as to why he needed to conduct a preliminary investigation in *People v. Lopez, et al*. We stress that the Revised Rule on Summary Procedure was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases.[37] Judge Javellana cannot be allowed to arbitrarily conduct proceedings beyond those specifically laid down by the Revised Rule on Summary Procedure, thereby lengthening or delaying the resolution of the case, and defeating the express purpose of said Rule.

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[37] *Sevilla v. Judge Lindo*, A.M. No. MTJ-08-1714, February 9, 2011, 642 SCRA 277, 284-285.

We further agree with the OCA that Judge Javellana committed a blatant error in denying the Motion to Dismiss filed by the accused in *People v. Celeste, et al.* and in insisting that said Motion was a prohibited pleading, even though the case was never previously referred to the *Lupong Tagapamayapa* as required by Sections 18 and 19(a) of the Revised Rule on Summary Procedure.

The pertinent provisions of the Revised Rule on Summary Procedure read:

> Sec. 18. *Referral to Lupon*. — Cases requiring referral to the Lupon for conciliation under the provisions of Presidential Decree No. 1508 where there is no showing of compliance with such requirement, shall be **dismissed without prejudice**, and may be revived only after such requirement shall have been complied with. This provision shall not apply to criminal cases where the accused was arrested without a warrant.
>
> Sec. 19. *Prohibited pleadings and motions*. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:
>
> (a) Motion to dismiss the complaint or to quash the complaint or information **except** on the ground of lack of jurisdiction over the subject matter, or **failure to comply with the preceding section[**.] (Emphases ours.)

We see no ambiguity in the aforequoted provisions. A case which has not been previously referred to the *Lupong Tagapamayapa* shall be dismissed without prejudice. A motion to dismiss on the ground of failure to comply with the *Lupon* requirement is an exception to the pleadings prohibited by the Revised Rule on Summary Procedure. Given the express provisions of the Revised Rule on Summary Procedure, we find irrelevant Judge Javellana's argument that referral to the *Lupon* is not a jurisdictional requirement. The following facts are undisputed: *People v. Celeste, et al.* was not referred to the *Lupon*, and the accused filed a Motion to Dismiss based on this ground. Judge Javellana should have allowed and granted the Motion to Dismiss (albeit without prejudice) filed by the accused in *People v. Celeste, et al.*

The Revised Rule on Summary Procedure has been in effect since November 15, 1991. It finds application in a substantial number of civil and criminal cases pending before Judge Javellana's court. Judge Javellana cannot claim to be unfamiliar with the same.

Every judge is required to observe the law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; and anything less than that would be constitutive of gross ignorance of the law. In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.[38]

In *Agunday v. Judge Tresvalles*,[39] we called the attention of Judge Tresvalles to Section 2 of the Revised Rule on Summary Procedure which states that a "patently erroneous determination to avoid the application of the [Revised] Rule on Summary Procedure is a ground for disciplinary action." We went on further to interpret said provision as follows:

> Although the said provision states that "patently erroneous determination to avoid the application of the [Revised] Rule on Summary Procedure is a ground for disciplinary action," **the provision cannot be read as applicable only where the failure to apply the rule is deliberate or malicious**. Otherwise, the policy of the law to provide for the expeditious and summary disposition of cases covered by it could easily be frustrated. Hence, requiring judges to make the determination of the applicability of the rule on summary procedure upon the filing of the case is the only guaranty that the policy of the law will be fully realized. x x x.[40] (Emphasis ours.)

Resultantly, Judge Javellana cannot invoke good faith or lack of deliberate or malicious intent as a defense. His repeated failure to apply the Revised Rule on Summary Procedure in cases so obviously covered by the same is detrimental to the

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[38] *Almojuela, Jr. v. Judge Ringor*, 479 Phil. 131, 137-138 (2004).

[39] 377 Phil. 141, 153 (1999).

[40] *Id.* at 153-154.

expedient and efficient administration of justice, for which we hold him administratively liable.

As for Judge Javellana's refusal to dismiss *People v. Lopez, et al.* and *People v. Celeste, et al.*, however, we exonerate him of the administrative charges for the same. Judge Javellana is correct that the appreciation of evidence is already within his judicial discretion.[41] Any alleged error he might have committed in this regard is the proper subject of an appeal but not an administrative complaint. We remind Judge Javellana though to adhere closely to the Revised Rule on Summary Procedure in hearing and resolving said cases.

II
Gross Misconduct

Judges are enjoined by the New Code of Judicial Conduct for the Philippine Judiciary[42] to act and behave, in and out of court, in a manner befitting their office, to wit:

Canon 2

INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

xxx xxx xxx

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[41] *Rollo* p. 315, OCA Report.

[42] A.M. No. 03-05-01-SC, April 27, 2004.

Canon 3

IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 1. Judges shall perform their judicial duties without favor, bias or prejudice.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

x x x x x x x x x

Canon 4

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

x x x x x x x x x

SECTION 8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

x x x x x x x x x

SECTION 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for, or accept, any gift, bequest, loan favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

x x x x x x x x x

Canon 5

EQUALITY

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

x x x x x x x x x

SECTION 2. Judges shall not, in the performance of judicial duties, by words or by conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

x x x x x x x x x

SECTION 2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

SECTION 3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

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Canon 6

COMPETENCE AND DILIGENCE

Competence and diligence are prerequisites to the due performance of judicial office.

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SECTION 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

Judge Javellana had violated the aforequoted canons/standards in several instances.

Judge Javellana did not admit having a business relationship with Manunag, contrary to the finding of the OCA. What Judge Javellana stated in his Comment was that his relationship with Manunag was "purely on official business," since Manunag was a duly authorized agent of a credited bonding company. Nonetheless, Judge Javellana, by referring the accused who appeared before his court directly to Manunag for processing of the bail bond of said accused, gave the impression that he favored Manunag and Manunag's bonding company, as well as the reasonable suspicion that he benefitted financially from such referrals. Judge Javellana should remember that he must not only avoid impropriety, but the "appearance of impropriety" as well.

Moreover, Judge Javellana was conspicuously inconsistent in granting[43] or denying[44] motions for extension of time to file pleadings which were signed only by the accused. Judge Javellana reasoned in his Comment that the PAO lawyers who prepared the motions should have signed the same as counsels for the

[43] Crim. Case Nos. 02-061 (*People v. Javier*), 02-056 (*People v. Lopez, et al.*), and 05-002 (*People v. Seguiza*).

[44] Crim. Case Nos. 03-090 (*People v. Earnshaw*) and 04-092 (*People v. Estubo*).

accused, but this only explained Judge Javellana's denial of said motions. It did not address why, in other cases, Judge Javellana had granted similar motions signed only by the accused. Without any satisfactory basis for the difference in his ruling on these motions, Judge Javellana had acted arbitrarily to the prejudice of the PAO lawyers.

Judge Javellana himself admitted that he often mentioned his previous accomplishments as counsel in big and controversial cases, claiming that he only did so to impress upon the parties that he meant business and that he relied greatly upon God to survive the trials and threats to his life. We are not persuaded.

The previous Code of Judicial Conduct specifically warned the judges against seeking publicity for personal vainglory.[45] *Vainglory*, in its ordinary meaning, refers to an individual's excessive or ostentatious pride especially in one's own achievements.[46] Even no longer explicitly stated in the New Code of Judicial Conduct, judges are still proscribed from engaging in self-promotion and indulging their vanity and pride by Canons 1 (on Integrity) and 2 (on Propriety) of the New Code.

We have previously strongly reminded judges in that:

> Canon 2, Rule 2.02 of the Code of Judicial Conduct says in no uncertain terms that "a judge should not seek publicity for personal vainglory." A parallel proscription, this time for lawyers in general, is found in Rule 3.01 of the Code of Professional Responsibility: "a lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services." This means that lawyers and judges alike, being limited by the exacting standards of their profession, cannot debase the same by acting as if ordinary merchants hawking their wares. As succinctly put by a leading authority in legal and judicial ethics, "(i)f lawyers are prohibited from x x x using or permitting the use of any undignified or self-laudatory

[45] Rule 2.02.

[46] THE MERRIAM-WEBSTER DICTIONARY HOME AND OFFICE EDITION (5th ed. [1998]).

statement regarding their qualifications or legal services (Rule 3.01, Code of Professional Responsibility), with more reasons should judges be prohibited from seeking publicity for vanity or self-glorification. Judges are not actors or actresses or politicians, who thrive by publicity.[47]

Judge Javellana's actuations as described above run counter to the mandate that judges behave at all times in such a manner as to promote public confidence in the integrity and impartiality of the judiciary.[48] We cannot stress enough that "judges are the visible representations of law and justice. They ought to be embodiments of competence, integrity and independence. In particular, municipal judges are frontline officers in the administration of justice. It is therefore essential that they live up to the high standards demanded by the Code of Judicial Conduct."[49]

For his violations of the New Code of Professional Conduct, Judge Javellana committed gross misconduct. We have defined *gross misconduct* as a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."[50]

There is no sufficient evidence to hold Judge Javellana administratively liable for the other charges against him contained in the complaint. Yet, we call Judge Javellana's attention to several matters pointed out by the OCA, that if left unchecked, may again result in another administrative complaint against the judge: (1) notices of hearing issued by Judge Javellana's court must state the specific time, date, and place[51]; (2) in

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[47] *Office of the Court Administrator v. Judge Florentino Floro*, 520 Phil. 590, 615 (2006).

[48] *Office of the Court Administrator v. Sayo, Jr.*, 431 Phil. 413, 436 (2002).

[49] *Agunday v. Judge Tresvalles*, *supra* note 39 at 154-155.

[50] *Almojuela, Jr. v. Judge Ringor*, *supra* note 38 at 139.

[51] *Rollo*, p. 317, OCA Report.

case Judge Javellana is unable to attend a hearing for any reason, he must inform his Clerk of Court as soon as possible so that the latter can already cancel the hearing and spare the parties, counsels, and witnesses from waiting[52]; and (3) he must take care in ascertaining the facts and according due process to the parties concerned before levying charges of incompetence or indifference against the PAO lawyers appearing before his court.[53]

III

Penalty

Gross ignorance of the law[54] and gross misconduct constituting violations of the Code of Judicial Conduct[55] are classified as serious charges under Rule 140, Section 8 of the Revised Rules of Court, and penalized under Rule 140, Section 11(a) of the same Rules by:

1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2) Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3) A fine of more than ₱20,000.00 but not exceeding ₱40,000.00

The OCA recommended that Judge Javellana be suspended without salary and benefits for three months. Given the gravity and number of violations committed by Judge Javellana, we

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[52] *Id*.

[53] *Id.* at 318.

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

[55] *Id.*, Rule 140, Section 8(3)

deem it appropriate to impose suspension without salary and benefits for a period of three months and one day.

WHEREFORE, Judge Erwin B. Javellana is found **GUILTY** of gross ignorance of the law and gross misconduct. He is **SUSPENDED** from office without salary and other benefits for a period of three (3) months and one (1) day with a **STERN WARNING** that the repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Decision be attached to his records with this Court.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-09-2182. September 5, 2012]
(Formerly A.M. No. 08-3007-RTJ)

GOVERNMENT SERVICE INSURANCE SYSTEM, BY ATTY. LUCIO L. YU, JR., *complainant, vs.* **EXECUTIVE JUDGE MARIA A. CANCINO-ERUM, REGIONAL TRIAL COURT, BRANCH 210, MANDALUYONG CITY, and JUDGE CARLOS A. VALENZUELA, REGIONAL TRIAL COURT, BRANCH 213, MANDALUYONG CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; THE 1997 RULES OF CIVIL PROCEDURE HAS EXPRESSLY MADE RAFFLE THE EXCLUSIVE METHOD OF ASSIGNING CASES AMONG SEVERAL BRANCHES OF COURT IN A JUDICIAL STATION; PURPOSE THEREOF. — The 1997 *Rules of Civil Procedure*

has expressly made the raffle the *exclusive* method of assigning cases among several branches of a court in a judicial station by providing in Section 2 of Rule 20. x x x The avowed purpose of instituting raffle as the exclusive method of assigning cases among several branches of a court in the same station is two-fold: *one*, to equalize the distribution of the cases among the several branches, and thereby foster the Court's policy of promoting speedy and efficient disposition of cases; and, *two*, to ensure the impartial adjudication of cases and thereby obviate any suspicion regarding assignment of cases to predetermined judges.

2. ID.; ID.; CIRCULAR NO. 7 ISSUE BY THE SUPREME COURT ON SEPTEMBER 23, 1974; DEMANDS ADHERENCE TO THE PROCEDURE FOR THE RAFFLE SET THEREIN; THE ONLY EXCEPTIONS PERMITTED ARE THOSE EXPRESSLY RECOGNIZED IN THE CIRCULAR; APPLICATION IN CASE AT BAR. — To achieve and implement this two-fold purpose, the Supreme Court issued Circular No. 7 on September 23, 1974. x x x Circular No. 7, stated that only the maximum number of cases, according to their dates of filing, as could be equally distributed to all the branches in the particular station or grouping should be included in the raffle; and that cases in excess of the number *sufficient for equal distribution* should be included in the next scheduled raffle. Despite not strictly following the procedure under Circular No. 7 in assigning Civil Case No. MC08-3660 to Branch 213, the respondents as members of the Raffle Committee could not be held to have violated the rule on the exclusivity of raffle because there were obviously less TRO or injunction cases available at anytime for raffling than the number of Branches of the RTC. Given the urgent nature of TRO or injunction cases, each of them had to be immediately attended to. This peculiarity must have led to the adoption of the practice of raffling such cases despite their number being less than the number of the Branches in Mandaluyong City. The practice did not absolutely contravene Circular No. 7 in view of the circular itself expressly excepting under its fourth paragraph, any incidental or interlocutory matter of such urgent nature (like a TRO application) that might not wait for the regular raffle. x x x Even if we now absolve the respondents from administrative liability on the basis of the foregoing, we cannot hereafter sanction any practice that does not conform to the

raffle as the exclusive method of assigning cases among several Branches within the judicial station. We reiterate that the raffle should always be the rule rather than the exception. Henceforth, adherence to the procedure for the raffle set forth in Circular No. 7 is demanded of all Raffle Committees in multi-sala trial courts in order to achieve the two-fold objectives earlier mentioned. Only the exceptions expressly recognized under item IV of Circular No. 7 shall be permitted.

3. **ID.; DISCIPLINE OF JUDGES; GROSS IGNORANCE OF THE LAW AND GRAVE MISCONDUCT; WHEN MAY BE GUILTY THEREOF. —** In the absence of any showing that improper motives or corruption had actuated the respondents, the respondents should be presumed to have acted in utmost good faith in assigning Civil Case No. MC08-3660 according to the existing practice of raffling cases adopted by the Raffle Committee. As such, they could not be held guilty of either gross ignorance of the law or grave misconduct. To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but must also be motivated by bad faith, fraud, dishonesty and corruption. Grave misconduct refers to a wrongful act inspired by corruption or intention to violate the law.

4. **ID.; ID.; ADMINISTRATIVE COMPLAINT IS INAPPROPRIATE AS A REMEDY FOR THE CORRECTION OF AN ACT OR OMISSION WHERE THE REMEDY OF APPEAL OR *CERTIORARI* IS AVAILABLE; RATIONALE. –** We have always regarded as a fundamental precept that an administrative complaint against a judge is inappropriate as a remedy for the correction of an act or omission complained of where the remedy of appeal or *certiorari* is a recourse available to an aggrieved party. Two reasons underlie this fundamental precept, namely: (*a*) to hold otherwise is to render judicial office untenable, for no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment; and (*b*) to follow a different rule can mean a deluge of complaints, legitimate or otherwise, and our judges will then be immersed in and be ceaselessly occupied with answering charges brought against them instead of performing their judicial functions.

R E S O L U T I O N

BERSAMIN, *J.*:

For resolution are the respondents' separate motions seeking the reconsideration of the resolution promulgated on June 3, 2009,[1] whereby the Court, adopting and approving the recommendation of the Office of the Court of Administrator (OCA), imposed a fine of ₱5,000.00 on each of them for violating the rules regulating the raffle of cases.[2]

Antecedents

This administrative complaint emanated from the filing on July 18, 2008 by one Belinda Martizano (Martizano) of a suit to restrain the Department of Transportation and Communications (DOTC), Land Transportation Office (LTO), Stradcom Corporation (STRADCOM), Insurance Commission, and Government Service Insurance System (GSIS) from implementing DOTC Department Order No. 2007-28 (DO 2007-28), an issuance that constituted the LTO the sole insurance provider of compulsory third party liability (CTPL) that was required for the registration of motor vehicles.

The suit, docketed as Civil Case No. MC08-3660 of the Regional Trial Court (RTC) in Mandaluyong City, claimed that the implementation of DO 2007-28 would deprive Martizano of her livelihood as an insurance agent.[3] She applied for the issuance of a temporary restraining order (TRO). On July 21, 2008, Civil Case No. MC08-3660 was raffled and assigned to Branch 213 of the RTC, presided by respondent Judge Carlos A. Valenzuela.[4]

On October 2, 2008, GSIS charged respondent RTC Judge Maria A. Cancino-Erum, the then Executive Judge of the RTC

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[1] *Rollo*, pp. 310-311.

[2] *Id.* at 301-309.

[3] *Id.* at 110-148.

[4] *Id.* at 13-21.

in Mandaluyong City, with grave misconduct, gross ignorance of the law, and violation of the *Rules of Court*.[5] On the same date, GSIS also charged Judge Valenzuela with grave misconduct, gross ignorance of the law, violation of the *Rules of Court*, and knowingly rendering an unjust order.[6]

The charges against the respondents were both based on the non-raffling of Civil Case No. MC08-3660. Allegedly, Judge Erum violated Section 2, Rule 20 of the *Rules of Court* by assigning Civil Case No. MC08-3660 to Branch 213 without the benefit of a raffle.

According to the GSIS, the raffle of Civil Case No. MC08-3660 had been set on July 21, 2008 at 1:00 p.m. inside the courtroom of Judge Erum. On said date, all the parties, as well as the members of the raffle committee, namely, the respondents and RTC Judge Esteban A. Tacla, Jr., attended. For the conduct of the raffle, a roulette bearing the numbers 208, 212, 213 and 214 (representing the RTC Branches involved in the raffle) was brought inside the courtroom. However, Judge Erum announced that Civil Case No. MC08-3660 was being assigned to Branch 213 because Branches 208, 212, and 214 had already been assigned an injunction case each, leaving only Branch 213 without an injunction case. She then explained the practice that once a TRO/injunction case had been raffled to a Branch, that particular Branch would be automatically excluded from the raffle until all the other Branches had each been assigned a TRO/injunction case. Thus, there being only four regular RTC Branches in Mandaluyong City (*i.e.*, Branches 208, 212, 213 and 214), every fourth TRO/injunction case filed was no longer raffled but automatically assigned to the remaining Branch.

GSIS stated that it sought a clarification from Judge Erum on the non-raffling of Civil Case No. MC08-3660 to know which particular Supreme Court circular authorized the rotation scheme, but Judge Erum merely replied that the scheme had been a

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

[6] *Id.* at 244-245.

long-standing practice of raffling and assigning TRO/injunction cases in the RTC in Mandaluyong City; that it subsequently requested the re-raffle of Civil Case No. MC08-3660 through its letter dated September 1, 2008; that Judge Erum denied the request on the ground that there was nothing irregular in the assignment of Civil Case No. MC08-3660 to Branch 213; that such conduct showed her incompetence, lack of integrity, and partiality; and that she thereby gave rise to an anomalous situation in which –

> xxx. [A]ll that a litigant with an injunction complaint in Mandaluyong has to do is to time the filing of his her case by waiting until the favored judge is the only sala left without an injunction case. Considering that there are only four salas in Mandaluyong, a litigant may not have to wait long until this happens. Once the favored judge is the only sala left, then the litigant is assured that his or her case will automatically be assigned to that judge.[7]

Against Judge Valenzuela, GSIS asserted that he showed manifest partiality as a member of the Raffle Committee by consenting to the assignment of Civil Case No. MC08-3660 to his Branch without the benefit of raffle; that despite having previously worked at FGU Insurance Corporation, a member of the Philippine Insurance and Reinsurance Association (PIRA) that had actively opposed the implementation of DO 2007-28 and had even filed a petition in the RTC in Makati City for the nullification of DO 2007-28, he refused to inhibit himself from handling Civil Case No. MC08-3660, and, instead, issued a TRO restraining the implementation of DO 2007-28 despite Martizano's failure to substantiate her application for the TRO, and without waiting for the opposition and comment of STRADCOM as well as without requiring Martizano to post a bond; and that he also unreasonably denied the *motion to dismiss* filed in Civil No. MC08-3660.[8]

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[7] *Id.* at 8.

[8] *Id.* at 245-255.

In her *comment* dated October 24, 2008, Judge Erum took the position that the assignment of Civil Case No. MC08-3660 to Branch 213 was by raffle, not by rotation, contrary to GSIS's position, thus:

> 14. xxx The assignment of cases including TRO cases is by raffle, and not by "rotation" in its strict sense. Because if we say rotation, we follow the consecutive number of the branches participating. Relative to MC08-3660, the 1st TRO case after closing the last preceding round was raffled to Branch 208 on July 7, 2008 raffle (and we used the roulette). The 2nd TRO case was raffled to Branch 212 (and we used the roulette) on July 14, 2008 raffle, and the 3rd TRO case was raffled to Branch 214 on July 14, 2008 raffle (and we also used the roulette). The next raffle was held on July 21, 2008, and that's where the case of MC08-3660 was raffled for it was during this period that it was filed, and the case was assigned to Branch 213, still by raffle although we did not use the roulette anymore in this particular case.
>
> 15. Had there been "rotation" in its strict sense, and not by raffle as what complainant is saying, then the sequence of the raffle would be Branch 208 to get the 1st TRO case, Branch 212 to get the 2nd TRO case, Branch 213 to get the 3rd TRO case, and the last or 4th TRO case would be Branch 214. That did not happen in this case because as it appears in the minutes of raffle, after Branch 208 and Branch 212 got their share, the next Branch to which the 3rd TRO case was raffled was to Branch 214.

Judge Erum explained that the roulette was not used in the assignment of Civil Case No. MC08-3660 because only Branch 213 of the four regular Branches in Mandaluyong City had not been assigned a TRO or injunction case. She cited the existing practice whereby a Branch to which a TRO was already raffled would be excluded from the next raffle, stating that the practice was adopted by consensus among the RTC Judges in Mandaluyong City for the purpose of equalizing the distribution of TRO/injunction cases among the several Branches of the station. She insisted that GSIS lodged the charges only because Judge Valenzuela denied its motion to inhibit and motion to dismiss filed in Civil Case No. MC08-3660.[9]

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[9] *Id.* at 172-176.

Judge Valenzuela submitted his own *comment* dated October 20, 2008, in which he maintained as follows:

3. xxx The raffle of all cases and those which includes application for TRO/Injunction is done on a *"round system."* The raffle of cases at present only involves the four (4) RTC branches, *i.e.*, RTC- Branch 208, RTC-Branch 212, RTC-Branch 213, and RTC-Branch 214, RTC-Branch 209 having been designated as a Family Court, a special court, hence excluded from raffle of ordinary cases, civil and criminal, the same with RTC-Branch 210, presided by the Executive Judge, which is likewise a special court since the same was designated as Drug Court, and RTC-Branch 211 which at present has no presiding judge, the raffle of cases only involves said four regular courts.

During the said raffle of July 21, 2008, it was only this court which has not received its share of cases with application for TRO/Injunction for said *"round"* hence, Civil Case No. MC-08-3660 was considered raffled and automatically assigned to the court of the undersigned at RTC-Branch 213 to close the raffle of cases with application for TRO/Injunction for said *"round."*

xxx xxx xxx

In short, Civil Case No. MC08-3660 was raffled on July 21, 2008 xxx, there is no need to spin the roulette, which was used in the raffle of cases, since it was only the court of the undersigned which has not received its share of civil cases with application for a TRO/ Injunction for the particular *"round."* The raffle committee would just be wasting time and make fool out of ourselves if we would still spin the roulette, on that particular raffle of July 21, 2008 for the raffle of Civil Case No. MC08-3660, and wait until the pointer of the roulette would be finally pointed to the portion where the words "RTC 213" is located in the roulette since it is only RTC-Branch 213 which is the only court included in the raffle of civil cases with application for a TRO/Injunction for the particular *"round."*

Judge Valenzuela justified the proceedings taken thusly:

[T]he same was agreed upon by the judges as its internal rules so as not burden a particular judge with several cases with application for TRO/preliminary injunction since as aforestated, such applications requires the immediate attention of the judge in view of the fact that each court has hundreds or thousands of cases clogging in its respective dockets."

Albeit admitting being a former employee of FGU Insurance Corporation, Judge Valenzuela clarified that FGU Insurance Corporation was not a party in Civil Case No. MC08-3660. He assured that all the parties in Civil Case No. MC08-3660 were given the opportunity to argue for or against the issuance of the TRO; that although he had granted a period of five days to STRADCOM within which to file its own *comment/opposition* to Martizano's application for the TRO, he did not wait anymore for STRADCOM's written *comment/opposition* owing to the public interest involved and the urgency of resolving the issues concerning DO 2007-28. He said that the non-imposition of a bond on Martizano was justified under Rule 58, Section 4(b) of the *Rules of Court*; that he denied the *motion to dismiss* because the requisites for the grounds relied upon were not met; and that the supposed anomaly attending the raffle proceedings was only the product of GSIS's "polluted mind."[10]

On April 1, 2009, the OCA rendered a report, stating:

> A careful study of the records of the case shows that respondent violated the procedure on the raffle of cases by automatically assigning a case to Branch 213 on the ground that the said procedure has been the practice of her predecessors.
>
> Even on the assumption, as respondent admitted, that the procedure has been the practice prior to her assumption as Executive Judge, she should have borne in mind that practice is not the law. The law is very explicit on this as expressed by Article 7 of the New Civil Code which provides: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or customs or practice to the contrary" (*Ceferino Inciong vs. Honorable Leticia S. Mariano De Guia,* A.M. No. R-249-RTJ, September 17, 1987).
>
> Circular No. 20, dated October 4, 1979, clearly provides that all cases filed with the court in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle. No case may be assigned to any branch without

[10] *Id.* at 59-84.

being raffled. Respondents could not go against Circular No. 20 of the Supreme Court in the exercise of its rule-making power until it is repealed or otherwise modified.[11]

The OCA recommended that: (*a*) both respondents be held guilty of violating the rules on the raffle of cases contained in Circular No. 7 dated September 23, 1974, with stern warning that the commission of the same or similar acts in the future would be dealt with more severely; (*b*) the charge against Judge Valenzuela for issuing the questioned orders in Civil Case No. MC08-3660 be dismissed for lack of merit; (*c*) the matter be re-docketed as a regular administrative matter; and (*d*) each of the respondents be fined ₱5,000.00 for violating Circular No. 7.[12]

As earlier mentioned, on June 3, 2009, the Court, adopting and approving the OCA's recommendations, declared the respondents guilty of violating the rules on the raffle of cases and fined each of them ₱5,000.00.[13]

Hence, the separate motions for reconsideration of the respondents,[14] which GSIS opposed.[15] The respondents then filed their separate replies.[16]

Issue

Were the respondents properly held administratively liable for violating the standing rules on the raffle of cases?

Ruling

We grant the motions for reconsideration, and reconsider and set aside the resolution dated June 3, 2009. We absolve the respondents.

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[11] *Id.* at 308.

[12] *Supra*, note 3.

[13] *Supra*, note 2.

[14] *Supra*, note 1.

[15] *Rollo*, pp. 392-408; 420-437.

[16] *Id.* at 477-479; 486-489.

1.
Rules in Raffling of Cases

The 1997 *Rules of Civil Procedure* has expressly made the raffle the *exclusive* method of assigning cases among several branches of a court in a judicial station by providing in Section 2 of Rule 20, as follows:

> Section 2. *Assignment of Cases*. – The assignment of cases to the different branches of a court shall be done exclusively by raffle. The assignment shall be done in open session of which adequate notice shall be given so as to afford interested parties the opportunity to be present. (7a,R22)

Previously, under the *Revised Rules of Court* (1964), the distribution of cases among different branches by raffle was *not exclusive*, considering that Rule 22 then allowed other methods, to wit:

> Section 7. *Assignment of cases*. In the assignment of cases to the different branches of a Court of First Instance or their transfer from one branch to another whether by raffle or otherwise, the parties or their counsel shall be given written notice sufficiently in advance so that they may be present therein if they so desire.

The avowed purpose of instituting raffle as the exclusive method of assigning cases among several branches of a court in the same station is two-fold: *one*, to equalize the distribution of the cases among the several branches, and thereby foster the Court's policy of promoting speedy and efficient disposition of cases; and, *two*, to ensure the impartial adjudication of cases and thereby obviate any suspicion regarding assignment of cases to predetermined judges.[17]

To achieve and implement this two-fold purpose, the Supreme Court issued Circular No. 7 on September 23, 1974, which pertinently stated:

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[17] *Fineza v. Rivera*, A.M. No. RTJ-00-1545, August 6, 2003, 408 SCRA 365, 373.

I. RAFFLING OF CASES

All cases filed with the Court in stations or groupings where there are two or more branches shall be assigned or distributed to the different branches by raffle. No case may be assigned to any branch without being raffled. The raffle of cases should be regularly conducted at the hour and on the day or days to be fixed by the Executive Judge. Only the maximum number of cases, according to their dates of filing, as can be equally distributed to all the branches in the particular station or grouping shall be included in the raffle. Cases in excess of the number sufficient for equal distribution shall be included in the next scheduled raffle, subject to the exceptions provided in paragraphs II and IV hereof.

II. NOTICE

Notice of the day and hour of the raffle shall be posted prominently in the bulletin boards of the Courts and at a conspicuous place at the main door of the session hall of the Executive Judge. Other notices to the parties may be sent as the interest of justice may require on request of any party and with the prior approval of the Executive Judge. There shall be no special raffle of any case except on meritorious application in writing by any party to the case and with the approval of the Executive Judge.

III. MANNER OF RAFFLING

The raffle must be conducted at the lawyer's table in open court by the Executive Judge personally with the attendance of two other Judges or, in case of the latter's inability, of their duly authorized representatives. In stations where there are only two salas the Judges of both or either and the Clerk of Court or the Branch Clerk of Court should be present. In the absence of the Executive Judge, the Judge at the station who is the most senior in point of appointment to the Judiciary shall personally conduct the raffle. Under no circumstance may any raffle be made in chambers. The raffle proceedings should be stenographically recorded, and minutes thereof shall be prepared by signed by the Judges (or their representatives) and the Clerk of Court in attendance. Immediately after the raffle on any particular branch to which the case is assigned, the same to be written in words and in figures on the cover of the *Rollo* and on the first page of the original complaint or information and initialed by the Executive Judge and the other two officers who attended said raffle.

The raffle must be conducted in such manner that all the branches of the Court in that station or grouping including vacant salas, shall receive more or less the same number of civil, criminal and other kinds of cases.

For purposes of facilitating implementation of the foregoing rules, a Raffle Committee composed of the Executive Judge and two other judges shall, as much as practicable, be constituted.

IV. IN CASE OF URGENT OR INTERLOCUTORY MATTERS

Whenever an incidental or interlocutory matter in a case is of such urgent nature that it may not wait for the regular raffle, the interested party may request the Executive Judge in writing for a special raffle. If the request is granted and the special raffle is conducted, the case shall immediately be referred to the branch to which it corresponds. The Executive Judge shall have no authority to act on any incidental or interlocutory matter in any case not yet assigned to any branch by raffle.

II.
Respondents did not violate the purposes of the rule requiring raffle

Circular No. 7, *supra*, stated that only the maximum number of cases, according to their dates of filing, as could be equally distributed to all the branches in the particular station or grouping should be included in the raffle; and that cases in excess of the number *sufficient for equal distribution* should be included in the next scheduled raffle.

Despite not strictly following the procedure under Circular No. 7 in assigning Civil Case No. MC08-3660 to Branch 213, the respondents as members of the Raffle Committee could not be held to have violated the rule on the exclusivity of raffle because there were obviously less TRO or injunction cases available at anytime for raffling than the number of Branches of the RTC. Given the urgent nature of TRO or injunction cases, each of them had to be immediately attended to. This peculiarity must have led to the adoption of the practice of raffling such cases despite their number being less than the number of the Branches in Mandaluyong City. The practice did not absolutely

contravene Circular No. 7 in view of the circular itself expressly excepting under its fourth paragraph, *supra*, any incidental or interlocutory matter of such urgent nature (like a TRO application) that might not wait for the regular raffle.

Still, GSIS posits that assigning Civil Case No. MC08-3660 to Branch 213 without raffle could easily "create an anomalous situation," which it describes in the following terms:

> They create an anomalous situation whereby all that a litigant with an injunction complaint in Mandaluyong has to do is to time the filing of his her case by waiting until the favored judge is the only sala left without an injunction case. Considering that there are only four salas in Mandaluyong, a litigant may not have to wait long until this happens. Once the favored judge is the only sala left, then the litigant is assured that his or her case will automatically be assigned to that judge."[18]

We find the position of GSIS untenable. The urgent nature of an injunction or TRO case demands prompt action and immediate attention, thereby compelling the filing of the case in the proper court without delay. To assume that a party desiring to file an injunction or TRO case will just stand idly by and mark time until his favored Branch is the only Branch left without an assigned injunction or TRO case is obviously speculative. Moreover, the "anomalous situation" is highly unlikely in view of the uncertainty of having the favored Branch remain the *only Branch* without an injunction or TRO case following the series of raffle.

The OCA has cited *Hilario v. Ocampo III*[19] and *Fineza v. Rivera*[20] to support its adverse recommendation against the respondents. However, said rulings were not on all fours with the situation of the respondents. In *Hilario v. Ocampo III*, the respondent was an executive judge who had assigned 13 related

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[18] *Supra*, note 7.

[19] A.M. No. MTJ-00-1305, December 3, 2001, 371 SCRA 260, 273.

[20] *Supra*, note 17.

cases to the branch to which the case having the lowest docket number had been assigned, thereby causing the uneven distribution of cases among the various branches of the station. That was not true herein, because the respondents as members of the Raffle Committee had earlier conducted a series of raffle involving injunction and TRO cases before assigning Civil Case No. MC08-3660 to Branch 213 conformably with the standing practice designed to ensure the equalization of the distribution of cases among the several Branches in the Mandaluyong City station. In *Fineza v. Rivera*, the respondent was an executive judge who had disregarded the procedure for the assignment of cases by relying instead on sequencing, that is, if a case was raffled to Branch 1, the next case was assigned to the next branch (Branch 2), and so on. In contrast, the respondents herein assigned Civil Case No. MC08-3660 to Branch 213 without considering their preference or without exercising their unregulated choice of the Branch, but entirely pursuant to their existing practice.

Even if we now absolve the respondents from administrative liability on the basis of the foregoing, we cannot hereafter sanction any practice that does not conform to the raffle as the exclusive method of assigning cases among several Branches within the judicial station. We reiterate that the raffle should always be the rule rather than the exception.

Henceforth, adherence to the procedure for the raffle set forth in Circular No. 7 is demanded of all Raffle Committees in multi-sala trial courts in order to achieve the two-fold objectives earlier mentioned. Only the exceptions expressly recognized under item IV of Circular No. 7 shall be permitted.

III.
Dismissal of charges for gross ignorance of the law, grave misconduct, and knowingly rendering unjust judgment was proper

The dismissal of the charges of gross ignorance of the law, grave misconduct, and knowingly rendering unjust judgment,

as the OCA recommended, was justified because the charges were really devoid of merit.

In the absence of any showing that improper motives or corruption had actuated the respondents, the respondents should be presumed to have acted in utmost good faith in assigning Civil Case No. MC08-3660 according to the existing practice of raffling cases adopted by the Raffle Committee. As such, they could not be held guilty of either gross ignorance of the law or grave misconduct. To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but must also be motivated by bad faith, fraud, dishonesty and corruption.[21] Grave misconduct refers to a wrongful act inspired by corruption or intention to violate the law.[22]

The charge of knowingly rendering unjust orders in Civil Case No. MC08-3660 levelled against Judge Valenzuela was bereft of factual support and legal basis. His explanations for issuing the assailed orders, which the Court finds to be fully substantiated by the records and the pertinent laws, are sufficient. In addition, we are puzzled that GSIS did not resort to any of several adequate remedies, like bringing a petition for *certiorari* or taking an appeal in due course, which remedies were available at its disposal had it really considered the issuance of the orders and Judge Valenzuela's explanations unwarranted or in contravention of the law.

GSIS's proceeding against Judge Valenzuela through this administrative complaint instead was definitely not its viable option at all. We have always regarded as a fundamental precept that an administrative complaint against a judge is inappropriate as a remedy for the correction of an act or omission complained of where the remedy of appeal or *certiorari* is a recourse

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[21] *Naval v. Panday*, A.M. No. RTJ-95-1283, July 21, 1997, 275 SCRA 654, 694.

[22] *Sesbreño v. Igonia*, A.M. No. P-04-1791, January 27, 2006, 480 SCRA 243, 255.

available to an aggrieved party.[23] Two reasons underlie this fundamental precept, namely: (*a*) to hold otherwise is to render judicial office untenable, for no one called upon to try the facts or to interpret the law in the process of administering justice can be infallible in his judgment; and (*b*) to follow a different rule can mean a deluge of complaints, legitimate or otherwise, and our judges will then be immersed in and be ceaselessly occupied with answering charges brought against them instead of performing their judicial functions.

WHEREFORE, the Court **GRANTS** the respondents' separate motions for reconsideration; **SETS ASIDE** the resolution dated June 3, 2009; and **DISMISSES** the administrative charges against the respondents.

Henceforth, the Raffle Committees of all multi-sala stations shall strictly adhere to the procedures for assigning of cases among the Branches in the stations, subject only to the exceptions recognized in Circular No. 7.

The Court Administrator is hereby directed to disseminate this resolution to all trial courts for their guidance and strict compliance.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

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[23] *City of Cebu v. Gako, Jr.*, A.M. No. RTJ-08-2111, May 7, 2008, 554 SCRA 15, 24; *Cepeda v. Cloribel-Purugganan*, A.M. No. RTJ-04-1866, July 30, 2004, 435 SCRA 456, 460.

THIRD DIVISION

[G.R. No. 148607. September 5, 2012]

ELSA B. REYES, *petitioner, vs.* **SANDIGANBAYAN (4th Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 167202. September 5, 2012]

ARTEMIO C. MENDOZA, *petitioner, vs.* **SANDIGANBAYAN (4th Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 167223. September 5, 2012]

ELSA B. REYES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 167271. September 5, 2012]

CARIDAD A. MIRANDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; CHECKS; IN THE ABSENCE OF CLEAR AUTHORITY TO INDORSE THE CHECK FOR RENEGOTIATION, THE INDORSEMENT OF THE CHECK IN QUESTION DID NOT ALTER THE NATURE THEREOF AS FOR DEPOSIT; APPLICATION IN CASE AT BAR. — Bad faith connotes, not only bad judgment or negligence, but also a dishonest purpose or conscious wrongdoing. But bad faith alone on the part of the accused is not sufficient. Such bad faith must be evident. Nothing in the record shows that corrupt motive spurred Miranda in her actions or that she received some material benefit for signing the checks that moved the funds out of IMC. All that can be proved against her is the fact that she indorsed

the IMC checks subject of the case. But this does not prove a dishonest purpose. She testified that it was a standard practice for the General Manager to sign the dorsal portion of checks for deposit. Indeed, Miranda presented similar checks with her indorsement which were deposited into IMC's accounts with government depositaries. The prosecution did not rebut this. While it is true that Miranda did not have to acknowledge the checks in order for them to be deposited, her indorsements were superfluous. They did not alter the nature of the checks as payable to IMC since Miranda did not have clear authority to indorse its checks for renegotiation. Her signing authority was limited to only ₱400,000.00 and under IMC Office Order 11, s. 1987, two signatures to IMC checks were required for this. Her indorsement of the checks in question may be regarded as laxity but it does not amount to a criminal design. That the checks in question were not deposited but were instead renegotiated after Miranda indorsed them should not be taken against her but against the individuals who managed to do so and the banks that allowed the unauthorized withdrawal of those funds. There is likewise no proof that Miranda acted with perceptible bias in favor of Reyes. They both deny ever knowing each other prior to the questioned transactions. Reyes dealt exclusively with Mendoza who was IMC's Finance Division Chief. Miranda was unaware that IMC funds were being diverted to unauthorized investments instead of being deposited in its accounts.

2. ID.; SECURITIES; GOVERNMENT OWNED OR CONTROLLED CORPORATIONS SHALL TRANSACT THEIR PURCHASE AND SALE OF SECURITIES ONLY WITH CENTRAL BANK OR GOVERNMENT FINANCIAL INSTITUTIONS; VIOLATION IN CASE AT BAR. —As for Mendoza, the Court agrees with the majority in the Sandiganbayan that he acted with evident bad faith. His above memorandum shows that the renegotiation of IMC checks was his initiative, purportedly to increase its earnings from idle funds. It can even be deduced from his memorandum that an effort was taken to conceal Reyes' part in those investments. He knew that IMC cannot make a deal with private investment companies such as that headed by Reyes, since such investments could be coursed only through government institutions. Further, Mendoza admitted telling Reyes that the investments had been authorized when in fact

the IMC Board issued no resolution regarding it. That the IMC had not recovered all of its investments is a fact supported by the records. Some attempts were made to negotiate payment of Eurotrust's liabilities to IMC but there is no evidence of record that these had taken place. Consequently, it may be assumed that the government suffered injury by reason of the transactions in question. Besides, Letter of Instruction 1302 categorically provides that government-owned or controlled corporations shall transact their purchases or sales of government securities only with Central Bank or government financial institutions including banks that are wholly owned or controlled by them. Here, Mendoza admittedly dealt with Reyes instead. In doing so, he gave unwarranted benefit and advantage to her, earning for her company a conduit fee of ₱571,028.19 paid through Associated Bank.

3. POLITICAL LAW; COMMISSION ON AUDIT; PRESIDENTIAL DECREE 1445 (ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES); SECTION 56(3) (C) THEREOF REQUIRES ADEQUATE EVIDENTIARY SUPPORT IN THE AUDIT WORKING PAPERS OF FINDINGS CONTAINED IN THE AUDIT REPORTS; COMPLIED WITH IN CASE AT BAR. — Section 56(3)(c) of Presidential Decree 1445 requires adequate evidentiary support in the audit working papers of findings contained in audit reports. Since the general proposition is that this requirement of law has been obeyed, the burden shifted to Reyes to disprove the correctness of the audit report in this case. She did not. In any event, COA's special audit appears in order. Its scope was clearly defined; it specified the documents that it examined. An exit conference between IMC and the audit team was held so the IMC and those involved could controvert the findings. The IMC management's comments on those findings were included in the report together with the audit team's rejoinder.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; TESTIMONY OF AN AUDIT TEAM MEMBER, WHEN ADMISSIBLE; CASE AT BAR. — As to the testimony of audit team member Adelino, the same is admissible. While her designation in the team took effect only on January 3, 1991, she had one month after the audit team turned over to her the documents that formed part of its working paper within which to examine and validate them. And she was involved in the

exit conference with IMC officials on June 4, 1991. She also took part in preparing the audit report submitted on August 20, 1991. She certainly was qualified to testify on the contents of that report, contrary to Reyes' assertion.

5. ID.; CRIMINAL PROCEDURE; MOTION FOR LEAVE OF COURT TO FILE DEMURRER TO EVIDENCE, WHEN DENIED; REMEDY. — Section 23, Rule 119 of the Rules of Criminal Procedure provides that a "motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case." This period runs, according to *Cabador v. People*, only after the court shall have ruled on the prosecution's formal offer for that is when it can be deemed to have rested its case. Here, Reyes filed a timely motion for reconsideration of the Sandiganbayan's ruling on the prosecution's formal offer, which is allowed, thus preventing the prosecution from resting its case. When the Sandiganbayan denied Reyes' motion for reconsideration, she filed with it, within the required five days of her receipt of the order of denial, her motion for leave to file demurrer to evidence. Still, the Sandiganbayan's error in not allowing Reyes to ask for leave to file a demurrer to the evidence cannot be regarded as capricious and whimsical as to constitute grave abuse of discretion. Courts have wide latitude for denying the filing of demurrers to evidence. Indeed, an order denying a motion for leave of court to file demurrer to evidence or the demurrer itself is not subject to appeal or *certiorari* action before judgment. The remedy is to assign the order of denial as an error on appeal after judgment.

APPEARANCES OF COUNSEL

Lazaro Law Firm for Elsa B. Reyes.
Rodolfo D. Reynoso for Artemio Mendoza.
Yulo Aliling Pascua & Zuniga for Caridad Miranda.

D E C I S I O N

ABAD, *J.*:

These cases pertain to the liability of public officers and private individuals for investing public funds through private investment companies without proper authorization.

The Facts and the Case

On May 27, 1982 the President of the Philippines issued Executive Order 806,[1] establishing the Instructional Materials Corporation (IMC), a government-owned and controlled corporation under the Department of Education, Culture, and Sports (DECS). IMC's task was to develop, produce, and distribute public school textbooks for elementary and high schools. Among others, IMC was empowered, with the approval of its Board of Directors, to invest its unscheduled funds pending their intended use.[2]

The present controversy arose when Senator Wigberto Tañada denounced alleged illegal investments that IMC made in Associated Bank from March 1989 to September 1990. Then DECS Secretary Isidro Cariño directed a special audit of IMC from December 6, 1990 to February 6, 1991 covering the alleged illegal deposits. On August 20, 1991 the Special Audit Team[3] reported a questionable investment of ₱231.56 million in a private bank of advances that IMC received from the government. Said the report:

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[1] Otherwise known as "*Creating the Textbook Council and the Instructional Materials Corporation, Defining their Powers and Functions and for other purposes*," dated May 27, 1982. By virtue of Executive Order 492 (November 29, 1991), IMC is now known as the Instructional Materials Development Center, an attached agency of DECS (now DepEd).

[2] Executive Order No. 806, Section 10 (b) (9).

[3] Composed of Angelita Sison, Normita Ablao and Leticia Torres. Torres was replaced by Mary Adelino who testified before the Sandiganbayan about the findings.

a. Of the ₱732 million advances including adjustments received by IMC from the different government entities during the period January 1, 1989 to September 30, 1990, only ₱209 million or 28.56% has been liquidated and used for the purpose intended. Advances amounting to ₱231.56 million was not deposited with authorized government depository bank but was instead used for unauthorized purchase of government securities from private brokers using Associated Bank as its conduit in violation of LOI 1302 dated March 25, 1983 and COA-MOF-MOB Joint Circular No. 9-81 dated October 19, 1981. In such placement, IMC incurred additional investment cost of ₱571,028.19 representing conduit fee paid to Associated Bank for services rendered to IMC and the Broker.

b. Government securities amounting to ₱118.67 million could not be accounted for during the count conducted on December 6, 1990. Available documents showed that the private broker was allowed to take custody of these securities in violation of Section 101 of PD 1445. Of the amount, custody for securities with face value of ₱74.10 million was denied by the Philippine National Bank.

c. Placement with private brokers were neither approved by the General Manager nor covered by a board resolution sanctioning such placements.[4]

Pending recovery of the unaccounted government securities worth ₱116 million mentioned above, the government filed criminal charges of violation of Section 3(e)[5] of Republic Act (R.A.) 3019[6] before the Sandiganbayan against petitioners

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[4] *Rollo* (G.R. 167271), p. 13.

[5] "Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

[6] Also known as the "*Anti-Graft and Corrupt Practices Act.*"

Caridad Miranda (Miranda) and Artemio Mendoza (Mendoza), General Manager and Finance Division Chief of IMC, respectively. They were accused of investing IMC funds by buying government securities from Associated Bank, brokered by Eurotrust Capital Corporation (Eurotrust). It was alleged that the investment was with evident bad faith because Miranda and Mendoza did not secure prior authority from the IMC Board.

The government also indicted petitioner Elsa B. Reyes (Reyes), Eurotrust's president, for investing IMC funds by buying government securities or BF Homes Assets Privatization Certifications from Associated Bank. These certificates were then sold to IMC for a profit of ₱571,028.19. IMC also failed to collect from Reyes a balance of ₱116 million from investment instruments that matured.

The information alleged:

> [A]ccused ARTEMIO MENDOZA, without authority, obtained from the IMC Cashier the following checks which were payable to and received by IMC from the Department of Education, Culture and Sports and the Educational Development Projects Implementing Task Force (EDPITAF) intended for the production and distribution of elementary textbooks and other instructional materials from *(sic)* the public schools, namely: x x x.
>
> [T]hereafter accused ARTEMIO MENDOZA caused accused CARIDAD MIRANDA to sign and indorse the aforementioned checks in blank which accused CARIDAD MIRANDA did, notwithstanding the fact that their *(sic)* indorsement in blank was unnecessary since the aforesaid checks were all for deposit; then accused ARTEMIO MENDOZA, without any disbursement vouchers whatsoever, and instead of depositing the said checks to the account of IMC, delivered them to accused ELSA REYES who, without any authority from IMC, thereafter caused the IMC funds covered by the aforementioned checks to be invested in government securities such as Treasury Bills, Treasury Notes, Land Bank Bonds or BF Homes Assets Privatization Certificates purchased from Associated Bank, a private or non-government financial institution, in violation of P.D. No. 1115, if the required volume was available in the said bank, and if no such volume could be provided by Associated Bank, accused ELSA REYES sold the necessary volume to Associated Bank which in turn sold

them to IMC, thereby causing IMC to pay an additional investment cost of ₱571,028.19; thereafter, upon termination or maturity dates of said investments, accused ARTEMIO MENDOZA and CARIDAD MIRANDA failed to demand the return of the funds from accused ELSA REYES who thereupon reinvested them or lent them to B.E. Ritz Mansion Investment Corporation (BERMIC) which, however, failed to pay its obligation in full, leaving an uncollected balance of ₱116,000,000.00, x x x.[7]

During the trial, the prosecution presented the findings of the Special Audit Team and the Committee on Investment headed by Mr. Melchor Tipace. Mary Adelino (Adelino), a member of the audit team testified that ₱118,666,655.48 in government securities were unaccounted for as of December 1990. She also testified that IMC incurred additional investment cost by way of conduit fee paid to Associated Bank in the amount of ₱571,028.19.

By way of defense, Miranda denied any involvement in the transactions with Eurotrust. She met Reyes for the first time only when the audit report was released to her. She also learned from Reyes that it was Mendoza whom she dealt with for the investments through Eurotrust.

Miranda also denied that she conspired with co-accused Mendoza when she signed and indorsed IMC checks to purchase securities from Eurotrust. She signed the checks as part of IMC's standard procedure, not knowing that Mendoza will use them to make the illegal investment.

Mendoza denied Miranda's claim. Mendoza said that, as finance officer, he can only determine what unscheduled funds IMC can invest. It was Miranda, he added, who authorized, when she signed the checks, to release the funds for investment through Eurotrust. Reyes, on the other hand, alleged that she did not know that Mendoza had no authority to invest IMC funds through Eurotrust.

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[7] *Rollo* (G.R. 167271), pp. 9-11.

After the prosecution ended the presentation of its evidence and filed a formal offer of its documentary exhibits, Reyes objected on the ground that witness Adelino's testimony covering the audit report was hearsay since she joined the audit team as a replacement member only in January 1991. She also objected to the offer of documentary evidence that were not marked or made known to the parties during pre-trial.

In a Resolution dated February 21, 2001, the Sandiganbayan set aside Reyes' objection and admitted the prosecution's evidence. It denied her motion for reconsideration on April 6, 2001, prompting her to file a motion for leave to file a demurrer. But the court denied this, too, for having been filed out of time since the 5-day period within which to file such leave was to be counted from Reyes' receipt of the February 21, 2001 Resolution.

In her motion for reconsideration, Reyes claimed that the 5-day period should rather be counted from her receipt of the denial of her motion for reconsideration of the Order admitting the prosecution's evidence. But the Sandiganbayan rejected this view, prompting Reyes to file a petition for *certiorari* before this Court in G.R. 148607 for alleged grave abuse of discretion. Meanwhile, trial in the case proceeded.

On September 22, 2004 the Sandiganbayan Fourth Division, voting 3-2, rendered a Decision[8] finding Mendoza and Miranda guilty beyond reasonable doubt of the charge against them and imposing on them the penalty of imprisonment of 6 years and 1 month as minimum up to 10 years as maximum and perpetual disqualification from public office. They were also ordered, by way of restitution, to return the missing government securities amounting to ₱118,666,655.48 or pay their cash equivalent.

The majority in the court found that Miranda and Mendoza conspired with Reyes in the investment of IMC funds with

[8] Penned by Justice Norberto Y. Geraldez with the concurrence of Justices Gregory S. Ong and Jose R. Hernandez. Justices Roland B. Jurado and Efren N. De la Cruz dissented.

Eurotrust absent authorization from the IMC Board. By using their positions as General Manager and Finance Officer, respectively, Miranda and Mendoza caused undue injury to the government when the securities bought with IMC funds were not recovered. Furthermore, Miranda and Mendoza were fully aware of their lack of authority, yet they proceeded with the investment. For the majority, this constituted evident bad faith.

The Justices who dissented claimed, on the other hand, that the prosecution failed to establish Miranda's active participation in the investment made through Eurotrust. That she signed blank checks without knowing where the funds will be deposited (and these were ultimately used by Mendoza to pay Eurotrust for the securities) may indicate incompetence or negligence but not bad faith.

Petitioners filed their respective motions for reconsideration which were denied by Resolution dated February 22, 2005. This led to the filing of separate petitions for review on *certiorari* by Mendoza in G.R. 167202, Reyes in G.R. 167223 and Miranda in G.R. 167271 before the Court. By Resolution of April 17, 2006, the Court consolidated the four petitions since they arose from the same criminal case that involved the same parties and raised substantially similar or closely related issues.

The Issues Presented

These cases present the following issues:

1. In G.R. 148607 instituted by Reyes, whether the Sandiganbayan committed grave abuse of discretion in not counting the 5-day period to file a motion for leave to file demurrer, not from its denial of her opposition to the order admitting the prosecution's documentary evidence, but from its rejection of her motion for reconsideration of that denial order.

2. In G.R. 167202, 167223 and 167271 separately filed by petitioners, whether or not the Sandiganbayan erred in finding them guilty of causing undue injury to the government by using IMC funds for the purchase of investment securities through third parties in violation of Section 3(e) of R.A. 3019.

The Court's Rulings

The information alleged that petitioners Miranda and Mendoza acted with evident bad faith in connection with the subject investment transactions. The majority in the Sandiganbayan found that they acted with evident bad faith when they pursued the investment despite want of authority from the IMC Board.

Bad faith connotes, not only bad judgment or negligence, but also a dishonest purpose or conscious wrongdoing.[9] But bad faith alone on the part of the accused is not sufficient. Such bad faith must be evident.[10]

Nothing in the record shows that corrupt motive spurred Miranda in her actions or that she received some material benefit for signing the checks that moved the funds out of IMC. All that can be proved against her is the fact that she indorsed the IMC checks subject of the case. But this does not prove a dishonest purpose. She testified that it was a standard practice for the General Manager to sign the dorsal portion of checks for deposit. Indeed, Miranda presented similar checks with her indorsement which were deposited into IMC's accounts with government depositaries. The prosecution did not rebut this.

While it is true that Miranda did not have to acknowledge the checks in order for them to be deposited, her indorsements were superfluous. They did not alter the nature of the checks as payable to IMC since Miranda did not have clear authority to indorse its checks for renegotiation. Her signing authority was limited to only ₱400,000.00 and under IMC Office Order 11, s. 1987, two signatures to IMC checks were required for this. Her indorsement of the checks in question may be regarded as laxity but it does not amount to a criminal design. That the checks in question were not deposited but were instead renegotiated after Miranda indorsed them should not be taken

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[9] *Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007.

[10] *Dugayon v. People*, 479 Phil. 930, 942 (2004).

against her but against the individuals who managed to do so and the banks that allowed the unauthorized withdrawal of those funds.

There is likewise no proof that Miranda acted with perceptible bias in favor of Reyes. They both deny ever knowing each other prior to the questioned transactions. Reyes dealt exclusively with Mendoza who was IMC's Finance Division Chief. Miranda was unaware that IMC funds were being diverted to unauthorized investments instead of being deposited in its accounts.

The prosecution cited Miranda's approval and submission of IMC's annual report for 1989 as proof that she connived with Mendoza. The investment of more than ₱123 million of IMC funds with Eurotrust had been included in the balance sheet appearing on that report.

But the Office of the General Manager, headed by Miranda, had the duty to submit an annual report to the Board within 30 days after the close of the calendar year.[11] This means putting together in one report all the annual summaries prepared by each of the operating divisions or departments of IMC, including that from its Finance Division, headed by Mendoza. Miranda cannot be presumed to have personal knowledge of all the transactions that made up the financial summaries that Mendoza's unit submitted. As Finance Division Chief, it was Mendoza who gave technical advice to management on financial matters and directed, coordinated, and supervised the proper recording and accounting of financial transactions.[12] Admittedly, it was Mendoza who took part in preparing the balance sheet that became part of IMC's 1989 annual report.[13]

In *Arias v. Sandiganbayan*,[14] the Court held that it would not do to take a shotgun approach when evaluating evidence in corruption cases. Liability must be pinpointed.

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[11] MECS Order 64, Series of 1985, "Implementing the details for the Organization and Operationalization of the Instructional Materials Council and the Instructional Materials Corporation, Section 13(c).

[12] Exhibit "17" (Miranda).

[13] TSN, May 22, 2003, p. 8.

[14] 259 Phil. 794 (1989).

We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

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x x x All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[15]

Quite telling are the contents of Mendoza's memorandum of October 15, 1990 to Miranda and Commission on Audit (COA) Resident Auditor Narcisa D. Joaquin.[16] Mendoza wrote:

We bought the certificates thru this bank (Associated Bank) because it is easier to transact with. Besides, mere presentation of check payments by DECS and other agencies to IMC is acceptable. With this, IMC is generating earnings for a period of at least five (5) days more than what IMC earns if the securities are purchased thru PNB. Also, we are encountering difficulty transacting with PNB which usually result in delays.

x x x x x x x x x

As to the name of Elsa Reyes, President of Eurotrust Capital Corporation in the anonymous letter, it is true that she is our link with the bank. However, in all IMC transactions and documentations, nowhere in the records you can find her name but the authorized

[15] *Id.* at 801-802.

[16] Exhibit "39-A" (Miranda).

signatories of the bank. Though there exist a certain technicality in her entering into the scheme, this system is accepted practice and also being done by other government corporations. x x x (Underscoring supplied)

That Associated Bank was lenient in allowing checks payable to IMC to be renegotiated and used for buying government securities, explains how banking rules were skirted. It was, therefore, not because of Miranda's signature that the irregularity was committed but because of some irregular banking practice.

As for Mendoza, the Court agrees with the majority in the Sandiganbayan that he acted with evident bad faith. His above memorandum shows that the renegotiation of IMC checks was his initiative, purportedly to increase its earnings from idle funds. It can even be deduced from his memorandum that an effort was taken to conceal Reyes' part in those investments. He knew that IMC cannot make a deal with private investment companies such as that headed by Reyes, since such investments could be coursed only through government institutions.[17] Further, Mendoza admitted telling Reyes that the investments had been authorized when in fact the IMC Board issued no resolution regarding it.[18]

That the IMC had not recovered all of its investments is a fact supported by the records. Some attempts were made to negotiate payment of Eurotrust's liabilities to IMC but there is no evidence of record that these had taken place. Consequently, it may be assumed that the government suffered injury by reason of the transactions in question.

Besides, Letter of Instruction 1302[19] categorically provides that government-owned or controlled corporations shall transact their purchases or sales of government securities only with Central Bank or government financial institutions including banks

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[17] TSN, May 21, 2003, p. 51.

[18] TSN, May 22, 2003, pp. 12-13.

[19] Issued on March 25, 1983.

that are wholly owned or controlled by them. Here, Mendoza admittedly dealt with Reyes instead. In doing so, he gave unwarranted benefit and advantage to her, earning for her company a conduit fee of ₱571,028.19 paid through Associated Bank.

As to Reyes, she chose instead of testifying, to adopt as her own evidence some documents that Miranda and Mendoza submitted to the court below. Reyes believed that the evidence given against her was insufficient to overcome the presumption of innocence that the Constitution grants her. In the main, she challenged the admissibility and weight of the COA Report and testimony of audit team member Adelino.

Section 56(3)(c) of Presidential Decree 1445[20] requires adequate evidentiary support in the audit working papers of findings contained in audit reports. Since the general proposition[21] is that this requirement of law has been obeyed, the burden shifted to Reyes to disprove the correctness of the audit report in this case.[22] She did not.

In any event, COA's special audit appears in order. Its scope was clearly defined; it specified the documents that it examined. An exit conference between IMC and the audit team was held so the IMC and those involved could controvert the findings. The IMC management's comments on those findings were included in the report together with the audit team's rejoinder.

As to the testimony of audit team member Adelino, the same is admissible. While her designation in the team took effect only on January 3, 1991, she had one month after the audit team turned over to her the documents that formed part of its working paper within which to examine and validate them. And

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[20] Otherwise known as "Ordaining and Instituting a Government Auditing Code of the Philippines."

[21] RULES OF COURT, Rule 131, Section 3(ff).

[22] *Id.* at Section 3.

she was involved in the exit conference with IMC officials on June 4, 1991. She also took part in preparing the audit report submitted on August 20, 1991. She certainly was qualified to testify on the contents of that report, contrary to Reyes' assertion.

On the merits of her case, the Court holds that the Sandiganbayan did not err in convicting Reyes. Clearly, she was at the receiving end of the benefits that resulted from Mendoza's unauthorized diversion of IMC funds to Associated Bank. That her company, Eurotrust, had not been accredited by the Central Bank as seller or buyer of securities for investors is evidence that she conspired with Mendoza to divert IMC funds through her company to Associated Bank.

The Court will now go into the question of whether or not the Sandiganbayan gravely abused its discretion in counting the period to file a motion for leave to file demurrer from the receipt of the Order admitting the prosecution's formal offer of evidence.

Section 23, Rule 119 of the Rules of Criminal Procedure provides that a "motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case." This period runs, according to *Cabador v. People*,[23] only after the court shall have ruled on the prosecution's formal offer for that is when it can be deemed to have rested its case.

Here, Reyes filed a timely motion for reconsideration of the Sandiganbayan's ruling on the prosecution's formal offer, which is allowed,[24] thus preventing the prosecution from resting its case. When the Sandiganbayan denied Reyes' motion for reconsideration, she filed with it, within the required five days

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[23] G.R. No. 186001, October 2, 2009, 602 SCRA 760, 768.

[24] *PAL Employees Savings and Loan Association, Inc. v. National Labor Relations Commission*, 329 Phil. 581, 593 (1996), citing *Zapata v. National Labor Relations Commission*, 256 Phil. 507, 512 (1989).

of her receipt of the order of denial, her motion for leave to file demurrer to evidence.

Still, the Sandiganbayan's error in not allowing Reyes to ask for leave to file a demurrer to the evidence cannot be regarded as capricious and whimsical as to constitute grave abuse of discretion.[25] Courts have wide latitude for denying the filing of demurrers to evidence.[26] Indeed, an order denying a motion for leave of court to file demurrer to evidence or the demurrer itself is not subject to appeal or *certiorari* action before judgment.[27] The remedy is to assign the order of denial as an error on appeal after judgment.[28]

At any rate, the Court has in fact dealt with the issue concerning the timeliness of Reyes' motion for leave to file a demurrer to evidence, finding that it had been filed on time. But the Sandiganbayan's error in that regard did not amount to a denial of her right to be heard on her defense. She just had to bear with not knowing sooner if the evidence the prosecution adduced against her thus far was insufficient to prove her guilt. She later had the chance to question the sufficiency of that evidence. But the Court, evaluating the same, agrees with the majority in the Sandiganbayan that the evidence is sufficient.

WHEREFORE, the Court **DISMISSES** the petition in G.R. 148607 for failure to show that the Sandiganbayan committed grave abuse of discretion in denying for having been filed out of time petitioner Elsa B. Reyes' motion for leave to file demurrer to evidence.

Further, the Court **DENIES** the petitions filed by petitioners Artemio C. Mendoza and Elsa B. Reyes in G.R. 167202 and167223, respectively, and entirely **AFFIRMS** the decision

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[25] *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

[26] *Alarilla v. Sandiganbayan,* 393 Phil. 143, 154 (2000).

[27] RULES OF COURT, Rule 119, Section 23.

[28] *Tadeo v. People*, 360 Phil. 914, 919 (1998).

of the Sandiganbayan against them dated September 22, 2004. They are to pay, jointly and solidarily, the financial liability imposed by the Sandiganbayan for the offense. The Court, however, **GRANTS** the petition filed by petitioner Caridad Miranda in G.R. 167271, **SETS ASIDE** that Sandiganbayan decision insofar as she is concerned, and **ACQUITS** her of the charge.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,[*] and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 148843. September 5, 2012]

ANTIOQUIA DEVELOPMENT CORPORATION and JAMAICA REALTY & MARKETING CORPORATION, *petitioners, vs.* **BENJAMIN P. RABACAL, EULALIA CANTALEJO, TERESITA CANTALEJO, RUDY RAMOS, DOMINGO AGUILAR, DOMINGO CANTALEJO, VIRGINIA CANTALEJO, DULCE AQUINO, ROGELIO REDONDO, VIRGILIO CANTALEJO, FRANCISCO LUMBRES and RODOLFO DELA CERNA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; R.A. NO. 1199 (AGRICULTURAL TENANCY ACT OF THE PHILIPPINES); TENANT, DEFINED. — A tenant has been defined under Section 5(a) of R.A. No. 1199 as a person who, himself, and with the aid available from within his immediate household,

[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

cultivates the land belonging to or possessed by another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold system.

2. ID.; ID.; TENANCY RELATIONSHIP; WHEN CREATED; REQUISITES; EFFECT THEREOF. — Thus, there must be a concurrence of the following requisites in order to create a tenancy relationship between the parties: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. Once the tenancy relationship is established, the tenant is entitled to security of tenure and cannot be ejected by the landlord unless ordered by the court for causes provided by law.

3. ID.; R.A. 3844 (AGRICULTURAL LAND REFORM CODE); DISTURBANCE COMPENSATION; APPLICABLE ONLY IF THE LAND IN QUESTION WAS SUBJECT OF AN AGRICULTURAL LEASEHOLD; NOT PRESENT IN CASE AT BAR. — Respondents having failed to establish their status as tenants or agricultural lessees, they are not entitled to security of tenure nor are they covered by the Land Reform Program of the Government under existing laws, including the right to receive disturbance compensation under Section 36(1) of R.A. No. 3844, as amended. On the matter of disturbance compensation, we have held that Section 36(1) of the Code of Agrarian Reforms (R.A. No. 3844) would apply only if the land in question was subject of an agricultural leasehold, a fact that was not established before the lower courts. Clearly, there was no basis for the MTC's award of disturbance compensation to herein respondents. x x x We stress that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*. For all its conceded merit, equity is available only in the absence of law and not as its replacement. The CA thus erred in applying equity to favor the grant of disturbance compensation which has no basis in law.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THERE IS NO UNJUST ENRICHMENT WHEN THE COURT AWARDS A REASONABLE COMPENSATION TO THE PLAINTIFF WHO WAS ADJUDGED TO HAVE A BETTER RIGHT TO POSSESSION IN AN EJECTMENT CASE; RATIONALE. — There is nothing in existing laws and procedural rules that obliges a plaintiff in an unlawful detainer or forcible entry case to pay compensation or financial assistance to defendants whose occupation was either illegal from the beginning or had become such when they refused to vacate the subject premises upon demand by the owner or person having better right to its possession. On the contrary, our Rules of Court expressly recognizes the right of such plaintiff to claim for damages arising from the unlawful deprivation of physical possession. x x x A plaintiff adjudged to have the better right to possession in an ejectment case cannot be said to have been unjustly enriched by the court's award of reasonable compensation for the use and occupation of the premises. x x x It is settled that the plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises. Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF PROPER. — We also sustain the RTC's grant of attorney's fees in favor of petitioners who were "constrained to litigate [to protect their interest] due to the unwarranted refusal of the x x x defendants to vacate and surrender possession of the premises in question." There is no doubt whatsoever that it is within the MTC's competence and jurisdiction to award attorney's fees and costs in an ejectment case, in accordance with Section 17, Rule 70 of the 1997 Rules of Civil Procedure, as amended.

APPEARANCES OF COUNSEL

Donardo R. Paglinawan for petitioners.

Torrefranca & Associates for B. Rabacal, E. Cantalejo, R. Ramos, D. Cantalejo & D. Aquino.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 seeking to set aside the Decision[1] dated November 28, 2000 and Resolution[2] dated July 3, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 58390, and to reinstate the Joint Decision[3] dated September 30, 1999 of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24, which modified the Consolidated Decision[4] dated August 11, 1998 of the Municipal Trial Court (MTC) of Cabuyao, Laguna.

The factual antecedents:

Petitioner Antioquia Development Corporation (ADC) is the registered owner of several parcels of land located at Mamatid, Cabuyao, Laguna, and covered by Transfer Certificate of Title (TCT) Nos. T-278043, T-278044, T-278045, T-278050, T-278051, T-278052, T-278053, T-278054, T-244163, T-277164, T-278068, T-278069 and T-278070 of the Registry of Deeds of Laguna, Calamba Branch.

On May 29, 1989, ADC entered into a joint venture agreement with petitioner Jamaica Realty & Marketing Corporation (JRMC), a real estate developer, for the construction of a residential subdivision on its property.

Respondents are among the defendants[5] in the twenty (20) ejectment cases (Civil Case Nos. 493 to 512) filed by petitioners

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[1] *Rollo*, pp. 72-80. Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Angelina S. Gutierrez (retired Member of this Court) and Elvi John S. Asuncion concurring.

[2] *Id.* at 92-93. Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Elvi John S. Asuncion and Alicia L. Santos concurring.

[3] *Id.* at 39-44. Penned by Judge Damaso A. Herrera.

[4] *Id.* at 33-38. Penned by Judge Zenaida Lubrica Galvez.

[5] The other named defendants were either not served with summons, did not file an Answer or no longer residing on the property.

in the MTC. Petitioners alleged that defendants were seasonal planters/workers on the property who were allowed by the former owner, Mariano Antioquia, Sr., to construct their houses on the land with an agreement that they would surrender peacefully the premises when the owner needs the same. However, despite oral and written demands by petitioners, defendants refused to vacate the premises. Petitioners further averred that Municipal Mayor Constancio G. Alimagno, Jr. had interceded in behalf of the defendants and dialogues were conducted between the parties but no settlement was reached as petitioners insisted that they have no legal obligation to pay the defendants because the latter's occupation is by mere tolerance. Defendants, moreover, are occupying the commercial area of the property and their continued stay therein has caused petitioners financial losses since prospective buyers refused to buy the property. Petitioners thus prayed that judgment be rendered ordering the defendants to vacate the property, surrender the same to petitioners, and to pay the petitioners ₱10,000 as attorney's fees, plus costs.

Answering defendants, including herein respondents, commonly asserted that the previous owner, a certain Dr. Carillo of Biñan, Laguna, gave them express permission to build their respective houses on the property through the intercession of then Barangay Captain Paulino Hilaga. It was agreed that defendants would clean and clear the land, and would stay there as long as necessary. Such agreement was respected by the succeeding owner, Mariano Antioquia, Sr. Defendants further claimed that in 1994, negotiations with petitioners were conducted for the defendants to vacate the property. Petitioners offered to give each of the defendants a 60-square meter lot valued at ₱118,000 payable in 10 years, without interest, and each defendant will also receive ₱2,000 as expenses for transfer. To this, defendants made the following counter-offer: a 60-square meter lot for each defendant for the price of ₱12,000, payable in 10 years, without interest, and in addition, petitioners would give each defendant ₱7,000 as expenses for transfer.

Defendants further claimed that during their meeting with Mayor Constancio Alimagno, Jr., the latter proposed a 60-square meter lot for each defendant priced at ₱15,000. In the succeeding dialogues, defendants demanded to be given ₱50,000 each as disturbance compensation but the petitioners refused. Defendants contended that in addition to lots where they can build new houses, they should also be given disturbance compensation since they were permitted by the former owner to stay on the land — which agreement should be honored — and they being members of the "*Samahang Kapit-Bisig*."

On August 11, 1998, the MTC rendered a Consolidated Decision[6], the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered:

1. Ordering individual defendants in Civil Cases Nos. 494, 495, 496, 498, 499, 501, 503, 504, 505, 506, 508, 509, 510, 511 and 512, namely, Benjamin Rabacal, Eulalia and Teresita Cantalejo, Rudy Ramos, Domingo Cantalejo, Virginia Cantalejo, Dulce Aquino, Domingo Aguilar, Nestor Bariring, Placido Celis, Felix Garcia, Rogelio Redondo, Virgilio Cantalejo, Sonny Lumbres, Maxima Roxas, and Rodelio dela Cerna and all persons claiming rights under them to vacate the land covered by TCT Nos. 27803, 278050, 278051, 278052, 244163, 277164, 278043, 278044, 278045, 278069, 278070, 278068, and 278054 of the Register of Deeds of Laguna, and surrender possession thereof to the plaintiffs;

2. Ordering plaintiffs to pay the above-named defendants the amount of Thirty Thousand (₱30,000.00) Pesos each as disturbance compensation;

3. Dismissing Civil Cases Nos. 493, 497, 500, 507 and 502.

SO ORDERED.[7]

Not satisfied, petitioners appealed to the RTC which found merit in petitioners' argument that there is no clear and convincing

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[6] Civil Case Nos. 493, 497, 500, 507 and 502 were dismissed for the reason that defendants therein have not been served with summons.

[7] *Rollo,* p. 38.

basis for the award of disturbance compensation, and that they are entitled to the award of attorney's fees as they were constrained to litigate to protect their interest on account of the defendants' unwarranted refusal to vacate the land and return its possession to petitioners. The RTC thus decreed in its Joint Decision:[8]

> WHEREFORE, premises considered, the appealed consolidated decision of the Municipal Trial Court of Cabuyao, Laguna, is hereby AFFIRMED in all other respects with the modification that paragraph two (2) of the dispositive portion thereof is deleted and another one entered to read as follows:
>
> "2.a. Ordering the defendants in each case named under paragraph one (1) of the consolidated decision, except Nestor Bariring, Placido Celis and Felix Garcia, defendants in Civil Cases Nos. 504, 505 and 506 (now B-5424, B-5425 and B-5426), to pay plaintiffs the amount of ₱250.00 a month as reasonable compensation for the use and occupation of that portion of the premises in question from the filing of these cases in the lower court until full possession thereof is actually surrendered to the plaintiffs; and
>
> "2.b. Ordering the defendants in each of the fifteen (15) cases as mentioned under paragraph one (1) of the said consolidated decision to pay plaintiff the amount of ₱2,000.00, or the total amount of ₱30,000.00, as and by way of reasonable attorney's fees, plus costs.
>
> SO ORDERED.[9]

Respondents elevated the case to the CA in a petition for review under Rule 42 of the 1997 Rules of Civil Procedure, as amended. They argued that since petitioners allowed them to construct their residential houses on the property, both are *in pari delicto*, the rights of one and the other shall be the same as though both acted in good faith, citing Article 453 of the

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[8] Petitioners manifested that they are not appealing the portion of the MTC Consolidated Decision dismissing the cases against defendants Charlie Ramos, Edgar Adversario, Ruby Aguilar, Victor Hilaga, Gregorio Bacardo and Sonny Oneza. (*Rollo*, p. 42.)

[9] *Rollo*, p. 44.

Civil Code of the Philippines. As to the award of disturbance compensation, respondents asserted that the MTC was correct in applying equity in resolving the controversy considering that their occupation of their homelots was by virtue of unwritten grant by Dr. Carillo in recognition of their contribution to the preservation of the property, especially in safeguarding it from encroachment of outsiders/squatters.

By Decision dated November 28, 2000, the CA reversed the RTC and upheld the award of disturbance compensation by the MTC. The CA thus ruled:

> In heeding petitioners' appeal that this case be decided on the basis of equity and justice, We take Our light from Section 36 of RA No. 3844, as amended, provides:
>
> "Possession of Landholding; Exceptions.— Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
>
> "(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purpose: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, xxx"
>
> It is not far-fetched to say that the petitioners' dwellings on the premises prevented encroachers from entering the property, which in turn redounded to the benefit of the developers. We take note of the fact that respondents had undertaken a series of negotiations with the petitioners (*Rollo*, p. 55), admitting in their comment that they had offered petitioners the sum of ₱2,000.00 in addition to a home lot of sixty (60) square meters at a very reasonable price of ₱18,000.00 payable on installment basis (*Rollo*, p. 81) for the latter to transfer. In view of all the foregoing, We rule that the award of compensation to the petitioners is warranted.

WHEREFORE, upon the premises, the petition is GRANTED. The appealed portion of the RTC Decision is REVERSED and SET ASIDE and the MTC Decision is ordered REINSTATED.

SO ORDERED.[10]

In its Resolution dated July 3, 2001, the CA granted the motion for reconsideration of petitioners with respect only to the inclusion of defendants Nestor Baring, Placido Celis and Felix Garcia who did not file any answer to the complaint. Accordingly, the CA upheld its Decision but deleted the names of the said non-answering defendants from the list of those entitled to receive disturbance compensation from petitioners.[11]

Hence, this petition assailing the CA in setting aside the judgment of the RTC and reinstating the MTC's Consolidated Decision which granted disturbance compensation to the respondents. Petitioners argue that Section 36 of Republic Act (R.A.) No. 3844 has no application in this case, there being no agricultural tenancy relationship between petitioners and respondents. They also point out that respondents were not tenants of the late Mariano Antioquia, Sr. who bought the property in 1986 with respondents occupying the same by mere tolerance as there was no proof that respondents were the tenants of the previous owner, a certain Dr. Carillo who supposedly allowed them to stay on the land as long as they want without any rentals provided they will help in clearing the land.

The petition is meritorious.

From respondents' declarations, we find that no tenancy relations existed between them and petitioners, and neither was there any proof that they were the tenants of the late Mariano Antioquia, Sr. A tenant has been defined under Section 5(a) of R.A. No. 1199 as a person who, himself, and with the aid available from within his immediate household, cultivates the land belonging to or possessed by another, with the latter's

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[10] *Id.* at 78-79.

[11] *Id.* at 92-93.

consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold system.[12] Thus, there must be a concurrence of the following requisites in order to create a tenancy relationship between the parties: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests.[13]

Once the tenancy relationship is established, the tenant is entitled to security of tenure and cannot be ejected by the landlord unless ordered by the court for causes provided by law.[14] However, none of the afore-stated requisites was proven in this case as respondents admitted they were allowed to stay on the land by a certain Dr. Carillo before Mariano Antioquia, Sr. bought it, not for the purpose of agricultural production, but allegedly to help clear the land.

Respondents having failed to establish their status as tenants or agricultural lessees, they are not entitled to security of tenure nor are they covered by the Land Reform Program of the Government under existing laws,[15] including the right to receive disturbance compensation under Section 36(1) of R.A. No. 3844, as amended. On the matter of disturbance compensation, we have held that Section 36(1) of the Code of Agrarian Reforms

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[12] *Ludo & Luym Development Corporation v. Barreto,* G.R. No. 147266, September 30, 2005, 471 SCRA 391, 407.

[13] *Solmayor v. Arroyo,* G.R. No. 153817, March 31, 2006, 486 SCRA 326, 347, citing *Caballes v. Department of Agrarian Reform,* No. 78214, December 5, 1988, 168 SCRA 247, 254.

[14] *Antonio v. Manahan,* G.R No. 176091, August 24, 2011, 656 SCRA 190, 197, citing *Heirs of Enrique Tan, Sr. v. Pollescas,* 511 Phil. 641, 649 (2005).

[15] See *Solmayor v. Arroyo, supra* note 13 at 348, citing *Spouses Cayetano, et al. v. Court of Appeals, et al.*, 215 Phil. 430, 437 (1984).

(R.A. No. 3844) would apply only if the land in question was subject of an agricultural leasehold,[16] a fact that was not established before the lower courts. Clearly, there was no basis for the MTC's award of disturbance compensation to herein respondents.

Respondents' prior physical possession of the property upon the supposed permission given by the predecessor-in-interest of Mariano Antioquia, Sr. and apparently with the latter's tolerance as the subsequent owner, does not automatically entitle them to continue in said possession and does not give them a better right to the property. Well-settled is the rule that persons who occupy the land of another at the latter's tolerance or permission, without any contract between them is bound by an implied promise that they will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against them.[17] From the time the title to the property was transferred in the name of petitioner ADC, respondents' possession was converted into one by mere tolerance by the owner. The forbearance ceased when said new owner made a demand on respondents to vacate the property. Thenceforth, respondents' occupancy had become unlawful.[18]

While the CA correctly sustained the lower courts in ordering the respondents to vacate the subject premises, said appellate court erred in setting aside the RTC's Joint Decision which deleted the award of disturbance compensation in favor of the respondents and granted petitioners' claim for damages.

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[16] *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, 457.

[17] *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640, 650, citing *Boy v. Court of Appeals*, G.R. No. 125088, April 14, 2004, 427 SCRA 196, 206.

[18] See *Malabanan v. Rural Bank of Cabuyao, Inc.*, G.R. No. 163495, May 8, 2009, 587 SCRA 442, 452.

It is settled that the plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises. Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property.[19] Since petitioners did not appeal the amount of rental fixed by the RTC (₱250.00 per month), the same may be safely presumed as reasonable compensation for respondents' use and occupation of the property.

Respondents nonetheless contend that reinstatement of the RTC Joint Decision would grossly cause injustice to them who labored to clear the land and guard it against entry of squatters. While the amount of ₱30,000 awarded by the MTC and affirmed by the CA would be inadequate considering the costs and expenses of relocating their respective families, they are willing to accept said amount to put an end to this case. They insist that it is petitioners who were unjustly enriched by respondents' efforts to clear the land and prevent encroachment by illegal occupants. They prayed for the affirmance of the CA Decision which upheld the award of ₱50,000 to each defendant on equitable considerations.

The Court is not persuaded.

There is nothing in existing laws and procedural rules that obliges a plaintiff in an unlawful detainer or forcible entry case to pay compensation or financial assistance to defendants whose occupation was either illegal from the beginning or had become such when they refused to vacate the subject premises upon demand by the owner or person having better right to its possession. On the contrary, our Rules of Court expressly recognizes the right of such plaintiff to claim for damages arising from the unlawful deprivation of physical possession.

We stress that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and

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[19] *Id.*, citing *Sps. Catungal v. Hao*, 407 Phil. 309, 320 (2001).

never against, statutory law or judicial rules of procedure. Positive rules prevail over all abstract arguments based on equity *contra legem*.[20] For all its conceded merit, equity is available only in the absence of law and not as its replacement.[21] The CA thus erred in applying equity to favor the grant of disturbance compensation which has no basis in law.

There is likewise no merit in respondents' assertion that the payment of reasonable compensation for the use and occupation of the property after demand to vacate was made by petitioners would unjustly enrich the latter. Respondents themselves admitted they were able to build houses on the land and stayed there for several years without paying any rental even when Mariano Antioquia, Sr. already bought the land. And yet, respondents still ask to be compensated for their long years of occupying the premises rent-free while its owners could not make use of the same throughout such period.

A plaintiff adjudged to have the better right to possession in an ejectment case cannot be said to have been unjustly enriched by the court's award of reasonable compensation for the use and occupation of the premises. As we held in *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*:[22]

> CAR COOL asserts that to award damages to USHIO Realty would constitute unjust enrichment at the expense of CAR COOL. CAR COOL claims that it never benefited from its occupation of the property after USHIO Realty's agents entered the property on 1 October 1995 and unlawfully destroyed CAR COOL's office, equipment and spare parts. Because of the destruction of the equipment and spare parts

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[20] *Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, G.R. No. 176518, March 2, 2010, 614 SCRA 41, 61-62, citing *Zabat, Jr. v. Court of Appeals*, 226 Phil. 489, 495 (1986).

[21] *Id.* at 62, citing *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 633.

[22] G.R. No. 138088, January 23, 2006, 479 SCRA 404.

needed to operate its business, CAR COOL asserts that it was no longer possible to continue its business operations.

We are not convinced.

Rule 70 of the Rules of Civil Procedure, which governs the rule on ejectment (forcible entry and unlawful detainer), provides under Sections 17 and 19 that:

> "Sec. 17. *Judgment*. – If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, **the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs.** If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires. (Emphasis supplied)
>
> Sec. 19. *Immediate execution of judgment; how to stay same*. – If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. **In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period.** The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed." (Emphasis supplied)
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> xxx xxx xxx

USHIO Realty, as the new owner of the property, has a right to physical possession of the property. Since CAR COOL deprived

USHIO Realty of its property, CAR COOL should pay USHIO Realty rentals as reasonable compensation for the use and occupation of the property.

Contrary to CAR COOL's allegations, ***the payment of damages in the form of rentals for the property does not constitute unjust enrichment.*** The Court of Appeals held:

> "x x x [T]he alleged payment by the petitioner as rentals were given to the former owner (Lopez) and not to the private respondent who was not privy to the transaction. As a matter of fact, it never benefited financially from the alleged transaction. Aside from that, the postdated checks the "private respondent" admitted to have received, as rental payments for September to December 1995, were never encashed. On the contrary, the private respondent even offered to return the same to the petitioner, but was refused. [T]herefore, it did not amount to payment."

We have held that "[t]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.

There is no unjust enrichment when the person who will benefit has a valid claim to such benefit. Under Section 17 of Rule 70 of the Rules of Civil Procedure, USHIO Realty has the legal right to receive some amount as reasonable compensation for CAR COOL's occupation of the property. Thus, in *Benitez v. Court of Appeals* we held that:

> "x x x Damages are recoverable in ejectment cases under Section 8, Rule 70 of the Revised Rules of Court. These damages arise from the loss of the use and occupation of the property, and not the damages which private respondents may have suffered but which have no direct relation to their loss of material possession.

> Damages in the context of Section 8, Rule 70 is limited to "rent" or "fair market value" for the use and occupation of the property."[23]

(Emphasis and italicization supplied)

We also sustain the RTC's grant of attorney's fees in favor of petitioners who were "constrained to litigate [to protect their interest] due to the unwarranted refusal of the x x x defendants to vacate and surrender possession of the premises in question."[24] There is no doubt whatsoever that it is within the MTC's competence and jurisdiction to award attorney's fees and costs in an ejectment case,[25] in accordance with Section 17, Rule 70 of the 1997 Rules of Civil Procedure, as amended.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated November 28, 2000 and Resolution dated July 3, 2001 of the Court of Appeals in CA-G.R. SP No. 58390 are **SET ASIDE**. The Joint Decision dated September 30, 1999 of the Regional Trial Court of Biñan, Laguna, Branch 24 in Civil Case Nos. B-5413 to B-5432 is hereby **REINSTATED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

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[23] *Id.* at 410-413.

[24] *Rollo,* p. 43.

[25] *Llobrera v. Fernandez,* G.R. No. 142882, May 2, 2006, 488 SCRA 509, 516.

FIRST DIVISION

[G.R. No. 162809. September 5, 2012]

PACIFIC OCEAN MANNING, INC. and CELTIC PACIFIC SHIP MANAGEMENT CO., LTD., *petitioners, vs.* **BENJAMIN D. PENALES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; APPLICATION OF THE LABOR CODE PROVISIONS IN DETERMINING THE DISABILITY BENEFITS DUE A SEAFARER; UPHELD. — This Court finds petitioners to be mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specifically its schedule of benefits, must be considered. This Court has ruled that such is governed not only by medical findings but also by contract and law. The applicability of the Labor Code, particularly Article 192(c)(1), to seafarers, is already a settled issue. x x x The application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits was further clarified by this Court in *Vergara v. Hammonia Maritime Services, Inc.*

2. ID.; ID.; ID.; THE INITIAL TREATMENT PERIOD OF 120 DAYS MAY BE EXTENDED TO A MAXIMUM OF 240 DAYS; SUSTAINED. — The provisions [of Section 20B(6)] of the, POEA SEC, [Article 192(c)] of the Labor Code, and its implementing rules and regulations, are to be read hand in hand when determining the disability benefits due a seafarer. Elucidating on this concept, this Court, in *PHILASIA Shipping Agency Corporation v. Tomacruz* quoting *Vergara.* x x x Based on the foregoing, it is clear that the initial treatment period of 120 days may be extended up to a maximum of 240 days under the conditions prescribed by law.

3. ID.; ID.; ID.; DETERMINATION OF AMOUNT TO BE AWARDED; REMAND OF THE CASE TO THE LABOR ARBITER IS PROPER. — Since the Labor Arbiter, the NLRC, and the Court of Appeals all found Penales to be disabled, this

fact is now binding on the petitioners and this Court. The question therefore is the amount of disability benefits to be awarded to Penales. To settle this, Penales' disability at the time of his last treatment should be determined in accordance with Section 20(B) of the POEA SEC. x x x In lieu thereof, this Court is **REMANDING** the case to the Labor Arbiter for the determination of the impediment grade to be assigned to Benjamin D. Penales' disability at the time of his last treatment.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, NOT PROPER. — Under Article 2208 of the Civil Code, attorney's fees can be recovered "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.

Linsangan Linsangan & Linsangan Law Offices for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] to reverse and set aside the December 4, 2003 **Decision**[2] and February 23,

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 46-53; penned by Associate Justice Eliezer R. de los Santos with Associate Justices B.A. Adefuin-de la Cruz and Jose C. Mendoza, concurring.

2004 **Resolution**[3] of the Court of Appeals in CA-G.R. SP No. 75126.

The facts, as summarized by the Court of Appeals, are as follows:

Petitioner Benjamin Penales (Penales) is a seafarer. He was contracted by private respondent Pacific Ocean Manning, Inc. (Pacific) for x x x its foreign principal, private respondent Celtic Pacific Ship Management (H.K.) Ltd. Penales was assigned to work on board the vessel, MV "Courage Venture" under the following terms and conditions:

Duration of Contract	:	10 months
Position	:	Ordinary Seaman
Basic Monthly Salary	:	US$396.00
Hours of Work	:	48 hours per week
Overtime	:	US$2.60/hour
Vacation Leave with pay	:	6.0 days per month

Penales underwent the pre-employment medical examination (PEME) as part of the prescribed employment procedure and was pronounced fit to work by the company doctors.

Penales joined the vessel of assignment and started working thereon on May 24, 1999.

Penales' scheduled repatriation coincided with the vessel's docking operations at the port of Nigeria making his return to Manila difficult. Hence, his supposed disembarkation in Singapore where he is scheduled to sign off and repatriated to Manila following the termination of his employment contract was not followed. Instead, he was made to stay longer than the ten-month contract duration stipulated in the Philippine Overseas Employment Administration (POEA) approved contract of employment.

On or about August 2000, the vessel "Courage Venture" went to the Port of Chennai, India. On its way to the designated port and while preparing to moor, the vessel, through its line (rope) tied on the starboard, was pulled by tugboat MV "Matchless." In preparation

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[3] *Id.* at 55.

for mooring, the Chief Mate ordered Penales to stand at the forward masthead and wait for further instruction.

While awaiting further instructions, the rope rifted and directly recoiled in Penales' direction, hitting him severely in the chest, left arm and head. The impact caused him to miss his balance, [become] unconscious and sustain a fracture on his left arm.

Penales was brought to the National Hospital in India under the medical supervision of Dr. Arvind Rajagopalan. He was initially diagnosed to have suffered from "*fracture shaft of left humerus mid third with radial nerve injury*." He was operated on, fixing the fracture on his left humerus with an eight-screwed stainless steel plate. After the operation, Penales was signed off and repatriated to Manila.

In Manila, Penales reported to the office of Pacific. He was referred to the Fatima Medical Clinic and was diagnosed as suffering from "*Fracture, closed, committed, M/3, humerus, S/P Open Reduction, internal fixation, plate and screws, Radial nerve pulsy left, Cerebral Concussion, Contusion chest left*" [as per the Medical Certificate[4] issued by the Fatima Medical Clinic. Penales however failed to go back to the clinic for the management of his injuries, as reported by Fatima Medical Clinic on October 10, 2000.[5]] [Penales was thereafter] referred to the Mary Chiles General Hospital and finally to the Medical Center Manila for treatment and rehabilitation [wherein he continued treatment until January 26, 2001].[6]

On October 2, 2000, while still undergoing treatment, Penales filed a complaint before the Quezon City Arbitration Branch of the National Labor Relations Commission (NLRC). This was docketed as NLRC OFW Case No. (L) 00-10-1636-00.

Penales complained that despite medical treatment, he continued to be weak and unable to perform any work-related activity. He alleged that his accident disabled him from earning income as a seafarer, thus, he was entitled to disability compensation and benefits, which the respondents denied him without valid cause.

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

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

[6] *Id.* at 46-47.

Pacific Ocean Manning, Inc. and Celtic Pacific Ship Management Co., Ltd. (petitioners), on the other hand, argued that Penales could not be considered as disabled by mere lapse of time. They claimed that Penales was still undergoing medical treatment, and that the last pronouncement of his attending orthopedic surgeon was that there was no reason why he should not eventually become fit to work.[7]

On January 25, 2002, Labor Arbiter Natividad Roma issued her Decision,[8] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Pacific Ocean Manning, Inc. and Celtic Pacific Ship Management Ltd. (Hongkong), to pay, jointly and solidarily, complainant Benjamin D. Penales disability benefits in the sum of US$16,795.00 representing 33.59% of the maximum amount of US$50,000.00 payable in Philippine Currency at the rate of exchange prevailing at the time of payment as well as ten (10%) percent thereon as attorney's fees; and DISMISSING all other claims for lack of merit.[9]

In her decision, the Labor Arbiter held that there is no dispute that Penales's injury was work-related and his treatment went beyond 120 days, which, under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC), entitled him to disability benefits. The Labor Arbiter added that the petitioners were unable to refute Penales' claim by failing to prove that he was fit to work, or with at least a certificate on his disability grade. The Labor Arbiter then declared that Penales was entitled to a disability of "around Grade 8 which is equivalent to 33.59% of the maximum amount of US$50,000 in the sum of US$16,795.00," after examining the schedule of disability benefits under the POEA SEC *vis-à-vis* the medical findings of the company-designated physician.[10]

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[7] *Id.* at 61.

[8] *Id.* at 114-123.

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

[10] *Id.* at 118-122.

Not satisfied, Penales appealed[11] the Labor Arbiter's Decision to the NLRC, arguing that the Labor Arbiter abused her discretion when she vaguely declared that he was entitled to a disability grade of only 8.

The NLRC agreed that while there is no question that Penales was disabled, the issue of his grade of disability was not threshed out properly. The NLRC said that "considering that the determination of the grade means determination of the actual physical condition of [Penales] and his injuries, a physician is more in a position to ascertain the degree of disability."[12]

On September 5, 2002, the NLRC set aside[13] the Labor Arbiter's decision and remanded the case for further proceedings only in so far as the determination of Penales' grade of disability.

Penales moved to reconsider the above resolution but this was denied by the NLRC on November 18, 2002, for lack of merit.[14]

Penales elevated his case then to the Court of Appeals via a Petition for *Certiorari*[15] under Rule 65, on the ground that the NLRC committed grave abuse of discretion when it remanded the case notwithstanding the fact that the evidence of both parties clearly support his entitlement to the maximum amount of US$60,000.00 as disability benefits. This petition was docketed as CA-G.R. SP No. 75126.

The Court of Appeals found that Penales was able to establish his entitlement to the maximum benefits under Section C(4)[b] and [c] of the POEA SEC. The Court of Appeals held:

We find Penales clearly entitled to the maximum amount given to totally and permanently disabled seafarers. It is undisputed that

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[11] Records, pp. 86-100.

[12] *Rollo*, pp. 177-178.

[13] *Id.* at 174-179.

[14] *Id.* at 193-194.

[15] *Id.* at 195-223.

even now, Penales has fragile extremities that [affect] his upper body strength and he can no longer perform draining shipboard activities. Since disability benefits are based on the impairment of earning capacity, then Penales is entitled to the maximum amount granted to disabled seafarers.

Consistently, the High Court has ruled that "disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness." [*ECC v. Edmund Sanico*, 321 SCRA 268] In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[16]

On December 4, 2003, the Court of Appeals granted Penales' petition and held that the NLRC abused its discretion when it remanded the case to the Labor Arbiter for the determination of Penales' grade of disability when his total and permanent disability had been clearly established. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the petition is **GRANTED**. Private Respondents are hereby ordered to pay Penales, jointly and severally, the amount of US$50,000.00 (maximum rate) x 120% or US$60,000.00 (to be paid in the Philippine currency equivalent to the exchange rate prevailing at the time of payment) representing the maximum disability benefits as per Section 30-A, Appendix 1-A of the POEA Standard Employment Contract.

Private respondents are likewise ordered to pay ten percent (10%) of the awarded amount of US$60,000.00 as and for attorney's fees.[17]

The petitioners filed a Motion for Reconsideration[18] of the above Decision but this was denied by the Court of Appeals in its February 23, 2004 Resolution for lack of merit.

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[16] *Id.* at 51.

[17] *Id.* at 52.

[18] *Id.* at 224-234.

Undaunted, petitioners are now before this Court presenting the following issue and grounds for its petition:

Statement Of The Issue

Whether Or Not The Court Of Appeals Decided The Case *A Quo* In A Way Not In Accord With Law And/Or [Applicable] Jurisprudence Of The Honorable Court When It Granted Petitioner's Petition For *Certiorari* Under Rule 65.

Grounds For The Petition

Petitioners respectfully submit that the appellate court decided the petition not in accord with applicable laws and jurisprudence when:

I. The Appellate Court Disregarded The Terms And Conditions Of The POEA Standard Employment Contract When It Rendered Petitioners Liable To Respondent For Disability Benefits.

II. The Appellate Court Failed To Give Due Weight And Consideration To The Assessment Made By The Company-Designated Physician As To Respondent's Condition; And

III. The Appellate Court Found Respondent With A Grade 1 Disability And Awarded Him Disability Benefits In The Amount Of U[S]$60,000.00 Which Is Equivalent To A Finding Of Total And Permanent Disability, Despite The Lack Of Any Basis Therefor.

IV. Respondent Is Not Entitled To Attorney's Fees.[19]

Discussion

The crux of the controversy boils down to the propriety of awarding disability benefits to Penales in light of the fact that he was neither declared fit to work nor given a disability grade rating within the period allowed by the law.

Applicability of the Labor Code Provisions on Disability Benefits to Seafarers

The petitioners claim that the benefits to be awarded to Penales should be determined and delimited by the POEA SEC, the contract which governs their relationship.[20] The petitioners argue:

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[19] *Id.* at 21.

[20] *Id.* at 23.

Entitlement of a seafarer to disability compensation does not depend on whether or not he is still capable of working as a seafarer but on whether he suffers an impediment which hinders him from doing his customary work or any kind of work of a similar nature which a person of his mentality and attainment could as defined by jurisprudence in the very cases relied upon by the appellate court in the assailed Decision and Denial Resolution. x x x.[21]

The petitioners add that Penales is not "totally disabled" as although he may have suffered an injury that would render him unfit to work as a seafarer, he could still get a land-based job, which does not call for the agility required by the work on board a vessel.[22] They claim that temporary disability, or one that is capable of being treated and cured, is not compensable.[23]

Penales, in his Comment,[24] reiterates that "in disability cases, it is not the nature and extent of the disability that is controlling but it is the negative impact created by the disability to one's earning capacity that ultimately gauges the claimant's chance of recovery."[25]

This Court finds petitioners to be mistaken in their notion that in determining the disability benefits due a seafarer, only the POEA SEC, specifically its schedule of benefits, must be considered. This Court has ruled that such is governed not only by medical findings but also by contract and law.[26] The applicability of the Labor Code, particularly Article 192(c)(1), to seafarers, is already a settled issue.[27] This Court, in *Magsaysay*

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

[22] *Id.* at 29.

[23] *Id.* at 368.

[24] *Id.* at 240-255.

[25] *Id.* at 245.

[26] *Vergara v. Hammonia Maritime Services, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 623.

[27] *Palisoc v. Easways Marine, Inc.*, G.R. No. 152273, September 11, 2007, 532 SCRA 585, 593.

Maritime Corporation v. Lobusta,[28] reiterating our ruling in *Remigio v. National Labor Relations Commission*,[29] held:

The standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under [Executive Order] No. 247 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas." Section 29 of the 1996 POEA [Standard Employment Contract] itself provides that "[a]ll rights and obligations of the parties to [the] Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory." Even without this provision, a contract of labor is so impressed with public interest that the New Civil Code expressly subjects it to "the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that "**disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do. It does not mean absolute helplessness**." It likewise cited *Bejerano v. ECC*, that **in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity**.[30] (Emphases ours, citations omitted.)

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[28] G.R. No. 177578, January 25, 2012, 664 SCRA 134, 143-144.

[29] 521 Phil. 330 (2006).

[30] *Id.* at 346-347.

The application of the Labor Code, its implementing rules and regulations, and the terms of the POEA SEC with regard to a seafarer's entitlement to disability benefits was further clarified by this Court in *Vergara v. Hammonia Maritime Services, Inc.*,[31] wherein we said:

> The standard terms [of the POEA SEC] agreed upon, x x x, are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

Award of Disability Benefits

The petitioners also argue that the case is premature as Penales was still undergoing treatment when he filed the complaint; thus, the possibility of his recovery cannot be discounted.[32]

In his memorandum,[33] Penales emphasized that his inability to perform his customary work for more than 120 days constitutes permanent total disability, and according to the applicable laws and jurisprudence, he is entitled to an award of total and permanent disability.[34]

The Labor Arbiter found, and the NLRC and the Court of Appeals agreed, that Penales indeed suffered work-related injury during his employment with the petitioners, which rendered him unable to perform his customary work as a seafarer. Since Penales was found to be disabled in all prior decisions, **the only bone of contention here now is the amount of disability benefits to be awarded to Penales**.

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[31] *Vergara v. Hammonia Maritime Services, Inc.*, *supra* note 26 at 626-627.

[32] *Rollo*, p. 29.

[33] *Id.* at 381-397.

[34] *Id.* at 321.

This Court notes that as of January 26, 2001, Penales' medical treatment had gone beyond the 120 days provided for in Section 20 B(6) of the POEA SEC, *viz*:

B. *Compensation and Benefits for Injury or Illness*

xxx xxx xxx

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.

and Article 192(c) of the Labor Code, which reads:

ART. 192. ***Permanent Total Disability***

xxx xxx xxx

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

However, Rule X, Section 2 of the Rules and Regulations Implementing Book IV, which is the rule referred to in the above Labor Code provision, states:

SEC. 2. **Period of entitlement.** – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

The above provisions of the POEA SEC, the Labor Code, and its implementing rules and regulations, are to be read hand in hand when determining the disability benefits due a seafarer.[35]

[35] *Vergara v. Hammonia Maritime Services, Inc., supra* note 26 at 627.

Elucidating on this concept, this Court, in *PHILASIA Shipping Agency Corporation v. Tomacruz*[36] quoting *Vergara*, held:

> 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.

Based on the foregoing, it is clear that the initial treatment period of 120 days may be extended up to a maximum of 240 days under the conditions prescribed by law.

The records show that from the time Penales became injured on August 31, 2000, until his last treatment on January 26, 2001, only 148 days had lapsed. While this might have exceeded 120 days, this was well within the 240-day maximum period for the company-designated physician to either declare Penales fit to work or assign an impediment grade to his disability at that time. It is worthy to note as well that when Penales filed a complaint before the Labor Arbiter on October 2, 2000, not only was he remiss in regularly attending his scheduled treatment sessions, but only 32 days had passed from the time of his injury.

We note that under POEA SEC, the seafarer has the duty to faithfully comply with and observe the terms and conditions of the contract, including the provisions governing the procedure for claiming disability benefits.

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[36] G.R. No. 181180, August 15, 2012.

When Penales filed his complaint and refused to undergo further medical treatment, he prevented the company-designated physician from fully determining his fitness to work within the time allowed by the POEA SEC and by law. As we said in *Vergara*:

> As we outlined above, a temporary total disability only becomes permanent when so declared by the company[-designated] physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. x x x.[37]

Damages and Award of Attorney's Fees

Under Article 2208 of the Civil Code, attorney's fees can be recovered "[w]hen the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest."[38] Considering the above pronouncements, this Court sees no reason why damages or attorney's fees should be awarded to Penales. It is obvious that he did not give the petitioners' company-designated physician ample time to assess and evaluate his condition, or to treat him properly for that matter. The petitioners had a valid reason for refusing to pay his claims, especially when they were complying with the terms of the POEA SEC with regard to his allowances and treatment.

Remand Case

As we have stated above, since the Labor Arbiter, the NLRC, and the Court of Appeals all found Penales to be disabled, this fact is now binding on the petitioners and this Court. The question therefore is the amount of disability benefits to be awarded to Penales. To settle this, Penales' disability at the time of his last treatment should be determined in accordance with Section 20(B) of the POEA SEC.

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[37] *Vergara v. Hammonia Maritime Services, Inc.*, *supra* note 26 at 629.

[38] CIVIL CODE, Art. 2208(2).

WHEREFORE, above premises considered, the December 4, 2003 Decision and February 23, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 75126 are **SET ASIDE.**

In lieu thereof, this Court is **REMANDING** the case to the Labor Arbiter for the determination of the impediment grade to be assigned to Benjamin D. Penales' disability at the time of his last treatment. No damages or attorney's fees shall be awarded.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 171107. September 5, 2012]

ANITA C. VIANZON, Heir of the Late Lucila Candelaria Gonzales, *petitioner, vs.* **MINOPLE MACARAEG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PERIOD TO APPEAL; MINOR LAPSES ARE AT TIMES DISREGARDED IN ORDER TO GIVE DUE COURSE TO APPEALS; APPLICATION IN CASE AT BAR. — Indeed, the perfection of an appeal in the manner and the period prescribed by law is mandatory and jurisdictional. Necessarily, the failure to conform to the rules will render the judgment for review final and unappealable. By way of exception, however, minor lapses are at times disregarded in order to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The period for appeal is set in order to avoid or prevent undue delay in the administration of justice and to put an end to controversies. It is there not to hinder the very ends of justice

itself. The Court cannot have purely technical and procedural imperfections as the basis of its decisions. In several cases, the Court held that "cases should be decided only after giving all parties the chance to argue their causes and defenses." x x x There is no denying that the controversy between the parties involves the very right over a considerable spread of land. In fact, it is Anita's position that the opposing parties in this case "have equal substantive rights over the lot in question." It was, therefore, correct on the part of the CA not to permit a mere procedural lapse to determine the outcome of this all too important case. It must be noted that the CA was the first level of judicial review, and coming from the OP's vacillating stance over the controversy, it was but correct to afford the parties every chance to ventilate their cause. Considering further that the party who failed to meet the exacting limits of an appeal by a mere seven days was an old farmer who was not only unlearned and unskilled in the ways of the law but was actually an illiterate who only knew how to affix his signature, certainly, to rule based on technicality would not only be unwise, but would be inequitable and unjust.

2. LABOR AND SOCIAL LEGISLATION; R.A. NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); QUALIFICATIONS OF A BENEFICIARY; PRESENT IN CASE AT BAR. — Congress enacted R.A. No. 6657, or the CARL of 1988. Section 22 of this law enumerates those who should benefit from the CARL. x x x Pursuant to this, the DAR issued A.O. No. 3, Series of 1990. x x x Thus, A.O. No. 3 lays down the qualifications of a beneficiary in landed estates in this wise: he or she should be (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. The significance of the allocatee/awardee being the actual tiller is made even clearer in the "Operating Procedures" of A.O. No. 3 itself, where the MARO is required to make a determination as to who the actual tiller is, for it is to him that the land should be awarded. In fact, item 2.1.3, states that if it is found that the allocatee or awardee employs others to till the land, the MARO should cancel the Order of Award (OA) or Certificate of Land Transfer (CLT) and issue a new one in favor of the "qualified actual cultivator/occupant." x x x R.A. No. 6657 or the CARL "is a social justice and poverty alleviation program which seeks to empower the lives of agrarian

reform beneficiaries through equitable distribution and ownership of the land based on the principle of land to the tiller." Given all the laws in place together with the undisputed fact that Minople worked on the subject landholding for more than half a century, the inescapable conclusion is that Minople as the actual tiller of the land is entitled to the land mandated by our Constitution and R.A. No. 6657.

APPEARANCES OF COUNSEL

Dela Cruz Nague & Associates Law Offices for petitioner.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the October 19, 2005 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 88816, reversing the August 18, 2004 Resolution[2] of the Office of the President *(OP)* which declared the late Lucila Candelaria Gonzales *(Lucila)* as the "legitimate and lawful purchaser/beneficiary"[3] of

x x x Lot No. 1222, Psd-78000 of the Dinalupihan Landed Estate administered by the Department of Agrarian Reform, containing an area of 3.1671 hectares located at Barangay Saguing, Dinalupihan, Bataan.[4]

The Factual and Procedural Antecedents:

The subject land formed part of the 10-hectare Lot No. 657 earlier awarded to the late Pedro Candelaria *(Pedro)*, the father of Lucila. In 1950, Pedro hired respondent Minople Macaraeg

[1] *Rollo*, pp. 113-129; penned by Associate Justice Renato C. Dacudao with Associate Justice Lucas P. Bersamin (now an Associate Justice of the Supreme Court) and Associate Justice Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 161-165.

[3] *Id.* at 165.

[4] *Id.* at 113.

(Minople) to work on Lot 657. In 1956, Pedro divided Lot 657 among his four children, including Lucila. Eventually, Lucila's undivided share became Lot No. 1222, the subject landholding.[5]

On August 17, 1960, Lucila and the Land Tenure Administration (LTA, now the Department of Agrarian Reform) entered into a contract denominated as "Agreement to Sell No. 5216" involving Lot No. 1222.[6]

After almost 30 years, or on May 8, 1989, Lucila's representative, petitioner Anita C. Vianzon *(Anita),* executed a deed of absolute sale in favor of her daughter, Redenita Vianzon *(Redenita),* conveying a 2.5- hectare portion of the subject land. In connection with this, Minople also affixed his signature on a document denominated as "Waiver of Right" purportedly relinquishing all his rights as well as his interest over the same property in favor of Redenita.[7]

Soon thereafter, Anita filed two applications to purchase the subject property – one in 1990 and the other on August 7, 1996. Minople, however, also filed his own application to purchase the same land on September 9, 1996. These conflicting claims were brought before the Department of Agrarian Reform *(DAR).* On November 6, 1996, the Chief of the Legal Division of the DAR Provincial Office recommended that the subject land be "divided equally" between the two applicants since both had been in some way "remiss in their obligations under the agrarian rules."[8] Based on the recommendation, the Officer-in-Charge Municipal Agrarian Reform Officer *(MARO)* referred the matter to the Provincial Agrarian Reform Officer *(PARO)* of Bataan. In his First Endorsement, dated November 14, 1996, the PARO concurred with the findings and recommendation of the Legal Division Chief and forwarded its concurrence to the DAR

[5] *Id.* at 114.

[6] *Id.* at 119.

[7] *Id.* at 114.

[8] *Id.* at 115.

Regional Director. The Officer-in-Charge Regional Director *(RD)* issued a corresponding order dividing the subject property equally between the parties. According to him, because the parties were "in *pari delicto,* the most equitable solution is to award the property to both of them."[9]

Minople sought reconsideration but this was treated as an appeal by the RD and was elevated to the DAR Secretary, who, on November 10, 1997, set aside the order and upheld Minople's right over the property.[10] In setting aside the RD order, the DAR Secretary found that it was Minople who was the "actual possessor/ cultivator of the lot in consideration."[11] He pointed out that Lucila's act of "hiring" Minople to render service pertaining to all the aspects of farming did not only violate the old LTA Administrative Order *(A.O.)* but it also contravened the very undertaking made by Lucila's representative and heir, Anita, in her latest sales application warranting its rejection.

Aggrieved, Anita appealed to the OP. On June 18, 2003, the OP issued a minute decision[12] affirming *in toto* the November 10, 1997 Order of the DAR Secretary. According to the OP,

> After a careful and thorough evaluation of the records of the case, this Office hereby adopts by reference the findings of fact and conclusions of law contained in the DAR Decision dated 10 November 1997.[13]

Anita then moved for reconsideration. On August 18, 2004, the OP, giving weight to the "Agreement to Sell No. 5216" between Lucila and the DAR's predecessor (the LTA), issued a resolution reversing and setting aside its minute decision and declaring Lucila as "the legitimate and lawful purchaser/

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

[10] *Id.* at 116.

[11] *Id.* at 155.

[12] *Id.* at 159.

[13] *Id*.

beneficiary of the landholding in question."[14] The OP stated that the subject lot had been paid for as early as 1971 and that the same had been declared in the name of the late Lucila for tax purposes. In addition, according to the OP, the "personal cultivation aspect of the said Agreement to Sell" was achieved or carried out by Lucila "with Minople Macaraeg as her hired farmworker."[15] The OP also took note that neither the LTA nor the DAR failed to give the necessary notice of cancellation to Lucila or Anita.[16] Lastly, the OP opined that when the Agreement to Sell was executed back in 1960, Minople was merely hired as a farmworker; ergo, his actual possession and cultivation were not in the concept of owner which explained why the LTA (now DAR) contracted with Lucila and not with Minople.[17]

Not in conformity, Minople elevated the matter to the CA via a petition for review under Rule 43. In upholding Minople's right to the subject land, the CA anchored its Decision on Section 22 of Republic Act *(R.A.)* No. 6657, or the Comprehensive Agrarian Reform Law *(CARL)*. According to the CA, Minople had been working on the contested lot since 1950, as a tenant and performing all aspects of farming and sharing in the harvest of the land, in conformity with DAR's A.O. No. 3, Series of 1990, pursuant to the CARL.[18]

Undaunted, Anita is now before this Court via this petition for review on *certiorari* presenting the following

STATEMENT OF ISSUES

I. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN PASSING OVER THE MERITS OF THE PETITION FOR REVIEW FILED BY THE RESPONDENT BEFORE THE SAID COURT DESPITE THE

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[14] *Id.* at 165.

[15] *Id.* at 163.

[16] *Id*.

[17] *Id.* at 162-164.

[18] *Id.* at 126-127.

FACT THAT RESPONDENT THEREIN FILED THE SAME BEYOND THE REGLEMENTARY PERIOD FOR FILING THE SAME.

II. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE RESPONDENT, AS TENANT, HAS LEGAL STANDING IN IMPUGNING THE OWNERSHIP OF THE PETITIONER, HIS LANDLORD, IN CONTRAVENTION OF THE PROVISIONS OF ARTICLE 1436 OF THE CIVIL CODE OF THE PHILIPPINES AS WELL AS SECTION 3(B), RULE 131 OF THE RULES OF COURT AND OTHER JURISPRUDENCE ON THE MATTER.

III. WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN DEPRIVING THE PETITIONER OF HER PROPERTY IN VIOLATION OF DUE PROCESS OF LAW AS WELL AS THE NON-IMPAIRMENT CLAUSE OF THE CONSTITUTION IN VIEW OF THE LACK OF NOTICE OF CANCELLATION OF THE AGREEMENT TO SELL.

IV. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER VIOLATED THE CONDITIONS CONTAINED IN THE AGREEMENT TO SELL.

V. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE AWARD OF THE LAND TO THE RESPONDENT WAS EQUIVALENT TO A NOTICE OF CANCELLATION OF THE AGREEMENT TO SELL.[19]

The Court finds no merit in the petition.

On the procedural issue

Indeed, the perfection of an appeal in the manner and the period prescribed by law is mandatory and jurisdictional. Necessarily, the failure to conform to the rules will render the judgment for review final and unappealable. By way of exception, however, minor lapses are at times disregarded in order to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons, such as serving the

[19] *Id.* at 330-331.

ends of justice and preventing a grave miscarriage thereof. The period for appeal is set in order to avoid or prevent undue delay in the administration of justice and to put an end to controversies. It is there not to hinder the very ends of justice itself. The Court cannot have purely technical and procedural imperfections as the basis of its decisions. In several cases, the Court held that "cases should be decided only after giving all parties the chance to argue their causes and defenses."[20]

In *Philippine National Bank, et al. v. Court of Appeals*, we allowed, in the higher interest of justice, an appeal filed three days late.

In *Republic v. Court of Appeals*, we ordered the Court of Appeals to entertain an appeal filed six days after the expiration of the reglementary period; while in *Siguenza v. Court of Appeals*, we accepted an appeal filed thirteen days late. Likewise, in *Olacao v. NLRC*, we affirmed the respondent Commission's order giving due course to a tardy appeal "to forestall the grant of separation pay twice" since the issue of separation pay had been judicially settled with finality in another case. All of the aforequoted rulings were reiterated in our 2001 decision in the case of *Equitable PCI Bank v. Ku.* (previous citations omitted)[21]

There is no denying that the controversy between the parties involves the very right over a considerable spread of land. In fact, it is Anita's position that the opposing parties in this case "have equal substantive rights over the lot in question."[22] It was, therefore, correct on the part of the CA not to permit a mere procedural lapse to determine the outcome of this all too important case. It must be noted that the CA was the first level of judicial review, and coming from the OP's vacillating stance over the controversy, it was but correct to afford the parties every chance to ventilate their cause. Considering further that the party who failed to meet the exacting limits of an appeal

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[20] *Republic Cement Corp. v. Guinmapang*, G.R. No. 168910, August 21, 2009, 596 SCRA 688, 695; *Gana v. NLRC*, G.R. No. 164640, June 13, 2008, 554 SCRA 471, 481.

[21] *Gana v. NLRC*, G.R. No. 164680, June 13, 2008, 554 SCRA 471, 481.

[22] *Rollo*, p. 52.

by a mere seven days was an old farmer who was not only unlearned and unskilled in the ways of the law but was actually an illiterate who only knew how to affix his signature,[23] certainly, to rule based on technicality would not only be unwise, but would be inequitable and unjust. All told, the Court sanctions the CA ruling allowing the petition for review of Minople.

On the substantive issue

The Court now proceeds with the crux of the case, that is, who between the opposing parties has a rightful claim to the subject landholding? In resolving the second and the fourth issues, this Court finds it inevitable to resolve the third and the fifth issues as well. Thus, the Court will discuss them jointly.

The beacon that will serve as our guide in settling the present controversy is found in the Constitution, more particularly Articles II and XIII:

Article II

SEC.21. The State shall promote comprehensive rural development and agrarian reform.

xxx xxx xxx

Article XIII

SEC. 4. 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 farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits the State shall respect the right of small land owners. The State shall further provide incentives for voluntary land-sharing. (Underscoring supplied)

[23] *Id.* at 405.

In this regard, the Court finds the elucidation of Framer Jaime Tadeo, in one of the deliberations of the Constitutional Commission, enlightening.

MR. TADEO.

. . . Ang dahilan ng kahirapan natin sa Pilipinas ngayon ay ang pagtitipon-tipon ng vast tracts of land sa kamay ng iilan. Lupa ang nagbibigay ng buhay sa magbubukid at sa iba pang manggagawa sa bukid. Kapag inalis sa kanila ang lupa, parang inalisan na rin sila ng buhay. Kaya kinakailangan talagang magkaroon ng tinatawag na just distribution. . . .

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MR. TADEO.

Kasi ganito iyan. Dapat muna nating makita ang prinsipyo ng agrarian reform, iyong maging may-ari siya ng lupa na kaniyang binubungkal. Iyon ang kauna-unahang prinsipyo nito. . . .

x x x x x x x x x.[24]

Picking up from there, Congress enacted R.A. No. 6657, or the CARL of 1988. Section 22 of this law enumerates those who should benefit from the CARL.

SEC. 22. Qualified Beneficiaries. – The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farmworkers;
(c) seasonal farmworkers;
(d) other farmworkers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

x x x x x x x x x.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make the land as productive as

[24] Records of the Constitutional Commission, Vol. II, pp. 663-664.

possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

xxx xxx xxx.

Pursuant to this, the DAR issued A.O. No. 3, Series of 1990. The foremost policy in said A.O.'s Statement of Policies states,

> Land has a social function, hence, there is a concomitant social responsibility in its ownership and should, therefore, be distributed to the actual tillers/occupants.[25]

Thus, A.O. No. 3 lays down the qualifications of a beneficiary in landed estates[26] in this wise: he or she should be (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.[27]

The significance of the allocatee/awardee being the actual tiller is made even clearer in the "Operating Procedures" of A.O. No. 3 itself, where the MARO is required to make a determination as to who the actual tiller is, for it is to him that the land should be awarded. In fact, item 2.1.3, states that if it is found that the allocatee or awardee employs others to till the land, the MARO should cancel the Order of Award (OA) or Certificate of Land Transfer (CLT) and issue a new one in favor of the "qualified actual cultivator/occupant."[28]

In this case, Anita questions the existence of a tenancy relationship between her/Lucila and Minople, pointing out the

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[25] DAR A.O. No. 3, series of 1990, www.dar.gov.ph.

[26] Landed Estates is defined in Administrative Order No. 3, Series of 1990 as the "former *haciendas* or landholdings of private individuals or corporations which have been acquired by the Government under different laws for redistribution and resale to deserving tenants and land less farmers."

[27] DAR A.O. No. 3, series of 1990, www.dar.gov.ph.

[28] *Id*.

purported DAR Director's finding that Minople deliberately failed to deliver the harvest for four years.[29] She argues that this negates any tenancy relationship between them and insists that Minople was only a farm worker initially engaged by the late Pedro Candelaria. To this, she adds that LTA would not have entered into an agreement to sell with Lucila in 1960 if it was Minople who was the actual possessor and cultivator back then.[30] Anita continues that even if tenancy existed, Minople could not controvert the title of Lucila/Anita being his purported landlord.[31]

Anita's argument, however, is misplaced. The cases she relied on referred to possession of leased premises in general. In this case, the issue is farm or agricultural tenancy and, inescapably, the applicable law is the CARL and its implementing rules. After all, the law was well in effect when Minople and Anita filed their respective applications to purchase the subject land.

Anita argues that the earlier sale made by LTA to her predecessor was never questioned, hence, it remains valid.[32] In fact, Anita claims, the late Lucila had already paid the purchase price sometime in 1971.[33] She then proceeds to argue that "personal cultivation" may be "with the aid of labor from within his immediate household."[34] Finally, Anita cries out for fairness. According to her:

> It would be unfair and unjust if the subject lot which was originally cultivated by the Petitioner's father, Pedro Candelaria, would only go to another who was just a mere helper of the said Pedro Candelaria, thereby rendering into naught the hardships of the petitioner and

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[29] *Rollo,* p. 344.

[30] *Id.* at 345-346 and 364-365.

[31] *Id.* at 347-353.

[32] *Id.* at 364.

[33] *Id.* at 356.

[34] *Id.* at 366.

her father in occupying and nourishing the subject land which they have occupied even before the 50's decade. Respondent would not have been there in Dinalupihan were it not for the Petitioner's father who secured his services as 'boy' or mere household helper.[35]

While Anita insists that "Agreement to Sell No. 5216" executed back in 1960 remains effective, her act of filing the above-mentioned applications to purchase after three decades of waiting for its fruition only reveals her skepticism in that very same instrument. Anita herself filed not one, but two subsequent applications. It was her application on August 7, 1996 together with that of Minople which gave rise to the present controversy. These conflicting applications were brought before the DAR, all the way up to the Secretary, and then to the OP. At this point, therefore, Anita had effectively abandoned her, or rather Lucila's "Agreement to Sell No. 5216" of 1960 with the then LTA. She cannot later on deny this and conveniently hide behind the feeble position of the OP that it was unnecessary for Anita/Lucila to file her application because the said agreement remained valid.

The fact remains, however, that there were two applications subsequently filed by Anita and acted upon by the DAR, the same office charged with executing the earlier "Agreement to Sell No. 5216," where Anita would have gone to in order to implement her all important agreement. This is the same agency, acting through its Secretary, which found that as early as the time of Lucila, there had been violations of "Agreement to Sell No. 5216" and the existing laws and rules upon which it was based. This is the same agency which eventually awarded the subject landholding to Minople. The CA found, to which the Court agrees, that this was "equivalent to a notice of cancellation of the earlier 'Agreement to Sell No. 5216.'"[36]

As regards Anita's claim that the land had been paid for, the provision that she relies on does not only speak of payment

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[35] *Id.* at 368.

[36] *Id.* at 128.

of the purchase price but also requires the performance of all the conditions found in the said agreement. Thus, if the Court is to assume the agreement to be valid, the LTA or the DAR may still not be compelled to issue a deed of sale in her favor because of violations of the agreement.

Agreement to Sell No. 5216

Section 10. Upon full payment of the purchase price as herein stipulated including all interest thereon and the performance by the PROMISSEE of all the conditions herein required, the Administration shall execute a Deed of Sale conveying the property subject of this Agreement to the PROMISSEE."[37] (Underscoring supplied)

Even if the Court assumes that there were no violations, why did Anita or her predecessor Lucila not compel the DAR to issue a deed of sale? Why did Anita choose to file the applications to purchase in the 1990s?

For Minople's part, there is no denying that he had been tilling the subject land since the 1950s. According to then DAR Secretary Ernesto D. Garilao:

After a thorough evaluation of the records of the case, together with its supporting documents, this Office finds the appeal to be impressed with merit, considering the fact that Minople Macaraeg is the actual possessor/cultivator of the lot in consideration as contained in the Report and Recommendation dated November 6, 1996 of Atty. Judita C. Montemayor, Chief, Legal Division of DAR Region III and the Certification dated April 23, 1997 issued by the BARC Chairman (Punong Barangay) of Dinalupihan Bataan.

The act of Lucila Candelaria Gonzales in allowing Minople Macaraeg to perform all the farming activities in the subject lot established a tenancy relationship between the former and the latter because the latter is doing the farm chores and is paid from the produce or harvest of the land in the amount of 20 cavans of *palay* every harvest. The claim of Lucila Candelaria Gonzales that Minople Macaraeg is only a hired farm worker will not hold water, considering the fact that he (Minople Macaraeg) was not hired to work on just

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[37] *Id.* at 357.

a branch of farming, but performed work pertaining to all the branches thereof, on the basis of sharing the harvest not on a fixed salary wage.[38]

With Minople continuously performing every aspect of farming on the subject landholding, neither Anita nor Lucila personally cultivated the subject land. While Anita continues to question the existence of a tenancy relationship, she did admit that her predecessors had hired Minople to till the land decades earlier. This clearly violated then LTA A.O. No. 2, Series of 1956 as well as the DAR's AO No. 3 series of 1990. This also contravened her own undertaking in her April 7, 1996 "Application to Purchase Lot."

"2.that I will not subdivide, sold (sic) or in any manner transfer or encumber said land without the proper consent of the DAR subject further to the terms and conditions provided for under Republic Act No. 6657 and other Operating laws not inconsistent thereon; 3.That **I shall not employ or use tenants** whatever form in the occupation or cultivation of the land or shall not be subject of share tenancy pursuant to the provision of PD No. 132 dated March 13, 1973, x x x."[39] (Emphasis supplied)

R.A. No. 6657 or the CARL "is a social justice and poverty alleviation program which seeks to empower the lives of agrarian reform beneficiaries through equitable distribution and ownership of the land based on the principle of land to the tiller."[40]

Given all the laws in place together with the undisputed fact that Minople worked on the subject landholding for more than half a century, the inescapable conclusion is that Minople as the actual tiller of the land is entitled to the land mandated by our Constitution and R.A. No. 6657.

WHEREFORE, the petition is **DENIED**, the October 19, 2005 Decision and January 10, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 88816, are hereby **AFFIRMED**.

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[38] *Id.* at 155.

[39] *Id.* at 156.

[40] *Heirs of Aurelio Reyes v. Garilao,* G.R. No. 136466, November 25, 2009, 605 SCRA 294, 310.

This is without prejudice on the part of petitioner to recover her payments from the government, if warranted.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175170. September 5, 2012]

MISAMIS ORIENTAL II ELECTRIC SERVICE COOPERATIVE (MORESCO II), *petitioner, vs.* **VIRGILIO M. CAGALAWAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); LABOR TRIBUNALS ARE NOT BOUND BY TECHNICAL RULES, HENCE, NOT PRECLUDED FROM RECEIVING EVIDENCE SUBMITTED ON APPEAL; EXCEPTION; NOT APPLICABLE IN CASE AT BAR. — Labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them. However, any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven. In the present case, MORESCO II did not cite any reason why it had failed to file its position paper or present its cause before the Labor Arbiter despite sufficient notice and time given to do so. Only after an adverse decision was rendered did it present its defense and rebut the evidence of Cagalawan by alleging that his transfer was made in response to the letter-request of the area manager

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[*] Designated additional member, per Special Order No. 1299 dated August 28, 2012.

of the Gingoog sub-office asking for additional personnel to meet its collection quota. To our mind, however, the belated submission of the said letter-request without any valid explanation casts doubt on its credibility, specially so when the same is not a newly discovered evidence. x x x When there is doubt between the evidence submitted by the employer and that submitted by the employee, the scales of justice must be tilted in favor of the employee. This is consistent with the rule that an employer's cause could only succeed on the strength of its own evidence and not on the weakness of the employee's evidence. Thus, MORESCO II cannot rely on the weakness of Ortiz's certification in order to give more credit to its own evidence. Self-serving and unsubstantiated declarations are not sufficient where the quantum of evidence required to establish a fact is substantial evidence, described as more than a mere scintilla. "The evidence must be real and substantial, and not merely apparent." MORESCO II has miserably failed to discharge the onus of proving the validity of Cagalawan's transfer.

2. ID.; ID.; MANAGEMENT'S PREROGATIVE TO TRANSFER EMPLOYEES; EXERCISE THEREOF SHOULD BE WITH DUE REGARD TO THE BASIC ELEMENTS OF JUSTICE AND FAIR PLAY; VIOLATION IN CASE AT BAR. — The rule is that it is within the ambit of the employer's prerogative to transfer an employee for valid reasons and according to the requirement of its business, provided that the transfer does not result in demotion in rank or diminution of salary, benefits and other privileges. This Court has always considered the management's prerogative to transfer its employees in pursuit of its legitimate interests. But this prerogative should be exercised without grave abuse of discretion and with due regard to the basic elements of justice and fair play, such that if there is a showing that the transfer was unnecessary or inconvenient and prejudicial to the employee, it cannot be upheld. Here, while we find that the transfer of Cagalawan neither entails any demotion in rank since he did not have tenurial security over the position of head of the disconnection crew, nor result to diminution in pay as this was not sufficiently proven by him, MORESCO II's evidence is nevertheless not enough to show that said transfer was required by the exigency of the electric cooperative's business interest. Simply stated, the evidence sought to be admitted by MORESCO II is not substantial to prove that there was a genuine business urgency that necessitated the transfer.

3. ID.; ID.; ID.; BAD FAITH IN THE EXERCISE THEREOF MUST BE ESTABLISHED CLEARLY AND CONVINCINGLY; NOT PRESENT IN CASE AT BAR. — "[B]ad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." Here, although we agree with the Labor Arbiter that Ke-e acted in an arbitrary manner in effecting Cagalawan's transfer, the same, absent any showing of some dishonest or wrongful purpose, does not amount to bad faith. Suffice it to say that bad faith must be established clearly and convincingly as the same is never presumed. Similarly, no bad faith can be presumed from the fact that Subrado was the opponent of Cagalawan's father-in-law in the election for directorship in the cooperative. Cagalawan's claim that this was one of the reasons why he was transferred is a mere allegation without proof. Neither does Subrado's alleged instruction to file a complaint against Cagalawan bolster the latter's claim that the former had malicious intention against him. As the Chairman of the Board of Directors of MORESCO II, Subrado has the duty and obligation to act upon complaints of its clients. On the contrary, the Court finds that Subrado had no participation whatsoever in Cagalawan's illegal dismissal; hence, the imputation of bad faith against him is untenable.

APPEARANCES OF COUNSEL

Kho Roa and Partners for petitioner.
Ranulfo D. Cenas for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In labor cases, strict adherence with the technical rules is not required.[1] This liberal policy, however, should still conform with the rudiments of equitable principles of law. For instance,

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[1] *Spic N' Span Services Corporation v. Paje*, G.R. No. 174084, August 25, 2010, 629 SCRA 261, 268-269.

belated submission of evidence may only be allowed if the delay is adequately justified and the evidence is clearly material to establish the party's cause.[2]

By this Petition for Review on *Certiorari*,[3] petitioner Misamis Oriental II Electric Service Cooperative (MORESCO II) assails the Decision[4] dated July 26, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84991, which reversed and set aside the Resolutions dated February 27, 2004[5] and April 26, 2004[6] of the National Labor Relations Commission (NLRC), and thereby reinstated the Labor Arbiter's Decision[7] dated September 30, 2003 pronouncing respondent Virgilio M. Cagalawan (Cagalawan) to have been constructively dismissed from employment. Also assailed is the CA Resolution[8] dated September 6, 2006 which denied MORESCO II's Motion for Reconsideration and granted Cagalawan's Partial Motion for Reconsideration.

Factual Antecedents

On September 1, 1993, MORESCO II, a rural electric cooperative, hired Cagalawan as a Disconnection Lineman on a probationary basis. On March 1, 1994 Cagalawan was appointed to the same post this time on a permanent basis.[9] On July 17, 2001, he was

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[2] *Anabe v. Asian Construction (ASIAKONSTRUKT)*, G.R. No. 183233, December 23, 2009, 609 SCRA 213, 219.

[3] *Rollo*, pp. 8-16.

[4] CA *rollo*, pp. 133-141; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro.

[5] *Id.* at 24-30; penned by Commissioner Jovito C. Cagaanan and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.

[6] *Id.* at 32-34.

[7] *Id.* at 75-79; penned by Labor Arbiter Henry F. Te.

[8] *Id.* at 216-220; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez.

[9] *Id.* at 90-91.

designated as Acting Head of the disconnection crew in Area III sub-office of MORESCO II in Balingasag, Misamis Oriental (Balingasag sub-office).[10] In a Memorandum[11] dated May 9, 2002, MORESCO II General Manager Amado B. Ke-e (Ke-e) transferred Cagalawan to Area I sub-office in Gingoog City, Misamis Oriental (Gingoog sub-office) as a member of the disconnection crew. Said memorandum stated that the transfer was done "in the exigency of the service."

In a letter[12] dated May 15, 2002, Cagalawan assailed his transfer claiming he was effectively demoted from his position as head of the disconnection crew to a mere member thereof. He also averred that his transfer to the Gingoog sub-office is inconvenient and prejudicial to him as it would entail additional travel expenses to and from work. He likewise sought clarification on what kind of exigency exists as to justify his transfer and why he was the one chosen to be transferred.

In a Memorandum[13] dated May 16, 2002, Ke-e explained that Cagalawan's transfer was not a demotion since he was holding the position of Disconnection Head only by mere designation and not by appointment. Ke-e did not, however, state the basis of the transfer but instead advised Cagalawan to just comply with the order and not to question management's legitimate prerogative to reassign him.

In reply, Cagalawan claimed that he was transferred because he executed an Affidavit[14] in support of his co-employee Jessie Rances, who filed an illegal dismissal case against MORESCO II.[15] He emphasized though that his action was not an act of disloyalty to MORESCO II, contrary to what was being accused

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[10] *Id.* at 52.

[11] *Id.* at 62.

[12] *Id.* at 63.

[13] *Id.* at 64.

[14] *Id.* at 61.

[15] *Id.* at 65.

of him. Nonetheless, Cagalawan still reported for work at Gingoog sub-office on May 27, 2002 but reserved his right to contest the legality of such transfer.[16]

Meanwhile and in view of Cagalawan's transfer, Ke-e issued an order[17] recalling the former's previous designation as Acting Head of the disconnection crew of the Balingasag sub-office.

Cagalawan eventually stopped reporting for work. On July 1, 2002, he filed a Complaint for constructive dismissal before the Arbitration branch of the NLRC against MORESCO II and its officers, Ke-e and Danilo Subrado (Subrado), in their capacities as General Manager and Board Chairman, respectively.

Proceedings before the Labor Arbiter

When the Labor Arbiter, in an Order[18] dated September 13, 2002, directed the parties to submit their respective verified position papers, only Cagalawan complied.[19] He alleged that his transfer was unnecessary and was made only in retaliation for his having executed an affidavit in favor of a co-worker and against MORESCO II. In support of his contention, Cagalawan submitted a certification[20] executed by the Head of the disconnection crew of the Gingoog sub-office, Teodoro Ortiz (Ortiz), attesting that the said sub-office was not undermanned. In fact, when Cagalawan stopped working, no other employee was transferred or hired in his stead, a proof that there were enough disconnection crew members in Gingoog sub-office who can very well handle the assigned tasks. Moreover, Cagalawan claimed that his transfer constituted a demotion from his position as Acting Head of the disconnection

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[16] *Id.* at 66.

[17] *Id.* at 67.

[18] *Id.*, unpaginated (in between pp. 34 and 35).

[19] *Id.* at 35-47.

[20] *Id.* at 69.

crew which he had occupied for almost 10 months. As such, he should be considered regular in that position and entitled to its corresponding salary.

Cagalawan further alleged that his transfer from Balingasag to Gingoog sub-office was tantamount to illegal constructive dismissal for being prejudicial and inconvenient as he had to spend an additional amount of ₱197.00[21] a day, leaving him nothing of his salary. He therefore had no choice but to stop working.

Aside from reinstatement and backwages, Cagalawan sought to recover damages and attorney's fees because to him, his transfer was effected in a wanton, fraudulent, oppressive or malevolent manner. Apart from MORESCO II, he averred that Ke-e and Subrado should also be held personally liable for damages since the two were guilty of bad faith in effecting his transfer. He believed that Subrado had a hand in his arbitrary transfer considering that he is the son-in-law of Subrado's opponent in the recent election for directorship in the electric cooperative. In fact, Subrado even asked a certain Cleopatra Moreno Manuel to file a baseless complaint against him as borne out by the declaration of Bob Abao in an affidavit.[22]

In view of MORESCO II's failure to file a position paper, Cagalawan filed a Motion[23] for the issuance of an order to declare the case submitted for decision. This was granted in an Order[24] dated March 14, 2003.

On September 30, 2003, the Labor Arbiter rendered a Decision[25] declaring that Cagalawan's transfer constituted illegal constructive dismissal. Aside from finding merit in Cagalawan's uncontroverted allegation that the transfer became grossly

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[21] *Id.* at 68.

[22] *Id.* at 59 and 70.

[23] *Id.* at 71-72.

[24] *Id.* at 73.

[25] *Id.* at 75-79.

inconvenient for him, the Labor Arbiter found no sufficient reason for his transfer and that the same was calculated to rid him of his employment, impelled by a vindictive motive after he executed an Affidavit in favor of a colleague and against MORESCO II.

Thus, the Labor Arbiter ordered Cagalawan's reinstatement to the position of Collector and awarded him backwages from the date of his transfer on May 16, 2002 up to his actual reinstatement. However, the Labor Arbiter denied his prayer for regularization as head of the disconnection crew since the period of six months which he claimed as sufficient to acquire regular status applies only to probationary employment. Hence, the fact that he was acting as head of the disconnection crew for 10 months did not entitle him to such position on a permanent basis. Moreover, the decision to promote him to the said position should only come from the management.

With respect to damages, the Labor Arbiter found Ke-e to have acted capriciously in effecting the transfer, hence, he awarded moral and exemplary damages to Cagalawan. Attorney's fees was likewise adjudged in his favor.

The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is rendered declaring the transfer of complainant as tantamount to constructive dismissal and ordering respondent[s] to reinstate complainant to his position as collector in Balingasag, Misamis Oriental without loss of seniority rights and to pay complainant the following:

1. Backwages	- ₱189,096.00
2. Exemplary damages	- ₱ 10,000.00
3. Moral damages	- ₱ 20,000.00
4. Attorney's fee 10%	- ₱ 21,909.60
GRAND TOTAL AWARD	₱241,005.60

SO ORDERED.[26]

[26] *Id.* at 79.

Proceedings before the National Labor Relations Commission

MORESCO II and Cagalawan both appealed the Labor Arbiter's Decision.

In its Memorandum on Appeal,[27] MORESCO II invoked the liberal application of the rules and prayed for the NLRC to admit its evidence on appeal. MORESCO II denied that Cagalawan's transfer was done in retaliation for executing an affidavit in favor of a co-worker. MORESCO II explained that the transfer was in response to the request of the area manager in Gingoog sub-office for additional personnel in his assigned area. To substantiate this, it submitted a letter[28] dated May 8, 2002 from Gingoog sub-office Area Manager, Engr. Ronel B. Canada (Engr. Canada), addressed to Ke-e. In said letter, Engr. Canada requested for two additional disconnection linemen in order to attain the collection quota allocated in his area. MORESCO II then averred that as against this letter of Engr. Canada who is a managerial employee, the certification issued by Ortiz should be considered as incompetent since the latter is a mere disconnection crew.

Moreover, Cagalawan's claim of additional expenses brought about by his transfer, specifically for meal and transportation, deserves no appreciation at all since he would still incur these expenses regardless of his place of assignment and also considering that he was provided with a rented motorcycle with fuel and oil allowance.

Also, MORESCO II intimated that it has no intention of removing Cagalawan from its employ especially since his father-in-law was its previous Board Member. In fact, it was Cagalawan himself who committed an act of insubordination when he abandoned his job.

In his Reply[29] to MORESCO II's Memorandum of Appeal, Cagalawan averred that the latter cannot present any evidence

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[27] *Id.* at 80-89.

[28] *Id.* at 93.

[29] *Id.* at 95-101.

for the first time on appeal without giving any valid reason for its failure to submit its evidence before the Labor Arbiter as provided under the NLRC rules. Further, the evidence sought to be presented by MORESCO II is not newly discovered evidence as to warrant its admission on appeal. In particular, he claimed that the May 8, 2002 letter of Engr. Canada should have been submitted at the earliest opportunity, that is, before the Labor Arbiter. MORESCO II's failure to present the same at such time thus raises suspicion that the document was merely fabricated for the purpose of appeal. Moreover, Cagalawan claimed that if there was indeed a request from the Area Manager of Gingoog sub-office for additional personnel as required by the exigency of the service, such reason should have been mentioned in Ke-e's May 16, 2002 Memorandum. In this way, the transfer would appear to have a reasonable basis at the outset. However, no such mention was made precisely because the transfer was without any valid reason.

Anent Cagalawan's partial appeal,[30] he prayed that the decision be modified in that he should be reinstated as Disconnection Lineman and not as Collector.

The NLRC, through a Resolution[31] dated February 27, 2004, set aside and vacated the Decision of the Labor Arbiter and dismissed Cagalawan's complaint against MORESCO II. The NLRC admitted MORESCO II's evidence even if submitted only on appeal in the interest of substantial justice. It then found said evidence credible in showing that Cagalawan's transfer to Gingoog sub-office was required in the exigency of the cooperative's business interest. It also ruled that the transfer did not entail a demotion in rank and diminution of pay as to constitute constructive dismissal and thus upheld the right of MORESCO II to transfer Cagalawan in the exercise of its sound business judgment.

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[30] *Rollo*, pp. 61-69.

[31] CA *rollo*, pp. 24-30.

Cagalawan filed a Motion for Reconsideration[32] but the same was denied by the NLRC in a Resolution[33] dated April 26, 2004.

Proceedings before the Court of Appeals

Cagalawan thus filed a Petition for *Certiorari*[34] with the CA. In a Decision[35] dated July 26, 2005, the CA found the NLRC to have gravely abused its discretion in admitting MORESCO II's evidence, citing Section 3, Rule V of the NLRC Rules of Procedure[36] which prohibits the parties from making new allegations or cause of action not included in the complaint or position paper, affidavits and other documents. It held that what MORESCO II presented on appeal was not just an additional evidence but its entire evidence after the Labor Arbiter rendered a Decision adverse to it. To the CA, MORESCO II's belated

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[32] *Id.* at 106-111.

[33] *Id.* at 32-34.

[34] *Id.* at 2-22.

[35] *Id.* at 133-141.

[36] **SECTION 3**. *Submission of Position Papers/Memorandum*. — Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/ memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

submission of evidence despite the opportunities given it cannot be countenanced as such practice "defeats speedy administration of justice" and "smacks of unfairness."

The dispositive portion of the CA Decision reads:

IN VIEW THEREOF, the petition is **GRANTED**. The Decision of the Labor Arbiter is reinstated with the modification that if reinstatement of petitioner is not feasible, he should be paid separation pay in accordance with law.

SO ORDERED.[37]

MORESCO II filed a Motion for Reconsideration[38] insisting that it may present evidence for the first time on appeal as the NLRC is not precluded from admitting the same because technical rules are not binding in labor cases. Besides, of paramount importance is the opportunity of the other party to rebut or comment on the appeal, which in this case, was afforded to Cagalawan.

Cagalawan, for his part, filed a Partial Motion for Reconsideration,[39] seeking modification of the Decision by ordering his reinstatement to the position of Disconnection Lineman instead of Collector.

In a Resolution[40] dated September 6, 2006, the CA maintained its ruling that MORESCO II's unexplained failure to present evidence or submit a position paper before the Labor Arbiter for almost 12 months from receipt of Cagalawan's position paper is intolerable and cannot be permitted. Hence, it denied its Motion for Reconsideration. With respect to Cagalawan's motion, the same was granted by the CA, *viz:*

Anent petitioner's Partial Motion for Reconsideration, We find the same meritorious. The records of this case reveal that prior to

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[37] CA *rollo*, p. 140.

[38] *Id.* at 201-205.

[39] *Id.* at 197-200.

[40] *Id.* at 216-219.

his constructive dismissal, petitioner was a Disconnection Lineman, not a Collector, assigned at Balingasag, Misamis Oriental. Hence, We modify the dispositive portion of Our July 26, 2005 Decision, to read:

> 'IN VIEW THEREOF, the petition is GRANTED. The Decision of the Labor Arbiter is reinstated with modification **that petitioner be reinstated to his position as Disconnection Lineman in Balingasag, Misamis Oriental with further modification** that if reinstatement of petitioner is not feasible, he should be paid separation pay in accordance with law.'[41] (Emphasis in the original.)

Issues

MORESCO II thus filed this petition raising the following issues:

(1) Was the respondent constructively dismissed by the petitioner?

(2) Did the Court of Appeals err in reversing the NLRC?[42]

MORESCO II insists that Cagalawan's transfer was necessary in order to attain the collection quota of the Gingoog sub-office. It contests the credibility of Ortiz's certification which stated that there was no need for additional personnel in the Gingoog sub-office. According to it, Ortiz is not a managerial employee but merely a disconnection crew who is not competent to make declarations in relation to MORESCO II's business needs. It likewise refutes Cagalawan's claim of incurring additional expenses due to his transfer which caused him inconvenience. In sum, it claims that Cagalawan was not constructively dismissed but instead had voluntarily abandoned his job.

MORESCO II avers that the CA's ruling is not in accordance with jurisprudence on the matter of admitting evidence on appeal in labor cases. It submits that the NLRC is correct in accepting

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[41] *Id.* at 219.

[42] *Rollo,* p. 210.

its evidence submitted for the first time on appeal in line with the basic precepts of equity and fairness. The NLRC also correctly ruled in its favor after properly appreciating its evidence which had been rebutted and contradicted by Cagalawan.

Our Ruling

The petition has no merit.

MORESCO II's belated submission of evidence cannot be permitted.

Labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[43] However, any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven.[44]

In the present case, MORESCO II did not cite any reason why it had failed to file its position paper or present its cause before the Labor Arbiter despite sufficient notice and time given to do so. Only after an adverse decision was rendered did it present its defense and rebut the evidence of Cagalawan by alleging that his transfer was made in response to the letter-request of the area manager of the Gingoog sub-office asking for additional personnel to meet its collection quota. To our mind, however, the belated submission of the said letter-request without any valid explanation casts doubt on its credibility, specially so when the same is not a newly discovered evidence. For one, the letter-request was dated May 8, 2002 or a day before the memorandum for Cagalawan's transfer was issued.

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[43] *Iran v. National Labor Relations Commission,* 352 Phil. 261, 274 (1998).

[44] *Anabe v. Asian Construction (ASIAKONSTRUKT), supra* note 2; *Angeles v. Fernandez,* G.R. No. 160213, January 30, 2007, 513 SCRA 378, 384; *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993, 1004-1005 (2003); *AG & P United Rank & File Association v. National Labor Relations Commission,* 332 Phil. 937, 943 (1996).

MORESCO II could have easily presented the letter in the proceedings before the Labor Arbiter for serious examination. Why it was not presented at the earliest opportunity is a serious question which lends credence to Cagalawan's theory that it may have just been fabricated for the purpose of appeal.

It should also be recalled that after Cagalawan received the memorandum for his transfer to the Gingoog sub-office, he immediately questioned the basis thereof through a letter addressed to Ke-e. If at that time there was already a letter-request from the Gingoog area manager, Ke-e could have easily referred to or specified this in his subsequent memorandum of May 16, 2002 which served as his response to Cagalawan's queries about the transfer. However, the said memorandum was silent in this respect. Nevertheless, Cagalawan, for his part, faithfully complied with the transfer order but with the reservation to contest its validity precisely because he was not adequately informed of its real basis.

The rule is that it is within the ambit of the employer's prerogative to transfer an employee for valid reasons and according to the requirement of its business, provided that the transfer does not result in demotion in rank or diminution of salary, benefits and other privileges.[45] This Court has always considered the management's prerogative to transfer its employees in pursuit of its legitimate interests. But this prerogative should be exercised without grave abuse of discretion and with due regard to the basic elements of justice and fair play, such that if there is a showing that the transfer was unnecessary or inconvenient and prejudicial to the employee, it cannot be upheld.[46]

Here, while we find that the transfer of Cagalawan neither entails any demotion in rank since he did not have tenurial security over the position of head of the disconnection crew, nor result to diminution in pay as this was not sufficiently proven by him,

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[45] *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 188 (2006).

[46] *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment*, 264 Phil. 338, 341 (1990).

MORESCO II's evidence is nevertheless not enough to show that said transfer was required by the exigency of the electric cooperative's business interest. Simply stated, the evidence sought to be admitted by MORESCO II is not substantial to prove that there was a genuine business urgency that necessitated the transfer.

Notably, the only evidence adduced by MORESCO II to support the legitimacy of the transfer was the letter-request of Engr. Canada. However, this piece of evidence cannot in itself sufficiently establish that the Gingoog sub-office was indeed suffering from losses due to collection deficiency so as to justify the assignment of additional personnel in the area. Engr. Canada's letter is nothing more than a mere request for additional personnel to augment the number of disconnection crew assigned in the area. While it mentioned that the area's collection efficiency should be improved and that there is a shortage of personnel therein, it is, standing alone, self-serving and thus cannot be considered as competent evidence to prove the accuracy of the allegations therein. MORESCO II could have at least presented financial documents or any other concrete documentary evidence showing that the collection quota of the Gingoog sub-office has not been met or could not be reached. It should have also submitted such other documents which would show the lack of sufficient personnel in the area. Unfortunately, the area manager's letter provides no more than bare allegations which deserve not even the slightest credit.

When there is doubt between the evidence submitted by the employer and that submitted by the employee, the scales of justice must be tilted in favor of the employee.[47] This is consistent with the rule that an employer's cause could only succeed on the strength of its own evidence and not on the weakness of the employee's evidence.[48] Thus, MORESCO II cannot rely on the weakness of Ortiz's certification in order to give more credit to its own evidence. Self-serving and unsubstantiated declarations are not sufficient

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[47] *Travelaire and Tours Corp. v. National Labor Relations Commission,* 355 Phil. 932, 937-938 (1998).

[48] *Functional, Inc. v. Granfil,* G.R. No. 176377, November 16, 2011.

where the quantum of evidence required to establish a fact is substantial evidence, described as more than a mere scintilla.[49] "The evidence must be real and substantial, and not merely apparent."[50] MORESCO II has miserably failed to discharge the onus of proving the validity of Cagalawan's transfer.

Clearly, not only was the delay in the submission of MORESCO II's evidence not explained, there was also failure on its part to sufficiently support its allegation that the transfer of Cagalawan was for a legitimate purpose. This being the case, MORESCO II's plea that its evidence be admitted in the interest of justice does not deserve any merit.

Ke-e and Subrado, as corporate officers, could not be held personally liable for Cagalawan's monetary awards.

In the Decision of the Labor Arbiter, the manager of MORESCO II was held to have acted in an arbitrary manner in effecting Cagalawan's transfer such that moral and exemplary damages were awarded in the latter's favor. However, the said Decision did not touch on the issue of bad faith on the part of MORESCO II's officers, namely, Ke-e and Subrado. Consequently, no pronouncement was made as to whether the two are also personally liable for Cagalawan's money claims arising from his constructive dismissal.

Still, we hold that Ke-e and Subrado cannot be held personally liable for Cagalawan's money claims.

"[B]ad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."[51] Here,

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[49] *Coastal Safeway Marine Services, Inc. v. Esguerra*, G.R. No. 185352, August 10, 2011, 655 SCRA 300, 309.

[50] *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011.

[51] *Andrade v. Court of Appeals*, 423 Phil. 30, 43 (2001).

although we agree with the Labor Arbiter that Ke-e acted in an arbitrary manner in effecting Cagalawan's transfer, the same, absent any showing of some dishonest or wrongful purpose, does not amount to bad faith. Suffice it to say that bad faith must be established clearly and convincingly as the same is never presumed.[52] Similarly, no bad faith can be presumed from the fact that Subrado was the opponent of Cagalawan's father-in-law in the election for directorship in the cooperative. Cagalawan's claim that this was one of the reasons why he was transferred is a mere allegation without proof. Neither does Subrado's alleged instruction to file a complaint against Cagalawan bolster the latter's claim that the former had malicious intention against him. As the Chairman of the Board of Directors of MORESCO II, Subrado has the duty and obligation to act upon complaints of its clients. On the contrary, the Court finds that Subrado had no participation whatsoever in Cagalawan's illegal dismissal; hence, the imputation of bad faith against him is untenable.

WHEREFORE, the petition is **DENIED**. The Decision dated July 26, 2005 of the Court of Appeals in CA-G.R. SP No. 84991 and its Resolution dated September 6, 2006, are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[52] *Harpoon Marine Services, Inc. v. Francisco*, G.R. No. 167751, March 2, 2011, 644 SCRA 394, 409.

FIRST DIVISION

[G.R. No. 177711. September 5, 2012]

SUICO INDUSTRIAL CORP., and SPOUSES ESMERALDO and ELIZABETH SUICO, *petitioners, vs.* **HON. MARILYN LAGURA-YAP, Presiding Judge of Regional Trial Court of Mandaue City, Branch 28; PRIVATE DEVELOPMENT CORP. OF THE PHILS. (PDCP now First E-Bank); and ANTONIO AGRO DEVELOPMENT CORPORATION,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS ; PERIOD OF ORDINARY APPEAL; A PARTY IS GIVEN A "FRESH PERIOD" OF FIFTEEN DAYS FROM RECEIPT OF THE COURT'S RESOLUTION ON A MOTION FOR RECONSIDERATION WITHIN WHICH TO FILE A NOTICE OF APPEAL.—** In *Neypes v. Court of Appeals* decided by this Court on September 14, 2005, we ruled that to standardize the appeal periods provided in the Rules of Court and to afford litigants a fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of fifteen (15) days within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. Said "fresh period rule" also aims to regiment or make the appeal period uniform. It eradicates the confusion as to when the fifteen (15)-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of final order appealed from. x x x Given the foregoing rules, the petitioners' notice of appeal was timely filed on April 4, 2003, since it was filed within the fifteen (15)-day period from their receipt on March 21, 2003 of the RTC's order denying their motion for reconsideration of the case's dismissal.

2. **ID.; ID.; FAILURE TO FILE A PRE-TRIAL BRIEF WITHIN THE TIME PRESCRIBED BY THE RULES OF COURT CONSTITUTES SUFFICIENT GROUND FOR DISMISSAL.—** Section 4, Rule 18 of the Rules of Court provides that it is the

duty of the parties and their counsel to appear at the pre-trial. The effect of their failure to do so is provided in Section 5 of Rule 18, particularly: **Sec. 5.** ***Effect of failure to appear.*** **– The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action.** The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. Under Section 6, Rule 18, the failure to file a pre-trial brief when required by law produces the same effect as failure to attend the pre-trial, to wit: **Sec. 6.** ***Pre-trial brief***. – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others: x x x **Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.** On the basis of the foregoing, the trial court clearly had a valid basis when it ordered the dismissal of the petitioners' action.

3. ID.; ID.; LIBERAL INTERPRETATION OF THE RULES; GROUNDS FOR JUSTIFICATION TO SUSPEND STRICT ADHERENCE TO PROCEDURAL RULES, NOT OBTAINING IN CASE AT BAR.— Still, petitioners assail the trial court's dismissal of their case, invoking a liberal interpretation of the rules. Instructive on this point are the guidelines we applied in *Bank of the Philippine Islands v. Dando*, wherein we cited the reasons that may provide a justification for a court to suspend a strict adherence to procedural rules, namely: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby. Upon review, we have determined that these grounds do not concur in this action.

4. ID.; ID.; ID.; THE FACTUAL ANTECEDENTS OF THE CASE INDICATE THAT THE DISMISSAL OF THE ACTION FOR SPECIFIC PERFORMANCE HAS NOT CAUSED ANY INJUSTICE TO PETITIONERS, BARRING ANY SPECIAL OR

COMPELLING CIRCUMSTANCES THAT WOULD WARRANT A RELAXATION OF THE RULES.— A review of the factual antecedents indicate that the dismissal of the action for specific performance has not caused any injustice to the petitioners, barring any special or compelling circumstances that would warrant a relaxation of the rules. The alleged agreement between PDCP Bank and the petitioners on the purchase by the latter's recommended buyers of the foreclosed properties at a specified amount deserves scant consideration for being unsupported by sufficient proof especially since said supposed agreement was vehemently denied by the bank. What the records merely adequately establish is the petitioners' failure to satisfy their obligation to the bank, leading to the foreclosure of the mortgage constituted to secure it, the sale of the foreclosed properties and the failure of the petitioners to make a timely redemption thereof. In the 1999 case of *Suico* which also involves herein parties, we have thus declared that when the petitioners failed to pay the balance of the secured loan and thereafter failed to redeem the mortgaged properties, title to the property had already been transferred to PDCP Bank, which had the right to possess the property based on its right of ownership as purchaser of the properties in the foreclosure sale. These even led us to declare that the petitioners undertook a procedural misstep when they filed a suit for specific performance, injunction and damages instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act No. 3135.

5. ID.; ID.; ID.; UTTER DISREGARD OF THE RULES CANNOT JUSTLY BE RATIONALIZED BY HARKING ON THE POLICY OF LIBERAL INTERPRETATION.— This Court finds no cogent reason to liberally apply the rules considering that the petitioners and their counsel had not offered sufficient justification for their failure to file the required pre-trial brief. As held by this Court in *Lapid v. Judge Laurea*, concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules. Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly

disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.

6. ID.; ID.; ID.; THE FAILURE TO FILE THE PRE-TRIAL BRIEF IS ATTRIBUTABLE TO THE FAULT OR NEGLIGENCE OF COUNSEL; NEGLIGENCE OF COUNSEL BINDS THE CLIENT.— The failure to file the pre-trial brief is then attributable to the fault or negligence of petitioners' counsel. The settled rule is that the negligence of a counsel binds his clients. Neither counsel nor his clients can now evade the effects thereof by invoking that the failure amounts to an inexcusable negligence which, by jurisprudence, should not bind the parties. It is absurd for a counsel to emphasize on the gravity of his own inaction and then invoke the same misfeasance to evade the consequences of his act. Furthermore, the claim of petitioners' counsel that his failure to file a pre-trial brief may be regarded as an inexcusable negligence is inconsistent with his plea for the court to consider the fact that he attended the scheduled pre-trial conference but only needed more time to file the pre-trial brief. As in the case of *Air Phils. Corp. v. Int'l. Business Aviation Services Phils., Inc.*, there was in this case a simple, not gross, negligence. There was only a plain "disregard of some duty imposed by law," a slight want of care that "circumstances reasonably impose," and a mere failure to exercise that degree of care that an ordinarily prudent person would take under the circumstances. There was neither a total abandonment or disregard of the petitioners' case nor a showing of conscious indifference to or utter disregard of consequences. Again, axiomatic is the rule that negligence of counsel binds the client.

7. ID.; ID.; ID.; MATTER OF ADMISSION OF RESPONDENT'S PLEADINGS, THOUGH BELATEDLY FILED, DEPENDED ON THE SOUND DISCRETION OF THE COURT.— Petitioners attempt to confuse the issues by citing the respondents' own prior delay in the filing of pleadings and the leniency accorded to them by the trial court in still later admitting their pleadings. Significantly, however, such matter on the court's admission of the respondents' pleadings, though belatedly filed, depended on the sound discretion of the court, the circumstances then attending the case and the particular consequences provided by law for the non-filing of the pleadings. Petitioners could

not expect the trial court to rule similarly in all incidents, considering that factual circumstances and results of the parties' actions vary in each issue. In addition, if the petitioners believed that the trial court gravely abused its discretion in admitting the respondents' pleadings, then they should have availed of the remedies available to them to question the trial court's orders, rather than wrongfully including the said matters at the first instance in the appeal from the case's dismissal.

APPEARANCES OF COUNSEL

Arnado Notarial & Law Office for petitioners.
Ricardo M. Pilares III for Prime Media Holdings.
Go & Bernados Law Offices for Antonio Agro Development Corp.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which assails the Decision[1] dated January 16, 2006 and Resolution[2] dated April 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 78676 entitled *Suico Industrial Corporation and Spouses Esmeraldo and Elizabeth Suico v. Hon. Marilyn Lagura-Yap, Presiding Judge of Mandaue City Regional Trial Court, Branch 28; Private Development Corporation of the Phils. (PDCP Bank); and Antonio Agro Development Corporation.*

The Factual Antecedents

In 1993, respondent Private Development Corporation of the Philippines (PDCP Bank), later renamed as First E-Bank

[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 32-43.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; *id.* at 44-45.

and now Prime Media Holdings, Inc., foreclosed the mortgage constituted on two real estate properties in Mandaue City then owned by petitioners and mortgagor-spouses Esmeraldo and Elizabeth Suico, following petitioner Suico Industrial Corporation's failure to pay the balance of two secured loans it obtained from the bank in 1987 and 1991. PDCP Bank emerged as the highest bidder in the foreclosure sale of the properties, as evidenced by a Certificate of Sale dated February 29, 1993 issued by the Sheriff of Mandaue City.

The mortgagors' failure to redeem the foreclosed properties within the period allowed by law resulted in the consolidation of ownership in favor of PDCP Bank and the issuance of Transfer Certificate of Title Nos. 34987 and 34988 in the bank's name. The enforcement of a writ of possession obtained by PDCP Bank from the Regional Trial Court (RTC), Mandaue City, Branch 28, was however enjoined by an injunctive writ obtained by the petitioners on January 17, 1995 from the RTC, Mandaue City, Branch 56, where they filed on December 9, 1994 an action for specific performance, injunction and damages to prevent PDCP Bank from selling and taking possession of the foreclosed properties. Petitioners alleged in said action for specific performance that they had an agreement with PDCP Bank to intentionally default in their payments so that the mortgaged properties could be foreclosed and purchased during public auction by the bank. After consolidation of title in the bank's name, PDCP Bank, allegedly, was to allow the petitioners to purchase the properties for ₱5,000,000.00 through a recommended buyer. Petitioners then claimed that PDCP Bank increased the properties' selling price, thereby preventing their recommended buyers from purchasing them.

When PDCP Bank questioned before the CA the issuance of the injunctive writ by the RTC Branch 56, the appellate court declared the trial court to have exceeded its jurisdiction in issuing the assailed writ, as it interfered with the proceedings of a court of concurrent jurisdiction, the RTC Branch 28. Said CA decision was affirmed in 1999 by this Court in G.R. No.

123050, entitled *Suico Industrial Corporation v. CA*,[3] wherein we declared:

> When petitioners failed to pay the balance of the loan and thereafter failed to redeem the properties, title to the property had already been transferred to respondent PDCP Bank. Respondent PDCP Bank's right to possess the property is clear and is based on its right of ownership as a purchaser of the properties in the foreclosure sale to whom title has been conveyed. Under Section 7 of Act No. 3135 and Section 35 of Rule 39, the purchaser in a foreclosure sale is entitled to possession of the property. Respondent PDCP Bank has a better right to possess the subject property because of its title over the same.
>
> **Furthermore, petitioners undertook a procedural misstep when it filed a suit for specific performance, injunction and damages before the RTC Branch 56 instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act 3135** x x x[.][4] (Citations omitted and emphasis ours)

Notwithstanding the afore-quoted portions in this Court's *Suico* decision, the proceedings in Civil Case No. MAN-2321 for specific performance, injunction and damages before RTC Branch 56 continued. Herein respondent Antonio Agro Development Corporation (AADC), which in the meantime had purchased the foreclosed properties from PDCP Bank, filed with the trial court a motion to intervene and an answer-in-intervention.

RTC Branch 56's Presiding Judge Augustine Vestil later voluntarily inhibited himself from further hearing the case, resulting in the re-raffle of the case to RTC Branch 55. When PDCP Bank failed to file its answer within the period allowed by the rules, the petitioners moved that the bank be declared in default and the answer-in-intervention of AADC be stricken off the records. In an Order[5] dated August 3, 2001, Judge Ulric R.

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[3] 361 Phil. 160 (1999).

[4] *Id.* at 170-171.

[5] *Rollo*, pp. 48-49.

Cañete (Judge Cañete) of RTC Branch 55 still gave therein defendants the time to file their written oppositions on the motions after noting the following antecedents:

> Record shows that this case was filed in 1994 yet and until this point in time there is no answer by the defendant. Likewise, the Motion for Intervention, filed by Antonio Agro Development Corporation was denied per record by the Court. However, [in spite] of the denial[,] an answer in intervention was filed. Hence, plaintiff now, per their motion and manifestation are praying for a default order against PDCP [Bank], and for the striking off from the records [of] Intervenor's Answer in Intervention.
>
> In today's hearing of the incidents, Atty. Cavada entered his appearance and manifested that he will [sic] just filed a notice of appearance as counsel for the defendant, Private Development Corporation of the Philippines. Atty. Go appeared for the Intervenor. Both counsels pray for a period of ten (10) days from today to file their written opposition in these incidents subject for today's hearing.
>
> Plaintiff failed to appear for the hearing of this incident.[6]

On October 23, 2001, the RTC issued an order denying the petitioners' motion to declare PDCP Bank in default. PDCP Bank's answer filed on August 24, 2001 and AADC's answer-in-intervention were also admitted. When Judge Cañete also inhibited from further hearing the case, the case was transferred to Judge Marilyn Lagura-Yap (Judge Yap) of RTC Branch 28.

During the case's scheduled pre-trial conference on September 6, 2002, the petitioners' counsel asked for a resetting to allow him more time to prepare the required pre-trial brief. This was opposed by PDCP Bank and AADC, which filed a motion for the case's dismissal later granted by Judge Yap in its order that reads in part:

> Although the Court notes that plaintiff Elizabeth Suico is in court, the fact that there is no pre-trial brief submitted by plaintiffs militates against their cause this morning. Under Section 6 of Rule 18 of the Revised Rules of Court[,] in the penultimate paragraph thereof[,] it

[6] *Id.* at 48.

is quite expressly provided that failure to file pre-trial brief has the same effect as failure to appear in the pre-trial.

FINDING the joint motion of defendant PDCP[,] now 1st e-Bank[,] and defendant-intervenor Antonio Agro Development Corporation to be meritorious, the Court hereby orders the DISMISSAL of this case.

IT IS SO ORDERED.[7]

Petitioners' motion for reconsideration, with pre-trial brief attached, was denied by the trial court in its Order[8] dated February 21, 2003, the dispositive portion of which reads:

Applying these rulings to the environmental circumstances in this case, the Court finds no basis to reconsider its Order dated September 6, 2002.

The Motion for Reconsideration is hereby DENIED.

IT IS SO ORDERED.[9]

A copy of the order was received by the petitioners' counsel on March 21, 2003.

Unsatisfied with the trial court's rulings, the petitioners filed on April 4, 2003 their notice of appeal. The RTC, however, refused to give due course to the appeal *via* its Order[10] dated May 15, 2003 given the following findings:

A review of the records of the case shows that the Order dismissing the Complaint was received by plaintiffs through counsel on September 17, 2002. On that date, the 15-day prescriptive period within which to file an appeal began to run. **Plaintiffs filed their Motion for Reconsideration on October 1, 2002, and their filing of the motion interrupted the reglementary period to appeal. By that time however, 14 days had already elapsed**; thus, from their receipt of the order

[7] CA *rollo*, pp. 38-39.

[8] *Id.* at 55-58.

[9] *Id.* at 58.

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

denying the Motion for Reconsideration, they had only one (1) day left within which to file a notice of appeal. **On March 21, 2003, plaintiff received the Order denying their Motion for Reconsideration. Accordingly, they had only one (1) day left, or until March 22, 2003 to file a notice of appeal. However, they were able to do so only on April 4, 2003, or thirteen (13) days late**.[11] (Emphasis ours)

Petitioners deemed it useless to still file a motion for reconsideration of the Order dated May 15, 2003, and thus went straight to the CA to question the RTC's orders *via* a petition for *certiorari*.

The Ruling of the CA

On January 16, 2006, the CA rendered its Decision[12] dismissing the petition for lack of merit, taking note of the following circumstances:

> The September 6, 2002 order dismissing the case pointed out that as early as July 29, 2002, the court had already issued the notice of pre-trial conference and the return of the notice showed that [plaintiffs'] counsel was furnished a copy on August 21, 2002 but despite the notice, Atty. Manuel Ong, plaintiffs' counsel, did not file the appropriate motion to the [sic] have the conference reset. The order further ruled that in the notice of pre-trial, it was expressly stated that failure to file pre-trial brief may be given the same effect as failure to appear in the pre-trial conference.[13] (Citation omitted)

As regards to the petitioners' late filing of their notice of appeal, the CA cited the provisions of Section 13, Rule 41 of the Rules of Court, which provides that the court may dismiss an appeal filed out of time, *motu proprio* or on motion, prior to the transmittal of the original records or the record on appeal to the appellate court.[14]

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[11] *Id.* at 18.

[12] *Rollo*, pp. 32-43.

[13] *Id.* at 38.

[14] *Id.* at 42.

Feeling aggrieved, the petitioners filed a motion for reconsideration, which was however denied by the CA in its Resolution[15] dated April 11, 2007. Hence, the present petition for review on *certiorari*.

The Present Petition

Petitioners cite the following grounds to support their petition:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN NOT RULING THAT RESPONDENT JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 28 OF MANDAUE CITY COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THE PETITIONER[S] NON-SUITED AND DISMISSING THE CASE ON THE GROUND OF FAILURE TO FILE A PRE-TRIAL BRIEF.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONERS' NOTICE OF APPEAL FILED ON THE 14TH DAY AFTER RECEIPT OF THE ORDER DENYING THEIR MOTION FOR RECONSIDERATION [WAS FILED OUT OF TIME].[16]

In their prayer, the petitioners specifically ask this Court to, among other things, reverse the CA's rulings and annul and set aside the RTC's Order[17] dated September 6, 2002 which dismissed their action for specific performance, injunction and damages, and the Order dated February 21, 2003 which denied their motion for reconsideration.

The petitioners were represented in this petition by the same counsel who assisted them during the pre-trial and filing of the notice of appeal before the RTC. A new counsel entered his appearance for the petitioners only upon the filing of a reply.

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[15] *Id.* at 44-45.

[16] *Id.* at 18.

[17] Referred to as Order of dismissal dated September 5, 2002 in the petition's prayer; CA *rollo*, pp. 38-39.

This Court's Ruling

This Court finds the petition dismissible.

Given the antecedents that led to the filing of this petition, and the fact that the timeliness of an appeal from the RTC's dismissal of the action for specific performance is a crucial issue that will determine whether or not the other issues resolved by the RTC can still be validly questioned at this time, we find it proper to first resolve the question on the RTC's ruling that the petitioners' notice of appeal was filed out of time.

A party is given a "fresh period" of fifteen (15) days from receipt of the court's resolution on a motion for reconsideration within which to file a notice of appeal.

Section 3, Rule 41 of the Rules of Court prescribes the period to appeal from judgments or final orders of RTCs, as follows:

> **Sec. 3.** ***Period of ordinary appeal.*** – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

In *Neypes v. Court of Appeals*[18] decided by this Court on September 14, 2005, we ruled that to standardize the appeal periods provided in the Rules of Court and to afford litigants a fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of fifteen (15) days within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. Said "fresh period rule" also aims to

[18] 506 Phil. 603 (2005).

regiment or make the appeal period uniform.[19] It eradicates the confusion as to when the fifteen (15)-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of final order appealed from.[20]

Thus, in similar cases decided by this Court after *Neypes*, the fresh period rule was applied, thereby allowing appellants who had filed with the trial court a motion for reconsideration the full fifteen (15)-day period from receipt of the resolution resolving the motion within which to file a notice of appeal. Among these cases is *Sumiran v. Damaso*,[21] wherein we reiterated our ruling in *Makati Insurance Co., Inc. v. Reyes*[22] and *De Los Santos v. Vda. de Mangubat*[23] to explain that the rule can be applied to actions pending upon its effectivity:

> As early as 2005, the Court categorically declared in *Neypes v. Court of Appeals* that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. x x x
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> x x x x x x x x x x x x
>
> The foregoing ruling of the Court was reiterated in *Makati Insurance Co., Inc. v. Reyes*, to wit:
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> > "Propitious to petitioner is *Neypes v. Court of Appeals*, promulgated on 14 September 2005 while the present Petition was already before us. x x x
> >
> > x x x x x x x x x x x x

[19] *Id.* at 626-627.

[20] *Id.* at 628.

[21] G.R. No. 162518, August 19, 2009, 596 SCRA 450.

[22] G.R. No. 167403, August 6, 2008, 561 SCRA 234.

[23] G.R. No. 149508, October 10, 2007, 535 SCRA 411.

> With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.
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> x x x x x x x x x
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> In *De los Santos v. Vda. de Mangubat*, we applied the same principle of "fresh period rule", expostulating that procedural law refers 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 application of statutes. **The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights.**"[24] (Citations omitted)

The retroactivity of the *Neypes* ruling was further explained in our Resolution dated June 25, 2008 in *Fil-Estate Properties, Inc. v. Homena-Valencia*,[25] wherein we held:

> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
>
> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, x x x.[26] (Citations omitted)

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[24] *Supra* note 21, at 455-457.

[25] G.R. No. 173942, June 25, 2008, 555 SCRA 345.

[26] *Id.* at 349-350.

Given the foregoing rules, the petitioners' notice of appeal was timely filed on April 4, 2003, since it was filed within the fifteen (15)-day period from their receipt on March 21, 2003 of the RTC's order denying their motion for reconsideration of the case's dismissal.

In any case, instead of remanding the case to the trial court with the order to take due course on the appeal made by the petitioners, this Court finds it more proper and appropriate to already resolve the issue on the legality of the court's dismissal of the main action filed before it on the basis of the counsel for the petitioners' failure to file a pre-trial brief. This, considering that the issue has already been extensively argued by the parties in their pleadings. The prayer in this petition even specifically seeks the annulment of the RTC's Order of dismissal dated September 6, 2002, and the order denying the motion for reconsideration thereof. The CA decision being appealed from and the RTC orders subject thereof have likewise decided on the issue, with in-depth discussion of the facts pertaining to the issue and the rationale for the courts' rulings.

Failure to file a pre-trial brief within the time prescribed by the Rules of Court constitutes sufficient ground for dismissal of an action.

Section 4, Rule 18 of the Rules of Court provides that it is the duty of the parties and their counsel to appear at the pre-trial. The effect of their failure to do so is provided in Section 5 of Rule 18, particularly:

> **Sec. 5.** ***Effect of failure to appear.*** **– The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action.** The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (Emphasis ours)

Under Section 6, Rule 18, the failure to file a pre-trial brief when required by law produces the same effect as failure to attend the pre-trial, to wit:

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

xxx xxx xxx

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

On the basis of the foregoing, the trial court clearly had a valid basis when it ordered the dismissal of the petitioners' action. Still, petitioners assail the trial court's dismissal of their case, invoking a liberal interpretation of the rules.

Instructive on this point are the guidelines we applied in *Bank of the Philippine Islands v. Dando*,[27] wherein we cited the reasons that may provide a justification for a court to suspend a strict adherence to procedural rules, namely: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[28] Upon review, we have determined that these grounds do not concur in this action.

A review of the factual antecedents indicate that the dismissal of the action for specific performance has not caused any injustice to the petitioners, barring any special or compelling circumstances that would warrant a relaxation of the rules. The alleged agreement between PDCP Bank and the petitioners on the purchase by the latter's recommended buyers of the foreclosed properties at a specified amount deserves scant consideration for being unsupported by sufficient proof especially since said supposed agreement was vehemently denied by the bank. What

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[27] G.R. No. 177456, September 4, 2009, 598 SCRA 378.

[28] *Id.* at 387-388, citing *Barranco v. Commission on the Settlement of Land Problems*, 524 Phil. 533, 543 (2006).

the records merely adequately establish is the petitioners' failure to satisfy their obligation to the bank, leading to the foreclosure of the mortgage constituted to secure it, the sale of the foreclosed properties and the failure of the petitioners to make a timely redemption thereof. In the 1999 case of *Suico* which also involves herein parties, we have thus declared that when the petitioners failed to pay the balance of the secured loan and thereafter failed to redeem the mortgaged properties, title to the property had already been transferred to PDCP Bank, which had the right to possess the property based on its right of ownership as purchaser of the properties in the foreclosure sale. These even led us to declare that the petitioners undertook a procedural misstep when they filed a suit for specific performance, injunction and damages instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act No. 3135.

The petitioners' allegations on their desire and efforts to negotiate during the pre-trial conference, and the argument that the case should have just been suspended instead of dismissed for said reason by the trial court, were only first raised by the petitioners through their new counsel in their reply, and merit no consideration at this point. Furthermore, nowhere in the records is it indicated or supported that such antecedents transpired or were made known by the parties to the courts below.

In affirming the dismissal of petitioners' case for their disregard of the rules on pre-trial, we emphasize this Court's ruling in *Durban Apartments Corporation v. Pioneer Insurance and Surety Corporation*[29] on the importance and the nature of a pre-trial, to wit:

> Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial is not thus put

[29] G.R. No. 179419, January 12, 2011, 639 SCRA 441.

to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.

x x x x x x x x x

Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference[,] (he) may be non-suited or considered as in default." **The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject[s] assigned by law to a pre-trial x x x.**[30] (Emphasis ours)

In addition to the foregoing, this Court finds no cogent reason to liberally apply the rules considering that the petitioners and their counsel had not offered sufficient justification for their failure to file the required pre-trial brief. As held by this Court in *Lapid v. Judge Laurea*,[31] concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[32] Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.[33]

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[30] *Id.* at 452, citing *Development Bank of the Phils. v. CA*, 251 Phil. 390, 392-395 (1989).

[31] 439 Phil. 887 (2002).

[32] *Id.* at 896, citing *Banco Filipino v. Court of Appeals*, 389 Phil. 644, 656 (2000).

[33] *Id.* at 897, citing *Santos v. Court of Appeals*, 413 Phil. 41, 54 (2001).

The failure to file the pre-trial brief is then attributable to the fault or negligence of petitioners' counsel. The settled rule is that the negligence of a counsel binds his clients. Neither counsel nor his clients can now evade the effects thereof by invoking that the failure amounts to an inexcusable negligence which, by jurisprudence, should not bind the parties. It is absurd for a counsel to emphasize on the gravity of his own inaction and then invoke the same misfeasance to evade the consequences of his act. Furthermore, the claim of petitioners' counsel that his failure to file a pre-trial brief may be regarded as an inexcusable negligence is inconsistent with his plea for the court to consider the fact that he attended the scheduled pre-trial conference but only needed more time to file the pre-trial brief. As in the case of *Air Phils. Corp. v. Int'l. Business Aviation Services Phils., Inc.*,[34] there was in this case a simple, not gross, negligence. There was only a plain "disregard of some duty imposed by law," a slight want of care that "circumstances reasonably impose," and a mere failure to exercise that degree of care that an ordinarily prudent person would take under the circumstances. There was neither a total abandonment or disregard of the petitioners' case nor a showing of conscious indifference to or utter disregard of consequences. Again, axiomatic is the rule that negligence of counsel binds the client.

Petitioners attempt to confuse the issues by citing the respondents' own prior delay in the filing of pleadings and the leniency accorded to them by the trial court in still later admitting their pleadings. Significantly, however, such matter on the court's admission of the respondents' pleadings, though belatedly filed, depended on the sound discretion of the court, the circumstances then attending the case and the particular consequences provided by law for the non-filing of the pleadings. Petitioners could not expect the trial court to rule similarly in all incidents, considering that factual circumstances and results of the parties' actions vary in each issue. In addition, if the petitioners believed that the trial court gravely abused its discretion in admitting the respondents' pleadings, then they should have availed of the remedies available to them

[34] 481 Phil. 366 (2004).

to question the trial court's orders, rather than wrongfully including the said matters at the first instance in the appeal from the case's dismissal.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated January 16, 2006 and Resolution dated April 11, 2007 of the Court of Appeals in CA-G.R. SP No. 78676 upholding the Regional Trial Court, Mandaue City, Branch 28's dismissal of petitioners' action for specific performance, injunction and damages are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 179054. September 5, 2012]

BAGONG KAPISANAN SA PUNTA TENEMENT, INC., represented by ENRICO V. ESPAÑO, *petitioner, vs.* **AZER E. DOLOT, LUDIVINA F. MANLANGIT, RODRIGO T. JACLA, PEDRO B. ESCOBER, WENCESLAO C. ASIS, EDUARDO E. ENRADO, SILVERIO S. TAÑADA, PAZ ANA M. ARIOLA, ANTONIO BENZON, JULIE GARCERA, IMELDA GIGANAN, CELESTE TORRES, and CARLOS DIUCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; DISHONESTY; CONVINCINGLY ESTABLISHED IN CASE AT BAR.— Dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and

straightforwardness; disposition to defraud, deceive or betray. In the case at bench, the supposed acts of dishonesty by Dolot and Tañada were convincingly established. Based on the contract, both *barangays* were to receive ₱0.25/20 liter as their share in the water distribution arrangement. From the said amount, 50% was allocated for the payment of back account with MWSS, while the remaining 50% was earmarked to their other *barangay*-related projects. The provision was very clear and categorical. Inpart was never tasked to pay the *barangays*' back account as the money allocated for payment was agreed to be deducted from the *barangays*' share. Apart from the self-serving declaration of Dolot and Tañada that it was Inpart's obligation to remit payments to MWSS, nothing in the records would show that they had an arrangement to such effect.

2. **ID.; ID.; ID.; ID.; RESPONDENTS' INACTION DEMONSTRATED A LACK OF CONCERN FOR THE WELFARE OF THEIR CONSTITUENTS AND ALSO RENEGED ON THEIR SWORN DUTY TO BE TRUE TO THEIR CONSTITUENTS.—** The Court cannot accept their flimsy excuse that it was the contractor's job to remit payments to the MWSS. As public servants and representatives of their respective *barangays*, it behooves upon Dolot and Tañada to ensure that the main goals of the MOA, which were to distribute water to the tenants and pay the tenement's back account with the MWSS, are faithfully followed. Even assuming that Inpart was the one delegated to pay the *barangays'* back account, the respondents should have checked on the status of the payment. They failed to demand accountability from Inpart to ensure that their payments were properly documented and remitted to MWSS. Their inaction demonstrated a lack of concern for the welfare of their constituents. Simply stated, they reneged on their sworn duty to be true to their constituents.

3. **ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL FROM SERVICE; CANNOT BE REDUCED BY THE COURT CONSIDERING THE PROVEN FACTS IN CASE AT BAR AND THE ABSENCE OF ANY MITIGATING CIRCUMSTANCES.—** When an individual is found guilty of dishonesty, the corresponding penalty is dismissal from employment or service. The underlying reason for this is because when a public official or government employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the

government. A finding of dishonesty necessarily carries with it the penalty of dismissal from the office he is holding or serving. x x x Moreover, considering the proven facts, the Court cannot reduce the penalty. Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, dated April 15, 2003. x x x In this case, however, the Court finds no mitigating circumstance at all. Thus, the Court has no disposition except to impose the penalty of dismissal.

4. ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; ENJOINS PUBLIC OFFICIALS AND EMPLOYEES TO DISCHARGE THEIR DUTIES WITH UTMOST RESPONSIBILITY, INTEGRITY AND COMPETENCE.— The Code of Conduct and Ethical Standards for Public Officials and Employees lays down the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. It is the bounden duty of public officials and government employees to remain true to the people at all times.

5. ID.; ID.; ID.; TO ALLOW RESPONDENTS TO REMAIN AS ACCOUNTABLE PUBLIC OFFICERS, DESPITE THEIR QUESTIONABLE ACTS, WOULD BE REWARDING THEM FOR THEIR MISDEED.— As public officials, Dolot and Tañada are expected to exhibit the highest degree of dedication in deference to their foremost duty of accountability to the people. No less than the Constitution sanctifies the principle that public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency. Doubtless, Dolot and Tañada committed infractions of such a grave nature justifying sanctions of commensurate degree. To allow them to remain as accountable public officers, despite their questionable acts, would be rewarding them for their misdeed. As to the other respondents, the Court affirms the dismissal of the complaint against them for lack of evidence proving, even in the slightest degree, that they had a direct hand in the mishandling of the tenement's *patubig* project. They merely

signed the resolution approving the MOA in their capacities as *barangay* kagawads, a laudable remedy to alleviate the plight of the members of the Punta Tenement.

6. REMEDIAL LAW; APPEALS; THE FINDINGS OF FACT OF THE OMBUDSMAN ARE CONCLUSIVE ON THE COURT.— The Court agrees with the findings of the Ombudsman and the CA that Dolot and Tañada were guilty of dishonesty. Well-settled is the rule that the findings of fact of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA. It is not the task of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result. Although there are exceptions to this rule, the Court finds none in this case.

7. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; SUBSTANTIAL EVIDENCE OF DISHONESTY ESTABLISHED BY THE CIRCUMSTANCES OF THE CASE.— In administrative cases, only substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Evidently, the circumstances of the case all point to the inexcusable misfeasance of Dolot and Tañada. Dishonesty is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.

APPEARANCES OF COUNSEL

Jaime N. Dela Cruz for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Bagong Kapisanan

[1] *Rollo,* pp. 7-21.

sa Punta Tenement, Inc., represented by Enrico Español *(Punta Tenement)*, which assails the August 1, 2007 Amended Decision[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 92506.

Petitioner Punta Tenement is an association formed by the residents of said tenement in Punta, Sta. Ana, Manila. The respondents, on the other hand, are *barangay* officials of Barangay 901 and Barangay 902, Zone 100, District IV of the City of Manila.

The Facts

The controversy stemmed from the February 6, 1999 Memorandum of Agreement[3] *(MOA)* signed by Barangay 901 and Barangay 902, represented by their respective chairmen, Azer E. Dolot *(Dolot)* and Silverio S. Tañada *(Tañada);* and Inpart Engineering *(Inpart)*, represented by respondent Antonio Benzon *(Benzon)*. Both *barangays* adopted and approved the said undertaking as reflected in Resolution No. 99-006.[4] The MOA was formulated to address the repair and rehabilitation of the water system of Punta Tenement and to manage the water distribution in the tenement as well as to handle the payment of the back accounts of its tenants to Metropolitan Waterworks and Sewerage System *(MWSS)*. Pertinent portions of the MOA are herein quoted:

xxx xxx xxx

1. The contractor shall distribute water f[ro]m MWC to the residents/tenants of the Tenement at the cost of ₱1.50/20 liter container which will be distributed as follows:

a. ₱ 0.25 will be remitted to the Barangay.

Note: Of the said amount of ₱ 0.25, 50% (or 0.125) shall be paid to the MWSS (Metropolitan Waterworks and Sewerage System), through the MWC, in partial payment of the back account of the tenement to the MWSS in the amount of ₱ 1,845,541.65 as of July

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[2] *Id.* at 22-28.

[3] Records, pp. 190-192.

[4] *Id.* at 204.

31, 1997. The other 50% (or ₱ 0.125) will be remitted directly to the Barangay for whatever project they intend to use the said fund.

b. ₱0.50 will go to the "*aguador*" who will be responsible in distributing water to every [tenant/resident]

c. ₱0.75 will be remitted by the Contractor in payment of the MWC water bill, electrical bill, salary of pump water, maintenance and return of investment of the Contractor.

x x x x x x x x x[5]

Punta Tenement filed a complaint for dishonesty and corruption before the Office of the Ombudsman *(Ombudsman)* against their *barangay* chairmen, Dolot and Tañada; and Benzon and other *barangay* kagawads namely: Ludivina F. Manlangit, Rodrigo T. Jacla, Pedro B. Escober, Wenceslao C. Asis, Eduardo E. Enrado, Lilia Marzo, Paz Ana M. Ariola, Antonio Benzon, Julie Garcera, Imelda Giganan, and Celeste Torres; and *barangay* treasurer Calos Diuco. The *barangay* officials were impleaded for their participation in the execution of the separate resolutions from their respective *barangays* and the subsequent Joint Resolution authorizing Dolot and Tañada to sign the MOA.

Punta Tenement alleged that the respondents conspired to defraud the tenants by not remitting to MWSS the agreed *barangay* share of ₱0.125 or 50% of ₱0.25 per 20 liter-container from the cost of water collection paid by the tenement residents which was intended to pay the back account with MWSS as instructed by the MOA. The MWSS back account was said to be around ₱2,214,792.87 covering the years 2000-2003.

On May 5, 2005, the Ombudsman rendered a decision[6] finding all the respondents guilty of dishonesty and imposing upon them the penalty of dismissal from the service. The dispositive portion of which reads:

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[5] *Id.* at 190.

[6] *Rollo,* pp. 29-49.

WHEREFORE, the foregoing premises considered, this Office hereby finds respondents AZER E. DOLOT and SILVERIO S. TAÑADA, Punong Barangay of Barangays 901 and 902, Zone 100, District IV, Manila, respectively, LUDIVINA F. MANLANGIT, RODRIGO T. JACLA, PEDRO B. ESCOBAR, WENCESLAO C. ASIS and EDUARDO E. ENRADO, AND LILIA MARZO, PAZ ANA M. ARIOLA, ANTONIO BENZON, JULIE GARCERA, IMELDA GIGANAN, CELESTE TORRES, all Barangay Kawagad, and CARLOS DIUCO, the Barangay Treasurer of Barangay 902 GUILTY of administrative offense of DISHONESTY with the penalty of DISMISSAL FROM THE SERVICE pursuant to the pertinent provisions of Republic Act No. 6770 otherwise known as the Ombudsman Act of 1989.[7]

The Ombudsman found that Inpart was already reneging on its MOA obligation as early as 1999, but the respondents failed to act on the problem. It opined that the respondents, at that point, should have noticed that the funds intended for the MWSS back account were not being remitted by Inpart and should have resolved it. They, however, chose to ignore it. It also found the authority of Dolot and Tañada to appoint *aguadores*, or those who would collect water payments, questionable.[8]

Aggrieved, the respondents filed their respective motions for reconsideration.[9] In its October 21, 2005 Order,[10] the Ombudsman denied the said motions. The decretal portion reads:

WHEREFORE, the Motions for Reconsideration are hereby DENIED.

The Hon. Jose L. Atienza, Jr. City Mayor of Manila City, is hereby directed to implement the decision of this office dated May 5, 2005, imposing the administrative penalty of dismissal from the service upon the respondents and submit proof of compliance thereof to this office.

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[7] *Id.* at 46-47.

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

[9] *Id.* at 50-74.

[10] *Id.* at 75-83.

SO ORDERED.[11]

Undaunted, the respondents appealed the case to the CA *via* a petition for review under Rule 43 of the Rules of Court.[12]

On October 20, 2006, the CA *reversed* the assailed ruling of the Ombudsman.[13] The *fallo* reads:

> WHEREFORE, premises considered, the instant PETITION FOR REVIEW is hereby GRANTED. Accordingly, the Decision dated 05 May 2005 and the Order dated 21 October 2005 both rendered by the Office of the Ombudsman which declared the petitioners guilty of dishonesty are hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[14]

Punta Tenement moved for the reconsideration of the said decision arguing that the special audit report of the Commission on Audit of the Manila City Auditor's Office clearly demonstrated the respondents' acts of corruption when they submitted improvised, not official, receipts of collections for the *Patubig* project. Likewise, the Ombudsman filed its Motion for Reconsideration asking for the re-evaluation of the CA 2006 decision.[15]

On August 1, 2007, the CA, in its Amended Decision, partly granted Punta Tenement's motion for reconsideration.[16] The CA ruled that the respondents were indeed remiss in their duties but the penalty of dismissal from service would be too harsh. It noted that "the collections intended for Barangays 901 and 902 were spent for noble Barangay projects. The special audit report submitted by the COA of the Manila City Auditor's Office

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[11] *Id.* at 82.

[12] *Id.* at 84-117.

[13] *Id.* at 150-161.

[14] *Id.* at 160-161.

[15] *Id.* at 162-186.

[16] *Id.* at 22-28.

covered these collections and not those being referred to for the payment of the water back accounts. This is entirely separate and independent proof and in no way connected with the issue of non-remittance of collections intended to pay the tenants' water back accounts with the Manila Water Company as assumed by the contractor – I[n]part Engineering."[17] The decretal portion of the Amended Decision reads:

> WHEREFORE, premises duly considered, the respondents' motions for reconsideration are perforce PARTLY GRANTED. Accordingly, the 20 October 2006 Decision of this Court in the above-entitled case is hereby set aside, and a new one entered finding only petitioners AZER E. D[O]LOT and SILVERIO S. TA[Ñ]ADA, in their capacity as Chairmen of Barangays 901 and 902 respectively, GUILTY OF DISHONESTY and are hereby ORDERED SUSPENDED FOR SIX (6) MONTHS without pay.
>
> The private respondent's motion to cite in contempt of court and its motion to render decision thereof are DISMISSED for lack of legal and factual basis.
>
> SO ORDERED.[18]

Hence, this petition.

Punta Tenement prays that the Court impose the penalty of dismissal on the respondents, who were found guilty of dishonesty, and find the exonerated respondents guilty as well. It, thus, anchors its position on the following

ARGUMENTS

I. The Court of Appeals gravely erred in imposing [a] very light penalty to a grave Administrative Offense of Dishonesty.

II. The Court of Appeals gravely erred in exonerating the rest of the respondents despite the fact that these respondents have direct and continuous participation in the anomalous transaction to date.[19]

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[17] *Id.* at 26-27.

[18] *Id.* at 27-28.

[19] *Id.* at 12-13; 334.

Punta Tenement insists that the CA was not correct in imposing a penalty of suspension despite its finding that Dolot and Tañada were guilty of dishonesty. It also faults the CA for absolving the other respondents despite their direct participation in the questionable *patubig* project.

The petition is partly meritorious.

Dishonesty is defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[20]

In the case at bench, the supposed acts of dishonesty by Dolot and Tañada were convincingly established. Based on the contract, both *barangays* were to receive ₱0.25/20 liter as their share in the water distribution arrangement. From the said amount, 50% was allocated for the payment of back account with MWSS, while the remaining 50% was earmarked to their other *barangay*-related projects. The provision was very clear and categorical. Inpart was never tasked to pay the *barangays*' back account as the money allocated for payment was agreed to be deducted from the *barangays*' share. Apart from the self-serving declaration of Dolot and Tañada that it was Inpart's obligation to remit payments to MWSS, nothing in the records would show that they had an arrangement to such effect.

Thus, the Court cannot accept their flimsy excuse that it was the contractor's job to remit payments to the MWSS. As public servants and representatives of their respective *barangays*, it behooves upon Dolot and Tañada to ensure that the main goals of the MOA, which were to distribute water to the tenants and pay the tenement's back account with the MWSS, are faithfully followed. Even assuming that Inpart was the one delegated to pay the *barangays*' back account, the respondents should have checked on the status of the payment. They failed to demand accountability from Inpart to ensure

[20] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

that their payments were properly documented and remitted to MWSS. Their inaction demonstrated a lack of concern for the welfare of their constituents. Simply stated, they reneged on their sworn duty to be true to their constituents.

Dolot and Tañada tried to convince the Court that they had no power over the situation. It was not the case, however. The MOA, in fact, provided that they had a say on who should be appointed as "*aguadors*" or collectors of the water distribution set-up:

> Duties and Responsibilities of the Owner:
>
> 1. The Owner shall recommend to the Contractor the person to be assigned as "aguador" on every floor.
>
> 2. That in case the "aguador" fails to remit to the Contractor the amount collected from the water distribution less his commission of ₱0.50/20 liter container, the Owner shall take the responsibility and the unremitted amount shall be deducted from the 25% or ₱0.25/20 liter container intended for the Owner.
>
> 3. The Owner shall provide security for the entire water system operation.[21]

These two respondents cannot feign ignorance of the fact that their chosen people acted as collectors for the water distribution set-up and had the first access to the money collected before the money was supposed to be turned over to Inpart less their commission/share. They could have easily effected the proper recording of payments and allocation of shares, and secured the money for the MWSS repayment. These nonfeasance seriously tainted their integrity as public servants.

Furthermore, as observed by the Ombudsman, Inpart had started violating the MOA in 1999, but the two respondents failed to investigate them. They tolerated the fact that no proper receipts were being issued to the tenants for the proper recording of their payments. They even refused to cooperate with the Commission of Audit when the latter asked them for documents

[21] Records, p. 191.

regarding the *patubig* project.[22] They misled the tenants into believing that the water collections were being properly accounted for and were being remitted to pay the tenement's back account with MWSS.

The Court agrees with the findings of the Ombudsman and the CA that Dolot and Tañada were guilty of dishonesty. Well-settled is the rule that the findings of fact of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA.[23] It is not the task of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.[24] Although there are exceptions[25] to this rule, the Court finds none in this case.

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[22] *Rollo*, pp. 224-225.

[23] *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 434.

[24] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

[25] *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*, G.R. No. 184850, October 20, 2010, 634 SCRA 363, 375, citing *New City Builders, Inc. v. NLRC*, G.R. No. 149281, June 15, 2005, 460 SCRA 220, 227. The following are the exceptions, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the findings went beyond the issues of the case or are contrary to the admissions of the parties to the case; (7) when the findings are contrary to those of the trial court or the administrative agency; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the pleadings are not disputed; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when certain relevant facts not disputed by the parties were manifestly overlooked, which, if properly considered, would justify a different conclusion.

In administrative cases, only substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Evidently, the circumstances of the case all point to the inexcusable misfeasance of Dolot and Tañada. Dishonesty is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.[26]

In its Amended Decision, the CA found Dolot and Tañada guilty of dishonesty but considered the penalty of dismissal from service too harsh, hence, it imposed a penalty of six (6) months suspension without pay instead.

Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service classifies dishonesty as a grave offense punishable with dismissal from the service even for the first offense. Moreover, dismissal from service carries administrative disabilities specified under Section 54 of the Uniform Rules such as cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

When an individual is found guilty of dishonesty, the corresponding penalty is dismissal from employment or service. The underlying reason for this is because when a public official or government employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[27]A finding of dishonesty necessarily carries with it the penalty of dismissal from the office he is holding or serving. In *Remolona v. Civil Service Commission*,[28] the Court explained the rationale for the imposition of the penalty of dismissal from service:

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[26] *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 12 (2002).

[27] *Bautista v. Negado*, 108 Phil. 283, 289 (1960).

[28] 414 Phil. 590, 600-601 (2001).

It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

Moreover, considering the proven facts, the Court cannot reduce the penalty. Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, dated April 15, 2003, reads:

Section 53. *Extenuating, Mitigating, Aggravating or Alternative Circumstances*. – In the determination of the penalties imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a. Physical illness
b. Good faith
c. Taking undue advantage of official position
d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building

i. Employment of fraudulent means to commit or conceal the offense
j. Length of service in the government
k. Education, or
l. Other analogous circumstances

In the case of *Civil Service Commission v. Delia Cortez*,[29] it was written:

Under the Civil Service Law and its implementing rules, **dishonesty**, grave misconduct and conduct grossly prejudicial to the best interest of the service are grave offenses punishable by dismissal from the service. Thus, as provided by law, **there is no other penalty that should be imposed on respondent than the penalty of dismissal**.

Of course, **the rules allow the consideration of mitigating and aggravating circumstances** and provide for the manner of imposition of the proper penalty: Section 54 of the Uniform Rules on Administrative Cases in the Civil Service provides:

Section 54. *Manner of imposition.* When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstance are present.

b. The medium of the penalty shall be imposed where no mitigating and no aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and the paragraph (c) shall be applied when there are more aggravating circumstances.

Jurisprudence is abound with cases applying the above rule in the imposition of the proper penalty and even in cases where the penalty prescribed by law, on commission of the first offense, is that

[29] G.R. No. 155732, June 3, 2004, 430 SCRA 593, 602-603.

of **dismissal**, which is, as argued by petitioner, **an indivisible penalty, the presence of mitigating or aggravating circumstances may still be taken into consideration** by us in the imposition of the proper penalty. Thus, in at least three cases, taking into consideration the presence of mitigating circumstances, we lowered the penalty of dismissal on respondent to that of forced resignation or suspension for 6 months and 1 day to 1 year without benefits. [Emphases supplied]

In this case, however, the Court finds no mitigating circumstance at all. Thus, the Court has no disposition except to impose the penalty of dismissal.

The Code of Conduct and Ethical Standards for Public Officials and Employees[30] lays down the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence. Section 4 of the Code lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. It is the bounden duty of public officials and government employees to remain true to the people at all times.[31]

As public officials, Dolot and Tañada are expected to exhibit the highest degree of dedication in deference to their foremost duty of accountability to the people.[32] No less than the Constitution sanctifies the principle that public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.[33]

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[30] Republic Act No. 6713.

[31] First sentence of Section 4(c), R.A. No. 6713.

[32] *Castillo v. Buencillo*, 407 Phil. 143, 153 (2001), citing *Gacho v. Fuentes, Jr.*, 353 Phil. 665, 674 (1998).

[33] 1987 CONSTITUTION, Art. XI, Sec. 1.

Doubtless, Dolot and Tañada committed infractions of such a grave nature justifying sanctions of commensurate degree. To allow them to remain as accountable public officers, despite their questionable acts, would be rewarding them for their misdeed.

As to the other respondents, the Court affirms the dismissal of the complaint against them for lack of evidence proving, even in the slightest degree, that they had a direct hand in the mishandling of the tenement's *patubig* project. They merely signed the resolution approving the MOA in their capacities as *barangay* kagawads, a laudable remedy to alleviate the plight of the members of the Punta Tenement.

WHEREFORE, the petition is **PARTLY GRANTED**. The August 1, 2007 Amended Decision of the Court of Appeals in CA-G.R. SP No. 92506, is hereby **MODIFIED**. Respondents Azer E. Dolot and Silverio S. Tañada are found **GUILTY** of **DISHONESTY** and are hereby ordered **DISMISSED** from the service with forfeiture of all benefits, except accrued leave credits, and perpetual disqualification to hold public office.

SO ORDERED.

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

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[*] Designated Additional Member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated July 1, 2009.

[**] Designated Additional Member, per Special Order No. 1299 dated August 28, 2012.

SECOND DIVISION

[G.R. No. 184606. September 5, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CALEXTO DUQUE FUNDALES, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF; PRESENT IN CASE AT BAR.— "Conviction is proper in prosecutions involving illegal sale of [dangerous] drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto." This Court is convinced that the prosecution sufficiently discharged the burden of establishing the elements of illegal sale of dangerous drugs and in proving the guilt of the appellant beyond reasonable doubt. The identity of the buyer and the seller were both established by the prosecution, appellant being the seller and PO1 Soquiña as the poseur-buyer. The object of the transaction was the five sachets of Methylamphetamine Hydrochloride or *shabu* and the consideration was the ₱500.00 marked money. Both such object and consideration have also been sufficiently established by testimonial and documentary evidence presented by the prosecution. As to the delivery of the thing sold and the payment therefor, PO1 Soquiña caught appellant *in flagrante delicto* selling and delivering the prohibited substance during a buy-bust operation. He also personally handed to appellant the marked money as payment for the same. Clearly, the above-mentioned elements are present in this case.

2. ID.; ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST IN ILLEGAL DRUGS CASES IS AN INSUFFICIENT CAUSE FOR ACQUITTAL; WHAT IS IMPORTANT IS THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS ARE PROPERLY PRESERVED.— We have already ruled in a number of cases that non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal. x x x

Thus, it is of no moment that Forensic Chemical Officer Mangalip was not presented as witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution. "It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses." What is important is that the integrity and evidentiary value of the seized drugs are properly preserved as it had been so in this case.

3. **ID.; ID.; ID.; THE ALLEGED IMPROPER HANDLING OF THE SEIZED ITEMS SHOULD HAVE BEEN RAISED DURING THE TRIAL.—** The provisions of RA No. 9165 cited by the appellant are meant to safeguard the accused in drugs cases against abuses of law enforcement officers. They provide for the proper handling of confiscated dangerous drugs in order to prevent malicious imputations of guilt upon an unsuspecting accused. x x x. The appellant here did not question during trial the alleged improper handling of the items seized from him, it being the proper time for him to raise such objections. We cannot thus accept such belated argument of the appellant especially so when the integrity of the items seized from him was shown to have been preserved. Evidence on record shows that the seized drugs were inventoried. "Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant."

4. **ID.; ID.; ID.; NON-PARTICIPATION OF THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) IN THE OPERATION DID NOT RENDER THE ARREST ILLEGAL AND THE EVIDENCE OBTAINED THEREIN INADMISSIBLE.—** Section 86 of RA No. 9165 deals with inter-agency relations of the PNP and other law enforcement agencies with the PDEA. It is an administrative provision designating the PDEA as the lead agency in dangerous drugs cases. We have already ruled that nothing in RA No. 9165 suggests that it is the intention of the legislature to make an arrest in drugs cases illegal if made without the participation of the PDEA. In the implementing rules and regulations of RA No. 9165, Section 86(a) clearly states: (a) Relationship/Coordination between the PDEA and Other Agencies. – **The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA xxx** Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law

enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. Suffice it to state that in this case, the danger of abuse that the provision seeks to prevent is not present. We therefore see no reason why the non-participation of the PDEA would render the arrest illegal and the evidence obtained therein inadmissible considering that the integrity and evidentiary value of the seized prohibited substances and dangerous drugs have been properly preserved.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE POSITIVE AND CATEGORICAL TESTIMONIES OF THE ARRESTING OFFICERS WHICH CARRY WITH IT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS CANNOT PREVAIL OVER THE MERE UNSUBSTANTIATED DENIAL OF THE APPELLANT.— It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. "Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary." In this case, PO1 Soquiña narrated in a straightforward manner the circumstances leading to the sale of *shabu*. He positively and categorically identified appellant as the seller of the drugs. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. Appellant himself testified that he never had any personal encounter with the police prior to his arrest, thus negating any ill-motive on the part of the police officers. The appellant, on the other hand, offers mere denial as his defense. He claims that he was merely fixing a washing machine at the time of the arrest and that the alleged buy-bust operation was fictitious. However, other than his own self-serving testimony, appellant has not offered any evidence to support this claim. We have held that "[a] bare denial is an inherently weak defense x x x." Appellant's denial is unsubstantiated by any credible and convincing evidence. Between the positive and categorical testimonies of the arresting officers on one hand, and the unsubstantiated denial of the appellant on the other, we are inclined to uphold the former.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the April 18, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02274, which affirmed the March 18, 2006 Decision[2] of the Regional Trial Court (RTC) of Parañaque City, Branch 259, in Criminal Case No. 03-1425. Said RTC Decision declared appellant Calexto Duque Fundales, Jr. (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Factual Antecedents

On December 8, 2003, appellant was charged with violations of Section 5 (illegal sale of dangerous drugs), Section 11 (illegal possession of dangerous drugs), and Section 12 in relation to Section 14 (illegal possession of drug paraphernalia) of Article II, RA No. 9165. The Informations read as follows:

CRIMINAL CASE NO. 03-1425
(For violation of Section 5, Article II, RA No. 9165)

That on or about the 2nd day of December 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully[,] and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute,

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[1] CA *rollo*, pp. 99-107; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Mario L. Guariña III and Romeo F. Barza.

[2] Records, pp. 286-291; penned by Judge Zosimo V. Escano.

dispatch in transit or transport Methylamphetamine Hydrochloride (*shabu*) in the total weight 0.10 gram, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

CRIMINAL CASE NO. 03-1426
(For violation of Section 11, Article II, RA No. 9165)

That on or about the 2nd day of Dec. 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess did then and there willfully, unlawfully[,] and feloniously have in his possession and under his control and custody Methylamphetamine Hydrochloride (*shabu*) weighing 0.02 gram, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

In the charge for illegal possession of drug paraphernalia, appellant was charged together with Ricardo Duque Fundales (Ricardo), Chulo Duque Fundales (Chulo), Jerico Cabangon Hugo (Jerico), and Joel Manuel Gomez (Joel). The Information reads:

CRIMINAL CASE NO. 03-1427

(For violation of Section 12 in relation to Section 14, Article II, RA No. 9165)

That on or about the 2nd day of Dec. 2003, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, being in the proximate company of five (5) persons and having gathered together, not being lawfully authorized to possess and/or use any dangerous drug, did then and there willfully, unlawfully, and feloniously possess and have under their control any equipment, instrument, apparatus and other paraphernalia for or intended for smoking, consuming, administering, injecting or introducing any dangerous drug into the body, in violation of the above-cited law.

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[3] *Id.* at 1.

[4] *Id.* at 9.

CONTRARY TO LAW.[5]

During arraignment, the appellant and his co-accused pleaded not guilty.[6] Thereafter, the parties agreed to terminate the pre-trial[7] and set the case for trial on the merits.

Version of the Prosecution

On the evening of December 2, 2003, the Chief of the Intelligence Unit of the Station Anti-Illegal Drug Special Task Force of Parañaque City Police, Police Superintendent Alfredo Valdez (P/Supt. Valdez), received an information from a confidential informant about the illegal drug trade operations conducted by the Fundales brothers. P/Supt. Valdez thus formed a buy-bust team composed of PO1 Ariel Ilagan, PO1 Cesarie Soquiña (PO1 Soquiña), PO1 Emmanuel Salvaloza, PO3 Regalado Adriatico and CE Ronald Tangcoy. The group then proceeded to 008 Jordan Street, Sitio Nazareth, *Barangay* San Isidro, Parañaque City for the buy-bust operation.

The group arrived in the vicinity of the target area at around 9:00 p.m.[8] PO1 Soquiña, who was designated as the poseur-buyer, and the informant proceeded to the house of the appellant.[9] The team remained inside their vehicles about 20 meters away from the target area. The informant then introduced PO1 Soquiña to the appellant as the person interested in buying *shabu* worth ₱500.00.[10] After PO1 Soquiña handed the ₱500.00 marked money to the appellant,[11] the latter then went inside his house and when he reappeared, he handed to PO1 Soquiña five plastic

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[5] *Id.* at 10.

[6] *Id.* at 13.

[7] *Id.* at 30.

[8] TSN, May 23, 2005, p. 15.

[9] *Id.* at 17.

[10] *Id.* at 19.

[11] *Id.* at 20.

sachets containing white crystalline substance.[12] PO1 Soquiña then lit a cigarette which was the pre-arranged signal to inform the rest of the team that the buy-bust operation had been consummated.[13] Hence, the team of back-up police officers proceeded to appellant's house to apprehend him.[14] Inside the house, the police officers saw Jerico, Ricardo, Chulo, and Joel who appeared to be engaged in a pot session hence they were also arrested along with the appellant.[15]

The five sachets of white crystalline substance sold by appellant, together with one sachet obtained from the group and the drug paraphernalia, were immediately marked and inventoried. The same were then submitted to the crime laboratory of the Philippine National Police (PNP) for examination.[16] After conducting a forensic examination, P/Insp. Richard Allan B. Mangalip (Mangalip), Chief of the Physical Science Section and Forensic Chemical Officer of the PNP Crime Laboratory, issued Physical Science Report No. D-1402-03S[17] confirming that the specimen submitted yielded positive for the presence of Methylamphetamine Hydrochloride.

Version of the Defense

On December 2, 2003, appellant was at home with Ricardo, Chulo, Joel, and Jerico repairing a washing machine.[18] At around 4:30 p.m., eight persons suddenly entered his house without warning and permission.[19] Aside from their weapons and handcuffs, there was no indication that the men were police

[12] *Id.* at 21-22.

[13] *Id.* at 22.

[14] *Id.* at 23.

[15] *Id.* at 24.

[16] Records, p. 6.

[17] *Id*.

[18] *Id.* at 214; TSN, June 21, 2005, p. 5.

[19] *Id.* at 216-217; *id.* at 7-8.

officers since they were all in civilian clothing.[20] Once inside, the men shouted, "*Walang gagalaw, sumama kayo sa amin.*"

[21] They were then brought to the Coastal Police Station and detained there for two days.[22]

Ruling of the Regional Trial Court

On March 18, 2006, the RTC rendered its Decision convicting appellant in Criminal Case No. 03-1425 for illegal sale of *shabu* and dismissing Criminal Case No. 03-1426 for illegal possession of dangerous drugs and Criminal Case No. 03-1427 for illegal possession of drug paraphernalia, for insufficiency of evidence. The dispositive portion of the Decision reads:

> **WHEREFORE**, **PREMISES CONSIDERED**, finding **Calexto Duque Fundales, Jr[.] GUILTY** beyond reasonable doubt for Violation of Section 5 Article II RA 9165 he is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00. The case against him under Crim. Case No. 03-1426 for alleged [violation] of Section 11 Art. II RA 9165 is ordered **DISMISSED** being considered absorbed in the commission of Violation of Section 5 under Crim. Case No. 03-1425. The case for alleged Violation of Section 12 in relation to Section 14 Art. II RA 9165 against accused **Calexto Duque Fundales, Jr[.], Ricardo Duque Fundales, Chulo Duque Fundales, Jerico Cabangon Hugo and Joel Manuel Gomez** is also ordered **DISMISSED** for insufficiency of evidence.
>
> The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of accused **Calexto Duque Fundales, Jr[.]** to the New Bilibid Prisons, Muntinlupa City and to forward the specimen subject of this case to the Philippine Drug Enforcement Agency for proper disposition.
>
> The Jail Warden of this jurisdiction is hereby ordered to immediately release **JERICO CABANGON HUGO** from custody unless there be some other legal reason to warrant his further detention.

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[20] *Id.* at 216; *id.* at 7.

[21] *Id.* at 218; *id* at 9.

[22] *Id.* at 219-222; *id.* at 10-11.

SO ORDERED.[23]

In finding appellant guilty of illegal sale of *shabu*, the RTC gave due consideration to the testimonies of the law enforcement officers.[24] It held that "no ill-motive or [wrongdoing] could be ascribed to the herein police officers with respect to the buy-bust operation x x x."[25] It gave full credit and weight to the testimony of PO1 Soquiña who positively identified the appellant as the person from whom he bought five plastic sachets of *shabu* during the buy-bust operation.

Ruling of the Court of Appeals

On appeal, the CA affirmed the trial court's Decision disposing as follows:

WHEREFORE, the assailed *Decision* dated 18 March 2006 of the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case No. 03-1425 finding appellant Calexto Fundales, Jr. guilty beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 is hereby AFFIRMED.

SO ORDERED.[26]

Not satisfied with the Decision of the CA, the appellant is now before this Court adopting the same issues he raised in the appellate court, *viz*:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND DISREGARDING THE DEFENSE OF THE ACCUSED-APPELLANT.

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[23] Records, pp. 290-291. Emphases in the original.

[24] *Id.* at 290.

[25] *Id*.

[26] CA *rollo*, p. 107.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THE EXISTENCE OF THE BUY-BUST OPERATION.

IV

THE TRIAL COURT GRAVELY ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY IN FAVOR OF THE ARRESTING OFFICERS.[27]

Issue

The main issue for resolution is whether the appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165.

Our Ruling

The appeal lacks merit.

"Conviction is proper in prosecutions involving illegal sale of [dangerous] drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto."[28]

This Court is convinced that the prosecution sufficiently discharged the burden of establishing the elements of illegal sale of dangerous drugs and in proving the guilt of the appellant beyond reasonable doubt.

The identity of the buyer and the seller were both established by the prosecution, appellant being the seller and PO1 Soquiña as the poseur-buyer. The object of the transaction was the five sachets of Methylamphetamine Hydrochloride or *shabu* and the consideration was the ₱500.00 marked money. Both such object and consideration have also been sufficiently

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[27] *Id.* at 30.

[28] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 339.

established by testimonial and documentary evidence presented by the prosecution. As to the delivery of the thing sold and the payment therefor, PO1 Soquiña caught appellant *in flagrante delicto* selling and delivering the prohibited substance during a buy-bust operation. He also personally handed to appellant the marked money as payment for the same. Clearly, the above-mentioned elements are present in this case.

Appellant insists that the prosecution failed to establish his guilt beyond reasonable doubt. He argues that the prosecution's failure to present the forensic chemist during trial was fatal to its cause. According to the appellant, the laboratory report has no probative value since the forensic chemist did not attest to the report's authenticity.[29] In view of this, he points out that the prosecution failed to establish the *corpus delicti.*

This Court is not persuaded. We have already ruled in a number of cases that non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal.[30]

In *People v. Quebral*,[31] we held thus:

> The accused-appellants also point out that, since the chemist who examined the seized substance did not testify in court, the prosecution was unable to establish the indispensable element of *corpus delicti*. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.
>
> Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official

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[29] CA *rollo*, pp. 36-37.

[30] *People v. Sultan*, G.R. No. 187737, July 5, 2010, 623 SCRA 542, 556.

[31] G.R. No. 185379, November 27, 2009, 606 SCRA 247, 255.

records made in the performance of official duty are *prima facie* evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. x x x (Citations omitted.)

Thus, it is of no moment that Forensic Chemical Officer Mangalip was not presented as witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution.[32] "It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses."[33] What is important is that the integrity and evidentiary value of the seized drugs are properly preserved as it had been so in this case.

Besides, it has not escaped our attention that during the proceedings before the trial court, both the prosecution and the defense agreed to dispense with the testimony of the forensic chemist. During the trial held on August 19, 2004, the parties stipulated as regards the probative value of the documents and physical evidence marked as Exhibits "A" to "C".[34] Exhibit "A" pertained to the letter request for laboratory examination of the specimens. Exhibit "B" was the specimen subject to laboratory examination; while Exhibit "C" was the Physical Science Report No. D-1402-03S submitted by the forensic chemist. The parties likewise stipulated that it was Forensic Chemical Officer Mangalip who conducted a qualitative examination on the specimens.

Appellant next claims that the pieces of evidence adduced by the prosecution were obtained in violation of Sections 21 and 86(a) of RA No. 9165 regarding the proper custody and

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[32] *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235.

[33] *People v. Rivera*, G.R. No. 182347, October, 17, 2008, 569 SCRA 879, 893.

[34] Records, p. 85.

disposition of seized narcotic substances and dangerous drugs. He also avers that the prosecution failed to prove that the police officers coordinated and reported the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).

The provisions of RA No. 9165 cited by the appellant are meant to safeguard the accused in drugs cases against abuses of law enforcement officers. They provide for the proper handling of confiscated dangerous drugs in order to prevent malicious imputations of guilt upon an unsuspecting accused.

However, as correctly ruled by the CA, this Court has already held in *People v. Sta. Maria*[35] that:

> [T]he failure of the law enforcers to comply strictly with Section 21 was not fatal. It did not render [the] appellant's arrest illegal nor the evidence adduced against him inadmissible.
>
> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

As in the above-quoted case, the appellant here did not question during trial the alleged improper handling of the items seized from him, it being the proper time for him to raise such objections. We cannot thus accept such belated argument of the appellant especially so when the integrity of the items seized from him

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[35] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

was shown to have been preserved. Evidence on record shows that the seized drugs were inventoried. "Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant."[36]

Appellant further claims that the police officers failed to coordinate and report the buy-bust operation with the PDEA. To appellant, this tainted the presumption of regularity in the performance of duty of the police officers. He likewise posits that the arresting officers had insufficient authority to conduct the said operation.

Section 86[37] of RA No. 9165 deals with inter-agency relations of the PNP and other law enforcement agencies with the PDEA.

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[36] *People v. Sultan, supra* note 30 at 552.

[37] **Section 86.** *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

It is an administrative provision designating the PDEA as the lead agency in dangerous drugs cases. We have already ruled that nothing in RA No. 9165 suggests that it is the intention of the legislature to make an arrest in drugs cases illegal if made without the participation of the PDEA.[38] In the implementing rules and regulations of RA No. 9165, Section 86(a) clearly states:

> (a) Relationship/Coordination between the PDEA and Other Agencies. – **The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA xxx** Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis supplied)

Suffice it to state that in this case, the danger of abuse that the provision seeks to prevent is not present. We therefore see no reason why the non-participation of the PDEA would render the arrest illegal and the evidence obtained therein inadmissible considering that the integrity and evidentiary value of the seized prohibited substances and dangerous drugs have been properly preserved.

Appellant further asserts that no buy-bust operation took place contrary to the testimony of the arresting officers. He claims that on the day of the alleged buy-bust operation, he was at home repairing a washing machine.

Appellant's contention does not deserve serious consideration. It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. "Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary."[39] In this case, PO1 Soquiña narrated in a

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[38] *People v. Sta. Maria, supra* note 35 at 634.

[39] *People v. Padua, supra* note 32 at 238.

straightforward manner the circumstances leading to the sale of *shabu*. He positively and categorically identified appellant as the seller of the drugs. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. Appellant himself testified that he never had any personal encounter with the police prior to his arrest,[40] thus negating any ill-motive on the part of the police officers.

The appellant, on the other hand, offers mere denial as his defense. He claims that he was merely fixing a washing machine at the time of the arrest and that the alleged buy-bust operation was fictitious. However, other than his own self-serving testimony, appellant has not offered any evidence to support this claim. We have held that "[a] bare denial is an inherently weak defense x x x."[41] Appellant's denial is unsubstantiated by any credible and convincing evidence. Between the positive and categorical testimonies of the arresting officers on one hand, and the unsubstantiated denial of the appellant on the other, we are inclined to uphold the former.

All told, this Court thus sustains the RTC's conviction of the appellant for violation of Section 5, Article II of RA No. 9165, as affirmed by the CA.

WHEREFORE, the appeal is **DENIED**. The April 18, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02274 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[40] Records, p. 226; TSN, June 21, 2005, p. 17.

[41] *People v. Quigod*, G.R. No. 186419, April 23, 2010, 619 SCRA 407, 424.

SECOND DIVISION

[G.R. No. 188979. September 5, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHRISTOPHER PAREJA *Y* VELASCO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; DEFINED.—** By definition, rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented. "Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman." Carnal knowledge of the victim by the accused must be proven beyond reasonable doubt, considering that it is the central element in the crime of rape

2. **ID.; ID.; CONSUMMATED BY THE SLIGHTEST PENILE PENETRATION OF THE *LABIA MAJORA* OR *PUDENDUM* OF THE FEMALE ORGAN; ABSENT ANY SHOWING OF ANY PENETRATION, THERE CAN BE NO CONSUMMATED RAPE.—** Simply put, "rape is consummated by the slightest penile penetration of the *labia majora* or *pudendum* of the female organ." Without any showing of such penetration, there can be no consummated rape; at most, it can only be attempted rape [or] acts of lasciviousness." As earlier discussed, the prosecution failed to present sufficient and convincing evidence to establish the required penile penetration. AAA's testimony did not establish that the appellant's penis touched the *labias* or slid into her private part. Aside from AAA's testimony, no other evidence on record, such as a medico-legal report, could confirm whether there indeed had been penetration, however slight, of the victim's *labias*. In the absence of testimonial or physical evidence to establish penile penetration, the appellant cannot be convicted of consummated rape.

3. **ID.; ID.; ATTEMPTED RAPE; COMMITTED IN CASE AT BAR.—** Article 6 of the Revised Penal Code, as amended, states that there is an attempt when the offender commenced the commission of the crime directly by overt acts but does not

perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. In *People v. Publico,* we ruled that **when the "touching" of the vagina by the penis is coupled with the intent to penetrate, attempted rape is committed**; otherwise, the crime committed is merely acts of lasciviousness. In the present case, the appellant commenced the commission of rape by the following overt acts: kissing AAA's nape and neck; undressing her; removing his clothes and briefs; lying on top of her; holding her hands and parting her legs; and trying to insert his penis into her vagina. The appellant, however, failed to perform all the acts of execution which should produce the crime of rape by reason of a cause other than his own spontaneous desistance, *i.e.*, the victim's loud cries and resistance. The totality of the appellant's acts demonstrated the unmistakable objective to insert his penis into the victim's private parts.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

This is an appeal from the June 15, 2009 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 02759. The CA affirmed the February 22, 2007 decision[2] of the Regional Trial Court (*RTC*), Branch 209, Mandaluyong City, finding appellant Christopher Pareja guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

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[1] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Vicente S.E. Veloso and Associate Justice Ricardo R. Rosario; *rollo*, pp. 2-17.

[2] CA *rollo*, pp. 34-42.

THE CASE

The prosecution charged the appellant before the RTC with the crime of rape under an Amended Information that reads:

> That on or about the 16th day of June 2003, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of [AAA],[3] 13 years of age, sister of the common law spouse of accused, against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the victim thereby prejudicing her normal development as a child.[4]

The evidence for the prosecution disclosed that at around 3:30 a.m. of June 16, 2003, AAA was sleeping beside her two-year old nephew, BBB, on the floor of her sister's room, when the appellant hugged her and kissed her nape and neck.[5] AAA cried, but the appellant covered her and BBB with a blanket.[6] The appellant removed AAA's clothes, short pants, and underwear; he then took off his short pants and briefs.[7] The appellant went on top of AAA, and held her hands. AAA resisted, but the appellant parted her legs using his own legs, and then tried to insert his penis into her vagina.[8] The appellant stopped when AAA's cry got louder; AAA kicked the appellant's upper thigh as the latter was about to stand up. The appellant put his clothes back on, and threatened to kill AAA if she disclosed the incident to anyone. Immediately

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[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] CA *rollo*, p. 87.

[5] Records, pp. 109-110, 115-117.

[6] *Id.* at 118-120.

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

[8] *Id.* at 126-128.

after, the appellant left the room.[9] AAA covered herself with a blanket and cried.[10]

At around 6:00 a.m. of the same day, AAA's brother, CCC, went to her room and asked her why she was lying on the floor and crying. AAA did not answer, and instead hurled invectives at CCC.[11] AAA went to the house of her other brother, but the latter was not in his house. AAA proceeded to the house of her older sister, DDD, at Block 19, Welfareville Compound, and narrated to her what had happened. Afterwards, AAA and her two (2) siblings went to the Women and Children's Desk of the Mandaluyong City Police Station and reported the incident.[12]

For his defense, the appellant declared on the witness stand that he hauled "filling materials" at his house, located at Block 38, Fabella Compound, on the evening of June 15, 2003. At around 10:00 p.m., he went to his room and slept.[13] On the next day, the appellant, accompanied by his mother and brother-in-law, went to the municipal hall to ask for financial assistance for his wife who was confined in the hospital. Upon arrival at the hospital, the doctor told him that his wife needed blood. Immediately after, the appellant and his companions went to Pasig City to find blood donors.[14]

On the evening of June 16, 2003, and while the appellant was folding the clothes of his son, two policemen entered his house and informed him that a complaint for attempted rape had been filed against him. The police brought him to the Criminal Investigation and Detection Group, forced him to admit the

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[9] *Id.* at 130-132.

[10] *Id.* at 133.

[11] *Id.* at 135-137.

[12] *Id.* at 140-147.

[13] Records, pp. 300-302.

[14] *Id.* at 307-310.

crime, mauled him, and then placed him in a detention cell.[15] The appellant added that he filed a complaint before the Office of the Ombudsman against the police officers who beat him up.[16]

The RTC convicted the appellant of rape in its decision of February 22, 2007, under the following terms:

> WHEREFORE, the Court finds accused CHRISTOPHER PAREJA ***y*** VELASCO GUILTY beyond reasonable doubt of the crime of RAPE and hereby sentences him as he is hereby sentenced to suffer the penalty of *reclusion perpetua*; and to indemnify the victim, [AAA,] the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity.[17]

The CA, in its decision dated June 15, 2009, affirmed the RTC decision. It explained that a slight penetration of the *labia* by the male organ is sufficient to constitute rape, and held that a slight penetration took place when the appellant's penis touched AAA's vagina as he was trying to insert it.

The appellate court further ruled that the presence of people in the other room did not make it impossible for the appellant to have raped the victim, because lust is no respecter of time and place. It also held that the victim's lack of tenacity in resisting the appellant's sexual aggression did not amount to consent or voluntary submission to the criminal act.[18]

In his brief,[19] the appellant argued that the lower courts erred in convicting him for the crime of rape, as the prosecution failed to prove even the slightest penetration of his penis into the victim's vagina. He added that the victim's testimony was incredible and contrary to human experience.

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[15] *Id.* at 311-315.

[16] *Id.* at 316.

[17] *Supra* note 2, at 41.

[18] *Supra* note 1, at 9-14.

[19] CA *rollo*, pp. 72-85.

THE COURT'S RULING

We find that the prosecution failed to prove the appellant's guilt beyond reasonable doubt of the crime of consummated rape. We convict him instead of **attempted rape**, as the evidence on record shows the presence of all the elements of this crime.

Carnal Knowledge Not Proven With Moral Certainty

By definition, rape is committed by having carnal knowledge of a woman with the use of force, threat or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age or is demented.[20] "Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman."[21] Carnal knowledge of the victim by the accused must be proven beyond reasonable doubt, considering that it is the central element in the crime of rape.[22]

In her testimony of February 9, 2004, AAA recounted the alleged rape, as follows:

FISCAL TRONCO:

Q: You said that the three of you then was (*sic*) sleeping on the floor, what is it that happened on that particular day and time that is unusual?
A: It was like somebody was embracing me or hugging me, ma'am.

Q: When you felt that some (sic) is embracing and hugging you, what did you [do]?
A: I didn't mind it because I thought that the person beside me just moved and when he made the movement, it's like that I was embraced, ma'am.

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[20] Article 266-A(1) of the Revised Penal Code, as amended.

[21] See *People v. Bon*, 444 Phil. 571, 579 (2003).

[22] See *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 493.

Q: Whom are you referring to?
A: My brother-in-law, ma'am.

Q: And after that, what else happened, if any, [AAA]?
A: Before that happened, my nephew cried and so I picked him up and put him on my chest and after a while[,] I slept again and brought him down again and then "*dumapa po ako*" and I felt that somebody was kissing my nape, ma'am.

Q: Were you able to see who was that somebody kissing your nape?
A: When I tried to evade, I looked on my side where the room was not that dark that I could not see the person and so, I saw that it was my brother-in-law, ma'am.

xxx xxx xxx

Q: When you saw that it was your brother-in-law kissing your nape while you were on a prone position, what else happened, if any?
A: He kissed my neck, ma'am.

Q: What was your position while he was kissing your neck?
A: I was on my side at that time and I was also crying, ma'am.

xxx xxx xxx

Q: Why were you crying at that time while he was kissing your neck?
A: I was afraid of what will happen next, ma'am.

Q: Aside from that incident that he was kissing your neck, was there any other previous incident that happened?
A: Yes, ma'am.

xxx xxx xxx

Q: What incident was that?
A: At that time, my brother-in-law covered me and my nephew with a blanket and he tried to get my clothes off, ma'am.

Q: When did this happen, [AAA]?
A: Also on said date, ma'am.

Q: You said that he covered you and your nephew with a blanket and then taking (sic) off your clothes?
A: Yes, ma'am.

xxx xxx xxx

Q: Was he able to take off your clothes?
A: Yes, ma'am.

Q: What particular clothing was he able to take off?
A: My short pants and underwear, ma'am.

Q: While he was taking off your short pants and your underwear, what did you do, if any?
A: I tried to fight him off, ma'am.

xxx xxx xxx

Q: You said that he was trying to take off your clothes and undergarments, what was your position at that time?
A: I was lying down, ma'am.

Q: What about him?
A: He was on my lap, ma'am.

xxx xxx xxx

Q: You said that you saw him take off his short pants?
A: Yes, ma'am.

xxx xxx xxx

Q: Did he also take off his brief?
A: Yes, ma'am.

xxx xxx xxx

Q: And after that what happened, [AAA]?
A: After removing his undergarments, he suddenly brought his body on top of me and he held my hands. At that time I was crying and still resisting and then he was trying to get

my legs apart. I was still resisting at that time, and at some point in time I felt weak and he was able to part my legs, ma'am.

Q: Could you please tell us how did (sic) he able to part your legs?
A: He did that with his legs while he was holding my hands, ma'am.

Q: And when he was able to part your legs, what happened next?
A: **He tried to insert his sexual organ but he was not able to do so, ma'am.**

Q: **How did you know that he was trying to insert his sexual organ?**
A: "***Naidikit po niya sa ari ko***."

Q: **Which part of your body was he able to touch his sexual organ?** (*sic*)
A: **On my sexual organ, ma'am.**

xxx xxx xxx

Q: **You mentioned earlier that he was not able to penetrate your private part, [AAA]?**
A: **Yes, ma'am**.

Q: So, what happened after that?
A: I cried and then while I was resisting, I hit my wrist on the wall and my wrist was "*nagasgas*," ma'am.

xxx xxx xxx

Q: And were you able to successfully resist?
A: Yes, ma'am, I was able to kicked (sic) his upper thigh, ma'am.[23]
(italics supplied; emphasis ours)

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[23] Records, pp. 113-131.

From the foregoing, we find it clear that the appellant's penis did not penetrate, but merely 'touched' (*i.e.*, "*naidikit*"), AAA's private part. In fact, the victim **confirmed on cross-examination that the appellant did not succeed in inserting his penis into her vagina**. Significantly, AAA's *Sinumpaang Salaysay*[24] also disclosed that the appellant was holding the victim's hand when he was trying to insert his penis in her vagina. This circumstance – coupled with the victim's declaration that she was resisting the appellant's attempt to insert his penis into her vagina – makes penile penetration highly difficult, if not improbable. Significantly, nothing in the records supports the CA's conclusion that the appellant's penis penetrated, however slightly, the victim's female organ.

Did the touching by the appellant's penis of the victim's private part amount to carnal knowledge such that the appellant should be held guilty of consummated rape?

In *People v. Campuhan*,[25] the Court laid down the parameters of genital contact in rape cases, thus:

> Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed *touched* the *labias* or slid into the female organ, *and not merely stroked the external surface thereof*, for an accused to be convicted of consummated rape. As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location *beneath* the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape.
>
> The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, *mons pubis*, *labia*

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[24] *Id.* at 5-6.

[25] 385 Phil. 912 (2000).

majora, *labia minora*, the hymen, the clitoris, the vaginal orifice, *etc*. The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. Jurisprudence dictates that the *labia majora* must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.[26] (italics supplied)

Simply put, "rape is consummated by the slightest penile penetration of the *labia majora* or *pudendum* of the female organ."[27] Without any showing of such penetration, there can be no consummated rape; at most, it can only be attempted rape [or] acts of lasciviousness."[28]

As earlier discussed, the prosecution failed to present sufficient and convincing evidence to establish the required penile penetration. AAA's testimony did not establish that the appellant's penis touched the *labias* or slid into her private part. Aside from AAA's testimony, no other evidence on record, such as a medico-legal report, could confirm whether there indeed had been penetration, however slight, of the victim's *labias*. In the absence of testimonial or physical evidence to establish penile penetration, the appellant cannot be convicted of consummated rape.

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[26] *Id.* at 920-922 (citations omitted).

[27] See *People v. Pancho*, 462 Phil. 193, 205-206 (2003).

[28] *People v. Brioso*, *supra* note 22, at 495.

Article 6 of the Revised Penal Code, as amended, states that there is an attempt when the offender commenced the commission of the crime directly by overt acts but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. In *People v. Publico*,[29] we ruled that **when the "touching" of the vagina by the penis is coupled with the intent to penetrate, attempted rape is committed**; otherwise, the crime committed is merely acts of lasciviousness.

In the present case, the appellant commenced the commission of rape by the following overt acts: kissing AAA's nape and neck; undressing her; removing his clothes and briefs; lying on top of her; holding her hands and parting her legs; and trying to insert his penis into her vagina. The appellant, however, failed to perform all the acts of execution which should produce the crime of rape by reason of a cause other than his own spontaneous desistance, *i.e.*, the victim's loud cries and resistance. The totality of the appellant's acts demonstrated the unmistakable objective to insert his penis into the victim's private parts.

A review of jurisprudence reveals that the Court has not hesitated to strike down convictions for consummated rape when the evidence failed to show that penetration, however slight, of the victim's vagina took place.

In *People v. Bon*,[30] the Court found the appellant guilty of attempted rape only, as there was no indication that the appellant's penis even touched the *labia* of the *pudendum* of the victim. We further held that the appellant could not be convicted of consummated rape by presuming carnal knowledge out of pain.

The Court had a similar ruling in *People v. Miranda*,[31] where the accused tried to insert his penis into the victim's private

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[29] G.R. No. 183569, April 13, 2011, 648 SCRA 734, 748, citing *People v. Collado*, 405 Phil. 880 (2001).

[30] 536 Phil. 897 (2006).

[31] 519 Phil. 531 (2006).

parts, but was unsuccessful, so he inserted his fingers instead. We convicted the accused of attempted rape only due to lack of evidence to establish that there was even a slight penile penetration. We noted, however, that the appellant's act of inserting his fingers would have constituted rape through sexual assault had the offense occurred after the effectivity of the Anti-Rape Law of 1997.

In *People v. Alibuyog*,[32] the victim declared that the accused placed his penis *on* her vagina; and claimed that it touched her private parts. The Court set aside the accused's conviction for rape, and convicted him of attempted rape only, because we found the victim's testimony too ambiguous to prove the vital element of penile penetration. We added that the victim's testimony was "replete with repeated denial of penile insertion."[33]

Similarly, in *People v. Quarre*,[34] the evidence for the prosecution consisted only of the victim's testimony that the accused tried, but failed, to insert his penis into her vagina, and she felt pain in the process. No medico-legal examination report was presented in evidence. Accordingly, the Court reversed the accused's conviction for rape, and found him guilty of attempted rape only.

In *People v. Ocomen*,[35] the Court also set aside the appellant's conviction for rape because no proof was adduced of even the slightest penetration of the female organ, aside from a general statement of the victim that she had been "raped."

People v. Monteron[36] is another noteworthy case where the Court set aside the appellant's conviction for rape. In this case, the victim testified that the accused placed his penis on top of her vagina, and that she felt pain. In finding the accused guilty of attempted rape only, we held that there was no showing

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[32] 469 Phil. 385 (2004).
[33] *Id.* at 393.
[34] 427 Phil. 422 (2002).
[35] 432 Phil. 57 (2002).
[36] 428 Phil. 401 (2002).

that the accused's penis entered the victim's vagina. We added that the pain that the victim felt might have been caused by the accused's failed attempts to insert his organ into her vagina.

In *People v. Mariano*,[37] the accused tried to insert his penis into the victim's vagina, but failed to secure penetration. The Court set aside the accused's conviction for three (3) counts of rape and found him guilty of attempted rape only. We explained the necessity of carefully ascertaining whether the penis of the accused in reality entered the labial threshold of the female organ to accurately conclude that rape had been consummated.

In *People v. Arce, Jr.*,[38] the Court found the accused guilty of attempted rape only, because the victim did not declare that there was the slightest penetration, which was necessary to consummate rape. On the contrary, she categorically stated that the accused was not able to insert his penis into her private parts because she was moving her hips away. We further ruled that the victim's attempt to demonstrate what she meant by "*idinidikit ang ari*" was unavailing to prove that rape had been consummated.

In *People v. Francisco*,[39] the victim testified that the accused "poked" her vagina. The Court set aside the accused's conviction for qualified rape, and convicted him instead only of attempted rape after failing to discern from the victim's testimony that the accused attained some degree of penile penetration, which was necessary to consummate rape.

In *People v. Dimapilis*,[40] the Court refused to convict the accused for consummated rape on the basis of the victim's testimony that she felt the accused's penis pressed against her vagina as he tried to insert it. We explained that in order to

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[37] 420 Phil. 727 (2001).

[38] 417 Phil. 18 (2001).

[39] 406 Phil. 947 (2001).

[40] 397 Phil. 607 (2000).

constitute consummated rape, there must be entry into the vagina of the victim, even if only in the slightest degree.

Finally, in *People v. Tolentino*,[41] the Court reversed the accused's conviction for rape and convicted him of attempted rape only, as there was paucity of evidence that the slightest penetration ever took place. We reasoned out that the victim's statements that the accused was "trying to force his sex organ into mine" and "*binundol-undol ang kanyang ari*" did not prove that the accused's penis reached the *labia* of the *pudendum* of the victim's vagina.

"In rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion."[42] We emphasize that a conviction cannot be made to rest on possibilities; strongest suspicion must not be permitted to sway judgment. In the present case, the prosecution failed to discharge its burden of proving all the elements of consummated rape.

The Proper Penalty and Indemnities

Under Article 51 of the Revised Penal Code, the imposable penalty for attempted rape is two degrees lower than the prescribed penalty of *reclusion perpetua* for consummated rape. Two degrees lower from *reclusion perpetua* is *prision mayor* whose range is six (6) years and one (1) day to 12 years. Without any attendant aggravating or mitigating circumstances and applying the Indeterminate Sentence Law, the maximum of the penalty to be imposed upon the appellant is *prision mayor* in its medium period, while the minimum shall be taken from the penalty next lower in degree, which is *prision correccional* whose range is six (6) months and one (1) day to six (6) years, in any of its periods. Accordingly, we sentence the appellant to suffer the indeterminate penalty of six (6) years

[41] 367 Phil. 755 (1999).

[42] See *People v. Poras*, G.R. No. 177747, February 16, 2010, 612 SCRA 624, 644.

of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum.

In addition, we order the appellant to pay the victim ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱10,000.00 as exemplary damages, in accordance with prevailing jurisprudence on attempted rape cases.[43]

WHEREFORE, premises considered, the June 15, 2009 decision of the Court of Appeals in CA-G.R. CR HC No. 02759 is **MODIFIED**, as follows:

The appellant's conviction for the crime of rape is **VACATED**, and —

(1) we find appellant Christopher Pareja *y* Velasco **GUILTY** of the crime of **ATTEMPTED RAPE**;

(2) we **SENTENCE** him to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum; and

(3) we **ORDER** him to **PAY** the victim the amounts of ₱30,000.00 as civil indemnity; ₱25,000.00 as moral damages; and ₱10,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

[43] *Supra* note 29, at 752.

SECOND DIVISION

[G.R. No. 189486. September 5, 2012]

SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, and the HEIRS OF THE LATE GRACE G. CHEU, *petitioners, vs.* **GILBERT G. GUY,** *respondent.*

[G.R. No. 189699. September 5, 2012]

SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, and the HEIRS OF THE LATE GRACE G. CHEU, *petitioners, vs.* **THE HON. OFELIA C. CALO, in her capacity as Presiding Judge of the RTC-Mandaluyong City-Branch 211 and GILBERT G. GUY,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; CLASSIFICATION OF SUITS BY STOCKHOLDERS OR MEMBERS OF A CORPORATION BASED ON WRONGFUL OR FRAUDULENT ACTS OF DIRECTORS OR OTHER PERSONS.— Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. An individual suit may be instituted by a stockholder against another stockholder for wrongs committed against him personally, and to determine their individual rights – this is an individual suit between stockholders. But an individual suit may also be instituted against a corporation, the same having a separate juridical personality, which by its own may be sued. It is of course, essential that the suing stockholder has a cause of action against the corporation. Individual suits against another stockholder or against a corporation are remedies which an aggrieved stockholder may avail of and which are recognized in our jurisdiction as embedded in the Interim Rules on Intra-Corporate Controversy. Together with this right is the parallel obligation of a party to comply with the compulsory joinder of indispensable parties whether they may be stockholders or the corporation itself.

2. ID.; ID.; INTRA-CORPORATE CONTROVERSIES; IN ALL AVERMENTS OF FRAUD OR MISTAKE, THE CIRCUMSTANCES CONSTITUTING FRAUD OR MISTAKE MUST BE STATED WITH PARTICULARITY; THE PARTICULARS WOULD NECESSARY INCLUDE THE TIME, PLACE AND SPECIFIC ACTS OF FRAUD COMMITTED.— "In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity" to "appraise the other party of what he is to be called on to answer, and so that it may be determined whether the facts and circumstances alleged amount to fraud." These particulars would necessarily include the time, place and specific acts of fraud committed. "The reason for this rule is that an allegation of fraud concerns the morality of the defendant's conduct and he is entitled to know fully the ground on which the allegations are made, so he may have every opportunity to prepare his case to clear himself at the trial."

3. ID.; ID.; ID.; ALLEGATIONS OF DECEIT, MACHINATION, FALSE PRETENSES, MISREPRESENTATION, AND THREATS ARE LARGELY CONCLUSIONS OF LAW THAT, WITHOUT SUPPORTING STATEMENTS OF THE FACTS TO WHICH THE ALLEGATIONS OF FRAUD REFER, DO NOT SUFFICIENTLY STATE AN EFFECTIVE CAUSE OF ACTION.— Tested against established standards, we find that the charges of fraud which Gilbert accuses his siblings are not supported by the required factual allegations. In *Reyes v. RTC of Makati,* which we now reiterate, *mutatis mutandis,* while the complaint contained allegations of fraud purportedly committed by his siblings, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged transfer of shares can be characterized as "fraudulent" were not explained and elaborated on. As emphasized in *Reyes:* Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. **To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme.** Significantly, no corporate power or office was alleged to have facilitated the transfer of

Gilbert's shares. How the petitioners perpetrated the fraud, if ever they did, is an indispensable allegation which Gilbert must have had alleged with particularity in his complaint, but which he failed to.

4. ID.; ID.; ID.; INTERIM RULES OF PROCEDURE ON INTRA-CORPORATE CONTROVERSIES; NUISANCE AND HARASSMENT SUITS; FAILURE TO SPECIFICALLY ALLEGE FRAUDULENT ACTS IN INTRA-CORPORATE CONTROVERSIES IS INDICATIVE OF A HARASSMENT OR NUISANCE SUIT AND MAY BE DISMISSED *MOTU PROPRIO*.— In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such a defect can be cured by a bill of particulars. x x x The above-stated rule, however, does not apply to intra-corporate controversies. In *Reyes*, we pronounced that "in cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies a bill of particulars is a prohibited pleading. **It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction.**" This is because fraud in intra-corporate controversies must be based on "devises and schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to **fraud or misrepresentation** which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association," as stated under Rule 1, Section 1 (a)(1) of the Interim Rules. The act of fraud or misrepresentation complained of becomes a criterion in determining whether the complaint on its face has merits, or within the jurisdiction of special commercial court, or merely a nuisance suit.

5. ID.; ID.; CERTIFICATE OF STOCK; AN ENDORSEMENT IN BLANK OF STOCK CERTIFICATES COUPLED WITH ITS DELIVERY, ENTITLES THE HOLDER THEREOF TO DEMAND THE TRANSFER OF SAID STOCK CERTIFICATES IN HIS NAME FROM THE ISSUING CORPORATION.— With Gilbert's failure to allege specific acts of fraud in his complaint and his failure to rebut the NBI report, this Court pronounces, as a consequence thereof, that the signatures appearing on the stock

certificates, including his blank endorsement thereon were authentic. With the stock certificates having been endorsed in blank by Gilbert, which he himself delivered to his parents, the same can be cancelled and transferred in the names of herein petitioners. In *Santamaria v. Hongkong and Shanghai Banking Corp.*, this Court held that when a stock certificate is endorsed in blank by the owner thereof, it constitutes what is termed as "street certificate," so that upon its face, the holder is entitled to demand its transfer into his name from the issuing corporation. Such certificate is deemed quasi-negotiable, and as such the transferee thereof is justified in believing that it belongs to the holder and transferor. While there is a contrary ruling, as an exception to the general rule enunciated above, what the Court held in *Neugene Marketing Inc., et al. v. CA,* where stock certificates endorsed in blank were stolen from the possession of the beneficial owners thereof constraining this Court to declare the transfer void for lack of delivery and want of value, the same cannot apply to Gilbert because the stock certificates which Gilbert endorsed in blank were in the undisturbed possession of his parents who were the beneficial owners thereof and who themselves as such owners caused the transfer in their names. Indeed, even if Gilbert's parents were not the beneficial owners, an endorsement in blank of the stock certificates coupled with its delivery, entitles the holder thereof to demand the transfer of said stock certificates in his name from the issuing corporation.

6. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; DEFINED; EXPOUNDED.— The definition in the Rules of Court, Section 7, Rule 3 thereof, of indispensable parties as "parties in interest without whom no final determination can be had of an action" has been jurisprudentially amplified. In *Sps. Garcia v. Garcia, et.al.*, this Court held that: An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose

absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. This was our pronouncements in *Servicewide Specialists Inc. v. CA, Arcelona v. CA,* and *Casals v. Tayud Golf and Country Club, Inc.*

7. ID.; ID.; ID.; ID.; THE ABSENCE OF AN INDISPENSABLE PARTY IN A CASE RENDERS ALL SUBSEQUENT ACTIONS OF THE COURT NULL AND VOID FOR WANT OF AUTHORITY TO ACT, NOT ONLY AS TO THE ABSENT PARTIES BUT EVEN AS TO THOSE PRESENT.— Gilbert's complaint essentially prayed for the return of his original 519,997 shares in GoodGold, by praying that the court declare that "there were no valid transfers [of the contested shares] to defendants and Francisco." It baffles this Court, however, that Gilbert omitted Francisco as defendant in his complaint. While Gilbert could have opted to waive his shares in the name of Francisco to justify the latter's non-inclusion in the complaint, Gilbert did not do so, but instead, wanted everything back and even wanted the whole transfer of shares declared fraudulent. This cannot be done, without including Francisco as defendant in the original case. The transfer of the shares cannot be, as Gilbert wanted, declared entirely fraudulent without including those of Francisco who owns almost a third of the total number. Francisco, in both the 2004 and 2008 complaints, is an indispensable party without whom no final determination can be had for the following reasons: (a) the complaint prays that the shares now under the name of the defendants **and Francisco** be declared fraudulent; (b) Francisco owns 195,000 shares some of which, Gilbert prays be returned to him; (c) Francisco signed the certificates of stocks evidencing the alleged fraudulent shares previously in the name of Gilbert. The inclusion of the shares of Francisco in the complaint makes Francisco an indispensable party. Moreover, the pronouncement about the shares of Francisco would impact on the hereditary rights of the contesting parties or on the conjugal properties of the spouses to the effect that Francisco, being husband of Simny and father of the other contesting parties, must be included for, otherwise, in his absence, there cannot be a determination between the parties

already before the court which is effective, complete, or equitable.

8. ID.; ID.; ID.; ID.; THE CORPORATION SHOULD HAVE ALSO BEEN IMPLEADED AS AN INDISPENSABLE PARTY.— Settled is the rule that joinder of indispensable parties is compulsory being a *sine qua non* for the exercise of judicial power, and, it is precisely "when an indispensable party is not before the court that the action should be dismissed" for such absence renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. It bears emphasis that Gilbert, while suing as a stockholder against his co-stockholders, should have also impleaded GoodGold as defendant. His complaint also prayed for the annulment of the 2004 stockholders' annual meeting, the annulment of the 2004 election of the board of directors and of its officers, the annulment of 2004 GIS submitted to the SEC, issuance of an order for the accounting of all monies and rentals of GoodGold, and the issuance of a writ of preliminary and mandatory injunction. We have made clear that GoodGold is a separate juridical entity distinct from its stockholders and from its directors and officers. The trial court, acting as a special commercial court, cannot settle the issues with finality without impleading GoodGold as defendant. Like Francisco, and for the same reasons, GoodGold is an indispensable party which Gilbert should have impleaded as defendant in his complaint.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioners.
Ignacio & Ignacio Law Firm for private respondent.

D E C I S I O N

PEREZ, *J.*:

THE FACTS

With 519,997 shares of stock as reflected in Stock Certificate Nos. 004-014, herein respondent Gilbert G. Guy (Gilbert) practically owned almost 80 percent of the 650,000 subscribed capital stock of GoodGold Realty & Development Corporation

(GoodGold),[1] one of the multi-million corporations which Gilbert claimed to have established in his 30s. GoodGold's remaining shares were divided among Francisco Guy (Francisco) with 130,000 shares, Simny Guy (Simny), Benjamin Lim and Paulino Delfin Pe, with one share each, respectively.

Gilbert is the son of spouses Francisco and Simny. Simny, one of the petitioners, however, alleged that it was she and her husband who established GoodGold, putting the bulk of its shares under Gilbert's name. She claimed that with their eldest son, Gaspar G. Guy (Gaspar), having entered the Focolare Missionary in 1970s, renouncing worldly possessions,[2] she and Francisco put the future of the Guy group of companies in Gilbert's hands. Gilbert was expected to bring to new heights their family multi-million businesses and they, his parents, had high hopes in him.

Simny further claimed that upon the advice of their lawyers, upon the incorporation of GoodGold, they issued stock certificates reflecting the shares held by each stockholder duly signed by Francisco as President and Atty. Emmanuel Paras as Corporate Secretary, with corresponding blank endorsements at the back of each certificate – including Stock Certificate Nos. 004-014 under Gilbert's name.[3] These certificates were all with Gilbert's irrevocable endorsement and power of attorney to have these stocks transferred in the books of corporation.[4] All of these certificates were always in the undisturbed possession of the spouses Francisco and Simny, including Stock Certificate Nos. 004-014.[5]

In 1999, the aging Francisco instructed Benjamin Lim, a nominal shareholder of GoodGold and his trusted employee, to collaborate with Atty. Emmanuel Paras, to redistribute GoodGold's shareholdings evenly among his children, namely,

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[1] *Rollo* (G.R. No. 189486), p. 118.

[2] *Id.* at 254.

[3] *Id.* at 208-218.

[4] *Id*.

[5] *Id.* at 462.

Gilbert, Grace Guy-Cheu (Grace), Geraldine Guy (Geraldine), and Gladys Guy (Gladys), while maintaining a proportionate share for himself and his wife, Simny.[6]

Accordingly, some of GoodGold's certificates were cancelled and new ones were issued to represent the redistribution of GoodGold's shares of stock. The new certificates of stock were signed by Francisco and Atty. Emmanuel Paras, as President and Corporate Secretary, respectively.

The shares of stock were distributed among the following stockholders:

NAME		NO. OF SHARES
Francisco Guy	[husband]	195,000
Simny G. Guy	[wife]	195,000
Gilbert G. Guy	[son]	65,000
Geraldine G. Guy	[daughter]	65,000
Grace G.Cheu (or her heirs)	[daughter]	65,000
Gladys G.Yao	[daughter]	65,000
	Total	650,000[7]

In September 2004, or five years after the redistribution of GoodGold's shares of stock, Gilbert filed with the Regional Trial Court (RTC) of Manila, a Complaint for the "Declaration of Nullity of Transfers of Shares in GoodGold and of General Information Sheets and Minutes of Meeting, and for Damages with Application for a Preliminary Injunctive Relief," against his mother, Simny, and his sisters, Geraldine, Grace, and Gladys.[8] Gilbert alleged, among others, that no stock certificate ever existed;[9] that his signature at the back of the spurious Stock Certificate Nos. 004-014 which purportedly endorsed the same and that of the corporate secretary, Emmanuel Paras, at the

[6] *Id.* at 7-8.

[7] *Id.* at 9.

[8] *Id.* at 9.

[9] *Id.* at 123.

obverse side of the certificates were forged, and, hence, should be nullified.[10]

Gilbert, however, withdrew the complaint, after the National Bureau of Investigation (NBI) submitted a report to the RTC of Manila authenticating Gilbert's signature in the endorsed certificates.[11] The NBI report stated:

> FINDINGS:
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> Comparative analysis of the specimens submitted under magnification using varied lighting process and with the aid of photographic enlargements **disclosed the presence of significant and fundamental similarities in the personal handwriting habits existing between the questioned signatures of "Gilbert G. Guy" and "Emmanuel C. Paras," on one hand, and their corresponding standard specimen/ exemplar signatures, on the other hand, such as in:**
>
> - **Basic design of letters/elements;**
> - **Manner of execution/line quality;**
> - **Minute identifying details.**
>
> CONCLUSION:
>
> **A. The questioned and the standard specimen/exemplar signatures [of] Gilbert G. Guy <u>were written by one</u> and the same person;**
>
> B. The questioned and the standard specimen/exemplar signatures [of] "EMMANUEL C. PARAS" <u>were written by one</u> and the same person. (Emphasis supplied)[12]

The present controversy arose, when in 2008, three years after the complaint with the RTC of Manila was withdrawn, Gilbert again filed a complaint, this time, with the RTC of Mandaluyong, captioned as "Intra-Corporate Controversy: For the Declaration of Nullity of **Fraudulent** Transfers of Shares

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[10] *Id*.

[11] *Id.* at 321-330.

[12] *Id.* at 329.

of Stock Certificates, Fabricated Stock Certificates, **Falsified** General Information Sheets, Minutes of Meetings, and Damages with Application for the Issuance of a Writ of Preliminary and Mandatory Injunction," docketed as **SEC-MC08-112,** against his mother, Simny, his sisters, Geraldine, Gladys, and the heirs of his late sister Grace.[13]

Gilbert alleged that he never signed any document which would justify and support the transfer of his shares to his siblings and that he has in no way, disposed, alienated, encumbered, assigned or sold any or part of his shares in GoodGold.[14] He also denied the existence of the certificates of stocks. According to him, "there were no certificates of stocks under [his] name for the shares of stock subscribed by him were never issued nor delivered to him from the time of the inception of the corporation."[15]

Gilbert added that the Amended General Information Sheets (GIS) of GoodGold for the years 2000 to 2004 which his siblings submitted to the Securities and Exchange Commission (SEC) were spurious as these did not reflect his true shares in the corporation which supposedly totaled to 595,000 shares;[16] that no valid stockholders' annual meeting for the year 2004 was held, hence proceedings taken thereon, including the election of corporate officers were null and void;[17] and, that his siblings are foreign citizens, thus, cannot own more than forty percent of the authorized capital stock of the corporation.[18]

Gilbert also asked in his complaint for the issuance of a Writ of Preliminary and Mandatory Injunction to protect his rights.[19]

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[13] *Id.* at 114-140.

[14] *Id.* at 123.

[15] *Id*.

[16] *Id.* at 118.

[17] *Id.* at 124-125.

[18] *Id.* at 127.

[19] *Id.* at 133-134.

In an Order dated 30 June 2008,[20] the RTC denied Gilbert's Motion for Injunctive Relief[21] which constrained him to file a motion for reconsideration, and, thereafter, a Motion for Inhibition against Judge Edwin Sorongon, praying that the latter recuse himself from further taking part in the case.

Meanwhile, Gilbert's siblings filed a manifestation claiming that the complaint is a nuisance and harassment suit under Section 1(b), Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies.

In an Order dated 6 November 2008,[22] the RTC denied the motion for inhibition. The RTC also dismissed the case, declaring it a nuisance and harassment suit, *viz.:*

> WHEREFORE, the court resolves:
> (1) To DENY as it is hereby DENIED [respondent's] Motion for Inhibition;
> (2) To DENY as it is hereby DENIED [respondent's] Motion for Reconsideration of the June 30, 2008 Order; and,
> (3) To declare as it is herby declared the instant case as a **nuisance or harassment suit**. Accordingly, pursuant to Section 1(b), Rule 1 of the Interim Rules of Procedure for Intra-Corporate Dispute, the instant case is hereby DISMISSED. No pronouncement as to costs.[23]

This constrained Gilbert to assail the above Order before the Court of Appeals (CA). The petition for review was docketed as CA-G.R. SP No. 106405.

In a Decision[24] dated 27 May 2009, the CA upheld Judge Sorongon's refusal to inhibit from hearing the case on the ground

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[20] *Id.* at 92-97.

[21] *Id.* at 97.

[22] *Id.* at 98-105.

[23] *Id.* at 105.

[24] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente concurring. *Id.* at 35-51.

that Gilbert failed to substantiate his allegation of Judge Sorongon's partiality and bias.[25]

The CA, in the same decision, also denied Gilbert's Petition for the Issuance of Writ of Preliminary Injunction for failure to establish a clear and unmistakable right that was violated as required under Section 3, Rule 58 of the 1997 Rules of Civil Procedure.[26]

The CA, however, found merit on Gilbert's contention that the complaint should be heard on the merits. It held that:

> A reading of the *Order, supra*, dismissing the [respondent's] complaint for being a harassment suit revealed that the court *a quo* relied heavily on the pieces of documentary evidence presented by the [Petitioners] to negate [Respondent's] allegation of fraudulent transfer of shares of stock, fabrication of stock certificates and falsification of General Information Sheets (GIS), *inter alia*. It bears emphasis that the [Respondent] is even questioning the genuiness and authenticity of the [Petitioner's] documentary evidence. To our mind, only a full-blown trial on the merits can afford the determination of the genuineness and authenticity of the documentary evidence and other factual issues which will ultimately resolve whether there was indeed a transfer of shares of stock.[27]

Hence, these consolidated petitions.

G.R. No. 189486 is a Petition for Review under Rule 45 of the Rules of Court filed by Simny, Geraldine, Gladys, and the heirs of the late Grace against Gilbert, which prays that this Court declare Civil Case No. SEC-MC08-112, a harassment or nuisance suit.

Meanwhile, during the pendency of G.R. No. 189486, the trial court set the pre-trial conference on the case subject of this controversy, constraining the petitioners to file a Motion

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[25] *Id.* at 43.

[26] *Id.* at 44.

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

to defer the pre-trial, which was, however, denied by the court *a quo* in an Order dated **11 September 2009**,[28] *viz.:*

> In a Resolution dated September 3, 2009, the Honorable Court of Appeals (CA) (Former Second Division) denied the Motion for Partial Reconsideration filed [by petitioners] herein. Inasmuch as there is no longer any impediment to proceed with the instant case and the fact that this court was specifically directed by the May 27, 2009 Decision of the CA Second Division to proceed with the trial on the merits with dispatch, this court resolves to deny the motion under consideration.
>
> WHEREFORE, premises considered, the Motion to Defer Pre-Trial Conference and Further Proceedings filed by [petitioners] is hereby DENIED. Set the pre-trial on October 20, 2009, at 8:30 in the morning.

The denial of the petitioners' motion to defer pre-trial, compelled them to file with this Court a Petition for *Certiorari* with Urgent Application for the Issuance of TRO and/or A Writ of Preliminary Injunction, docketed as **G.R. No. 189699.** Because of the pendency of the G.R. No. 189486 before us, the petitioners deemed proper to question the said denial before us as an incident arising from the main controversy.[29]

OUR RULING

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits.[30]

An individual suit may be instituted by a stockholder against another stockholder for wrongs committed against him personally, and to determine their individual rights[31] – this is an individual suit between stockholders. But an individual suit may also be

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[28] *Rollo* (G.R. No. 189699), p. 23.

[29] *Id.* at 6.

[30] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, 4 December 2009, 607 SCRA 645, 690.

[31] Vol. 18, C.J.S. Corporations, §533 (1939).

instituted against a corporation, the same having a separate juridical personality, which by its own may be sued. It is of course, essential that the suing stockholder has a cause of action against the corporation.[32]

Individual suits against another stockholder or against a corporation are remedies which an aggrieved stockholder may avail of and which are recognized in our jurisdiction as embedded in the Interim Rules on Intra-Corporate Controversy. Together with this right is the parallel obligation of a party to comply with the compulsory joinder of indispensable parties whether they may be stockholders or the corporation itself.

The absence of an indispensable party in a case renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[33]

It bears emphasis that this controversy started with Gilbert's complaint filed with the RTC of Mandaluyong City in his capacity as stockholder, director and Vice-President of GoodGold.[34]

Gilbert's complaint essentially prayed for the return of his original 519,997 shares in GoodGold, by praying that the court declare that "there were no valid transfers [of the contested shares] to defendants and Francisco."[35] It baffles this Court, however, that Gilbert omitted Francisco as defendant in his complaint. While Gilbert could have opted to waive his shares in the name of Francisco to justify the latter's non-inclusion in the complaint, Gilbert did not do so, but instead, wanted everything back and even wanted the whole transfer of shares declared fraudulent. This cannot be done, without including Francisco

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[32] *Id.* at Vol. 18, C.J.S. Corporations, §520 (1939).

[33] R.J. Francisco, *CIVIL PROCEDURE*, p.139 (2001).

[34] *Rollo* (G.R. No. 189486), p. 132.

[35] *Id.* at 137.

as defendant in the original case. The transfer of the shares cannot be, as Gilbert wanted, declared entirely fraudulent without including those of Francisco who owns almost a third of the total number.

Francisco, in both the 2004 and 2008 complaints, is an indispensable party without whom no final determination can be had for the following reasons: (a) the complaint prays that the shares now under the name of the defendants **and Francisco** be declared fraudulent; (b) Francisco owns 195,000 shares some of which, Gilbert prays be returned to him; (c) Francisco signed the certificates of stocks evidencing the alleged fraudulent shares previously in the name of Gilbert. The inclusion of the shares of Francisco in the complaint makes Francisco an indispensable party. Moreover, the pronouncement about the shares of Francisco would impact on the hereditary rights of the contesting parties or on the conjugal properties of the spouses to the effect that Francisco, being husband of Simny and father of the other contesting parties, must be included for, otherwise, in his absence, there cannot be a determination between the parties already before the court which is effective, complete, or equitable.

The definition in the Rules of Court, Section 7, Rule 3 thereof, of indispensable parties as "parties in interest without whom no final determination can be had of an action" has been jurisprudentially amplified. In *Sps. Garcia v. Garcia, et al.*,[36] this Court held that:

> An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which

[36] G.R. No. 169157, 14 November 2011.

is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

This was our pronouncements in *Servicewide Specialists Inc. v. CA*,[37] *Arcelona v. CA*,[38] and *Casals v. Tayud Golf and Country Club, Inc.*[39]

Settled is the rule that joinder of indispensable parties is compulsory[40] being a *sine qua non* for the exercise of judicial power,[41] and, it is precisely "when an indispensable party is not before the court that the action should be dismissed" for such absence renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[42]

It bears emphasis that Gilbert, while suing as a stockholder against his co-stockholders, should have also impleaded GoodGold as defendant. His complaint also prayed for the annulment of the 2004 stockholders' annual meeting, the annulment of the 2004 election of the board of directors and of its officers, the annulment of 2004 GIS submitted to the SEC, issuance of an order for the accounting of all monies and rentals of GoodGold, and the issuance of a writ of preliminary and mandatory injunction. We have made clear that GoodGold is a separate juridical entity distinct from its stockholders and from its directors and officers. The trial court, acting as a special commercial court, cannot settle the issues with finality without impleading GoodGold as defendant. Like Francisco, and for the same reasons, GoodGold is an indispensable party which Gilbert should have impleaded as defendant in his complaint.

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[37] 321 Phil. 427 (1995).

[38] 345 Phil. 250 (1997).

[39] G.R. No. 183105, 22 July 2009, 593 SCRA 468.

[40] RULES OF COURT, Rule 3, Section 7.

[41] R.J. Francisco, *CIVIL PROCEDURE*, Vol. I, p. 139 (2001).

[42] *Id*.

Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action.[43]

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity"[44] to "appraise the other party of what he is to be called on to answer, and so that it may be determined whether the facts and circumstances alleged amount to fraud."[45] These particulars would necessarily include the time, place and specific acts of fraud committed.[46] "The reason for this rule is that an allegation of fraud concerns the morality of the defendant's conduct and he is entitled to know fully the ground on which the allegations are made, so he may have every opportunity to prepare his case to clear himself at the trial."[47]

The complaint of Gilbert states:

13. The said **spurious** Amended GIS for the years 2000, 2001, 2002, 2003, 2004 and also in another falsified GIS for the year 2004, the [petitioners] indicated the following alleged stockholders of GOODGOLD with their respective shareholdings, to wit:

NAME	NO. OF SHARES
Francisco Guy Co Chia	195,000
Simny G. Guy	195,000
Gilbert G. Guy	65,000

[43] *Reyes v. RTC of Makati City, Br. 142*, G.R. No. 165744, 11 August 2008, 561 SCRA 593, 607.

[44] RULES OF COURT, Rule 8, Sec.5.

[45] R.J. Francisco, *CIVIL PROCEDURE*, Vol. I, p. 309 (2001).

[46] *Id.* at 83.

[47] *Id.* at 309.

Geraldine G. Guy	65,000
Grace G.-Cheu	65,000
Gladys G.Yao	65,000
Total	650,000

14. The above **spurious** GIS would show that form the original 519,997 shares of stocks owned by the [respondent], which is equivalent to almost 80% of the total subscriptions and/or the outstanding capital stock of GOODGOLD, [respondent's] subscription [was] drastically reduced to only 65,000 shares of stocks which is merely equivalent to only 10 percent of the outstanding capital stock of the corporation.

15. **Based on the spurious GIS, shares pertaining to Benjamin Lim and Paulino Delfin Pe were omitted and the total corporate shares originally owned by incorporators including herein [respondent] have been fraudulently transferred and distributed, as follows:** x x x (Emphasis supplied)

xxx xxx xxx

18. To date, [respondent] is completely unaware of any documents signed by him that would justify and support the foregoing transfer of his shares to the defendants. [Respondent] strongly affirms that he has not in any way, up to this date of filing the instant complaint, disposed, alienated, encumbered, assigned or sold any or part of the shares of stocks of GOODGOLD corporation owned by him and registered under his name under the books of the corporation.

19. Neither has [respondent] endorsed, signed, assigned any certificates of stock representing the tangible evidence of his stocks ownership, there being no certificates of stocks issued by the corporation nor delivered to him since its inception on June 6, 1988. Considering that the corporation is merely a family corporation, plaintiff does not find the issuance of stock certificates necessary to protect his corporate interest and he did not even demand for its issuance despite the fact that he was the sole subscriber who actually paid his subscription at the time of incorporation.[48]

Tested against established standards, we find that the charges of fraud which Gilbert accuses his siblings are not supported

[48] *Rollo* (G.R. No. 189486), pp. 117-119.

by the required factual allegations. In *Reyes v. RTC of Makati,*[49] which we now reiterate, *mutatis mutandis,* while the complaint contained allegations of fraud purportedly committed by his siblings, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged transfer of shares can be characterized as "fraudulent" were not explained and elaborated on.[50] As emphasized in *Reyes:*

> Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. **To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme.**[51] (Emphasis supplied)

Significantly, no corporate power or office was alleged to have facilitated the transfer of Gilbert's shares. How the petitioners perpetrated the fraud, if ever they did, is an indispensable allegation which Gilbert must have had alleged with particularity in his complaint, but which he failed to.

Failure to specifically allege the fraudulent acts in intra-corporate controversies is indicative of a harassment or nuisance suit and may be dismissed motu proprio.

In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such a defect can be cured by a bill of particulars.[52] Thus:

> Failure to allege fraud or mistake with as much particularity as is desirable is not fatal if the general purport of the claim or defense is

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[49] *Supra* note 43.

[50] *Id.* at 607-608.

[51] *Id.* at 608.

[52] *Id.* at 609.

clear, since all pleadings should be so construed as to do substantial justice. Doubt as to the meaning of the pleading may be resolved by seeking a bill of particulars.

A bill of particulars may be ordered as to a defense of fraud or mistake if the circumstances constituting fraud or mistake are not stated with the particularity required by the rule.[53]

The above-stated rule, however, does not apply to intra-corporate controversies. In *Reyes*,[54] we pronounced that "in cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies a bill of particulars is a prohibited pleading. **It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction.**" This is because fraud in intra-corporate controversies must be based on "devises and schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to **fraud or misrepresentation** which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association," as stated under Rule 1, Section 1 (a)(1) of the Interim Rules. The act of fraud or misrepresentation complained of becomes a criterion in determining whether the complaint on its face has merits, or within the jurisdiction of special commercial court, or merely a nuisance suit.

It did not escape us that Gilbert, instead of particularly describing the fraudulent acts that he complained of, just made a sweeping denial of the existence of stock certificates by claiming that such were not necessary, GoodGold being a mere family corporation.[55] As sweeping and bereft of particulars is his claim that he "is unaware of any document signed by him that would justify and support the transfer of his shares to herein petitioners."[56] Even more telling is the contradiction between the denial of the existence of stock

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[53] R.J. Francisco, *CIVIL PROCEDURE*, Vol. I, p. 310 (2001).

[54] *Supra* note 43 at 609.

[55] *Rollo* (G.R. No. 189486), p. 123.

[56] *Id.* at 119.

certificates and the denial of the transfer of his shares of stocks "under his name under the books of the corporations."

It is unexplained that while Gilbert questioned the authenticity of his signatures indorsing the stock certificates, and that of Atty. Emmanuel Paras, the corporate secretary, he did not put in issue as doubtful the signature of his father which also appeared in the certificate as President of the corporation. Notably, Gilbert, during the entire controversy that started with his 2004 complaint, failed to rebut the NBI Report which authenticated all the signatures appearing in the stock certificates.

Even beyond the vacant pleadings, its nature as nuisance is palpable. To recapitulate, it was only after five years following the redistribution of GoodGold's shares of stock, that Gilbert filed with the RTC of Manila, a Complaint for the "Declaration of Nullity of Transfers of Shares in GoodGold and of General Information Sheets and Minutes of Meeting, and for Damages with Application for a Preliminary Injunctive Relief," against his mother, Simny, and his sisters, Geraldine, Grace, and Gladys.[57] Gilbert alleged, among others, that no stock certificate ever existed;[58] that his signature at the back of the spurious Stock Certificate Nos. 004-014 which purportedly endorsed the same and that of the corporate secretary, Emmanuel Paras, at the obverse side of the certificates were forged, and, hence, should be nullified.[59] Gilbert withdrew this complaint after the NBI submitted a report to the RTC of Manila authenticating Gilbert's signature in the endorsed certificates. And, it was only after three years from the withdrawal of the Manila complaint, that Gilbert again filed in 2008 a complaint also for declaration of nullity of the transfer of the shares of stock, this time with the RTC of Mandaluyong. The caption of the complaint is "Intra-Corporate Controversy: For the Declaration of Nullity of **Fraudulent** Transfers of Shares of Stock Certificates, Fabricated Stock Certificates, **Falsified** General Information Sheets, Minutes of Meetings, and Damages with Application for the Issuance of

[57] *Id.* at 9.

[58] *Id.* at 123.

[59] *Id*.

a Writ of Preliminary and Mandatory Injunction," docketed as **SEC-MC08-112,** against his mother, Simny, his sisters, Geraldine, Gladys, and the heirs of his late sister Grace.[60]

When a stock certificate is endorsed in blank by the owner thereof, it constitutes what is termed as "street certificate," so that upon its face, the holder is entitled to demand its transfer his name from the issuing corporation.

With Gilbert's failure to allege specific acts of fraud in his complaint and his failure to rebut the NBI report, this Court pronounces, as a consequence thereof, that the signatures appearing on the stock certificates, including his blank endorsement thereon were authentic. With the stock certificates having been endorsed in blank by Gilbert, which he himself delivered to his parents, the same can be cancelled and transferred in the names of herein petitioners.

In *Santamaria v. Hongkong and Shanghai Banking Corp.*,[61] this Court held that when a stock certificate is endorsed in blank by the owner thereof, it constitutes what is termed as "street certificate," so that upon its face, the holder is entitled to demand its transfer into his name from the issuing corporation. Such certificate is deemed quasi-negotiable, and as such the transferee thereof is justified in believing that it belongs to the holder and transferor.

While there is a contrary ruling, as an exception to the general rule enunciated above, what the Court held in *Neugene Marketing Inc., et al. v. CA*,[62] where stock certificates endorsed in blank were stolen from the possession of the beneficial owners thereof constraining this Court to declare the transfer void for lack of delivery and want of value, the same cannot apply to Gilbert because the stock certificates which Gilbert endorsed in blank were in the

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[60] *Id.* at 114-140.

[61] 89 Phil. 780, 788-789 (1951).

[62] 362 Phil. 633, 644 (1999).

undisturbed possession of his parents who were the beneficial owners thereof and who themselves as such owners caused the transfer in their names. Indeed, even if Gilbert's parents were not the beneficial owners, an endorsement in blank of the stock certificates coupled with its delivery, entitles the holder thereof to demand the transfer of said stock certificates in his name from the issuing corporation.[63]

Interestingly, Gilbert also used the above discussed reasons as his arguments in *Gilbert Guy v. Court of Appeals, et al.*,[64] a case earlier decided by this Court. In that petition, Lincoln Continental, a corporation purportedly owned by Gilbert, filed with the RTC, Branch 24, Manila, a Complaint for Annulment of the Transfer of Shares of Stock against Gilbert's siblings, including his mother, Simny. The complaint basically alleged that Lincoln Continental owns 20,160 shares of stock of Northern Islands; and that Gilbert's siblings, in order to oust him from the management of Northern Islands, falsely transferred the said shares of stock in his sisters' names.[65] This Court dismissed Gilbert's petition and ruled in favor of his siblings *viz:*

> One thing is clear. **It was established before the trial court, affirmed by the Court of Appeals, that Lincoln Continental held the disputed shares of stock of Northern Islands merely in trust for the Guy sisters**. In fact, the evidence proffered by Lincoln Continental itself supports this conclusion. It bears emphasis that this factual finding by the trial court was affirmed by the Court of Appeals, being supported by evidence, and is, therefore, final and conclusive upon this Court.
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> Article 1440 of the Civil Code provides that:
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> "ART. 1440. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and

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[63] *Santamaria v. Hongkong and Shanghai Banking Corporation*, *supra* note 61 at 788.

[64] G.R. Nos. 165849, 170185, 170186, 171066, 176650, 10 December 2007, 539 SCRA 584.

[65] *Id.* at 590-591.

> the person for whose benefit the trust has been created is referred to as the beneficiary."

In the early case of *Gayondato v. Treasurer of the Philippine Islands*, this Court defines trust, in its technical sense, as "a right of property, real or personal, held by one party for the benefit of another." Differently stated, a trust is "a fiduciary relationship with respect to property, subjecting the person holding the same to the obligation of dealing with the property for the benefit of another person."

Both Lincoln Continental and Gilbert claim that the latter holds legal title to the shares in question. But *record shows that there is no evidence to support their claim.* Rather, the evidence on record clearly indicates that the stock certificates representing the contested shares are in respondents' possession. Significantly, there is no proof to support his allegation that the transfer of the shares of stock to respondent sisters is fraudulent. As aptly held by the Court of Appeals, fraud is never presumed but must be established by clear and convincing evidence. Gilbert failed to discharge this burden. We agree with the Court of Appeals that respondent sisters own the shares of stocks, Gilbert being their mere trustee.[66] (Underlining supplied).

This Court finds no cogent reason to divert from the above stated ruling, these two cases having similar facts.

WHEREFORE, premises considered, the petitions in **G.R. Nos. 189486 and 189699** are hereby **GRANTED**. The Decision dated 27 May 2009 of the Court of Appeals in CA-G.R. SP No. 106405 and its Resolution dated 03 September 2009 are **REVERSED and SET ASIDE**. The Court **DECLARES** that SEC-MC08-112 now pending before the Regional Trial Court, Branch 211, Mandaluyong City, is a nuisance suit and hereby **ORDERS** it to **IMMEDIATELY DISMISS** the same for reasons discussed herein.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[66] *Id.* at 607-608.

SECOND DIVISION

[G.R. No. 192945. September 5, 2012]

CITY OF IRIGA, *petitioner, vs.* **CAMARINES SUR III ELECTRIC COOPERATIVE, INC. (CASURECO III),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER MODE OF APPEAL FROM THE DECISION OF THE REGIONAL TRIAL COURT INVOLVING LOCAL TAXES; WITH THE ENACTMENT OF R.A. 9282 EXPANDING THE JURISDICTION OF THE COURT OF APPEALS (CTA) AND ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT, RESPONDENT COOPERATIVE SHOULD HAVE FILED ITS APPEAL WITH THE CTA AND NOT WITH THE COURT OF APPEALS (CA).— RA 9282, which took effect on April 23, 2004, expanded the jurisdiction of the Court of Tax Appeals (CTA) to include, among others, the power to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction. Considering that RA 9282 was already in effect when the RTC rendered its decision on February 7, 2005, CASURECO III should have filed its appeal, not with the CA, but with the CTA Division in accordance with the applicable law and the rules of the CTA. Resort to the CA was, therefore, improper, rendering its decision null and void for want of jurisdiction over the subject matter. A void judgment has no legal or binding force or efficacy for any purpose or at any place. Hence, the fact that petitioner's motion for reconsideration from the CA Decision was belatedly filed is inconsequential, because a void and non-existent decision would never have acquired finality. The foregoing procedural lapses would have been sufficient to dismiss the instant petition outright and declare the decision of the RTC final. However, the substantial merits of the case compel us to dispense with these lapses and instead, exercise the Court's power of judicial review.

2. TAXATION; TAX EXEMPTION; LAWS GRANTING TAX PRIVILEGES TO ELECTRIC COOPERATIVES.— PD 269, which took effect on August 6, 1973, granted electric cooperatives registered with the NEA, like CASURECO III, several tax privileges, one of which is exemption from the payment of "all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes." On March 10, 1990, Congress enacted into law RA 6938, otherwise known as the "Cooperative Code of the Philippines," and RA 6939 creating the CDA. The latter law vested the power to register cooperatives solely on the CDA, while the former provides that electric cooperatives registered with the NEA under PD 269 which *opt not to register* with the CDA shall not be entitled to the benefits and privileges under the said law.

3. ID.; ID.; RESPONDENT COOPERATIVE IS NOT EXEMPT FROM PAYMENT OF FRANCHISE TAXES.— On January 1, 1992, the LGC took effect, and Section 193 thereof withdrew tax exemptions or incentives previously enjoyed by "all persons, whether natural or juridical, including government-owned or controlled corporations, *except* local water districts, *cooperatives duly registered under R.A. No. 6938*, non-stock and non-profit hospitals and educational institutions." In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*, the Court held that the tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn and only those registered with the CDA under RA 6938 may continue to enjoy the tax privileges under the Cooperative Code. Therefore, CASURECO III can no longer invoke PD 269 to evade payment of local taxes. Moreover, its provisional registration with the CDA which granted it exemption for the payment of local taxes was extended only until May 4, 1992. Thereafter, it can no longer claim any exemption from the payment of local taxes, including the subject franchise tax.

4. ID.; LOCAL TAXATION; PETITIONER HAS THE POWER TO IMPOSE LOCAL TAXES; THE POWER OF LOCAL GOVERNMENT UNITS TO IMPOSE AND COLLECT TAXES IS DERIVED FROM THE CONSTITUTION WHICH GRANTS THEM THE POWER TO CREATE ITS OWN SOURCES OF REVENUES AND LEVY TAXES, FEES AND CHARGES

SUBJECT TO SUCH GUIDELINES AND LIMITATION AS THE CONGRESS MAY PROVIDE.— Indisputably, petitioner has the power to impose local taxes. The power of the local government units to impose and collect taxes is derived from the Constitution itself which grants them "the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide." This explicit constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, local government units have the fiscal mechanisms to raise the funds needed to deliver basic services to their constituents and break the culture of dependence on the national government. Thus, consistent with these objectives, the LGC was enacted granting the local government units, like petitioner, the power to impose and collect franchise tax.

5. **ID.; ID.; FRANCHISE TAX; A TAX ON THE PRIVILEGE OF TRANSACTING BUSINESS IN THE STATE AND EXERCISING CORPORATE FRANCHISES GRANTED BY THE STATE; IT IS WITHIN THIS CONTEXT THAT THE PHRASE "TAX ON BUSINESSES ENJOYING A FRANCHISE" IN SECTION 137 OF THE LOCAL GOVERNMENT CODE SHOULD BE INTERPRETED AND UNDERSTOOD.—** In *National Power Corporation v. City of Cabanatuan*, the Court declared that "a franchise tax is 'a *tax on the privilege* of transacting business in the state and exercising corporate franchises granted by the state.'" It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. "It is within this context that the phrase 'tax on businesses enjoying a franchise' in Section 137 of the LGC should be interpreted and understood."

6. **ID.; ID.; ID.; REQUISITES IN ORDER TO BE LIABLE FOR A LOCAL FRANCHISE TAX; PRESENT IN CASE AT BAR.—** To be liable for local franchise tax, the following requisites should concur: (1) that one has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit. There is a confluence of these requirements in the case at bar. By virtue of PD 269, NEA granted CASURECO III a franchise to operate an electric light

and power service for a period of fifty (50) years from June 6, 1979, and it is undisputed that CASURECO III operates within Iriga City and the Rinconada area. It is, therefore, liable to pay franchise tax notwithstanding its non-profit nature.

7. ID.; ID.; ID.; RESPONDENT ELECTRIC COOPERATIVE IS LIABLE FOR FRANCHISE TAX ON GROSS RECEIPTS WITHIN IRIGA CITY AND RINCONADA AREA.— It should be stressed that what the petitioner seeks to collect from CASURECO III is a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on *business*, rather than on persons or property. Since it partakes of the nature of an excise tax, the *situs* of taxation is the place where the privilege is exercised, in this case in the City of Iriga, where CASURECO III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area.

APPEARANCES OF COUNSEL

Ruben T. Almelor, Jr. for petitioner.
Glenn G. Hao for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Court reiterates that a franchise tax is a tax levied on the exercise by an entity of the rights or privileges granted to it by the government.[1] In the absence of a clear and subsisting legal provision granting it tax exemption, a franchise holder, though non-profit in nature, may validly be assessed franchise tax by a local government unit.

Before the Court is a petition filed under Rule 45 of the Revised Rules of Court seeking to set aside the February 11,

[1] *National Power Corporation v. City of Cabanatuan*, G.R. No. 149110, April 9, 2003, 401 SCRA 259, 274.

2010 Decision[2] and July 12, 2010 Resolution[3] of the Court of Appeals (CA), which reversed the February 7, 2005 Decision of the Regional Trial Court (RTC) of Iriga City, Branch 36 and ruled that respondent Camarines Sur III Electric Cooperative, Inc. (CASURECO III) is exempt from payment of local franchise tax.

The Facts

CASURECO III is an electric cooperative duly organized and existing by virtue of Presidential Decree (PD) 269,[4] as amended, and registered with the National Electrification Administration (NEA). It is engaged in the business of electric power distribution to various end-users and consumers within the City of Iriga and the municipalities of Nabua, Bato, Baao, Buhi, Bula and Balatan of the Province of Camarines Sur, otherwise known as the "Rinconada area."[5]

Sometime in 2003, petitioner City of Iriga required CASURECO III to submit a report of its gross receipts for the period 1997-2002 to serve as the basis for the computation of franchise taxes, fees and other charges.[6] The latter complied[7] and was subsequently assessed taxes.

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[2] Penned by Associate Justice Noel G. Tijam with Associate Justices Apolinario D. Bruselas, Jr. and Ruben C. Ayson, concurring, *rollo,* pp. 42-55.

[3] *Id.* at 37-40.

[4] Presidential Decree No. 269, Creating the "National Electrification Administration" as a Corporation, Prescribing Its Powers and Activities, Appropriating the Necessary Funds Therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes. It took effect on August 6, 1973.

[5] *Rollo,* p. 43.

[6] *Id.*

[7] Records, p. 12.

On January 7, 2004, petitioner made a final demand on CASURECO III to pay the franchise taxes due for the period 1998-2003 and real property taxes due for the period 1995-2003.[8] CASURECO III, however, refused to pay said taxes on the ground that it is an electric cooperative provisionally registered with the Cooperative Development Authority (CDA),[9] and therefore exempt from the payment of local taxes.[10]

On March 15, 2004, petitioner filed a complaint for collection of local taxes against CASURECO III before the RTC, citing its power to tax under the Local Government Code (LGC) and the Revenue Code of Iriga City.[11] It alleged that as of December 31, 2003, CASURECO III's franchise and real property taxes liability, inclusive of penalties, surcharges and interest, amounted to Seventeen Million Thirty-Seven Thousand Nine Hundred Thirty-Six Pesos and Eighty-Nine Centavos (₱17,037,936.89) and Nine Hundred Sixteen Thousand Five Hundred Thirty-Six Pesos and Fifty Centavos (₱916,536.50), respectively.[12]

In its Answer, CASURECO III denied liability for the assessed taxes, asserting that the computation of the petitioner was erroneous because it included 1) gross receipts from service areas beyond the latter's territorial jurisdiction; 2) taxes that had already prescribed; and 3) taxes during the period when it was still exempt from local government tax by virtue of its then subsisting registration with the CDA.[13]

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[8] *Id.* at 14.

[9] On March 10, 1990, Congress enacted into law Republic Act No. 6938, otherwise known as the "Cooperative Code of the Philippines" and Republic Act No. 6939 creating the CDA. The latter law vested the power to register cooperatives solely on the CDA while the former provides that electric cooperatives registered with NEA under P.D. 269 which **opt not to register** with the CDA shall not be entitled to the benefits and privileges under the said law. (Emphasis supplied)

[10] *Rollo,* p. 43.

[11] Records, p. 2.

[12] *Rollo,* p. 44.

[13] Records, p. 26.

Ruling of the Trial Court

In its Decision dated February 7, 2005, the RTC ruled that the real property taxes due for the years 1995-1999 had already prescribed in accordance with Section 194[14] of the LGC. However, it found CASURECO III liable for franchise taxes for the years 2000-2003 based on its gross receipts from Iriga City and the Rinconada area on the ground that the "*situs* of taxation is the place where the privilege is exercised."[15] The dispositive portion of the RTC Decision reads:

WHEREFORE, in view of the foregoing, defendant is hereby made liable to pay plaintiff real property taxes and franchise taxes on its receipts, including those from service area covering Nabua, Bato,

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[14] Section 194, LGC: *Periods of Assessment and Collection.* — (a) Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection of such taxes, fees, or charges, whether administrative or judicial, shall be instituted after the expiration of such period: Provided, That, taxes, fees or charges which have accrued before the effectivity of this Code may be assessed within a period of three (3) years from the date they became due.

(b) In case of fraud or intent to evade the payment of taxes, fees, or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

(c) Local taxes, fees, or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period: Provided, however, that, taxes, fees or charges assessed before the effectivity of this Code may be collected within a period of three (3) years from the date of assessment.

(d) The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which:

(1) The treasurer is legally prevented from making the assessment of collection;

(2) The taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and

(3) The taxpayer is out of the country or otherwise cannot be located.

[15] CA *rollo*, p. 11.

Baao and Buhi for the years 2000 up to the present. The realty taxes for the years 1995 and 1999 is hereby declared prescribed. The City Assessor is hereby directed to make the proper classification of defendant's real property in accordance with Ordinance issued by the City Council.

SO ORDERED.[16]

Only CASURECO III appealed from the RTC Decision, questioning its liability for franchise taxes.

Ruling of the Court of Appeals

In its assailed Decision, the CA found CASURECO III to be a non-profit entity, not falling within the purview of "businesses enjoying a franchise" pursuant to Section 137 of the LGC. It explained that CASURECO III's non-profit nature is diametrically opposed to the concept of a "business," which, as defined under Section 131 of the LGC, is a "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." Consequently, it relieved CASURECO III from liability to pay franchise taxes.

Petitioner moved for reconsideration, which the CA denied in its July 12, 2010 Resolution for being filed a day late, hence, the instant petition.

Issues Before the Court

Petitioner raises two issues for resolution, which the Court restates as follows: (1) whether or not an electric cooperative registered under PD 269 but not under RA 6938[17] is liable for the payment of local franchise taxes; and (2) whether or not the *situs* of taxation is the place where the franchise holder exercises its franchise regardless of the place where its services or products are delivered.

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[16] *Rollo,* p. 42.

[17] Republic Act No. 6938 (March 10, 1990), an Act to Ordain a Cooperative Code of the Philippines.

CASURECO III, on the other hand, raises the procedural issue that since the motion for reconsideration of the CA Decision was filed out of time, the same had attained finality.

The Court's Ruling

The petition is meritorious.

Before delving into the substantive issues, the Court notes the procedural lapses extant in the present case.

Proper Mode of Appeal from the Decision of the Regional Trial Court involving local taxes

RA 9282,[18] which took effect on April 23, 2004, expanded the jurisdiction of the Court of Tax Appeals (CTA) to include, among others, the power to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction.[19]

Considering that RA 9282 was already in effect when the RTC rendered its decision on February 7, 2005, CASURECO III should have filed its appeal, not with the CA, but with the CTA Division in accordance with the applicable law and the rules of the CTA. Resort to the CA was, therefore, improper, rendering its decision null and void for want of jurisdiction over the subject matter. A void judgment has no legal or binding force or efficacy for any purpose or at any place.[20] Hence, the fact that

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[18] Republic Act No. 9282 (March 30, 2004), an Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[19] Section 7(a)(3), RA 9282.

[20] *Roces v. House of Representatives Electoral Tribunal and Ang Ping*, G.R. No. 167499, September 15, 2005, 469 SCRA 681, 694.

petitioner's motion for reconsideration from the CA Decision was belatedly filed is inconsequential, because a void and non-existent decision would never have acquired finality.[21]

The foregoing procedural lapses would have been sufficient to dismiss the instant petition outright and declare the decision of the RTC final. However, the substantial merits of the case compel us to dispense with these lapses and instead, exercise the Court's power of judicial review.

CASURECO III is not exempt from payment of franchise tax

PD 269, which took effect on August 6, 1973, granted electric cooperatives registered with the NEA, like CASURECO III, several tax privileges, one of which is exemption from the payment of "all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes."[22]

On March 10, 1990, Congress enacted into law RA 6938,[23] otherwise known as the "Cooperative Code of the Philippines,"

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[21] *Nazareno v. Hon. Court of Appeals*, G.R. No. 111610, February 27, 2002, 378 SCRA 28, 36.

[22] Presidential Decree No. 269 (August 6, 1973), Section 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) shall be permanently exempt from paying income taxes, and (2) x x x shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, x x x

(b) x x x x x x x x x

[23] Republic Act No. 6938 (March 10, 1990), amended by Republic Act 9520, "An Act Amending the Cooperative Code of the Philippines to be known as the 'Philippine Cooperative Code of 2008."'

and RA 6939[24] creating the CDA. The latter law vested the power to register cooperatives solely on the CDA, while the former provides that electric cooperatives registered with the NEA under PD 269 which *opt not to register* with the CDA shall not be entitled to the benefits and privileges under the said law.

On January 1, 1992, the LGC took effect, and Section 193 thereof withdrew tax exemptions or incentives previously enjoyed by "all persons, whether natural or juridical, including government-owned or controlled corporations, *except* local water districts, *cooperatives duly registered under R.A. No. 6938*, non-stock and non-profit hospitals and educational institutions."[25]

In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*,[26] the Court held that the tax privileges granted to electric cooperatives registered with NEA under PD 269 were validly withdrawn and only those registered with the CDA under RA 6938 may continue to enjoy the tax privileges under the Cooperative Code.

Therefore, CASURECO III can no longer invoke PD 269 to evade payment of local taxes. Moreover, its provisional registration with the CDA which granted it exemption for the payment of local taxes was extended only until May 4, 1992. Thereafter, it can no longer claim any exemption from the payment of local taxes, including the subject franchise tax.

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[24] Republic Act 6939 (March 10, 1990), An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Functions and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives as such and Consolidating the Same with the Authority, Appropriating Funds Therefor, and for Other Purposes.

[25] Local Government Code, Section 193, emphasis supplied.

[26] G.R. No. 143076, June 10, 2003, 403 SCRA 558.

Indisputably, petitioner has the power to impose local taxes. The power of the local government units to impose and collect taxes is derived from the Constitution itself which grants them "the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide."[27] This explicit constitutional grant of power to tax is consistent with the basic policy of local autonomy and decentralization of governance. With this power, local government units have the fiscal mechanisms to raise the funds needed to deliver basic services to their constituents and break the culture of dependence on the national government. Thus, consistent with these objectives, the LGC was enacted granting the local government units, like petitioner, the power to impose and collect franchise tax, to wit:

> SEC. 137. *Franchise Tax*. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. xxx
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> SEC. 151. *Scope of Taxing Powers*. — Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code. The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

Taking a different tack, CASURECO III maintains that it is exempt from payment of franchise tax because of its nature as a *non-profit cooperative*, as contemplated in PD 269,[28]

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[27] *See* Section 5, Article X, 1987 Constitution.

[28] Section 2. *Declaration of National Policy.*

x x x x x x x x x

and insists that only entities engaged in business, and not non-profit entities like itself, are subject to the said franchise tax.

The Court is not persuaded.

In *National Power Corporation v. City of Cabanatuan*,[29] the Court declared that "a franchise tax is 'a *tax on the privilege* of transacting business in the state and exercising corporate franchises granted by the state.'"[30] It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government.[31] "It is within this context that the phrase 'tax on businesses enjoying a franchise' in Section 137 of the LGC should be interpreted and understood."[32]

Thus, to be liable for local franchise tax, the following requisites should concur: (1) that one has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit.[33]

There is a confluence of these requirements in the case at bar. By virtue of PD 269, NEA granted CASURECO III a franchise to operate an electric light and power service for a period of fifty (50) years from June 6, 1979,[34] and it is undisputed that CASURECO III operates within Iriga City and the Rinconada

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Because of their non-profit nature, cooperative character and the heavy financial burdens that they must sustain to become effectively established and operationally viable, electric cooperatives, particularly, shall be given every tenable support and assistance by the National Government, its instrumentalities and agencies to the fullest extent of which they are capable; x x x

[29] G.R. No. 149110, April 9, 2003, 401 SCRA 259, 260.

[30] *Id.*, emphasis supplied.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] Records, p. 44.

area. It is, therefore, liable to pay franchise tax notwithstanding its non-profit nature.

CASURECO III is liable for franchise tax on gross receipts within Iriga City and Rinconada area

CASURECO III further argued that its liability to pay franchise tax, if any, should be limited to gross receipts received from the supply of the electricity within the City of Iriga and not those from the Rinconada area.

Again, the Court is not convinced.

It should be stressed that what the petitioner seeks to collect from CASURECO III is a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137[35] of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on *business*, rather than on persons or property.[36] Since it partakes of the nature of an excise tax,[37] the *situs* of taxation is the place where the privilege is exercised, in this case in the City of Iriga, where CASURECO III has its principal

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[35] Local Government Code, Section. 137. *Franchise Tax*. - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at a rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction. xxx

[36] *Commissioner of Internal Revenue v. Solidbank Corp*., G.R. No. 148191, November 25, 2003, 416 SCRA 436, 463.

[37] "Generally stated, an excise tax is one that is imposed on the performance of an act, the engagement in an occupation, or the enjoyment of a privilege; and the word has come to have a broader meaning that includes every form of taxation not a burden laid directly on persons or property." (*See Commissioner of Internal Revenue v. Solidbank Corp.*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 463, citing *Manila Electric Company v. Vera*, 67 SCRA 352, October 22, 1975. See also *State ex rel. Janes v. Brown*, 148 NE 95, 96, May 19, 1925; *Buckstaff Bath House Co. v. McKinley*, 127 SW 2d 802, 806, April 10, 1939; and *State v. Fields*, 35 NE 2d 744, 749, July 15, 1938).

office and from where it operates, regardless of the place where its services or products are delivered. Hence, franchise tax covers all gross receipts from Iriga City and the Rinconada area.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated February 11, 2010 and Resolution dated July 12, 2010 of the Court of Appeals are hereby **SET ASIDE** and the Decision of the Regional Trial Court of Iriga City, Branch 36, is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 195592. September 5, 2012]

MAGDIWANG REALTY CORPORATION, RENATO P. DRAGON and ESPERANZA TOLENTINO, *petitioners, vs.* **THE MANILA BANKING CORPORATION, substituted by FIRST SOVEREIGN ASSET MANAGEMENT (SPV-AMC), INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A PETITION FOR REVIEW ON *CERTIORARI* SHALL RAISE ONLY QUESTIONS OF LAW, WHICH MUST BE DISTINCTLY SET FORTH.— At the outset, we explain that based on the issues being raised by the petitioners, together with the arguments and the evidence being invoked in support thereof, we hold that the petition involves questions of fact that are beyond the ambit of a petition for review on *certiorari*. x x x Section 1, Rule

45 then categorically states that a petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

2. **ID.; ID.; ID.; THE ISSUE OF ALLEGED NOVATION INVOLVES A QUESTION OF FACT AS IT NECESSARILY REQUIRES FACTUAL DETERMINATION OF THE EXISTENCE OF THE REQUIREMENTS OF NOVATION.—** Applying the guidelines laid down by jurisprudence on the criteria for distinguishing a question of law from a question of fact, it is clear that the petitioners are now asking this Court to determine a question of fact, as their arguments delve on the truth or falsity of the trial and appellate courts' factual findings, the existence and authenticity of the respondent's documentary evidence, as well as the truth or falsity of the TMBC's narration of facts in their complaint and the testimonial evidence presented before the Presiding Judge in support of said allegations. Similarly, the issue of the alleged novation involves a question of fact, as it necessarily requires a factual determination on the existence of the following requisites of novation: (1) there must be a previous valid obligation; (2) the parties concerned must agree to a new contract; (3) the old contract must be extinguished; and (4) there must be a valid new contract. Needless to say, the respondent's entitlement to attorney's fees also depends upon the questioned factual findings.

3. **ID.; ID.; ID.; THE FACT THAT THE COURT OF APPEALS ADOPTED THE FINDINGS OF FACT OF THE TRIAL COURT MAKES THE SAME BINDING UPON THE COURT; IT IS NOT THE FUNCTION OF THE COURT TO REVIEW, EXAMINE AND EVALUATE OR WEIGH THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED.—** The settled rule is that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as observe the demeanor of the

witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court. The Supreme Court is not a trier of facts. It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Although jurisprudence admits of several exceptions to the foregoing rules, the present case does not fall under any of them.

4. ID.; ID.; EFFECT OF FAILURE TO PLEAD; ORDER OF DEFAULT; VALIDITY OF THE TRIAL COURT'S DECLARATION OF PETITIONER'S DEFAULT IS A SETTLED MATTER.— Significantly, the petitioners failed to file their answer to TMBC's complaint within the reglementary period allowed under the Rules of Court. The validity of the trial court's declaration of their default is a settled matter, following the denial of the petitions previously brought by the petitioners before the CA and this Court questioning it. The petitioners' default by their failure to file their answer led to certain consequences. Where defendants before a trial court are declared in default, they thereby lose their right to object to the reception of the plaintiff's evidence establishing his cause of action. This is akin to a failure to, despite due notice, attend in court hearings for the presentation of the complainant's evidence, which absence would amount to the waiver of such defendant's right to object to the evidence presented during such hearing, and to cross-examine the witnesses presented therein.

5. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE IN CIVIL CASES; ESTABLISHED BY THE TOTALITY OF EVIDENCE PRESENTED BY RESPONDENT BANK IN SUPPORT OF THEIR ALLEGATIONS IN THE COMPLAINT.— Taking into consideration the bank's allegations in its complaint and the totality of the evidence presented in support thereof, coupled with the said circumstance that the petitioners, by their own inaction, failed to make their timely objection or opposition to the evidence, both documentary and testimonial, presented by TMBC to support its case, we find no cogent reason to reverse the trial and appellate courts' findings. We stress that in civil cases, the party having the burden of proof must establish his case only by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be

synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability to truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.

6. CIVIL LAW; CIVIL CODE; PRESCRIPTION OF ACTIONS; THE TEN (10)-YEAR PRESCRITIVE PERIOD TO FILE AN ACTION BASED ON THE SUBJECT PROMISSORY NOTES WAS INTERRUPTED BY THE SEVERAL LETTERS EXCHANGED BETWEEN THE PARTIES.— We agree with the trial and appellate courts, for as the records bear, that the ten (10)-year prescriptive period to file an action based on the subject promissory notes was interrupted by the several letters exchanged between the parties. This is in conformity with the second and third circumstances under Article 1155 of the New Civil Code (NCC) which provides that the prescription of actions is interrupted when: (1) they are filed before the court; (2) there is a written extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor. In TMBC's complaint against the petitioners, the bank sufficiently made the allegations on its service and the petitioners' receipt of the subject demand letters, even attaching thereto copies thereof for the trial court's consideration. x x x During the bank's presentation of evidence *ex parte*, the testimony of witness Mr. Megdonio Isanan was also offered to further support the claim on the demand made by the bank upon the petitioners. In the absence of a timely objection from the petitioners on these claims, no error can be imputed on the part of the trial court, and even the appellate court, in taking due consideration thereof. As against the bare denial belatedly made by the petitioners of their receipt of the written extrajudicial demands made by TMBC, especially of the letter of September 10, 1999 which was the written demand sent closest in time to the institution of the civil case, the appreciation of evidence and pronouncements of the trial court in its Order dated November 5, 2007 shall stand.

7. ID.; ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; NO EVIDENCE WAS PRESENTED TO ADEQUATELY ESTABLISH THAT NOVATION ENSUED.— On the issue of novation, no evidence was presented to adequately establish that such novation ensued. What the letters being invoked by the petitioners as supposedly

establishing novation only indicate that efforts on a repayment scheme were exerted by the parties. However, nowhere in the records is it indicated that such novation ever materialized.

8. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF JUSTIFIED BY THE CLEAR REFUSAL OF PETITIONERS TO SATISFY THEIR EXISTING DEBT TO THE BANK DESPITE THE LONG PERIOD OF TIME AND THE ACCOMMODATIONS GRANTED TO IT BY THE RESPONDENT TO ENABLE THEM TO SATIFY THEIR OBLIGATIONS.— Regarding the award of attorney's fees, the applicable provision is Article 2208(2) of the NCC which allows the grant thereof when the defendants' act or omission compelled the plaintiff to litigate or to incur expenses to protect its interest. Considering the circumstances that led to the filing of the complaint in court, and the clear refusal of the petitioners to satisfy their existing debt to the bank despite the long period of time and the accommodations granted to it by the respondent to enable them to satisfy their obligations, we agree that the respondent was compelled by the petitioners' acts to litigate for the protection of the bank's interests, making the award of attorney's fees proper.

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioners.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

REYES, *J.*:

This resolves the petition for review on *certiorari* filed under Rule 45 of the Rules of Court which questions the Decision[1] dated October 11, 2010 and Resolution[2] dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90098 entitled *The Manila Banking Corporation, substituted by First*

[1] Penned by Associate Justice Isaias Dicdican, with Associate Justice Stephen C. Cruz and Manuel M. Barrios, concurring; *rollo*, pp. 43-56.

[2] *Id.* at 58-59.

Sovereign Asset Management, Inc., Plaintiff-Appellee, v. Magdiwang Realty Corporation, Renato P. Dragon and Esperanza Tolentino, Defendants-Appellants.

The Factual Antecedents

The case stems from a complaint[3] for sum of money filed on April 18, 2000 before the Regional Trial Court (RTC), Makati City by herein respondent, The Manila Banking Corporation (TMBC), against herein petitioners, Magdiwang Realty Corporation (Magdiwang), Renato P. Dragon (Dragon) and Esperanza Tolentino (Tolentino), after said petitioners allegedly defaulted in the payment of their debts under the five promissory notes[4] they executed in favor of TMBC, which contained the following terms:

	Maturity Date	Amount
Promissory Note No. 4953	December 27, 1976	Php500,000.00
Promissory Note No. 10045	March 27, 1982	Php500,000.00
Promissory Note No. 10046	March 27, 1982	Php500,000.00
Promissory Note No. 10047	March 27, 1982	Php500,000.00
Promissory Note No. 10048	March 27, 1982	Php500,000.00

All promissory notes included stipulations on the payment of interest and additional charges in case of default by the debtors. Despite several demands for payment made by TMBC, the petitioners allegedly failed to heed to the bank's demands, prompting the filing of the complaint for sum of money. The case was docketed as Civil Case No. 00-511 and raffled to Branch 148 of the RTC of Makati City.

Instead of filing a responsive pleading with the trial court, the petitioners filed on October 12, 2000, which was notably beyond the fifteen (15)-day period allowed for the filing of a responsive pleading, a Motion for Leave to Admit Attached

[3] *Id.* at 169-181.
[4] *Id.* at 182-186.

Motion to Dismiss[5] and a Motion to Dismiss,[6] raising therein the issues of novation, lack of cause of action against individuals Dragon and Tolentino, and the impossibility of the novated contract due to a subsequent act of the Congress. The motions were opposed by the respondent TMBC, *via* its Opposition[7] which likewise asked that the petitioners be declared in default for their failure to file their responsive pleading within the period allowed under the law.

Acting on these incidents, the RTC issued an Order[8] on July 5, 2001 declaring the petitioners in default given the following findings:

> The record shows that as per Officer's Return dated 19 September 2000, summons were served on even date by way of substituted service. Summons were received by a certain LINDA G. MANLIMOS, a person of sufficient age and discretion then working/residing at the address indicated in the Complaint at No. 15 Tamarind St., Forbes Park, Makati City.
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> Consequently, in accordance with the Rules, defendants should have filed an Answer or Motion to Dismiss or any responsive pleading for that matter within the reglementary period, which is [fifteen] (15) days from receipt of Summons and a copy of the complaint with attached annexes. Accordingly, defendants should have filed their responsive pleading on October 2, 2000 but no pleading was filed on the aforesaid date, not even a Motion for Extension of Time. Instead, defendant's Motion to Dismiss [found its] way into the court only on the 13th day of October, clearly beyond the period contemplated by the Rules. A perusal of the Motion for Leave to Admit the Motion to Dismiss filed by defendants reveals that the case, as claimed by the counsel for defendants, was just referred to the counsel only on October 10, and further insinuated that the Motion to Dismiss was only filed on the said date in view of the complicated factual and legal issues involved. While this Court appreciates the

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

[6] *Id.* at 72-80.

[7] *Id.* at 81-97.

[8] Under the sala of Judge Oscar B. Pimentel; *id.* at 124-126.

efforts and tenacity shown by defendants' counsel for having prepared a [lengthy] pleading for his clients in so short a time, the Court will have to rule that the Motion to Dismiss was nonetheless filed out of time, hence, there is sufficient basis to declare defendant[s] in default. x x x.[9]

The decretal portion of the Order then reads:

WHEREFORE, premises considered, defendants[']Motio[n] to Dismiss is hereby treated as a pleading which has not been filed at all and cannot be ruled upon by the Court anymore for the same has been filed out of time. Plaintiff's prayer to declare defendants in default is hereby **GRANTED**, and as a consequence, defendants are hereby declared in **DEFAULT**.

SO ORDERED.[10]

The petitioners' motion for reconsideration was denied by the trial court in its Order[11] dated August 2, 2005. The *ex parte* presentation of evidence by the bank before the trial court's Presiding Judge was scheduled in the same Order.

Unsatisfied with the RTC orders, the petitioners filed with the CA a petition for *certiorari,* which was docketed as CA-G.R. SP No. 91820. In a Decision[12] dated December 2, 2006, the CA affirmed the RTC orders after ruling that the trial court did not commit grave abuse of discretion when it declared herein petitioners in default. The denial of petitioners' motion for reconsideration prompted the filing of a petition for review on *certiorari* before this Court, which, through its Resolutions dated March 5, 2008[13] and June 25, 2008,[14] denied the petition for lack of merit.

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

[10] *Id.* at 126.

[11] *Id.* at 150-151.

[12] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Regalado E. Maambong, concurring; *id.* at 605-617.

[13] *Id.* at 658-659.

[14] *Id.* at 660.

In the meantime, TMBC's presentation of evidence *ex parte* proceeded before Presiding Judge Oscar B. Pimentel of the RTC of Makati City.

The Ruling of the RTC

On May 20, 2007, the RTC rendered its Decision[15] in favor of TMBC and against herein petitioners. The decision's dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff as against:

1. Defendant Magdiwang Realty Corporation, requiring said defendant to pay plaintiff the sum of [₱]500,000.00 as indicated in Promissory Note No. 4953;

2. Requiring defendant Magdiwang Realty Corporation to pay the plaintiff interest to the principal loan at the rate of 14% per annum from 27 December 1976 until the amount is paid;

3. Requiring the defendant Magdiwang Realty Corporation to pay plaintiff penalty charges of 4% per annum from December 27, 1976 until the whole amount is paid; [and]

4. Requiring defendant Magdiwang Realty Corporation to pay plaintiff attorney's fees equivalent to 10% of the total outstanding obligation.

Further, judgment is rendered in favor of plaintiff and against defendants Magdiwang Realty Corporation, Renato Dragon and Esperanza Tolentino ordering said defendants to jointly and severally pay the plaintiff the following:

1. The principal amount of [₱]500,000.00 as indicated in Promissory Note No. 10045;

2. To pay the principal amount of [₱]500,000.00 as indicated in Promissory Note No. 10046;

3. To pay the principal amount of [₱]500,000.00 as indicated in Promissory Note No. 10047;

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[15] *Id.* at 210-218.

4. To pay the principal amount of [₱]500,000.00 as indicated in Promissory Note No. 10048;

5. To pay interest in the principal loan at the rate of sixteen (16%) percent per annum as stipulated in PN Nos. 10045, 10046, 10047 and 10048 from March 27, 1981 until the whole amount is paid;

6. To pay penalty at the rate of one percent a month (1%) on the principal amount [of] loan plus unpaid interest at the rate of 16% per annum in PN Nos. 10045, 10046, 10047 and 10048 starting from March 27, 1981 until the whole amount is paid; [and]

7. To pay 10% of the total amount due and outstanding under PN Nos. 10045, 10046, 10047 and 10048 as attorney's fees.

Costs against the defendants.

SO ORDERED.[16]

The petitioners' motion for reconsideration was denied by the trial court *via* its Order[17] dated November 5, 2007. Feeling aggrieved, the petitioners appealed to the CA, imputing error on the part of the trial court in: (1) not declaring that TMBC's cause of action was already barred by the statute of limitations; (2) declaring herein petitioners liable to pay TMBC despite the alleged novation of the subject obligations; (3) declaring TMBC entitled to its claims despite the alleged failure of the bank to substantiate its claims; (4) declaring TMBC entitled to attorney's fees and litigation expenses; and (5) declaring herein petitioners in default.

While appeal was pending before the appellate court, TMBC and First Sovereign Asset Management (SPV-AMC), Inc. (FSAMI) filed a Joint Motion for Substitution, asking that TMBC be substituted by FSAMI after the former executed in favor of the latter a Deed of Assignment covering all of its rights, title and interest over the loans subject of the case.

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[16] *Id.* at 217-218.

[17] *Id.* at 251-252.

The Ruling of the CA

On October 11, 2010, the CA rendered its Decision[18] dismissing the petitioners' appeal. The decision's dispositive portion reads:

> **WHEREFORE,** in view of the foregoing premises, the appeal filed in this case is hereby **DENIED** and, consequently, **DISMISSED**. The assailed Decision dated May 20, 2007 and Order dated November 5, 2007 of the Regional Trial Court, Branch 148, in Makati City in Civil Case No. 00-51[1] are hereby **AFFIRMED**.
>
> **SO ORDERED.**[19]

On the issue of prescription, the CA cited the rule that the prescriptive period is interrupted in any of the following instances: (1) when an action is filed before the court; (2) when there is a written extrajudicial demand by the creditors; and (3) when there is any written acknowledgment of the debt by the debtor. The appellate court held:

> As shown by the evidence, we arrived at the conclusion that the prescriptive period was legally interrupted on September 19, 1984 when the defendants-appellants, through several letters, proposed for the restructuring of their loans until the plaintiff-appellee sent its final demand letter on September 10, 1999. Indeed, the period during which the defendants-appellants were seeking reconsideration for the non-settlement of their loans and proposing payment schemes of the same should not be reckoned against it. When prescription is interrupted, all the benefits acquired so far from the lapse of time cease and, when prescription starts anew, it will be entirely a new one. This concept should not be equated with suspension where the past period is included in the computation being added to the period after prescription is resumed. Consequently, when the plaintiff-appellee sent its final demand letter to the defendants-appellants, thus, foreclosing all possibilities of reaching a settlement of the loans which could be favorable to both parties, the period of ten years within which to enforce the five promissory notes under Article 1142 of the New Civil Code began to run again and, therefore, the action

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[18] *Id.* at 43-56.

[19] *Id.* at 55.

filed on April 18, 2000 to compel the defendants-appellants to pay their obligations under the promissory notes had not prescribed. The written communications of the defendants-appellants proposing for the restructuring of their loans and the repayment scheme are, in our view, synonymous to an express acknowledgment of the obligation and had the effect of interrupting the prescription. x x x.[20] (Citation omitted)

The defense of novation was also rejected by the CA, citing the absence of two requirements for a valid novation, namely: (1) the clear and express release of the original debtor from the obligation upon the assumption by the new debtor of the obligation; and (2) the consent of the creditor thereto.

A motion for reconsideration filed by the petitioners was denied by the CA in its Resolution[21] dated January 31, 2011. Hence, the present petition for review on *certiorari*.

The Present Petition

The petitioners present the following grounds to support their petition:

1. THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PRESCRIPTIVE PERIOD WAS LEGALLY INTERRUPTED ON 19 SEPTEMBER 1984 WHEN PETITIONERS, THROUGH SEVERAL LETTERS, PROPOSED FOR THE RESTRUCTURING OF THEIR LOANS UNTIL THE RESPONDENT SENT ITS FINAL DEMAND LETTER ON 10 SEPTEMBER 1999.

2. THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PRINCIPLE OF NOVATION BY THE SUBSTITUTION OF DEBTORS WAS ERRONEOUSLY EMPLOYED BY THE PETITIONERS TO EXTRICATE THEMSELVES FROM THEIR OBLIGATION TO RESPONDENT.

3. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE TRIAL COURT'S RULING HOLDING THAT PETITIONERS ARE LIABLE FOR ATTORNEY'S FEES.[22]

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[20] *Id.* at 51.

[21] *Id.* at 58-59.

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

This Court's Ruling

The petition is dismissible.

At the outset, we explain that based on the issues being raised by the petitioners, together with the arguments and the evidence being invoked in support thereof, we hold that the petition involves questions of fact that are beyond the ambit of a petition for review on *certiorari.* Section 1, Rule 45 of the Rules of Court, as amended, reads:

> **Sec. 1.** ***Filing of petition with Supreme Court***. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis ours)

Section 1, Rule 45 then categorically states that a petition for review on *certiorari* shall raise only questions of law, which must be distinctly set forth. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[23]

On the first issue of prescription, the petitioners argue that there was no written extrajudicial demand by the creditor TMBC that could have validly interrupted the ten (10)-year prescriptive period.[24] They claim, among other things, that the bank failed

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[23] *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012.

[24] *Rollo*, p. 24.

to prove that it sent the demand letter dated September 10, 1999 to the petitioners, and that it was actually received by said petitioners. The petitioners also question the several other letters supposedly exchanged between the parties. These contentions are now being raised even after the trial court that admitted the evidence of the respondent has categorically declared in its Decision dated May 20, 2007 the fact of the respondent's service, and the petitioners' receipt, of the demands.[25] In its Order dated November 5, 2007, the trial court had also cited the several other correspondences exchanged between the parties, including the letters of November 14, 1984, March 24, 1987, February 14, 1990 and September 10, 1999 that negated the defenses of prescription and novation.[26]

On appeal, these factual findings were even affirmed by the CA, which again cited the several letters exchanged between the parties in relation to the subject debts, and which correspondences were declared to have effectively interrupted the running of the prescriptive period to initiate the action for sum of money against the petitioners.

Applying the guidelines laid down by jurisprudence on the criteria for distinguishing a question of law from a question of fact, it is clear that the petitioners are now asking this Court to determine a question of fact, as their arguments delve on the truth or falsity of the trial and appellate courts' factual findings, the existence and authenticity of the respondent's documentary evidence, as well as the truth or falsity of the TMBC's narration of facts in their complaint and the testimonial evidence presented before the Presiding Judge in support of said allegations.

Similarly, the issue of the alleged novation involves a question of fact, as it necessarily requires a factual determination on the existence of the following requisites of novation: (1) there must be a previous valid obligation; (2) the parties concerned

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[25] *Id.* at 217.

[26] *Id.* at 252.

must agree to a new contract; (3) the old contract must be extinguished; and (4) there must be a valid new contract.[27] Needless to say, the respondent's entitlement to attorney's fees also depends upon the questioned factual findings.

The settled rule is that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as observe the demeanor of the witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court.[28] The Supreme Court is not a trier of facts. It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event.[29] Although jurisprudence admits of several exceptions to the foregoing rules, the present case does not fall under any of them.

Even granting that the issues being raised by the petitioners may still be validly entertained by this Court through the instant petition for review on *certiorari,* we hold that their arguments and defenses are bound to fail for lack of merit.

Significantly, the petitioners failed to file their answer to TMBC's complaint within the reglementary period allowed under the Rules of Court. The validity of the trial court's declaration of their default is a settled matter, following the denial of the petitions previously brought by the petitioners before the CA and this Court questioning it. As correctly stated by the CA in the Decision dated October 11, 2010:

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[27] *Country Bankers Insurance Corporation v. Lagman*, G.R. No. 165487, July 13, 2011, 653 SCRA 765, 769-770.

[28] *Bernales v. Heirs of Julian Sambaan*, G.R. No. 163271, January 15, 2010, 610 SCRA 90, 105, citing *Instrade, Inc. v. Court of Appeals*, 395 Phil. 791, 801 (2000).

[29] *Phil. Lawin Bus, Co. v. Court of Appeals*, 425 Phil. 146, 154 (2002).

At the outset, it behooves this Court to accentuate that the Order of the trial court declaring the defendants-appellants in default for their failure to file their responsive pleading to the complaint within the period prescribed under Section 3 of Rule 9 of the Revised Rules of Court had been declared final and beyond review already by the Supreme Court through its Resolution dated March 5, 2008 and June 25, 2008. Judicial decisions of the Supreme Court, as the final arbiter of any justiciable controversy, assume the same authority as the law itself. Thus, the issue raised by the defendants-appellants questioning the wisdom of the trial court's decision in declaring them in default is now rendered moot and academic by the aforecited Supreme Court resolutions.[30]

The petitioners' default by their failure to file their answer led to certain consequences. Where defendants before a trial court are declared in default, they thereby lose their right to object to the reception of the plaintiff's evidence establishing his cause of action.[31] This is akin to a failure to, despite due notice, attend in court hearings for the presentation of the complainant's evidence, which absence would amount to the waiver of such defendant's right to object to the evidence presented during such hearing, and to cross-examine the witnesses presented therein.[32]

Taking into consideration the bank's allegations in its complaint and the totality of the evidence presented in support thereof, coupled with the said circumstance that the petitioners, by their own inaction, failed to make their timely objection or opposition to the evidence, both documentary and testimonial, presented by TMBC to support its case, we find no cogent reason to reverse the trial and appellate courts' findings. We stress that in civil cases, the party having the burden of proof must establish his case only by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate

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[30] *Rollo*, p. 49.

[31] See *Dionisio v. Puerto*, 158 Phil. 671 (1974).

[32] See *Monzon v. Relova*, G.R. No. 171827, September 17, 2008, 565 SCRA 514.

evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability to truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[33]

We agree with the trial and appellate courts, for as the records bear, that the ten (10)-year prescriptive period to file an action based on the subject promissory notes was interrupted by the several letters exchanged between the parties. This is in conformity with the second and third circumstances under Article 1155 of the New Civil Code (NCC) which provides that the prescription of actions is interrupted when: (1) they are filed before the court; (2) there is a written extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor. In TMBC's complaint against the petitioners, the bank sufficiently made the allegations on its service and the petitioners' receipt of the subject demand letters, even attaching thereto copies thereof for the trial court's consideration. Thus, the complaint states in part:

> 23. However, despite numerous demands by plaintiff for the payment of the loan obligations obtained by defendants and evidenced by the five Promissory Notes, defendants MAGDIWANG, Dragon and Tolentino failed to settle their obligations with plaintiff.
>
> Copies of plaintiff's demand letters with respect to the five Promissory Notes (PN Nos. 4953, 10045, 10046, 10047, 10048) duly received by defendants, as well as defendants letters in reply to the demand letters and requesting for restructuring of loan or extension of time to pay the same are herewith attached as Annexes "F" to "O", respectively, and made integral parts of this Complaint.[34]

During the bank's presentation of evidence *ex parte*, the testimony of witness Mr. Megdonio Isanan was also offered to further support

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[33] *Chua v. Westmont Bank*, G.R. No. 182650, February 27, 2012.

[34] *Rollo*, p. 176.

the claim on the demand made by the bank upon the petitioners. In the absence of a timely objection from the petitioners on these claims, no error can be imputed on the part of the trial court, and even the appellate court, in taking due consideration thereof.

As against the bare denial belatedly made by the petitioners of their receipt of the written extrajudicial demands made by TMBC, especially of the letter of September 10, 1999 which was the written demand sent closest in time to the institution of the civil case, the appreciation of evidence and pronouncements of the trial court in its Order dated November 5, 2007 shall stand, to wit:

> In the 14 November 1984 Letter of Kalilid Wood Industries, Inc., through Mr. Uriel Balboa, the counter-offer of the plaintiff was acknowledged but Kalilid, while manifesting that the counter offer is acceptable, made some reservations and other conditions which likewise constitute as counter offers. Hence, no meeting of the minds happened regarding the restructuring of the loan. Likewise, based on this letter, the debt was also acknowledged. Another letter dated 24 March 1987 was issued and a repayment plan has been proposed by the Magdiwang Realty Corporation. There was also a correspondence dated February 14, 1990 from defendant Renato P. Dragon's Office regarding the obligation. While a demand letter dated September 1999 was given by the plaintiff to the defendants. Hence, from all indications, the prescription of the obligation does not set in.[35]

In addition to these, we take note that letters prior to the letter of September 1999 also form part of the case records, and the existence of said letters were not directly denied by the petitioners. The following letters that form part of the complaint and included in TMBC's formal offer of exhibits were correctly claimed by the respondents in their Comment[36] as also containing the petitioners' acknowledgment of their debts and TMBC's demand to its debtors: (1) Exhibit "M-29", which is a letter dated January 4, 1995 requesting for an updated Statement of Account of the corporations owned by petitioner Dragon, including the account of petitioner Magdiwang;

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[35] *Id.* at 252.

[36] *Id.* at 427-459.

and (2) Exhibit "M-30", which is the letter dated January 12, 1995 from the Office of the Statutory Receiver of TMBC and providing the Statements of Account requested for in the letter of January 4, 1995. Significantly, the petitioners failed to adequately negate the authority of the first letter's signatory to act for and on behalf of the petitioners, the reasonable conclusion being that said signatory and the company it represented were designated by the petitioners, as the debtors in the loans therein indicated, to deal with the TMBC.

On the issue of novation, no evidence was presented to adequately establish that such novation ensued. What the letters being invoked by the petitioners as supposedly establishing novation only indicate that efforts on a repayment scheme were exerted by the parties. However, nowhere in the records is it indicated that such novation ever materialized.

Regarding the award of attorney's fees, the applicable provision is Article 2208(2) of the NCC which allows the grant thereof when the defendants' act or omission compelled the plaintiff to litigate or to incur expenses to protect its interest. Considering the circumstances that led to the filing of the complaint in court, and the clear refusal of the petitioners to satisfy their existing debt to the bank despite the long period of time and the accommodations granted to it by the respondent to enable them to satisfy their obligations, we agree that the respondent was compelled by the petitioners' acts to litigate for the protection of the bank's interests, making the award of attorney's fees proper.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated October 11, 2010 and Resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. CV No. 90098 are hereby **AFFIRMED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 195619. September 5, 2012]

PLANTERS DEVELOPMENT BANK, *petitioner, vs.* **JULIE CHANDUMAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ACTION *IN PERSONAM*; HOW JURISDICTION OVER THE DEFENDANT IS ACQUIRED.— The fundamental rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the court acquires no jurisdiction over its person, and a judgment rendered against it is null and void. Where the action is *in personam* and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him. If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made. Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.

2. ID.; ID.; ID.; REQUISITES FOR A VALID SUBSTITUTED SERVICE OF SUMMONS.— In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In *Manotoc v. Court of Appeals*, the Court detailed the requisites for a valid substituted service of summons, summed up as follows: (1) **impossibility of prompt personal service –** the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) **specific details in the return** – the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service; (3) **a person of suitable age and discretion** – the sheriff

must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) **a competent person in charge**, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons. These were reiterated and applied in *Pascual v. Pascual*, where the substituted service of summon made was invalidated due to the sheriff's failure to specify in the return the necessary details of the failed attempts to effect personal service which would justify resort to substituted service of summons.

3. ID.; ID.; ID.; SUMMONS; NO VALID SUBSTITUTED SERVICE OF SUMMONS IN CASE AT BAR; THE ALLEGED "EFFORTS" EXERTED BY THE SHERIFF SHOWN BY THE RETURN THAT MERELY STATES THE ALLEGED WHEREABOUTS OF THE DEFENDANT AND NOTHING MORE CLEARLY DO NOT SUFFICE TO JUSTIFY SUBSTITUTED SERVICE OF SUMMONS.— In applying the requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons. According to the CA, the Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof. Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective.

4. ID.; ID.; ID.; ID.; SUMMONS; VOLUNTARY APPEARANCE; RESPONDENT VOLUNTARY SUBMITTED HER PERSON TO THE JURISDICTION OF THE TRIAL COURT WHEN SHE FILED AN URGENT MOTION TO SET ASIDE THE ORDER OF DEFAULT AND TO ADMIT ATTACHED ANSWER; WHERE A PARTY SEEKS AN AFFIRMATIVE RELIEF AND FILES A PLEADING, THE FILING IS EQUIVALENT TO A SERVICE OF SUMMONS AND VESTS THE TRIAL COURT WITH JURISDICTION OVER THE DEFENDANT'S PERSON.— Despite that there was no valid substituted service of summons, the Court, nevertheless, finds that Chandumal voluntarily submitted to the jurisdiction of the trial court. x x x When Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person. Thus, it was ruled that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction. The Court notes that aside from the allegation that she did not receive any summons, Chandumal's motion to set aside order of default and to admit attached answer failed to positively assert the trial court's lack of jurisdiction. In fact, what was set forth therein was the substantial claim that PDB failed to comply with the requirements of R.A. No. 6552 on payment of cash surrender value, which already delves into the merits of PDB's cause of action. In addition, Chandumal even appealed the RTC decision to the CA, an act which demonstrates her recognition of the trial court's jurisdiction to render said judgment. Given Chandumal's voluntary submission to the jurisdiction of the trial court, the RTC, Las Piñas City, Branch 255, had all authority to render its Decision dated May 31, 2004. The CA, therefore, erred in nullifying said RTC decision and dispensing with the resolution of the substantial issue raised herein, *i.e.*, validity of the notarial rescission. Instead, however, of remanding this case to the CA, the Court will resolve the same considering that the records of the case are already before us and in order to avoid any further delay.

5. CIVIL LAW; SPECIAL CONTRACTS; SALES; REALTY INSTALLMENT BUYER ACT "MACEDA LAW" (R.A. 6552); NO VALID RESCISSION OF THE CONTRACT TO SELL BY NOTARIAL ACT PURSUANT TO SECTION 3 (b) OF R.A. NO. 6552 IN CASE AT BAR.— R.A. No. 6552 recognizes the right of the seller to cancel the contract but any such cancellation must be done in conformity with the requirements therein prescribed. In addition to the notarial act of rescission, the seller is required to refund to the buyer the cash surrender value of the payments on the property. The actual cancellation of the contract can only be deemed to take place upon the expiry of a thirty (30)-day period following the receipt by the buyer of the notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value. In this case, it is an admitted fact that PDB failed to give Chandumal the full payment of the cash surrender value. In its complaint, PDB admitted that it tried to deliver the cash surrender value of the subject property as required under R.A. No. 6552 but Chandumal was "unavailable" for such purpose. Thus, it prayed in its complaint that it be ordered to "deposit with a banking institution in the Philippines, for the account of Defendants (sic), the amount of Ten Thousand Pesos (₱10,000.00), Philippine Currency, representing the cash surrender value of the subject property; x x x." The allegation that Chandumal made herself unavailable for payment is not an excuse as the twin requirements for a valid and effective cancellation under the law, *i.e.*, notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value, is **mandatory**. Consequently, there was no valid rescission of the contract to sell by notarial act undertaken by PDB and the RTC should not have given judicial confirmation over the same.

APPEARANCES OF COUNSEL

Janda Asia & Associates for petitioner.
Jurado Jurado & Associates for respondent.

D E C I S I O N

REYES, *J.*:

In this petition for review under Rule 45 of the Rules of Court, Planters Development Bank (PDB) questions the Decision[1] dated July 27, 2010 of the Court of Appeals (CA), as well as its Resolution[2] dated February 16, 2011, denying the petitioner's motion for reconsideration in CA-G.R. CV No. 82861. The assailed decision nullified the Decision[3] dated May 31, 2004 of the Regional Trial Court (RTC), Las Piñas City, Branch 255 in Civil Case No. LP-99-0137.

Antecedent Facts

The instant case stemmed from a contract to sell a parcel of land, together with improvements, between BF Homes, Inc. (BF Homes) and herein respondent Julie Chandumal (Chandumal). The property subject of the contract is located in Talon Dos, Las Piñas City and covered by Transfer Certificate of Title No. T-10779. On February 12, 1993, BF Homes sold to PDB all its rights, participations and interests over the contract.

Chandumal paid her monthly amortizations from December 1990 until May 1994 when she began to default in her payments. In a Notice of Delinquency and Rescission of Contract with Demand to Vacate[4] dated July 14, 1998, PDB gave Chandumal a period of thirty (30) days from receipt within which to settle her installment arrearages together with all its increments; otherwise, all her rights under the contract shall be deemed

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring; CA *rollo*, pp. 56-65.

[2] *Id.* at 96-97.

[3] Under the sala of Judge Raul Bautista Villanueva; RTC records, pp. 174-179.

[4] *Id.* at 149.

extinguished and terminated and the contract declared as rescinded. Despite demand, Chandumal still failed to settle her obligation.

On June 18, 1999, an action for judicial confirmation of notarial rescission and delivery of possession was filed by PDB against Chandumal, docketed as Civil Case No. LP-99-0137. PDB alleged that despite demand, Chandumal failed and/or refused to pay the amortizations as they fell due; hence, it caused the rescission of the contract by means of notarial act, as provided in Republic Act (R.A.) No. 6552.[5] According to PDB, it tried to deliver the cash surrender value of the subject property, as required under R.A. No. 6552, in the amount of ₱10,000.00; however, the defendant was unavailable for such purpose.[6]

Consequently, summons was issued and served by deputy sheriff Roberto T. Galing (Sheriff Galing). According to his return, Sheriff Galing attempted to personally serve the summons upon Chandumal on July 15, 19 and 22, 1999 but it was unavailing as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons on August 5, 1999 by serving the same through Chandumal's mother who acknowledged receipt thereof.[7]

For her failure to file an answer within the prescribed period, PDB filed on April 24, 2000 an *ex parte* motion to declare Chandumal in default. On January 12, 2001, the RTC issued an Order granting the motion of PDB.[8]

On February 23, 2001, Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. She maintained that she did not receive the summons and/or was not

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[5] Otherwise known as the "Realty Installment Buyers Protection Act," effective September 16, 1972, and more commonly known as the Maceda Law.

[6] RTC records, p. 3.

[7] *Id.* at 24.

[8] Under the sala of Judge Florentino M. Alumbres; *id.* at 70.

notified of the same. She further alleged that her failure to file an answer within the reglementary period was due to fraud, mistake or excusable negligence. In her answer, Chandumal alleged the following defenses: (a) contrary to the position of PDB, the latter did not make any demand for her to pay the unpaid monthly amortization; and (b) PDB did not tender or offer to give the cash surrender value of the property in an amount equivalent to fifty percent (50%) of the actual total payment made, as provided for under Section 3(b) of R.A. No. 6552. Moreover, Chandumal claimed that since the total payment she made amounts to ₱782,000.00, the corresponding cash surrender value due her should be ₱391,000.00.[9]

Per Order[10] dated August 2, 2001, the RTC denied Chandumal's motion to set aside the order of default. Her motion for reconsideration was also denied for lack of merit.[11] Conformably, the RTC allowed PDB to present its evidence *ex parte*.[12] On May 31, 2004, the RTC rendered a Decision[13] in favor of PDB, the dispositive portion of which reads:

> WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the plaintiff Planters Development Bank and against defendant Julie Chandumal as follows, to wit:
>
> 1. Declaring the notarial rescission of the Contract to Sell dated 03 January 1990 made by the plaintiff per the Notice of Delinquency and Rescission of Contract with Demand to Vacate dated 14 July 1998 as judicially confirmed and ratified;
>
> 2. Requiring the plaintiff to deposit in the name of the defendant the amount of [₱]10,000.00 representing the cash surrender value for the subject property with the Land Bank of the Philippines, Las Pi[ñ]as City Branch in satisfaction of the provisions of R.A. No. 6552; and,

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[9] *Id.* at 71-98.

[10] Under the sala of Judge Bonifacio Sanz Maceda; *id.* at 108.

[11] *Id.* at 121-123.

[12] *Id*.

[13] *Id.* at 174-179.

3. Ordering the defendant to pay the plaintiff the amount of [₱]50,000.00 as and by way of attorney's fees, including the costs of suit.

SO ORDERED.[14]

From the foregoing judgment, Chandumal appealed to the CA.

On July 27, 2010, the CA, *without ruling on the propriety of the judicial confirmation of the notarial rescission,* rendered the assailed decision nullifying the RTC decision due to invalid and ineffective substituted service of summons. The dispositive portion of the CA decision provides:

WHEREFORE, premises considered, the decision of Branch 255 of the Regional Trial Court of Las Piñas City, dated May 31, 2004, in Civil Case No. LP-99-0137 is hereby **NULLIFIED** and **VACATED**.

SO ORDERED.[15]

PDB filed a motion for reconsideration but it was denied by the CA in its Resolution dated February 16, 2011.

Hence, this petition based on the following assignment of errors:

I

The Honorable Court of Appeals erred in reversing the decision of the trial court on the ground of improper service of summons[;]

II

The decision of the trial court is valid as it duly acquired jurisdiction over the person of respondent Chandumal through voluntary appearance[; and]

III

The trial court did not err in confirming and ratifying the notarial rescission of the subject contract to sell.[16]

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[14] *Id.* at 178-179.

[15] CA Decision dated July 27, 2010, p. 10; CA *rollo*, p. 65.

[16] *Rollo*, p. 12.

PDB contends that the RTC properly acquired jurisdiction over the person of Chandumal. According to PDB, there was proper service of summons since the sheriff complied with the proper procedure governing substituted service of summons as laid down in Section 7, Rule 14 of the Rules of Court. PDB alleges that it is clear from the sheriff's return that there were several attempts on at least three (3) different dates to effect personal service within a reasonable period of nearly a month, before he caused substituted service of summons. The sheriff likewise stated the reason for his failure to effect personal service and that on his fourth attempt, he effected the service of summons through Chandumal's mother who is unarguably, a person of legal age and with sufficient discretion. PDB also argues that Chandumal voluntarily submitted herself to the jurisdiction of the court when she filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer.

For her part, Chandumal asserts that she never received a copy of the summons or was ever notified of it and she only came to know of the case sometime in July or August 2000, but she was already in the United States of America by that time, and that the CA correctly ruled that there was no valid service of summons; hence, the RTC never acquired jurisdiction over her person.

Issues

1. Whether there was a valid substituted service of summons;

2. Whether Chandumal voluntarily submitted to the jurisdiction of the trial court; and

3. Whether there was proper rescission by notarial act of the contract to sell.

Our Ruling

The fundamental rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the

court acquires no jurisdiction over its person, and a judgment rendered against it is null and void.[17]

Where the action is *in personam*[18] and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him.[19] If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made.[20] Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.[21]

No valid substituted service of summons

In this case, the sheriff resorted to substituted service of summons due to his failure to serve it personally. In *Manotoc v. Court of Appeals*,[22] the Court detailed the requisites for a valid substituted service of summons, summed up as follows:

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[17] An action *in personam* is one which seeks to enforce personal rights and obligations against a defendant and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. (See *Belen v. Chavez*, G.R. No. 175334, March 26, 2008, 549 SCRA 479, 481.)

[18] *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36.

[19] RULES OF COURT, Rule 14, Section 6.

[20] Section 7, Rule 14 of the Rules of Court on substituted service provides: "If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at the defendant's office or regular place of business with some competent person in charge thereof."

[21] *Pascual v. Pascual*, G.R. No. 171916, December 4, 2009, 607 SCRA 288, 298.

[22] 530 Phil. 454 (2006).

(1) **impossibility of prompt personal service –** the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service; (2) **specific details in the return** – the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service; (3) **a person of suitable age and discretion** – the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and (4) **a competent person in charge**, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons.[23] These were reiterated and applied in *Pascual v. Pascual*,[24] where the substituted service of summon made was invalidated due to the sheriff's failure to specify in the return the necessary details of the failed attempts to effect personal service which would justify resort to substituted service of summons.

In applying the foregoing requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons. According to the CA, the Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof.[25] Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication

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[23] *Id.* at 468-471.

[24] *Supra* note 21.

[25] CA *rollo*, p. 63.

if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective.[26]

Respondent voluntarily submitted to the jurisdiction of the trial court

Despite that there was no valid substituted service of summons, the Court, nevertheless, finds that Chandumal voluntarily submitted to the jurisdiction of the trial court.

Section 20, Rule 14 of the Rules of Court states:

Sec. 20. *Voluntary appearance*. – The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

When Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person. Thus, it was ruled that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction.[27] The Court notes that aside from the allegation that she did not receive any summons, Chandumal's motion to set aside order of default and to admit attached answer failed to positively assert the

[26] *Afdal v. Carlos*, G.R. No. 173379, December 1, 2010, 636 SCRA 389, 398.

[27] *Rapid City Realty and Development Corporation v. Villa*, G.R. No. 184197, February 11, 2010, 612 SCRA 302, 306.

trial court's lack of jurisdiction. In fact, what was set forth therein was the substantial claim that PDB failed to comply with the requirements of R.A. No. 6552 on payment of cash surrender value,[28] which already delves into the merits of PDB's cause of action. In addition, Chandumal even appealed the RTC decision to the CA, an act which demonstrates her recognition of the trial court's jurisdiction to render said judgment.

Given Chandumal's voluntary submission to the jurisdiction of the trial court, the RTC, Las Piñas City, Branch 255, had all authority to render its Decision dated May 31, 2004. The CA, therefore, erred in nullifying said RTC decision and dispensing with the resolution of the substantial issue raised herein, *i.e.*, validity of the notarial rescission. Instead, however, of remanding this case to the CA, the Court will resolve the same considering that the records of the case are already before us and in order to avoid any further delay.[29]

There is no valid rescission of the contract to sell by notarial act pursuant to Section 3(b), R.A. No. 6552

That the RTC had jurisdiction to render the decision does not necessarily mean, however, that its ruling on the validity of the notarial rescission is in accord with the established facts of the case, the relevant law and jurisprudence.

PDB claims that it has validly rescinded the contract by notarial act as provided under R.A. No. 6552. Basically, PDB instituted Civil Case No. LP-99-0137 in order to secure judicial confirmation of the rescission and to recover possession of the property subject of the contract.

In *Leaño v. Court of Appeals*,[30] it was held that:

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[28] RTC records, pp. 71-72.

[29] *Peñoso v. Dona*, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 241.

[30] 420 Phil. 836, (2001).

R.A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. The law also provides for the rights of the buyer in case of cancellation. Thus, Sec. 3 (b) of the law provides that:

> "**If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made** and, after five years of installments, an additional five percent every year but not to exceed ninety percent of the total payments made: *Provided,* That ***the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer***."[31] (Citation omitted and emphasis ours)

R.A. No. 6552 recognizes the right of the seller to cancel the contract but any such cancellation must be done in conformity with the requirements therein prescribed. In addition to the notarial act of rescission, the seller is required to refund to the buyer the cash surrender value of the payments on the property. The actual cancellation of the contract can only be deemed to take place upon the expiry of a thirty (30)-day period following the receipt by the buyer of the notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value.[32]

In this case, it is an admitted fact that PDB failed to give Chandumal the full payment of the cash surrender value. In its complaint,[33] PDB admitted that it tried to deliver the cash surrender value of the subject property as required under R.A.

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[31] *Id.* at 846-847.

[32] *Olympia Housing, Inc. v. Panasiatic Travel Corp.*, 443 Phil. 385, 398-399 (2003).

[33] RTC records, p. 3.

No. 6552 but Chandumal was "unavailable" for such purpose. Thus, it prayed in its complaint that it be ordered to "deposit with a banking institution in the Philippines, for the account of Defendants (sic), the amount of Ten Thousand Pesos (₱10,000.00), Philippine Currency, representing the cash surrender value of the subject property; x x x."[34] The allegation that Chandumal made herself unavailable for payment is not an excuse as the twin requirements for a valid and effective cancellation under the law, *i.e.*, notice of cancellation or demand for rescission by a notarial act and the full payment of the cash surrender value, is **mandatory**.[35] Consequently, there was no valid rescission of the contract to sell by notarial act undertaken by PDB and the RTC should not have given judicial confirmation over the same.

WHEREFORE, the petition is **DENIED**. The Decision dated July 27, 2010 of the Court of Appeals, as well as its Resolution dated February 16, 2011, denying the Motion for Reconsideration in CA-G.R. CV No. 82861 are **AFFIRMED** in so far as there was no valid service of summons. Further, the Court **DECLARES** that there was no valid rescission of contract pursuant to R.A. No. 6552. Accordingly, the Decision dated May 31, 2004 of the Regional Trial Court, Las Piñas City, Branch 255 in Civil Case No. LP-99-0137 is **REVERSED** and **SET ASIDE**, and is therefore, **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[34] *Id.* at p. 4.

[35] *Active Realty & Development Corp. v. Daroya*, 431 Phil. 753, 761-762 (2002).

SECOND DIVISION

[G.R. No. 197528. September 5, 2012]

PERT/CPM MANPOWER EXPONENT CO., INC., *petitioner, vs.* **ARMANDO A. VINUYA, LOUIE M. ORDOVEZ, ARSENIO S. LUMANTA, JR., ROBELITO S. ANIPAN, VIRGILIO R. ALCANTARA, MARINO M. ERA, SANDY O. ENJAMBRE and NOEL T. LADEA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; RECRUITMENT AND PLACEMENT; PROHIBITED ACTIVITIES; THE AGENCY AND THE FOREIGN EMPLOYER ARE GUILTY OF CONTRACT SUBSTITUTION AND ILLEGAL RECRUITMENT.— The agency and its principal, Modern Metal, committed flagrant violations of the law on overseas employment, as well as basic norms of decency and fair play in an employment relationship, pushing the respondents to look for a better employment and, ultimately, to resign from their jobs. The agency and Modern Metal are guilty of contract substitution. The respondents entered into a POEA-approved two-year employment contract, with Modern Metal providing among others, as earlier discussed, for a monthly salary of 1350 AED. On April 2, 2007, Modern Metal issued to them appointment letters whereby the respondents were hired for a longer three-year period and a reduced salary, from 1,100 AED to 1,200 AED, among other provisions. Then, on May 5, 2007, they were required to sign new employment contracts reflecting the same terms contained in their appointment letters, except that this time, they were hired as "ordinary laborer," no longer aluminum fabricator/installer. The respondents complained with the agency about the contract substitution, but the agency refused or failed to act on the matter. The fact that the respondents' contracts were altered or substituted at the workplace had never been denied by the agency. On the contrary, it admitted that the contract substitution did happen when it argued, "[a]s to their claim for [underpayment] of salary, their original contract mentioned 1350 AED monthly salary, which includes allowance

while in their Appointment Letters, they were supposed to receive 1,300 AED. While there was [a] difference of 50 AED monthly, the same could no longer be claimed by virtue of their Affidavits of Quitclaims and Desistance[.]" Clearly, the agency and Modern Metal committed a prohibited practice and engaged in illegal recruitment under the law.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; RESPONDENTS WERE IN EFFECT CONSTRUCTIVELY DISMISSED; THE SUBSTITUTION OF THEIR ORIGINAL CONTRACTS AND THE OPPRESSIVE WORKING AND LIVING CONDITIONS COMPELLED THEM TO GIVE UP THEIR JOBS.—** With their original contracts substituted and their oppressive working and living conditions unmitigated or unresolved, the respondents' decision to resign is not surprising. They were compelled by the dismal state of their employment to give up their jobs; effectively, they were constructively dismissed. A constructive dismissal or discharge is "a quitting because continued employment is rendered impossible, unreasonable or unlikely, as, an offer involving a demotion in rank and a diminution in pay."

3. **ID.; ID.; ID.; ID.; RESPONDENT'S CONTINUED EMPLOYMENT HAD BECOME UNREASONABLE; THE RESIGNATION LETTERS WERE FOUND "DUBIOUS" BOTH BY THE APPELLATE COURT AND THE COURT.—** Without doubt, the respondents' continued employment with Modern Metal had become unreasonable. A reasonable mind would not approve of a substituted contract that pays a diminished salary — from 1350 AED a month in the original contract to 1,000 AED to 1,200 AED in the appointment letters, a difference of 150 AED to 250 AED (not just 50 AED as the agency claimed) or an extended employment (from 2 to 3 years) at such inferior terms, or a "free and suitable" housing which is hours away from the job site, cramped and crowded, without potable water and exposed to air pollution. We thus cannot accept the agency's insistence that the respondents voluntarily resigned since they personally prepared their resignation letters in their own handwriting, citing family problems as their common ground for resigning. As the CA did, we find the resignation letters "dubious," not only for having been lopsidedly worded to ensure that the employer is rendered free from any liability, but also for the odd coincidence that all the respondents had, at the

same time, been confronted with urgent family problems so that they had to give up their employment and go home. The truth, as the respondents maintain, is that they cited family problems as reason out of fear that Modern Metal would not give them their salaries and their release papers. Only Era was bold enough to say the real reason for his resignation — to protest company policy.

4. ID.; ID.; ID.; ID.; THE AFFIDAVITS OF QUITCLAIM AND RELEASE ARE ALSO SUSPECT.— We likewise find the affidavits of quitclaim and release which the respondents executed suspect. Obviously, the affidavits were prepared as a follow through of the respondents' supposed voluntary resignation. Unlike the resignation letters, the respondents had no hand in the preparation of the affidavits. They must have been prepared by a representative of Modern Metal as they appear to come from a standard form and were apparently introduced for only one purpose — to lend credence to the resignation letters. In Modern Metal's haste, however, to secure the respondents' affidavits, they did not check on the model they used. Thus, Lumanta's affidavit mentioned a G & A International Manpower as his recruiting agency, an entity totally unknown to the respondents; the same thing is true for Era's affidavit. This confusion is an indication of the employer's hurried attempt to avoid liability to the respondents.

5. ID.; ID.; ID.; ID.; THE COMPROMISE AGREEMENT CANNOT BE CONSIDERED TO HAVE FULLY SETTLED THE RESPONDENTS' CLAIMS FOR ILLEGAL DISMISSAL AND MONETARY BENEFITS; THE ALLEGED SETTLEMENT PERTAINED ONLY TO THEIR CLAIM FOR REFUND OF THE AIRFARE WHICH THEY SHOULDERED WHEN THEY RETURNED TO THE PHILIPPINES.— The uniform insubstantial amount for each of the signatories to the agreement lends credence to their contention that the settlement pertained only to their claim for refund of the airfare which they shouldered when they returned to the Philippines. The compromise agreement, apparently, was intended by the agency as a settlement with the respondents and others with similar claims, which explains the inclusion of the two (Nangolinola and Gatchalian) who were not involved in the case with the NLRC. Under the circumstances, we cannot see how the compromise agreements can be considered to have fully settled the

respondents' claims before the NLRC — illegal dismissal and monetary benefits arising from employment. We thus find no reversible error nor grave abuse of discretion in the rejection by the NLRC and the CA of said agreements.

6. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; LAWS HAVE NO RETROACTIVE EFFECT, UNLESS THE CONTRARY IS PROVIDED; THE AMENDMENT INTRODUCED BY R.A. 10022, RESTORING A PROVISION OF R.A. 8042 WHICH WAS DECLARED UNCONSTITUTIONAL, CANNOT BE GIVEN RETROACTIVE EFFECT, NOT ONLY BECAUSE THERE IS NO EXPRESS DECLARATION OF RETROACTIVITY IN THE LAW, BUT ALSO BECAUSE RETROACTIVE APPLICATION WILL RESULT IN AN IMPAIRMENT OF A RIGHT THAT HAD ACCRUED TO THE RESPONDENTS BY VIRTUE OF THE *SERRANO* RULING.— Laws shall have no retroactive effect, unless the contrary is provided. By its very nature, the amendment introduced by R.A. 10022 — restoring a provision of R.A. 8042 declared unconstitutional — cannot be given retroactive effect, not only because there is no express declaration of retroactivity in the law, but because retroactive application will result in an impairment of a right that had accrued to the respondents by virtue of the *Serrano* ruling — entitlement to their salaries for the unexpired portion of their employment contracts. All statutes are to be construed as having only a prospective application, unless the purpose and intention of the legislature to give them a retrospective effect are expressly declared or are necessarily implied from the language used. We thus see no reason to nullify the application of the *Serrano* ruling in the present case. Whether or not R.A. 10022 is constitutional is not for us to rule upon in the present case as this is an issue that is not squarely before us. In other words, this is an issue that awaits its proper day in court; in the meanwhile, we make no pronouncement on it.

APPEARANCES OF COUNSEL

Manicad Ong Dela Cruz & Fallarme for petitioner.
Leaño Leaño & Leaño III Law Office for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] assailing the decision[2] dated May 9, 2011 and the resolution[3] dated June 23, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 114353.

The Antecedents

On March 5, 2008, respondents Armando A. Vinuya, Louie M. Ordovez, Arsenio S. Lumanta, Jr., Robelito S. Anipan, Virgilio R. Alcantara, Marino M. Era, Sandy O. Enjambre and Noel T. Ladea (*respondents*) filed a complaint for illegal dismissal against the petitioner Pert/CPM Manpower Exponent Co., Inc. (*agency*), and its President Romeo P. Nacino.

The respondents alleged that the agency deployed them between March 29, 2007 and May 12, 2007 to work as aluminum fabricator/installer for the agency's principal, Modern Metal Solution LLC/MMS Modern Metal Solution LLC (*Modern Metal*) in Dubai, United Arab Emirates.

The respondents' employment contracts,[4] which were approved by the Philippine Overseas Employment Administration (*POEA*), provided for a two-year employment, nine hours a day, salary of 1,350 AED with overtime pay, food allowance, free and suitable housing (four to a room), free transportation, free laundry, and free medical and dental services. They each paid a ₱15,000.00 processing fee.[5]

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[1] *Rollo*, pp. 27-64; filed under Rule 45 of the Rules of Court.

[2] *Id.* at 107-121; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Estela M. Perlas-Bernabe (now also a member of this Court) and Elihu A. Ybañez.

[3] *Id.* at 138-139.

[4] *Id.* at 316-322.

[5] *Id.* at 323-326.

On April 2, 2007, Modern Metal gave the respondents, except Era, appointment letters[6] with terms different from those in the employment contracts which they signed at the agency's office in the Philippines. Under the letters of appointment, their employment was increased to three years at 1,000 to 1,200 AED and food allowance of 200 AED.

The respondents claimed that they were shocked to find out what their working and living conditions were in Dubai. They were required to work from 6:30 a.m. to 6:30 p.m., with a break of only one hour to one and a half hours. When they rendered overtime work, they were most of the time either underpaid or not paid at all. Their housing accommodations were cramped and were shared with 27 other occupants. The lodging house was in Sharjah, which was far from their jobsite in Dubai, leaving them only three to four hours of sleep a day because of the long hours of travel to and from their place of work; there was no potable water and the air was polluted.

When the respondents received their first salaries (at the rates provided in their appointment letters and with deductions for placement fees) and because of their difficult living and working conditions, they called up the agency and complained about their predicament. The agency assured them that their concerns would be promptly addressed, but nothing happened.

On May 5, 2007, Modern Metal required the respondents to sign new employment contracts,[7] except for Era who was made to sign later. The contracts reflected the terms of their appointment letters. Burdened by all the expenses and financial obligations they incurred for their deployment, they were left with no choice but to sign the contracts. They raised the matter with the agency, which again took no action.

On August 5, 2007, despondent over their unbearable living and working conditions and by the agency's inaction, the

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[6] *Id.* at 327-333.

[7] *Id.* at 334, 336-339.

respondents expressed to Modern Metal their desire to resign. Out of fear, as they put it, that Modern Metal would not give them their salaries and release papers, the respondents, except Era, cited personal/family problems for their resignation.[8] Era mentioned the real reason – "because I dont (sic) want the company policy"[9] – for his resignation.

It took the agency several weeks to repatriate the respondents to the Philippines. They all returned to Manila in September 2007. Except for Ordovez and Enjambre, all the respondents shouldered their own airfare.

For its part, the agency countered that the respondents were not illegally dismissed; they voluntarily resigned from their employment to seek a better paying job. It claimed that the respondents, while still working for Modern Metal, applied with another company which offered them a higher pay. Unfortunately, their supposed employment failed to materialize and they had to go home because they had already resigned from Modern Metal.

The agency further alleged that the respondents even voluntarily signed affidavits of quitclaim and release after they resigned. It thus argued that their claim for benefits, under Section 10 of Republic Act No. (R.A.) 8042, damages and attorney's fees is unfounded.

The Compulsory Arbitration Rulings

On April 30, 2008, Labor Arbiter Ligerio V. Ancheta rendered a decision[10] dismissing the complaint, finding that the respondents voluntarily resigned from their jobs. He also found that four of them – Alcantara, Era, Anipan and Lumanta – even executed a compromise agreement (with quitclaim and release) before the POEA. He considered the POEA recourse a case of forum shopping.

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[8] *Id.* at 269, 278, 282 and 296.

[9] *Id.* at 286.

[10] *Id.* at 141-154.

The respondents appealed to the National Labor Relations Commission (*NLRC*). They argued that the labor arbiter committed serious errors in (1) admitting in evidence the quitclaims and releases they executed in Dubai, which were mere photocopies of the originals and which failed to explain the circumstances behind their execution; (2) failing to consider that the compromise agreements they signed before the POEA covered only the refund of their airfare and not all their money claims; and (3) ruling that they violated the rule on non-forum shopping.

On May 12, 2009, the NLRC granted the appeal.[11] It ruled that the respondents had been illegally dismissed. It anchored its ruling on the new employment contracts they were made to sign in Dubai. It stressed that it is illegal for an employer to require its employees to execute new employment papers, especially those which provide benefits that are inferior to the POEA-approved contracts.

The NLRC rejected the quitclaim and release executed by the respondents in Dubai. It believed that the respondents executed the quitclaim documents under duress as they were afraid that they would not be allowed to return to the Philippines if they did not sign the documents. Further, the labor tribunal disagreed with the labor arbiter's opinion that the compromise agreement they executed before the POEA had effectively foreclosed the illegal dismissal complaint before the NLRC and that the respondents had been guilty of forum shopping. It pointed out that the POEA case involved pre-deployment issues; whereas, the complaint before the NLRC is one for illegal dismissal and money claims arising from employment.

Consequently, the NLRC ordered the agency, Nacino and Modern Metal to pay, jointly and severally, the respondents, as follows:

> WHEREFORE, the Decision dated 30 April 2008 is hereby REVERSED and SET ASIDE, a new Decision is hereby issued ordering the respondents PERT/CPM MANPOWER EXPONENTS CO., INC., ROMEO NACINO, and MODERN METAL SOLUTIONS, INC. to jointly and severally, pay the complainants the following:

[11] *Id.* at 155-162.

Employee	Underpaid Salary	Placement fee	Salary for the unexpired portion of the contract (1350 x 6 months)	Exemplary Damages
Vinuya, ARMANDO	150 x 6 = 900 AED	USD 400	8100 AED	₱20,000.00
Alcantara VIRGILIO	150 X 4 = 600 AED	USD 400	8100 AED	P20,000.00
Era, MARINO	350 x 4 = 1400 AED	USD 400	8100 AED	₱20,000.00
Ladea, NOEL	150 x 5 = 750 AED	USD 400	8100 AED	₱20,000.00
Ordovez, LOUIE	250 x 3 = 750 AED	USD 400	8100 AED	₱20,000.00
Anipan, ROBELITO	150 X 4 = 600 AED	USD 400	8100 AED	₱20,000.00
Enjambre, SANDY	150 x 4 = 600 AED	USD 400	8100 AED	₱20,000.00
Lumanta, ARSENIO	250 x 5 = 1250 AED	USD 400	8100 AED	₱20,000.00
TOTAL:	6,850 AED	US$3,200	64,800AED	₱400,000.00

or their peso equivalent at the time of actual payment plus attorney[']s fees equivalent to 10% of the judgment award.[12]

The agency moved for reconsideration, contending that the appeal was never perfected and that the NLRC gravely abused its discretion in reversing the labor arbiter's decision.

[12] *Id.* at 160.

The respondents, on the other hand, moved for partial reconsideration, maintaining that their salaries should have covered the unexpired portion of their employment contracts, pursuant to the Court's ruling in *Serrano v. Gallant Maritime Services, Inc.*[13]

The NLRC denied the agency's motion for reconsideration, but granted the respondents' motion.[14] It sustained the respondents' argument that the award needed to be adjusted, particularly in relation to the payment of their salaries, consistent with the Court's ruling in *Serrano*. The ruling declared unconstitutional the clause, "or for three (3) months for every year of the unexpired term, whichever is less," in Section 10, paragraph 5, of R.A. 8042, limiting the entitlement of illegally dismissed overseas Filipino workers to their salaries for the unexpired term of their contract or three months, whichever is less. Accordingly, it modified its earlier decision and adjusted the respondents' salary entitlement based on the following matrix:

Employee	Duration of Contract	Departure date	Date dismissed	Unexpired portion of contract
Vinuya, ARMANDO	2 years	29 March 2007	8 August 2007	19 months and 21 days
Alcantara, VIRGILIO	2 years	3 April 2007	8 August 2007	20 month and 5 days
Era, MARINO	2 years	12 May 2007	8 August 2007	21months and 4 days
Ladea, NOEL	2 years	29 March 2007	8 August 2007	19 months and 21 days
Ordovez, LOUIE	2 years	3 April 2007	26 July 2007	21 months and 23 days
Anipan, ROBELITO	2 years	3 April 2007	8 August 2007	20 months and 5 days

[13] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[14] *Rollo*, pp. 246-251; resolution dated September 2, 2009.

Enjambre, SANDY	2 years	29 March 2007	26 July 2007	20 months and 3 days
Lumanta, ARSENIO	2 years	29 March 2007	8 August 2007	19 months and 21 days[15]

Again, the agency moved for reconsideration, reiterating its earlier arguments and, additionally, questioning the application of the *Serrano* ruling in the case because it was not yet final and executory. The NLRC denied the motion, prompting the agency to seek recourse from the CA through a petition for *certiorari.*

The CA Decision

The CA dismissed the petition for lack of merit.[16] It upheld the NLRC ruling that the respondents were illegally dismissed. It found no grave abuse of discretion in the NLRC's rejection of the respondents' resignation letters, and the accompanying quitclaim and release affidavits, as proof of their voluntary termination of employment.

The CA stressed that the filing of a complaint for illegal dismissal is inconsistent with resignation. Moreover, it found nothing in the records to substantiate the agency's contention that the respondents' resignation was of their own accord; on the contrary, it considered the resignation letters "dubious for having been lopsidedly-worded to ensure that the petitioners (employer[s]) are free from any liability."[17]

The appellate court likewise refused to give credit to the compromise agreements that the respondents executed before the POEA. It agreed with the NLRC's conclusion that the agreements pertain to the respondents' charge of recruitment violations against the agency distinct from their illegal dismissal complaint, thus negating forum shopping by the respondents.

Lastly, the CA found nothing legally wrong in the NLRC correcting itself (upon being reminded by the respondents), by adjusting the

[15] *Id.* at 250.

[16] *Supra* note 2.

[17] *Id.* at 118.

respondents' salary award on the basis of the unexpired portion of their contracts, as enunciated in the *Serrano* case.

The agency moved for, but failed to secure, a reconsideration of the CA decision.[18]

The Petition

The agency is now before the Court seeking a reversal of the CA dispositions, contending that the CA erred in:

1. affirming the NLRC's finding that the respondents were illegally dismissed;

2. holding that the compromise agreements before the POEA pertain only to the respondents' charge of recruitment violations against the agency; and

3. affirming the NLRC's award to the respondents of their salaries for the unexpired portion of their employment contracts, pursuant to the *Serrano* ruling.

The agency insists that it is not liable for illegal dismissal, actual or constructive. It submits that as correctly found by the labor arbiter, the respondents voluntarily resigned from their jobs, and even executed affidavits of quitclaim and release; the respondents stated family concerns for their resignation. The agency posits that the letters were duly proven as they were written unconditionally by the respondents. It, therefore, assails the conclusion that the respondents resigned under duress or that the resignation letters were dubious.

The agency raises the same argument with respect to the compromise agreements, with quitclaim and release, it entered into with Vinuya, Era, Ladea, Enjambre, Ordovez, Alcantara, Anipan and Lumanta before the POEA, although it submitted evidence only for six of them. Anipan, Lumanta, Vinuya and Ladea signing one document;[19] Era[20] and Alcantara[21] signing a document each.

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[18] *Supra* note 3.

[19] *Rollo*, p. 344.

[20] *Id.* at 345.

[21] *Id.* at 345-A.

It points out that the agreement was prepared with the assistance of POEA Conciliator Judy Santillan, and was duly and freely signed by the respondents; moreover, the agreement is not conditional as it pertains to all issues involved in the dispute between the parties.

On the third issue, the agency posits that the *Serrano* ruling has no application in the present case for three reasons. *First*, the respondents were not illegally dismissed and, therefore, were not entitled to their money claims. *Second*, the respondents filed the complaint in 2007, while the *Serrano* ruling came out on March 24, 2009. The ruling cannot be given retroactive application. *Third*, R.A. 10022, which was enacted on March 8, 2010 and which amended R.A. 8042, restored the subject clause in Section 10 of R.A. 8042, declared unconstitutional by the Court.

The Respondents' Position

In their Comment (to the Petition) dated September 28, 2011,[22] the respondents ask the Court to deny the petition for lack of merit. They dispute the agency's insistence that they resigned voluntarily. They stand firm on their submission that because of their unbearable living and working conditions in Dubai, they were left with no choice but to resign. Also, the agency never refuted their detailed narration of the reasons for giving up their employment.

The respondents maintain that the quitclaim and release affidavits,[23] which the agency presented, betray its desperate attempt to escape its liability to them. They point out that, as found by the NLRC, the affidavits are ready-made documents; for instance, in Lumanta's[24] and Era's[25] affidavits, they mentioned a certain G & A International Manpower as the agency which recruited them — a fact totally inapplicable to all the respondents.

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[22] *Id.* at 453-465.

[23] *Id.* at 268, 272, 277, 280, 281, 285, 289 and 294.

[24] *Id.* at 277.

[25] *Id.* at 285.

They contend that they had no choice but to sign the documents; otherwise, their release papers and remaining salaries would not be given to them, a submission which the agency never refuted.

On the agency's second line of defense, the compromise agreement (with quitclaim and release) between the respondents and the agency before the POEA, the respondents argue that the agreements pertain only to their charge of recruitment violations against the agency. They add that based on the agreements, read and considered entirely, the agency was discharged only with respect to the recruitment and pre-deployment issues such as excessive placement fees, non-issuance of receipts and placement misrepresentation, but not with respect to post-deployment issues such as illegal dismissal, breach of contract, underpayment of salaries and underpayment and nonpayment of overtime pay. The respondents stress that the agency failed to controvert their contention that the agreements came about only to settle their claim for refund of their airfare which they paid for when they were repatriated.

Lastly, the respondents maintain that since they were illegally dismissed, the CA was correct in upholding the NLRC's award of their salaries for the unexpired portion of their employment contracts, as enunciated in *Serrano*. They point out that the *Serrano* ruling is curative and remedial in nature and, as such, should be given retroactive application as the Court declared in *Yap v. Thenamaris Ship's Management*.[26] Further, the respondents take exception to the agency's contention that the *Serrano* ruling cannot, in any event, be applied in the present case in view of the enactment of R.A. 10022 on March 8, 2010, amending Section 10 of R.A. 8042. The amendment restored the subject clause in paragraph 5, Section 10 of R.A. 8042 which was struck down as unconstitutional in *Serrano*.

The respondents maintain that the agency cannot raise the issue for the first time before this Court when it could have

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[26] G.R. No. 179532, May 30, 2011, 649 SCRA 369.

raised it before the CA with its petition for *certiorari* which it filed on June 8, 2010;[27] otherwise, their right to due process will be violated. The agency, on the other hand, would later claim that it is not barred by estoppel with respect to its reliance on R.A. 10022 as it raised it before the CA in CA-G.R. SP No. 114353.[28] They further argue that RA 10022 cannot be applied in their case, as the law is an amendatory statute which is, as a rule, prospective in application, unless the contrary is provided.[29] To put the issue to rest, the respondents ask the Court to also declare unconstitutional Section 7 of R.A. 10022.

Finally, the respondents submit that the petition should be dismissed outright for raising only questions of fact, rather than of law.

The Court's Ruling

The procedural question

We deem it proper to examine the facts of the case on account of the divergence in the factual conclusions of the labor arbiter on the one hand, and, of the NLRC and the CA, on the other.[30] The arbiter found no illegal dismissal in the respondents' loss of employment in Dubai because they voluntarily resigned; whereas, the NLRC and the CA adjudged them to have been illegally dismissed because they were virtually forced to resign.

The merits of the case

We find no merit in the petition. **The CA committed no reversible error and neither did it commit grave abuse of discretion in affirming the NLRC's illegal dismissal ruling**.

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[27] *Rollo*, p. 205; date when petition was stamped received by the CA.

[28] *Id.* at 469-470.

[29] CIVIL CODE, Article 4.

[30] *Fujitsu Computer Products Corp. of the Phils. v. Court of Appeals*, 494 Phil. 697, 716 (2005).

The agency and its principal, Modern Metal, committed flagrant violations of the law on overseas employment, as well as basic norms of decency and fair play in an employment relationship, pushing the respondents to look for a better employment and, ultimately, to resign from their jobs.

First. The agency and Modern Metal are guilty of contract substitution. The respondents entered into a POEA-approved two-year employment contract,[31] with Modern Metal providing among others, as earlier discussed, for a monthly salary of 1350 AED. On April 2, 2007, Modern Metal issued to them appointment letters[32] whereby the respondents were hired for a longer three-year period and a reduced salary, from 1,100 AED to 1,200 AED, among other provisions. Then, on May 5, 2007, they were required to sign new employment contracts[33] reflecting the same terms contained in their appointment letters, except that this time, they were hired as "ordinary laborer," no longer aluminum fabricator/installer. The respondents complained with the agency about the contract substitution, but the agency refused or failed to act on the matter.

The fact that the respondents' contracts were altered or substituted at the workplace had never been denied by the agency. On the contrary, it admitted that the contract substitution did happen when it argued, "[a]s to their claim for [underpayment] of salary, their original contract mentioned 1350 AED monthly salary, which includes allowance while in their Appointment Letters, they were supposed to receive 1,300 AED. While there was [a] difference of 50 AED monthly, the same could no longer be claimed by virtue of their Affidavits of Quitclaims and Desistance[.]"[34]

Clearly, the agency and Modern Metal committed a prohibited practice and engaged in illegal recruitment under the law. Article 34 of the Labor Code provides:

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[31] *Supra* note 4.

[32] *Supra* note 6.

[33] *Supra* note 7.

[34] *Rollo*, p. 342.

Art. 34. Prohibited Practices. It shall be unlawful for any individual, entity, licensee, or holder of authority:

xxx xxx xxx

(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor[.]

Further, Article 38 of the Labor Code, as amended by R.A. 8042,[35] defined "illegal recruitment" to include the following act:

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment[.]

Second. The agency and Modern Metal committed breach of contract. Aggravating the contract substitution imposed upon them by their employer, the respondents were made to suffer substandard (shocking, as they put it) working and living arrangements. Both the original contracts the respondents signed in the Philippines and the appointment letters issued to them by Modern Metal in Dubai provided for free housing and transportation to and from the jobsite. The original contract mentioned free and suitable housing.[36] Although no description of the housing was made in the letters of appointment except: "Accommodation: Provided by the company," it is but reasonable to think that the housing or accommodation would be "suitable."

As earlier pointed out, the respondents were made to work from 6:30 a.m. to 6:30 p.m., with a meal break of one to one and a half hours, and their overtime work was mostly not paid or underpaid. Their living quarters were cramped as they shared them with 27 other workers. The lodging house was in Sharjah, far from the jobsite in Dubai, leaving them only three to four

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[35] Migrant Workers and Overseas Filipinos Act of 1995.

[36] *Supra* note 4.

hours of sleep every workday because of the long hours of travel to and from their place of work, not to mention that there was no potable water in the lodging house which was located in an area where the air was polluted. The respondents complained with the agency about the hardships that they were suffering, but the agency failed to act on their reports. Significantly, the agency failed to refute their claim, anchored on the ordeal that they went through while in Modern Metal's employ.

Third. With their original contracts substituted and their oppressive working and living conditions unmitigated or unresolved, the respondents' decision to resign is not surprising. They were compelled by the dismal state of their employment to give up their jobs; effectively, they were constructively dismissed. A constructive dismissal or discharge is "a quitting because continued employment is rendered impossible, unreasonable or unlikely, as, an offer involving a demotion in rank and a diminution in pay."[37]

Without doubt, the respondents' continued employment with Modern Metal had become unreasonable. A reasonable mind would not approve of a substituted contract that pays a diminished salary — from 1350 AED a month in the original contract to 1,000 AED to 1,200 AED in the appointment letters, a difference of 150 AED to 250 AED (not just 50 AED as the agency claimed) or an extended employment (from 2 to 3 years) at such inferior terms, or a "free and suitable" housing which is hours away from the job site, cramped and crowded, without potable water and exposed to air pollution.

We thus cannot accept the agency's insistence that the respondents voluntarily resigned since they personally prepared their resignation letters[38] in their own handwriting, citing family problems as their common ground for resigning. As the CA

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[37] C.A. Azucena, Jr., *The Labor Code* (with Comments and Cases), Volume II, Sixth Ed., 2007, p. 889, citing *Philippine Japan Active Carbon Corporation v. NLRC*, 253 Phil. 149 (1989).

[38] *Supra* note 8.

did, we find the resignation letters "dubious,"[39] not only for having been lopsidedly worded to ensure that the employer is rendered free from any liability, but also for the odd coincidence that all the respondents had, at the same time, been confronted with urgent family problems so that they had to give up their employment and go home. The truth, as the respondents maintain, is that they cited family problems as reason out of fear that Modern Metal would not give them their salaries and their release papers. Only Era was bold enough to say the real reason for his resignation — to protest company policy.

We likewise find the affidavits[40] of quitclaim and release which the respondents executed suspect. Obviously, the affidavits were prepared as a follow through of the respondents' supposed voluntary resignation. Unlike the resignation letters, the respondents had no hand in the preparation of the affidavits. They must have been prepared by a representative of Modern Metal as they appear to come from a standard form and were apparently introduced for only one purpose — to lend credence to the resignation letters. In Modern Metal's haste, however, to secure the respondents' affidavits, they did not check on the model they used. Thus, Lumanta's affidavit[41] mentioned a G & A International Manpower as his recruiting agency, an entity totally unknown to the respondents; the same thing is true for Era's affidavit.[42] This confusion is an indication of the employer's hurried attempt to avoid liability to the respondents.

The respondents' position is well-founded. The NLRC itself had the same impression, which we find in order and hereunder quote:

> The acts of respondents of requiring the signing of new contracts upon reaching the place of work and requiring employees to sign quitclaims before they are paid and repatriated to the Philippines

[39] *Supra* note 2, at 118.

[40] *Rollo*, pp. 268, 271, 272, 277, 280, 281, 285 and 289.

[41] *Id.* at 277.

[42] *Id.* at 285.

are all too familiar stories of despicable labor practices which our employees are subjected to abroad. While it is true that quitclaims are generally given weight, however, given the facts of the case, We are of the opinion that the complainants-appellants executed the same under duress and fear that they will not be allowed to return to the Philippines.[43]

Fourth. The compromise agreements (with quitclaim and release)[44] between the respondents and the agency before the POEA did not foreclose their employer-employee relationship claims before the NLRC. The respondents, except Ordovez and Enjambre, aver in this respect that they all paid for their own airfare when they returned home[45] and that the compromise agreements settled only their claim for refund of their airfare, but not their other claims.[46] Again, this submission has not been refuted or denied by the agency.

On the surface, the compromise agreements appear to confirm the agency's position, yet a closer examination of the documents would reveal their true nature. Copy of the compromise agreement is a standard POEA document, prepared in advance and readily made available to parties who are involved in disputes before the agency, such as what the respondents filed with the POEA ahead (filed in 2007) of the illegal dismissal complaint before the NLRC (filed on March 5, 2008).

Under the heading "Post-Deployment," the agency agreed to pay Era[47] and Alcantara[48] ₱12,000.00 each, purportedly in satisfaction of the respondents' claims arising from overseas employment, consisting of unpaid salaries, salary differentials and other benefits, including money claims with the NLRC.

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[43] *Id.* at 159-160.

[44] *Supra* notes 19, 20 and 21.

[45] *Rollo*, p. 307.

[46] *Id.* at 299.

[47] *Id*.

[48] *Id.* at 300.

The last document was signed by (1) Anipan, (2) Lumanta, (3) Ladea, (4) Vinuya, (5) Jonathan Nangolinola, and (6) Zosimo Gatchalian (the last four signing on the left hand side of the document; the last two were not among those who filed the illegal dismissal complaint).[49] The agency agreed to pay them a total of ₱72,000.00. Although there was no breakdown of the entitlement for each of the six, but guided by the compromise agreement signed by Era and Alcantara, we believe that the agency paid them ₱12,000.00 each, just like Era and Alcantara.

The uniform insubstantial amount for each of the signatories to the agreement lends credence to their contention that the settlement pertained only to their claim for refund of the airfare which they shouldered when they returned to the Philippines. The compromise agreement, apparently, was intended by the agency as a settlement with the respondents and others with similar claims, which explains the inclusion of the two (Nangolinola and Gatchalian) who were not involved in the case with the NLRC. Under the circumstances, we cannot see how the compromise agreements can be considered to have fully settled the respondents' claims before the NLRC — illegal dismissal and monetary benefits arising from employment. We thus find no reversible error nor grave abuse of discretion in the rejection by the NLRC and the CA of said agreements.

Fifth. The agency's objection to the application of the *Serrano* ruling in the present case is of no moment. Its argument that the ruling cannot be given retroactive effect, because it is curative and remedial, is untenable. It points out, in this respect, that the respondents filed the complaint in 2007, while the *Serrano* ruling was handed down in March 2009. The issue, as the respondents correctly argue, has been resolved in *Yap vs. Thenamaris Ship's Management*,[50] where the Court sustained the retroactive application of the *Serrano* ruling which declared unconstitutional the subject clause in Section 10, paragraph 5

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[49] *Id.* at 298.

[50] *Supra* note 26.

of R.A. 8042, limiting to three months the payment of salaries to illegally dismissed Overseas Filipino Workers.

Undaunted, the agency posits that in any event, the *Serrano* ruling has been nullified by R.A. No. 10022, entitled "*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*."[51] It argues that R.A. 10022, which lapsed into law (without the Signature of the President) on March 8, 2010, restored the subject clause in the 5th paragraph, Section 10 of R.A. 8042. The amendment, contained in Section 7 of R.A. 10022, reads as follows:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement "of" his placement fee and the deductions made with interest at twelve percent (12%) *per annum*, **plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.**[52] (emphasis ours)

This argument fails to persuade us. Laws shall have no retroactive effect, unless the contrary is provided.[53] By its very nature, the amendment introduced by R.A. 10022 — restoring a provision of R.A. 8042 declared unconstitutional — cannot be given retroactive effect, not only because there is no express declaration of retroactivity in the law, but because retroactive application will result in an impairment of a right that had accrued to the respondents by virtue of the *Serrano* ruling — entitlement

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[51] OFFICIAL GAZETTE, Vol. 106, No. 19, May 10, 2010, pp. 2729-2746.

[52] *Id.* at 2734.

[53] CIVIL CODE OF THE PHILIPPINES, Article 4.

to their salaries for the unexpired portion of their employment contracts.

All statutes are to be construed as having only a prospective application, unless the purpose and intention of the legislature to give them a retrospective effect are expressly declared or are necessarily implied from the language used.[54] We thus see no reason to nullify the application of the *Serrano* ruling in the present case. Whether or not R.A. 10022 is constitutional is not for us to rule upon in the present case as this is an issue that is not squarely before us. In other words, this is an issue that awaits its proper day in court; in the meanwhile, we make no pronouncement on it.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Decision dated May 9, 2011 and the Resolution dated June 23, 2011 of the Court of Appeals in CA-G.R. SP No. 114353 are **AFFIRMED**. Let this Decision be brought to the attention of the Honorable Secretary of Labor and Employment and the Administrator of the Philippine Overseas Employment Administration as a black mark in the deployment record of petitioner Pert/CPM Manpower Exponent Co., Inc., and as a record that should be considered in any similar future violations.

Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[54] A.M. Tolentino, *Civil Code of the Philippines, Commentaries and Jurisprudence,* 1990, Vol. 1, p. 28.

[*] Designated Additional Member vice Associate Justice Estela M. Perlas-Bernabe per Raffle dated September 5, 2012.

SECOND DIVISION

[G.R. No. 200951. September 5, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JOSE ALMODIEL *ALIAS* "DODONG ASTROBAL,"** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; SALE OF DANGEROUS DRUGS; ELEMENTS NECESSARY FOR PROSECUTION THEREOF.— The elements necessary for a prosecution for violation of RA 9165 or sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*. In the present case, all the elements of the crime have been sufficiently established.

2. ID.; ID.; CHAIN OF CUSTODY REQUIREMENT; ENSURES THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS, AS THE SAME WOULD BE UTILIZED IN THE DETERMINATION OF THE GUILT OR INNOCENCE OF THE ACCUSED.— In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. It is precisely in this regard that RA 9165, particularly its Section 21, prescribes the procedure to ensure the existence and identity of the drug seized from the accused and submitted to the court. The Implementing Rules of RA 9165 offer some flexibility when a proviso added 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." In *People v. Rosialda, People v. Llamado,* and *People v. Rivera,* the Court had the occasion to apply such flexibility when it ruled that the failure of the prosecution to show that the police

officers conducted the required physical inventory and photograph of the evidence confiscated is not fatal and does not automatically render the arrest of the accused illegal or the items seized from him inadmissible. The Court consistently held that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

3. ID.; ID.; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST SITUATION.— *Malillin v. People* explained that the chain of custody rule would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in 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 chain. These witnesses would then described the precautions taken to ensure that there had been no change in the condition of the item and that there was no opportunity for someone not in the chain to have possession of the same. In *People v. Kamad*, the Court ruled that the links that must be established in the chain of custody in a buy-bust situation are: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

4. ID.; ID.; THE PROSECUTION SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS AND SUFFICIENTLY ESTABLISHED THE CRUCIAL LINKS IN THE CHAIN OF CUSTODY; THE INTEGRITY AND EVIDENTIARY VALUE OF

THE SEIZED *SHABU* REMAIN UNIMPAIRED.— For the first link, PO2 Virtudazo positively testified that he was in possession of the two sachets of *shabu* from the time of the buy-bust operation up to the PDEA office. PO3 Lumawag corroborated his testimony. Then, PO2 Virtudazo marked the confiscated two sachets of *shabu* using the initials of PO3 Lumawag, "APL-1" and "APL-2," to help him remember that PO3 Lumawag was his companion at the time. PO2 Virtudazo prepared the Certificate of Inventory, which was signed by their team leader SPO4 Arnaldo, Prosecutor Guiritan and a media representative. PO3 Lumawag testified that *barangay* officials were not present because some *barangay* officials were suspected of involvement in illegal drugs. As to the second and third link, PO2 Virtudazo, together with SPO3 Lumawag, brought the accused and the two sachets to the crime laboratory on the same day of the arrest. For the final link, forensic chemist PSInsp. Banogon testified that he examined the two sachets, marked with "APL-1" and "APL-2," and submitted them on 20 March 2003 to PO1 Monton, the PNCO desk officer of the crime laboratory. In the Chemistry Report No. D-061-2003, PSInsp. Banogon found the substance in the two sachets positive of *shabu*. PSInsp. Banogon took possession of the *shabu* until he identified and offered the same to the court. Accordingly, the prosecution substantially complied with the requirements under RA 9165 and sufficiently established the crucial links in the chain of custody. The integrity and evidentiary value of the seized *shabu* remain unimpaired.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF THE PROSECUTION WITNESSES FOUND CONVINCING, CATEGORICAL AND CREDIBLE.— It has been settled that credence is given to prosecution witnesseses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers. In the present case, the claim of ill-motive was not substantiated by the accused. The trial court found the testimonies of the prosecution witnesseses convincing, categorical and credible. Findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and

unsupported conclusions are made from such findings. This rule finds an even more stringent application where the findings are sustained by the Court of Appeals, as in the present case.

6. ID.; ID.; DEFENSES OF FRAME-UP, DENIAL AND PLANTED EVIDENCE; IN THE ABSENCE OF PROOF OF MOTIVE TO FALSELY IMPUTE SUCH A SERIOUS CRIME AGAINST THE ACCUSED, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, AS WELL AS THE FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES, SHALL PREVAIL OVER THE ACCUSED'S SELF-SERVING AND UNCORROBORATED DENIAL.— The accused denied the charge against him, and alleged frame-up and planting of evidence by the police officers. In *Quinicot v. People*, we held that allegations of frame-up by police officers are common and standard defenses in most dangerous drugs cases. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. Here, the accused made a bare allegation without presenting clear and convincing evidence to support his claim. Felix and Max testified that they did not witness the incident between the accused and the police officers before the arrest. Against the positive testimonies of the prosecution witnesses, the accused's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail. Thus, in the absence of proof of motive to falsely impute such a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the accused's self-serving and uncorroborated denial.

7. ID.; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT WARRANT; AN ARREST MADE AFTER A BUY-BUST OPERATION DOES NOT REQUIRE A WARRANT.— Under Section 5 (a), Rule 113 of the Rules of Court, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." The accused was caught in the act of committing an offense during a buy-bust operation. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police officers

are not only authorized but duty-bound to arrest him even without a warrant. An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest."

8. ID.; ID.; SEARCH AND SEIZURE; WHEN AN ARREST IS LAWFULLY MADE, THE SEARCH INCIDENTAL THERETO IS ALSO VALID.— Considering that an arrest was lawfully made, the search incidental to such arrest was also valid. A person lawfully arrested may be searched, without a search warrant, for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense. Accordingly, the two sachets of *shabu* seized in the present case are admissible as evidence.

9. ID.; ID.; THE DISCRETION ON WHICH WITNESS TO PRESENT IN EVERY CASE BELONGS TO THE PROSECUTOR.— The accused argues that SPO4 Arnaldo, SPO3 Alota and PO1 Monton should have testified in court. But in *People v. Habana*, we held that there is no requirement for the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of the prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor. It is even possible to reach a conclusion of guilt on the basis of the testimony of a lone witness. Furthermore, as aptly ruled by the CA, there was no need for other persons in the chain of custody to testify, since their testimonies would only corroborate that of PO2 Virtudazo. In fine, the evidence for the prosecution established that during a buy-bust operation, the accused was caught *in flagrante delicto* in the act of selling two sachets of *shabu* to a police officer, who acted as a poseur-buyer.Thus, the guilt of the accused had been proven in the instant case beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an appeal assailing the Decision[1] of the Court of Appeals, Cagayan de Oro City, (CA) in CA-G.R. CR HC No. 00632-MIN. The CA affirmed the Decision[2] of the Regional Trial Court of Butuan City, Branch 4 (RTC), in Criminal Case No. 9840 convicting appellant Jose Almodiel *alias* "Dodong Astrobal" (accused) of violation of Section 5, Article II (Sale of Dangerous Drugs)[3] of Republic Act No. 9165 (RA 9165) or *The Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The Information dated 16 May 2003 filed against the accused states:

AMENDED INFORMATION

The undersigned accuses JOSE ALMODIEL *alias* "DODONG" ASTROBAL of the crime of [v]iolation of Section 5, Article II of R. A. No. 9165, committed as follows:

That at or about 2:00 o'clock in the afternoon of March 20, 2003 at Purok 9, Brgy. 15, Langihan Road, Butuan City, Philippines and

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[1] *Rollo*, pp. 3-17. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles, concurring.

[2] CA *rollo*, pp. 48-60. Penned by Judge Godofredo B. Abul, Jr..

[3] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x

within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, trade, deliver two (2) sachets of methamphetamine hydrochloride, otherwise known as *shabu* weighing zero point one two zero five (0.1205) grams, a dangerous drug.

That the accused has already been convicted in Criminal Case No. 7338 for Violation of Section 16, Article III of R.A. 6425, as amended by R.A. 7659.

CONTRARY TO LAW. (Violation of Sec. 5, Art. II of R.A. 9165)[4]

Upon arraignment, the accused entered a plea of not guilty. During pre-trial, the defense admitted all the allegations in the Information except the specific place of the alleged incident and the allegation of the sale of dangerous drugs. Thus, trial ensued.

Version of the Prosecution

The prosecution presented three witnesses: (1) PO2 Saldino C. Virtudazo (PO2 Virtudazo), (2) PO3 Arnel P. Lumawag (PO3 Lumawag), and (3) PSInsp. Cramwell T. Banogon (PSInsp. Banogon).

At 7:30 a.m. of 20 March 2003, the Philippine Drug Enforcement Agency (PDEA) Regional Office XIII in Libertad, Butuan City, received a report from a confidential agent that a certain "Dodong" was dealing with *shabu*. Immediately after, Regional Director PSupt. Glenn Dichosa Dela Torre (PSupt. Dela Torre) conducted a briefing for a buy-bust operation and designated SPO4 Alberto Arnaldo (SPO4 Arnaldo) as teamleader, PO2 Virtudazo as poseur-buyer, and PO3 Lumawag as back-up operative.

At 1:30 p.m. of the same day, PO2 Virtudazo, PO3 Lumawag, and the confidential agent proceeded to Purok 9, Brgy. 15, Langihan Road, Butuan City to conduct the buy-bust operation. PO3 Lumawag hid and positioned himself eight meters away from PO2 Virtudazo and the confidential agent. When the accused arrived, the confidential agent introduced PO2 Virtudazo to the accused

[4] Records, p. 10.

as customer of *shabu*. PO2 Virtudazo told the accused that he wanted to buy two sachets of *shabu* worth ₱400.00. The accused agreed, and then left. After thirty minutes, the accused returned bringing two sachets containing white crystalline substance, which he handed to PO2 Virtudazo. PO2 Virtudazo testified that based on experience, he knew that the substance in the two sachets was *shabu*. Thus, PO2 Virtudazo gave a pre-arranged signal to PO3 Lumawag to approach them.

PO2 Virtudazo and PO3 Lumawag introduced themselves as PDEA agents, and arrested the accused after informing him of his constitutional rights. They took him to the PDEA Regional Office, and seized from him other items – two aluminum foils and one lighter.[5] PO2 Virtudazo marked the two sachets with "APL-1" and "APL-2," the initials of PO3 Lumawag. Together with SPO3 Dindo Alota (SPO3 Alota) and PO3 Lumawag, PO2 Virtudazo brought the accused and the two sachets to the Regional Crime Laboratory Office for drug testing. In PSInsp. Banogon's Chemistry Report No. D-061-2003,[6] the substance contained in the two sachets was found positive of *shabu*.

The prosecution offered and submitted the following exhibits: (1) Exhibit "A" and sub-markings – Certificate of Inventory or Confiscation Receipt dated 20 March 2003; (2) Exhibit "B" and sub-markings – written request for laboratory examination dated 20 March 2003; (3) Exhibit "C" and sub-markings – self-sealing pack containing the actual specimen of two sachets of *shabu*; and (4) Exhibit "D" and sub-markings – Chemistry Report No. D-061-2003 dated 21 March 2003.[7]

Version of the Defense

On the other hand, the defense also presented three witnesses: (1) the accused himself, (2) Felix Branzuela (Felix), and (3) Max Malubay (Max), the alleged confidential agent.

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[5] *Id.* at 96.

[6] *Id.* at 99.

[7] *Id.* at 94.

The accused denied the charges of the prosecution, and narrated that on the morning of 20 March 2003, he and his girlfriend stayed in Cadez Lodging House, located at Purok 9, Brgy. 15, Butuan City. At about 10 a.m., the accused's girlfriend left but promised to return later. While waiting, the accused and Felix played with the slot machine. Then, Max approached the accused and requested to buy *shabu* from him. The accused told Max that he was not selling *shabu*. Thus, Max left. However, Felix alleged that he saw Max talking to police officers. Felix informed the accused that Max is a police asset, but the accused ignored his remark and stated that he had nothing to fear.

Around 1:30 p.m. of the same day, the accused decided to go home aboard his motorcycle. While on his way, the accused was stopped by PO3 Lumawag, who pointed a gun at the accused and arrested him. The accused noticed PO3 Lumawag holding a sachet of *shabu* while searching the accused's body. The accused protested but PO3 Lumawag directed him to go to the PDEA office with another police officer. Upon arrival, the accused was instructed to remove his clothes. PO3 Lumawag took the accused's wallet and claimed to retrieve another sachet of *shabu* from it. PO3 Lumawag insisted that the accused owned the *shabu*, but the accused vehemently denied the same. After about thirty minutes, a representative from the media and City Prosecutor Felixberto Guiritan (Prosecutor Guiritan) arrived. They took pictures of the two sachets of *shabu* and signed the Certificate of Inventory.

The Decision of the Regional Trial Court

In its Decision dated 17 June 2008, the RTC found the accused guilty beyond reasonable doubt of violation of RA 9165. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, accused is hereby found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 ([o]therwise [k]nown as the Dangerous Drugs Act of 2002) and is hereby accordingly sentenced to suffer the penalty of life imprisonment and a fine of [F]ive Hundred Thousand Pesos (₱500,000.00) without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited in the service thereof with his preventive imprisonment pursuant to Article 29 of the Revised Penal Code, as amended.

The sachets of *shabu* are ordered confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.[8]

The RTC found that the elements of the crime of illegal sale of *shabu* were proven by the prosecution. On the other hand, the accused failed to present clear and convincing evidence to prove his defense of frame-up and planting of evidence. Hence, the RTC held that the categorical and convincing testimonies of the prosecution witnesses, supported by physical evidence, overcome the unsubstantiated claim of ill-motive by the accused. In addition, the RTC ruled that the arrest was lawfully made.

On 4 July 2008, the accused filed a Motion for Reconsideration, which was denied by the RTC in its Resolution[9] dated 22 July 2008. The accused filed an appeal to the CA. The accused imputed the following errors on the RTC:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT WAS CAUGHT *IN FLAGRANTE DELICTO* SELLING THE SUBJECT DANGEROUS DRUGS.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE ARREST AND THE SEARCH OF THE ACCUSED-APPELLANT WITHOUT A WARRANT WOULD FALL UNDER THE DOCTRI[N]E OF WARRANTLESS SEARCH AS AN INCIDENT TO A LAWFUL ARREST.

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[8] *Rollo,* pp. 6-7.

[9] Records, pp. 157-158.

III

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE SUBJECT *SHABU* IS ADMISSIBLE IN EVIDENCE.

IV

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT WHEN THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUGS WAS NOT ESTABLISHED IN CONFORMITY WITH THE ESTABLISHED RULES.

V

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING APPELLANT WHEN HIS GUILT IS NOT PROVEN BEYOND REASONABLE DOUBT.[10]

The Decision of the Court of Appeals

In its Decision dated 14 November 2011, the CA affirmed the RTC's Decision against the accused. The dispositive portion of the CA Decision reads:

> WHEREFORE, the appeal is DISMISSED. The Decision dated June 17, 2008 finding Jose Almodiel *alias* Dodong Astrobal guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165 is AFFIRMED *in toto*.
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> SO ORDERED.[11]

The CA ruled that since a buy-bust operation was conducted, there was no necessity for a warrant of arrest pursuant to Rule 113, Section 5(a) of the Rules of Court. The CA found that the defense's version of the events was not credible considering that the accused did not object to his arrest or file any complaint against the police officers. On the chain of custody rule, the CA held that non-compliance with Section 21 of RA 9165 is not fatal as long as there is justifiable ground, and the

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[10] *Rollo*, pp. 7-8.

[11] *Id.* at 16.

integrity and evidentiary value of the seized drugs are preserved, as in this case.

Hence, this appeal.[12]

The Ruling of the Court

The appeal lacks merit.

The elements necessary for a prosecution for violation of RA 9165 or sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.[13] What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.[14]

In the present case, all the elements of the crime have been sufficiently established. PO2 Virtudazo testified that a buy-bust operation took place, to wit:

PROSECUTOR GUIRITAN:

Q: On March 20, 2003 at about 2:00 o'clock in the afternoon, where were you at that time?

A: I was at Purok 9, *Barangay* 15, San Ignacio, Langihan Road, Butuan City.

Q: Why were you there in that place?

A: Because we were conducting an entrapment operation.

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Q: You already mentioned last time that you were already at the place at about 2:00 o'clock of March 20, 2003, and you

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[12] *Id.* at 18-19. Pursuant to Rules of Court, Rule 125, Section 2 in relation to Rule 56, Section 3.

[13] *People v. Laylo,* G.R. No. 192235, 6 July 2011, 653 SCRA 660 citing *People v. Llamado,* G.R. No. 185278, 13 March 2009, 581 SCRA 544.

[14] *People v. De La Cruz,* G.R. No. 185717, 8 June 2011, 651 SCRA 597; *People v. Ara, G.*R. No. 185011, 23 December 2009, 609 SCRA 304; *People v. Orteza,* G.R. No. 173051, 31 July 2007, 528 SCRA 750; *People v. Cabugatan,* G.R. No. 172019, 12 February 2007, 515 SCRA 537.

were with your back-up Lumawag and your confidential agent. When you arrived at that place what happened actually?
A: At 2:00 o'clock the accused arrived in the place and he gave me the two (2) sachets of "*shabu*."

Q: How did the accused know that you will be the buyer?
A: I was introduced by our confidential agent to him.

Q: Now you said the accused handed to you "*shabu*", how many sachets, if you recall?
A: Two (2) sachets, Sir.

Q: When already in possession of those two (2) sachets of "*shabu*", what did you do?
A: I examined it if it is indeed "*shabu*."

Q: What was your findi[n]gs?
A: That it was real "*shabu*."

Q: How did you know that it was a "*shabu*"?
A: Based on my experience.[15]

Upon clarificatory questioning by the court, PO2 Virtudazo testified that the accused agreed to sell *shabu* to him, thus:

Q: So what did you do when the accused was already with the asset?
A: I was introduced by our asset to the accused and at that point in time I also told the accused that I was interested to buy "*shabu*."

Q: And the accused what did he do to you?
A: He agreed and then left immediately.

Q: What did you agree with the accused?
A: That he will give me "*shabu*."

Q: Why will the accused give you "*shabu*"?
A: Because I was going to buy it from him.

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[15] TSN, 25 August 2004, pp. 9-12.

Q: For how much?
A: Worth ₱400.00.[16]

PO3 Lumawag materially corroborated the testimony of PO2 Virtudazo as to the conduct of the buy-bust operation, to wit:

Q: What happened when the accused arrived?
A: When the accused arrived they talked with each other then after more or less two (2) minutes, the suspect left the area.

xxx xxx xxx

Q: Now what happened after that?
A: After the suspect left the area, after another twenty-five (25) minutes more or less, he came back and met Virtudazo at that area.

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Q: Now, when the accused went back, what happened next?
A: I observed that the accused approached Virtudazo and he gave something to Virtudazo. When Virtudazo tried to inspect the items given to him, that's the time that Virtudazo gave the pre-arranged signal by turning his cap.

Q: And, what did you do?
A: So, when PO2 Virtudazo gave the pre-arranged signal that's the time I rushed up and apprehended the suspect.

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Q: How many *shabu* was given by him to your poseur-buyer?
A: Two (2) sachets, sir.

Q: How did you come to know of that?
A: Because when I approached him, Virtudazo also showed to me that that is the *shabu* given to him by the suspect.[17]

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

[17] TSN, 14 July 2005, pp. 8-10.

Both testimonies of PO2 Virtudazo and PO3 Lumawag positively identified PO2 Virtudazo as the poseur-buyer and the accused as the seller of two sachets containing white crystalline substance for ₱400.00. The confiscated sachets were brought to the crime laboratory for examination, where a chemical analysis on the substance confirmed that the same was *shabu*. The sachets containing *shabu* were positively identified by PSInsp. Banogon during the trial as the same sachets seized from the accused.

The accused, however, contends that there was no sale since the marked money was not delivered to the accused or presented in Court. *Cruz v. People*[18] is instructive in ruling that the failure to present the buy-bust money is not fatal to the case.

> x x x The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.[19]

It has been settled that credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers.[20] In the present case, the claim of ill-motive was not substantiated by the accused. The trial court found the testimonies of the prosecution witnesses convincing, categorical and credible. Findings of the trial court, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross

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[18] G.R. No. 164580, 6 February 2009, 578 SCRA 147.

[19] *Id.* at 154.

[20] *People v. Llamado,* G.R. No. 185278, 13 March 2009, 581 SCRA 544.

misapprehension of facts or speculative, arbitrary and unsupported conclusions are made from such findings.[21] This rule finds an even more stringent application where the findings are sustained by the Court of Appeals, as in the present case.[22]

The accused denied the charge against him, and alleged frame-up and planting of evidence by the police officers. In *Quinicot v. People*,[23] we held that allegations of frame-up by police officers are common and standard defenses in most dangerous drugs cases. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[24] Here, the accused made a bare allegation without presenting clear and convincing evidence to support his claim. Felix and Max testified that they did not witness the incident between the accused and the police officers before the arrest.[25] Against the positive testimonies of the prosecution witnesses, the accused's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail.[26]

Thus, in the absence of proof of motive to falsely impute such a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall

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[21] *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673 citing *People v. De Guzman,* G.R. No. 177569, 28 November 2007, 539 SCRA 306.

[22] *Id*.

[23] G.R. No. 179700, 22 June 2009, 590 SCRA 458.

[24] *People v. Villamin,* G.R. No. 175590, 9 February 2010, 612 SCRA 91.

[25] TSN, 8 June 2006, p. 7; TSN, 29 June 2007, p. 9.

[26] *People v. Villamin, supra* citing *People v. del Monte*, G. R. No. 179940, 23 April 2008, 552 SCRA 627.

prevail over the accused's self-serving and uncorroborated denial.[27]

Arrest During a Buy-bust Operation

The accused contends that the police officers arrested him without securing a warrant of arrest. Consequently, his arrest was unlawful, making the sachets of *shabu* allegedly seized from him inadmissible in evidence.

Under Section 5 (a), Rule 113 of the Rules of Court, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense."[28] The accused was caught in the act of committing an offense during a buy-bust operation. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police officers are not only authorized but duty-bound to arrest him even without a warrant.[29] An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest."[30]

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[27] *People v. Manlangit,* G.R. No. 189806, 12 January 2011, 639 SCRA 455 citing *People v. Llamado,* G.R. No. 185278, 13 March 2009, 581 SCRA 544.

[28] Rules of Court, Rule 113, Section 5 provides:

Sec. 5. Arrest without warrant; when lawful – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[29] *People v. Manlangit, supra* note 27 citing *People v. Doria,* 361 Phil. 595 (1999).

[30] *Id.* citing *People v. Agulay,* G.R. No. 181747, 26 September 2008, 566 SCRA 571.

The accused argues that force and intimidation attended his arrest when four police officers arrested him and one of them pointed a gun at him. However, his allegations were not supported by evidence. On the contrary, the CA found that the defense neither objected to the accused's arrest nor filed any complaint against the police officers.

Considering that an arrest was lawfully made, the search incidental to such arrest was also valid. A person lawfully arrested may be searched, without a search warrant, for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense.[31] Accordingly, the two sachets of *shabu* seized in the present case are admissible as evidence.

The Chain of Custody Requirement

The accused contends that the prosecution failed to establish the identity of the *shabu* in accordance with the requirements under RA 9165 and its Implementing Rules and Regulations.[32] The defense particularly alleges that there was no photograph of the seized items and there was no *barangay* official present during the incident.

We find the claim unmeritorious. In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt.[33] It is precisely in this regard that RA 9165, particularly its Section 21,[34] prescribes the procedure to ensure the existence

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[31] Rules of Court, Rule 126, Section 13.

[32] *Rollo*, p. 14.

[33] *People v. Arriola*, G.R. No. 187736, 8 February 2012.

[34] (a) 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;

and identity of the drug seized from the accused and submitted to the court.

The Implementing Rules of RA 9165 offer some flexibility when a proviso added 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."[35] In *People v. Rosialda*,[36] *People v. Llamado*,[37] and *People v. Rivera*,[38] the Court had the occasion to apply such flexibility when it ruled that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated is not fatal and does not automatically render the arrest of the accused illegal or the items seized from him inadmissible.

The Court consistently held that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[39] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[40] The chain of

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[35] *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507.

[36] *Id*.

[37] *Supra* note 20.

[38] G.R. No. 182347, 17 October 2008, 569 SCRA 879.

[39] *People v. Magundayao*, G.R. No. 188132, 29 February 2012; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118; *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421.

[40] *People v. Obmiranis*, G.R. No. 181492, 16 December 2008, 574 SCRA 140.

custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[41]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[42] which implements RA 9165, defines "chain of custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.][43]

Malillin v. People[44] explained that the chain of custody rule would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in 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

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[41] *Id*.

[42] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

[43] *People v. Pagaduan*, G.R. No. 179029, 9 August 2010, 627 SCRA 308; *People v. Denoman*, G.R. No. 171732, 14 August 2009, 596 SCRA 257; *People v. Garcia*, G.R. No. 173480, 25 February 2009, 580 SCRA 259.

[44] G.R. No. 172953, 30 April 2008, 553 SCRA 619.

ensure that there had been no change in the condition of the item and that there was no opportunity for someone not in the chain to have possession of the same.[45]

In *People v. Kamad*,[46] the Court ruled that the links that must be established in the chain of custody in a buy-bust situation are: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

For the first link, PO2 Virtudazo positively testified that he was in possession of the two sachets of *shabu* from the time of the buy-bust operation up to the PDEA office.[47] PO3 Lumawag corroborated his testimony.[48] Then, PO2 Virtudazo marked the confiscated two sachets of *shabu* using the initials of PO3 Lumawag, "APL-1" and "APL-2," to help him remember that PO3 Lumawag was his companion at that time.[49] PO2 Virtudazo prepared the Certificate of Inventory, which was signed by their team leader SPO4 Arnaldo, Prosecutor Guiritan and a media representative.[50] PO3 Lumawag testified that *barangay* officials were not present because some *barangay* officials were suspected of involvement in illegal drugs.[51]

As to the second and third link, PO2 Virtudazo, together with SPO3 Alota and PO3 Lumawag, brought the accused and

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[45] *Id*.

[46] G.R. No. 174198, 9 January 2010, 610 SCRA 295.

[47] TSN, 25 August 2004, p. 13.

[48] TSN, 14 July 2005, p. 10.

[49] TSN, 25 August 2004, p. 21.

[50] *Id.* at pp. 16-17.

[51] TSN, 14 July 2005, p. 21.

the two sachets to the crime laboratory on the same day of the arrest.[52] For the final link, forensic chemist PSInsp. Banogon testified that he examined the two sachets, marked with "APL-1" and "APL-2," and submitted them on 20 March 2003 to PO1 Monton, the PNCO desk officer of the crime laboratory.[53] In his Chemistry Report No. D-061-2003, PSInsp. Banogon found the substance in the two sachets positive of *shabu*. PSInsp. Banogon took possession of the *shabu* until he identified and offered the same to the court.[54] Accordingly, the prosecution substantially complied with the requirements under RA 9165 and sufficiently established the crucial links in the chain of custody. The integrity and evidentiary value of the seized *shabu* remain unimpaired.

The accused argues that SPO4 Arnaldo, SPO3 Alota and PO1 Monton should have testified in court. But in *People v. Habana,*[55] we held that there is no requirement for the prosecution to present as witness in a drugs case every person who had something to do with the arrest of the accused and the seizure of the prohibited drugs from him. The discretion on which witness to present in every case belongs to the prosecutor.[56] It is even possible to reach a conclusion of guilt on the basis of the testimony of a lone witness.[57] Furthermore, as aptly ruled by the CA, there was no need for other persons in the chain of custody to testify, since their testimonies would only corroborate that of PO2 Virtudazo.

In fine, the evidence for the prosecution established that during a buy-bust operation, the accused was caught *in flagrante*

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[52] TSN, 25 August 2004, p. 20; TSN, 14 July 2005, p. 12.

[53] TSN, 23 February 2006, p. 5.

[54] *Id.* at 9.

[55] G.R. No. 188900, 5 March 2010, 614 SCRA 433.

[56] *Id.* citing *People v. Zeng Hua Dian*, G.R. No. 145348, 14 June 2004, 432 SCRA 25.

[57] *People v. Alberto*, G.R. No. 179717, 5 February 2010, 611 SCRA 706.

delicto in the act of selling two sachets of *shabu* to a police officer, who acted as a poseur-buyer. Thus, the guilt of the accused had been proven in the instant case beyond reasonable doubt.

Under Section 5, Article II of RA 9165, the crime of unauthorized sale of *shabu*, regardless of the quantity and purity thereof, is punishable with life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000.00) to ten million pesos (₱10,000,000.00). Hence, the penalty of life imprisonment and a fine of ₱500,000.00 was correctly imposed by the RTC and the CA on accused Jose Almodiel *alias* "Dodong Astrobal" for illegal sale of *shabu*.

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM** the Decision dated 14 November 2011 of the Court of Appeals in CA-G.R. CR HC No. 00632-MIN *in toto*.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 171118. September 10, 2012]

PARK HOTEL, J's PLAYHOUSE BURGOS CORP., INC., and/or GREGG HARBUTT, General Manager, ATTY. ROBERTO ENRIQUEZ, President, and BILL PERCY, *petitioners, vs.* **MANOLO SORIANO, LESTER GONZALES, and YOLANDA BADILLA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO (2) REQUISITES FOR A VALID DISMISSAL; BOTH ELEMENTS ARE

COMPLETELY LACKING IN CASE AT BAR.— The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same Code. In the case before us, both elements are completely lacking. Respondents were dismissed without any just or authorized cause and without being given the opportunity to be heard and defend themselves. The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

2. ID.; ID.; UNFAIR LABOR PRACTICE; COMMITTED IN CASE AT BAR; RESPONDENTS WERE UNCEREMONIOUSLY DISMISSED FROM WORK BY REASON OF THEIR INTENT TO FORM AND ORGANIZE A UNION.— Anent the unfair labor practice, Article 248 (a) of the Labor Code considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form an association. In order to show that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the case at bar, respondents were indeed unceremoniously dismissed from work by reason of their intent to form and organize a union. As found by the LA: The immediate impulse of respondents (petitioners herein), as in the case at bar, was to terminate the organizers. Respondents (petitioners herein) have to cripple the union at sight, to frustrate attempts of employees from joining or supporting it, preventing them, at all cost and to frustrate the employees' bid to exercise their right to self-organization.

3. ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; RESPONDENTS ARE ENTITLED TO THE PAYMENT OF FULL

BACKWAGES, INCLUSIVE OF ALLOWANCES, AND OTHER BENEFITS OR THEIR MONETARY EQUIVALENT AND SEPARATION PAY INSTEAD OF REINSTATEMENT; AWARDS OF SEPARATION PAY AND BACKWAGES ARE NOT MUTUALLY EXCLUSIVE, AND BOTH MAY BE AWARDED THE DISMISSED EMPLOYEES.— In cases when an employee is unjustly dismissed from work, he shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement. In the case at bar, the Court finds that it would be best to award separation pay instead of reinstatement, in view of the passage of a long period of time since respondents' dismissal. In *St. Luke's Medical Center, Inc. v. Notario*, the Court held that if reinstatement proves impracticable, and hardly in the best interest of the parties, due to the lapse of time since the employee's dismissal, the latter should be awarded separation pay in lieu of reinstatement. In view of the foregoing, respondents are entitled to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service. The awards of separation pay and backwages are not mutually exclusive, and both may be given to respondents.

4. ID.; ID.; ID.; ID.; AWARDS OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF RESPONDENTS ARE ALSO JUSTIFIED.— The awards of moral and exemplary damages in favor of respondents are also in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy, while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner. The grant of attorney's fees is likewise proper. Attorney's fees may likewise be awarded to respondents who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts of petitioners. The unjustified act of petitioners had obviously compelled respondents to institute

an action primarily to protect their rights and interests which warrants the granting of the award.

5. MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; NOT APPLICABLE IN CASE AT BAR.— As to whether Park Hotel may be held solidarily liable with Burgos, the Court rules that before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced. Thus, before Park Hotel can be held answerable for the obligations of Burgos to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other. A corporation is an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed. In the case at bar, respondents utterly failed to prove by competent evidence that Park Hotel was a mere instrumentality, agency, conduit or adjunct of Burgos, or that its separate corporate veil had been used to cover any fraud or illegality committed by Burgos against the respondents. Accordingly, Park Hotel and Burgos cannot be considered as one and the same entity, and Park Hotel cannot be held solidary liable with Burgos.

6. ID.; ID.; ID.; ALTHOUGH THE CORPORATE VEIL CANNOT BE PIERCED IN CASE AT BAR, THE CORPORATION AND ITS OWNERS AND OFFICERS CANNOT BE EXEMPT FROM

LIABILITY; CORPORATE OFFICERS MAY BE DEEMED SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYEES IF THEY ACTED WITH MALICE OR BAD FAITH.— Nonetheless, although the corporate veil between Park Hotel and Burgos cannot be pierced, it does not necessarily mean that Percy and Harbutt are exempt from liability towards respondents. Verily, a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. However, corporate officers may be deemed solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. In the present case, the lower tribunals unanimously found that Percy and Harbutt, in their capacity as corporate officers of Burgos, acted maliciously in terminating the services of respondents without any valid ground and in order to suppress their right to self-organization. Section 31 of the Corporation Code makes a director personally liable for corporate debts if he willfully and knowingly votes for or assents to patently unlawful acts of the corporation. It also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation. Thus, Percy and Harbutt, having acted in bad faith in directing the affairs of Burgos, are jointly and severally liable with the latter for respondents' dismissal.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioners.
Legal Advocates for Workers' Interest for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1]

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz, concurring; *rollo*, pp. 12-26.

and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 67766.

The antecedents are as follows:

Petitioner Park Hotel[3] is a corporation engaged in the hotel business. Petitioners Gregg Harbutt[4] (Harbutt) and Bill Percy[5] (Percy) are the General Manager and owner, respectively, of Park Hotel. Percy, Harbutt and Atty. Roberto Enriquez are also the officers and stockholders of Burgos Corporation (Burgos),[6] a sister company of Park Hotel.

Respondent Manolo Soriano (Soriano) was hired by Park Hotel in July 1990 as Maintenance Electrician, and then transferred to Burgos in 1992. Respondent Lester Gonzales (Gonzales) was employed by Burgos as Doorman, and later promoted as Supervisor. Respondent Yolanda Badilla (Badilla) was a bartender of J's Playhouse operated by Burgos.

In October of 1997, Soriano, Gonzales and Badilla[7] were dismissed from work for allegedly stealing company properties. As a result, respondents filed complaints for illegal dismissal, unfair labor practice, and payment of moral and exemplary damages and attorney's fees, before the Labor Arbiter (LA). In their complaints, respondents alleged that the real reason for their dismissal was that they were organizing a union for the company's employees.

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[2] *Id.* at 10.

[3] Represented in this case by Mr. William Victor Percy, per Secretary's Certificate dated February 2, 2006, *rollo*, p. 8.

[4] Whose complete name is Gregory Robert Harbutt.

[5] Whose complete name is William Victor Percy.

[6] Represented in this case by Mr. William Victor Percy, per Secretary's Certificate dated February 2, 2006, *rollo*, p. 8.

[7] Gonzales and Badilla were dismissed on October 2, 1997 and Soriano was dismissed on October 6, 1997.

On the other hand, petitioners alleged that aside from the charge of theft, Soriano and Gonzales have violated various company rules and regulations[8] contained in several memoranda issued to them. After dismissing respondents, Burgos filed a case for qualified theft against Soriano and Gonzales before the Makati City Prosecutor's Office, but the case was dismissed for insufficiency of evidence.

In his Affidavit,[9] Soriano claimed that on October 4, 1997, he was barred from entering the company premises and that the following day, Harbutt shouted at him for having participated in the formation of a union. He was later dismissed from work. For his part, Gonzales averred that he was coerced to resign by Percy and Harbutt in the presence of their goons. Badilla[10] claimed that she was also forced by Percy and Harbutt to sign a resignation letter, but she refused to do so because she was innocent of the charges against her. She was nevertheless dismissed from service.

The three (3) respondents averred that they never received the memoranda containing their alleged violation of company rules and they argued that these memoranda were fabricated to give a semblance of cause to their termination. Soriano and Gonzales further claimed that the complaint filed against them was only an afterthought as the same was filed after petitioners

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[8] Soriano's alleged violations include: (1) dereliction of duties, (2) loitering during work time, (3) taking unscheduled day-off, (4) persistently absenting himself without leave, (5) arriving late and leaving early, and (6) leaving the work premises to buy something not in relation to his duties. With respect to Gonzales, his alleged infractions include: (1) drinking while on duty, (2) switching his day-off without the company's consent, (3) using the store house for immoral purposes, (4) having his time record punched in and out by others to cover his absences, and (5) general neglect of duties.

[9] CA *rollo*, pp. 69-70.

[10] Who allegedly: (1) misrepresented her time of arrival at work, (2) changed her day-off without the knowledge of her supervisors, and (3) stole the company's table cloth.

learned that a complaint for illegal dismissal was already instituted against them.

On September 27, 1998, the LA rendered a Decision[11] finding that respondents were illegally dismissed because the alleged violations they were charged with were not reduced in writing and were not made known to them, thus, denying them due process. The LA found that respondents did not actually receive the memoranda allegedly issued by petitioners, and that the same were mere afterthought to conceal the illegal dismissal. The dispositive portion of the Decision reads:

> WHEREFORE, premises all considered, respondents (petitioners herein) are hereby ordered, jointly and severally:
>
> a. To reinstate within ten (10) days herein complainants to their former positions without loss of seniority rights with full backwages from actual dismissal to actual reinstatement;
>
> b. To declare the respondents (petitioners herein) guilty of unfair labor practice for terminating complainants due to their union activities, which is union-busting, and to pay a fine of Ten Thousand Pesos (₱10,000.00) pursuant to Article 288 of the Labor Code, as amended, payable to the Commission;
>
> c. To pay the amount of One Hundred Fifty Thousand [Pesos] (₱150,000.00) each to complainants by way of moral and exemplary damages, plus ten percent (10%) attorney's fees of the total award, chargeable to the respondents (petitioners herein).
>
> SO ORDERED.[12]

Unsatisfied with the LA's decision, petitioners appealed to the National Labor Relations Commission (NLRC). On August 31, 1999, the NLRC, First Division, rendered a Decision[13] remanding the case to the arbitration branch of origin for further

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[11] *Rollo*, pp. 110-119.

[12] *Id.* at 119.

[13] *Id.* at 138-142.

proceedings.[14] On August 3, 2000, the LA rendered a new Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises all considered, respondents (petitioners herein) are hereby ORDERED, jointly and severally:
>
> a. to reinstate within ten (10) days herein three (3) complainants to their former positions without loss of seniority rights with full backwages from actual dismissal to actual reinstatement; to pay complainant Soriano his unpaid wages for seven (7) days in the amount of ₱1,680.00, his five (5) days incentive leave pay in the amount of ₱1,200,00 (₱240x5), unpaid proportionate 13th month pay in the amount of ₱4,992.00, plus other benefits;
>
> b. to cease and desist from committing unfair labor practice against the complainant and to pay a fine of Ten Thousand (₱10,000.00) Pesos pursuant to Art. 288 of the Labor Code, payable to the Commission; and
>
> c. to pay the amount of ₱150,000.00[15] each to the complainants by way of moral and exemplary damages, plus ten percent (10%) attorney's fees of the total award, chargeable to the respondents (petitioners herein).
>
> SO ORDERED.[16]

Discontented with the LA's decision, petitioners again appealed to the NLRC. On February 1, 2001, the NLRC affirmed the LA's decision and dismissed the appeal for lack of merit.[17]

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[14] The NLRC ruled that there was no substantial evidence to support either the charge of theft against respondents or the LA's conclusion that petitioners are guilty of union-busting. The NLRC likewise required additional facts to be pleaded to justify the grant of moral and exemplary damages being claimed by respondents.

[15] Broken down as follows: ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages. (*Rollo*, p. 173.)

[16] CA *rollo*, pp. 161-174.

[17] *Rollo*, pp. 233-234.

Petitioners filed a motion for reconsideration, but it was denied for lack of merit.[18]

Undaunted, Park Hotel, Percy, and Harbutt filed a petition for *certiorari* with the CA ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in holding Park Hotel, Harbutt and Percy jointly and severally liable to respondents.

On January 24, 2005, the CA rendered a Decision[19] dismissing the petition and affirming with modification the ruling of the NLRC, the dispositive portion of which states:

> WHEREFORE, the instant Petition is DISMISSED for lack of merit and the assailed Decision dated 1 February 2001 of the 1st Division of the NLRC is hereby AFFIRMED with MODIFICATION in that the award of damages is reduced to ₱100,000.00 in favor of each of the Private Respondents, including 10% of the total amount of wages to be received as attorney's fees.
>
> SO ORDERED.[20]

The CA ruled that petitioners failed to observe the mandatory requirements provided by law in the conduct of terminating respondents, *i.e.*, lack of due process and just cause. The CA also found that petitioners' primary objective in terminating respondents' employment was to suppress their right to self-organization.

Petitioners filed a Motion for Reconsideration, but was denied in the Resolution[21] dated January 13, 2006.

Hence, the instant petition assigning the following errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AUTHORITY IN FINDING

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[18] Resolution dated August 15, 2001, *id.* at 262.

[19] *Rollo*, pp. 12-26.

[20] *Id.* at 26.

[21] *Id.* at 10.

PARK HOTEL, BILL PERCY AND [GREGORY] HARBUTT, TOGETHER WITH BURGOS CORPORATION AND ITS PRESIDENT, AS ONE AND THE SAME ENTITY.

II

THE HONORABLE COURT OF APPEALS COMMITTED ERROR WHEN IT OVERLOOKED MATERIAL CIRCUMSTANCES AND FACTS, WHICH IF TAKEN INTO ACCOUNT, WOULD ALTER THE RESULTS OF ITS DECISION, PARTICULARLY IN FINDING [THAT] THE SAID ENTITIES WERE FORMED IN PURSUANCE TO THE COMMISSION OF FRAUD.

III

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AUTHORITY IN FINDING PARK HOTEL, BILL PERCY AND GREGORY HARBUTT, TOGETHER WITH BURGOS CORPORATION AND ITS PRESIDENT, GUILTY OF UNFAIR LABOR PRACTICE.[22]

For brevity and clarity, the issues in this case may be re-stated and simplified as follows: (1) whether the respondents were validly dismissed; and (2) if petitioners are liable, whether Park Hotel, Percy and Harbutt are jointly and severally liable with Burgos for the dismissal of respondents.

Park Hotel argued that it is not liable on the ground that respondents were not its employees. On the other hand, Percy and Harbutt argued that the CA committed error in piercing the corporate veil between them and respondent corporations, thereby making them all solidarily liable to the respondents.

To begin with, it is significant to note that the LA, the NLRC and the CA were unanimous in their findings that respondents were dismissed without just cause and due process. They were also in agreement that unfair labor practice was committed against respondents. We reiterate the rule that findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the LA, as in this case,

[22] *Id.* at 37.

are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[23] The function of this Court is limited to the review of the appellate court's alleged errors of law. It is not required to weigh all over again the factual evidence already considered in the proceedings below.[24] In any event, we found no compelling reason to disturb the unanimous findings and conclusions of the CA, the NLRC and the LA with respect to the finding of illegal dismissal.

The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same Code.[25] In the case before us, both elements are completely lacking. Respondents were dismissed without any just or authorized cause and without being given the opportunity to be heard and defend themselves. The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[26]

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[23] *Hantex Trading Co., Inc. v. Court of Appeals,* 438 Phil. 737, 743 (2002).

[24] *Quezon City Government v. Dacara,* 460 SCRA 243, 251 (2005).

[25] *Estacio v. Pampanga I Electric Cooperative, Inc.*, G.R. No. 183196, August 19, 2009, 596 SCRA 542, 563-564.

[26] *Times Transportation Co., Inc. v. National Labor Relations Commission,* G.R. Nos. 148500-01, November 29, 2006, 508 SCRA 435, 443.

Anent the unfair labor practice, Article 248 (a) of the Labor Code[27] considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form an association.[28] In order to show that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] In the case at bar, respondents were indeed unceremoniously dismissed from work by reason of their intent to form and organize a union. As found by the LA:

> The immediate impulse of respondents (petitioners herein), as in the case at bar, was to terminate the organizers. Respondents (petitioners herein) have to cripple the union at sight, to frustrate attempts of employees from joining or supporting it, preventing them, at all cost and to frustrate the employees' bid to exercise their right to self-organization. x x x[30]

Having settled that respondents were illegally dismissed and were victims of unfair labor practice, the question that comes to fore is who are liable for the illegal dismissal and unfair labor practice?

A perusal of the records would show that Burgos is the respondents' employer at the time they were dismissed. Notwithstanding, the CA held that despite Soriano's transfer to Burgos in 1992, he was still an employee of Park Hotel at the time of his dismissal in 1997. The Court, however, rules that the CA's finding is clearly contrary to the evidence presented.

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[27] Article 248. UNFAIR LABOR PRACTICE – It shall be unlawful for an employer to commit any of the following unfair labor practices: (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization; x x x.

[28] *Standard Chartered Bank Employees Union v. Hon. Confesor*, 476 Phil. 346, 367 (2004).

[29] *Id*.

[30] LA decision dated August 3, 2000, CA *rollo*, p. 171.

From the documents presented by Soriano, it appears that Soriano's payroll passbook[31] contained withdrawals and deposits, made in 1991, and that Soriano's payslip[32] issued by Park Hotel covered the period from September to October 1990. Hence, these documents merely show that Soriano was employed by Park Hotel before he was transferred to Burgos in 1992. Nowhere in these documents does it state that Soriano continued to work for Park Hotel in 1992 and onwards. Clearly therefore, Park Hotel cannot be made liable for illegal dismissal as it no longer had Soriano in its employ at the time he was dismissed from work.

As to whether Park Hotel may be held solidarily liable with Burgos, the Court rules that before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced.[33] Thus, before Park Hotel can be held answerable for the obligations of Burgos to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other.[34]

A corporation is an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[35] While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine

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[31] With an indication that the addressee is Park Hotel. (CA *rollo*, p. 225.)

[32] CA *rollo*, p. 226.

[33] *Siemens Philippines, Inc. v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 99.

[34] *Id*.

[35] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 245.

applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[36] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[37]

In the case at bar, respondents utterly failed to prove by competent evidence that Park Hotel was a mere instrumentality, agency, conduit or adjunct of Burgos, or that its separate corporate veil had been used to cover any fraud or illegality committed by Burgos against the respondents. Accordingly, Park Hotel and Burgos cannot be considered as one and the same entity, and Park Hotel cannot be held solidary liable with Burgos.

Nonetheless, although the corporate veil between Park Hotel and Burgos cannot be pierced, it does not necessarily mean that Percy and Harbutt are exempt from liability towards respondents. Verily, a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent.[38] However, corporate officers may be deemed solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[39] In the present case, the lower tribunals unanimously found that Percy and Harbutt, in their capacity as corporate officers of Burgos, acted maliciously in terminating the services of respondents without any valid ground and in order to suppress their right to self-organization.

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[36] *Id.* at 246.

[37] *Lim v. Court of Appeals,* 380 Phil. 60, 77 (2000).

[38] *Siemens Philippines, Inc. v. Domingo, supra* note 33 at 100.

[39] *Id*.

Section 31[40] of the Corporation Code makes a director personally liable for corporate debts if he willfully and knowingly votes for or assents to patently unlawful acts of the corporation. It also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation. Thus, Percy and Harbutt, having acted in bad faith in directing the affairs of Burgos, are jointly and severally liable with the latter for respondents' dismissal.

In cases when an employee is unjustly dismissed from work, he shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement.[41]

In the case at bar, the Court finds that it would be best to award separation pay instead of reinstatement, in view of the passage of a long period of time since respondents' dismissal. In *St. Luke's Medical Center, Inc. v. Notario*,[42] the Court held that if reinstatement proves impracticable, and hardly in the best interest of the parties, due to the lapse of time since the employee's dismissal, the latter should be awarded separation pay in lieu of reinstatement.

In view of the foregoing, respondents are entitled to the payment of full backwages, inclusive of allowances, and other benefits

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[40] Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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[41] *Aliviado v. Procter & Gamble Philippines, Inc.*, G.R. No. 160506, March 9, 2010, 614 SCRA 563, 588.

[42] G.R. No. 152166, October 20, 2010, 634 SCRA 67, 80-81.

or their monetary equivalent, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service.[43] The awards of separation pay and backwages are not mutually exclusive, and both may be given to respondents.[44]

The awards of moral and exemplary damages[45] in favor of respondents are also in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy, while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.[46] The grant of attorney's fees is likewise proper. Attorney's fees may likewise be awarded to respondents who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts[47] of petitioners. The unjustified act of petitioners had obviously compelled respondents to institute an action primarily to protect their rights and interests which warrants the granting of the award.

WHEREFORE, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 67766, dated January 24, 2005 and January 13, 2006, respectively, are **AFFIRMED** with the

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[43] *Eastern Telecommunications Phils., Inc. v. Diamse,* G.R. No. 169299, June 16, 2006, 491 SCRA 239, 251.

[44] *Century Canning Corporation v. Ramil,* G.R. No. 171630, August 9, 2010, 627 SCRA 192, 206.

[45] The CA awarded the amount of PhP100,000.00 as moral and exemplary damages, in favor of each of the respondents, which is to be broken down as follows: PhP50,000.00 as moral damages and PhP50,000.00 as exemplary damages.

[46] *Timoteo H. Sarona v. National Labor Relations Commission, Royale Security Agency (Formerly Sceptre Security Agency) and Cesar S. Tan,* G.R. No. 185280, January 18, 2012.

[47] *Aliviado v. Procter & Gamble Philippines, Inc., supra* note 41.

following **MODIFICATIONS**: (a) Petitioner Park Hotel is exonerated from any liability to respondents; and (b) The award of reinstatement is deleted, and in lieu thereof, respondents are awarded separation pay.

The case is **REMANDED** to the Labor Arbiter for the purpose of computing respondents' full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of their dismissal up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of their engagement up to the finality of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174982. September 10, 2012]

JOSE VICENTE ATILANO II, HEIRS OF CARLOS V. TAN represented by Conrad K. Tan, Carlos K. Tan, Camilo Karl K. Tan, Carisa Rosenda T. Go, NELIDA F. ATILANO and ISIDRA K. TAN, *petitioners, vs.* **HON. JUDGE TIBING A. ASAALI, Presiding Judge of the Regional Trial Court of Zamboanga City and ATLANTIC MERCHANDISING, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PAYMENT OF APPELLATE COURT DOCKET FEES; WHILE IT IS AN

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[*] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

INDISPENSABLE STEP TO PERFECTION OF AN APPEAL, THE COURT MAY RELAX THE RULES IF COMPELLING AND SUBSTANTIAL REASONS EXIST.— Payment of the full amount of docket fees is an indispensable step to the perfection of an appeal, and the Court acquires jurisdiction over any case only upon such payment. Corollary to this, the Court has consistently held that procedural rules are not to be disregarded simply because their non-observance may result in prejudice to a party's substantive rights. However, these same rules may be relaxed, for persuasive and weighty reasons, to relieve a litigant of an injustice commensurate with his failure to comply with procedure. Thus, in *La Salette College v. Pilotin*, the Court explained: Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances. After a judicious perusal of the records, the Court finds that compelling and substantial reasons exist in this case as to justify the relaxation of procedural rules.

2. ID.; ID.; SATISFACTION OF JUDGMENT; PROCEEDINGS WHEN INDEBTEDNESS DENIED OR ANOTHER PERSON CLAIMS THE PROPERTY; THE TRIAL COURT SHOULD HAVE DIRECTED RESPONDENT CORPORATION TO INSTITUTE A SEPARATE ACTION AGAINST PETITIONERS FOR PURPOSE OF RECOVERING THE LATTER'S ALLEGED INDEBTEDNESS.— Records show that petitioners merely became involved in this case when, upon failure to execute the revived final judgment in its favor in Civil Case No. 3776, respondent sought to examine the debtors of ZACI, the judgment obligor, which included petitioners on the allegation that they had unpaid stock subscriptions to ZACI, as its incorporators and stockholders. During the proceedings, petitioners *vehemently denied* any such liability or indebtedness. Under the circumstances, therefore, the RTC should have directed respondent to institute a separate action against petitioners for the purpose of recovering their alleged indebtedness to ZACI, in accordance with Section 43, Rule 39 of the Rules of Court.

3. ID.; ID.; EXECUTION OF JUDGMENT; CAN ONLY BE ISSUED AGAINST ONE WHO IS A PARTY TO THE ACTION.— It is well-settled that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by a judgment rendered by the court. Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party thereto, did not have his day in court. Due process dictates that a court decision can only bind a party to the litigation and not against innocent third parties. x x x Petitioners were total strangers to the civil case between ZACI and respondent, and to order them to settle an obligation which they *persistently denied* would be tantamount to deprivation of their property without due process of law. The only power of the RTC, in this case, is to make an order authorizing respondent to sue in the proper court to recover an indebtedness in favor of ZACI. It has no jurisdiction to summarily try the question of whether petitioners were truly indebted to ZACI when such indebtedness is denied. On this note, it bears stressing that stock subscriptions are considered a debt of the stockholder to the corporation.

4. ID.; ID.; THE COURT DEEMS IT IN THE INTEREST OF SUBSTANTIAL JUSTICE AND PETITIONER'S CONSTITUTIONALLY-GUARANTEED RIGHT TO DUE PROCESS TO RELAX THE RULES OF PROCEDURE IN ORDER TO PREVENT AN APPARENT TRAVESTY OF JUSTICE.— Under this factual backdrop, the CA, therefore, should have exercised its sound judicial discretion when it dismissed petitioners' *certiorari* action. It should have carefully weighed, with circumspection and prudence, the issues and grievances that petitioners have raised *vis-a-vis* the procedural defect of their petition. Records show that petitioners had fully paid the deficiency in the docket fee in the sum of ₱1,530.00 notwithstanding the fact that it was made beyond the reglementary period under the rules. What is significant, however, is that petitioners have *fully complied* with all the deficiencies enumerated by the CA in its assailed May 27, 2005 Resolution. Considered in this light, the Court, therefore, deems it in the interest of substantial justice and petitioners' constitutionally-guaranteed right to due process to relax the rules of procedure in order to prevent an apparent travesty of justice in this case.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioners.
Jesus Salvador Uro for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari* assails the May 27, 2005 Resolution[1] and September 6, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00231 which dismissed the petition for *certiorari* filed by petitioners Jose Vicente Atilano II, Heirs of Carlos V. Tan represented by Conrad K. Tan, Carlos K. Tan, Camilo Karl K. Tan, Carisa Rosenda T. Go, Nelida F. Atilano and Isidra K. Tan for failure to comply with the rules of procedure.

The Factual Antecedents

Sometime in January 1990, private respondent Atlantic Merchandising, Inc. filed an action for revival of judgment against Zamboanga Alta Consolidated, Inc. (ZACI) before the Regional Trial Court (RTC) of Zamboanga City, Branch 17, docketed as Civil Case No. 3776. In its January 31, 1991 Decision, the RTC revived the judgment in Civil Case No. 3049 and ordered ZACI to pay private respondent the amount of ₱673,536.54 representing its principal obligation, interest, attorney's fees and costs, plus 12% legal interest *per annum* computed from the time of the filing of the complaint until the same is fully paid. ZACI was likewise directed to pay private respondent attorney's fees equivalent to 15% of the unpaid amount as well as expenses of litigation and costs.

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[1] Penned by Associate Justice Normandie B. Pizzaro, with Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr., concurring, *rollo*, pp. 35-36.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liaco Flores and Mario V. Lopez, concurring, *id.* at 37-40.

A writ of execution was issued to enforce the RTC's January 31, 1991 Decision but because it was returned unsatisfied, private respondent sought the examination of ZACI's debtors, which included petitioners as its stockholders. In the course of the proceedings, petitioners denied liability for any unpaid subscriptions with ZACI and offered various documentary evidence to support their claim.

The RTC's Ruling

In the proceedings before the RTC, petitioners offered official records from the Securities and Exchange Commission (SEC) which revealed the following information[3] as of **February 20, 1988** with respect to ZACI's incorporators, their respective subscriptions:

Name	Amount Subscribed	Amount Paid-in
Jose Vicente F. Atilano II	₱300,000.00	₱75,000.00
Carlos F. Tan	150,000.00	37,500.00
Arthur M. Lopez	150,000.00	37,500.00
Nelida F. Atilano	150,000.00	37,500.00
Isidra K. Tan	150,000.00	37,500.00
Mauro Tan	100,000.00	25,000.00

However, the RTC noted[4] that ZACI had folded up and ceased business operations as early as **1983**, and when inquiries regarding its paid-in capital were made in **1992**, or almost ten (10) years later, no changes were reflected in the company books.

Finding petitioners to be indebted to ZACI as its incorporators in the aggregate amount of ₱750,000.00 by way of unpaid stock subscriptions on the basis of the records of the SEC, the RTC, in its September 29, 2004 Decision,[5] ordered petitioners to settle their obligations to the capital stock of ZACI.

Petitioners' motion for reconsideration was denied in the RTC's December 9, 2004 Order.[6]

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[3] *Id*. at 94.

[4] *Id*. at 95.

[5] Penned by Judge Tibing A. Asaali, *id*. at 93-96.

[6] *Id*. at 108-109.

The CA Ruling

Aggrieved, petitioners filed a petition for *certiorari* before the CA, imputing grave abuse of discretion upon the RTC for failing to consider Section 43, Rule 39 of the Revised Rules of Court which substantially provides for the proceedings that should be conducted when a third person allegedly indebted to a judgment debtor denies the debt. However, the CA dismissed[7] their petition outright on the following grounds: (1) failure to attach certified true copies of the assailed RTC Decision and Order; (2) only three out of four petitioners signed the verification and certification of non-forum shopping; (3) the IBP Official Receipt Number of the counsel for petitioners was outdated, violating Bar Matter No. 287; and (4) deficiency in the docket and other fees in the sum of ₱1,530.00.

Petitioners sought reconsideration of the dismissal of their petition and substantially complied with the procedural defects enumerated. However, in its September 6, 2006 Resolution,[8] the CA, while acknowledging petitioners' compliance with the technical defects of their petition, nonetheless, denied petitioners' motion for reconsideration, finding that the payment of the deficiency in the docket fee was made beyond the reglementary period.

Issues Before The Court

In this petition for review, petitioners maintain that the CA's outright dismissal of their petition on procedural grounds, despite substantial compliance, and the RTC Decision directing them to pay private respondent the amount of their alleged unpaid stock subscriptions to ZACI, are tantamount to a denial of due process of law.

The Court's Ruling

The petition has merit.

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[7] *Supra* note 1.

[8] *Supra* note 2.

Payment of the full amount of docket fees is an indispensable step to the perfection of an appeal, and the Court acquires jurisdiction over any case only upon such payment.[9] Corollary to this, the Court has consistently held that procedural rules are not to be disregarded simply because their non-observance may result in prejudice to a party's substantive rights.[10]

However, these same rules may be relaxed, for persuasive and weighty reasons, to relieve a litigant of an injustice commensurate with his failure to comply with procedure.[11] Thus, in *La Salette College v. Pilotin*,[12] the Court explained:

> Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

After a judicious perusal of the records, the Court finds that compelling and substantial reasons exist in this case as to justify the relaxation of procedural rules.

Records show that petitioners merely became involved in this case when, upon failure to execute the revived final judgment in its favor in Civil Case No. 3776, respondent sought to examine the debtors of ZACI, the judgment obligor, which included petitioners on the allegation that they had unpaid stock subscriptions to ZACI, as its incorporators and stockholders. During the proceedings, petitioners *vehemently denied* any such liability or indebtedness.

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[9] *Panay Railways, Inc. v. Heva Management and Development Corporation*, G.R. No. 154061, January 25, 2012.

[10] *Id*.

[11] *Far Corporation v. Magdaluyo*, G.R. No. 148739, November 19, 2004, 443 SCRA 218, 230.

[12] G.R. No. 149227, December 11, 2003, 418 SCRA 381, 387.

Under the circumstances, therefore, the RTC should have directed respondent to institute a separate action against petitioners for the purpose of recovering their alleged indebtedness to ZACI, in accordance with Section 43, Rule 39 of the Rules of Court, which provides:

> Section 43. *Proceedings when indebtedness denied or another person claims the property.* – If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court which issued it, or the court in which the action is brought, upon such terms as may be just. (Emphasis supplied)

It is well-settled that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by a judgment rendered by the court.[13] Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party thereto, did not have his day in court.[14] Due process dictates that a court decision can only bind a party to the litigation and not against innocent third parties.[15]

In *National Power Corporation v. Gonong*,[16] the Court explained:

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[13] *Fermin v. Hon. Antonio Esteves*, G.R. No. 147977, March 26, 2008, 549 SCRA 424, 428.

[14] *Panotes v. City Townhouse Development Corporation*, G.R. No. 154739, January 23, 2007, 512 SCRA 269.

[15] *Mariculum Mining Corporation v. Brion*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87.

[16] G.R. No. 87140, September 7, 1989, 177 SCRA 365, 372.

[E]xecution may issue against such person or entity only upon an incontrovertible showing that the person or entity in fact holds property belonging to the judgment debtor or is indeed a debtor of said judgment debtor, *i.e., that such holding of property, or the indebtedness, is not denied*. In the event of such a denial, it is not, to repeat, within the judge's power to order delivery of property allegedly belonging to the judgment debtor or the payment of the alleged debt. A contrary rule would allow a court to adjudge substantive liability in a summary proceeding, incidental merely to the process of executing a judgment, rather than in a trial on the merits, to be held only after the party sought to be made liable has been properly summoned and accorded full opportunity to file the pleadings permitted by the Rules in ventilation of his side. This would amount to a denial of due process of law. [Emphasis and underscoring supplied]

Petitioners were total strangers to the civil case between ZACI and respondent, and to order them to settle an obligation which they *persistently denied* would be tantamount to deprivation of their property without due process of law. The only power of the RTC, in this case, is to make an order authorizing respondent to sue in the proper court to recover an indebtedness in favor of ZACI. It has no jurisdiction to summarily try the question of whether petitioners were truly indebted to ZACI when such indebtedness is denied.[17] On this note, it bears stressing that stock subscriptions are considered a debt of the stockholder to the corporation.[18]

Under this factual backdrop, the CA, therefore, should have exercised its sound judicial discretion when it dismissed petitioners' *certiorari* action. It should have carefully weighed, with circumspection and prudence, the issues and grievances that petitioners have raised *vis-a-vis* the procedural defect of their petition. Records show that petitioners had fully paid the deficiency in the docket fee in the sum of ₱1,530.00[19] notwithstanding the

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[17] *Economic Insurance Co. Inc. v. Torres*, L-28488, October 21, 1977, 79 SCRA 519, 523-524, cited in *National Power Corporation v. Gonong*, *supra*.

[18] *Nava v. Peers Marketing Corporation*, 74 SCRA 65, November 25, 1976, citing *Velasco v. Poizat*, 37 Phil. 802, March 15, 1918.

[19] *Supra* note 2, at 39, 5th paragraph.

fact that it was made beyond the reglementary period under the rules. What is significant, however, is that petitioners have *fully complied* with all the deficiencies enumerated by the CA in its assailed May 27, 2005 Resolution.

Considered in this light, the Court, therefore, deems it in the interest of substantial justice and petitioners' constitutionally-guaranteed right to due process to relax the rules of procedure in order to prevent an apparent travesty of justice in this case.

WHEREFORE, the instant petition is **GRANTED** and the assailed May 27, 2005 and September 6, 2006 Resolutions of the Court of Appeals are **SET ASIDE.** The September 29, 2004 Decision and December 9, 2004 Order of the RTC are likewise **NULLIFIED**, without prejudice to the institution of a separate action against petitioners in accordance with Section 43, Rule 39 of the Rules of Court.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

EN BANC

[A.M. No. P-09-2597. September 11, 2012]
(Formerly A.M. No. 08-12-356-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LEONILA R. ACEDO, former Clerk of Court II of the Municipal Circuit Trial Court, Abuyog-Javier, Leyte,** *respondent.*

[A.M. No. 01-10-593-RTC. September 11, 2012]

RE: REQUEST TO WITHHOLD SALARIES OF CLERKS OF COURT WHO CONTINUALLY FAILED TO SUBMIT THE REQUIRED MONTHLY REPORTS IN VIOLATION OF GUIDELINES SET FORTH UNDER SC CIRCULAR NO. 32-93.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; CLERKS OF COURT; ARE ESSENTIAL OFFICERS IN ANY JUDICIAL SYSTEM, AS THE CHIEF ADMINISTRATIVE OFFICERS OF THEIR RESPECTIVE COURTS, THEY MUST ACT WITH COMPETENCE, HONESTY AND PROBITY IN ACCORDANCE WITH THEIR DUTY OF SAFEGUARDING THE INTEGRITY OF THE COURT AND THEIR PROCEEDINGS.—** Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. The clerk of court of a court of justice is an essential officer in any judicial system. The office is the hub of activities, both adjudicative and administrative. Clerks of court are judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds. As the chief administrative officers of their respective courts, they must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and its proceedings.

2. **ID.; ID.; ID.; ID.; ID.; DISHONESTY AND GRAVE MISCONDUCT; THE ACT OF MISAPPROPRIATING JUDICIARY FUNDS AMOUNTS TO DISHONESTY AND GRAVE MISCONDUCT PUNISHABLE BY DISMISSAL FROM THE SERVICE EVEN IF COMMITTED FOR THE FIRST TIME.—** In the case at bench, there is no doubt that Acedo committed infractions that warranted the withholding of her salaries. She even admitted and took full responsibility for all her shortcomings. Being a judicial officer, it was highly expected of her to competently and efficiently discharge her duties as a clerk of court to maintain proper administration of justice. She was the custodian of court funds and was duty-bound to promptly and regularly report the collections and immediately deposit the funds collected in their respective accounts. The violations that Acedo committed were offenses that merit serious and harsh penalties. "The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the Judiciary. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are punishable by dismissal from

the service even if committed for the first time." For those who have fallen short of their accountabilities, the Court has not hesitated to impose the ultimate penalty.

3. **ID.; ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCES ARE NOT TO BE LOSELY APPRECIATED ESPECIALLY IN CASES OF SERIOUS OFFENSES.—** The ultimate penalty of dismissal carries with it the penalty of forfeiture of retirement benefits. Sec. 58(a) of the Uniform Rules on Administrative Cases in the Civil Service. x x x Although Acedo cannot be dismissed from the service anymore because she was supposed to have retired in January 2003, she asked for leniency from the Court insofar as her retirement benefits and method of payment for her accountabilities were concerned. In several administrative cases, mitigating circumstances such as length of service in the Judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, merited the leniency of the Court. It is, however, to be emphasized that these mitigating circumstances are not loosely appreciated especially in cases of serious offenses. The mitigating circumstances remain to be the exception, the general rule being the full imposition of the accessory penalties of forfeiture of retirement benefits and the perpetual disqualification for reemployment in the government service pursuant to the above-mentioned rule.

4. **ID.; ID.; ID.; ID.; ID.; LENGTH OF SERVICE IS AN ALTERNATIVE CIRCUMSTANCE WHICH CAN MITIGATE OR POSSIBLY EVEN AGGRAVATE THE PENALTY, DEPENDING ON THE CIRCUMSTANCES OF THE CASE; IN CASE AT BAR, RESPONDENT'S 40 YEARS IN SERVICE SHOULD BE TAKEN AGAINST HER.—** In this case, as per the November 17, 2008 Memorandum of the OCA, Acedo rendered almost forty (40) years of service in the Judiciary, starting in January 1965 as a Clerk, then as a Stenographer, and later as Clerk of Court in 1979 until her retirement in January 2003. These facts, however, rather aggravate the offenses committed by Acedo. Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case. Acedo's almost forty (40) years of service should be taken against her. Having been accorded full trust and confidence for such a length of time, Acedo was expected to discharge her duties with utmost responsibility, integrity, loyalty, and efficiency, which unfortunately she failed to do. Moreover, records show that Acedo

clearly took advantage of her official position to misappropriate the court funds entrusted to her. Further, the misappropriation proved to be habitual. These circumstances likewise aggravate her infractions, pursuant to Sec. 53 of the Uniform Rules on Administrative Cases in the Civil Service, thus, supporting this Court's conclusion that Acedo's retirement benefits should be forfeited.

5. ID.; ID.; ID.; ID.; ID.; CONSIDERING THAT THERE ARE MORE AGGRAVATING THAN MITIGATING CIRCUMSTANCES IN CASE AT BAR, RESPONDENT CANNOT BE ALLOWED TO RETIRE TO ENABLE HER TO PAY HER REMAINING CASH ACCOUNTABILITIES; RESPONDENT'S RETIREMENT BENEFITS SHOULD BE FORFEITED, EXCEPT HER ACCRUED/ TERMINAL LEAVE BENEFITS WHICH SHALL BE APPLIED TO THE PAYMENT OF HER SHORTAGES.— The OCA took into consideration Acedo's admission of sole responsibility and her promise to restitute her shortages in installment basis, which the OCA concluded as her effort to keep the institution whole and to speed up the healing process which the MCTC, Abuyog-Leyte needed. Thus, the OCA recommended, for humanitarian consideration, that Acedo be allowed to retire to enable her to pay her remaining cash accountabilities. The Court cannot agree. The Court does not discount the fact that Acedo indeed admitted her infractions and promised to restitute her shortages. This admission, however, does not suffice to warrant the Court's leniency. Sec. 54 of the Uniform Rules on Administrative Cases in the Civil Service provides: x x x Here, it has been clearly shown that there are more aggravating than mitigating circumstances present in the case. For said reason, the Court cannot find the OCA's recommendation as proper and in accord with law and jurisprudence. Thus, Acedo's retirement benefits should be forfeited, except for her accrued/terminal leave benefits which shall be applied in payment of her shortages.

6. ID.; ID.; ID.; ID.; ID.; FAILURE OF CLERKS OF COURT TO COMPLETELY SUBMIT THE REQUIRED MONTHLY REPORTS IN VIOLATION OF THE GUIDELINES SET FORTH UNDER SC-CIRCULAR NO. 32-93 JUSTIFIES THE WITHHOLDING OF THEIR SALARIES.— Out of the twenty-nine (29) clerks of court who were directed to show cause why they should not be disciplinary dealt with for continually failing to submit the required monthly reports, only seven (7) failed to comply with the said

directive as of October 15, 2002. Hence, the Court *En Banc* issued its Resolution, upon recommendation of the OCA, directing the FMO to *withhold* the salaries of the seven clerks of court who had not completely submitted the required monthly reports, in violation of the guidelines set forth under SC Circular No. 32-93. Acedo was one of them.

D E C I S I O N

MENDOZA, *J.*:

These consolidated administrative matters originated from a memorandum[1] submitting to the Court a list of clerks of court who had continually failed to submit the required monthly reports despite having been given two (2) due notices.

On October 23, 2001, the Court *En Banc* issued a Resolution[2] requiring twenty-nine (29) clerks of court to show cause within ten (10) days from notice why they should not be disciplinarily dealt with for continually failing to submit the required monthly reports. Respondent Leonila R. Acedo *(Acedo)*, former Clerk of Court II of the Municipal Circuit Trial Court, Abuyog-Javier, Leyte *(MCTC)*, was one of those named in the Resolution.

On October 15, 2002, the Court *En Banc* issued another Resolution,[3] upon recommendation of the Office of the Court Administrator *(OCA)*, directing the Fiscal Management Office *(FMO)* to *withhold* the salaries of seven (7) clerks of court who had not completely submitted the required monthly reports, in violation of the guidelines set forth under SC Circular No. 32-93. Acedo was again one of those named in the list.

A.M. No. P-09-2597

On January 18, 2003, Acedo compulsorily retired but did not seek clearance thereafter. She admitted in her Letter,[4] dated October 6, 2008, that she did not voluntarily submit her books of accounts.

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[1] *Rollo* (A.M. No. 01-10-593-RTC), pp. 1-5.

[2] *Id.* at 7-9.

[3] *Id.* at 704-706.

[4] *Rollo* (A.M. No. P-09-2597), pp. 43-45.

She was afraid because she failed to comply with her obligation and responsibility as Clerk of Court/Accountable Officer and admitted the violations she had committed.

On November 17, 2008, the Financial Audit Team submitted a report on the financial audit that they had conducted on the books of account of Acedo for the period covering May 17, 1985 to January 18, 2003, and of Mr. Estanislao S. Yaranon *(Yaranon)*, Clerk of Court II, for the period covering January 19, 2003 to September 30, 2008. The significant findings[5] of the audit team were as follows:

a) Cash Count on September 29, 2008 disclosed no shortage/overage. Total undeposited collections as well as the total cash items amounted to **Eighteen Thousand Four Hundred Pesos (₱18,400.00)**, hence, no balance of accountability. Yaranon was advised to deposit the said amount to their respective accounts, which he complied on October 3, 2008.

b) All Supreme Court Official Receipts requisitioned from the Property Division, OCA were fully accounted for.

c) Audit computations of accountabilities for each judiciary fund were the following:

a. JUDICIARY DEVELOPMENT FUND (JDF)

For Ms. Leonila R. Acedo – May 17, 1985 to January18, 2003

Total Collections per Audit (May 17, 1985 to Jan. 18, 2003)	₱ 727,358.10
Less: Total Remittance (same period)	512,838.05
Balance of Accountability – Shortage	**₱ 214,520.05**

The shortage was due to under-remittance of collections.

For Mr. Estanislao S. Yaranon – January 19, 2003 to September 30, 2008

Total Collections per Audit (Jan. 19, 2003 to Sept. 30, 2008)	₱574,782.72
Less: Total Remittance (same period)	566,114.32
Balance	₱ 8,668.40
Less: Deposit in transit dated Oct. 3, 2008	7,677.80
Balance of Accountability – Shortage	**₱ 990.60**

[5] Reported in OCA Memorandum dated November 17, 2008, *rollo* (A.M. No. P-09-2597), pp. 4-12.

The cash shortage of ₱990.60 was restituted on October 3, 2008.

b. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND (SAJF)

For the period of November 11, 2003 to September 30, 2008

Total Collections per Audit (Nov. 11, 2003 to Sept. 30, 2008)	₱ 565,740.50
Less: Total Remittance (same period)	565,722.50
Balance of Accountability - Shortage	₱ 18.00
Less: Adjustments	
SAJF collections deposited to GF account	21.00
Over-remittance	**₱(3.00)**

c. MEDIATION FUND (MF)

Total Collections per Audit (Aug. 2005 to Sept. 30, 2008)	₱ 14,000.00
Less: Total Remittance	13,500.00
Balance of Accountability - Shortage	₱ 500.00
Less: Payments on Oct. 3, 2008	500.00
Balance of Accountability	**₱ 0.00**

Shortage amounting to ₱500.00 was due to erroneous recording of collections under OR No. 20938576 instead of ₱1,000.00. It was deposited in the cash book for only ₱500.00.

d. CLERK OF COURT GENERAL FUND (COCGF)

For the period of March 11, 1996 to November 10, 2003

Total Collections		₱ 54,236.50
Less: Total Remittance (same period)	7,705.00	
SAJF collections deposited to GF account	21.00	7,684.00
Balance of Accountability - Shortage		**₱ 46,552.50**

The collections amounting to ₱46,552.50 were not remitted to the National Treasury by Acedo.

e. FIDUCIARY FUND (FF)

For Ms. Leonila R. Acedo – June 13, 1996 to January 18, 2003

Total Collections from June 13, 1996 to Jan. 18, 2003	₱ 1,242,467.20
Less: Total refunded cash bond – withdrawals (same period)	661,442.20

Balance of Unwithdrawn FF as of Jan. 18, 2003	₱ 551,025.00
Less: Bank Balance as of Jan. 18, 2003	0.00
Sub-Total	**₱ 551,025.00**
Add: Undocumented withdrawals	413,552.20
Total Shortage	**₱ 964,577.20**

Acedo violated Sec. A(2) of OCA Circular No. 50-95 when she failed to deposit the cash bond collections of ₱551,025.00 to the court's legitimate Savings Account No. 0181-2079-81 with the Land Bank of the Philippines, Tacloban Branch.

The undocumented withdrawals will be added as cash shortage of Acedo should she fail to submit a copy of court orders and acknowledgment receipts.

For Mr. Estanislao S. Yaranon – Jan. 19, 2003 to Sept. 30, 2008	
Total Collections – Jan. 19, 2003 to Sept. 30, 2008	₱ 1,773,580.00
Less: Withdrawals (same period)	974,500.00
Balance of Unwithdrawn FF as of Sept. 30, 2008	₱ 799,080.00
Balance of Unwithdrawn FF as of Sept. 30, 2008	₱ 799,080.00
Less: Bank Balance as of Sept. 30, 2008	799,034.94
Balance of Accountability – shortage	**₱ 45.06**

Withdrawals of interest (net of tax) as of Sept. 30, 2008	₱ 25,226.00
Net Interests as of Sept. 30, 2008	25,220.94
Over-withdrawal of interest – shortage	**₱ 45.06**

Yaranon restituted the amount of ₱45.06 on October 7, 2008 representing shortage due to over-withdrawal of interest earned.

As a result of the audit, the Team found shortages amounting to **Eight Hundred Thirteen Thousand Ninety Seven Pesos & 55/100 (₱813,097.55)** for JDF, GF and FF during the accountability of Acedo.

Letter of Ms. Leonila R. Acedo

On October 6, 2008, Acedo submitted a letter[6] addressed to then Chief Justice Reynato Puno in connection with the audit conducted by the Financial Audit Team on her books of account. She readily admitted her failure to fulfil and comply with her

[6] *Rollo* (A.M. No. P-09-2597), pp. 43-45.

obligations as clerk of court during the time she was recuperating from her illness. She also admitted having used the amount entrusted to her to pay for her medical and other household expenses. For the said shortcomings and violations committed, she begged for forgiveness and humbly asked the Court for consideration in settling her accountabilities. She further wrote:

> Thus, I am earnestly praying that the shortage I have in my accountability will be deducted to the accrued terminal leave or any other benefits, and to those salaries of mine that were withheld in your good office. And if ever, the accrued and other benefits and the salaries withheld would not suffice to pay off for the shortage, the remaining amount if you may permit will be paid by installment basis with the monthly pension I will be having.[7]

Recommendation of the OCA

The initial findings and recommendation of the audit team were adopted by the OCA in its Memorandum,[8] dated November 27, 2008, as follows:

A. This report be docketed as an administrative complaint against Ms. Leonila R. Acedo, former Clerk of Court II of the Municipal Circuit Trial Court, Abuyog-Javier, Leyte and be consolidated with "**A.M. No. 01-10-593-RTC- Re: Request to withhold salaries of Clerk of Court**" involving Ms. Leonila R. Acedo, former Clerk of Court of MCTC, Abuyog-Javier, Leyte, *et al.;*

B. **MS. LEONILA R. ACEDO** be **DIRECTED** within fifteen (15) days to:

B1. **RESTITUTE** the amounts of ₱215,520.05, ₱46,552.50 and ₱551,025.00 representing the shortages in the JDF, GF and Fiduciary Fund, respectively;

B2. **DEPOSIT** said amounts to their respective accounts, furnishing the Fiscal Monitoring Division, CMO-OCA, with the machine validated deposit slips as proof of remittance;

B3. **DEPOSIT** the same amounts to their respective fund accounts;

B4. **FURNISH** the Fiscal Monitoring Division, CMO-OCA of the machine-validated deposit slips as proof of remittance; and

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[7] *Id.* at 45.

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

B4. **SUBMIT** undocumented withdrawals of Four Hundred Thirteen Thousand Five Hundred Fifty Two Pesos & 20/100 (₱413,552.20). Failure to submit/present copy(ies) of Court Orders and Acknowledgment Receipts, the amount of ₱413,552.20 will be added to ₱551,025.00, making the shortage of Fiduciary Fund to ₱964,577.20.

C. MR. ESTANISLAO S. YARANON, former Clerk of Court II of MCTC, Abuyog-Javier, be cleared from financial accountabilities;

D. MS. ANASTACIA C. TABURADA, Officer-in-Charge, MCTC, Abuyog-Javier, Leyte be **DIRECTED** to:

1. Effectively exercise control and supervision over the court personnel especially those in charge with the collection/deposits/ withdrawals and recording of all court's funds, and submission of monthly reports; and
2. Keep herself abreast/updated with the court issuances & strictly comply with the provisions thereof, particularly on the proper handling of judiciary funds; and
3. SUBMIT to the Fiscal Monitoring Division, CMO-OCA the COURT ORDERS of the withdrawn cash bonds as enumerated in Annex "C" of this report amounting to ₱413,552.20; otherwise, this will form part of the accountability of Ms. Acedo.

E. Presiding Judge Elizabeth B. Briton be **DIRECTED** to:
1. MONITOR the Officer-in-Charge, Ms. Anastacia C. Taburada on the strict compliance with the circulars on the proper handling of judiciary funds and adhere strictly to the issuances of the Court to avoid repetition of the same offenses committed as enumerated above; and
2. SUBMIT to the Fiscal Monitoring Division, CMO-OCA the COURT ORDERS of the withdrawn cash bonds as enumerated in Annex "C" of this report amounting to ₱413,552.20; otherwise, this will form part of the accountability of Ms. Acedo.

Resolution of the Court

On January 21, 2009, the Court's Second Division issued a Resolution[9] stating and adopting *in toto* the recommendation

[9] *Id.* at 30-33.

of the OCA, and noting the latter's Memorandum, dated November 27, 2008.

On November 24, 2009, the Court *En Banc* issued its Resolution[10] accepting the consolidation of administrative matters, *A.M. No. 01-10-593-RTC docketed as Re: Request to Withhold Salaries of Clerks of Court Who Continually Failed to Submit the Required Monthly Reports in Violation of Guidelines Set Forth under SC Circular No. 32-93* and *A.M. No. P-09-2597 (Formerly A.M. No. 08-12-356-MCTC) entitled Office of the Court Administrator v. Ms. Leonila R. Acedo, former Clerk of Court II, MCTC, Abuyog-Javier, Leyte.*

Final Accountabilities of Ms. Leonila R. Acedo

In compliance with the abovementioned resolution, Anastacia C. Taburada *(Taburada),* Officer-in-Charge of the MCTC, submitted the court orders of the withdrawn cash bonds which amounted to only ₱144,000.00, thereby reducing the undocumented withdrawals of ₱413,552.20 to ₱269,552.20. The amount of ₱269,552.20 was included as additional shortage for failure of Taburada to submit copies of the court orders, *etc.* and would form part of Acedo's accountability as stated in the January 21, 2009 Resolution.

On March 15, 2012, the OCA reported in its Memorandum[11] the total accountabilities of Acedo, as computed by the audit team, as follows:

TOTAL ACCOUNTABILITIES[12]

Nature of Funds	Accountabilities
Judiciary Development Fund	₱ 214,520.05
Clerk of Court General Fund	46,552.50
Fiduciary Fund	820,577.20
TOTAL	**₱ 1,081,649.75**

[10] *Id.* at 34.

[11] *Id.* at 35-42.

[12] *Id.* at 39.

Final Recommendation of the OCA

In the said memorandum, the OCA recommended that:

1. Ms. Leonila R. Acedo, former Clerk of Court II, Municipal Circuit Trial Court, Abuyog-Javier, Leyte, be:

a. **CONSIDERED** retired as of January 17, 2003:

b. **DIRECTED** within fifteen (15) days from notice to -

b.1. **PAY and DEPOSIT** the amount of Four Hundred Forty-One Thousand Six Hundred Thirty-Three pesos & 91/100 (₱441,633.91) representing excess shortage after deducting the terminal pay, computed as follows:

Judiciary Development Fund (JDF)	₱ 214,520.05
Clerk of Court General Fund COGF	46,552.50
Fiduciary Fund (FF)	180,561.36
Total	**₱ 441,633.91**

b.2. **SUBMIT** to the Fiscal Monitoring Division (FMD), Court Management Office, Office of the Court Administrator, the machine-validated deposit slip as proof of remittance in Item 1.a.;

c. **FINED** in the amount of **FIVE THOUSAND PESOS (₱5,000.00)** for the shortages incurred in the collection of judiciary funds, which deprived the Court of interest income that could have been earned if the amount were deposited on time with the depository bank; and

2. The Financial Management Office, Office of the Court Administrator, be **DIRECTED** to:

a. **PROCESS** the terminal leave benefits of respondent Acedo, dispensing with the documentary requirements, and REMIT to the Municipal Circuit Trial Court, Abuyog-Javier, Leyte, the total monetary value of respondent's earned leave credits in the amount of ₱640,015.84, representing portion of the total shortages incurred in the Fiduciary Fund; and

b. **COORDINATE** with the Fiscal Monitoring Division, Court Management, OCA, before the release of the checks issued in favour of the MCTC, Abuyog-Javier, Leyte, for the preparation of the necessary communication to the incumbent

> Clerk of Court of the MCTC Abuyog-Javier, and to furnish the said office with a copy of the machine-validated deposit slip as proof of partial restitution of the shortages incurred in the Fiduciary Fund account to finalize the herein audit.[13]

Ruling of the Court

Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[14] The clerk of court of a court of justice is an essential officer in any judicial system. The office is the hub of activities, both adjudicative and administrative.[15] Clerks of court are judicial officers entrusted with the delicate function with regard to collection of legal fees. They are expected to correctly and effectively implement regulations relating to proper administration of court funds.[16] As the chief administrative officers of their respective courts, they must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and its proceedings.[17]

In the case at bench, there is no doubt that Acedo committed infractions that warranted the withholding of her salaries. She even admitted and took full responsibility for all her shortcomings. Being a judicial officer, it was highly expected of her to competently and efficiently discharge her duties as a clerk of court to maintain proper administration of justice. She was the custodian of court funds and was duty-bound to promptly and regularly report the collections and immediately deposit the funds collected in their respective accounts.

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

[14] Section 1, Article XI, *Constitution*.

[15] The 2002 Revised Manual For Clerks of Court.

[16] *OCA v. Nelia D.C. Recio, Eralyn S. Cavite, Ruth G. Cabigas and Chona Aurelia R. Reniedo, all of the Metropolitan Trial Court, San Juan, Metro Manila*, A.M. No. P-04-1813 (Formerly A.M. No. 04-5-119-MeTC), May 31, 2011, 649 SCRA 552, 568.

[17] *OCA v. Gregorio B. Saddi, Clerk of Court, MTC, Sasmuan, Pampanga*, A.M. No. P-10-2818 (Formerly A.M. No. 10-4-54-MTC), November 15, 2010, 634 SCRA 525, 531.

The violations that Acedo committed were offenses that merit serious and harsh penalties. "The failure to remit the funds in due time amounts to dishonesty and grave misconduct, which the Court cannot tolerate for they diminish the people's faith in the Judiciary. The act of misappropriating judiciary funds constitutes dishonesty and grave misconduct which are punishable by dismissal from the service even if committed for the first time."[18] For those who have fallen short of their accountabilities, the Court has not hesitated to impose the ultimate penalty.[19]

The ultimate penalty of dismissal carries with it the penalty of forfeiture of retirement benefits. Sec. 58(a) of the Uniform Rules on Administrative Cases in the Civil Service provides:

> a. The penalty of dismissal shall carry with it that of cancellation of eligibility, **forfeiture of retirement benefits**, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision. [Emphasis supplied]

Although Acedo cannot be dismissed from the service anymore because she was supposed to have retired in January 2003, she asked for leniency from the Court insofar as her retirement benefits and method of payment for her accountabilities were concerned. In several administrative cases, mitigating circumstances such as length of service in the Judiciary, acknowledgment of infractions and feeling of remorse, and family circumstances, among other things, merited the leniency of the Court.[20] It is, however, to be emphasized that these mitigating circumstances are not loosely appreciated especially in cases of serious offenses. The mitigating circumstances remain to be the exception, the general rule being the full imposition of the accessory penalties of forfeiture of retirement benefits and the perpetual disqualification for reemployment in the government service pursuant to the above-mentioned rule.

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[18] *OCA v. Santos*, A.M. No. P-06-2287, October 12, 2010, 632 SCRA 678, 689-690, citing *OCA v. Nolasco*, A.M. No. P-06-2148, March 4, 2009, 580 SCRA 471, 487.

[19] *Concerned Citizen v. Gabral, Jr.*, 514 Phil. 209, 218 (2005).

[20] *Judge Dayaon v. De Leon*, A.M. No. P-11-2926, February 1, 2012.

In this case, as per the November 17, 2008 Memorandum of the OCA, Acedo rendered almost forty (40) years of service in the Judiciary, starting in January 1965 as a Clerk, then as a Stenographer, and later as Clerk of Court in 1979 until her retirement in January 2003. These facts, however, rather aggravate the offenses committed by Acedo. Length of service is an alternative circumstance which can mitigate or possibly even aggravate the penalty, depending on the circumstances of the case.[21] Acedo's almost forty (40) years of service should be taken against her. Having been accorded full trust and confidence for such a length of time, Acedo was expected to discharge her duties with utmost responsibility, integrity, loyalty, and efficiency, which unfortunately she failed to do.

Moreover, records show that Acedo clearly took advantage of her official position to misappropriate the court funds entrusted to her. Further, the misappropriation proved to be habitual. These circumstances likewise aggravate her infractions, pursuant to Sec. 53 of the Uniform Rules on Administrative Cases in the Civil Service, thus, supporting this Court's conclusion that Acedo's retirement benefits should be forfeited.

The OCA took into consideration Acedo's admission of sole responsibility and her promise to restitute her shortages in installment basis, which the OCA concluded as her effort to keep the institution whole and to speed up the healing process which the MCTC, Abuyog-Leyte needed.[22] Thus, the OCA recommended, for humanitarian consideration, that Acedo be allowed to retire to enable her to pay her remaining cash accountabilities.[23] The Court cannot agree.

The Court does not discount the fact that Acedo indeed admitted her infractions and promised to restitute her shortages. This admission, however, does not suffice to warrant the Court's leniency. Sec. 54 of the Uniform Rules on Administrative Cases in the Civil Service provides:

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[21] *Gannapao v. Civil Service Commission*, G.R. No. 180141, May 31, 2011, 649 SCRA 595, 614.

[22] *Rollo* (A.M. No. P-09-2597), p. 9.

[23] *Id.* at 41.

Section 54. ***Manner of Imposition.*** When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
d. **Where aggravating and mitigating circumstances are present, paragraph** [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph **[c] shall be applied when there are more aggravating circumstances.**

Here, it has been clearly shown that there are more aggravating than mitigating circumstances present in the case. For said reason, the Court cannot find the OCA's recommendation as proper and in accord with law and jurisprudence. Thus, Acedo's retirement benefits should be forfeited, except for her accrued/terminal leave benefits which shall be applied in payment of her shortages.

Further, the Court deems it proper to modify the computation of the total shortage in Fiduciary Fund.

The audit team earlier revealed a total shortage in the amount of ₱964,577.20, inclusive of the undocumented withdrawals, computed as follows:

Total Collections from June 13, 1996 to Jan. 18, 2003	₱ 1,242,467.20
Less: Total refunded cash bond – withdrawals (same period)	661,442.20
Balance of Unwithdrawn FF as of Jan. 18, 2003	₱ 551,025.00
Less: Bank Balance as of Jan. 18, 2003	0.00
Sub-Total	**₱ 551,025.00**
Add: Undocumented withdrawals	413,552.20
Total Shortage	**₱ 964,577.20**

A careful scrutiny of the computation bared a miscalculation in the **balance of unwithdrawn FF**. Deducting the total refunded cash bond from the total collections should have resulted in the

amount of **₱581,025.00** instead of ₱551,025.00. There was clearly a difference of ₱30,000.00. The correct amount of total shortage should be **₱994,577.20**. Therefore, the correct computation after deducting the amount of ₱144,000.00 which was already complied with, through the submission of court orders, shall be the following:

Total Collections from June 13, 1996 to Jan. 18, 2003		₱1,242,467.20
Less: Total refunded cash bond – withdrawals (same period)		661,442.20
Balance of Unwithdrawn FF as of Jan. 18, 2003		₱581,025.00
Less: Bank Balance as of Jan. 18, 2003		0.00
Sub-Total		**₱581,025.00**
Add: Undocumented withdrawals	₱ 413,552.20	
Less: Complied	144,000.00	269,552.20
Total Shortage		**₱850,577.20**

Consequently, in the application of payments, priority should be given to the Fiduciary Account as the funds therein are only held in trust by the Court and are subject to refund upon presentation of appropriate documents.[24] The OCA was, therefore, correct in stating that the FF shall be deducted first from the withheld salaries and accrued leave credits of Acedo. With that in mind, the balance of accountability of Acedo, as far as the FF is concerned, is as follows:

Fiduciary Fund – Final Shortage	₱ 850,577.20
Less: Total monetary value of accrued leave credits	640,015.84
Balance of Accountability	**₱210,561.36**

Thus, the total accountability of Acedo shall be:

Judiciary Development Fund (JDF)	₱ 214,520.05
Clerk of Court General Fund (COCGF)	46,552.50
Fiduciary Fund (FF)	210,561.36
Total	**₱ 471,633.91**

[24] *OCA v. Varela*, A.M. No. P-06-2113 (Formerly A.M. No. 05-12-357-MTC), February 6, 2008, 544 SCRA 10, 18.

The Court takes this opportunity to remind the Court Management Office, OCA, to be more careful with their audit and computation so as to truly reflect the proper accountabilities of the responsible officer as well as what is truly owing to the Court.

A.M. No. 01-10-593-RTC

Out of the twenty-nine (29) clerks of court who were directed to show cause why they should not be disciplinary dealt with for continually failing to submit the required monthly reports, only seven (7) failed to comply with the said directive as of October 15, 2002. Hence, the Court *En Banc* issued its Resolution,[25] upon recommendation of the OCA, directing the FMO to *withhold* the salaries of the seven clerks of court who had not completely submitted the required monthly reports, in violation of the guidelines set forth under SC Circular No. 32-93. Acedo was one of them. The other six (6) clerks of court were the following:

1. Celso M. Apusen – RTC-Lipa City, Batangas
2. Ernesto A. Luzod, Jr. – RTC-Biñan, Laguna
3. Bibiano C. Gaudiel, Jr. – RTC-San Jose, Occidental Mindoro
4. Fermin M. Ofilas – RTC-San Mateo, Rizal
5. Martino B. Gasid, Jr. – MTC-San Isidro, Northern Samar
6. Gerardo K. Baroy – MTC-Sta. Catalina, Negros Oriental

Of the six named above, three (3), namely, Fermin Ofilas *(Ofilas)*, Celso M. Apusen *(Apusen)* and Martino B. Gasid *(Gasid)* later submitted the reports required by the OCA. Thus, on November 4, 2002, the OCA issued a Memorandum[26] addressed to then Chief Justice Davide, requesting for the release of the salaries withheld from Ofilas. On February 4, 2003, the Court *En Banc* issued its Resolution[27] directing the FMO, upon

[25] *Rollo,* pp. 704-706.

[26] *Id.* at 848.

[27] *Id.* at 737.

recommendation of the OCA, to release the salaries withheld from Apusen. Likewise, on October 7, 2003, an *en banc* resolution[28] was issued by the Court directing the FMO to release the salaries withheld from Gasid, less the amount of ₱535.00 representing the value of the postal money orders still pending verification with the Accounting Division, OCA.

Incidentally, Ofilas was dismissed from the service by the Court on April 23, 2010 for gross dishonesty, grave misconduct and conduct prejudicial to the best interest of the public in A.M. No. P-05-1935.[29]

On the other hand, records reveal that the Accounting Division-OCA submitted its Memorandum-Reply,[30] dated April 8, 2003, requesting for authority to withhold the other emoluments of Ernesto A. Luzod, Jr. *(Luzod)* and Gerardo K. Baroy *(Baroy)* for their continued failure to submit the required monthly reports, and recommending that they be relieved of their duties and responsibilities as clerks of courts effective immediately and that their bonds cancelled.

On July 22, 2003, acting on the OCA's Memorandum-Reply, the Court *En Banc* issued a Resolution[31] resolving to direct only the withholding of emoluments of Luzod and Baroy.

As of date, the OCA has not submitted before this Court any further recommendations anent the accountabilities and responsibilities of clerks of court, Luzod and Baroy. Neither is there any report that they are not in the service anymore. Thus, Luzod and Baroy still appear to continuously fail to submit the required monthly reports pursuant to SC Circular No. 32-93 without any justification. The Court has not, and will not, hesitate to impose the penalties as recommended by the OCA, that Luzod and Baroy be relieved of their duties and responsibilities

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[28] *Id.* at 790.

[29] *OCA v. Ofilas*, April 23, 2010, 619 SCRA 13.

[30] *Rollo*, pp. 840-841.

[31] *Id.* at 838.

as clerks of courts and their bonds cancelled. The offenses committed by them greatly diminish and affect the faith of the public in the Judiciary.

As far as Atty. Bibiano C. Gaudiel, Jr. is concerned, the Court notes that as per OCA Memorandum,[32] dated April 8, 2003, he has already transferred to the House of Representatives, effective July 2001, without the necessary clearance from the OCA.

WHEREFORE, the Court disposes as follows:

1] In **A.M. No. P-09-2597,** the Court resolves to **CONSIDER** Leonila R. Acedo, former Clerk of Court II of the Municipal Circuit Trial Court, Abuyog-Javier, Leyte, retired as of January 17, 2003, as dismissal from service is no longer feasible. Her retirement benefits, however, are ordered forfeited. She is declared to be perpetually disqualified for reemployment in the government service. She is **DIRECTED** within fifteen (15) days from notice, to **PAY and DEPOSIT** the amount of Four Hundred Seventy One Thousand Six Hundred Thirty-Three Pesos & 91/100 (₱471,633.91) representing net shortage after deducting the terminal pay; and to **SUBMIT** to the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, the machine-validated deposit slip as proof of remittance; and **FINED** in the amount of **TWENTY THOUSAND PESOS (₱20,000.00)** for the shortages incurred in the collection of judiciary funds, which deprived the Court of interest income that could have been earned if the amount had been deposited on time with the depository bank.

The Financial Management Office, Office of the Court Administrator, is **DIRECTED** to **PROCESS** the terminal leave benefits of the Acedo; to **REMIT** to the Municipal Circuit Trial Court, Abuyog-Javier, Leyte, the total monetary value of her earned leave credits in the amount of ₱640,015.84, representing a portion of the total shortages incurred in the

[32] *Id.* at 841.

Fiduciary Fund; to **COORDINATE** with the Fiscal Monitoring Division, Court Management, OCA, before the release of the checks issued in favor of the MCTC, Abuyog-Javier, Leyte, for the preparation of the necessary communication with the incumbent clerk of court of the MCTC, Abuyog-Javier; and to **FURNISH** the said office with a copy of the machine-validated deposit slip as proof of partial restitution of the shortages incurred in the Fiduciary Fund account to finalize the herein audit.

2] In **A.M. No. 01-10-593-RTC,** the Court Management Office, Office of the Court Administrator, is hereby **DIRECTED** to report to the Court the results of the audit of the cash and account of Clerks of Courts Ernesto A. Luzod, Jr., Regional Trial Court, Biñan, Laguna, and Gerardo K. Baroy, Municipal Trial Court, Sta. Catalina, Negros Oriental, pursuant to the Court *En Banc's* Resolution, dated July 22, 2003, within fifteen (15) days from receipt of this judgment.

Pending the submission by the CMO-OCA of the results of the audit, Luzod, Jr. and Baroy are hereby immediately relieved of their duties and responsibilities as clerks of courts and their bonds are ordered cancelled.

SO ORDERED.

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

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

EN BANC

[G.R. No. 162372. September 11, 2012]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), HERMOGENES D. CONCEPCION, JR., WINSTON F. GARCIA, REYNALDO P. PALMIERY, LEOVIGILDO P. ARRELLANO, ELMER T. BAUTISTA, LEONORA V. DE JESUS, FULGENCIO S. FACTORAN, FLORINO O. IBAÑEZ, AIDA C. NOCETE, AURORA P. MATHAY, ENRIQUETA DISUANCO, AMALIO MALLARI, LOURDES PATAG, RICHARD M. MARTINEZ, ASUNCION C. SINDAC, GLORIA D. CAEDO, ROMEO C. QUILATAN, ESPERANZA FALLORINA, LOLITA BACANI, ARNULFO MADRIAGA, LEOCADIA S. FAJARDO, BENIGNO BULAONG, SHIRLEY D. FLORENTINO, and LEA M. MENDIOLA, *petitioners, vs.* **COMMISSION ON AUDIT (COA), AMORSONIA B. ESCARDA, MA. CRISTINA D. DIMAGIBA, and REYNALDO P. VENTURA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; RETIREMENT LAWS; RETIREMENT BENEFITS BELONG TO A DIFFERENT CLASS OF BENEFITS; THEY ARE GIVEN AS A FORM OF REWARD FOR THE SERVICES A RETIRED EMPLOYEE HAD RENDERED AND THE PURPOSE IS NOT TO ENRICH HIM BUT TO HELP HIM DURING HIS NON-PRODUCTIVE YEARS.— [E]ven if the substantive issues and arguments raised by the Movants Federico Pascual, *et al.* are considered, there is no justifiable ground to reverse the Court's Decision. While it is true, as claimed by the Movants Federico Pascual, *et al.*, that based on prevailing jurisprudence, disallowed benefits received in good faith need not be refunded, the case before us may be distinguished from all the cases cited by Movants Federico Pascual, *et al.* because the monies involved here are

retirement benefits. Retirement benefits belong to a different class of benefits. All the cases cited by the Movants Federico Pascual, *et al*. involved benefits such as cash gifts, representation allowances, rice subsidies, uniform allowances, *per diems*, transportation allowances, and the like. The foregoing allowances or fringe benefits are given **in addition** to one's salary, either to reimburse him for expenses he might have incurred in relation to his work, or as a form of supplementary compensation. On the other hand, retirement benefits are given to one who is separated from employment either voluntarily or compulsorily. Such benefits, subject to certain requisites imposed by law and/or contract, are given to the employee on the assumption that he can no longer work. They are also given as a form of reward for the services he had rendered. The purpose is not to enrich him but to help him during his non-productive years.

2. ID.; ID.; TO ALLOW THE PETITIONERS TO RETAIN THE DISALLOWED BENEFITS WOULD AMOUNT TO THEIR UNJUST ENRICHMENT TO THE PREJUDICE OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), WHOSE AVOWED PURPOSE IS TO MAINTAIN ITS ACTUAL SOLVENCY TO FINANCE THE RETIREMENT, DISABILITY, AND LIFE INSURANCE BENEFITS OF ITS MEMBERS.— Our Decision dated October 11, 2011 does not preclude Movants Federico Pascual, *et al*. from receiving retirement benefits provided by existing retirement laws. What they are prohibited from getting are the additional benefits under the GSIS RFP, which we found to have emanated from a void and illegal board resolution. To allow the payees to retain the disallowed benefits would amount to their unjust enrichment to the prejudice of the GSIS, whose avowed purpose is to maintain its actuarial solvency to finance the retirement, disability, and life insurance benefits of its members. This Court, elucidating on the concept of unjust enrichment in *University of the Philippines v. PHILAB Industries, Inc.*, said: Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconvey.

Rather, it is a prerequisite for the enforcement of the doctrine of restitution.

3. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; UNJUST ENRICHMENT; BECAUSE THE GSIS RFP (RETIREMENT/ FINANCIAL PLAN) IS CONTRARY TO LAW, VOID AND NO EFFECT, THE ENRICHMENT OF THE PAYEES IS WITHOUT JUST OR LEGAL GROUND.— The statutory basis for unjust enrichment is found in Article 22 of the Civil Code, which provides: Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. Under the foregoing provision, there is unjust enrichment when: 1. A person is unjustly benefited; and 2. Such benefit is derived at the expense of or with damages to another. In *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation* we said: [T]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. x x x. In the same case, we added that "[t]here is no unjust enrichment when the person who will benefit has a valid claim to such benefit." Because the GSIS RFP, which we repeat, is contrary to law, thus void and of no effect, the enrichment of the payees is without just or legal ground. Therefore, the payees have no valid claim to the benefits they received under the GSIS RFP.

4. ID.; ID.; TRUSTS; DOCTRINE OF IMPLIED TRUST; CONSTRUCTIVE TRUST; APPROPRIATE REMEDY AGAINST UNJUST ENRICHMENT.— The payees received the disallowed benefits with the mistaken belief that they were entitled to the same under the GSIS RFP. Article 1456 of the Civil Code, which is applicable in this case, reads: If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. Construing the above provision, this Court, in *Aznar Brothers Realty Company v. Aying*, quoted established jurisprudence as follows: A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee

for the benefit of another who is called the *cestui que trust*, respecting property which is held by the trustee for the benefit of the *cestui que trust*. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary. x x x [I]mplied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. x x x *Policarpio v. Court of Appeals* expounded on the doctrine of implied trust in relation to another provision of the Civil Code. We ruled in the said case that a constructive trust is substantially an appropriate remedy against unjust enrichment, as follows: And specifically applicable to the case at bar is the doctrine that [a] constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it. Thus, the payees, who acquired the retirement benefits under the GSIS RFP, are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

APPEARANCES OF COUNSEL

Alfredo D. Pineda for Romeo C. Quilatan, *et al.*
GSIS Legal Services Group for GSIS.
Factoran & Associates Law Offices for movants.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

Romeo C. Quilatan, in his capacity as one of the petitioners in *GSIS, et al. v. Commission on Audit, et al.*, and in

representation of his fellow Government Service Insurance System (GSIS) officers and employees who retired under the GSIS RFP (Retirement/Financial Plan), filed a **Motion for Clarification and Reconsideration** dated November 7, 2011, and a **Manifestation to Supplement the Motion for Clarification and Reconsideration** dated January 20, 2012, of this Court's October 11, 2011 Decision in the said case. On May 17, 2012, Quilatan filed a **Final Memorandum and Summary of Arguments,** which he followed-up on August 28, 2012, with another **Manifestation to Supplement [the] Final Memorandum and Summary of Arguments.**

On November 11, 2011, Federico Pascual, Daniel N. Mijares, Elvira U. Geronimo, Aurora P. Mathay, Manuel P. Bausa, Rustico G. Delos Angeles, Lourdes Delos Angeles, Sonia S. Sindac, Marina Santamaria, the Estate of Lourdes G. Patag represented by Napolen Patag, and Vicente Villegas (Movants Federico Pascual, *et al*.), who are some of the payees named in the decision, filed an **Entry of Appearance with Motion for Leave of Court to Admit the Motion for Clarification** filed on the same day. The Movants Federico Pascual, *et al*. later on furnished Quilatan a copy of this Motion, as per their Compliance/ Manifestation dated July 20, 2012, which this Court notes.

On February 22, 2012, Quilatan filed a Manifestation and Motion to Defer Execution of Judgment, alleging that GSIS, the main petitioner in the case, which no longer contested this Court's October 11, 2011 Decision, had started to send out demand letters from the payees, asking them to refund the amounts they had received as retirement benefits under the GSIS RFP.

In his Manifestations, Memorandum, and Motion for Clarification and Reconsideration of this Court's October 11, 2011 Decision, Quilatan raises several grounds, all of which were already addressed in said Decision. Movants Federico Pascual, *et al*., however, raised in their Motion for Clarification, a new issue, which this Court will address, to wit:

Whether or not the payees should be compelled to return the retirement benefits they had received under the GSIS RFP.

In essence, the Movants Federico Pascual, *et al*. are asking this Court to reconsider our Decision in so far as their liability, as the payees, to return the benefits they had already received, by applying our rulings in *Molen, Jr. v. Commission on Audit*,[1] *De Jesus v. Commission on Audit*,[2] *Magno v. Commission on Audit*,[3] *Baybay Water District v. Commission on Audit*,[4] *Barbo v. Commission on Audit*,[5] *Bases Conversion and Development Authority v. Commission on Audit*,[6] among others, wherein, despite this Court's disapproval of the allowances and/or benefits the payees therein received, for being contrary to the law applicable in those cases, this Court did not require such payees to refund the monies they had received in good faith.

On April 11, 2012, the public respondents, through the Office of the Solicitor General, commented and agreed with the Movants Federico Pascual, *et al.* that it would be an injustice if they were ordered to refund the retirement benefits they had received more than a decade ago.

The Court notes the Comment filed by the GSIS on July 13, 2012, in compliance with our March 13, 2012 Resolution, where GSIS states that since it did not move for the reconsideration of this Court's October 11, 2011 Decision, it was bound by such decision. As far as it was concerned, the said decision became final after the lapse of fifteen days from receipt of said Decision on October 21, 2011. GSIS adds that since it already conceded that it had no power to adopt the GSIS RFP,

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[1] 493 Phil. 874 (2005).

[2] 451 Phil. 812 (2003).

[3] G.R. No. 149941, August 28, 2007, 531 SCRA 339.

[4] 425 Phil. 326 (2002).

[5] G.R. No. 157542, October 10, 2008, 568 SCRA 302.

[6] G.R. No. 178160, February 26, 2009, 580 SCRA 295.

and decided to accept the notices of disallowance, it had no reason to continue disregarding such notices, the implementation of which was never enjoined.

As for Quilatan, GSIS claims that he has no legal standing to represent the payees as he has no interest in the main controversy, *i.e.*, the power of GSIS to adopt the RFP, and because he was not prejudiced by the decision on the case. Moreover, the GSIS avers, Quilatan had already retired from the GSIS; thus, he cannot represent it and argue its case before this Court.

Anent the payees, some of whom are the Movants now before us, the GSIS posits that they did not timely intervene in this case despite knowledge of its pendency before this Court, which lasted for almost eight years. According to the GSIS, giving due course to the motions would allow a form of intervention by persons who were not parties to the case after the opportunity for them to do so had lapsed.

The Court finds merit in the aforesaid position of the GSIS. Quilatan's Motion for Clarification and Reconsideration and the Movants Federico Pascual, *et al.*'s Motion for Clarification, which in effect seeks a reconsideration of the Court's Decision dated October 11, 2011, should be denied for lack of the Movants' legal standing to question the said Decision.

Furthermore, even if the substantive issues and arguments raised by the Movants Federico Pascual, *et al.* are considered, there is no justifiable ground to reverse the Court's Decision. While it is true, as claimed by the Movants Federico Pascual, *et al.*, that based on prevailing jurisprudence, disallowed benefits received in good faith need not be refunded, the case before us may be distinguished from all the cases cited by Movants Federico Pascual, *et al*. because the monies involved here are **retirement benefits**.

Retirement benefits belong to a different class of benefits. All the cases cited by the Movants Federico Pascual, *et al.* involved benefits such as cash gifts, representation allowances, rice subsidies, uniform allowances, *per diems*, transportation

allowances, and the like. The foregoing allowances or fringe benefits are given **in addition** to one's salary, either to reimburse him for expenses he might have incurred in relation to his work, or as a form of supplementary compensation. On the other hand, retirement benefits are given to one who is separated from employment either voluntarily or compulsorily. Such benefits, subject to certain requisites imposed by law and/or contract, are given to the employee on the assumption that he can no longer work. They are also given as a form of reward[7] for the services he had rendered. The purpose is not to enrich him but to help him during his non-productive years.

Our Decision dated October 11, 2011 does not preclude Movants Federico Pascual, *et al*. from receiving retirement benefits provided by existing retirement laws. What they are prohibited from getting are the additional benefits under the GSIS RFP, which we found to have emanated from a void and illegal board resolution. To allow the payees to retain the disallowed benefits would amount to their unjust enrichment to the prejudice of the GSIS, whose avowed purpose is to maintain its actuarial solvency to finance the retirement, disability, and life insurance benefits of its members.[8]

This Court, elucidating on the concept of unjust enrichment in *University of the Philippines v. PHILAB Industries, Inc.*,[9] said:

> Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself

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[7] *Santos v. Court of Appeals*, 399 Phil. 298, 307 (2000).

[8] *Government Service Insurance System v. The City Assessor of Iloilo City*, 526 Phil. 145, 149 (2006).

[9] 482 Phil. 693 (2004).

a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[10]

The statutory basis for unjust enrichment is found in Article 22 of the Civil Code, which provides:

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

Under the foregoing provision, there is unjust enrichment when:

1. A person is unjustly benefited; and
2. Such benefit is derived at the expense of or with damages to another.[11]

In *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*[12] we said:

> [T]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. x x x.[13] (Citation omitted.)

In the same case, we added that "[t]here is no unjust enrichment when the person who will benefit has a valid claim to such benefit."[14] Because the GSIS RFP, which we repeat, is contrary to law, thus void and of no effect, the enrichment of the payees is without just or legal ground. Therefore, the payees have no valid claim to the benefits they received under the GSIS RFP.

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[10] *Id.* at 710.

[11] *Tamio v. Ticson*, 485 Phil. 434, 443 (2004).

[12] 515 Phil. 376 (2006).

[13] *Id.* at 384.

[14] *Id*.

The payees received the disallowed benefits with the mistaken belief that they were entitled to the same under the GSIS RFP. Article 1456 of the Civil Code, which is applicable in this case, reads:

> If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Construing the above provision, this Court, in *Aznar Brothers Realty Company v. Aying*,[15] quoted established jurisprudence as follows:

> A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the *cestui que trust*, respecting property which is held by the trustee for the benefit of the *cestui que trust*. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.
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> x x x x x x x x x
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> x x x [I]mplied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. x x x[16]

Policarpio v. Court of Appeals[17] expounded on the doctrine of implied trust in relation to another provision of the Civil Code. We ruled in the said case that a constructive trust is substantially an appropriate remedy against unjust enrichment, as follows:

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[15] 497 Phil. 788 (2005).

[16] *Id.* at 799-800.

[17] 336 Phil. 329 (1997).

And specifically applicable to the case at bar is the doctrine that [a] constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it.[18]

Thus, the payees, who acquired the retirement benefits under the GSIS RFP, are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

WHEREFORE, premises considered, the Motion for Clarification and Reconsideration and Manifestation to Supplement the Motion for Clarification and Reconsideration filed by Romeo C. Quilatan and the Motion for Clarification (which we treat as a Motion for Reconsideration) filed by Federico Pascual, Daniel N. Mijares, Elvira U. Geronimo, Aurora P. Mathay, Manuel P. Bausa, Rustico G. Delos Angeles, Lourdes Delos Angeles, Sonia S. Sindac, Marina Santamaria, the Estate of Lourdes G. Patag represented by Napolen Patag, and Vicente Villegas are **DENIED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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[18] *Id.* at 342.

EN BANC

[G.R. No. 184500. September 11, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WENCESLAO NELMIDA @ "ESLAO," and RICARDO AJOK @ "PORDOY,"** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED RESPECT AND FINALITY.—** [T]his Court held that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal. A careful perusal of the records of this case revealed that none of these circumstances is attendant herein. The affirmance by the Court of Appeals of the factual findings of the trial court places this case under the rule that factual findings are final and conclusive and may not be reviewed on appeal to this Court. No reason has been given by appellants to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.

2. **ID.; ID.; ID.; PROSECUTION'S CREDIBLE WITNESSES FIRMLY ESTABLISHED IDENTITIES OF THE ACCUSED.—** [I]t is beyond any cavil of doubt that prosecution witnesses, Macasuba, PFC Angni and Samuel, have firmly established the identities of appellants as the perpetrators of the ambush. In addition, their testimonies on who and how the crime was

committed were characterized by the trial court as simple and candid. Even their answers to questions were simple, straightforward and categorical. Such simplicity and candidness in their testimonies only prove that they were telling the truth, thus, strengthening their credibility as witnesses.

3. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES DO NOT IMPAIR THEIR CREDIBILITY.—** [A]s regards the inconsistencies pointed out by appellant Wenceslao that allegedly cast doubt on the credibility of the prosecution witnesses, this Court finds them frivolous, trivial, minor, irrelevant and have nothing to do with the essential elements of the crime charged, *i.e.*, double murder with multiple frustrated murder and double attempted murder. x x x It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. **An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction**. Similarly, PFC Angni and Samuel's failure to name appellant Wenceslao in their affidavits/sworn statements as one of the ambushers does not necessarily render their testimonies implausible and unworthy of belief. Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness. An affidavit, being taken *ex-parte*, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons. More so, because of the partial and innocent suggestions, or for want of specific inquiries. In addition, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements. Similarly, the failure of a witness to immediately disclose the name of the culprit does not necessarily impair his or her credibility.

4. ID.; ID.; ID.; ILL-MOTIVE AND MALICE ON THE PART OF PROSECUTION'S WITNESSES, NOT PROVEN.— The records are bereft of any evidence to substantiate the claim of appellant Wenceslao that the motive of the prosecution witnesses in testifying against him was to remove him as the only non-Muslim leader in the Municipality of Salvador, Lanao del Norte, and that it was an act of revenge for opposing Mayor Tawan-tawan during the 1998 elections. Appellant Wenceslao failed to present an iota of evidence to support his aforesaid allegations. As properly stated by the Court of Appeals, "[m]ere allegation or claim is not proof. Each party must prove his own affirmative allegation." x x x It is settled that where the defense fails to prove that witnesses are moved by improper motives, the presumption is that they were not so moved and their testimonies are therefore entitled to full weight and credit. To repeat, most of the prosecution witnesses are victims of the ambush. Being the aggrieved parties, they all desire justice for what had happened to them, thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives of the victims, more so, the victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.

5. ID.; ID.; FLIGHT OF THE ACCUSED CONSIDERED AS AN EVIDENCE OF GUILT.— Contrary to appellant Wenceslao's assertion, this Court is convince that his and appellant Ricardo's flight from the scene of the crime immediately after the ambush is an evidence of their guilt. x x x If appellants were truly innocent of the crime charged, they would not go into hiding rather they would face their accusers to clear their names. Courts go by the biblical truism that "the wicked flee when no man pursueth but the righteous are as bold as a lion." Appellants' respective explanations regarding their flight fail to persuade this Court. It bears emphasis that after the alleged strafing of appellant Wenceslao's house, all he did is to move from one place to another instead of having it investigated by the authorities. Until now, the alleged strafing of his house remains a mystery. If that strafing incident truly happened, he would be much eager

to know who caused it in order to penalize the author thereof. Appellant Ricardo, on the other hand, was allegedly afraid of being persecuted for being one of the supporters of Mayor Tawan-tawan's political rival. His fear, however, was more imaginary than real. The aforesaid claim of appellant Ricardo was uncorroborated, hence, cannot be given any considerable weight.

6. ID.; ID.; DEFENSE OF DENIAL AND *ALIBI* CANNOT PROSPER IN THE LIGHT OF CATEGORICAL AND STRAIGHTFORWARD TESTIMONIES OF WITNESSES COUPLED WITH POSITIVE IDENTIFICATION OF THE ACCUSED; APPLICATION.— In light of the clear, positive and straightforward testimonies of prosecution witnesses, coupled with their positive identification of appellants as among the perpetrators of the ambush, appellants' defense of denial and *alibi* cannot prosper. As this Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that appellants committed the crime. For *alibi* to prosper, the requirements of time and place must be strictly met. It is not enough to prove that appellants were somewhere else when the crime happened. They must also demonstrate by clear and convincing evidence that it was physically impossible for them to have been at the scene of the crime at the approximate time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. A mere denial, like *alibi*, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. In this case, both appellants claimed that they were just in their respective houses in Poblacion, Salvador, Lanao del Norte, when the ambush incident happened and they have no involvement whatsoever in the commission thereof. x x x Withal, it was not physically impossible for the appellants to be at the scene of the crime in the afternoon of 5 June 2001. As observed by the trial court and the appellate court, Poblacion, Salvador, Lanao del Norte, where both appellants' reside, is only about seven (7) kilometers away from San Manuel, Lala, Lanao del Norte, where the ambush took place.

7. CRIMINAL LAW; MURDER AND ATTEMPTED MURDER, WHERE THE KILLING AND THE WOUNDING OF THE VICTIMS WERE NOT THE RESULT OF THE SINGLE ACT BUT OF SEVERAL ACTS, ACCUSED SHOULD NOT BE CONVICTED OF A COMPLEX CRIME BUT OF SEPARATE CRIMES.— The trial court, as well as the appellate court, convicted appellants of double murder with multiple frustrated murder and double attempted murder. **This Court believes, however, that appellants should be convicted not of a complex crime but of separate crimes of two (2) counts of murder and seven (7) counts of attempted murder** as the killing and wounding of the victims in this case were not the result of a single act but of several acts of the appellants, thus, making Article 48 of the Revised Penal Code inapplicable. x x x In a complex crime, two or more crimes are actually committed, however, in the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed. There are two kinds of complex crime. The **first is known as compound crime**, or when a single act constitutes two or more grave or less grave felonies while **the other is known as complex crime proper**, or when an offense is a necessary means for committing the other. The classic example of the first kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. **Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes**. Evidently, there is in this case no complex crime proper. And the circumstances present in this case do not fit exactly the description of a compound crime. From its factual backdrop, it can easily be gleaned that the killing and wounding of the victims were not the result of a single discharge of firearms by the appellants and their co-accused. To note, appellants and their co-accused opened fire and rained bullets on the vehicle boarded by Mayor Tawan-tawan and his group. As a result, two security escorts died while five (5) of them were wounded and injured. The victims sustained gunshot wounds in different parts of their bodies. Therefrom, it cannot be gainsaid that more than one bullet had hit the victims. Moreover, more than one gunman fired at the vehicle of the victims. x x x Obviously, appellants and their co-accused performed not only a single act but several individual and distinct acts in the commission of the crime. Thus, Article 48 of the Revised Penal Code would not apply for it speaks only of a "single act."

8. ID.; ID.; ID.; PENALTY FOR TWO (2) COUNTS OF MURDER.— Under Article 248 of the Revised Penal Code, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being neither aggravating nor mitigating circumstance, the penalty to be imposed upon appellants is *reclusion perpetua* for each count, pursuant to paragraph 2, Article 63 of the Revised Penal Code.

9. ID.; ID.; ID.; PENALTY FOR SEVEN (7) COUNTS OF ATTEMPTED MURDER.— Appellants are also guilty of seven (7) counts of attempted murder. The penalty prescribed by law for murder, *i.e.*, *reclusion perpetua* to death, should be reduced by two degrees, conformably to Article 51 of the Revised Penal Code. Under paragraph 2, Article 61, in relation to Article 71 of the Revised Penal Code, such a penalty is *prision mayor*. There being neither mitigating nor aggravating circumstance, the same should be imposed in its medium period pursuant to paragraph 1, Article 64 of the Revised Penal Code. Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of *prision mayor*, which is 8 years and 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, the range of which is 6 months and 1 day to 6 years. This Court, therefore, imposed upon the appellants the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, for each count of attempted murder.

10. ID.; ID.; ID.; KINDS OF DAMAGES AWARDED TO THE HEIRS OF MURDERED VICTIMS.— Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof. Moral damages like civil indemnity, is also mandatory upon the finding of the fact of murder. Therefore, the trial court and the appellate court properly awarded civil indemnity in the amount of ₱50,000.00 and moral damages also in the amount of ₱50,000.00 to the heirs of each deceased victims. Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. In this case, treachery may no longer be considered as an aggravating circumstance since it was already

taken as a qualifying circumstance in the murder, and abuse of superior strength which would otherwise warrant the award of exemplary damages was already absorbed in the treachery. However, in *People v. Combate*, this Court still awards exemplary damages despite the lack of any aggravating circumstance to deter similar conduct and to serve as an example for public good. Thus, to deter future similar transgressions, the Court finds that an award of ₱30,000.00 as exemplary damages in favor of the heirs of each deceased victims is proper. The said amount is in conformity with this Court's ruling in *People v. Gutierrez*. Actual damages cannot be awarded for failure to present the receipts covering the expenditures for the wake, coffin, burial and other expenses for the death of the victims. In lieu thereof, temperate damages may be recovered where it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty as provided for under Article 2224 of the Civil Code. In this case, it cannot be denied that the heirs of the deceased victims suffered pecuniary loss although the exact amount was not proved with certainty. Thus, this Court similarly awards ₱25,000.00 as temperate damages to the heirs of each deceased victims.

11. ID.; ID.; ID.; KINDS OF DAMAGES AWARDED TO THE SURVIVING VICTIMS.— The surviving victims, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito, are also entitled to moral, temperate and exemplary damages. Ordinary human experience and common sense dictate that the wounds inflicted upon the aforesaid victims would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries. It is only justifiable to grant them moral damages in the amount of ₱40,000.00 each in conformity with this Court's ruling in *People v. Mokammad*. The award of ₱25,000.00 each as temperate damages to Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito is also in order. It is beyond doubt that these victims were hospitalized and spent money for their medication. As to Macasuba, although he was not confined in a hospital, it cannot be gainsaid that he also spent for the treatment of the minor injuries he sustained by reason of the ambush. However, they all failed to present any receipt therefor. Nevertheless, it could not be denied that they suffered pecuniary loss; thus, it is only prudent to award temperate damages in the amount of ₱25,000.00 to each of them. The award of exemplary damages is also in

order. Thus, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito are awarded exemplary damages in the amount of ₱30,000.00 to conform to current jurisprudence. This Court likewise affirms the award of ₱50,000.00 for and as attorney's fees, as well as costs of the suit, in favor of Mayor Tawantawan.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for Ricardo Ajok.
Arthur L. Abundiente for Wenceslao Nelmida.

D E C I S I O N

PEREZ, *J.*:

The subject of this present appeal is the Decision[1] dated 18 June 2008 of the Court of Appeals in CA-G.R. HC No. 00246, affirming the Decision[2] dated 30 September 2005 of the Regional Trial Court (RTC) of Kapatagan, Lanao del Norte, Branch 21, in Criminal Case No. 21-910, finding herein appellants Wenceslao Nelmida @ "Eslao" (Wenceslao) and Ricardo Ajok @ "Pordoy" (Ricardo) guilty beyond reasonable doubt of double murder with multiple frustrated murder and double attempted murder, thereby sentencing them to suffer the penalty of *reclusion perpetua*. Appellants were likewise ordered to indemnify, jointly and severally, the heirs of each of the deceased victims, *i.e.*, Police Officer 3 Hernando P. Dela Cruz (PO3 Dela Cruz) and Technical Sergeant Ramon Dacoco (T/Sgt. Dacoco), the amount of ₱50,000.00 each as moral damages and ₱50,000.00 each as civil indemnity for the death of each of the said victims. Similarly, appellants were directed to pay, jointly and severally, Mayor

[1] Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, concurring. *Rollo*, pp. 3-32.

[2] Penned by Presiding Judge Jacob T. Malik. CA *rollo*, pp. 74-101.

Johnny Tawan-tawan the amount of ₱50,000.00 for and as attorney's fees, as well as the costs of the suit.

Appellants and their co-accused Samuel Cutad @ "Sammy" (Samuel), Brigido Abais @ "Bidok" (Brigido), Pedro Serafico @ "Peter" (Pedro), Eduardo Bacong, Sr. (Eduardo, Sr.), Eduardo Bacong, Jr. @ "Junjun" (Eduardo, Jr.), Alejandro Abarquez (Alejandro), Ruben Bartolo @ "Yoyoy Bulhog" (Ruben), Arnel Espanola @ "Toto Ilongo" (Arnel), Alfredo Paninsuro @ "Tambok" (Alfredo), Opao Casinillo (Opao) and other John Does, were charged in an Amended Information[3] dated 3 October 2001 with the crime of double murder with multiple frustrated murder and double attempted murder, the accusatory portion of which reads:

> That on or about the 5th day of June 2001, at SAN MANUEL, Lala, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellants and their co-accused], conspiring, confederating and mutually helping one another, armed with assorted high-powered firearms and hand-grenade, did then and there willfully, unlawfully and feloniously, with treachery, evident premidation (sic), taking advantage of their superiority in strength and in numbers, and with intent to kill, ambush, attack, assault and use personal violence upon the persons of the following, namely[:]
>
> 1. [PO3 Dela Cruz], [Philippine National Police (PNP)];
> 2. [T/Sgt. Dacoco], [Philippine Army (PA)];
> 3. [Private First Class (PFC)] Haron Angni, PA;
> 4. [PFC] Gador[4] Tomanto, PA;
> 5. Juanito Ibunalo;
> 6. Mosanif[5] Ameril;
> 7. Macasubar[6] Tandayao;

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[3] Records, pp. 48-51.

[4] Both in the Medical Certificate dated 3 January 2003 (*see* Records, p. 272) and in the Transcript of Stenographic Notes dated 13 February 2003, Tomanto's first name appears to be "Gapor" and not "Gador."

[5] Sometimes spelled as "Musanip" per his Affidavit-Complaint dated 11 June 2001 (*see* Records, p. 267) and "Mosanip" per Transcript of Stenographic Notes dated 5 February 2003.

[6] In the Transcript of Stenographic Notes dated 15 January 2003, Tandayao's first name is "Macasuba" not "Macasubar."

8. Mayor Johnny Tawantawan;[7] and
9. Jun Palanas

by then and there firing and shooting them with said high-powered firearms thereby inflicting upon the persons of [PO3 De la Cruz], [T/Sgt. Dacoco], [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, M[o]sani[p] Ameril and [Macasuba] Tandayao gunshot wounds which were the direct and immediate cause of the death of [PO3 De la Cruz and T/Sgt. Dacoco] and the serious wounding of said [PFC] Haron Angni, [PFC] Ga[p]or Tomanto, Juanito Ibunalo, Mosani[p] Ameril and [Macasuba] Tandayao that without the medical assistance would have caused their deaths, while Mayor Johnny Tawan[-]tawan and Jun Palanas were not hit.[8]

When arraigned, appellants Wenceslao and Ricardo, assisted by their counsel *de parte*[9] and counsel *de oficio*,[10] respectively; and their co-accused Samuel, likewise assisted by counsel *de oficio*,[11] all entered separate pleas of NOT GUILTY to the crime charged. The rest of the accused in this case, however, remained at large. Trial on the merits ensued thereafter.

Meanwhile, or on 21 January 2003, however, the prosecution filed a Motion to Discharge Accused [Samuel] To Be Utilized As State Witness,[12] which the court *a quo* granted in an Order dated 12 February 2003.[13] Also, upon motion of the prosecution,

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[7] Johnny Tawantawan was referred to as Mayor in the Amended Information because at the time the ambush incident happened on 5 June 2001 he was the incumbent Mayor of Salvador, Lanao del Norte, though at the time the Amended Information was filed his term of office has already expired. Also, his surname is spelled as "Tawan-tawan" in most of the documents attached in this case.

[8] Records, pp. 48-49.

[9] Per Certificate of Arraignment dated 16 April 2002 and RTC Order dated 16 April 2002. *Id.* at 98 and 101-102.

[10] Per Certificate of Arraignment dated 4 June 2002 and RTC Order dated 4 June 2002. *Id.* at 103 and 106.

[11] *Id*.

[12] *Id.* at 141-144.

[13] *Id.* at 168-170.

the court *a quo* issued another Order dated 17 March 2003,[14] directing the release of Samuel from detention following his discharge as state witness.

As such, Samuel, together with 13 more witnesses, namely, Macasuba Tandayao (Macasuba), Mosanip Ameril (Mosanip), PFC Gapor Tomanto (PFC Tomanto), Merlina Dela Cruz (Merlina), Senior Police Inspector Renato Salazar (Senior P/Insp. Salazar), PFC Haron Angni (PFC Angni), Senior Police Officer 4 Raul Torres Medrano (SPO4 Medrano), Senior Police Officer 1 Ferdinand Suaring (SPO1 Suaring), Senior Police Officer 2 Ivan Mutia Evasco (SPO2 Evasco), Senior Police Officer 4 Emmie Subingsubing (SPO4 Subingsubing), Juanito Ibunalo (Juanito), Senior Police Officer 3 Tommy Umpa (SPO3 Umpa), and Mayor Johnny Tawan-tawan (Mayor Tawan-tawan), testified for the prosecution.

The factual milieu of this case as culled from the testimonies of the aforesaid prosecution witnesses is as follows:

On 5 June 2001, Mayor Tawan-tawan of Salvador, Lanao del Norte, together with his security escorts composed of some members of the Philippine Army, Philippine National Police (PNP) and civilian aides, to wit: (1) T/Sgt. Dacoco; (2) PFC Angni; (3) PFC Tomanto; (4) PO3 Dela Cruz; (5) Juanito; (6) Mosanip; (7) Macasuba; and (8) a certain Jun, respectively, were in Tubod, Lanao del Norte. In the afternoon, the group went home to Salvador, Lanao del Norte, on board the yellow pick-up service vehicle of Mayor Tawan-tawan with Plate No. JRT 818 driven by Juanito. Sitting at the passenger seat of the aforesaid vehicle was Mayor Tawan-tawan while those at the back seat were Mosanip, Jun, and Macasuba, who was sitting immediately behind Juanito. Those seated on a wooden bench installed at the rear (open) portion of the said yellow pick-up service vehicle were PFC Tomanto, PFC Angni, PO3 Dela Cruz and T/Sgt. Dacoco. PFC Tomanto and PFC Angni were sitting beside each other facing the right side of the road while

[14] *Id.* at 185-186.

PO3 Dela Cruz and T/Sgt. Dacoco were both seated behind PFC Tomanto and PFC Angni facing the left side of the road.[15]

At around 3:00 p.m. of the same day, appellants, together with their aforenamed co-accused, brought Samuel to a waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte, the one located on the left side of the road going to Salvador, Lanao del Norte. Samuel was instructed by appellants and their co-accused to stay in the said waiting shed while they assembled themselves in a diamond position on both sides of the road, which is more or less five (5) meters away from the shed. Then, appellants and their co-accused surreptitiously waited for the vehicle of the group of Mayor Tawan-tawan.[16]

A few minutes later, Samuel saw the yellow pick-up service vehicle of Mayor Tawan-tawan approaching towards the direction of Salvador, Lanao del Norte. The moment the yellow pick-up service vehicle of Mayor Tawan-tawan passed by the aforesaid waiting shed, appellants and their co-accused opened fire and rained bullets on the vehicle using high-powered firearms. Both Macasuba, who was sitting immediately behind the driver, and PFC Tomanto, who was then sitting on the rear (open) portion of the yellow pick-up service vehicle, saw appellant Wenceslao on the right side of the road firing at them in a squatting position using an M-16 armalite rifle. Macasuba was also able to identify appellants Ricardo, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido and Alfredo as among the ambushers. Mayor Tawan-tawan ordered Juanito to keep on driving to avoid greater casualties. The vehicle stopped upon reaching the army

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[15] Testimony of Macasuba Tandayao, TSN, 15 January 2003, pp. 6-7 and 14; Testimony of Mosanip Ameril, TSN, 5 February 2003, pp. 10-11 and 20; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, pp. 3-5 and 17-18; TSN, Testimony of PFC Haron Angni, 30 April 2003, pp. 3-4; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 9-10; Testimony of Mayor Johnny Tawan-tawan, TSN, 27 November 2003, pp. 5 and 10.

[16] Testimony of Macasuba Tandayao, *id.* at 10; Testimony of PFC Gapor Tomanto, *id.* at 6; Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 15 and 17.

and Civilian Armed Forces Geographical Unit (CAFGU) detachment in Curva, Miagao, Salvador, Lanao del Norte. Mayor Tawan-tawan then asked assistance therefrom.[17]

Immediately after the ambush, appellants and their co-accused ran towards the house of Samuel's aunt located, more or less, 10 meters away from the site of the ambush to get their bags and other stuff. The house of Samuel's aunt was the place where appellants and their co-accused stayed prior to the incident. Samuel followed appellants and their co-accused to the house of his aunt. Thereafter, appellants and their co-accused hurriedly ran towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte.[18]

On the occasion of the ambush, two security escorts of Mayor Tawan-tawan, namely, PO3 Dela Cruz and T/Sgt. Dacoco, died, while others suffered injuries. In particular, Macasuba was slightly hit on the head by shrapnel; Mosanip sustained injury on his shoulder that almost severed his left arm; PFC Tomanto was hit on the right and left sides of his body, on his left leg and knee; PFC Angni was hit on his left shoulder; and Juanito was hit on his right point finger, right head and left hip. Mayor Tawan-tawan and Jun were not injured.[19]

All the victims of the ambush, except Macasuba, were brought to Bontilao Country Clinic in Maranding, Lala, Lanao del Norte, and were later transferred to Mindanao Sanitarium and Hospital in Tibanga, Iligan City. PO3 Dela Cruz, however, died before reaching the hospital while T/Sgt. Dacoco died in the hospital.

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[17] Testimony of Macasuba Tandayao, *id.* at 7 and 9-11; Testimony of Mosanip Ameril, TSN, 5 February 2003, pp. 11-12 and 17-18; Testimony of PFC Gapor Tomanto, *id.* at 4-6; Testimony of Samuel Cutad, *id.* at 8-9 and 16; Testimony of PFC Haron Angni, TSN, 30 April 2003, pp. 4-6; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 14-16; Testimony of Mayor Johnny Tawan-tawan, TSN, 27 November 2003, pp. 5-6.

[18] Testimony of Samuel Cutad, *id.* at 9, 18-19 and 47.

[19] Testimony of Macasuba Tandayao, TSN, 15 January 2003, pp. 8 and 16; Testimony of Mosanip Ameril, TSN, 5 February 2003, p. 11; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, p. 5; Testimony of PFC Haron Angni, TSN, 30 April 2003, p. 6.

PFC Tomanto stayed at Mindanao Sanitarium and Hospital for 13 days before he was transferred to Camp Evangelista Hospital in Patag, Cagayan de Oro City, and then in a hospital in Manila and Quezon City. PFC Angni stayed for seven (7) days in Mindanao Sanitarium and Hospital before he was transferred to Camp Evangelista Hospital, where he was confined for one (1) month. PFC Angni was transferred to V. Luna Hospital in Quezon City and was confined therein for two (2) months.[20]

On the other hand, Mayor Tawan-tawan, Macasuba and the members of the CAFGU went back to the site of the ambush but appellants and their co-accused were no longer there. Not long after, SPO4 Medrano, Chief of Police of Salvador Municipal Police Station, Salvador, Lanao del Norte, and his troops arrived. It was while inside the Salvador Municipal Police Station that SPO4 Medrano heard gunfire and he came to know that the group of Mayor Tawan-tawan was ambushed prompting him and his troops to go to the scene of the crime. Mayor Tawan-tawan informed SPO4 Medrano that appellant Wenceslao was one of those responsible for the ambush. SPO4 Medrano and his troops, then, conducted an investigation during which he noticed Samuel at the scene of the crime. Upon interrogation Samuel denied any involvement in the ambush. Even so, SPO4 Medrano still found Samuel suspicious, hence, he and his fellow police officers arrested him and turned him over to a certain SPO4 Micabalo, Chief of Police of Lala, Lanao del Norte. Samuel was then brought to Lala Municipal Jail in Lanao del Norte. Subsequently, SPO4 Medrano, together with the members of the CAFGU, PNP and the rest of the troops who were at the scene of the crime, found a trail of footprints believed to be from the culprits. They conducted a hot pursuit operation towards *Barangay* Lindongan, Municipality of Baroy, Lanao del Norte, where appellants and their co-accused were believed to have fled. They were able to recover an M-16 armalite rifle caliber

[20] Testimony of Mosanip Ameril, *id.* at 12; Testimony of PFC Gapor Tomanto, TSN, 13 February 2003, p. 7; Testimony of PFC Haron Angni, TSN, 30 April 2003, pp. 6-7; Testimony of Juanito Ibunalo, TSN, 4 September 2003, pp. 10 and 16.

5.26 concealed near a *nipa* hut. SPO4 Medrano then sent a Spot Report and a follow-up report about the ambush. He did not, however, reveal the identity of appellant Wenceslao so that with a warrant of arrest, appellant Wenceslao could be arrested at the earliest possible time. SPO4 Medrano also informed the provincial headquarters about the incident through a radio message.[21]

The following day, or on 6 June 2001, Samuel informed SPO1 Suaring, member of PNP Lala Municipal Police, Lala, Lanao del Norte, that there were electrical supplies and radio antenna in San Manuel, Lala, Lanao del Norte, left by the malefactors. SPO1 Suaring, together with Samuel, Senior P/Insp. Salazar, SPO4 Subingsubing and a certain SPO4 Sumaylo, proceeded to San Manuel, Lala, Lanao del Norte, where they found the materials near the National Irrigation Administration (NIA) canal, which is 30 meters away from the house of Samuel's aunt. These were photographed.[22]

Later, SPO2 Evasco, who was assigned at Lala Police Station, received a call from *Barangay Kagawad* Renato Senahon (*Brgy. Kgwd.* Senahon) that a black backpack was found in Mount Curay-curay, Rebe, Lala, Lanao del Norte, which is two (2) kilometers away from the highway. Immediately, SPO2 Evasco and *Brgy. Kgwd.* Senahon went to the location. Upon inspection, they recovered from the backpack an army camouflage with name cloth, one Garand pouch and one fragmentation grenade *cacao* type. SPO2 Evasco then brought these to the police station in Maranding, Lala, Lanao del Norte, and turned it over to Senior P/Insp. Salazar.[23]

On 8 June 2001, Samuel executed his sworn statement identifying appellants and their co-accused as the persons responsible for the ambush of Mayor Tawan-tawan and his

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[21] Testimony of Samuel Cutad, TSN, 17 March 2003, p. 23; Testimony of SPO4 Raul Torres Medrano, *id.* at 4-7, 11-16 and 22.

[22] Testimony of SPO1 Ferdinand Suaring, TSN, 14 August 2003, pp. 3-8.

[23] Testimony of SPO2 Ivan Mutia Evasco, TSN, 14 August 2003, pp. 9-15.

companions. Samuel was, thereafter, incarcerated at the Bureau of Jail Management and Penology (BJMP) in Tubod, Lanao del Norte.[24]

On 29 August 2001, or more than two (2) months after the ambush, appellant Wenceslao was arrested while he was in Katipa, Lopez Jaena, Misamis Occidental. Appellant Ricardo, on the other hand, was arrested on 20 December 2001 while working in *Puting Bato* in Sapad, Lanao del Norte. It was Senior P/Insp. Salazar who effected the arrest of the appellants.[25]

Appellants denied having any involvement in the ambush. Appellant Wenceslao presented as witnesses Armida Nelmida (Armida), Jeffrey Paninsuro (Jeffrey), Luzviminda Apolinares (Luzviminda), Rudy Alegado (Rudy), Sergeant Teofanis Garsuta (Sgt. Garsuta) and Master Sergeant Pio Cudilla (M/Sgt. Cudilla). Appellant Ricardo, on the other hand, did not present any witness other than himself.

Appellant Wenceslao testified that on 5 June 2001, he was in their house with his family. At around 1:00 p.m., he went outside their house to clean the pigsty and feed the pigs. Then, at around 2:30 p.m., Jacob Pepito, Rudy and a certain Romy, who is a military personnel, arrived to get a copy of the election returns of the 15 May 2001 elections upon the orders of Tanny Pepito, a gubernatorial candidate. He told them that he has no copy of the returns. He then advised them to get it to Atty. Aldoni Umpa (Atty. Umpa) who has a copy. At that time, he, Jacob Pepito and Romy were outside the house while his wife and nieces were just eight (8) to 10 meters away from them. After 10 minutes, his visitors left.[26] Suddenly, appellant Wenceslao heard gunfire coming from the direction of the house of Mayor

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[24] Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 31-44; Testimony of Senior P/Insp. Renato Salazar, TSN, 26 March 2003, p. 8.

[25] Testimony of Senior P/Insp. Salazar, *id.* at 3-5; Testimony of Wenceslao Nelmida, TSN, 24 November 2004, p. 11; Testimony of Ricardo Ajok, TSN, 15 September 2004, p. 6.

[26] Testimony of Wenceslao Nelmida, *id.* at 2-6 and 12; Testimony of Wenceslao Nelmida, TSN, 4 January 2005, p. 5.

Tawan-tawan. His nephew, Jeffrey, approached and informed him that Mayor Tawan-tawan and the latter's group were ambushed. After about one (1) or two (2) minutes, he again heard gunfire. This time the bullets were already hitting the roof and walls of their house. He then instructed Jeffrey, who is also a CAFGU member, to report the said incident and to ask help from the members of the Philippine Army stationed at Camp Allere, Salvador, Lanao del Norte.[27]

When Jeffrey left, appellant Wenceslao stayed at their house. He did not know where his wife and the rest of the women, who were in their house, went after the gunburst. After more or less 15 minutes, he walked barefooted and unarmed towards Camp Allere. There he saw M/Sgt. Cudilla and he informed the former regarding the incident happened in their house. Not long after, a certain Captain Esmeralda (Capt. Esmeralda), Commanding Officer of Bravo Company of the Philippine Army, arrived. He also approached and informed Capt. Esmeralda about the incident in their house. Capt. Esmeralda then ordered his men to board the *samba* and a six-by-six truck to fetch appellant Wenceslao's wife and relatives in Poblacion, Salvador, Lanao del Norte. A six-by-six truck returned to Camp Allere carrying appellant Wenceslao's wife and relatives.[28]

On the evening of 5 June 2001, appellant Wenceslao, together with his wife and daughter, slept in his father's house located, more or less, 100 meters away from Camp Allere and stayed there for five (5) days. Appellant Wenceslao's wife then requested for transfer to their son's house in Kolambugan, Lanao del Norte, as she could no longer sleep because of what happened at their house. Thus, they went to their son's house in Kolambugan, Lanao del Norte, and stayed there for eight (8) days. During that period of time, he did not hear of any case filed against him. No policemen even bothered to arrest him. His wife, however, was still afraid, so they left the house of

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[27] Testimony of Wenceslao Nelmida, TSN, 24 November 2004, p. 7.

[28] Testimony of Wenceslao Nelmida, *id.* at 8-10.

their son and moved to Katipa, Lopez Jaena, Misamis Occidental. They stayed there until he was arrested on 29 August 2001.[29]

Appellant Wenceslao, however, disclosed that it would only take, more or less, a 15 minute-vehicle ride from his residence in Poblacion, Salvador, Lanao del Norte, to the site of the ambush in San Manuel, Lala, Lanao del Norte. Also, from his house to Camp Allere it would only take, more or less, 5 minute-vehicle ride. Appellant Wenceslao also admitted that he ran for the vice-mayoralty position in Salvador, Lanao del Norte, against Rodolfo Oban during the 2001 elections. Way back in the 1998 elections, he ran for mayoralty position in the same locality against Mayor Tawan-tawan but he lost. On both occasions, he and Mayor Tawan-tawan were no longer in the same political party. Similarly, during the term of Mayor Tawan-tawan in 1998, appellant Wenceslao revealed that he and his son were charged with illegal possession of firearm.[30]

Other defense witnesses, namely, Armida, Jeffrey and Luzviminda, who are appellant Wenceslao's wife, nephew and niece, respectively, corroborated appellant Wenceslao's testimony on all material points. They all denied that appellant Wenceslao has something to do with the ambush of Mayor Tawan-tawan and his group. Nonetheless, Armida admitted that there is a road connecting San Manuel, Lala, Lanao del Norte, to Salvador, Lanao del Norte. There are also vehicles for hire plying the route of Salvador, Lanao del Norte, to San Manuel, Lala, Lanao del Norte, and *vice-versa*.[31]

Another defense witness, Rudy, corroborated appellant Wenceslao's testimony with respect to the fact that on 5 June

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[29] Testimony of Wenceslao Nelmida, *id.* at 10-11; Testimony of Wenceslao Nelmida, TSN, 4 January 2005, pp. 6-8.

[30] Testimony of Wenceslao Nelmida, *id.* at 4; Testimony of Wenceslao Nelmida, *id.* at 4 and 13; Court of Appeals Decision dated 18 June 2008. *Rollo*, pp. 25-26.

[31] Testimony of Armida Nelmida, TSN, 26 May 2004, pp. 2-10; Testimony of Jeffrey Paninsuro, TSN, 9 June 2004, pp. 2-14; Testimony of Luzviminda Apolinares, TSN, 7 July 2004, pp. 2-8.

2001, he, together with Jacob Pepito and a certain member of the army intelligence group, went to the house of appellant Wenceslao to get the election returns. However, he could not recall anything unusual that happened while he was in the house of appellant Wenceslao. They left the house of appellant Wenceslao at around 2:45 p.m. Still, no unusual incident happened thereafter. Rudy similarly revealed that he did not go inside the house of appellant Wenceslao but merely waited for Jacob Pepito and a member of the army intelligence group inside their vehicle parked at a distance of, more or less, three (3) meters from the house of appellant Wenceslao. As such, he did not hear the subject of the conversation between appellant Wenceslao, Jacob Pepito and a member of the army intelligence group.[32]

Sgt. Garsuta, who also testified for the defense, stated that in the afternoon of 5 June 2001, while he was at the legislative hall in Pigcarangan, Tubod, Lanao del Norte, to secure the canvass of the elections, they received a radio call from M/ Sgt. Cudilla informing them that Mayor Tawan-tawan was ambushed and the house of appellant Wenceslao was strafed. Thereafter, Capt. Esmeralda called them to board a six-by-six truck and to proceed to Salvador, Lanao del Norte. As they passed by San Manuel, Lala, Lanao del Norte, they stopped to get some information from the police officers therein. They proceeded to Camp Allere in Salvador, Lanao del Norte. They arrived at Camp Allere at around 4:30 p.m. to 4:35 p.m. and there he saw appellant Wenceslao waiting and talking to 1st Sgt. Codilla. Appellant Wenceslao then requested that his family and some personal effects be taken from his house. Thus, Capt. Esmeralda ordered them to board a six-by-six truck and to proceed to appellant Wenceslao's house. Upon reaching the house of appellant Wenceslao, nobody was there. Suddenly, appellant Wenceslao's wife came out from the nearby house. Then they ordered her to board a six-by-six truck after taking some personal belongings of appellant Wenceslao in the latter's house.[33]

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[32] Testimony of Rudy Alegado, TSN, 4 August 2004, pp. 2-17.

[33] Testimony of Sgt. Teofanis Garsuta, TSN, 11 August 2004, pp. 2-6, 11.

M/Sgt. Cudilla alleged that at around, more or less, 3:00 p.m. of 5 June 2001, while he was at their command post at Camp Allere, Salvador, Lanao del Norte, his detachment commander, a certain T/Sgt. Quijano, called and informed him through radio that an ambush incident happened in his area of responsibility, *i.e.*, Curva Miagao, Salvador, Lanao del Norte. He advised T/Sgt. Quijano to verify the incident. M/Sgt. Cudilla then called Capt. Esmeralda to inform the latter about the said ambush incident. He, thereafter, prepared a perimeter defense in the camp. In the second call of T/Sgt. Quijano, the latter told him that Mayor Tawan-tawan was ambushed. After about 15 minutes, M/Sgt. Cudilla heard gunbursts from Poblacion, Salvador, Lanao del Norte. Later, more or less, 10 civilians arrived at Camp Allere.

M/Sgt. Cudilla further confirmed that on 5 June 2001, also at around 3:00 p.m., he saw appellant Wenceslao at the back of the stage inside Camp Allere near Km. Post one. Appellant Wenceslao then informed him of the strafing incident in his house. When their commanding officer arrived, appellant Wenceslao approached the former. Thereafter, a platoon was organized heading towards Poblacion, Salvador, Lanao del Norte.[34]

Appellant Ricardo, for his part, maintained that on 5 June 2001, he was also in his house in *Purok* 5, Poblacion, Salvador, Lanao del Norte, attending to his wife and children because his wife had just given birth in April 2001. In the afternoon thereof, he heard a gunburst somewhere in Poblacion, Salvador, Lanao del Norte, followed by some commotion in the street. Later, his brother, Joji Ajok, arrived and informed him that appellant Wenceslao was shot in his house.[35]

Appellant Ricardo also confirmed that on the early evening of 5 June 2001, he and his family transferred to the house of his parents-in-law at Camp Allere, Salvador, Lanao del Norte.

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[34] Testimony of M/Sgt. Pio Cudilla, TSN, 8 September 2004, pp. 2-10.

[35] Testimony of Ricardo Ajok, TSN, 15 September 2004, pp. 2-4.

He so decided when he heard rumors that the supporters of Atty. Umpa, the political rival of Mayor Tawan-tawan in the 2001 local elections, were being persecuted. Being one of Atty. Umpa's supporters, he got scared, prompting him to bring his family to Camp Allere. They stayed there until the following morning and then he left alone for Ozamis City, Misamis Occidental, and stayed there for three (3) months. Thereafter, he moved to *Puting Bato* in Sapad, Lanao del Norte, where he worked in the farm of his friend. He stayed there until he was arrested on 20 December 2001.[36]

Nevertheless, appellant Ricardo divulged that there was never an instance that Atty. Umpa was harassed or intimidated by the group of Mayor Tawan-tawan. He claimed that only Atty. Umpa's supporters were harassed. He also revealed that prior to the ambush incident, there was never an instance that he was threatened by the group of Mayor Tawan-tawan. He just presumed that Atty. Umpa's supporters were being harassed by the people of Mayor Tawan-tawan because others were already harassed.[37]

Finding the testimonies of the prosecution witnesses, most of whom were victims of the ambush, to be credible, categorical, straightforward, spontaneous and consistent, coupled with their positive identification of the appellants as among the perpetrators of the crime and their lack of ill-motive to falsely testify against them, *vis-à-vis* the defense of denial and *alibi* proffered by the latter, the trial court rendered its Decision on 30 September 2005 finding appellants guilty beyond reasonable doubt of double murder with multiple frustrated murder and double attempted murder and imposing upon them the penalty of *reclusion perpetua*. The dispositive portion of the aforesaid trial court's Decision states:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered **finding [herein appellants Wenceslao and Ricardo] GUILTY beyond reasonable doubt of the crime of double murder with multiple frustrated murder and double attempted murder, and the Court**

[36] Testimony of Ricardo Ajok, *id.* at 4-6.

[37] Testimony of Ricardo Ajok, TSN, 13 October 2004, pp. 3 and 5.

hereby sentences them to suffer the indivisible prison term of *reclusion perpetua*; to pay, jointly and severally, the heirs of the late [PO3 Dela Cruz] the amount of ₱50,000.00 as moral damages and another sum of ₱50,000.00 for and by way of civil indemnity ***ex delicto***; to pay, jointly and severally, the heirs of the late [T/Sgt. Dacoco] the sum of ₱50,000.00 as moral damages plus ₱50,000.00 for and by way of civil indemnity ***ex delicto***; and to pay, jointly and severally, Ex-Mayor Johnny Tawantawan the amount of ₱50,000.00 for and as attorney's fees, and the costs of suit.

The Armalite rifle with defaced serial number, the hand grenade and the [G]arand pouch are hereby ordered turned-over to the Firearm and Explosive Unit of the PNP Headquarters, Pigcarangan, Tubod, Lanao del Norte, for proper disposition as authorized by law.

The full period of the preventive imprisonment of the [appellants] shall be credited to them and deducted from their prison term provided they comply with the requirements of Article 29 of the Revised Penal Code. [Appellant Wenceslao] was arrested on 29 August 2001 and detained since then up to the present. While [appellant Ricardo] was arrested on 20 December 2001 and detained since then up to the present.

Let the records of this case be sent to the archive files without prejudice on the part of the prosecution to prosecute the case against the other accused who remain at-large, as soon as said accused are apprehended.[38] [Emphasis supplied].

Unperturbed, appellants separately appealed the aforesaid trial court's Decision to the Court of Appeals *via* Notice of Appeal,[39] and, thereafter, submitted their respective appeal briefs.

In his brief, appellant Wenceslao assigned the following errors:

I.

THE TRIAL COURT ERRED IN DECLARING THAT THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE CREDIBLE AND NOT ORCHESTRATED LIES INTENDED TO FALSELY IMPUTE THE CRIMINAL LIABILITY TO [APPELLANT WENCESLAO][;]

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[38] CA *rollo*, pp. 100-101.

[39] Records, pp. 463 and 465.

II.

THE TRIAL COURT ERRED IN DECLARING THAT THE INCONSISTENCIES OF PROSECUTION WITNESSES ARE HONEST INCONSISTENCIES ON MINOR AND TRIVIAL POINTS[;]

III.

THE TRIAL COURT ERRED IN RULING THAT [APPELLANTS WENCESLAO AND RICARDO] FAILED TO CAST ILL-MOTIVE ON THE PART OF PROSECUTION WITNESSES AND THAT THESE WITNESSES HAD NO IMPROPER AND NEFARIOUS MOTIVE IN TESTIFYING AGAINST THE [APPELLANTS][;]

IV.

THE TRIAL COURT FAILED TO APPRECIATE THE TESTIMONY OF THE MILITARY MEN WHO ARE NEUTRAL, IMPARTIAL AND OBJECTIVE WITNESSES[;]

V.

THE TRIAL COURT ERRED IN RULING THAT [APPELLANT WENCESLAO] ABSCONDED AND IN IMPUTING MALICE ON THE ACT OF [APPELLANT WENCESLAO] IN TEMPORARILY LEAVING HIS RESIDENCE[;]

VI.

THE LOWER COURT ERRED IN CONVICTING [APPELLANT WENCESLAO] OF THE CRIME CHARGED BASED ON TESTIMONIES WHICH ARE OF DOUBTFUL VERACITY[;]

VII.

THE TRIAL COURT ERRED IN NOT APPRECIATING THE DEFENSE OF [APPELLANT WENCESLAO] BASED ON JURISPRUDENCE WHICH ARE NOT APPLICABLE IN THE CASE AT BAR[.][40]

While appellant Ricardo, in his brief, raised this lone assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING [APPELLANT RICARDO] DESPITE THE FAILURE OF THE

[40] CA *rollo*, pp. 15-16.

PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[41]

On 18 June 2008, the Court of Appeals rendered its now assailed Decision affirming appellants' conviction of the crime charged. The Court of Appeals held that the evidence on record disclosed that the alleged inconsistencies pointed to by appellant Wenceslao refer only to minor matters. The same did not damage the credibility of the prosecution witnesses, particularly that of PFC Tomanto, PFC Angni, Juanito and Mayor Tawan-tawan. Honest inconsistencies on minor and trivial points serve to strengthen rather than destroy the credibility of a witness to a crime. Moreover, since the prosecution witnesses positively identified appellants in open court as among the perpetrators of the ambush, the same must prevail over the alleged inconsistencies, as well as the defense of denial and *alibi* interposed by the appellants. Denial is a negative and self-serving assertion that cannot overcome the victim's affirmative, categorical and convincing testimony. In the same way, for *alibi* to prosper, it must be established by positive, clear and satisfactory proof that it was impossible for the accused to be at the scene of the crime at the time of its commission and not merely assert that he was somewhere else. As in the present case, the trial court took judicial notice of the distance of seven (7) kilometers between Salvador, Lanao del Norte, where appellants reside, and San Manuel, Lala, Lanao del Norte, where the ambush incident took place. Appellants, therefore, could not successfully invoke *alibi* as a defense because it was not physically impossible for them to have been at the scene of the crime.[42] The Court of Appeals then decreed as follows:

WHEREFORE, in the light of the foregoing, the separate **APPEALS** are **DENIED**, and the appealed *Decision* is hereby **AFFIRMED**.[43]

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[41] *Id.* at 110.

[42] *Rollo*, pp. 28-31.

[43] *Id.* at 31.

Still undaunted, appellants elevated the aforesaid Decision of the Court of Appeals to this Court *via* Notice of Appeal.

In a Resolution[44] dated 19 November 2008, the Court required the parties to simultaneously submit their respective supplemental briefs, if they so desire. In lieu thereof, the Office of the Solicitor General filed a Manifestation[45] stating that it will no longer file a supplement to its Consolidated Appellee's Brief[46] dated 14 December 2006 there being no transactions, occurrences or events which have happened since the appellate court's Decision was rendered.

Appellants, on the other hand, filed their separate Supplemental Briefs,[47] which were a mere rehash of the arguments already discussed in their respective Appellant's Briefs[48] submitted before the appellate court. In his Supplemental Brief, appellant Wenceslao reiterates that: *the trial court and the Court of Appeals committed reversible errors when they decided a question of substance which is not in accord with established facts and the applicable laws.*[49] He, once again, enumerated the following errors committed by the appellate court, thus:

I.

The court *a quo* and the Court of Appeals gravely erred when they ruled that the inconsistencies committed by the prosecution witnesses are on minor and trivial points when these inconsistencies are indicative of the innocence of [appellant Wenceslao][;]

II.

The trial court and the Court of Appeals failed to consider as indicative of innocence of [appellant Wenceslao] the fact that the authorities did not include in the police report the name of [appellant Wenceslao]

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[44] *Id.* at 39-40.

[45] *Id.* at 48-50.

[46] CA *rollo*, pp. 176-201.

[47] *Rollo*, pp. 55-60 and 62-116.

[48] CA *rollo*, pp. 10-72 and 108-122.

[49] *Rollo*, p. 71.

and did not arrest him immediately after the ambush, or within a couple of months from the date of the ambush[;]

III.

The trial court and the Court of Appeals committed reversible error when they deliberately refused or failed to consider and appreciate the testimonies of the military officers who are neutral, impartial, and objective witnesses[;]

IV.

Both the trial court and the Court of Appeals miserably failed to consider the evidence for the defense despite the clear and unmistakable proof of their honesty and integrity[;]

V.

The trial court and the Court of Appeals clearly and deliberately [misinterpreted] the facts and [misapplied] the laws regarding "flight" as an alleged indication of guilt[;]

VI.

The trial court and the Court of Appeals convicted [appellant Wenceslao] based on jurisprudence on "*alibi*" which are not applicable in the case at bar[50] [Emphasis and italicized omitted].

Appellant Wenceslao contends that a thorough perusal of the testimonies of the prosecution witnesses would show these are tainted with glaring inconsistencies, which are badges of lies and dishonesty, thus, casting doubts on their credibility.

The inconsistencies referred to by appellant Wenceslao are as follows: (1) whether PFC Tomanto and PFC Angni were already with Mayor Tawan-tawan from Salvador, Lanao del Norte, to Tubod, Lanao del Norte, and *vice-versa*, or they merely hitched a ride in Mayor Tawan-tawan's vehicle on their way home to Salvador, Lanao del Norte; (2) if so, the place where PFC Tomanto and PFC Angni hitched a ride in Mayor Tawan-tawan's vehicle; (3) the officer from whom PFC Tomanto and PFC Angni got permission in order to go home to Salvador,

[50] *Id.* at 71-72.

Lanao del Norte; (4) PFC Angni allegedly knew appellant Wenceslao prior to the ambush incident on 5 June 2001 and he even saw appellant Wenceslao as among the perpetrators of the ambush, yet, he did not mention the name of the former in his affidavit; (5) Mayor Tawan-tawan should have mentioned the name of appellant Wenceslao as one of those responsible in the ambush incident when he reported the same to SPO4 Medrano; (6) SPO4 Medrano should have included the name of appellant Wenceslao in the Spot Reports he transmitted to the Provincial Police Office of the PNP and should have immediately caused his arrest if he truly participated in the ambush incident; (7) it would no longer be necessary to discharge Samuel and to make him as state witness if the victims of the ambush incident, indeed, saw the perpetrators of the crime; and (8) if appellant Wenceslao was one of the ambushers, Samuel would not have failed to mention the former in his sworn statement.

Appellant Wenceslao believes that the afore-enumerated inconsistencies only proved that he has no participation in the ambush of Mayor Tawan-tawan and his companions. The declaration of his innocence is thus called for.

Appellant Wenceslao further imputes ill-motive and malice on the testimonies of the prosecution witnesses in testifying against him. The motive was to remove him, being the only non-Muslim leader, in the Municipality of Salvador, Lanao del Norte, who has the courage to challenge the reign of Mayor Tawan-tawan and his clan. It was also an act of revenge against him for opposing Mayor Tawan-tawan during the 1998 elections. As to Samuel's motive, appellant Wenceslao claims that it was for self-preservation, freedom, leniency and some other consideration. Evidently, after Samuel's testimony, the latter was released from jail.

Appellant Wenceslao maintains that he was not at the ambush site on 5 June 2001 as can be gleaned from the testimonies of M/Sgt. Cudilla and Sgt. Garsuta.

Lastly, appellant Wenceslao argues that his flight was not an indication of guilt. He justified his temporary absence from his residence by stating that it was because of the traumatic experience of his wife, who had no peace of mind since their house was riddled with bullets by lawless elements without any cause.

With all the foregoing, the resolution of this appeal hinges primarily on the determination of credibility of the testimonies of the prosecution witnesses.

Time and again, this Court held that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[51] Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.[52] A careful perusal of the records of this case revealed that none of these circumstances is attendant herein.

The affirmance by the Court of Appeals of the factual findings of the trial court places this case under the rule that factual findings are final and conclusive and may not be reviewed on appeal to this Court. No reason has been given by appellants

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[51] *People v. Barde*, G.R. No. 183094, 22 September 2010, 631 SCRA 187, 208-209.

[52] *People v. Bondoy*, G.R. No. 79089, 18 May 1993, 222 SCRA 216, 229.

to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.

In the present case, most of the prosecution witnesses, *i.e.*, Macasuba, Mosanip, PFC Tomanto, PFC Angni, Juanito and Mayor Tawan-tawan, were victims of the 5 June 2001 ambush incident. As such, they actually witnessed what exactly happened on that fateful day, especially Macasuba and PFC Angni, who vividly saw appellant Wenceslao on the right side of the road and in a squatting position firing at them with his M-16 armalite rifle. Macasuba and PFC Angni, having seated behind the driver and on the rear (open) portion of the yellow pick-up service vehicle, respectively, both facing the right side of the road, were in such a position to see without any obstruction how appellant Wenceslao rained bullets on their vehicle with his M-16 armalite rifle while they were traversing the road of San Manuel, Lala, Lanao del Norte, on their way home to Salvador, Lanao del Norte. Macasuba was also able to identify appellant Ricardo, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido and Alfredo as among the perpetrators of the ambush.

It bears stressing that the ambush happened at around 3:00 p.m., in broad daylight, such that it would not be impossible for Macasuba and PFC Angni to have seen and identified their assailants, particularly appellant Wenceslao, who was once chief of Civilian Home Defense Force (CHDF), then municipal councilor and twice elected vice-mayor of Salvador, Lanao del Norte, *i.e.*, 1992 and 1995 elections, and appellant Ricardo, who is a resident of Poblacion, Salvador, Lanao del Norte.[53]

The aforesaid assertions of Macasuba and PFC Angni were equally confirmed by Samuel, an accused-turned-state-witness, who, in his testimony before the open court, narrated how appellants and their co-accused, Pedro, Eduardo, Sr., Eduardo, Jr., Brigido, Alfredo, Alejandro, Ruben, Arnel, and Opao, brought

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[53] Testimony of Macasuba Tandayao, TSN, 15 January 2003, p. 5; Testimony of Ricardo Ajok, TSN, 15 September 2004, p. 2.

him in the waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte; assembled themselves in a diamond position on both sides of the road; surreptitiously waited for the vehicle boarded by Mayor Tawan-tawan and his group; and executed the ambush from the moment the vehicle boarded by Mayor Tawan-tawan and his group passed by the aforesaid waiting shed.

Samuel was in an advantageous position to substantiate the identities of the appellants and their co-accused as the perpetrators of the ambush because he was near the scene of the crime, *i.e.*, merely five (5) meters away therefrom. This is aside from the fact that appellants and their co-accused were the very same people who brought him to the site of the ambush. Appellants and their co-accused likewise stayed for a long period of time in the house of Samuel's aunt prior to the ambush incident and Samuel is very well-acquainted with these people for he himself resided therein.[54]

Given the foregoing, it is beyond any cavil of doubt that prosecution witnesses, Macasuba, PFC Angni and Samuel, have firmly established the identities of appellants as the perpetrators of the ambush. In addition, their testimonies on who and how the crime was committed were characterized by the trial court as simple and candid. Even their answers to questions were simple, straightforward and categorical. Such simplicity and candidness in their testimonies only prove that they were telling the truth, thus, strengthening their credibility as witnesses.

Now, as regards the inconsistencies pointed out by appellant Wenceslao that allegedly cast doubt on the credibility of the prosecution witnesses, this Court finds them frivolous, trivial, minor, irrelevant and have nothing to do with the essential elements of the crime charged, *i.e.*, double murder with multiple frustrated murder and double attempted murder. In the same manner, they do not detract from the fact that Mayor Tawan-tawan and his group, which includes PFC Tomanto and PFC Angni, were ambushed by appellants and their co-accused on 5 June

[54] Testimony of Samuel Cutad, TSN, 17 March 2003, pp. 9 and 12.

2001 while on board the yellow pick-up service vehicle as it passed by the waiting shed in *Purok* 2, San Manuel, Lala, Lanao del Norte. And, said ambush resulted in the death of PO3 Dela Cruz and T/Sgt. Dacoco and injuries to Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito.

It is axiomatic that slight variations in the testimony of a witness as to minor details or collateral matters do not affect his or her credibility as these variations are in fact indicative of truth and show that the witness was not coached to fabricate or dissemble. **An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction**.[55]

Similarly, PFC Angni and Samuel's failure to name appellant Wenceslao in their affidavits/sworn statements as one of the ambushers does not necessarily render their testimonies implausible and unworthy of belief.

Inconsistencies between the sworn statement and direct testimony given in open court do not necessarily discredit the witness. An affidavit, being taken *ex-parte*, is oftentimes incomplete and is generally regarded as inferior to the testimony of the witness in open court. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, which are usually incomplete and inaccurate for a variety of reasons. More so, because of the partial and innocent suggestions, or for want of specific inquiries. In addition, an extrajudicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement, hence, omissions and misunderstandings by the writer are not infrequent. Indeed, the prosecution witnesses' direct and categorical declarations on the witness stand are superior to their extrajudicial statements.[56] Similarly,

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[55] *People v. Ignas*, 458 Phil. 965, 988 (2003).

[56] *People v. Astudillo*, 449 Phil. 778, 790-791 (2003).

the failure of a witness to immediately disclose the name of the culprit does not necessarily impair his or her credibility.[57]

A meticulous perusal of Samuel's sworn statement reveals that he categorically mentioned therein the name of appellant Wenceslao as one of the ambushers. In his sworn statement, Samuel specifically stated that during the ambush, he saw appellant Wenceslao at the other side of the road, just a few meters away from the bridge, who, at that time armed with an M-16 rifle, was likewise firing towards the group of Mayor Tawan-tawan.[58] Above all, both PFC Angni and Samuel positively identified appellant Wenceslao in open court as one of those responsible for the ambush of Mayor Tawan-tawan and his group.[59] Such open court declaration is much stronger than their affidavits/sworn statements.

Mayor Tawan-tawan's failure to disclose to SPO4 Medrano the name of appellant Wenceslao as one of those responsible in the ambush and SPO4 Medrano's failure to include the name of appellant Wenceslao in the Spot Reports he transmitted to the Provincial Police Office of the PNP would not inure to appellant Wenceslao's benefit.

As can be gleaned from the transcript of stenographic notes, when Mayor Tawan-tawan and SPO4 Medrano met at the scene of the crime, the former immediately told the latter that appellant Wenceslao was one of the ambushers.[60] This belied the claim of appellant Wenceslao that Mayor Tawan-tawan did not tell SPO4 Medrano that he (appellant Wenceslao) was among the

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[57] *People v. Vasquez,* G.R. No. 123939, 28 May 2004, 430 SCRA 52, 66.

[58] Sworn Statement of Samuel Cutad. Records, p. 13.

[59] Testimony of PFC Haron Angni, TSN, 30 April 2003, p. 5; Testimony of Samuel Cutad, TSN, 17 March 2003, p. 4.

[60] Testimony of SPO4 Raul Torres Medrano, TSN, 17 July 2003, pp. 4 and 17.

ambushers. Also, SPO4 Medrano provided an explanation[61] for his failure to state in his Spot Reports the name of appellant Wenceslao as one of the ambushers. And, even granting that his explanation would not have been satisfactory, still, SPO4 Medrano's failure to mention appellant Wenceslao's name in his Spot Reports was not fatal to the cause of the prosecution. More especially because appellant Wenceslao was positively identified by the prosecution witnesses as one of the perpetrators of the crime.

Even the discharge of Samuel to become state witness does not negate the fact that prosecution witnesses, Macasuba and PFC Angni, indeed, saw appellants as among the perpetrators of the crime. To note, appellants were not the only persons accused of the crime; they were many including Pedro, Eduardo, Sr., Eduardo, Jr., Brigido, Alfredo, Alejandro, Ruben, Arnel, and Opao. In order to give justice to the victims of the ambush, especially those who have died by reason thereof, all persons responsible therefor must be penalized. Since Samuel knew all those who have participated in the ambush incident, his testimony as to the other accused in this case is material to strengthen the case of the prosecution against them. Unfortunately, the other accused in this case remained at large until now.

As aptly observed by the trial court, thus:

> x x x The Court is convinced without equivocation on the veracity of the testimonies of the prosecution eyewitnesses who are all in one pointing to [herein appellant Wenceslao] as one of those who participated in the ambush, and on the veracity of the testimonies of the two prosecution eyewitnesses – [Macasuba and Samuel] – to the effect that [appellant Ricardo] was among the people who perpetrated the said ambush.
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> The testimonies of these witnesses were simple and candid. The simplicity and candidness of their testimonies only prove that they

[61] SPO4 Medrano did not reveal the identity of appellant Wenceslao so that if warrant of arrest would be issued against him, he could be arrested at the earliest possible time (Testimony of SPO4 Raul Torres Medrano, TSN, 17 July 2003, p. 11).

were telling the truth. Their answers to questions were simple, straightforward and categorical; spontaneous, frank and consistent. Thus, a witness who testifies categorically, spontaneously, frankly and consistently is a credible witness.[62]

Appellant Wenceslao's allegations of ill-motive and malice on the part of prosecution witnesses, including Samuel, have no leg to stand on.

The records are bereft of any evidence to substantiate the claim of appellant Wenceslao that the motive of the prosecution witnesses in testifying against him was to remove him as the only non-Muslim leader in the Municipality of Salvador, Lanao del Norte, and that it was an act of revenge for opposing Mayor Tawan-tawan during the 1998 elections. Appellant Wenceslao failed to present an iota of evidence to support his aforesaid allegations. As properly stated by the Court of Appeals, "[m]ere allegation or claim is not proof. Each party must prove his own affirmative allegation." Also, it must be emphasized that during the 1998 elections, it was Mayor Tawan-tawan who won the mayoralty position. It is, therefore, highly implausible for Mayor Tawan-tawan, who emerged as the victor, to take revenge against the losing candidate, appellant Wenceslao. As such, appellant Wenceslao failed to prove any ill-motive on the part of the prosecution witnesses. It is settled that where the defense fails to prove that witnesses are moved by improper motives, the presumption is that they were not so moved and their testimonies are therefore entitled to full weight and credit.[63]

To repeat, most of the prosecution witnesses are victims of the ambush. Being the aggrieved parties, they all desire justice for what had happened to them, thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives

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[62] CA *rollo*, p. 94.

[63] *People v. Emoy*, 395 Phil. 371, 384 (2000).

of the victims, more so, the victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.[64]

Contrary to appellant Wenceslao's assertion, this Court is convince that his and appellant Ricardo's flight from the scene of the crime immediately after the ambush is an evidence of their guilt. It is noteworthy that after the ambush incident, appellant Wenceslao immediately left his residence and moved to his father's house, then to his son's house in Kolambugan, Lanao del Norte, and lastly to Katipa, Lopez Jaena, Misamis Occidental, where he was arrested. Appellant Ricardo did the same thing. From his residence in Poblacion, Salvador, Lanao del Norte, he transferred to his parents-in-law's house, then he left alone for Ozamis City, Misamis Occidental, and thereafter, moved to *Puting Bato* in Sapad, Lanao del Norte, until he was arrested on 20 December 2001. If appellants were truly innocent of the crime charged, they would not go into hiding rather they would face their accusers to clear their names. Courts go by the biblical truism that "the wicked flee when no man pursueth but the righteous are as bold as a lion."[65]

Appellants' respective explanations regarding their flight fail to persuade this Court. It bears emphasis that after the alleged strafing of appellant Wenceslao's house, all he did is to move from one place to another instead of having it investigated by the authorities. Until now, the alleged strafing of his house remains a mystery. If that strafing incident truly happened, he would be much eager to know who caused it in order to penalize the author thereof. Appellant Ricardo, on the other hand, was allegedly afraid of being persecuted for being one of the supporters of Mayor Tawan-tawan's political rival. His fear, however, was more imaginary than real. The aforesaid claim of appellant Ricardo was uncorroborated, hence, cannot be given any considerable weight.

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[64] *People v. Reynes*, 423 Phil. 363, 382 (2001).

[65] *People v. Cañedo*, 390 Phil. 379, 396 (2000).

In light of the clear, positive and straightforward testimonies of prosecution witnesses, coupled with their positive identification of appellants as among the perpetrators of the ambush, appellants' defense of denial and *alibi* cannot prosper.

As this Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that appellants committed the crime.[66] For *alibi* to prosper, the requirements of time and place must be strictly met. It is not enough to prove that appellants were somewhere else when the crime happened. They must also demonstrate by clear and convincing evidence that it was physically impossible for them to have been at the scene of the crime at the approximate time of its commission.[67] Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[68] A mere denial, like *alibi*, is inherently a weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[69]

In this case, both appellants claimed that they were just in their respective houses in Poblacion, Salvador, Lanao del Norte, when the ambush incident happened and they have no involvement whatsoever in the commission thereof.

To corroborate appellant Wenceslao's testimony, the defense presented Armida, Jeffrey and Luzviminda, who are appellant Wenceslao's wife, nephew and niece, respectively. This Court, however, cannot give credence to the testimonies of these defense witnesses. Being appellant Wenceslao's relatives, their testimonies are rendered suspect because the former's relationship to them makes it likely that they would freely perjure themselves for his

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[66] *People v. Veloso*, 386 Phil. 815, 825 (2000).

[67] *People v. Lacatan*, 356 Phil. 510, 521 (1998).

[68] *People v. Barde*, *supra* note 51 at 211.

[69] *People v. Arofo*, 430 Phil. 475, 484-485 (2002).

sake. The defense of *alibi* may not prosper if it is established mainly by the appellant himself and his relatives, and not by credible persons.[70] This Court further quote with conformity the observation made by the trial court, *viz*:

> FURTHER, the testimonies of the above-named witnesses for [herein appellant Wenceslao] were shattered by the testimony of [Rudy], another witness for [appellant Wenceslao], who categorically told the Court that during the time he and his companions Jacob Pepito and a certain Romy were in the house of [appellant Wenceslao] in the afternoon of 5 June 2001, **there was no unusual incident that took place**, **as well as no unusual incident that happened when they left the house of [appellant Wenceslao] at about 2:45 in the afternoon**.
>
> The foregoing testimony of [Rudy] clearly imparts that the visit of [Rudy] and his companions to the house of [appellant Wenceslao], if any, happened on another date. This will be so because if [appellant Wenceslao] and his closely related witnesses are telling the truth that Jacob Pepito, [Rudy] and Romy were in the house of [appellant Wenceslao] talking about the said election returns during that fateful afternoon, **then definitely, [Rudy] should have had known of the ambush incident, said incident being spreaded throughout or shall we say, "the talk of the town" that afternoon of 5 June 2001**.
>
> **If the ambush incident occurred on the day [Rudy] and his companions visited [appellant Wenceslao], then, no doubt that [Rudy] will tell the Court about it. But his testimony was otherwise**.[71] [Emphasis supplied].

In the same breath, appellant Ricardo's defense of denial and *alibi* cannot be given any evidentiary value as it was unsubstantiated. Appellant Ricardo never presented any witness to support his claim that he was simply inside their house attending to his wife and children during the time that the ambush incident happened. This Court reiterates that mere denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Between the categorical and positive assertions of the prosecution witnesses and the negative averments of the accused which are uncorroborated by reliable and independent

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[70] *People v. Maceda*, 405 Phil. 698, 711 (2001).

[71] CA *rollo*, pp. 96-97.

evidence, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[72]

Withal, it was not physically impossible for the appellants to be at the scene of the crime in the afternoon of 5 June 2001. As observed by the trial court and the appellate court, Poblacion, Salvador, Lanao del Norte, where both appellants' reside, is only about seven (7) kilometers away from San Manuel, Lala, Lanao del Norte, where the ambush took place.[73]

All told, this Court affirms the findings of the trial court and the appellate court that, indeed, appellants were among the perpetrators of the ambush against Mayor Tawan-tawan and his group. Prosecution witnesses' categorical, positive and straightforward testimonies, coupled with their positive identification of appellants as among the perpetrators of the crime, prevail over appellants' defense of bare denial and *alibi*.

As to the crime committed. The trial court, as well as the appellate court, convicted appellants of double murder with multiple frustrated murder and double attempted murder. **This Court believes, however, that appellants should be convicted not of a complex crime but of separate crimes of two (2) counts of murder and seven (7) counts of attempted murder** as the killing and wounding of the victims in this case were not the result of a single act but of several acts of the appellants, thus, making Article 48 of the Revised Penal Code inapplicable.

Appellants and their co-accused simultaneous act of riddling the vehicle boarded by Mayor Tawan-tawan and his group with bullets discharged from their firearms when the said vehicle passed by San Manuel, Lala, Lanao del Norte, resulted in the death of two security escorts of Mayor Tawan-tawan, *i.e.*, PO3 Dela Cruz and T/Sgt. Dacoco.

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[72] *People v. Hilet*, 450 Phil. 481, 490-491 (2003).

[73] *Rollo*, p. 31.

Article 248 of the Revised Penal Code provides:

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

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

xxx xxx xxx

5. With evident premeditation. [Emphasis supplied].

Treachery, which was alleged in the Information, attended the commission of the crime. Time and again, this Court, in a *plethora* of cases, has consistently held that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. There are two (2) conditions that must concur for treachery to exist, to wit: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. **"The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape."**[74]

The deadly successive shots of the appellants and their co-accused did not allow the hapless victims, *i.e.*, PO3 Dela Cruz and T/Sgt. Dacoco, any opportunity to put up a decent defense. The attack was executed by appellants and their-co-accused in such a vicious manner as to make the defense virtually impossible. Under the circumstances, **it is very apparent that appellants had murder in their hearts when they waylaid their unwary**

[74] *People v. Barde*, *supra* note 51 at 215.

victims.[75] **Thus, as to the death of PO3 Dela Cruz and T/Sgt. Dacoco, appellants should be held liable for murder**.

The aggravating circumstance of abuse of superior strength, however, cannot be appreciated as it is deemed absorbed in treachery.[76]

Since the prosecution failed to prove the attending circumstance of evident premeditation, the circumstance cannot likewise be appreciated. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[77] None of these elements could be gathered from the evidence on record.

As regards the victims Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito, although they were injured during the ambush and were all hospitalized, except for Macasuba, it was not mentioned that their injuries and wounds were mortal or fatal such that without the timely medical assistance accorded to them, they would have died.[78] However, it does not necessarily follow that the crimes committed against the aforenamed victims were simply less serious physical injuries. Also, even though Mayor Tawan-tawan and Jun did not sustain any injury during the ambush, it does not mean that no crime has been committed against them. The latter were just fortunate enough not to have sustained any injury on the occasion thereof. **Since appellants were motivated by the same intent to kill, thus, as to Macasuba, Mosanip, PFC Tomanto, PFC Angni, Juanito,**

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[75] *People v. Sanidad*, 450 Phil. 449, 462-463 (2003).

[76] *People v. Cawaling*, 355 Phil. 1, 42 (1998).

[77] *Id*.

[78] As evidenced by the Medical Certificates issued to Mosanip Ameril, PFC Gapor Tomanto, PFC Haron Angni and Juanito Ibunalo. Records, pp. 268-273.

Mayor Tawan-tawan and Jun, appellants should be held guilty of attempted murder.

What brings this case out of the ordinary is the issue of applicability of Article 48 of the Revised Penal Code. Its resolution would determine whether the conviction of appellants must be for the separate crimes of two (2) counts of murder and seven (7) counts of attempted murder or of the complex crime of double murder with multiple frustrated murder and double attempted murder.

The concept of a complex crime is defined in Article 48 of the Revised Penal Code which explicitly states that:[79]

> ART. 48. *Penalty for complex crimes.* – When **a single act constitutes two or more grave or less grave felonies**, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. [Emphasis supplied].

In a complex crime, two or more crimes are actually committed, however, in the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed. There are two kinds of complex crime. The **first is known as compound crime**, or when a single act constitutes two or more grave or less grave felonies while **the other is known as complex crime proper**, or when an offense is a necessary means for committing the other. The classic example of the first kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. **Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes**.[80]

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[79] *People v. Bermas*, 369 Phil. 191, 237 (1999).

[80] *People v. Gaffud, Jr.*, G.R. No. 168050, 19 September 2008, 566 SCRA 76, 88; *People v. Orias*, G.R. No. 186539, 29 June 2010, 622 SCRA 417, 435.

Evidently, there is in this case no complex crime proper. And the circumstances present in this case do not fit exactly the description of a compound crime.

From its factual backdrop, it can easily be gleaned that the killing and wounding of the victims were not the result of a single discharge of firearms by the appellants and their co-accused. To note, appellants and their co-accused opened fire and rained bullets on the vehicle boarded by Mayor Tawan-tawan and his group. As a result, two security escorts died while five (5) of them were wounded and injured. The victims sustained gunshot wounds in different parts of their bodies. Therefrom, it cannot be gainsaid that more than one bullet had hit the victims. Moreover, more than one gunman fired at the vehicle of the victims. As held in *People v. Valdez*,[81] each act by each gunman pulling the trigger of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to a complex crime.[82]

Obviously, appellants and their co-accused performed not only a single act but several individual and distinct acts in the commission of the crime. Thus, Article 48 of the Revised Penal Code would not apply for it speaks only of a "single act."

There are, however, several rulings which applied Article 48 of the Revised Penal Code despite the fact that several acts were performed by several accused in the commission of the crime resulting to the death and/or injuries to their victims.

In ***People v. Lawas***,[83] the members of the Home Guard, upon order of their leader, Lawas, simultaneously and successively fired at several victims. As a result, 50 persons died. It was there held that the **killing was the result of a single impulse as there was no intent on the part of the accused to fire**

[81] 364 Phil. 259 (1999).

[82] *Id.* at 278.

[83] 97 Phil. 975 (1955).

at each and every victim separately and distinctly from each other. If the act or acts complained of resulted from a single criminal impulse, it constitutes a single offense. However, "single criminal impulse" was not the only consideration in applying Article 48 of the Revised Penal Code in the said case because there was therein no evidence at all showing the identity or number of persons killed by each accused. There was also **no conspiracy** to perpetuate the killing, **thus, collective criminal responsibility could not be imputed upon the accused**. **Since it was impossible to ascertain the number of persons killed by each of them, this Court was "forced" to find all the accused guilty of only one offense of multiple homicide instead of holding each of them responsible for 50 deaths**.[84]

Significantly, there was no conspiracy in *People v. Lawas.* However, as this Court held in *People v. Remollino*,[85] the *Lawas* doctrine is more of an exception than the general rule.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and then decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them. In the absence of any direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. **As such, it does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all**.[86]

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[84] Campanilla, *The Revised Penal Code* (Book One) 2007, pp. 916-917 citing *People v. Mision*, G.R. No. 63480, 26 February 1991, 194 SCRA 432, 444-445; *People v. Orias*, *supra* note 80 at 435-436 citing *People v. Hon. Pineda*, 127 Phil. 150, 155-156 (1967).

[85] 109 Phil. 607 (1960).

[86] *People v. Orias*, *supra* note 80 at 433.

The Information filed against appellants and their co-accused alleged conspiracy, among others. Although the trial court did not directly state that a conspiracy existed, such may be inferred from the concerted actions of the appellants and their co-accused, to wit: (1) appellants and their co-accused brought Samuel to a waiting shed located on the left side of the road where the yellow pick-up service vehicle boarded by Mayor Tawan-tawan and his group would pass; (2) appellants and their co-accused, thereafter, assembled themselves on both sides of the road and surreptitiously waited for the aforesaid yellow pick-up service vehicle; (3) the moment the yellow pick-up service vehicle passed by the waiting shed, appellants and their co-accused opened fire and rained bullets thereon resulting in the killing and wounding of the victims; (4) immediately, appellants and their co-accused ran towards the house of Samuel's aunt to get their bags and other stuff; (5) Samuel followed appellants and their co-accused; and (6) appellants and their co-accused fled.

Conspiracy is very much evident from the afore-enumerated actuations of the appellants and their co-accused. Clearly, their acts were coordinated. They were synchronized in their approach to riddle with bullets the vehicle boarded by Mayor Tawan-tawan and his group. They were motivated by a single criminal impulse – to kill the victims. Indubitably, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[87]

With the presence of conspiracy in the case at bench, appellants and their co-accused had assumed joint criminal responsibility – the act of one is the act of all. The ascertainment of who among them actually hit, killed and/or caused injury to the victims already becomes immaterial. Collective responsibility replaced individual responsibility. The *Lawas* doctrine, premised

[87] *Id.* at 434.

on the impossibility of determining who killed whom, cannot, to repeat, be applied.

Interestingly, in *People v. De los Santos*,[88] *People v. Abella*,[89] *People v. Garcia*[90] and *People v. Pincalin*,[91] this Court also applied Article 48 of the Revised Penal Code even though several acts were performed by the accused **and** conspiracy attended the commission of the crime.

In *People v. De los Santos*,[92] a prison riot occurred for two consecutive days inside the national penitentiary between the members of two gangs, *i.e.*, *Sigue-Sigue Sputnik* and *Oxo*. As a result, nine (9) inmates were killed. Fourteen (14) inmates were then convicted for the crime of multiple murder. The existence of conspiracy in the commission of the crime was duly proven. There was, however, no discussion why the accused were convicted of a complex crime instead of separate crimes.

In a similar case of *People v. Abella*,[93] involving the massacre of certain prisoners in the Davao Penal Colony and a reprise of a similar riot that occurred in the national penitentiary on 16 February 1958 (subject of *De los Santos*), all the accused were also convicted for the complex crime of multiple murder and multiple frustrated murder. Conspiracy likewise attended the commission of the crime. This Court applied the ruling in *De los Santos* and elucidated that the ruling in the said case is predicated on the theory that "when for the **attainment of a single purpose** which constitutes an offense, **various acts are executed, such acts must be considered only as one offense,**" **a complex one**. The *Lawas* doctrine was equally applied although conspiracy had been duly proven. This Court

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[88] 122 Phil. 55 (1965).

[89] 181 Phil. 285 (1979).

[90] 185 Phil. 362 (1980).

[91] 190 Phil. 117 (1981).

[92] *Supra* note 88.

[93] *Supra* note 89.

then stated that **where a conspiracy animates several persons with a single purpose** "**their individual acts in pursuance of that purpose are looked upon as a single act – the act of execution – giving rise to a complex offense**. The felonious agreement produces a sole and solidary liability: each confederate forms but a part of a single being."[94]

People v. Garcia[95] and *People v. Pincalin*[96] have the same factual background as *De los Santos* and *Abella*. They were the third and fourth cases, respectively, of prison riots resulting to the killing of convicts by fellow convicts while inside the national penitentiary. In *Garcia*, the accused were convicted for the complex crime of multiple murder and double attempted murder, while in *Pincalin* the accused were convicted for the complex crime of double murder and frustrated murder. In both cases, this Court found conspiracy to have attended the commission of the crime.

In applying Article 48 of the Revised Penal Code in *Garcia* and *Pincalin*, this Court, gave the same justification as in *Abella:* that both cases were covered by the rule that "**when for the attainment of a single purpose, which constitutes an offense various acts are executed, such acts must be considered as only one offense, a complex one**." Correspondingly, "**where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a complex offense**. Various acts committed under one criminal impulse may constitute a single complex offense.[97]

We however found no intention by this Court to establish as doctrine, contrary to *Lawas*, that Article 48 is applicable even

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[94] *Id.* at 311-313. (Emphasis supplied).

[95] *Supra* note 90.

[96] *Supra* note 91.

[97] *People v. Garcia, supra* note 90 at 369-370 (emphasis supplied); *People v. Pincalin, supra* note 91 at 125. (Emphasis supplied)

in cases where several acts were performed by the accused **and** conspiracy attended the commission of the crime. In *Pincalin*, this Court has already clarified that: [n]onetheless, this Court further held that "in other cases where several killings on the same occasion were perpetrated, but not involving prisoners, a different rule may be applied, that is to say, the killings would be treated as separate offenses, as opined by Mr. Justice Makasiar and as held in some decided cases."[98]

De los Santos, *Abella*, *Garcia* and *Pincalin*, therefore, were exceptions to the general rule stated in Article 48 which exceptions were drawn by the peculiar circumstance of the cases.

It may be mentioned that in *People v. Sanidad*,[99] this Court, once again, applied Article 48 of the Revised Penal Code although the circumstances of the case were not the same as in *Lawas*, *De los Santos*, *Abella*, *Garcia* and *Pincalin*, where this Court departed from the general rule.

In *Sanidad*, suddenly and without a warning, several accused unleashed a volley of shots at the jeepney boarded by the victims. Miraculously, all passengers, except Rolando Tugadi (Rolando), survived the ambush and suffered only minor injuries. Conspiracy attended the commission of the crime. Accused were convicted for the complex crime of murder and multiple attempted murder. We there held that the case comes within the purview of Article 48 of the Revised Penal Code. Citing *Lawas* and *Abella*, it was pronounced that although several independent acts were performed by the accused, it was not possible to determine who among them actually killed Rolando; and that there was no evidence that the accused intended to fire at each and every one of the victims separately and distinctly from each other. On the premise that the evidence clearly shows a single criminal impulse to kill Marlon Tugadi's group as a whole, we repeated that where a conspiracy animates several persons with a single purpose, their individual

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[98] *People v. Pincalin*, *id.* at 126. (Emphasis supplied)

[99] *Supra* note 75.

acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense.[100]

The reliance in *Sanidad,* on *Lawas* and *Abella* is incorrect.

The application of the *Abella* doctrine, has already been clarified in *Pincalin*, thus: where several killings on the same occasion were perpetrated, but not involving prisoners, a different rule may be applied, that is to say, the killings would be treated as separate offenses. Since in *Sanidad,* the killings did not involve prisoners or it was not a case of prisoners killing fellow prisoners. As such, *Abella* would not apply.

To repeat, in *Lawas*, this Court was merely forced to apply Article 48 of the Revised Penal Code because of the impossibility of ascertaining the number of persons killed by each accused. Since conspiracy was not proven therein, joint criminal responsibility could not be attributed to the accused. Each accused could not be held liable for separate crimes because of lack of clear evidence showing the number of persons actually killed by each of them.

Proven conspiracy could have overcome the difficulty.

Our repeated ruling is that in conspiracy, the act of one is the act of all. It is as though each one performed the act of each one of the conspirators. Each one is criminally responsible for each one of the deaths and injuries of the several victims. The severalty of the acts prevents the application of Article 48. The applicability of Article 48 depends upon the singularity of the act, thus the definitional phrase "a single act constitutes two or more grave or less grave felonies." This is not an original reading of the law. In *People v. Hon. Pineda,*[101] the Court already recognized the "deeply rooted *x x x* doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes." As we observed in *People v. Tabaco,*[102] clarifying the

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[100] *Id.* at 463-464.

[101] *Supra* note 84 at 154.

[102] 336 Phil. 771 (1997).

applicability of Article 48 of the [Revised Penal Code], [this Court] further stated in [*Hon.*] *Pineda* that "to apply the first half of Article 48, *x x x* there must be singularity of criminal act; singularity of criminal impulse is not written into the law."[103]

With all the foregoing, this Court holds appellants liable for the separate crimes of two (2) counts of murder and seven (7) counts of attempted murder.

As to penalty. Under Article 248 of the Revised Penal Code, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being neither aggravating nor mitigating circumstance, the penalty to be imposed upon appellants is *reclusion perpetua* for each count, pursuant to paragraph 2, Article 63[104] of the Revised Penal Code.[105]

Appellants are also guilty of seven (7) counts of attempted murder. The penalty prescribed by law for murder, *i.e.*, *reclusion perpetua* to death, should be reduced by two degrees, conformably to Article 51[106] of the Revised Penal Code. Under

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[103] *Id.* at 802-803 citing *People v. Hon. Pineda, supra* note 84 at 154-155.

[104] **ART. 63**. *Rules for the application of indivisible penalties*. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[105] *People v. Molina*, G.R. No. 184173, 13 March 2009, 581 SCRA 519, 540.

[106] **ART. 51**. *Penalty to be imposed upon principals of attempted crime*. – The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

paragraph 2, Article 61,[107] in relation to Article 71 of the Revised Penal Code, such a penalty is *prision mayor*. There being neither mitigating nor aggravating circumstance, the same should be imposed in its medium period pursuant to paragraph 1, Article 64[108] of the Revised Penal Code.[109] Applying the Indeterminate Sentence Law in the case of attempted murder, the maximum shall be taken from the medium period of *prision mayor*, which is 8 years and 1 day to 10 years, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, the range of which is 6 months and 1 day to 6 years. This Court, therefore, imposed upon the appellants the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, for each count of attempted murder.

As to damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the

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[107] **ART. 61**. *Rules for graduating penalties*. – For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

x x x x x x x x x

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[108] **ART. 64**. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

[109] *People v. Molina*, *supra* note 105 at 541.

death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[110]

Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof. Moral damages like civil indemnity, is also mandatory upon the finding of the fact of murder.[111] Therefore, the trial court and the appellate court properly awarded civil indemnity in the amount of ₱50,000.00 and moral damages also in the amount of ₱50,000.00 to the heirs of each deceased victims.

Article 2230 of the Civil Code states that exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. In this case, treachery may no longer be considered as an aggravating circumstance since it was already taken as a qualifying circumstance in the murder, and abuse of superior strength which would otherwise warrant the award of exemplary damages was already absorbed in the treachery.[112] However, in *People v. Combate*,[113] this Court still awards exemplary damages despite the lack of any aggravating circumstance to deter similar conduct and to serve as an example for public good. Thus, to deter future similar transgressions, the Court finds that an award of ₱30,000.00 as exemplary damages in favor of the heirs of each deceased victims is proper.[114] The said amount is in conformity with this Court's ruling in *People v. Gutierrez*.[115]

Actual damages cannot be awarded for failure to present the receipts covering the expenditures for the wake, coffin, burial and other expenses for the death of the victims. In lieu thereof, temperate damages may be recovered where it has been shown that the

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[110] *Id.* at 542.

[111] *People v. Barde*, *supra* note 51 at 220.

[112] *People v. Elijorde*, 365 Phil. 640, 652-653 (1999).

[113] G.R. No.189301, 15 December 2010, 638 SCRA 797.

[114] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[115] G.R. No. 188602, 4 February 2010, 611 SCRA 633, 647.

victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty as provided for under Article 2224 of the Civil Code.[116] In this case, it cannot be denied that the heirs of the deceased victims suffered pecuniary loss although the exact amount was not proved with certainty. Thus, this Court similarly awards ₱25,000.00 as temperate damages to the heirs of each deceased victims.[117]

The surviving victims, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito, are also entitled to moral, temperate and exemplary damages.

Ordinary human experience and common sense dictate that the wounds inflicted upon the aforesaid victims would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries.[118] It is only justifiable to grant them moral damages in the amount of ₱40,000.00 each in conformity with this Court's ruling in *People v. Mokammad*.[119]

The award of ₱25,000.00 each as temperate damages to Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito is also in order. It is beyond doubt that these victims were hospitalized and spent money for their medication. As to Macasuba, although he was not confined in a hospital, it cannot be gainsaid that he also spent for the treatment of the minor injuries he sustained by reason of the ambush. However, they all failed to present any receipt therefor. Nevertheless, it could not be denied that they suffered pecuniary loss; thus, it is only prudent to award temperate damages in the amount of ₱25,000.00 to each of them.

The award of exemplary damages is also in order. Thus, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito

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[116] *People v. Barde*, *supra* note 51 at 220-221.

[117] *People v. Montemayor*, 452 Phil. 283, 306-307 (2003); *People v. Molina*, *supra* note 105 at 542-543.

[118] *People v. Barde*, *supra* note 51 at 221.

[119] G.R. No. 180594, 19 August 2009, 596 SCRA 497, 513.

are awarded exemplary damages in the amount of ₱30,000.00 to conform to current jurisprudence.[120]

This Court likewise affirms the award of ₱50,000.00 for and as attorney's fees, as well as costs of the suit, in favor of Mayor Tawan-tawan.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. HC No. 00246 dated 18 June 2008 is hereby **MODIFIED**, as follows: (1) appellants are found guilty beyond reasonable doubt of two (2) counts of murder thereby imposing upon them the penalty of *reclusion perpetua* for each count; (2) appellants are also found guilty beyond reasonable doubt of seven (7) counts of attempted murder thereby imposing upon them the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, for each count; (3) other than the civil indemnity and moral damages already awarded by the trial court and the appellate court, appellants are further ordered to pay, jointly and severally, exemplary and temperate damages in the amount of ₱30,000.00 and ₱25,000.00, respectively, to the heirs of each deceased victims; and (4) appellants are also directed to pay, jointly and severally, Macasuba, Mosanip, PFC Tomanto, PFC Angni and Juanito the amount of ₱40,000.00 each as moral damages, ₱25,000.00 each as temperate damages and ₱30,000.00 each as exemplary damages.

Costs against appellants.

SO ORDERED.

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

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[120] *People v. Barde*, *supra* note 51 at 222.

EN BANC

[G.R. No. 199084. September 11, 2012]

ANTONIA P. CERON, *petitioner, vs.* **COMMISSION ON ELECTIONS, GRACE P. VALDEZ, EVA T. PAUIG and ARJOLYN T. ANTONIO, in their capacity as MEMBERS OF THE BOARD OF ELECTION TELLERS OF CLUSTERED PRECINCTS 0844A AND 0844B of BARANGAY 201, PASAY CITY and ROMEO ARCILLA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; OMNIBUS ELECTION CODE; SECTION 216 THEREOF EQUALLY APPLIES TO THE BOARD OF ELECTION TELLERS (BET).—** Although Section 216 of the Omnibus Election Code refers to the Board of Election Inspectors, the provision is equally applicable to the BET. Section 51 of COMELEC Resolution No. 9030, promulgated by the COMELEC *En Banc* for the conduct of the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, adopts Section 216 of the Omnibus Election Code. Furthermore, the primary duties of the Board of Election Inspectors and the BET are identical. In the conduct of regular or special elections, Section 168(a) of the Omnibus Election Code provides that the Board of Election Inspectors shall "[c]onduct the voting and counting of votes in their respective polling places." In the conduct of *barangay* elections, Section 40(2) of the Omnibus Election Code states that the BET "shall supervise and conduct the election in their respective polling places, count the votes and thereafter prepare a report in triplicate on a form prescribed by the Commission."

2. **ID.; ID.; ID.; WHERE THE DISCREPANCY BETWEEN THE *TARAS* AND THE WRITTEN WORDS AND FIGURES IS APPARENT ON THE FACE OF THE ELECTION RETURN, OPENING OF THE BALLOT BOX AND RECOUNTING OF THE BALLOTS MAY BE DISPENSED WITH.—** The Court considers the verified petition as one filed pursuant to Section

216 of the Omnibus Election Code and Section 51 of COMELEC Resolution No. 9030. The verified petition was filed with the COMELEC by all the members of the BET after the announcement of the results of the election has been made in Clustered Precinct Nos. 844A and 844B. It seeks to correct the erroneous entry in the Election Return of Clustered Precinct Nos. 844A and 844B, particularly the written words and figures which do not correspond to the number of *taras.* In the verified petition, Valdez, Pauig and Antonio, in their capacity as members of the BET, admitted that they made an erroneous entry in the said Election Return with respect to the total number of votes received by Ceron. They explained that through honest mistake, Pauig as the Poll Clerk recorded in written words and figures a total of fifty-six (56) votes for Ceron, instead of the 50 votes corresponding to the total number of *taras* recorded. They claimed that Pauig incorrectly heard the number of votes dictated by the Chairman of the BET possibly due to "too much noise created by the watchers inside and outside of the polling precinct." In correcting the erroneous entry, the COMELEC need not order the opening of the ballot box for purpose of recounting the votes of the candidates affected. Section 216 of the Omnibus Election Code dispenses with the requirement of opening the ballot box and conducting a recount of the ballots if "**the correction sought is such that it can be made without the need of opening the ballot box**." The Court observes that the discrepancy between the *taras* and the written words and figures is apparent on the face of the subject Election Return. The discrepancy can be corrected by the BET without the necessity of opening the ballot box. The correction can be carried out by recounting the number of *taras* in the Election Return and revising the written words and figures to conform to the number of *taras*.

3. ID.; ID.; ID.; DISMISSAL OF THE ELECTION PROTEST DOES NOT CONSTITUTE *RES JUDICATA* TO BAR THE FILING OF A VERIFIED PETITION FOR CORRECTION IN THE ELECTION RETURN.— The Court agrees with the arguments of the COMELEC and Arcilla. The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 does not constitute *res judicata*. Although the issue on the discrepancy between the number of *taras* and the written words

and figures in the Election Return was raised both in the election protest and the verified petition, some of the requisites of *res judicata* are not present. The doctrine of *res judicata* provides that "a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit." The following are the requisites of *res judicata* as a bar by prior judgment: (1) finality of the former judgment; (2) the court which rendered the judgment had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and causes of action. The third and fourth requisites *of res judicata* as bar by prior judgment are not present in the case. The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 is not a judgment on the merits. The Order dismissed the election protest filed by Arcilla based on technicality for failure of his petition to "specifically state the total number of precincts of the x x x *Barangay* concerned," as required under Section 11(d) of A.M. No. 07-4-15-SC. Section 13(b) of A.M. No. 07-4-15-SC states that the court shall summarily dismiss an election protest if "[t]he petition is insufficient in form and content as required in Section 11 hereof." There is also an absence of identity of parties between the election protest filed by Arcilla and the verified petition filed by Valdez, Pauig and Antonio. Identity of parties exists "where the parties in both actions are the same, or there is privity between them, they are successors-in-interest. The election protest was filed solely by Arcilla as a candidate in the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, while the verified petition was filed by Valdez, Pauig and Antonio in their capacity as members of the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for *certiorari*[1] under Rule 64 of the Rules of Court. The petition assails the following resolutions of the Commission on Elections (COMELEC) in SPC No. 10-205 (BRGY): (1) Resolution[2] promulgated by the COMELEC First Division on 1 July 2011; and (2) Resolution[3] promulgated by the COMELEC *En Banc* on 11 October 2011.

The Facts

Petitioner Antonia P. Ceron (Ceron) and private respondent Romeo O. Arcilla (Arcilla) were candidates for the position of Barangay Kagawad of Barangay 201, Pasay City during the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections.

After the canvass of votes, the Barangay Board of Canvassers (BBOC) proclaimed Ceron as one of the seven duly elected Barangay Kagawads. Based on the Statement of Votes by Precinct[4] and the Certificate of Canvass of Votes and Proclamation of Winning Candidates,[5] Ceron received a total of nine hundred and twenty-one (921) votes and ranked sixth in the tally of votes. The Certificate of Canvass of Votes and Proclamation of Winning Candidates lists the following candidates who obtained the seven highest numbers of votes for the position of Barangay Kagawad of Barangay 201, Pasay City:

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 87-93.

[3] *Id.* at 22-29.

[4] Serial Nos. 5245415-17; *id.* at 49-51.

[5] No. 1941843; *id.* at 84.

Names of Candidates	Number of Votes Received	
	(In Figures)	(In Words)
1. BONTILAO, JAIME	2238	Two Thousand Two Hundred Thirty-Eight
2. SALCEDO, LEOPOLDO	1492	One Thousand Four Hundred Ninety-Two
3. CANAREZ, ANTONIO	1458	One Thousand Four Hundred Fifty-Eight
4. ABAD, ZENAIDA	1299	One Thousand Two Hundred Ninety-Nine
5. LIOK, JOSEPH	1170	One Thousand One Hundred Seventy
6. CERON, ANTONIA	**921**	**Nine Hundred Twenty-One**
7. CANLAS, CARLA	920	Nine Hundred Twenty[6]

The aforesaid candidates were thus proclaimed the duly elected Barangay Kagawads of Barangay 201, Pasay City. On the other hand, Arcilla was not proclaimed as he only obtained nine hundred and nineteen (919) votes and ranked eighth in the tally of votes.[7]

Arcilla thereafter filed a petition[8] protesting the election of Ceron with the Metropolitan Trial Court of Pasay City, docketed as Case No. E-03-10.[9] Arcilla alleged that there is a discrepancy between the *taras*[10] and the written words and figures corresponding to

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[6] *Id.* Boldfacing supplied.

[7] *Id.* at 49-52, 84.

[8] *Id.* at 30-35.

[9] The case was entitled "*Romeo O. Arcilla v. Antonia Ceron*" and raffled to the Metropolitan Trial Court, Branch 47, Pasay City; *id.* at 64.

[10] The term "*tara*" refers to the vertical line representing each vote in the recording of votes on the election return, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. Batas Pambansa Blg. 881 (hereinafter "OMNIBUS ELECTION CODE"), Section 210. See also *Doromal v. Biron*, G.R. No. 181809, 17 February 2010, 613 SCRA 160, 164.

the votes obtained by Ceron recorded in the Election Return for Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.[11] He claimed that the *taras* recorded in the said Election Return corresponding to the votes obtained by Ceron were tabulated as follows: seven (7), six (6), thirteen (13), thirteen (13) and eleven (11).[12] Thus, the total number of *taras* is fifty (50). However, the recorded total number of votes obtained by Ceron in written words and figures is fifty-six (56).[13] There is therefore a discrepancy of six (6) votes between the *taras* and the written words and figures. Arcilla argued that the written words and figures should be equal to the total number of *taras*, and that the total number of votes received by Ceron should therefore be nine hundred and fifteen (915) and not 921.[14] Arcilla then concluded that he received a higher number of votes than Ceron, particularly 919 compared to 915, and should therefore be declared as the seventh ranking Barangay Kagawad of Barangay 201, Pasay City.[15]

On 24 November 2010, Presiding Judge Eliza B. Yu of the Metropolitan Trial Court, Branch 47, Pasay City promulgated an Order[16] dismissing the election protest of Arcilla pursuant to Section 13 of A.M. No. 07-4-15-SC.[17] The election protest was dismissed for failure of the petition of Arcilla to "specifically state the total number of precincts of the x x x Barangay concerned," as required under Section 11(d) of A.M. No. 07-4-15-SC.[18] It does not appear from the records that Arcilla

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[11] *Rollo*, pp. 32-33.

[12] *Id.* at 32.

[13] *Id*.

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

[15] *Id.* at 33-35.

[16] *Id.* at 64.

[17] Administrative Matter No. 07-4-15-SC is entitled "Rules of Procedure in Election Contests before the Courts involving Elective Municipal and Barangay Officials."

[18] *Rollo*, p. 64.

filed a motion for reconsideration or appealed the Order dismissing the election protest.

On 27 November 2010, Grace P. Valdez (Valdez), Eva T. Pauig (Pauig) and Arjolyn T. Antonio (Antonio), in their capacity as members of the Board of Election Tellers (BET) of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City, filed a verified petition[19] with the COMELEC docketed as SPC No. 10-205 (BRGY). Valdez, Pauig and Antonio were the Chairman, Poll Clerk and Third Member, respectively, of the said BET.[20] They alleged that on 17 November 2010 they received a letter from the winning Barangay Chairman of Barangay 201, Pasay City, inviting them to explain the discrepancy between the *taras* and the written words and figures pertaining to the number of votes received by Ceron in the Election Return for Clustered Precinct Nos. 844A and 844B.[21] Valdez, Pauig and Antonio further alleged that upon reviewing the said Election Return, they discovered that they made an erroneous entry therein with respect to the total number of votes received by Ceron.[22] They claimed that Valdez dictated the total number of votes received by each candidate, and that Pauig did not properly hear the dictation of the total number of votes received by Ceron possibly due to "too much noise created by the watchers inside and outside of the polling precinct."[23] Thus, through honest mistake, Pauig recorded in written words and figures a total of 56 votes for Ceron, instead of the 50 votes dictated by Valdez corresponding to the total number of *taras* recorded.[24]

Valdez, Pauig and Antonio prayed that the COMELEC direct the members of the BET of Clustered Precinct Nos. 844A and 844B and the members of the BBOC of Barangay 201, Pasay

[19] *Id.* at. 41-45.

[20] *Id.* at 42.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 43.

[24] *Id.* at 42.

City to reconvene, in order for the BET to prepare a corrected Election Return for the said clustered precincts, and for the BBOC to prepare a corrected Statement of Votes by Precinct and a corrected Certificate of Canvass of Votes and Proclamation of Winning Candidates.[25] They further prayed that the COMELEC set aside the proclamation of Ceron as the sixth winning Barangay Kagawad, and proclaim Carla Canlas (Canlas) as the sixth winning Barangay Kagawad and Arcilla as the seventh winning Barangay Kagawad.[26]

On 20 January 2011, Arcilla filed an Answer[27] to the petition of the members of the BET. He agreed with the material allegations of the petition with respect to the error in recording the total number of votes received by Ceron in Clustered Precinct Nos. 844A and 844B.[28] Arcilla outlined the same prayers set forth in the petition.[29]

In the Comment[30] to the petition filed on 14 February 2011, Ceron averred that the issues raised in the petition were moot and academic, given that these issues were already raised in the election protest previously filed by Arcilla and dismissed by the Metropolitan Trial Court, Branch 47, Pasay City in the Order dated 24 November 2010.[31] Ceron stated that the said Order was final and executory since Arcilla did not file any appeal.[32] Ceron also filed a Position Paper[33] on 16 February 2011. She reiterated that the issues raised in the petition were moot and academic, and further alleged that Valdez, Pauig and Antonio did not possess

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[25] *Id.* at 44.

[26] *Id*.

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

[28] *Id.* at 55.

[29] *Id.* at 56.

[30] *Id.* at 59-62.

[31] *Id.* at 60.

[32] *Id*.

[33] *Id.* at 73-78.

the requisite legal personality since they would not be affected nor stand to benefit from the resolution of the petition.[34] Furthermore, Ceron argued that the petition was filed beyond the period allowed by law for any alteration or correction in the election return.[35]

The Ruling of the COMELEC First Division

The COMELEC First Division promulgated on 1 July 2011 a Resolution in SPC No. 10-205 (BRGY). It declared that the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City committed an error in recording the votes received by Ceron in written words and figures in the Election Return.[36] The COMELEC First Division observed that there is a discrepancy between the *taras* and the written words and figures. In particular, the total number of *taras* recorded in the Election Return is 50 while the written words and figures are "fifty-six" and "56", respectively.[37] It recognized the settled rule that the number of votes reflected by the *taras* prevails in the event of a discrepancy between the number of *taras* and the written words and figures.[38] It therefore concluded that the total number of votes received by Ceron is 915, and the resulting ranking of the candidates is as follows:

RANK	NAME	VOTES OBTAINED
1st	BONTILAO, Jaime	Two Thousand Two Hundred Thirty Eight (2238)
2nd	SALCEDO, Leopoldo	One Thousand Four Hundred Ninety-Two (1492)

[34] *Id.* at 76-77.

[35] *Id.* at 77.

[36] *Id.* at 90.

[37] *Id*.

[38] *Id.* at 90-91.

3rd	CAÑARES, Antonio Sr.	One Thousand Four Hundred Fifty-Eight (1458)
4th	ABAD, Zenaida	One Thousand Two Hundred Ninety-Nine (1299)
5th	LIOK, Joseph	One Thousand One Hundred Seventy (1170)
6th	**CANLAS, Carla**	**Nine Hundred Twenty (920)**
7th	**ARCILLA, Romeo**	**Nine Hundred Nineteen (919)**

Dislodged	**CERON, Antonia (previously proclaimed as 6th in rank)**	**Nine Hundred Fifteen (915)**[39]

The COMELEC First Division thus granted the petition. The dispositive portion of the Resolution dated 1 July 2011 states:

WHEREFORE, premises considered, the Commission (First Division) **RESOLVED**, as it hereby **RESOLVES**, to **GRANT** the instant Petition. The proclamation of Antonia Ceron and Carla Canlas as the 6th and 7th ranking sangguniang barangay kagawad, respectively, of Brgy. 201, Pasay City is hereby **ANNULLED**.

Accordingly, the Barangay Board of Canvassers of Brgy. 201, Pasay City is hereby **DIRECTED** to **RECONVENE** for the purpose of:

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[39] *Id.* at 91.

a. **RECTIFYING** the errors committed in the Election Return of Clustered Precinct No[s]. 844A and 844B and the corresponding Statement of Votes; and

b. **PROCLAIMING** candidates Carla Canlas and Romeo Arcilla as the 6th and 7th ranking sangguniang barangay kagawad, respectively.

The Board is hereby ordered to prepare a new Certificate of Canvass of Votes and Proclamation.

xxx xxx xxx

SO ORDERED.[40]

Ceron subsequently filed a Motion for Reconsideration[41] of the Resolution dated 1 July 2011. Ceron argued that the proper procedure to resolve the dispute is for the COMELEC to order the opening of the ballot box to recount the votes cast, pursuant to Section 236 of Batas Pambansa Blg. 881 or the Omnibus Election Code.[42] This procedure is also mandated under Section 68 of COMELEC Resolution No. 9030.[43] Ceron further argued that it is improper to categorize the alleged error in the Election Return as a manifest error since this did not occur in the tabulation or tallying of the election returns during canvassing.[44] The alleged error in the Election Return is not one of the instances of manifest error provided under Section 69 of COMELEC Resolution No. 9030.[45] Finally, Ceron argued that the dismissal of the election protest filed by Arcilla bars the resolution of the issues raised in the petition under the principle of *res judicata*.[46]

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[40] *Id.* at 92.

[41] *Id.* at 94-102.

[42] *Id.* at 95-96.

[43] COMELEC Resolution No. 9030 dated 21 September 2010 is entitled "General Instructions for the Board of Election Tellers (BET) and Barangay Board of Canvassers (BBOC) in connection with the conduct of the October 25, 2010, Synchronized Barangay and Sangguniang Kabataan Elections."

[44] *Rollo*,p. 96.

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

[46] *Id*. at 99-100.

The Ruling of the COMELEC *En Banc*

The COMELEC *En* Banc denied the Motion for Reconsideration of Ceron in a Resolution[47] promulgated on 11 October 2011. It ruled that the discrepancy between the *taras* and the written words and figures representing the number of votes received by Ceron constitutes manifest error.[48]

According to the COMELEC *En Banc*, a manifest error is "evident to the eye and understanding; visible to the eye; that which is open, palpable, incontrovertible; needing no evidence to make it more clear [sic]; not obscure or hidden."[49] It further stated that a mistake in the addition of the votes of any candidate is one of the instances of manifest error under Section 69 of COMELEC Resolution No. 9030. The COMELEC *En Banc* observed that the error in the Election Return of Clustered Precinct Nos. 844A and 844B is evident to the eye, and a mere recounting of the number of *taras* reveals the disparity with the written words and figures.[50]

The COMELEC *En Banc* explained the procedure in rectifying the manifest error in the said Election Return, thus:

> The error in the said Election Returns affects the computation of the total number of votes received by [Ceron] during the canvassing and eventually, the final result or the determination of the winning candidates. This is a clear case of manifest error.
>
> However, to correct such error, there is no need to open the ballot box and recount the votes cast. The mistake in the Election Returns can be easily traced and there is no need to seek additional evidence to rectify such error. The expedient course of action is for COMELEC to direct the board of canvassers to reconvene and, after notice and hearing in accordance with Section 7, Rule 27 of the COMELEC Rules of Procedure, to effect the necessary corrections and on the basis

[47] *Id.* at 22-29.

[48] *Id.* at 96.

[49] *Id.* at 24.

[50] *Id.* at 25.

thereof, proclaim the winning candidate. It has been ruled that in case of discrepancy, the taras/tally would prevail.[51]

The COMELEC *En Banc* ruled that the procedures under Section 236 of the Omnibus Election Code and Section 68 of COMELEC Resolution No. 9030 are only applicable in the event that there is a discrepancy among the authentic copies of the same election returns.[52]

With respect to the application of the principle of *res judicata*, the COMELEC *En Banc* determined that there was no identity of parties in the election protest filed by Arcilla and the petition filed by the members of the BET.[53] Furthermore, the dismissal of the election protest was not based on merit but on technicality.[54]

Hence, this instant petition filed by Ceron assailing the Resolution promulgated by the COMELEC First Division on 1 July 2011 and the Resolution promulgated by the COMELEC *En Banc* on 11 October 2011.

The Issues

Ceron raises the following issues:

1. Whether the COMELEC may order the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the Election Return of Clustered Precinct Nos. 844A and 844B; and

2. Whether the COMELEC may take cognizance of the petition filed by Valdez, Pauig and Antonio, in their capacity as members of the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.[55]

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[51] *Id*.

[52] *Id.* at 26-27.

[53] *Id.* at 27-28.

[54] *Id.* at 28.

[55] *Id*. at 8.

The Ruling of the Court

The petition is unmeritorious.

I.

Ceron argues that the proper procedure is for COMELEC to direct the opening of the ballot box of Clustered Precinct Nos. 844A and 844B for purposes of recounting the votes cast in favor of the candidates affected, pursuant to Section 236 of the Omnibus Election Code and Section 68 of COMELEC Resolution No. 9030.[56] Section 236 of the Omnibus Election Code provides:

SECTION 236. *Discrepancies in election returns*. — In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

Section 68 of COMELEC Resolution No. 9030 states:

SECTION 68. *Discrepancies in Election Returns*. — In case it appears to the BBOC that there exist discrepancies in the votes of any candidate in words and figures in the same returns, and in either case the difference affects the results of the elections the Commission shall, upon motion of the BBOC or any candidate affected and after due notice to all candidates concerned, proceed summarily to determine whether the integrity of the ballot box had been preserved.

Once the Commission is satisfied that the integrity of the ballot box had been preserved, it shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

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

If upon opening the ballot box as ordered by the Commission, it should appear that there are signs of replacement, tampering, or violation of the integrity of the ballots, the Commission shall not recount the ballots but forthwith seal the ballot box and order its safekeeping.

Ceron further argues that the alleged error in the subject Election Return is not a manifest error as contemplated under Section 69 of COMELEC Resolution No. 9030.[57] She claims that the provision does not apply to errors in the election return, but is only applicable to errors committed in the tabulation or tallying of the election returns during the canvassing.[58]

On the other hand, the COMELEC claims that it correctly ordered the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the Election Return of Clustered Precinct Nos. 844A and 844B.[59] It argues that the discrepancy between the *taras* and the written words and figures is a manifest error that is evident to the eye.[60] It is not necessary to open the ballot box and recount the ballots since the manifest error can be rectified by simply correcting the written words and figures to reflect the number of *taras*.[61] Thus, the applicable provision is Section 69 of COMELEC Resolution No. 9030. The section states:

SECTION 69. *Manifest Error*. - (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying [of] election returns during the canvassing, the BBOC may *motu proprio*, or upon verified petition by any candidate, after due notice and hearing, correct the errors committed.

There is manifest error in the tabulation or tallying of the result during the canvassing when:

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[57] *Id.* at 10-12.

[58] *Id*.

[59] *Id.* at 141.

[60] *Id.* at 144-145.

[61] *Id*. at 145-146.

1) A copy of the election returns was tabulated more than once;

2) Two or more copies of the election returns for one precinct were tabulated;

3) There was a mistake in the copying of the figures from the election returns to the statement of votes;

4) Election returns from non-existent precincts were included in the canvass;

5) Election returns from precinct of one *barangay* were included in the canvass for another *barangay*; and

6) There was a mistake in the addition of the votes of any candidate.

(b) If the manifest error is discovered before proclamation, the BBOC shall promulgate an order in writing for the correction of the manifest error. Then effect the necessary correction in the statement of votes/ certificate of canvass and proclamation by crossing out the erroneous figures/entries to be initialed by the members of the BBOC and entering the correct figures/entries. The correction of manifest error made by the BBOC shall be recorded in the minutes of canvass.

Any candidate aggrieved by the said order may appeal the same to the Commission within twenty-four (24) hours from promulgation. The appeal must implead as respondents the board of canvassers concerned and all candidates that may be adversely affected.

Once an appeal is made, the board of canvassers shall not proclaim the winning candidate, unless the votes are not affected by the appeal.

Upon receipt of the appeal, the Clerk of Court concerned shall forthwith [issue] summons together with a copy of the appeal of the respondent. The Clerk of Court concerned shall immediately set the appeal for hearing. The appeal shall be heard and immediately decided by the Commission *en banc*.

(c) Manifest errors discovered after proclamation the same [sic] shall be filed by the board or any aggrieved party with the Commission.

Similarly, Arcilla claims that the COMELEC may order the BBOC of Barangay 201, Pasay City to reconvene and make the proper correction in the subject Election Return.[62] He argues

[62] *Id.* at 119.

that the *taras* prevail in case of a discrepancy between the number of *taras* and the written words and figures.[63] The applicable provision is Section 69(3) of COMELEC Resolution No. 9030 since the BBOC "should not have copied the figures from the election returns but should have given credit to the *taras*, this being the prevailing rule in canvassing."[64]

This Court disagrees with Ceron and respondents as to the statutory and regulatory provisions applicable to this case. The applicable provisions are Section 216 of the Omnibus Election Code and Section 51 of COMELEC Resolution No. 9030. Section 216 of the Omnibus Election Code outlines the procedure for alterations and corrections in the election returns, thus:

> SECTION 216. *Alterations and corrections in the election returns*. — Any correction or alteration made in the election returns by the board of election inspectors before the announcement of the results of the election in the polling place shall be duly initialed by all the members thereof.
>
> After the announcement of the results of the election in the polling place has been made, the board of election inspectors shall not make any alteration or amendment in any of the copies of the election returns, unless so ordered by the Commission upon petition of the members of the board of election inspectors within five days from the date of the election or twenty-four hours from the time a copy of the election returns concerned is opened by the board of canvassers, whichever is earlier. The petition shall be accompanied by proof of service upon all candidates affected. If the petition is by all members of the board of election inspectors and the results of the election would not be affected by said correction and none of the candidates affected objects thereto, the Commission, upon being satisfied of the veracity of the petition and of the error alleged therein, shall order the board of election inspectors to make the proper correction on the election returns.

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[63] *Id.* at 120.

[64] *Id*.

However, if a candidate affected by said petition objects thereto, whether the petition is filed by all or only a majority of the members of the board of election inspectors and the results of the election would be affected by the correction sought to be made, the Commission shall proceed summarily to hear the petition. If it finds the petition meritorious and there are no evidence or signs indicating that the identity and integrity of the ballot box have been violated, the Commission shall order the opening of the ballot box. After satisfying itself that the integrity of the ballots therein has also been duly preserved, the Commission shall order the recounting of the votes of the candidates affected and the proper corrections made on the election returns, unless the correction sought is such that it can be made without need of opening the ballot box. (*Sec. 169, 1978 EC*)

Section 51 of COMELEC Resolution No. 9030 states:

SECTION 51. *Alterations and Corrections in the Election Returns*. — Any correction or alteration made on the election returns by the BET before the announcement of the results of the elections in the precinct shall be duly initialed by all the members thereof.

After the announcement of the results of the elections in the precinct, the BET shall not make any alteration or amendment in any copy of the election returns, unless so ordered by the Commission.

Although Section 216 of the Omnibus Election Code refers to the Board of Election Inspectors, the provision is equally applicable to the BET. Section 51 of COMELEC Resolution No. 9030, promulgated by the COMELEC *En Banc* for the conduct of the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, adopts Section 216 of the Omnibus Election Code. Furthermore, the primary duties of the Board of Election Inspectors and the BET are identical. In the conduct of regular or special elections, Section 168(a) of the Omnibus Election Code provides that the Board of Election Inspectors shall "[c]onduct the voting and counting of votes in their respective polling places." In the conduct of *barangay* elections, Section 40(2) of the Omnibus Election Code states that the BET "shall supervise and conduct the election in their respective polling places, count the votes and thereafter prepare a report in triplicate on a form prescribed by the Commission."

The Court considers the verified petition as one filed pursuant to Section 216 of the Omnibus Election Code and Section 51 of COMELEC Resolution No. 9030. The verified petition was filed with the COMELEC by all the members of the BET after the announcement of the results of the election has been made in Clustered Precinct Nos. 844A and 844B. It seeks to correct the erroneous entry in the Election Return of Clustered Precinct Nos. 844A and 844B, particularly the written words and figures which do not correspond to the number of *taras*. In the verified petition, Valdez, Pauig and Antonio, in their capacity as members of the BET, admitted that they made an erroneous entry in the said Election Return with respect to the total number of votes received by Ceron.[65] They explained that through honest mistake, Pauig as the Poll Clerk recorded in written words and figures a total of fifty-six (56) votes for Ceron, instead of the 50 votes corresponding to the total number of *taras* recorded.[66] They claimed that Pauig incorrectly heard the number of votes dictated by the Chairman of the BET possibly due to "too much noise created by the watchers inside and outside of the polling precinct."[67]

In correcting the erroneous entry, the COMELEC need not order the opening of the ballot box for the purpose of recounting the votes of the candidates affected. Section 216 of the Omnibus Election Code dispenses with the requirement of opening the ballot box and conducting a recount of the ballots if "**the correction sought is such that it can be made without the need of opening the ballot box**."[68] The Court observes that the discrepancy between the *taras* and the written words and figures is apparent on the face of the subject Election Return. The discrepancy can be corrected by the BET without the necessity of opening the ballot box. The correction can be carried out by recounting the number of *taras* in the Election Return

[65] *Id.* at 42.

[66] *Id*.

[67] *Id.* at 43.

[68] Boldfacing supplied.

and revising the written words and figures to conform to the number of *taras*.

The correction of the discrepancy in the Election Return will therefore result in the deduction of six (6) votes from the total votes previously recorded for Ceron, particularly the previous 921 votes will be reduced to 915 votes. The resulting ranking of the three candidates affected, as correctly tabulated by the COMELEC First Division, will be as follows:

RANK	NAME	VOTES OBTAINED
6th	**CANLAS, Carla**	**Nine Hundred Twenty (920)**
7th	**ARCILLA, Romeo**	**Nine Hundred Nineteen (919)**

Dislodged	**CERON, Antonia (previously proclaimed as 6th in rank)**	**Nine Hundred Fifteen (915)**[69]

Consequently, the previous proclamation of Ceron and Canlas as the sixth (6th) and seventh (7th) ranked Barangay Kagawads, respectively, must be annulled. After the BET has corrected the subject Election Return and the BBOC has corrected the corresponding Statement of Votes by Precinct, Canlas and Arcilla should be proclaimed as the duly elected sixth (6th) and seventh (7th) ranked Barangay Kagawads, respectively.

II.

Ceron further claims that the COMELEC does not have jurisdiction over the verified petition filed by Valdez, Pauig and Antonio in their capacity as members of the BET.[70] According to Ceron, the

[69] *Rollo*, p.91.

[70] *Id.* at 13.

Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 dismissing the election protest filed by Arcilla has attained finality and therefore constitutes *res judicata*.[71] Ceron avers that the issues raised in the verified petition were already raised in the election protest filed by Arcilla.[72]

On the other hand, the COMELEC and Arcilla similarly argue that the dismissal of the election protest does not amount to *res judicata*. They claim that there is no identity of parties between the election protest and the verified petition.[73] In addition, the dismissal of the election protest was not based on the merits but on technicality.[74]

The Court agrees with the arguments of the COMELEC and Arcilla. The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 does not constitute *res judicata*. Although the issue on the discrepancy between the number of *taras* and the written words and figures in the Election Return was raised both in the election protest and the verified petition,[75] some of the requisites of *res judicata* are not present.

The doctrine of *res judicata* provides that "a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit."[76] The following are the requisites of *res judicata* as a bar by prior judgment: (1) finality of the former judgment; (2) the court which rendered the judgment had jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of

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[71] *Id.* at 14.

[72] *Id*.

[73] *Id.* at 122-123, 152.

[74] *Id*.

[75] See *rollo*, pp. 32-33, 42-44.

[76] *Chu v. Spouses Cunanan*, G.R. No. 156185, 12 September 2011, 657 SCRA 379, 391.

parties, subject matter and causes of action.[77] The third and fourth requisites of *res judicata* as a bar by prior judgment are not present in the case.

The Order of the Metropolitan Trial Court, Branch 47, Pasay City in Case No. E-03-10 is not a judgment on the merits. The Order dismissed the election protest filed by Arcilla based on technicality for failure of his petition to "specifically state the total number of precincts of the x x x *Barangay* concerned," as required under Section 11(d) of A.M. No. 07-4-15-SC.[78] Section 13(b) of A.M. No. 07-4-15-SC states that the court shall summarily dismiss an election protest if "[t]he petition is insufficient in form and content as required in Section 11 hereof."

There is also an absence of identity of parties between the election protest filed by Arcilla and the verified petition filed by Valdez, Pauig and Antonio. Identity of parties exists "where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity."[79] The parties in the first and second actions are clearly not the same. There is also no privity between them and they are not successors-in-interest. The election protest was filed solely by Arcilla as a candidate in the 25 October 2010 Synchronized Barangay and Sangguniang Kabataan Elections, while the verified petition was filed by Valdez, Pauig and Antonio in their capacity as members of the BET of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay City.

WHEREFORE, the petition is **DISMISSED** for lack of merit. The proclamation of Antonia P. Ceron and Carla Canlas as the sixth and seventh ranked Barangay Kagawads of Barangay

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[77] *Selga v. Brar*, G.R. No. 175151, 21 September 2011, 658 SCRA 108, 121.

[78] *Rollo*, p. 64.

[79] *Cagayan de Oro Coliseum, Inc. v. Court of Appeals*, 378 Phil. 498, 519 (1999).

201, Pasay City, respectively, is hereby **ANNULLED**. Pursuant to Section 216 of the Omnibus Election Code, respondent COMELEC is **DIRECTED** to order the Board of Election Tellers of Clustered Precinct Nos. 844A and 844B of Barangay 201, Pasay, City to **RECONVENE** in order to **CORRECT** the discrepancy between the number of *taras* and the written words and figures corresponding to the total number of votes received by Antonia P. Ceron in the subject Election Return of the said clustered precincts. Respondent COMELEC is further **DIRECTED** to order the Barangay Board of Canvassers of Barangay 201, Pasay City to **RECONVENE** in order to: (1) **CORRECT** the Statement of Votes by Precinct of Barangay 201, Pasay City on the basis of the corrected Election Return; (2) **PREPARE** a new Certificate of Canvass of Votes and Proclamation of Winning Candidates on the basis of the corrected Statement of Votes by Precinct; and (3) **PROCLAIM** Carla Canlas and Romeo Arcilla as the duly elected sixth and seventh ranked Barangay Kagawads of Barangay 201, Pasay City, respectively.

The 1 July 2011 Resolution of the COMELEC First Division and the 11 October 2011 Resolution of the COMELEC *En Banc* are hereby **MODIFIED** accordingly.

SO ORDERED.

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

TTHIRD DIVISION

[G.R. No. 170787. September 12, 2012]

CRISPINO PANGILINAN, *petitioner, vs.* **JOCELYN N. BALATBAT substituted by her heirs, namely, VICENTE BALATBAT, ANA LUCIA N. BALATBAT, JOSE VICENTE N. BALATBAT, ANTONIO BENIGNO N. BALATBAT, JOCELYN BEUNA B. DE GUZMAN, GERVACIO ALFREDO N. BALATBAT, PIO ROMULO N. BALATBAT and JUNIOPERO PEDRO N. BALATBAT,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; DENIAL, NOT A CASE OF.—** The essence of due process is simply an opportunity to be heard. Such process requires notice and an opportunity to be heard before judgment is rendered. x x x In this case, petitioner was not denied due process as he was able to file a comment before the Court of Appeals through his counsel of record, DAR Legal Officer Dizon. Moreover, records show that petitioner, with the assistance of two lawyers, Atty. Paul S. Maglalang and Atty. Jord Achaes R. David, filed a motion for reconsideration of the decision of the Court of Appeals dated May 30, 2005, which motion was denied for lack of merit by the Court of Appeals in its Resolution dated December 2, 2005.

2. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHERE THE FILING OF AN APPLICATION FOR RETENTION OF LAND AND A COMPLAINT FOR ANNULMENT OF EMANCIPATION PATENT DO NOT CONSTITUTE FORUM SHOPPING.—** There is no forum shopping in this case as the parties involved and the reliefs prayed for are different. x x x 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, for the purpose of obtaining a favorable judgment. In this case, the letter of application for retention of land addressed to the DAR is not a suit against petitioner. Moreover, respondents filed the

complaint for annulment of emancipation patent *after* petitioner was awarded Emancipation Patent No. 00728063 and issued TCT No. 25866, despite the fact that the DAR had not yet ruled on their application for retention of their landholdings, including Lot 21-F, which is the parcel of land covered by Emancipation Patent No. 00728063 granted to petitioner. Hence, it is not shown that herein respondents, as plaintiffs, filed two suits against the same defendants, and that the complaint for annulment of emancipation patent was filed to obtain a favorable judgment on the application for retention, but to protest the issuance of the emancipation patent to petitioner, as respondents' application for retention had not yet been acted upon.

3. ID.; DEPARTMENT OF AGRARIAN REFORM NEW RULES OF PROCEDURE; COMPLAINT FOR ANNULMENT OF EMANCIPATION PATENT IS WITHIN THE JURISDICTION OF PARAD AND DARAB.— The Court holds that the Complaint is within the jurisdiction of the PARAD and the DARAB, as it seeks the annulment of petitioner's emancipation patent which has been registered with the Register of Deeds for the Province of Pampanga. The jurisdiction of the DARAB under Section 1, Rule II, of the applicable DAR New Rules of Procedure (1994) includes "[t]hose involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority." Section 2 of the said DARAB New Rules of Procedure grant the PARAD "concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction."

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; PRESIDENTIAL DECREE NO. 27 IN RELATION TO LOI NO. 474; LANDOWNER MAY NOT INVOKE HIS RIGHT OF RETENTION IF HE IS DISQUALIFIED UNDER THE LAW.— In this case, the DARAB and the Court of Appeals agreed that respondents' total landholding is 25.2548 hectares, and that 9.8683 hectares thereof was riceland, which was subjected to Operation Land Transfer, while 15.3864 hectares was sugarland. In addition, the PARAD and the DARAB found that the 15.3864 hectares of sugarland was subdivided by respondents into 4.8836 subdivision lot to support themselves and their family; hence under LOI No. 474 and Administrative Order No. 4, series of

1991, the PARAD and the DARAB held that respondents are no longer entitled to retain seven hectares of the land subject to Operation Land Transfer. The decisions of the PARAD and the DARAB are supported by the Court's ruling in *Heirs of Aurelio Reyes v. Garilao* cited above. As the PARAD and the DARAB found that respondents are disqualified to retain the parcel of land, which is the subject matter of this case, there was no ground to cancel the emancipation patent of petitioner; hence, the DARAB affirmed the decision of the PARAD dismissing respondents' complaint for lack of merit. The Court notes that the Decision dated October 12, 1998 of the PARAD and the Decision dated February 2, 2004 of the DARAB, affirming the decision of the PARAD dismissing for lack of merit the complaint for annulment of petitioner's patent, was based on the same DAR Administrative Order (Administrative Order No. 4, series of 1991) applied by the DAR Regional Director in denying the application for retention of respondents. The respective decisions of the PARAD and the DARAB that there was no ground for the cancellation of petitioner's emancipation patent hinged on the finding that respondents were disqualified to retain their riceland, and the legal basis of the said disqualification is consistent with the legal basis of the Regional Director's Order dated March 12, 1998, denying respondents' application for retention.

APPEARANCES OF COUNSEL

Maglalang Lagman & Maglalang Law Offices for petitioner.
Proceso M. Nacino for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision[2] dated May 30, 2005 in CA-G.R. SP No.

[1] Under Rule 45 of the Rules of Court.

[2] The Decision was rendered by the Special Seventh Division composed of Associate Justice Juan Q. Enriquez, Jr. as Acting Chairman, Associate Justice Vicente Q. Roxas as *ponente*, and Regalado E. Maambong as member.

85017, and its Resolution[3] dated December 2, 2005, denying petitioner's motion for reconsideration.

The Court of Appeals reversed and set aside the Decision dated February 2, 2004 of the Department of Agrarian Reform Adjudication Board (DARAB), which affirmed the decision dated October 12, 1998 of the Provincial Agrarian Reform Adjudicator (PARAD) of San Fernando, Pampanga, dismissing respondents' complaint for the annulment of the emancipation patent issued in favor of respondents' tenant, petitioner Crispino Pangilinan, which emancipation patent covered a portion of the land sought to be retained by respondents.

The facts, as stated by the Court of Appeals, are as follows:

Respondent spouses Jocelyn N. Balatbat and Vicente A. Balatbat were found by the PARAD to have landholdings totaling 25.2548 hectares, which consisted of 9.8683 hectares of riceland and 15.3864 hectares of sugarland. The 9.8683 hectares of riceland was covered by land reform.

Out of the 25.2548 hectares of land owned by respondents, 18.2479 hectares or 182,479 square meters[4] thereof was under Original Certificate of Title (OCT) No. 6009. Municipal Agrarian Reform Officer Victorino D. Guevarra found that in OCT No. 6009, 8.6402 hectares or 86,402 square meters was riceland covered by Presidential Decree (P.D.) No. 27 and Executive Order (E.O.) No. 228, while 96,077 square meters was sugarland.[5] The 96,077 square meters of sugarland was subdivided by respondents as follows:

Title No. 181462 --	64,540 square meters
Title No. 181464 --	8,904 square meters
Title No. 181469 --	22,633 square meters
Total	96,077 square meters

[3] The Resolution was rendered by the Former Seventh Division composed of Associate Justice Portia Aliño-Hormachuelos as Chairman, Associate Justice Vicente Q. Roxas as *ponente*, and Associate Justice Juan Q. Enriquez, Jr. as member.

[4] Annex "XIII", *rollo*, p. 163.

[5] *Rollo*, pp. 163-164.

Title Nos. 181464 and 181469, representing Lots 21-0 and 21-1, were utilized by respondents in a subdivision/condominium project particularly called Carolina Village II, located at San Juan, Sta. Ana, Pampanga, while Title No. 181462, representing Lot 21-B, was subdivided among the children of respondents.

The exact area of riceland respondents applied for retention is 8.3749 hectares, which is covered by TCT No. 181466-R, TCT No. 181465-R, TCT No. 181463-R, and TCT No. 181461-R.[6]

Although 8.6402 hectares was subjected to the Operation Land Transfer Program under P.D. No. 27,[7] as amended by Letter of Instruction (LOI) No. 474, this case involves only 2.9941 hectares or 29,941 square meters thereof, covered under TCT No. 181466-R,[8] and identified as Lot 21-F of the subdivision plan Psd-03-005059, being a portion of Lot 21 Sta. Ana Cadastre, situated in the Barrio of San Juan, Municipality of Sta. Ana, Province of Pampanga. The said Lot 21-F, with an area of 29,941 square meters, was transferred to petitioner as evidenced by TCT No. 25866,[9] which was registered in the Register of Deeds for the Province of Pampanga on May 30, 1997, pursuant to Emancipation Patent No. 00728063 issued by the DAR on April 18, 1997.[10] Hence, respondents sought to cancel the said emancipation patent on the ground that they applied to retain the land covered by it.

Respondents first filed an Application for Retention[11] of their landholdings under P.D. No. 27 on December 24, 1975. However, it was not acted upon.

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[6] See Letter dated February 21, 1997 of Counsel for Petitioner to Ms. Lolita Cruz, Department Manager, LBP, Dolores, San Fernando, Pampanga, records, p. 142.

[7] Entitled *Decreeing The Emancipation of Tenants From The Bondage Of The Soil, Transferring To Them The Ownership of the Land They Till And Providing The Instruments And Mechanism Therefor,* promulgated on October 21, 1972 by then President Ferdinand E. Marcos.

[8] CA *rollo,* p. 47.

[9] *Id.* at 102.

[10] *Id*.

[11] *Id.* at 74.

In May 1996, respondents received a letter from Municipal Agrarian Reform Officer Victorino Guevarra informing respondents of a conference for the determination of the value of their landholdings and the final survey of the land preparatory to the issuance of emancipation patents.

Respondents alleged that on September 16, 1996, they received a Notice of Coverage on OCT No. 6009 under R.A. No. 6657, and on October 28, 1996, they received a final notification to landowner, which notices were all issued by Municipal Agrarian Reform Officer Victorino Guevarra.

In a letter[12] dated September 28, 1996, respondents, by counsel, reiterated their application for retention to the Department of Agrarian Reform (DAR) Regional Director, Region III, San Fernando Pampanga, thru the Municipal Agrarian Reform Office, San Fernando, Pampanga.

The DAR Regional Director referred respondents' application for retention to the Provincial Agrarian Reform Officer in San Fernando, Pampanga, which application was later endorsed to Municipal Agrarian Reform Officer Victorino Guevarra.[13]

After investigation and verification of the landholdings of respondents, Municipal Agrarian Reform Officer Victorino Guevarra, in a letter[14] dated March 21, 1997, recommended to the DAR Provincial Office, San Fernando, Pampanga that respondents' re-application for retention be denied.

On May 30, 1997, the Register of Deeds for the Province of Pampanga issued TCT No. 25866 to petitioner, pursuant to Emancipation Patent No. 00728063[15] covering Lot 21-F of the subdivision plan Psd-03-005059, situated in the Barrio of San Juan, Municipality of Sta. Ana, Province of Pampanga, with

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[12] Annex "J", records, p. 67.

[13] Respondents Memorandum, *rollo*, pp. 216-217.

[14] Annex "B", records, p. 93.

[15] Records, p. 102.

an area of 29,941 square meters, which is a portion of the land sought to be retained by respondents. This prompted respondents to file on February 4, 1998 with the DAR Provincial Agrarian Reform Adjudication Board, Region III, San Fernando, Pampanga a Complaint[16] for annulment of emancipation patent, ejectment and damages against petitioner Crispino Pangilinan, Municipal Land Officer Victorino D. Guevarra, and the DAR Secretary, represented by the Regional Director, Region III.

In their Complaint, respondents alleged that although Municipal Agrarian Reform Officer Victorino Guevarra knew that the land cultivated by petitioner is one of those included in their application for retention, Guevarra, acting in bad faith and without notice to them and in disregard of their rights and in collusion with petitioner, recommended for the coverage of their land under Operation Land Transfer. Thereafter, Emancipation Patent No. 00728063 and TCT No. 25866 were unlawfully issued and registered with the Register of Deeds of Pampanga on May 30, 1997.

Respondents prayed for the annulment of TCT No. 25866 bearing Emancipation Patent No. 00728063, the ejectment of petitioner from the landholding in question, and for payment of moral damages, attorney's fees and litigation expenses.

On October 12, 1998, the PARAD rendered a Decision[17] in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered against the plaintiffs by dismissing the case for lack of merit.[18]

The PARAD stated that 9.8683 hectares of the 25.2548 hectares of the landholding of respondents was subjected to Operation Land Transfer. He acknowledged that respondents applied for retention in 1975 under P.D. No. 27. However,

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[16] The Complaint was docketed as DARAB Case No. 5357 P'98.

[17] *Rollo*, pp. 78-86.

[18] *Id.* at 86.

respondents were already barred in their bid for the retention area when they filed their subsequent application for retention on November 6, 1996, since the last day for the landowner to apply for his right of retention under Administrative Order No. 1 of February 27, 1985 was on August 29, 1985.

Moreover, the PARAD explained that the area of retention policy under P.D. No. 27 is that a landowner can retain in naked ownership an area of not more than seven (7) hectares of rice/ corn lands if the said landowner does not own an aggregate area of more than seven (7) hectares of land used for residential, commercial, industrial and other urban purposes from which the landowner derives adequate income to support himself and his family. Otherwise, such landowner is compelled to give up his rice/corn land to his tenant-tiller, and payment to him shall be undertaken by the Land Bank of the Philippines (LBP) if not directly paid by such tenant-tiller.

In this case, the PARAD declared that respondents "retained" the sugarland with an area of 15.2864 hectares, and 4.8836 hectares thereof was divided into a subdivision lot, while the remaining balance was subdivided among respondents and their children. Hence, the PARAD held that the area of seven hectares that can be retained under P.D. No. 27 can no longer be awarded to respondents, since they already owned an aggregate area of more than seven hectares used for residential and other urban purposes from which they derive adequate income to support themselves and their family.

Moreover, the PARAD stated that petitioner has absolute ownership of the landholding as he has fully paid the amortizations to the LBP.

Respondents appealed the decision of the PARAD before the DARAB.[19]

On February 2, 2004, the DARAB rendered its Decision,[20] the dispositive portion of which reads:

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[19] Docketed as DARAB Case No. 8024.

[20] *Rollo*, pp. 87-93.

WHEREFORE, premises considered, judgment is hereby rendered, the decision of the Honorable Adjudicator *a quo*, 'dated October 12, 1998, is hereby AFFIRMED *IN TOTO*.[21]

In support of its decision, the DARAB cited Administrative Order No. 4, Series of 1991, which provides:

> *Subject*: **Supplemental Guidelines Governing the Exercise of Retention Rights by Landowners Under Presidential Decree No. 27**
>
> x x x x x x x x x
>
> B. Policy Statements
>
> 1. **Landowners covered by P.D. 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). <u>An owner of tenanted rice and corn lands may *not* retain these lands under the following cases</u>:**
>
> a. If he, as of 21 October 1972, owned more than 24 hectares of tenanted rice or corn lands; or
>
> b. **By virtue of LOI 474, if he, as of 21 October 1976, owned less than 24 hectares of tenanted rice or corn lands but additionally owned the following:**
>
> **- Other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or**
>
> **- Lands used for residential, commercial, industrial, or other urban purposes, from which he derives adequate income to support himself and his family**.[22]

In this case, the DARAB noted that respondents' total landholding is 25.2548 hectares. Of the total landholding, 9.8683 hectares was riceland, which was subjected to Operation Land

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[21] *Id.* at 92.

[22] Emphasis supplied.

Transfer, while 15.3864 hectares was sugarland, which was subdivided by respondents into a 4.8836 subdivision lot to support themselves and their family. Hence, respondents are no longer entitled to retain seven hectares of the land subject to Operation Land Transfer.

The DARAB also stated that as an emancipation patent has been issued to petitioner, he acquires the vested right of absolute ownership in the landholding.

Respondents' motion for reconsideration was denied by the DARAB in a Resolution[23] dated June 11, 2004.

Petitioner filed a petition for review of the decision of the DARAB before the Court of Appeals, alleging that the DARAB gravely erred in finding that (1) once an emancipation patent is issued to a qualified beneficiary, the latter acquires a vested right of absolute ownership in the landholding that is no longer open to doubt or controversy; and (2) respondents are no longer entitled to retention, applying LOI No. 474.

On May 30, 2005, the Court of Appeals rendered a Decision[24] in favor of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, petition for review is hereby **GIVEN DUE COURSE** and the assailed October 12, 1998 Decision of the Provincial Agrarian Reform Adjudication Board, Region III of San Fernando, Pampanga in DARAB Case No. 537-P'98, is hereby **REVERSED AND SET ASIDE.** TCT No. 25866 is hereby **DECLARED VOID** *ab initio*. The Register of Deeds is hereby **DIRECTED TO CANCEL TCT No. 25866** in the name of Crispino Pangilinan in order to fully accord to petitioners BALATBAT their rights of retention under Presidential Decree No. 27 and Section 6 of R.A. No. 6657, and **TO ISSUE A NEW TCT** in the name of petitioners in lieu of TCT No. 25866 in order to replace TCT No. 181466-R under the name of petitioners that the Register of Deeds of Pampanga cancelled. Since land is tenanted, within a period of one (1) year from finality of this decision, the respondent tenant Crispino Pangilinan shall have the

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

[24] *Rollo*, pp. 29-40.

option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features; in case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act; in case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner.[25]

The Court of Appeals stated that P.D. No. 27 allows a landowner to retain not more than seven (7) hectares of his land if his aggregate landholding does not exceed twenty-four (24) hectares.[26] In this case, respondents' total landholding is 25.2548 hectares, of which 9.8683 hectares was covered by land reform being riceland, while the balance of 15.3864 hectares was sugarland. Since respondents timely filed their application for retention of seven hectares way back in 1975 and the deadline was in 1985, the Court of Appeals held that respondents were qualified to retain at least seven hectares.

Moreover, the Court of Appeals stated that under Administrative Order No. 2, Series of 1994, an Emancipation Patent or Certificate of Land Ownership Award may be cancelled if the land covered is later found to be part of the landowner's retained area. The appellate court held that the transfer certificate of title issued on the basis of the certificate of land transfer could not operate to defeat the right of respondents to retain the five hectares they have chosen, which includes the said less than three (3) hectares (29,942 square meters) of riceland involved in this case.

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[27] dated December 2, 2005.

Petitioner filed this petition raising the following issues:

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[25] *Id.* at 39.

[26] *Id.* at 35, citing DAR Memorandum on the Interim Guidelines on Retention By Small Landowners, issued on July 10, 1975.

[27] *Rollo*, pp. 54-55.

I. THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DECIDED CA-G.R. [SP] NO. 85017 WITHOUT REQUIRING THAT PETITIONER HEREIN (AS PRIVATE RESPONDENT IN CA-G.R. [SP] NO. 85017) BE FURNISHED WITH A COPY OF THE PETITION, THUS DEPRIVING THE LATTER HIS RIGHT TO BE HEARD AND TO PRESENT EVIDENCE IN OPPOSITION THERETO.

II. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO RECOGNIZE THAT HEREIN PRIVATE RESPONDENTS FILED THE PETITION IN THE COURT OF APPEALS (CA-G.R [SP] NO. 85017) IN UTMOST BAD FAITH AND ARE GUILTY OF WILLFUL AND DELIBERATE FORUM SHOPPING AND PERJURY.

III. IF THE PETITION IN CA-G.R. SP NO. 85017 DURING THE PENDENCY OF THE APPLICATION FOR RETENTION OF PRIVATE RESPONDENTS IS NOT CONSIDERED FORUM SHOPPING, THE HONORABLE COURT OF APPEALS SHOULD HAVE, AT THE VERY LEAST, CONSIDERED THE FORMER AS *LITIS PENDENTIA* WHICH NECESSITATES THE DISMISSAL OF THE LATER SUIT.

IV. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT PRIVATE RESPONDENTS HAVE NO CAUSE OF ACTION FOR THE CANCELLATION OF THE SUBJECT EMANCIPATION PATENT.

V. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO REALIZE THAT IT WAS PREMATURE FOR IT TO DECLARE THAT PRIVATE RESPONDENTS ARE ENTITLED TO RETAIN THE SUBJECT LANDHOLDING.

VI. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT FINDING THAT THE PRIVATE RESPONDENTS FAILED TO EXHAUST THE AVAILABLE ADMINISTRATIVE REMEDIES PERTAINING TO THEIR APPLICATION FOR RETENTION BEFORE FILING THEIR COMPLAINT AT THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR OF PAMPANGA AND THE PETITION IN CA-G.R. [SP] NO. 85017.

VII. THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR OF PAMPANGA ERRED IN ADJUDICATING THE RIGHT OF RETENTION OF THE PRIVATE RESPONDENTS.

VIII. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT TOOK COGNIZANCE OF THE PETITION IN CA-G.R. [SP] NO. 85017 DESPITE THE FACT THAT IT HAD NO JURISDICTION TO ENTERTAIN THE SAME.

IX. THE DECISION OF THE HONORABLE COURT OF APPEALS IN CA-G.R. [SP] NO. 85017 CANNOT BE ENFORCED AGAINST THE REGISTRY OF DEEDS OF PAMPANGA CONSIDERING THAT IT WAS NOT IMPLEADED IN THE CASE FILED BEFORE THE PARAD OF PAMPANGA NOR IN CA-G.R. [SP] NO. 85017.[28]

Petitioner contends that he was deprived of the right to be heard and denied due process of law because he was not personally furnished a copy of the petition in CA-G.R. SP No. 85017, which copy was furnished to Mr. Fernando Dizon, his legal counsel before the PARAD and the DARAB. According to petitioner, the legal services rendered to him by Mr. Fernando Dizon in DARAB Case No. 5357- P'98 was merely an accommodation to him in Mr. Dizon's capacity as Legal Officer for the Legal Services Division of the DAR. Petitioner asserts that after the case was decided and resolved by the DARAB, the legal assistance extended to him by Mr. Fernando Dizon ended, simply because Mr. Fernando Dizon is not a full-fledged lawyer**,** which the respondents knew very well. Thus, the Decision of the Court of Appeals, dated May 30, 2005, cannot be enforced against him.

Petitioner's contention lacks merit.

Petitioner was not denied due process or the right to be heard as he was furnished with a copy of the petition through his counsel of record, Mr. Fernando Dizon, who was his legal counsel before the PARAD and the DARAB. The Court notes that the applicable DARAB New Rules of Procedure (1994)[29] allows a non-lawyer to appear before the Board or any of its adjudicators if he is a DAR Legal Officer. As Mr. Dizon was his counsel of record before the PARAD and the DARAB, it may be

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

[29] DARAB New Rules of Procedure (1994), Rule VII, Sec. 1.

presumed that petitioner and Mr. Dizon communicated with each other as Mr. Dizon even filed a Comment to the Petition for Review filed by respondents before the Court of Appeals. The filing of the said Comment would show that petitioner was informed by Mr. Dizon that respondents filed a Petition for Review of the Decision of the DARAB with the Court of Appeals. Hence, it is the responsibility of petitioner to engage the services of a lawyer to file a Comment in his behalf and to inform the court of any change of counsel.

Section 2, Rule 13 (Filing and Service of Pleadings, Judgments and Other Papers) of the Rules of Court provides:

> Sec. 2. *Filing and service, defined*. – Filing is the act of presenting the pleading or other paper to the clerk of court.
>
> Service is the act of providing a party with a copy of the pleading or paper concerned. **If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.** Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Emphasis supplied.)

As petitioner had a counsel of record, service was properly made upon the said counsel, absent any notification by petitioner to the court of circumstances requiring service upon petitioner himself.

The essence of due process is simply an opportunity to be heard. Such process requires notice and an opportunity to be heard before judgment is rendered.[30] *Rizal Commercial Bank Corporation v. Commissioner of Internal Revenue*,[31] held:

> There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal," but due process as a constitutional precept does not always, and in

[30] *Calma v. Court of Appeals*, G.R. No. 122787, February 9, 1999, 302 SCRA 682, 689.

[31] G.R. No. 168498, June 16, 2006, 491 SCRA 213.

all situations, require a trial-type proceeding. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[32]

In this case, petitioner was not denied due process as he was able to file a comment before the Court of Appeals through his counsel of record, DAR Legal Officer Dizon. Moreover, records show that petitioner, with the assistance of two lawyers, Atty. Paul S. Maglalang and Atty. Jord Achaes R. David, filed a motion for reconsideration of the decision of the Court of Appeals dated May 30, 2005, which motion was denied for lack of merit by the Court of Appeals in its Resolution dated December 2, 2005.

Next, petitioner contends that respondents were guilty of forum shopping when they filed on February 4, 1998 the complaint for annulment of emancipation patent, ejectment and damages, since they failed to divulge to the PARAD, DARAB and the Court of Appeals that they had filed an application for retention dated September 28, 1996[33] with the DAR Regional Director, and that the DAR Regional Director denied their application for retention in an Order[34] dated March 12, 1998, and respondents moved for the reconsideration of the said Order of denial; hence, their application for retention was still pending.

Petitioner's contention is unmeritorious.

Chavez v. Court of Appeals[35] held:

x x x By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, trusting that one

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[32] *Id.* at 218, citing *Batongbakal v. Zafra*, G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.

[33] Respondents' Memorandum, *rollo*, p. 215.

[34] *Rollo*, pp. 66-68.

[35] G.R. No. 174356, January 20, 2010, 610 SCRA 399.

or the other tribunal would favorably dispose of the matter. **The elements of forum shopping are the same as in *litis pendentia* where the final judgment in one case will amount to *res judicata* in the other.** The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[36]

There is no forum shopping in this case as the parties involved and the reliefs prayed for are different.

In the letter dated September 28, 1996 addressed to the DAR Regional Director, Region III, respondents reiterated their application for retention of their riceland under R.A. No. 6657. On March 12, 1998, respondents' application for retention was denied by the DAR Regional Director, Region III in Agrarian Reform Case No. LSD 0051 '98.[37] Hence, the party involved in the agrarian reform case is only the respondents, who applied for retention of their landholdings under R.A. No. 6657 before the DAR. The relief sought was the exercise of respondents' right of retention granted to them as landowners under R.A. No. 6657.

On the other hand, the Complaint filed by respondents against petitioner before the PARAD was for annulment of emancipation patent, ejectment and damages.[38] The parties involved were respondents, petitioner, the Municipal Agrarian Reform Officer Victorino D. Guevarra, the DAR Secretary represented by the Regional Director, Region III. The reliefs prayed for was the annulment of the emancipation patent granted to petitioner and the ejectment of petitioner, on the ground that respondents' application for retention of their agricultural landholdings, which

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[36] *Chavez v. Court of Appeals, supra*, at 403. (Emphasis and underscoring supplied.)

[37] *Rollo*, p. 66.

[38] Records, p. 5.

included the land granted to petitioner in the emancipation patent and the subsequent transfer certificate of title issued pursuant to the emancipation patent, was still unacted upon.

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, for the purpose of obtaining a favorable judgment.[39] In this case, the letter of application for retention of land addressed to the DAR is not a suit against petitioner. Moreover, respondents filed the complaint for annulment of emancipation patent *after* petitioner was awarded Emancipation Patent No. 00728063 and issued TCT No. 25866, despite the fact that the DAR had not yet ruled on their application for retention of their landholdings, including Lot 21-F, which is the parcel of land covered by Emancipation Patent No. 00728063 granted to petitioner. Hence, it is not shown that herein respondents, as plaintiffs, filed two suits against the same defendants, and that the complaint for annulment of emancipation patent was filed to obtain a favorable judgment on the application for retention, but to protest the issuance of the emancipation patent to petitioner, as respondents' application for retention had not yet been acted upon.

Moreover, petitioner contends that if the petition in CA-G.R. SP No. 85017 during the pendency of the application for retention of private respondents is not considered forum shopping, the Court of Appeals should have at least considered the former as *litis pendentia*, which necessitates the dismissal of the later suit.

Petitioner's contention is without merit.

Dotmatrix Trading v. Legaspi[40] explained the meaning and elements of *litis pendentia*, thus:

Litis pendentia is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter*

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[39] *GD Express Worldwide N.V. v. Court of Appeals*, G.R. No. 136978, May 8, 2009, 587 SCRA 333, 346.

[40] G.R. No. 155622, October 26, 2009, 604 SCRA 431.

action pendant. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.

To constitute *litis pendentia*, not only must the parties in the two actions be the same; there must as well be substantial identity in the causes of action and in the reliefs sought. Further, the identity should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.[41]

As the elements of forum shopping, which have been discussed earlier, are the same as the elements of *litis pendentia*, and the said elements are not found to be present in this case, *litis pendentia* cannot be a ground for the dismissal of the complaint for annulment of emancipation patent.

Contrary to petitioner's contention, the Register of Deeds for the Province of Pampanga was correctly not impleaded in the complaint for annulment of emancipation patent before the DARAB as it is neither a party in interest who stands to be benefited or injured by the judgment in the suit nor a necessary party whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them.[42]

Further, petitioner contends that the PARAD and the DARAB had no jurisdiction over the complaint of respondents as it is the DAR Secretary who has jurisdiction over the right of retention. Petitioner avers that on November 6, 1996, the applicable procedure in applications for retention under P.D. No. 27 is Administrative Order No. 4 series of 1991, while applications under CARP are governed by Administrative Order No. 11, series of 1990. In both the aforesaid administrative orders, it is the DAR Regional Director who has the original jurisdiction

[41] *Dotmatrix Trading v. Legaspi, supra,* at 436.

[42] *Quiombing v. Court of Appeals*, G.R. No. 93010, August 30, 1990, 189 SCRA 325, 330.

to approve or deny applications for retention. In both instances, the decision or order of the DAR Regional Director is appealable to the DAR Secretary.

Respondents counter that the PARAD and the DARAB had jurisdiction over the case, since it is for the annulment of an emancipation patent registered with the Register of Deeds, which falls under Section 1, Rule II of the DARAB New Rules of Procedure.

On the issue of jurisdiction, the Court is guided by *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*,[43] which held:

> It is axiomatic that **the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs**. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action. The failure of the parties to challenge the jurisdiction of the DARAB does not prevent the court from addressing the issue, especially where the DARAB's lack of jurisdiction is apparent on the face of the complaint or petition.
>
> Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss. Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. **If the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB**. The proceedings before a court or tribunal without

[43] G.R. No. 162980, November 22, 2005, 475 SCRA 743.

jurisdiction, including its decision, are null and void, hence, susceptible to direct and collateral attacks.[44]

In this case, respondents alleged in their Complaint:

x x x xxx x x x

2. That plaintiffs are the absolute and registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. 181466-R of the Registry of Deeds of Pampanga, x x x which parcel of land is situated at San Juan, Sta. Ana, Pampanga, with an area of twenty-nine thousand nine hundred forty-one (29,941) square meters, more or less;

3. That sometime in the year 1975, plaintiffs filed an application for retention which was not acted upon but the application for retention was for the plaintiffs to retain a portion of their landholdings under P.D. No. 27;

4. That the application for retention refers to the land cultivated by the private defendant, Crispino Pangilinan, as one of those lands applied for;

5. That the application for retention was reiterated in a letter of the plaintiffs' counsel dated November 6, 1996 to the Officer-in-Charge, Provincial Agrarian Reform Office (PARO), San Fernando, Pampanga, of the public defendant which was known to private defendant, Victorino D. Guevarra, being then the Municipal Agrarian Reform Officer of the Department of Agrarian Reform in the Municipality of Sta. Ana, Pampanga;

6. That despite private defendant Victorino Guevarra's knowledge of the fact that the land is one of those applied for retention, he acted in bad faith and without notice to the plaintiffs and in wanton disregard of the rights of the plaintiffs and in collusion with the private defendant, Crispino Pangilinan, recommended for the coverage of the latter's land under Operation Land Transfer and through the defendants' collective efforts, private defendants requested for the issuance of Transfer Certificate of Title (TCT) No. 25866 with Emancipation Patent (E.P.) No. 00728063 which was unlawfully issued and registered with the Register of Deeds of Pampanga on May 30, 1997;

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[44] *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz, supra,* at 755-757. (Emphasis supplied.)

xxx xxx xxx

WHEREFORE, it is most respectfully prayed of the Honorable Board, that after hearing, judgment be rendered, to wit:

1. Ordering the annulment of Transfer Certificate of Title No. 25866 bearing Emancipation Patent No. 00728063 and declaring it to have no force and effect;

2. Ordering the ejectment of the private defendant, Crispino Pangilinan, from the landholding in question;

3. Ordering the defendants to pay plaintiffs the amount of One Hundred Thousand Pesos (₱100,000.00) by way of moral damages, Twenty Thousand Pesos (₱20,000.00), plus appearance fee of Eight Hundred Pesos (₱800.00) by way of attorney's fees and litigation expenses in the amount of Five Thousand Pesos (₱5,000.00); and

4. Other reliefs are likewise prayed.[45]

The Court holds that the Complaint is within the jurisdiction of the PARAD and the DARAB, as it seeks the annulment of petitioner's emancipation patent which has been registered with the Register of Deeds for the Province of Pampanga. The jurisdiction of the DARAB under Section 1,[46] Rule II, of the

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[45] Records, p. 5.

[46] SECTION 1. *Primary And Exclusive Original and Appellate Jurisdiction.* — The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate **all agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include, but not be limited to, cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

applicable DAR New Rules of Procedure (1994) includes "[t]hose involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority." Section 2 of the said DARAB New Rules of Procedure grant the PARAD "concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction."

The resolution of the issue on whether petitioner's emancipation patent should be cancelled hinged on the right of retention of respondents; hence, the PARAD and the DARAB determined respondents' right of retention. The applicable DARAB New Rules of Procedure (1994) did not contain a contrary proviso in Section 1 or Section 1 (f) thereof.

The Court notes that even before the Provincial Adjudicator rendered his decision dated October 12, 1998 on the complaint for annulment of petitioner's emancipation patent, the DAR Regional Director of Pampanga had already issued an Order[47] dated March 12, 1998, denying the application for retention of respondents. The DAR Regional Director held, thus:

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c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

d) Those cases arising from or connected with membership or representation in compact farms, farmers' cooperative and other registered farmers' associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) Those involving the sale, alienation, mortgage, foreclosure, preemption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Awards (CLOAS) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x (Emphasis supplied.)

[47] *Rollo*, pp. 66-68.

x x x [T]he applicant seeks before this Office the grant of five (5) hectares of her landholding as retention rights under the law and, further, requested that said retention area is from her landholding covered and embraced by Title Nos. TCT-181461, 181463, 181464, 181465, 181466, 181467 and 181468.

Records of the case disclosed that the Municipal Agrarian Reform Office (MARO) concerned recommended for the denial of the subject application which also the Provincial Agrarian Reform Office concurred with the findings of the MARO, hence, likewise strongly recommended the disapproval of this instant case.

This Office, after painstaking scrutiny of records as well as the foregoing recommendation of the MARO and PARO, is inclined to agree with said findings. This is so because records will bear us out that the 8.6402 hectares is not only the landholding of the herein applicant as the latter owns other properties as evidenced by the Certification of the Deputy Clerk of Court, Court of First Instance of Pampanga, executed on December 24, 1975.

Further, per investigation conducted by this Office, the applicant once applied for retention under PD No. 27, under the incumbency of the then Team Leader Florencio Siman of which the former declared to have a total of 9.8683 hectares, more or less, of tenanted rice and corn lands situated at San Juan and Santiago, all at the Municipality of Sta. Ana, Province of Pampanga. Said application was received by DAR Sta. Ana Office on December 24, 1975, but however, it appears that it was not acted [upon] nor forwarded [to] this Office for action.

It appears also from the records of this case that it is only now [that] the applicant is re-applying for retention as per letter of her counsel, Atty. Proceso M. Nacino, dated November 6, 1996. This time, the MARO had already processed and forwarded to the PARO the claimfolders of applicant tenant-farmers, whereby, the Emancipation Patent Titles of the applicant farmer-beneficiaries, namely: Maximo Lagman, Crispino Pangilinan and Cecilio Yumul were already generated, issued and distributed to them as evidenced by the certification issued by the Land Bank of the Philippines (LBP).

Additionally, with respect to the portion of the landholding of the applicant which was utilized as subdivision/condominium project named Carolina Village II, Administrative Order No. 4, Series of 1991, giving close attention to Policy Statements I-B, which provides that:

"1. Landowners covered by PD 27 are entitled to retain seven hectares[,] except those [whose] entire [tenanted] rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). An owner of tenanted rice and corn lands may not retain these lands under the following cases:

xxx xxx xxx

b. [B]y virtue of LOI 474, if he as of 21 October 1976 owned less than 24 hectares of tenanted rice and corn lands but additionally owned the following:

- Other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and [regardless of the income derived therefrom]; or
- Lands used for residential, commercial, industrial, or other urban purposes[,] from which he derives adequate income to support himself and his family."

Given this situation, it is in this provision of law that this Office strongly deny the application for retention of the herein applicant in favor of the farmer-beneficiaries concerned who had already been issued their Emancipation Patents (EP).

WHEREFORE, in the light of the foregoing analysis and for the reason indicated therein, an ORDER is hereby issued DENYING the application for retention of Jocelyn Balatbat for utter lack of merit.

SO ORDERED.[48]

The legal basis of the decision of the DARAB in determining whether respondents were qualified to retain their riceland, in order to resolve the main issue on whether there was a ground for the cancellation of petitioner's emancipation patent, is the same as the legal basis of the DAR Regional Director in denying respondents' application for retention.

[48] *Id.* at 67-68.

Moreover, the decision of the DARAB is appealable to the Court of Appeals, pursuant to Section 54[49] of R.A. No. 6657; Section 1,[50] Rule XIV of the DAR New Rules of Procedure (1994); and Section 1,[51] Rule 43 of the Revised Rules of Court, as amended by Administrative Circular No. 20-95.

The main issue in this case is whether or not the Court of Appeals erred in reversing and setting aside the decision of the DARAB, dated February 2, 2004, and its Resolution dated June 11, 2004; in declaring TCT No. 25866 issued in favor of petitioner as void *ab initio*; and in ordering the Register of

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[49] Section 54. *Certiorari*. — Any decision, order, award or ruling of the DAR on the agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from receipt of a copy thereof.

[50] Section 1. *Certiorari to the Court of Appeals*. – Any decision, order, resolution, award or ruling of the Board on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari.* Notwithstanding an appeal to the Court of Appeals, the decision of the Board appealed from shall be immediately executory pursuant to Section 50, Republic Act No. 6657.

[51] Section 1. *Scope*. – **This Rule shall apply to appeals from judgments or final orders of the** Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, **Department of Agrarian Reform under Republic Act No. 6657**, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied.)

Deeds to cancel TCT No. 25866 and to issue a new TCT in the name of respondents to replace TCT No. 181466-R under respondents' name, which the Register of Deeds of Pampanga canceled.

The Court holds that the Court of Appeals erred in reversing and setting aside the decision of the DARAB, dated February 2, 2004, and its Resolution dated June 11, 2004, which affirmed the Decision of the PARAD, dated October 12, 1998.

The Court of Appeals reversed the decision of the DARAB on the ground that the right of retention by the landowner is a constitutionally guaranteed right and respondents timely filed their application for retention of seven hectares in 1975, ahead of the deadline set on August 29, 1985; hence, respondents were qualified to retain at least seven hectares, although they sought to retain only 5 hectares. However, the Court of Appeals failed to look into the legal basis cited by the DARAB that disqualified landowners from exercising their right of retention, particularly Administrative Order No. 4, series of 1991, and also LOI No. 474, which are applicable to this case and would have made a difference in the judgment of the Court of Appeals if it had considered the said laws in its decision.

The laws pertinent to this case are P.D. No. 27, LOI No. 474 and Administrative Order No. 4, series of 1991.

On October 21, 1972, then President Ferdinand E. Marcos issued P.D. No. 27, entitled *Decreeing The Emancipation Of Tenants From The Bondage Of The Soil, Transferring To Them The Ownership Of The Land They Till And Providing The Instruments And Mechanisms Therefor.* P.D. No. 27 states:

> This shall apply to tenant farmers of private agricultural lands primarily devoted to rice and corn under a system of sharecrop or lease-tenancy, whether classified as landed estate or not;
>
> The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;

On October 21, 1976, then President Marcos, issued LOI No. 474, which reads:

To: The Secretary of Agrarian Reform.

WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families. x x x (Emphasis supplied.)

In June 1988, R.A. No. 6657, otherwise known as *The Comprehensive Agrarian Reform Law of 1988*, took effect under the administration of then President Corazon C. Aquino.

Section 6 of R.A No. 6657 provides for the right of retention of landowners, thus:

SEC. 6. *Retention Limits.* - Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder. x x x

On April 26, 1991, the DAR Secretary issued Administrative Order No. 4, series of 1991 on the Supplemental Guidelines Governing the Exercise of Retention Rights by Landowners Under Presidential Decree No. 27. The pertinent provisions thereof are as follows:

xxx xxx xxx

B. *Policy Statements*

1. Landowners covered by P.D. 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). An owner of tenanted rice and corn lands may not retain these lands under the following cases:

    a. If he, as of 21 October 1972, owned more than 24 hectares of tenanted rice and corn lands; or by virtue of LOI 474, if he, as of 21 October 1976, owned less than 24 hectares of tenanted rice or corn lands, but additionally owned the following:

        - Other agricultural lands of more than seven hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

        - Lands used for residential, commercial, industrial, or other urban purposes, from which he derives adequate income to support himself and his family.

In *Heirs of Aurelio Reyes v. Garilao*,[52] the Court held that LOI No. 474 provides for a restrictive condition on the exercise of the right of retention, specifically disqualifying landowners who "own other agricultural lands of more than seven hectares in aggregate areas, or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families."[53] The Court noted that the restrictive condition in LOI No. 474 is essentially the same one contained in Administrative Order No. 4, series of 1991.[54]

Heirs of Aurelio Reyes[55] ruled that there is no conflict between R.A. No. 6675 and LOI No. 474, as both can be given a reasonable construction so as to give them effect.[56] The suppletory application of laws is sanctioned under Section 75[57] of RA No. 6675. *Heirs of Aurelio Reyes*,[58] thus, held:

> Withal, this Court concludes that while RA No. 6675 is the law of general application, LOI No. 474 may still be applied to the latter. Hence, landowners under RA No. 6675 are entitled to retain five hectares of their landholding; however, if they too own other "lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families," they are disqualified from exercising their right of retention.[59]

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[52] G.R. No. 136466, November 25, 2009, 605 SCRA 294.

[53] *Id.* at 307.

[54] *Id*.

[55] *Supra* note 52.

[56] *Id.* at 312.

[57] SEC. 75. *Suppletory Application of Existing Legislation*. - The provisions of Republic Act Number 3844, as amended, Presidential Decree Numbers 27 and 266, as amended, Executive Order Numbers 228 and 229, both series of 1987, and other laws not inconsistent with this Act, shall have suppletory effect.

[58] *Supra* note 52.

[59] *Supra* note 52, at 313.

In this case, the DARAB and the Court of Appeals agreed that respondents' total landholding is 25.2548 hectares, and that 9.8683 hectares thereof was riceland, which was subjected to Operation Land Transfer, while 15.3864 hectares was sugarland. In addition, the PARAD and the DARAB found that the 15.3864 hectares of sugarland was subdivided by respondents into a 4.8836 subdivision lot to support themselves and their family; hence, under LOI No. 474 and Administrative Order No. 4, series of 1991, the PARAD and the DARAB held that respondents are no longer entitled to retain seven hectares of the land subject to Operation Land Transfer. The decisions of the PARAD and the DARAB are supported by the Court's ruling in *Heirs of Aurelio Reyes v. Garilao*[60] cited above. As the PARAD and the DARAB found that respondents are disqualified to retain the parcel of land, which is the subject matter of this case, there was no ground to cancel the emancipation patent of petitioner; hence, the DARAB affirmed the decision of the PARAD dismissing respondents' complaint for lack of merit.

The Court notes that the Decision dated October 12, 1998 of the PARAD and the Decision dated February 2, 2004 of the DARAB, affirming the decision of the PARAD dismissing for lack of merit the complaint for annulment of petitioner's patent, was based on the same DAR Administrative Order (Administrative Order No. 4, series of 1991) applied by the DAR Regional Director in denying the application for retention of respondents. The respective decisions of the PARAD and the DARAB that there was no ground for the cancellation of petitioner's emancipation patent hinged on the finding that respondents were disqualified to retain their riceland, and the legal basis of the said disqualification is consistent with the legal basis of the Regional Director's Order dated March 12, 1998, denying respondents' application for retention.

Administrative Order No. 11, series of 1990, which contains the Rules and Procedures Governing the Exercise of Retention

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[60] *Supra* note 52.

Rights by Landowners and Award to Children Under Section 6 of RA 6657, states that "[t]he decision of the Regional Director approving or disapproving the application of the landowner for the retention and award shall become final after fifteen (15) days upon receipt of the decision, unless an appeal is made to the DAR Secretary." Moreover, Administrative Order No. 4, series of 1991, which contains the Supplemental Guidelines Governing the Exercise of Retention Rights by Landowners Under Presidential Decree No. 27 states that "[t]he Order of the Regional Director approving or denying the application for retention shall become final fifteen (15) days from receipt of the same unless an appeal is made to the DAR Secretary." Hence, it is the DAR Secretary who finally approves or denies the application for retention.

In this case, the Order dated March 12, 1998 of the Regional Director, denying respondents' application for retention, appears to be pending before the DAR Secretary, and respondents failed to present any evidence that the said Order had been reversed to warrant the cancellation of petitioner's emancipation patent.

WHEREFORE, the Court of Appeals' Decision dated May 30, 2005 in CA-G.R. SP No. 85017, and its Resolution dated December 2, 2005 are **REVERSED** and **SET ASIDE**, and the Decision of the DARAB dated February 2, 2004 in DARAB Case No. 8024 and its Resolution dated June 11, 2004 are hereby **REINSTATED**.

No costs.

SO ORDERED.

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

[*] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

SECOND DIVISION

[G.R. No. 174376. September 12, 2012]

ZOSIMA INCORPORATED, *petitioner, vs.* **LILIA SALIMBAGAT and all persons claiming rights under her,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; CONCEPT.—** The present petition is an action for unlawful detainer governed by Section 1, Rule 70 of the Rules of Court. As the principal issue in an unlawful detainer case is the right to possess a real property, the subject matter must refer to a particular property. In an unlawful detainer, the defendant's possession of the plaintiff's property is based on the plaintiff's permission expressed through an express or implied contract between them. The defendant's possession becomes illegal only when the plaintiff demands the return of the property, either because of the expiration of the right to possess it or the termination of their contract, and the defendant refuses to heed the demand.

2. **ID.; ID.; ID.; THE PLAINTIFF BEARS THE BURDEN OF PROVING THAT RESPONDENT HAD BEEN IN POSSESSION DURING THE RELEVANT TIME AND THAT HE POSSESSED THE PROPERTY AFTER HIS RIGHT HAD EXPIRED.—** In the present case, Zosima, as plaintiff, bears the burden of proving that Salimbagat has been in actual possession of the property between April 2000 and June 2003 when a demand to vacate was made. Zosima cannot reason out that Salimbagat was likewise not able to prove that she had not been in possession of the property as the burden of adducing proof arises only after Zosima, as plaintiff, had proven that Salimbagat had been in possession during the relevant time. Additionally, the party carrying the burden of proof must rely on the strength of his own evidence and not upon the weakness of the defendant's. For us to justify a judgment in Zosima's favor, it must in the first place establish through preponderance of evidence the case it alleged – that Salimbagat possessed its property after Salimbagat's right of possession had lapsed or expired.

3. ID.; ID.; ID.; WHERE THE PRINCIPLE OF IMPLIED NEW LEASE IS NOT APPLICABLE, THE NEW LEASE SHOULD HAVE BEEN ONLY ON A MONTHLY BASIS.— Zosima's contention – that although the lease contract had already expired, the principle of implied new lease or *tacita reconduccion* existed by operation of law between the periods of April 2000 and June 2003 – is not correct. An implied new lease will set in if it is shown that: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor. This acquiescence may be inferred from the failure of the lessor to serve notice to vacate upon the lessee. x x x Thus, after the expiration of the contract of lease, the implied new lease should have only been in a monthly basis. In this regard, we find it significant that it was only on June 20, 2003, or three (3) years after the last payment of the monthly rentals, that Zosima filed the complaint for unlawful detainer against Salimbagat. It does not help that Zosima failed to adduce any additional evidence to rebut the allegation that by April 2000, no office building stood to be leased because it had been demolished to pave way for the construction of the LRT Line II Project.

APPEARANCES OF COUNSEL

Balili and Velasco for petitioner.
Romualdo A. Din, Jr. for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari*,[1] filed by Zosima Incorporated (*Zosima*) under Rule 45 of the Rules of Court, assailing the decision[2] dated June 26, 2006 of the Court

[1] *Rollo*, pp. 10-24.

[2] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Enrico A. Lanzanas; *id*. at 25-35.

of Appeals (*CA*) in CA-G.R. SP No. 92475. The CA reversed and set aside the decision[3] dated October 5, 2005 of the Regional Trial Court (*RTC*), Branch 20, Manila. The RTC affirmed the decision[4] dated May 4, 2005 of the Metropolitan Trial Court (*MeTC*), Branch 6, Manila, and ordered Lilia Salimbagat to vacate the premises and to pay Zosima rental arrearages, attorney's fees and costs of suit.

The Antecedent Facts

Zosima, a domestic corporation, has been the registered owner of an office building situated at 2414 Legarda Street, Sampaloc, Manila. Sometime in April 1993, Zozima entered into a contract with Salimbagat for lease of the office building. The lease was on a yearly basis with the initial monthly rate of ₱8,000.00 that is subject to an annual increase. In 1999, the monthly rental fee reached ₱14,621.00. In March 2000, no monthly fee was paid becuase the contract of lease was alledly not renewed.

On June 20, 2003, Zosima, through counsel, sent a formal letter of demand to Salimbagat, requiring her to pay her arrears within fifteen (15) days from receipt of the demand letter and to vacate the property. Despite the receipt of the demand letter, Salimbagat refused to vacate the property and to pay her alleged rental obligations.

On November 5, 2003, Zosima filed a case for unlawful detainer against Salimbagat. Zosima alleged that from April 2000 to October 2003, Salimbagat had accumulated arrears in her rental payments amounting to ₱628,703.00.

On March 26, 2004, Salimbagat filed her answer alleging that she was not occupying the property of Zosima. Salimbagat alleged that although she was occupying a property using the same address denominated as "2414 Legarda Street, Sampaloc, Manila," it was not the same office building that Zosima owned,

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[3] Penned by Judge Marivic Balisi-Umali; *id*. at 38-43.

[4] Penned by Judge Ma. Theresa Dolores C. Gomez-Estoesta; *id*. at 44-49.

but a warehouse on a dried *estero* located at the back of the office building. Salimbagat argued that the office building which belonged to Zosima was demolished to pave the way for the construction of the Light Rail Transit (*LRT*) Line II Project. She further alleged that she bought the warehouse for ₱300,000.00 as evidenced by a Deed of Conditional Sale, and she had declared the property for taxation purposes.

On July 6, 2004, after the submission of the parties' position papers, the MeTC set the case for clarificatory hearing. It sought to resolve the following factual issues:

1. Whether the office building subject of the expired contract of lease is still existing *vis-à-vis* Salimbagat's claim that it had already been demolished;
2. Presuming it still exists, whether Salimbagat is presently occupying the office building; and,
3. Whether the warehouse/factory erected on a dried *estero* that Salimbagat now claims to occupy is part and parcel of the land registered in the name of Zosima under Transfer Certificate of Title No. 262637.

Zosima filed a motion to reset the clarificatory hearing, prompting Salimbagat's counsel to submit the case for decision solely on the basis of the position papers that the parties had submitted.

On May 4, 2005, the MeTC rendered a decision whose dispositive portion reads:

WHEREFORE, judgment is hereby rendered ordering defendant Lilia Salimbagat and all other persons claiming rights under her:

1) To vacate the office building subject of the expired Contract of Lease located at No. 2414 Legarda Street, Sampaloc, Manila covered by Transfer Certificate of Title No. 262637 and peacefully surrender possession thereof to the plaintiff;
2) To pay plaintiff rental arrearages in the amount of ₱14,621.00 per month counted from April 2000 until the time the office building was fully vacated by said defendant;

3) To pay attorney's fees fixed in the reasonable amount of ₱7,000.00; and

4) To pay the costs of suit.[5]

Salimbagat appealed the MeTC decision to the RTC. In its decision dated October 5, 2005, the RTC fully affirmed the MeTC decision.

Salimbagat elevated the case to the CA which reversed the RTC's decision on June 26, 2006, and dismissed the case for unlawful detainer.

The CA did not dispute the findings of both lower courts on the existence of a contractual relationship between the parties, nor that the lease had been annually renewed from April 1993 to March 1997. The CA also agreed that upon the termination of the lease contract in March 1997, an implied new lease or *tacita reconduccion* was created by operation of law between the parties,[6] and that from March 1997 to March 2000, Salimbagat continued to pay Zosima the monthly rentals. Notwithstanding this finding, the CA was not convinced that Salimbagat had unlawfully possessed the property from April 2000 to June 2003. According to the CA, the records do not support this conclusion and Zosima failed to introduce any evidence to prove its allegations.[7]

Zosima moved for reconsideration of the CA decision but the CA denied the motion in a resolution[8] dated August 25, 2006.

The Petition

Zosima now questions the CA's ruling before us. Zosima posits that the CA erred in ruling on factual matters that were not part of the proceedings in the lower courts. Zosima also insists that the

[5] *Id.* at 28.

[6] *Id.* at 30.

[7] *Id.* at 33.

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

subject matter of the unlawful detainer complaint is the office building owned by Zosima, not the warehouse on the dried *estero.*

For her part, Salimbagat argues that the appellate court may review factual matters on appeal, to determine whether these factual findings are just and equitable in accordance with the aim of justice. Salimbagat further argues that Zosima has no cause of action to file the complaint for unlawful detainer, since the office building she had lease had already been demolished and she presently occupies a warehouse that does not belong to Zosima.

The Court's Ruling

We deny the petition for lack of merit.

The complaint for unlawful detainer

The present petition is an action for unlawful detainer governed by Section 1, Rule 70 of the Rules of Court.[9] As the principal issue in an unlawful detainer case is the right to possess a real property, the subject matter must refer to a particular property. In an unlawful detainer, the defendant's possession of the plaintiff's property is based on the plaintiff's permission expressed through an express or implied contract between them. The defendant's possession becomes illegal only when the plaintiff demands the return of the property, either because of the

[9] Section 1. *Who may institute proceedings, and when.* — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of posses-sion, or any person or persons claiming under them, for the restitu-tion of such possession, together with damages and costs.

expiration of the right to possess it or the termination of their contract, and the defendant refuses to heed the demand.[10]

Zosima's complaint for unlawful detainer referred to the office building located at "2414 Legarda Street, Sampaloc, Manila;" hence, we confine our ruling to the question of whether Salimbagat should be held liable for unlawfully occupying the office building that was the subject of their lease agreement.

It is not disputed that Salimbagat had been in possession of the leased property from April 1993 to March 1997 and had been diligently paying the monthly rentals. There is also no issue that at the time the lease contract expired in March 1997, no new contract of lease was executed between the parties for the period of March 1997 to March 2000. Salimbagat, however, continued to pay Zosima the monthly rentals during that period. Beginning April 2000, Salimbagat stopped the payment of monthly rentals, alleging that she was no longer in possession of the property. Despite this claim, Salimbagat still used the address of the property, alleging this time that she was occupying not the office building itself that she used to lease, but the warehouse on the dried *estero* behind the office building.

The evidence on record does not contain any information supporting the allegation that Salimbagat has been in actual possession of Zosima's property from April 2000, but neither does it confirm Zosima's allegation that Salimbagat then occupied the office building. This was precisely the reason why the MeTC set the case for a clarificatory hearing. Unfortunately, the hearing was cancelled due to Zosima's failure to appear, and the case was submitted for decision solely on the basis of the parties' position papers. The CA decision in fact noted that:

> These issues were not at all resolved due to the unavailability of the respondent's counsel despite due notice. **These matters are essential to establish its case by preponderance of evidence** for the

[10] *Sarmiento v. CA*, 320 Phil. 146, 153 (1995); and *Espiritu v. Court of Appeals*, 368 Phil. 669, 674-675 (1999).

burden of proof is on the respondent as plaintiff in the original action for the ejectment case. It leads [us] to conclude, therefore, that the respondent, as plaintiff in the unlawful detainer case, failed to prove its case by preponderance of evidence since the burden of proof rests on its side.[11] (emphasis and underscoring ours)

In civil cases, the rule is that the party carrying the burden of proof must establish his case by a preponderance of evidence,[12] *i.e.*, by evidence that is of greater weight, or more convincing, than that which is offered in opposition to it.[13]

In the present case, Zosima, as plaintiff, bears the burden of proving that Salimbagat has been in actual possession of the property between April 2000 and June 2003 when a demand to vacate was made. Zosima cannot reason out that Salimbagat was likewise not able to prove that she had not been in possession of the property as the burden of adducing proof arises only after Zosima, as plaintiff, had proven that Salimbagat had been in possession during the relevant time. Additionally, the party carrying the burden of proof must rely on the strength of his own evidence and not upon the weakness of the defendant's.[14] For us to justify a judgment in Zosima's favor, it must in the first place establish through preponderance of evidence the case it alleged – that Salimbagat possessed its property after Salimbagat's right of possession had lapsed or expired.

In this light, Zosima's contention – that although the lease contract had already expired, the principle of implied new lease or *tacita reconduccion* existed by operation of law between

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[11] *Rollo*, p. 32.

[12] RULES OF COURT, Rule 133, Section 1.

[13] *The New Testament Church of God v. CA*, 316 Phil. 330, 333 (1995); and *Republic v. Court of Appeals*, G.R. No. 84966, November 21, 1991, 204 SCRA 160, 168.

[14] *Davao Light & Power Co., Inc. v. Opeña*, 513 Phil. 160, 179 (2005), citing *Jison v. Court of Appeals*, G.R. No. 124853, February 24, 1998, 286 SCRA 495.

the periods of April 2000 and June 2003 – is not correct. An implied new lease will set in if it is shown that: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor. This acquiescence may be inferred from the failure of the lessor to serve notice to vacate upon the lessee.[15] This principle is provided for under Article 1670 of the Civil Code:

> Article 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, **not for the period of the original contract, but for the time established in Articles 1682 and 1687.** The other terms of the original contract shall be revived. [emphasis and underscoring ours]

The cited Article 1687, on the other hand, provides:

> Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, **if it is monthly**; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month. [emphasis ours]

Thus, after the expiration of the contract of lease, the implied new lease should have only been in a monthly basis. In this regard, we find it significant that it was only on June 20, 2003, or three (3) years after the last payment of the monthly rentals, that Zosima filed the complaint for unlawful detainer against Salimbagat. It does not help that Zosima failed to adduce any additional evidence to rebut the allegation that by April 2000,

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[15] *Arevalo Gomez Corporation v. Lao Hian Liong*, 232 Phil. 343, 348 (1987).

no office building stood to be leased because it had been demolished to pave way for the construction of the LRT Line II Project.[16]

We further note that Salimbagat was able to produce tax declarations and a copy of the Deed of Conditional Sale as proof of her right to possess the warehouse located on a dried *estero* and adjoining the demolished building she used to lease.[17] While tax receipts and declarations are not incontrovertible proof of ownership, they constitute, at least, proof that the holder has a claim of title over the property.[18] In practical terms under the circumstances of this case, we see it absurd for Salimbagat to be occupying a property and paying monthly rentals on it when she owns and occupies the property just behind it.

Under the existing evidentiary situation, we see no evidence supporting Zosima's allegations and, thus, cannot rule in its favor.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit. Accordingly, we **AFFIRM** the decision of the Court of Appeals in CA-G.R. SP No. 92475.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[16] *Rollo,* p. 102.

[17] *Id.* at 57.

[18] *Republic of the Phils. v. Alconaba,* 471 Phil. 607, 621 (2004).

SECOND DIVISION

[G.R. No. 183097. September 12, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONINO VENTURINA,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT GIVEN FULL WEIGHT AND CREDIT.—** In the appreciation of the evidence for the prosecution and the defense, the settled rule is that the assessment of the credibility of witnesses is left largely to the trial court. And in almost all rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. "[The victim's] testimony is most vital and must be received with the utmost caution." Once found credible, the victim's lone testimony is sufficient to sustain a conviction. Absent therefore any substantial reason to justify the reversal of the assessments and conclusions of the trial court especially if such findings have been affirmed by the appellate court, the evaluation of the credibility of witnesses is well-nigh conclusive to this Court. We have thoroughly reviewed the records and found no compelling reason to deviate from the findings of fact and conclusion of law of the trial court, as affirmed by the appellate court. We find that "AAA's" detailed narration of her harrowing experience has all the earmarks of truth. "AAA" remained coherent and steadfast in recounting the material points of the criminal incidents. x x x This Court, like the courts below, is convinced that "AAA" truthfully narrated her ordeal. In this regard, a restatement of a consistent ruling, that "testimonies of child victims of rape are given full weight and credit, for youth and immaturity are badges of truth," is in order.

2. **CRIMINAL LAW; RAPE; MAY STILL BE COMMITTED IN A CONFINED SPACE AND EVEN IN THE PRESENCE OF VICTIM'S SIBLINGS.—** Contrary, however, to appellant's impression that rape could not have been committed due to the confined space and the presence of "AAA's" siblings,

suffice it to state that rape is not a respecter of place and time. It has been long recognized that "rape is not impossible even if committed in the same room where the rapist's spouse was sleeping, or in a small room where other [household] members [were also sleeping]." In this light, rape in this case was not an impossibility even if "AAA's" siblings were not awakened from their deep slumber.

3. ID.; ID.; ABSENCE OF INJURY OR FRESH HYMENAL LACERATIONS DOES NOT NEGATE COMMISSION OF RAPE.— Neither does the lack of any form of injury or fresh hymenal lacerations negate the commission of rape. "[S]ettled is the doctrine that absence of external signs or physical injuries does not negate the commission of rape." Physical injuries or hymenal lacerations are not essential elements of rape.

4. ID.; ID.; DEFENSE OF DENIAL CANNOT STAND IN THE FACE OF THE CREDIBLE TESTIMONY OF A YOUNG VICTIM POINTING TO HER FATHER AS THE ONE WHO RAPED HER.— [A]t the center of appellant's defense of denial is his assertion that the accusation against him was a mere concoction. According to him, "AAA" filed the case because she resented being disciplined by him. We are, however, inclined to believe that it was appellant instead who concocted his defense. Not even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true. As has been repeatedly ruled, "[n]o young girl x x x 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 were other than a fervent desire to seek justice." Thus, taking into consideration that the parties are close blood relatives, "AAA's" testimony pointing to her father as the person who raped her must stand.

5. ID.; ID.; *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE, PROPER PENALTY FOR TWO COUNTS OF RAPE.— Article 266-B of the Revised Penal Code provides that the penalty of death shall be imposed upon the accused if the victim is under 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. To justify the imposition of death

penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly alleged in the information and duly proved during the trial. All these requirements were duly established in these cases. In the two Informations, it was alleged that "AAA" was 16 years old when the incidents happened. Her minority was buttressed not only by her testimony during trial but likewise by her Certificate of Live Birth showing that she was born on August 3, 1985. With respect to her relationship to appellant, it was likewise specifically alleged in the Informations that appellant is "AAA's" father. During trial, appellant categorically admitted that "AAA" is his daughter. The trial court was thus correct in imposing the penalty of death on appellant. However, since the death penalty for heinous crimes has been abolished by Republic Act No. 9346 the appellate court correctly modified the trial court's imposition of the death penalty by reducing it to *reclusion perpetua* without eligibility for parole.

6. ID.; ID.; CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES, AWARDED.— We sustain the award of civil indemnity made by the appellate court in the increased amount of ₱75,000.00 and likewise of the amount of ₱75,000.00 as moral damages in each case following existing jurisprudence. We also affirm the grant of exemplary damages but in the increased amount of ₱30,000.00 for each case also consistent with relevant jurisprudence. Likewise, interest at the rate of 6% per annum shall be imposed on all the damages awarded from the date of finality of this judgment until fully paid.

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.*:

As a last resort to gain a reversal of his conviction, Antonino Venturina (appellant) is now before this Court challenging the

October 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01106, which affirmed with modification the May 12, 2005 Decision[2] of the Regional Trial Court (RTC), Branch 85, Malolos, Bulacan, finding him guilty beyond reasonable doubt of two counts of rape.

The prosecution's version of the incident as summarized by the Office of the Solicitor General (OSG) and adopted by the appellate court is as follows:

> On April 24, 2002, complainant, [AAA],[3] who is the daughter of appellant, was inside their nipa hut located in the field being cultivated by her father. At that time, she was with her younger brothers [BBB] and [CCC] who were sleeping beside her. Her other brothers, [DDD] and [EEE], were at a nearby nipa hut which is 8 to 10 meters away from where she was staying.
>
> At around 8:00 o'clock in the evening, appellant arrived at the hut where [AAA] was staying. Her brothers who were with her at that time were already sleeping. Appellant was drunk, had difficulty breathing and was crying. [AAA] massaged his chest until he stopped crying. Unexpectedly, appellant embraced and kissed her on the cheeks. Then he removed his clothes and that of [AAA] who resisted. Afterwards, he laid on top of her, placed his private organ inside her so much so [that] she felt pain and cried. He further dragged the victim outside to the area near the chicken pen after the victim's

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[1] CA *rollo*, pp. 73-86; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas.

[2] Records, pp. 81-88; penned by Judge Ma. Belen Ringpis Liban.

[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-year old brother woke up and there, continued his immoral acts by [again inserting his penis [into] her vagina and] placing the legs of the victim on his shoulders and [licking] her private organ. [At daybreak], appellant stopped ravishing [AAA] and threatened her not to tell anybody. He told her that he was going to his wife, who is the victim's mother, to ask for money to pay the electric bill.

When appellant left, [AAA] also left and reported the incident to her sister [FFF] who was then living in the other house in [YYY]. The matter was reported to the police where she executed a Sinumpaang Salaysay.

Dr. Ivan Richard Viray (Dr. Viray) who examined the victim executed a Medico-Legal Report MR-085-2002 with the following findings:

GENERAL AND EXTRAGENITAL

Physical Built:	Light built
Mental Status:	Coherent female subject
Breast:	Conical in shape with light brown areola and nipples from which no secretions could be pressed out.
Abdomen:	Flat and soft
Physical Injuries:	No external signs of application of any form of trauma
	GENITAL
Pubic Hair:	Scanty growth
Labia Majora:	Are full convex and coaptated
Labia Minora:	In between labia majora light brown in color
Hymen:	Elastic fleshy type with presence of deep healed lacerations at 3 and 9 o'clock positions
Posterior Fourchette:	V-shape or sharp
External Vaginal Orifice:	Offers strong resistance to the examining index finger
Vaginal Canal:	Narrow with prominent rugosities
Cervix:	Firm/close
Peri-urethal and Peri-vaginal Smears:	Are negative for spermatozoa and for gram (-) diplococci

Conclusion:	Subject is in non-virgin state physically. There are no external signs of application of any form of trauma.[4]

Based on the complaint of "AAA," appellant was charged with two counts of rape in the Informations,[5] the accusatory portions of which are similarly worded as follows:

That on or about the 24th day of April, 2002, in the municipality of "XXX," province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the father of "AAA," did then and there willfully, unlawfully and feloniously, by means of force and intimidation have carnal knowledge of his daughter, "AAA," a minor 16 yrs. of age against her will and without her consent.

Contrary to law.[6]

In his defense, appellant denied the charges hurled against him. As summarized by the Public Attorney's Office, his version of the incident is as follows:

[Appellant] tilled the land beside the hut where he and his family slept from 7:00 o'clock in the morning until 5:00 o'clock in the afternoon of 24 April 2002. He went home at 8:00 o'clock in the morning and took his snack. Thereafter, he returned to work. When he went home at 5:00 o'clock in the afternoon, [AAA] was not there. She left without asking his permission but later returned home.

He had forbidden the private complainant to mingle with her friends who were known to be drug users as they might influence her. He also grounded her for a week.

Due to his chest pains, the accused fell on the wooden bed as he passed by [AAA]. He only regained consciousness at 4:00 o'clock in the early morning of the following day.

He went to get some money from [AAA]'s mother and when [he] got home, [AAA] was not around. When the latter arrived she was

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[4] CA *rollo*, pp. 75-76. Citations omitted.

[5] Records, pp. 1 and 7.

[6] *Id*.

with a police officer who immediately put him in handcuffs and brought him to a police station. Knowing that he was innocent, he willingly went to the police station only to be mauled and forced to admit committing the crime. He was, thereafter, detained at the Municipal Jail.[7]

Ruling of the Regional Trial Court

On May 12, 2005, the RTC rendered its consolidated Decision finding appellant guilty beyond reasonable doubt of two counts of rape and sentencing him to death by lethal injection in both cases. He was also ordered to pay the amount of ₱50,000.00 as indemnity for each crime.

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the RTC Decision by reducing the penalty to *reclusion perpetua* without eligibility for parole, increasing the civil indemnity from ₱50,000.00 to ₱75,000.00, and awarding moral damages of ₱75,000.00 and exemplary damages of ₱25,000.00.

Undaunted, appellant interposed the present appeal adopting the same argument he raised in his brief submitted before the CA, *viz*:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8]

Essentially, appellant's argument boils down to the issue of credibility.

Our Ruling

In the appreciation of the evidence for the prosecution and the defense, the settled rule is that the assessment of the credibility of witnesses is left largely to the trial court. And in almost all

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[7] CA *rollo*, pp. 31-32.

[8] *Id.* at 28.

rape cases, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the participants therein can testify to its occurrence. "[The victim's] testimony is most vital and must be received with the utmost caution."[9] Once found credible, the victim's lone testimony is sufficient to sustain a conviction.[10] Absent therefore any substantial reason to justify the reversal of the assessments and conclusions of the trial court especially if such findings have been affirmed by the appellate court, the evaluation of the credibility of witnesses is well-nigh conclusive to this Court.

We have thoroughly reviewed the records and found no compelling reason to deviate from the findings of fact and conclusion of law of the trial court, as affirmed by the appellate court. We find that "AAA's" detailed narration of her harrowing experience has all the earmarks of truth. "AAA" remained coherent and steadfast in recounting the material points of the criminal incidents. She vividly recounted the sexual ordeal she suffered sometime on April 24, 2002 at the hands of her own father. "AAA" consistently testified that while they were in the nipa hut with her other siblings who were then asleep, her father suddenly and unexpectedly embraced her and removed his clothes. He also removed her [AAA] clothes, brassiere and panty. Then, he placed himself on top of her body and inserted his penis into her vagina. After that, her father brought her to a nearby chicken pen where he once again inserted his penis into her vagina. He likewise placed her legs on his shoulders and licked her vagina. All throughout this time, "AAA' was crying. She was later told by her father not to tell anyone about what happened.

This Court, like the courts below, is convinced that "AAA" truthfully narrated her ordeal. In this regard, a restatement of

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[9] *People v. Penaso*, 383 Phil. 200, 208 (2000), citing *People v. Domogoy*, 364 Phil. 547, 558 (1999).

[10] *People v. Babera*, 388 Phil. 44, 53 (2000), citing *People v. Gapasan*, G.R. No. 110812, March 29, 1995, 243 SCRA 53, 59-60.

a consistent ruling, that "testimonies of child victims of rape are given full weight and credit, for youth and immaturity are badges of truth,"[11] is in order.

Moreover, "AAA's" testimony is corroborated by the findings of Dr. Viray. The doctor found deep healed lacerations in "AAA's" hymen. It is settled that "when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established."[12]

Appellant proffers the defense of denial and challenges the credibility of "AAA" on three grounds: *First*, the impossibility of committing the crime considering the limited space and the presence of her siblings; *second*, the absence of any form of physical trauma on "AAA" which shows that she was not forced to engage in sexual congress; and *third*, the absence of fresh hymenal lacerations just a few days after the alleged rape, which proves that the crime of rape did not take place, and that appellant did not commit the same.

Contrary, however, to appellant's impression that rape could not have been committed due to the confined space and the presence of "AAA's" siblings, suffice it to state that rape is not a respecter of place and time. It has been long recognized that "rape is not impossible even if committed in the same room where the rapist's spouse was sleeping, or in a small room where other [household] members [were also sleeping]."[13] In this light, rape in this case was not an impossibility even if "AAA's" siblings were not awakened from their deep slumber.

Neither does the lack of any form of injury or fresh hymenal lacerations negate the commission of rape. "[S]ettled is the

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[11] *People v. Veluz,* G.R. No. 167755, November 28, 2008, 572 SCRA 500, 514.

[12] *People v. Tormis,* G.R. No. 183456, December 18, 2008, 574 SCRA 903, 914.

[13] *People v. Rebato,* 410 Phil. 470, 479 (2001).

doctrine that absence of external signs or physical injuries does not negate the commission of rape."[14] Physical injuries[15] or hymenal lacerations[16] are not essential elements of rape.

Lastly, at the center of appellant's defense of denial is his assertion that the accusation against him was a mere concoction. According to him, "AAA" filed the case because she resented being disciplined by him.

We are, however, inclined to believe that it was appellant instead who concocted his defense. Not even the most ungrateful and resentful daughter would push her own father to the wall as the fall guy in any crime unless the accusation against him is true. As has been repeatedly ruled, "[n]o young girl x x x 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 were other than a fervent desire to seek justice."[17] Thus, taking into consideration that the parties are close blood relatives, "AAA's" testimony pointing to her father as the person who raped her must stand.

The Imposable Penalty

Article 266-B of the Revised Penal Code provides that the penalty of death shall be imposed upon the accused if the victim is under 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. To justify the imposition of death penalty, however, it is required that the special qualifying circumstances of minority of the victim and her relationship to the appellant be properly

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[14] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008, 546 SCRA 703, 721.

[15] *People v. Veluz*, *supra* note 11 at 519-520.

[16] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 542.

[17] *People v. Metin*, 451 Phil. 133, 142 (2003).

alleged in the information and duly proved during the trial. All these requirements were duly established in these cases. In the two Informations, it was alleged that "AAA" was 16 years old when the incidents happened. Her minority was buttressed not only by her testimony during trial but likewise by her Certificate of Live Birth[18] showing that she was born on August 3, 1985. With respect to her relationship to appellant, it was likewise specifically alleged in the Informations that appellant is "AAA's" father. During trial, appellant categorically admitted that "AAA" is his daughter. The trial court was thus correct in imposing the penalty of death on appellant. However, since the death penalty for heinous crimes has been abolished by Republic Act No. 9346[19] the appellate court correctly modified the trial court's imposition of the death penalty by reducing it to *reclusion perpetua* without eligibility for parole.

Civil Indemnity

We sustain the award of civil indemnity made by the appellate court in the increased amount of ₱75,000.00 and likewise of the amount of ₱75,000.00 as moral damages in each case following existing jurisprudence.[20] We also affirm the grant of exemplary

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[18] Exhibit "A", Records, p. 58.

[19] REPUBLIC ACT NO. 9346 - An Act Prohibiting the Imposition of Death Penalty in the Philippines

x x x x x x x x x

Sec. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. x x x

x x x x x x x x x

Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[20] *People v. Tormis*, *supra* note 12 at 919.

damages but in the increased amount of ₱30,000.00 for each case also consistent with relevant jurisprudence.[21] Likewise, interest at the rate of 6% per annum shall be imposed on all the damages awarded from the date of finality of this judgment until fully paid.[22]

WHEREFORE, the October 23, 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01106 finding appellant Antonino Venturina guilty beyond reasonable doubt of two counts of rape is **AFFIRMED with further modifications** that the amount of exemplary damages is increased to ₱30,000.00 for each case and that interest at the rate of 6% per annum is imposed on all the damages awarded from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

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[21] *People v. Rocabo,* G.R. No. 193482, March 2, 2011, 644 SCRA 508, 514-515.

[22] *People v. Alverio,* G.R. No. 194259, March 16, 2011, 645 SCRA 658, 670.

[*] Per raffle dated September 10, 2012.

SECOND DIVISION

[G.R. No. 191128. September 12, 2012]

CARMENCITA GUIZANO, substituted by her heirs, namely: EUGENIO M. GUIZANO, JR., EMMANUEL M. GUIZANO, EDMUND M. GUIZANO, ERWIN M. GUIZANO, CARMINA M. GUIZANO, represented by their co-heir and attorney-in-fact ELMER GUIZANO, and ELMER M. GUIZANO, *petitioners, vs.* **REYNALDO S. VENERACION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; IN AN ACTION FOR RECONVEYANCE, THE REAL PARTY-IN-INTEREST AGAINST WHOM THE ACTION MUST BE FILED IS THE REGISTERED OWNER OF THE PROPERTY.— An action for reconveyance is an action available to a person whose property has been wrongfully registered under the Torrens system in another's name. While it is a real action, it is an action *in personam*, for it binds a particular individual only, although it concerns the right to an intangible thing. Any judgment in this action is binding only upon the parties properly impleaded. This is in keeping with the principle that every action must be prosecuted or defended in the name of the real party-in-interest, *i.e.*, 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, as embodied in Section 2, Rule 3 of the Rules of Court[.] x x x Any decision rendered against a person who is not a real party-in-interest in the case cannot be executed. Hence, a complaint filed against such a person should be dismissed for failure to state a cause of action. x x x As Reynaldo himself recognized in his complaint, the subject property is registered under TCT No. RT-18578 in Emmanuel's name alone; Carmencita's name does not appear anywhere on the title. While Reynaldo alleged that Carmencita was the owner of the property subject of dispute, with Emmanuel acting as a mere nominal owner, a Torrens certificate is the best evidence of ownership over registered land, and serves as evidence of an indefeasible

title to the property in favor of the person whose name appears on the title. Absent any evidence to the contrary, Emmanuel is the real party-in-interest in any action that seeks to challenge ownership of the registered property. Reynaldo should thus have filed his complaint for reconveyance against him.

2. ID.; ID; ID.; ID.; REAL PARTY-IN-INTEREST MUST BE IMPLEADED; ATTORNEY-IN-FACT IS NOT A REAL PARTY-IN-INTEREST.— Given Reynaldo's awareness of the defect of his complaint, and the opportunities afforded him to address the defect, his failure to implead Emmanuel in the action is untenable. While the lower courts considered Carmencita to be Emmanuel's attorney-in-fact, we find no evidence on record that Emmanuel ever authorized his mother to represent him in this action. Even assuming that Carmencita did act as Emmanuel's attorney-in-fact, it is well-established in our jurisdiction that an attorney-in-fact is not the real party-in-interest. Even if so authorized in the power of attorney, she cannot bring an action in her own name for an undisclosed principal. Since Reynaldo was obviously aware of the fact that the subject property was registered in Emmanuel's name, he should still have included Emmanuel as a defendant in the reconveyance case pursuant to Section 3, Rule 3 of the Rules of Civil Procedure[.]

APPEARANCES OF COUNSEL

Protacio F. Cortez, Jr. for petitioners.
Romeo S. Salinas for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Carmencita Guizano (now deceased), substituted by her heirs, namely Eugenio M. Guizano, Jr., Emmanuel M. Guizano, Edmund M. Guizano, Erwin M. Guizano, and Carmina M. Guizano,

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 12-22.

represented by their co-heir and attorney-in-fact Elmer Guizano, and Elmer M. Guizano to reverse and set aside the decision[2] dated July 31, 2007 of the Court of Appeals (*CA*) in CA-G.R. CV No. 77248, as well as its resolution dated January 27, 2010.[3] These assailed CA issuances essentially ordered petitioner Carmencita Guizano to reconvey the subject property to respondent Reynaldo Veneracion.

THE FACTS

The facts of the case, as gathered from the decisions of the CA and the Regional Trial Court (*RTC*), are summarized below.

This case involves two parcels of land in Barangay Kapihan, San Rafael, Bulacan that Lucia Santos (married to David Santos) and her brother, Nicasio Bernardino, inherited from their mother.

Nicasio sold his share of the property, Lot No. 431 consisting of 6,445 square meters, to Dr. Eugenio and his wife Carmencita. The property was registered on February 22, 1985 under Transfer Certificate of Title (*TCT*) No. RT-18578,[4] in the name of Emmanuel Guizano, the son of the Guizano spouses.

Lucia and her husband, for their part, sold a 656 sqm. portion of their land (*subject property*) in September 1995 to Reynaldo.[5]

Since the Santoses did not have any documentary proof of ownership over the subject property, Reynaldo had to rely on the Santoses' representation that Lucia inherited the land from her parents. Before buying the subject property, Reynaldo's father, Dr. Veneracion, hired a geodetic engineer to segregate the land being purchased from the land registered to Emmanuel.

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[2] Penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Jose C. Reyes, Jr. and Ramon R. Garcia; *id.* at 25-35.

[3] *Id.* at 36-38.

[4] *Id.* at 53.

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

Domingo Santos (son of the Santos spouses), Nicasio and Carmencita were all present during the survey when Nicasio pointed out the boundaries of his former lot, as well as Lucia's share. Carmencita also pointed out the boundaries of her property, which were marked by bamboo trees, a *madre de cacao* tree and a pilapil.[6] The geodetic engineer drew up a sketch plan based on the survey and had all those present, including Carmencita, affix their signatures thereon.[7]

As an additional precautionary measure, when the Santoses and Reynaldo executed the deed of sale (*Bilihan ng Tuluyan*) in September 1995, **the parties had Carmencita affix her signature to the deed of sale under the heading "*Walang Tutol*," signifying that she did not object to the sale.**[8]

Thereafter, Carmencita discovered that the property sold to Reynaldo was actually part of the property that had already been registered in Emmanuel's name under TCT No. RT-18578 on February 22, 1985. She thus placed the word "HOLD" on the subdivision plan signed by the geodetic engineer.[9]

On June 14, 1999, **Reynaldo filed a complaint against Carmencita and the Santos spouses**, praying that Carmencita, as owner or as the lawful attorney-in-fact of her son Emmanuel, be ordered to reconvey the 656 sqm. parcel of land in his (Reynaldo's) favor.[10] The complaint was docketed as Civil Case No. 623-M-99 and raffled to Branch 81 of the RTC of Malolos, Bulacan.

In her *Answer*, Carmencita claimed that the complaint was without merit since the property subject of the sale between Reynaldo and the Santos spouses is part of the property owned and registered

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[6] *Id.* at 58.

[7] *Id.* at 59.

[8] *Id.* at 58.

[9] *Id.* at 59.

[10] *Id.* at 40-43.

in the name of her son Emmanuel, under TCT No. RT-18578.[11] Reynaldo, thus, had no cause of action against her.

On July 24, 2002, the RTC dismissed Reynaldo's complaint for lack of merit. The RTC observed that while the sale between the Santoses and Reynaldo was established, there was no evidence that the Santoses had the legal right to sell the lot. To begin with, the property sold to Reynaldo was already covered by TCT No. RT-18578, registered in the name of Emmanuel. In contrast, the Santoses had no evidence to support their alleged ownership of the subject property – they never had the property surveyed, they never paid real estate taxes on the land, and they never declared the property for tax.[12]

The RTC also found that Emmanuel's title had already attained the status of indefeasibility at the time Reynaldo filed his action. Furthermore, even if an action for reconveyance had not yet prescribed as Reynaldo remained in possession of the property, he is guilty of laches for filing the action 14 years after Emmanuel's title had been issued.

THE DECISION OF THE CA

In resolving Reynaldo's appeal, the CA, in a decision dated July 31, 2007,[13] reversed the RTC decision and ordered Carmencita to convey the subject property to Reynaldo.

The CA observed that Carmencita told Dr. Veneracion that the small portion of land immediately adjacent to his property did not belong to her but to Lucia. In the absence of any document showing the technical description of the respective shares of Nicasio and Lucia, Lucia and her son Domingo built an earthen dike and planted trees to show the demarcation line between the properties. This boundary was respected even by Carmencita when her family bought the property from Nicasio. Carmencita also participated in the survey conducted by the geodetic engineer

[11] *Id.* at 48-52.

[12] *Id.* at 57-61.

[13] *Supra* note 2, at 33.

by pointing out the boundaries of her lot, and signed the deed of sale between the Santoses and Reynaldo to signify her conformity to the sale. From Carmencita's acts and representations, it is clear that she believed that the subject property belonged to the Santoses and she was estopped from claiming ownership over the subject property.

The dispositive portion of this decision reads:

WHEREFORE, the foregoing considered, the instant appeal is hereby **GRANTED** and the assailed decision is **REVERSED AND SET ASIDE**. Accordingly, a new one is entered as follows:

1. Ordering defendant-appellee Carmencita Guizano as attorney-in-fact of her son Emmanuel Guizano to reconvey and execute a "Deed of Acknowledgement/Reconveyance" over the 656 square meter subject property in favor of plaintiff-appellant Reynaldo Veneracion, Jr.

2. Declaring as valid and legal the "*Bilihan Tuluyan*" executed by vendors/defendant-appellee spouses over the subject property in favor of plaintiff-appellant.

3. Ordering the Registrar of Deeds of Bulacan to register the "*BILIHAN TULUYAN*" as encumbrance in favor of plaintiff-appellant on TCT No. 18578.

4. In the alternative, if the above remedies are no longer possible, ordering Carmencita Guizano and her principal, Emmanuel Guizano, to pay the fair market value of the 656 square meter land.

5. Ordering defendant-appellee Carmencita Guizano to pay plaintiff-appellant ₱50,000.00 attorney's fees and cost of suit.

Costs against defendant-appellee Carmencita Guizano.[14] (emphases supplied)

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[14] *Supra* note 2, at 33-34.

THE PETITION

In their petition, Carmencita's heirs argue that since Emmanuel's certificate of title had attained the status of indefeasibility, it was no longer open to review on the ground of actual fraud. Neither is the legal remedy of reconveyance available against Carmencita as laches had already set in when the Santoses, Reynaldo's predecessors-in-interest, slept on their right to assert their ownership over the subject property. Lastly, **the action should be dismissed as it was directed against Carmencita, who was not the real party-in-interest as she was not the registered owner of the property from where the 656 sqm. lot was taken**. Emmanuel, the registered owner, was not even impleaded in the case.

In his *Comment,* Reynaldo avers that the petition should be denied for raising a question of fact, *i.e.*, who is the owner of the subject property. He also insists that the petitioners are bound by their predecessor-in-interest Carmencita's acts in relation to the subject property and, thus, they are estopped from questioning his right to the property.

THE RULING

The Court GRANTS the petition.

Complaint was not filed against the real party-in-interest

The records from both the RTC and the CA reveal that the courts *a quo* arrived at the same factual considerations. Undoubtedly, the subject property that Reynaldo purchased from the Santos spouses is part of the land registered in the name of Emmanuel under TCT No. RT-18578. The conflict arises when we take into consideration the acts and representations of Carmencita regarding the subject property, which show her recognition that the subject property is not part of her son's property, but was actually owned by the Santoses and was later purchased by Reynaldo.

In determining entitlement to the subject property, the RTC emphasized that the Santoses never assailed the registration of their property in Emmanuel's name. The trial court thus

ruled in favor of Emmanuel after determining that the Santoses had been guilty of laches. In contrast, the CA highlighted the fact that the Santoses had been in open, peaceful, public, and adverse possession of the subject property in the concept of owners, and Carmencita never questioned this possession until after the sale to Reynaldo, when she discovered that this land was actually part of the land registered in her son's name.

After examining the records, we find that both the RTC and the CA grievously erred when they overlooked a basic but fundamental issue that Carmencita timely raised in her *Answer* – that the complaint states no cause of action against her.[15]

An action for reconveyance is an action available to a person whose property has been wrongfully registered under the Torrens system in another's name.[16] While it is a real action, it is an action *in personam*, for it binds a particular individual only, although it concerns the right to an intangible thing. Any judgment in this action is binding only upon the parties properly impleaded.[17] This is in keeping with the principle that every action must be prosecuted or defended in the name of the real party-in-interest, *i.e.*, 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,[18] as embodied in Section 2, Rule 3 of the Rules of Court:

> Section 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. [italics supplied]

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[15] *Rollo*, p. 50.

[16] See *Heirs of Lopez, Sr. v. Hon. Enriquez*, 490 Phil. 74, 89 (2005).

[17] See *Muñoz v. Yabut, Jr.*, G.R. Nos. 142676 and 146718, June 6, 2011, 650 SCRA 344, 367, citing *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 86-87 (2002).

[18] See *Navarro v. Escobido*, G.R. No. 153788, November 27, 2009, 606 SCRA 1, 11.

Any decision rendered against a person who is not a real party-in-interest in the case cannot be executed. Hence, a complaint filed against such a person should be dismissed for failure to state a cause of action.[19]

Reynaldo filed the present complaint to compel Carmencita to execute a Deed of Acknowledgement/Reconveyance over the subject property in his favor. Notably, he filed the present action only against Carmencita, despite his knowledge that the subject property is registered in Emmanuel's name. As he stated in his complaint:

5. That defendant, GUISANO,[20] now refuses to recognize the sale made by defendants SANTOS to plaintiff, with her consent and connivance, and now claims the said parcel of land as HERS; having been registered by her, or her deceased husband in the name of their son, Emmanuel Guisano, under TCT No. RT-18578 of the Registry of Deeds of Bulacan only for tax purposes;

6. That said defendant GUISANO also refuses to execute the necessary DEED OF ACKNOWLEDGEMENT/RECONVEYANCE to plaintiff, or cause the same to be executed by the nominal owner, her son, EMMANUEL, in order to set the record straight and quiet title to the aforesaid portion of land[.][21]

In the prayer portion of his complaint, Reynaldo further asserted that he filed the present action against Carmencita as either the owner of the subject property or the lawful attorney-in-fact of Emmanuel. We quote the pertinent portion of the complaint:

WHEREFORE, it is respectfully prayed that judgment be rendered:

1. Ordering defendant CARMENCITA GUISANO, as the alleged owner of the property and/or as the lawful attorney-in-fact of her

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[19] Herrera, *Remedial Law* I, Rules 1 to 22, 2007 ed., p. 515, citing *Aguila, Jr. v. Court of Appeals*, G.R. No. 127347, November 25, 1999, 319 SCRA 246; *Berman Memorial Park, Inc. v. Cheng*, 497 Phil. 441, 452 (2005).

[20] Corrected by the RTC as Guizano in its pre-trial order dated October 14, 1999; RTC records, p. 78.

[21] *Rollo*, p. 41.

son Emmanuel Guisano, to execute the necessary DEED OF ACKNOWLEDGEMENT/RECONVEYANCE over the parcel of land described in par. 3 of this Complaint, in favor of plaintiff; and/or in the alternative, ordering defendant GUISANO to pay plaintiff the sum of ₱330,000.00, equivalent to the present value of the land, as actual damages[.][22]

As Reynaldo himself recognized in his complaint, the subject property is registered under TCT No. RT-18578 in Emmanuel's name alone; Carmencita's name does not appear anywhere on the title. While Reynaldo alleged that Carmencita was the owner of the property subject of dispute, with Emmanuel acting as a mere nominal owner, a Torrens certificate is the best evidence of ownership over registered land,[23] and serves as evidence of an indefeasible title to the property in favor of the person whose name appears on the title.[24] Absent any evidence to the contrary, Emmanuel is the real party-in-interest in any action that seeks to challenge ownership of the registered property. Reynaldo should thus have filed his complaint for reconveyance against him.

What makes Reynaldo's error all the more inexcusable is the fact that Carmencita repeatedly raised this defect before the lower court in her *Answer*[25] and *Pre-Trial Brief*.[26] Given Reynaldo's awareness of the defect of his complaint, and the opportunities afforded him to address the defect, his failure to implead Emmanuel in the action is untenable.

While the lower courts considered Carmencita to be Emmanuel's attorney-in-fact, we find no evidence on record

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[22] *Id.* at 42.

[23] *Heirs of the Late Fernando S. Falcasantos v. Tan*, G.R. No. 172680, August 28, 2009, 597 SCRA 411, 414.

[24] *Ibid.*, citing *Republic v. Court of Appeals*, G.R. No. 84966, November 21, 1991, 204 SCRA 160; and *Demasiado v. Velasco*, No. L-27844, May 10, 1976, 71 SCRA 105.

[25] RTC records, p. 25.

[26] *Id.* at 56.

that Emmanuel ever authorized his mother to represent him in this action. Even assuming that Carmencita did act as Emmanuel's attorney-in-fact, it is well-established in our jurisdiction that an attorney-in-fact is not the real party-in-interest. Even if so authorized in the power of attorney, she cannot bring an action in her own name for an undisclosed principal.[27] Since Reynaldo was obviously aware of the fact that the subject property was registered in Emmanuel's name, he should still have included Emmanuel as a defendant in the reconveyance case pursuant to Section 3, Rule 3 of the Rules of Civil Procedure, which reads:

> Section 3. *Representatives as parties*.— Where the action is allowed to be prosecuted or **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 party in interest**. A representative may be a trustee of an express 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]

WHEREFORE, the petition is **GRANTED**. The Decision of the CA dated July 31, 2007 in CA-G.R. CV No. 77248 is **REVERSED** and **SET ASIDE,** and the complaint in Civil Case No. 623-M-99 is **DISMISSED** for lack of merit, without pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[27] Herrera, *supra* note 19, at 537.

THIRD DIVISION

[G.R. No. 194014. September 12, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES ALEJANDRO and MYRNA REBLANDO,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; REQUISITES FOR VALIDITY OF A MORTGAGE CONTRACT, PRESENT.— Article 2085 of the Civil Code provides that a mortgage contract, to be valid, must have the following requisites: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the persons constituting the mortgage have free disposal of their property, and in the absence of free disposal, that they be legally authorized for the purpose. The presence of the second requisite—absolute ownership—is the contentious determinative issue. x x x Contrary to the findings of the courts *a quo,* the evidence on record reveals that, at the time the subject mortgage was created, respondent Alejandro was the declared owner of Lot No. 10. His ownership is reflected in TD No. 59006 issued on September 12, 1990 or a little less than two years prior to the constitution of the mortgage on Lot No. 10 in January 1992. The fact of being in actual possession of the property is another indication of such ownership. x x x [T]he sale of Unit No. 10 to the Reblandos, is not, without more, proof that respondents did not own Lot No. 10 at the time of the constitution of the mortgage. The Contract to Sell of Unit No. 10 presented by respondents has nothing to do with this case, as it is not in any way related to the mortgage contract. And as between the Contract to Sell and TD No. 59006, categorically stating that respondent Alejandro is the owner of Lot No. 10 since the time of its issuance on September 12, 1990, the latter ought to be the superior evidence as to who owns Lot No. 10. x x x [N]ot only was the tax declaration in Alejandro's name, but also, respondents admittedly possessed the property mortgaged, their residence being constructed on it. It is for this very reason that they prayed for injunction before the RTC

when the writ of possession was issued against them. There is, therefore, a *prima facie* proof of ownership in this case which respondents failed to rebut. Consequently, the power of Alejandro to subject Lot No. 10 as collateral to the loan stands. In sum, respondents failed to prove and the trial and appellate courts erred in ruling that the Contract to Sell, supposedly the proof that Lot No. 10 was owned by the government at the time of the mortgage, covers Lot No. 10, a parcel of land, when in fact it covers Unit No. 10, a dwelling unit under the BLISS Development Project. The pieces of evidence, consisting of the tax declarations and the annotations, as well as the amendments to the REM executed and signed by respondents, show that Lot No. 10 was already owned by Alejandro at the time of the mortgage. The latter being the owner of the lot, he then could validly encumber said property by way of mortgage. Therefore, the REM constituted is valid, contrary to respondents' insistence that the contract is void for lack of authority on the part of the mortgagor to encumber the property used as collateral for the loan.

2. ID.; ID.; ESTOPPEL BY DEED; WHERE A PARTY IS ESTOPPED FROM CONTESTING THE VALIDITY OF THE MORTGAGE.— Respondents' act of entering into the mortgage contract with petitioner, benefiting through the receipt of the loaned amount, defaulting in payment of the loan, letting the property be foreclosed, failing to redeem the property within the redemption period, and thereafter insisting that the mortgage is void, cannot be countenanced. We agree with PNB that respondents are estopped from contesting the validity of the mortgage, absent any proof that PNB coerced or fraudulently induced respondents into posting Lot No. 10 as collateral. Even if We assume, for the sake of argument, that respondents did not intend to deceive petitioner when they used Lot No. 10 as collateral, still We cannot allow respondents to arbitrarily reverse their position to the damage and prejudice of the bank absent any showing that the latter accepted the mortgage over Lot No. 10 in bad faith. x x x The practice of obtaining loans, defaulting in payment, and thereafter contesting the validity of the mortgage after the collateral has been foreclosed without any meritorious ground should be deterred. Actions of this kind, bearing a hint of fraud on the part of mortgagors, should not be tolerated, for they go against the basic principle that no person shall unjustly

enrich himself or herself at the expense of another and that parties in a juridical relation must act with justice, honesty, and good faith in dealing with one another. What is worse, respondents even attempted, not just once, to deceive the courts into believing their position by manipulating their evidence in such a way that it will support a concocted theory. Respondents, by omitting a part of the REM contract as annex to the complaint, concealed the simultaneity of the constitution of the mortgage over both properties. Not only that, respondents even submitted in evidence a document, the Contract to Sell, to support their theory that at the time of the constitution of the mortgage, Alejandro did not own the property, thus rendering the mortgage over Lot No. 10 void. This theory, however, is nothing more than a mere fabrication, a product of one's ingenuity crafted to deceive the courts into acquiescing and ruling in their favor, a fraudulent practice which We shall not countenance.

APPEARANCES OF COUNSEL

Franc Evan L. Dandoy II for petitioner.
Arlyn Joy C. Alloso-Alaba for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review of the Decision of the Court of Appeals (CA) dated June 24, 2010, as effectively reiterated in its Resolution of August 24, 2010, both rendered in CA-G.R. CV No. 79987. The CA Decision dismissed the appeal of petitioner Philippine National Bank (PNB) from the Decision dated October 8, 2001 of the Regional Trial Court (RTC), Branch 22 in General Santos City, in Civil Case No. 6771 entitled *The Spouses Alejandro and Myrna Reblando v. Philippine National Bank, Deputy Sheriff Cyr M. Perlas and the Assessor of General Santos City*.

The Facts

On January 28, 1992, respondents, spouses Alejandro and Myrna Reblando (collectively, the Reblandos), obtained a one hundred and fifty thousand-peso (PhP 150,000) loan from PNB. To secure the payment of the loan, the Reblandos executed a real estate mortgage[1] (REM) over two (2) parcels of land located in General Santos City, the first covered by Transfer Certificate of Title (TCT) No. T-40839 and the second by Tax Declaration (TD) No. 59006 and designated as Cadastral Lot No. 10 (Lot No. 10). The pro forma REM contract consisted of two (2) pages plus a duly-signed supplemental page,[2] providing a description of Lot No. 10, thus:

> A parcel of land with cadastral Lot No. 10, Bounded on the North by Lot 9; on the [S]outh by Lot 11, on the East by a Road and on the West by road, situated on the Bo. of Calumpang, City of General Santos, Island of Mindanao, [c]ontaining an area of THREE HUNDRED NINETY SEVEN POINT NINETY FIVE (397.95) square meters, more or less.[3]

TD No. 38950, formerly in the name of the Ministry of Human Settlements, was cancelled and replaced with TD No. 59006[4] in Alejandro Reblando's (Alejandro's) name on September 12, 1990. Improvements on the lot consisted of a residential house and a store shed.[5]

TCT No. T-40839 was then registered in the name of Letecia Reblando-Bartolome, who earlier executed a Special Power of Attorney,[6] authorizing Alejandro, her brother, to utilize the

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[1] Records, pp. 16-19.

[2] *Rollo*, pp. 50-54.

[3] Records, p. 31, Notice of Extrajudicial Foreclosure.

[4] *Id.* at 47.

[5] *Rollo*, p. 65.

[6] *Id.* at 10. The Special Power of Attorney reads in part: "1. To apply for, borrow or secure any industrial, commercial or agricultural loan or credit accommodation from the [PNB] in such sum or sums as he shall think fit

lot covered by the title as collateral to secure a loan not exeeceding PhP 150,000.

A few years later, the parties agreed to up the loan value from PhP 150,000 to PhP 260,000. They then executed an "Amendment to Real Estate Mortgage" on January 4, 1995,[7] reflecting the increase in the loan accommodation. The amended contract provides in part:

> WHEREAS, in order to secure the payment of certain loans and obligations of the Mortgagor with the Mortgagee, the former has executed on 1-28-92 in favor of the latter a Real Estate Mortgage conveying by way of mortgage that TWO (2) parcel[s] of land, with an aggregate area of SIX HUNDRED SEVENTY (670) sqm. More or less, located at [blank], covered by TCT-T-40839 and TD# 59006 of the land records of the City of General Santos / Province of South Cotabato, registered in the name of the Mortgagor x x x.

Stated and made to appear as collaterals in the amended REM are the following properties:

TCT No. T-40839, Lot 5326-B, Psd-11-022402	TD# 47097 – Land
TD No. 59006, Lot 10	TD# 59006 – Land
	TD# 46828 – Bldg.

Barely two weeks after, or on January 26, 1995, the parties again agreed to another increase, this time to PhP 312,000 and executed for the purpose a second "Amendment to Real Estate Mortgage."[8]

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or advisable, the principal of which shall not exceed the amount of x x x (₱150,000.00) PESOS, Philippine Currency, plus any interest that may be agreed upon with the said Bank, and subject to the usual conditions of the said Bank in loans or credit accommodation of the same kind and to such further terms and conditions as may, upon granting the said loan, be imposed by the said Bank, in which there may be included the appointment of the Mortgagee as attorney-in-fact of the Mortgagor and, without any further formality, in case of any violation of any terms and conditions of the mortgage contract."

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

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

Meanwhile, on July 24, 1995, Alejandro and the Bliss Development Corporation (BDC), a subsidiary of the Home Insurance and Guaranty Corporation, which in turn was under the then Ministry of Human Settlements, entered into a Contract to Sell over a dwelling unit (Unit No. 10) in the Rural Bliss 1 Project located at Calumpang, Gen. Santos City with an area of 36 square meters.

Later developments saw the Reblandos defaulting in the payment of their loan obligation, prompting the PNB to commence extra-judicial foreclosure of the mortgage. On May 12, 1997, the Reblandos received a Notice of Extra-Judicial Foreclosure of Lot No. 10 and the lot covered by TCT No. T-40839.[9] At the foreclosure sale, the PNB, as lone bidder, was awarded the lots for its bid of PhP 439,990.62 and was issued on July 11, 1997 a Certificate of Extra-Judicial Sale covering both collaterals.[10] This certificate was duly registered with the Registry of Deeds of General Santos City on September 2, 1997.

Following the lapse of the redemption period without the Reblandos redeeming the properties, PNB consolidated its ownership over the subject parcels of land.[11] Thereafter, PNB secured a new title over the property covered by TCT No. T-40839. A new tax declaration[12] under its name was issued also for Lot No. 10 and the improvements.

Subsequently, the RTC, acting on PNB's *ex parte* petition, issued an Order[13] granting a writ of possession.

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[9] With the following description: "A parcel of land with cadastral Lot No. 10, Bounded on the North by Lot 9; on the [S]outh by Lot 11, on the East by a Road and on the West by road, situated on the Bo. of Calumpang, City of General Santos, Island of Mindanao, [c]ontaining an area of 397.95 square meters, more or less." Records, p. 31.

[10] *Rollo*, p. 61.

[11] *Id.* at 62, via an affidavit of consolidation dated September 28, 1998.

[12] TD No. 94015 over the lot; TD No. 94016 over the improvement.

[13] Penned by Acting Presiding Judge Monico G. Gabales.

On May 10, 2000, the Reblandos filed a complaint before the RTC, seeking, as their main prayer, the declaration of nullity of the mortgage over Lot No. 10 allegedly constituted on **January 13, 1995** when PNB and the Reblandos executed the "Amendment to Real Estate Mortgage." According to them, they could not have validly created a mortgage over Lot No. 10, not being the owner when the mortgage was constituted, citing in this regard *Development Bank of the Philippines* (*DBP*) *v. Court of Appeals*.[14] What, they added, impelled them to include Lot No. 10 in the mortgage package, albeit it did not belong to them, was the PNB's "require[ment] [for them] to post [Lot No. 10] as additional collateral."[15]

PNB countered and contended that, on February (should be January) 28, 1992, the Reblandos, via a contract of REM of even date, already conveyed by way of mortgage Lot No. 10 covered by TD No. 59006, inclusive of the Reblandos' possessory and other rights. And together with the lot covered by TCT No. T-40839, Lot No. 10 is listed as mortgaged property. Appended to PNB's Answer was the supplemental page of the covering mortgage deed which page, so the bank claimed, the Reblandos deliberately omitted to attach in their basic complaint in an attempt to mislead the court and conceal the simultaneous constitution of the mortgage over Lot No. 10 and the titled lot. Also, PNB belied the Reblandos' assertion on having been required to post Lot No. 10 as additional security, noting that the very same lot, which was then in the latter's physical possession, was already an existing collateral.

As an affirmative defense, PNB raised the issue of estoppel.

Following a pre-trial conference, the RTC, by Order of October 11, 2000, narrowed the core issue to the question of the validity of the mortgage in question.[16]

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[14] G.R. No. 109946, February 9, 1996, 253 SCRA 414.

[15] Records, p. 4.

[16] *Rollo*, pp. 96, 132.

RTC Ruling

Issues having been joined and on the bases of the pleadings and memoranda filed, the RTC rendered judgment in favor of the Reblandos, as plaintiffs *a quo*, on the strength of the following main premises: (1) Under Article 2085 of the Civil Code, it is an essential requisite for the validity of a mortgage that the mortgagor be the absolute owner of the property thus mortgaged, a requirement not met in the case, as Lot No. 10 was still owned by the then Ministry of Human Settlements at the time of the constitution of the mortgage; (2) *DBP*[17] holds that "[a] mortgage constituted over a public land before the issuance of the sales patent to the mortgagor is void and ineffective"; and (3) Lot No. 10, with its improvements, was what was mortgaged,[18] not the possessory rights of the Reblandos, as PNB claimed.

The dispositive portion of the RTC's October 8, 2001 Decision reads:

> WHEREFORE, premises considered[,] judgement is hereby rendered in favor of the plaintiffs and against the defendants. The Real Estate Mortgage constituted on Lot No. 10 (the house and lot at the Bliss Project at Calumpang, General Santos City) is hereby declared null and void. Consequently, the foreclosure sale that ensued and the writ of possession thus issued are also declared null and void and of no effect. The defendants are permanently enjoined from implementing the writ of possession. Defendant Philippine National Bank is hereby ordered to pay the cost of the suit to the plaintiffs.
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> SO ORDERED.[19]

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[17] *Supra* note 14.

[18] REM, records, pp. 16-19. According to the RTC, the mortgage contract expressly provided the following: "x x x the MORTGAGOR does hereby transfer and convey by way of mortgage unto the mortgagee, its successors or assigns, the parcels of land which is/are described in the list attached hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon x x x." (*Id.* at 122.)

[19] *Id.* at 120. Penned by Presiding Judge Antonio C. Lubao.

Petitioner sought but was denied reconsideration per the RTC's Order of January 27, 2003.

PNB then appealed to the CA. In the main, PNB faulted the RTC for declaring the mortgage over Lot No. 10 null and void, for finding *DBP* applicable and, lastly, for not appreciating the principle of estoppel against respondents.

CA Ruling

By Decision dated June 24, 2010,[20] the CA affirmed the appealed Decision of the RTC. The appellate court rejected PNB's assertion that the Reblandos had deceived the bank by misrepresenting themselves as the true and absolute owners of Lot No. 10, declaring instead that "[PNB] is a banking institution and, as such, is expected to exercise extraordinary diligence in entering into mortgage contracts."[21] To the appellate court, TD No. 59006 in the name of Alejandro or the Reblandos' possession of Lot No. 10 is not determinative of their ownership. The CA noted in this regard that PNB no less admitted that it was only in 1995, or three years after the constitution of the mortgage over Lot No. 10, that Alejandro bought the property from BDC through the Contract to Sell covering "**Unit No. 10**."[22] To the CA, the Contract to Sell is an additional argument belying the Reblandos' ownership over Lot No. 10 at the time of the constitution of the REM.

The CA also rejected the PNB's posture on estoppel. Inasmuch as PNB knew from the very beginning that the Reblandos were not the absolute owners of Lot No. 10, it cannot, according to the appellate court, set up the defense of estoppel against them.

PNB's motion for reconsideration was denied per the CA's Resolution of August 24, 2010.

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[20] Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando.

[21] *Rollo*, p. 135.

[22] *Id.* at 17.

The Issues

Hence this recourse, on the stated issues that the CA, as well as the RTC, erred:

A. [IN HOLDING THE APPLICABILITY OF *DBP V. COURT OF APPEALS*] (ENUNCIATING THAT THE MORTGAGEE BANK DID NOT ACQUIRE VALID TITLE OVER THE LAND IN DISPUTE BECAUSE IT WAS PUBLIC LAND WHEN MORTGAGED) TO THE INSTANT CASE.

B. X X X IN FAILING TO RECOGNIZE THAT THE MORTGAGORS ALSO MORTGAGED ALL OTHER REAL RIGHTS BELONGING TO THEM ATTACHED TO PROPERTY OR MAY THEREAFTER BE VESTED IN THEM.

C. X X X IN FAILING TO APPLY THE PRINCIPLE OF *ESTOPPEL* BY DEED AGAINST THE RESPONDENTS.[23]

The focal issue for this Court's resolution revolves around the validity of the mortgage constituted over Lot No. 10.

The Court's Ruling

The petition is impressed with merit.

On findings of fact of the trial and appellate courts

Before delving into the merits of the case, a circumspect review of certain determinative background facts on record against which the case is cast is most imperative, if only to protect one's right to property. Both the RTC and the CA brushed aside petitioner's insistent contentions, to wit: (a) that the parcels of land covered by TCT No. 40839 and TD No. 59006, as the case may be, were simultaneously mortgaged on January 28, 1992 when petitioner and respondents signed the corresponding mortgage contract; and (b) that what respondents mortgaged included their possessory rights over Lot No. 10. In this regard, both courts made parallel factual findings, as shall be discussed below, upon which they anchored their conclusion as to the nullity of the mortgage over Lot No. 10.

[23] *Id.* at 37.

Generally, findings of fact of trial courts are accorded great respect and shall not be disturbed,[24] more so when affirmed by the CA.[25] This rule, however, admits of several exceptions,[26] such as when the findings are manifestly mistaken, unsupported by evidence or the result of a misapprehension of acts, as in this case.

From the evidence adduced, both the trial and appellate courts deduced the following set of facts:

(1) That on February 28, 1992, respondents mortgaged the lot covered by TCT No. T-40839 to secure a PhP 150,000 loan from petitioner.

(2) Subsequently, the parties amended the REM by executing an "Amendment to Real Estate Mortgage" on January 13, 1995 to cover the increase in the loanable amount as well as the posting of the additional security allegedly demanded by PNB. This added collateral is Lot No. 10.

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[24] *Castillo v. Court of Appeals*, G.R. No. 106472, August 7, 1996, 260 SCRA 374, 381.

[25] *De la Cruz v. Court of Appeals*, G.R. No. 105213, December 4, 1996, 265 SCRA 299, 306-307.

[26] *Alba Vda. de Raz v. Court of Appeals*, G.R. No. 120066, September 9, 1999, 314 SCRA 36, 50:

> More explicitly, the findings of fact of the Court of Appeals, which are as a general rule deemed conclusive, may be reviewed by this Court in the following instances:
>
> 3.] When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible;
>
> x x x x x x x x x
>
> 6.] When the judgment of the Court of Appeals is premised on a misapprehension of facts;
>
> x x x x x x x x x
>
> 9.] When the findings of fact are conclusions without citation of specific evidence on which they are based.
>
> x x x x x x x x x

(3) A few years later, or on July 24 1995, Alejandro and BDC executed a Contract to Sell over a 36-square meter dwelling unit referred to as Unit No. 10, with Alejandro as the buyer.

Both parcels of land were mortgaged simultaneously

In a bid to convince the RTC that they executed the mortgage over Lot No. 10 only on January 13, 1995 when they sought and obtained approval of the increase of their loan, respondents appended to their complaint, as Annex "B," the underlying REM contract executed on January 28, 1992, and the "Amendment to Real Estate Mortgage." Annex "B" came without the supplemental page,[27] albeit it formed an integral part of the original contract of mortgage. The PNB, in its Answer to the complaint, faulted respondents for omitting to attach in said Annex "B" the supplemental page of the REM which, as PNB pointed in the Answer, made reference to and contained the description of Lot No. 10. The PNB drew the RTC and subsequently the CA's attention to this aberration, distinctly pointing out that the REM was executed in January 1992, not February 1992, as stated by both courts. On these two points, We agree with the PNB.

First, on its face, the REM[28] shows that it was executed on January 28, 1992, not February, 28, 1992 as written by the RTC and the CA.[29] *Second*, the January 28, 1992 REM contract specifically covered, as collaterals, two parcels of land, albeit the second collateral was reflected in the supplemental page of the contract, which page respondents neglected or indeed omitted to attach to their basic complaint, whether purposely or not.[30] That respondents did not include said supplemental page is buttressed by a simple annotation[31] at the bottom of the last page of their Annex "A" (pertaining to the REM), reading:

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[27] *Rollo*, p. 54.
[28] Records, p. 19.
[29] *Rollo*, pp. 10, 96.
[30] Records, p. 19.
[31] *Id*.

"- ADDITIONAL COLLATERAL AT THE SUPPLEMENTAL PAGE -."

To be sure, respondents have not offered any explanation for what this annotation referred to. They cannot plausibly deny, however, that it referred to Lot No. 10. The "Amendment to Real Estate Mortgage," executed and signed by the parties on January 26, 1995, made a cross-reference to the January 28, 1992 REM contract and the properties mortgaged. The perambulatory clause adverted to provides:

> WHEREAS, in order to secure the payment of certain loans and obligations of the Mortgagor with the Mortgagee, the former has **executed on 1-28-92** in favor of the latter a Real Estate Mortgage conveying by way of mortgage that **TWO (2) parcel[s] of land**, with an aggregate area of SIX HUNDRED SEVENTY (670) sqm. More or less, located at [blank], **covered by TCT-T-40839 and TD# 59006** of the land records of the City of General Santos / Province of South Cotabato, registered in the name of the Mortgagor x x x.[32] (Emphasis ours.)

And lest it be overlooked, the mortgage over Lot No. 10 is reflected in the "Declaration of Real Property filed under Presidential Decree No. 464" (referring to TD No. 59006) filed by Alejandro for tax purposes, through an annotation by stamp-mark, signed by City Assessor Angel S. Daproza, dated January 29, 1992, the day after the execution of the REM contract. The annotation states that the "PROPERTY DESCRIBED X X X ASSESSMENT TD NOS. 47097 & 59006 IS MORTGAGED TO THE [PNB] FOR ₱150,000.00 PESOS. 1-29-92 [date]."[33]

When the terms of an agreement have been reduced into writing, as in this case, it is, under the rules on evidence, considered as containing all the terms agreed upon.[34] Respondents have not

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[32] *Rollo*, p. 55.

[33] Records, p. 47.

[34] RULES OF COURT, Rule 130, Sec. 9. *Evidence of written agreements.*— When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

presented evidence, other than their bare denial, to contradict the stipulations in the contract and to show that the REM or the amendment to it, as couched, does not reflect their real agreement with petitioner PNB.

The REM, it bears to stress, having been notarized, is a public document, thus accorded the benefit of certain presumptions. The Court held:

> Being a public document, it enjoys the presumption of regularity. It is a ***prima facie*** **evidence of the truth of the facts stated therein** and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld.[35] (Emphasis added.)

The due execution of this above annotation by the City Assessor stands undisputed. Its correctness must, perforce, stand.

Given the above perspective, the Court accords full credence to the proposition, as insisted by PNB at every turn, that both parcels of land in question were simultaneously mortgaged on January 28, 1992. The finding to the contrary of both the RTC and the CA has simply nothing to support itself.

On the validity of the mortgage

Now, to the meat of the controversy.

Article 2085 of the Civil Code provides that a mortgage contract, to be valid, must have the following requisites: (a) that it be constituted to secure the fulfilment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the persons constituting the mortgage have free disposal of their property, and in the absence of free

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However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

x x x x x x x x x

b. The failure of the written agreement to express the true intent and agreement of the parties thereto.

[35] *Chua v. Westmont Bank*, G.R. No. 182650, February 27, 2012.

disposal, that they be legally authorized for the purpose. The presence of the second requisite—absolute ownership—is the contentious determinative issue.

Respondents assert that the mortgagor's absolute ownership over the property intended to be mortgaged is necessary for the mortgage to be valid. To disprove allegations of their absolute ownership of Lot No. 10 and necessarily to prove the nullity of the mortgage contract, respondents point to the Contract to Sell[36] which Alejandro entered into with BDC three years after the purported constitution of the mortgage over Lot No. 10. Said contract covers Unit No. 10, a dwelling structure with an area of 36 square meters located in Calumpang, General Santos City.

The CA agreed with respondents as to the implication of the aforesaid contract to sell on the issue of ownership of Lot No. 10 as a requisite element that goes into the validity of mortgage. The appellate court, thus, stated the observation that the fact that the Contract to Sell over Unit No. 10 was executed three years after the constitution of the mortgage "bolsters the thesis that [respondents] were ***not*** the owners of Lot No. 10 ***at the time of the constitution of the [REM]***."[37]

We do not agree.

Contrary to the findings of the courts *a quo*, the evidence on record reveals that, at the time the subject mortgage was created, respondent Alejandro was the declared owner of Lot No. 10. His ownership is reflected in TD No. 59006 issued on September 12, 1990[38] or a little less than two years prior to the constitution of the mortgage on Lot No. 10 in January 1992. The fact of being in actual possession of the property is another indication of such ownership.

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[36] Records, pp. 20-24.

[37] *Rollo*, p. 18.

[38] Records, p. 47, dorsal portion of the Declaration of Real Property, TD No. 59006.

Respondents parlayed and the CA acquiesced with the argument that the BDC owned Lot No. 10 when mortgaged to the PNB, and that they were mere applicants out to buy the lot. The records, however, are bereft of evidence, other than respondents' bare and self-serving assertion, to support their contention about being mere applicants in a social housing project at the time and that Lot No. 10 was, indeed, government property. And as may be noted, TD No. 38950 over Lot No. 10—in the name of the Ministry of Human Settlements, which should otherwise lend proof to the Ministry ownership of the lot—had, as of 1990, already been cancelled; and in lieu of it, TD No. 59006[39] was issued in Alejandro's name, two (2) years prior to the constitution of the REM. Well-settled is the rule that "[b]are and unsubstantiated allegations do not constitute substantial evidence and have no probative value."[40]

Much has been made on the evidentiary value of the Contract to Sell of Unit No. 10 as to the ownership of Lot No. 10. However, a perusal of the Contract to Sell shows that it contemplates a different object. The contract, to stress, is one for the sale of Unit No. 10 in the Rural Bliss I Project, having an area of 36 square meters, as indicated in the technical description. Too, its Clause IV[41] specifically refers to the unit being sold as a "dwelling unit," that is, a house, which the buyer is even required to insure against fire and is deemed to have conditionally accepted the unit in good order.

In fine, the sale of Unit No. 10 to the Reblandos, is not, without more, proof that respondents did not own Lot No. 10 at the time of the constitution of the mortgage. The Contract to Sell of Unit No. 10 presented by respondents has nothing to do with this case, as it is not in any way related to the mortgage

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[39] *Id.* The dorsal portion of TD No. 59006 states, "This Declaration cancels Tax Nos. 38950-E x x x."

[40] *LNS International Manpower Services v. Padua, Jr.*, G.R. No. 179792, March 5, 2010, 614 SCRA 322, 323.

[41] Records, p. 21.

contract. And as between the Contract to Sell and TD No. 59006, categorically stating that respondent Alejandro is the owner of Lot No. 10 since the time of its issuance on September 12, 1990, the latter ought to be the superior evidence as to who owns Lot No. 10. What the Court said in *Cequeña v. Bolante*[42] is instructive:

> Tax receipts and declarations are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership. x x x

In this case, not only was the tax declaration in Alejandro's name, but also, respondents admittedly possessed the property mortgaged, their residence being constructed on it.[43] It is for this very reason that they prayed for injunction before the RTC when the writ of possession was issued against them.[44] There is, therefore, a *prima facie* proof of ownership in this case which respondents failed to rebut. Consequently, the power of Alejandro to subject Lot No. 10 as collateral to the loan stands.

In sum, respondents failed to prove and the trial and appellate courts erred in ruling that the Contract to Sell, supposedly the proof that Lot No. 10 was owned by the government at the time of the mortgage, covers Lot No. 10, a parcel of land, when in fact it covers Unit No. 10, a dwelling unit under the BLISS Development Project. The pieces of evidence, consisting of the tax declarations and the annotations, as well as the amendments to the REM executed and signed by respondents, show that Lot No. 10 was already owned by Alejandro at the time of the mortgage. The latter being the owner of the lot, he then could validly encumber said property by way of mortgage. Therefore, the REM constituted is valid, contrary to respondents' insistence that the contract is void for lack of authority on the

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[42] G.R. No. 137944, April 6, 2000, 330 SCRA 216, 218.

[43] TSN, August 22, 2000, pp. 3, 12.

[44] *Id.* at 13.

part of the mortgagor to encumber the property used as collateral for the loan.

It is unfortunate that both the RTC and the CA heavily relied on the Contract to Sell of Unit No. 10 when it is readily apparent that the Contract to Sell, on which their decisions in favor of the nullity of the mortgage were anchored, covers a different subject matter. Also, it is but proper for Us to warn parties against this practice of attempting to mislead courts into believing their cause and, worse, subsequently ruling in their favor, by making it appear that their evidence supports their position when, in fact, it is not in any way related to the case or by omitting to attach a material part of their evidence to support their false theory on the case.

On estoppel by deed

Petitioner faults the RTC and the CA for not applying the principle that a mortgagor is estopped from claiming that he is not bound by the ancillary mortgage agreement after he has benefited from the principal contract of loan.

To support its allegation that respondents are estopped from denying the validity of the REM, PNB forwards the view that Rule 131 of the Rules of Court applies to this case.

We find merit in petitioner's position.

Rule 131, Section 2(a) of the Rules of Court, enunciating the principle of estoppel,[45] states, "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it." At point is *Toledo v. Hyden*,[46] where the Court held that "[a] party to

[45] *Toledo v. Hyden,* G.R. No. 172139, December 8, 2010, 637 SCRA 540, 550.

[46] *Id.* at 551; citing *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35, 45 (2002).

a contract cannot deny the validity thereof after enjoying its benefits without outrage to one's sense of justice and fairness."

Respondents' act of entering into the mortgage contract with petitioner, benefiting through the receipt of the loaned amount, defaulting in payment of the loan, letting the property be foreclosed, failing to redeem the property within the redemption period, and thereafter insisting that the mortgage is void, cannot be countenanced. We agree with PNB that respondents are estopped from contesting the validity of the mortgage, absent any proof that PNB coerced or fraudulently induced respondents into posting Lot No. 10 as collateral.

Even if We assume, for the sake of argument, that respondents did not intend to deceive petitioner when they used Lot No. 10 as collateral, still We cannot allow respondents to arbitrarily reverse their position to the damage and prejudice of the bank absent any showing that the latter accepted the mortgage over Lot No. 10 in bad faith. Pertinently:

> [A] party may be estopped to deny representations made when he had no knowledge of their falsity, or which he made without any intent to deceive the party now setting up the estoppel. [T]he fraud consists in the inconsistent position subsequently taken, rather than in the original conduct. It is the subsequent inconsistent position, and not the original conduct that operates to the injury of the other party.[47]

The practice of obtaining loans, defaulting in payment, and thereafter contesting the validity of the mortgage after the collateral has been foreclosed without any meritorious ground should be deterred. Actions of this kind, bearing a hint of fraud on the part of mortgagors, should not be tolerated, for they go against the basic principle that no person shall unjustly enrich himself or herself at the expense of another and that parties in a juridical relation must act with justice, honesty, and good

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[47] See *Sullivan v. Buckhorn Ranch Partnership BH*, No. 100,618, June 14, 2005; *Hamilton v. Hamilton*, 296 N.C. 574, 576-77, 251 S.E.2d 441, 443 (1979).

faith in dealing with one another.[48] What is worse, respondents even attempted, not just once, to deceive the courts into believing their position by manipulating their evidence in such a way that it will support a concocted theory. Respondents, by omitting a part of the REM contract as annex to the complaint, concealed the simultaneity of the constitution of the mortgage over both properties. Not only that, respondents even submitted in evidence a document, the Contract to Sell, to support their theory that at the time of the constitution of the mortgage, Alejandro did not own the property, thus rendering the mortgage over Lot No. 10 void. This theory, however, is nothing more than a mere fabrication, a product of one's ingenuity crafted to deceive the courts into acquiescing and ruling in their favor, a fraudulent practice which We shall not countenance.

In light of the foregoing disquisition, the Court need not belabor the other assigned errors.

WHEREFORE, premises considered, the instant petition is **GRANTED**. Accordingly, the appealed Decision and Resolution dated June 24, 2010 and August 24, 2010, respectively, in CA-G.R. CV No. 79987 are **REVERSED** and **SET ASIDE**. The Real Estate Mortgage constituted over Lot No. 10 is hereby declared **VALID**. Respondents are **ORDERED** to immediately vacate the property and to surrender its possession to petitioner PNB.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.*, concur.

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[48] *Bricktown Dev't. Corp. v. Amor Tierra Dev't. Corp.*, G.R. No. 112182, December 12, 1994, 239 SCRA 126, 128.

[*] Additional member per Special Order No. 1299 dated August 28, 2012.

SPECIAL SECOND DIVISION

[G.R. No. 198662. September 12, 2012]

RADIO MINDANAO NETWORK, INC. and ERIC S. CANOY, *petitioners, vs.* **DOMINGO Z. YBAROLA, JR. and ALFONSO E. RIVERA, JR.,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; EMPLOYEES' COMMISSION SHOULD BE INCLUDED IN THE COMPUTATION OF THEIR SEPARATION PAY.— If these commissions had been really profit-sharing bonuses to the respondents, they should have received the same amounts, yet, as the NLRC itself noted, Ybarola and Rivera received ₱372,173.11 and ₱586,998.50 commissions, respectively, in 2002. The variance in amounts the respondents received as commissions supports the CA's finding that the salary structure of the respondents was such that they only received a minimal amount as guaranteed wage; a greater part of their income was derived from the commissions they get from soliciting advertisements; these advertisements are the "products" they sell. As the CA aptly noted, this kind of salary structure does not detract from the character of the commissions being part of the salary or wage paid to the employees for services rendered to the company, as the Court held in *Philippine Duplicators, Inc. v. NLRC*. x x x [A]s the CA noted, the separation pay the respondents each received was deficient by at least ₱400,000.00; thus, they were given only half of the amount they were legally entitled to. To be sure, a settlement under these terms is not and cannot be a reasonable one, given especially the respondents' length of service – 25 years for Ybarola and 19 years for Rivera. The CA was correct when it opined that the respondents were in dire straits when they executed the release/quitclaim affidavits. Without jobs and with families to support, they dallied in executing the quitclaim instrument, but were eventually forced to sign given their circumstances.

APPEARANCES OF COUNSEL

A.D. Corvera & R.C. Tinga Law Firm and *Hector L. Hofileña Law Office* for petitioners.
Rene M. Atienza for respondents.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration[1] of petitioners Radio Mindanao Network, Inc. (*RMN*) and Eric S. Canoy addressing our Resolution[2] of December 7, 2011 which denied the appeal from the decision[3] and the resolution[4] of the Court of Appeals (*CA*) in CA-G.R. SP No. 109016.

Factual Background

Respondents Domingo Z. Ybarola, Jr. and Alfonso E. Rivera, Jr. were hired on June 15, 1977 and June 1, 1983, respectively, by RMN. They eventually became account managers, soliciting advertisements and servicing various clients of RMN.

On September 15, 2002, the respondents' services were terminated as a result of RMN's reorganization/restructuring; they were given their separation pay – ₱631,250.00 for Ybarola, and ₱481,250.00 for Rivera. Sometime in December 2002, they executed release/quitclaim affidavits.

Dissatisfied with their separation pay, the respondents filed separate complaints (which were later consolidated) against RMN and its President, Eric S. Canoy, for illegal dismissal with several money claims, including attorney's fees. They

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[1] *Rollo*, pp. 204-220.

[2] *Id.* at 202-203.

[3] *Id.* at 8-21; dated February 17, 2011.

[4] *Id.* at 23-24; dated September 23, 2011.

indicated that their monthly salary rates were ₱60,000.00 for Ybarola and ₱40,000.00 for Rivera.

The Compulsory Arbitration Proceedings

The respondents argued that the release/quitclaim they executed should not be a bar to the recovery of the full benefits due them; while they admitted that they signed release documents, they did so due to dire necessity.

The petitioners denied liability, contending that the amounts the respondents received represented a fair and reasonable settlement of their claims, as attested to by the release/quitclaim affidavits which they executed freely and voluntarily. They belied the respondents' claimed salary rates, alleging that they each received a monthly salary of ₱9,177.00, as shown by the payrolls.

On July 18, 2007, Labor Arbiter Patricio Libo-on dismissed the illegal dismissal complaint, but ordered the payment of additional separation pay to the respondents – ₱490,066.00 for Ybarola and ₱429,517.55 for Rivera.[5] The labor arbiter adjusted the separation pay award based on the respondents' Certificates of Compensation Payment/Tax Withheld showing that Ybarola and Rivera were receiving an annual salary of ₱482,477.61 and ₱697,303.00, respectively.

On appeal by the petitioners to the National Labor Relations Commission (*NLRC*), the NLRC set aside the labor arbiter's decision and dismissed the complaint for lack of merit.[6] It ruled that the withholding tax certificate cannot be the basis of the computation of the respondents' separation pay as the tax document included the respondents' cost-of-living allowance and commissions; as a general rule, commissions cannot be included in the base figure for the computation of the separation pay because they have to be earned by actual market transactions attributable to the respondents, as held by the Court in *Soriano*

[5] *Id.* at 69-84.

[6] *Id.* at 103-111; Resolution dated January 26, 2009.

v. NLRC[7] and *San Miguel Jeepney Service v. NLRC*.[8] The NLRC upheld the validity of the respondents' quitclaim affidavits as they failed to show that they were forced to execute the documents.

From the NLRC, the respondents sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision and the Court's Ruling

In its decision[9] of February 17, 2011, the CA granted the petition and set aside the assailed NLRC dispositions. It reinstated the labor arbiter's separation pay award, rejecting the NLRC's ruling that the respondents' commissions are not included in the computation of their separation pay. It pointed out that in the present case, the respondents earned their commissions through actual market transactions attributable to them; these commissions, therefore, were part of their salary.

The appellate court declared the release/quitclaim affidavits executed by the respondents invalid for being against public policy, citing two reasons: (1) the terms of the settlement are unconscionable; the separation pay the respondents received was deficient by at least ₱400,000.00 for each of them; and (2) the absence of voluntariness when the respondents signed the document, it was their dire circumstances and inability to support their families that finally drove them to accept the amount the petitioners offered. Significantly, they dallied and it took them three months to sign the release/quitclaim affidavits.

The petitioners moved for reconsideration, but the CA denied the motion in a resolution[10] dated September 23, 2011. Thus, the petitioners appealed to this Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court.

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[7] 239 Phil. 119 (1987).

[8] 332 Phil. 804 (1996).

[9] *Supra* note 3.

[10] *Supra* note 4.

By a Resolution[11] dated December 7, 2011, the Court denied the petition for failure to show any reversible error or grave abuse of discretion in the assailed CA rulings.

The Motion for Reconsideration

The petitioners seek reconsideration of the Court's denial of their appeal on the ground that the CA, in fact, committed reversible error in: (1) failing to declare that Canoy is not personally liable in the present case; (2) disregarding the rule laid down in *Talam v. National Labor Relations Commission*[12] on the proper appreciation of quitclaims; and (3) disregarding prevailing jurisprudence which places on the respondents the burden of proving that their commissions were earned through actual market transactions attributable to them.

The petitioners fault the CA for not expressly declaring that no basis exists to hold Canoy personally liable for the award to the respondents as they failed to specify any act Canoy committed against them or to explain how Canoy participated in their dismissal. They express alarm as they believe that unless the Court acts, the respondents will enforce the award against Canoy himself.

On the release/quitclaim issue, the petitioners bewail the CA's disregard of the Court's ruling in *Talam* that the quitclaim that Francis Ray Talam, who was not an unlettered employee, executed was a voluntary act as there was no showing that he was coerced into signing the instrument, and that he received a valuable consideration for his less than two years of service with the company. They point out that in this case, the labor arbiter and the NLRC correctly concluded that the respondents are hardly unlettered employees, but intelligent, well-educated and who were too smart to be caught unaware of what they were doing. They stress, too, that the respondents submitted no proof that they were in dire circumstances when they executed the release/quitclaim document.

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[11] *Supra* note 2.

[12] G.R. No. 175040, April 6, 2010, 617 SCRA 408.

With regard to the controversy on the inclusion of the respondents' commissions in the computation of their separation pay, the petitioners reiterate their contention that the respondents failed to show proof that they earned the commissions through actual market forces attributable to them.

The Respondents' Position

Through their Comment/Opposition (to the Motion for Reconsideration),[13] the respondents pray that the motion be denied for lack of merit. They argue that the motion is based on arguments already raised in the petition for review which had already been denied by this Court.

The respondents submit that the issue of Canoy's personal liability has become final and conclusive on the parties as the petitioners failed to raise the issue on time. They maintain that as the records show, the petitioners failed to raise the issue in their appeal to the NLRC and neither did they bring it up in their motion for reconsideration of the CA's decision reinstating the labor arbiter's award.

The Petitioners' Reply

In their reply (to the respondents' Comment/Opposition),[14] the petitioners ask that their petition be reinstated to allow the full ventilation of the issues presented for consideration. They contend that the respondents merely reiterated the CA pronouncements and have not confronted the issues raised and the jurisprudence they cited.

On the question of Canoy's personal liability, the petitioners take exception to the respondents' submission that the matter had been resolved with finality and has become conclusive on them. They assert that they did not raise the issue with the CA because there was no reason for them to do so as the ruling then being reviewed was one which held that they were not liable to the respondents.

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[13] *Rollo*, pp. 236-245.

[14] *Id.* at 248-255.

Our Ruling on the Motion for Reconsideration

We find the motion for reconsideration unmeritorious. The motion raises substantially the same arguments presented in the petition and we find no compelling justification to grant the reconsideration prayed for.

The petitioners insist that the respondents' commissions were not part of their salaries, because they failed to present proof that they earned the commission due to actual market transactions attributable to them. They submit that the commissions are profit-sharing payments which do not form part of their salaries. **We are not convinced.** If these commissions had been really profit-sharing bonuses to the respondents, they should have received the same amounts, yet, as the NLRC itself noted, Ybarola and Rivera received ₱372,173.11 and ₱586,998.50 commissions, respectively, in 2002.[15] The variance in amounts the respondents received as commissions supports the CA's finding that the salary structure of the respondents was such that they only received a minimal amount as guaranteed wage; a greater part of their income was derived from the commissions they get from soliciting advertisements; these advertisements are the "products" they sell. As the CA aptly noted, this kind of salary structure does not detract from the character of the commissions being part of the salary or wage paid to the employees for services rendered to the company, as the Court held in *Philippine Duplicators, Inc. v. NLRC*.[16]

The petitioners' reliance on our ruling in *Talam v. National Labor Relations Commission*,[17] regarding the "proper appreciation of quitclaims," as they put it, is misplaced. While Talam, in the cited case, and Ybarola and Rivera, in this case, are not unlettered employees, their situations differ in all other respects.

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[15] *Supra* note 6, at 107.

[16] G.R. No. 110068, November 11, 1993, 227 SCRA 747, 753.

[17] *Supra* note 12.

In *Talam,* the employee received a valuable consideration for his less than two years of service with the company;[18] he was not shortchanged and no essential unfairness took place. In this case, as the CA noted, the separation pay the respondents each received was deficient by at least ₱400,000.00; thus, they were given only half of the amount they were legally entitled to. To be sure, a settlement under these terms is not and cannot be a reasonable one, given especially the respondents' length of service – 25 years for Ybarola and 19 years for Rivera. The CA was correct when it opined that the respondents were in dire straits when they executed the release/quitclaim affidavits. Without jobs and with families to support, they dallied in executing the quitclaim instrument, but were eventually forced to sign given their circumstances.

Lastly, the petitioners are estopped from raising the issue of Canoy's personal liability. They did not raise it before the NLRC in their appeal from the labor arbiter's decision, nor with the CA in their motion for reconsideration of the appellate court's judgment. The risk of having Canoy's personal liability for the judgment award did not arise only with the filing of the present petition, it had been there all along – in the NLRC, as well as in the CA.

WHEREFORE, premises considered, we hereby **DENY** the motion for reconsideration with finality. No second motion for reconsideration shall be entertained. Let judgment be entered in due course.

SO ORDERED.

Sereno, C.J., Carpio (Chairperson), Perez, and *Reyes, JJ.,* concur.

[18] *Supra* note 1, at 211.

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Factual findings of the Ombudsman — Conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the Court of Appeals; exceptions. (Bagong Kapisanan sa Punta Tenement, Inc. *vs*. Dolot, G.R. No. 179054, Sept. 05, 2012) p. 305

Factual findings of trial court — Binding and conclusive upon the Supreme Court, especially when affirmed by the CA; exceptions: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, 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 of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

Fresh-period rule — A party is given a "fresh period" of fifteen days from receipt of the court's resolution on a motion for reconsideration within which to file a notice of appeal. (Suico Industrial Corp. *vs*. Hon. Marilyn Lagura-Yap, G.R. No. 177711, Sept. 05, 2012) p. 286

Period to appeal — Minor lapses are at times disregarded in order to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling reasons; rationale; application. (Vianzon *vs*. Macaraeg, G.R. No. 171107, Sept. 05, 2012) p. 253

Petition for review on certiorari to the Supreme Court under Rule 45 — A petition for review on certiorari shall raise only questions of law, which must be distinctly set forth. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

Questions of fact — The issue of alleged novation involves a question of fact as it necessarily requires factual determination of the existence of the requirements of novation. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

Question of law and question of fact, distinguished — A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

ARREST

Arrest in flagrante delicto — If the accused was caught in flagrante delicto and the arrest was valid, the arresting policemen thereby became cloaked with the authority to validly search his person and effects for weapons or any other article which might be used 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. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

Warrantless arrest — An arrest made after a buy-bust operation considered a valid "warrantless arrest"; police officers duty-bound to arrest accused who is apprehended in *flagrante delicto*. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

ATTORNEYS

Code of Professional Responsibility — Violation thereof not subject to compromise entered into with the complainant. (Virtusio *vs.* Atty. Virtusio, A.C. No. 6753, Sept. 05, 2012) p. 148

Dishonest and deceitful conduct — Includes use for personal purpose of money entrusted to a lawyer. (Virtusio *vs.* Atty. Virtusio, A.C. No. 6753, Sept. 05, 2012) p. 148

Gross misconduct — A lawyer's gross misconduct, whether in his professional or private capacity, is a ground for suspension or disbarment; rationale. (Virtusio *vs.* Atty. Virtusio, A.C. No. 6753, Sept. 05, 2012) p. 148

Violation of Lawyer's Oath — A lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law. (Virtusio *vs.* Atty. Virtusio, A.C. No. 6753, Sept. 05, 2012) p. 148

ATTORNEY'S FEES

Award of — Justified by the clear refusal of petitioners to satisfy their existing debt to the bank despite the long period of time and the accommodations granted to it by the respondent to enable them to satisfy their obligations. (Magdiwang Realty Corp. *vs.* Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

— Proper in an ejectment case. (Antioquia Dev't. Corp. *vs.* Rabacal, G.R. No. 148843, Sept. 05, 2012) p. 223

CIVIL PROCEDURE, 1997 RULES OF

Assignment of cases — Raffle expressly made the exclusive method of assigning cases among several branches of a court in a judicial station; purpose thereof. (GSIS *vs.* Exec. Judge Maria A. Cancino-Erum, A.M. No. RTJ-09-2182 [Formerly A.M. No. 08-3007-RTJ], Sept. 05, 2012) p. 189

— Supreme Court issued Circular No. 7 demanding adherence to procedure for the raffle; exceptions expressly recognized. *(Id.)*

CLERKS OF COURT

Dishonesty and grave misconduct — Committed by failure to remit judiciary funds in due time; punishable by dismissal from the service even if committed for the first time. (OCAD *vs*. Acedo, A.M. No. P-09-2597 (Formerly A.M. No. 08-12-356-MCTC), A.M. No. 01-10-593-RTC, Sept. 11, 2012) p. 497

Duties and responsibilities — Clerks of court are essential officers in any judicial system; as the chief administrative officers of their respective courts, they must act with competence, honesty and probity in accordance with their duty of safeguarding the integrity of the court and their proceedings. (OCAD *vs*. Acedo, A.M. No. P-09-2597 [Formerly A.M. No. 08-12-356-MCTC], A. M. No. 01-10-593-RTC, Sept. 11, 2012) p. 497

— Failure to completely submit the required monthly reports in violation of the guidelines set forth under SC Circular No. 32-93 justifies the withholding of their salaries. *(Id.)*

Length of service — An alternative circumstance which can mitigate or aggravate the penalty, depending on the circumstances of the case; 40 years in service taken against respondent. (OCAD *vs*. Acedo, A.M. No. P-09-2597 [Formerly A.M. No. 08-12-356-MCTC], A. M. No. 01-10-593-RTC, Sept. 11, 2012) p. 497

CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (R.A. NO. 6713)

Duty of public officials and employees — Public officials expected to exhibit the highest degree of dedication in deference to their foremost duty of accountability to the people; to allow respondents to remain as accountable public officers, despite their questionable acts, would be rewarding them for their misdeed. (Bagong Kapisanan sa Punta Tenement, Inc. *vs*. Dolot, G.R. No. 179054, Sept. 05, 2012) p. 305

— The Code enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence; bounden duty of public officials and

government employees to remain true to the people at all times. *(Id.)*

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Qualifications of a beneficiary — A.O. No. 3 lays down the qualifications of a beneficiary in landed estates: he or she should be (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. (Vianzon *vs.* Macaraeg, G.R. No. 171107, Sept. 05, 2012) p. 253

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Ensures the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized to determine the guilt or innocence of the accused; procedure prescribed in Section 21; some flexibility offered in its Implementing Rules. (People of the Phils. *vs.* Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

— Links that must be established in the chain of custody in a buy-bust situation, enumerated. *(Id.)*

— The prosecution had indubitably established the crucial links in the chain of custody as the evidence clearly show that the integrity and evidentiary value of the confiscated substance have been preserved; explained. *(Id.)*

Illegal sale of dangerous drugs — Non-presentation of the forensic chemist in illegal drugs cases is an insufficient cause for acquittal; what is important is that the integrity and evidentiary value of the seized drugs are properly preserved. (People of the Phils. *vs.* Calexto Duque Fundales, Jr., G.R. No. 184606, Sept. 05, 2012) p. 322

— The requisites for illegal sale of shabu are: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; (b) the delivery of the thing sold and the

payment for the thing; and (c) the presentation in court of the *corpus delicti* as evidence. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

(People of the Phils. *vs*. Calexto Duque Fundales, Jr., G.R. No. 184606, Sept. 05, 2012) p. 322

Requirements of law for handling evidence — Non-participation of the Philippine Drug Enforcement Agency in the operation did not render the arrest illegal and the evidence obtained therein inadmissible. (People of the Phils. *vs*. Calexto Duque Fundales, Jr., G.R. No. 184606, Sept. 05, 2012) p. 322

— The alleged improper handling of the seized items should have been raised during the trial; slight infractions by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant. *(Id.)*

CORPORATIONS

Certificate of stock — Endorsement in blank of stock certificates coupled with its delivery, entitles the holder thereof to demand the transfer of said stock certificates in his name from the issuing corporation; such certificate deemed quasi-negotiable. (Guy *vs*. Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

Classification of suits — Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits; individual suit, explained. (Guy *vs*. Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

Interim Rules of Procedure on Intra-Corporate Controversies — Failure to specifically allege fraudulent acts in intra-corporate controversies is indicative of a harassment or nuisance suit and may be dismissed *motu proprio*. (Guy *vs*. Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

Intra-corporate controversies — In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity; particulars would necessarily include the time, place and specific acts of fraud committed; rationale. (Guy *vs.* Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

Special commercial court — Not every allegation of fraud done in a corporate setting will bring the case within the special commercial court's jurisdiction. (Guy *vs*. Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

DAMAGES

Attorney's fees — Justified by the clear refusal of petitioners to satisfy their existing debt to the bank despite the long period of time and the accommodations granted to it by the respondent to enable them to satisfy their obligations. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

— Proper in an ejectment case. (Antioquia Dev't. Corp. *vs*. Rabacal, G.R. No. 148843, Sept. 05, 2012) p. 223

Kinds of damages awarded to heirs of murdered victims — Moral damages like civil indemnity, exemplary damages, actual damages, and temperate damages, discussed. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

DEFAULT

Order of default — The validity of the trial court's declaration of petitioners' default is a settled matter, following the denial of the petitions previously brought by the petitioners before the CA and this Court questioning it; effect of failure to plead. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

DEMURRER TO EVIDENCE

Motion for leave of court to file demurrer to evidence — Courts have wide latitude for denying the filing of demurrers to evidence; remedy. (Reyes *vs*. Sandiganbayan [4th Div.], G.R. No. 148607, Sept. 05, 2012) p. 206

DENIAL AND ALIBI

Defense of — Both inherently weak defenses that cannot prosper in the light of the clear, positive and straightforward testimonies of prosecution witnesses coupled with their positive identification of the accused. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction of — Complaint for annulment of emancipation patent is within the jurisdiction of the Provincial Agrarian Reform Adjudicator (PARAD) and DARAB; concurrent original jurisdiction with the PARAD. (Pangilinan *vs*. Balatbat, G.R. No. 170787, Sept. 12, 2012) p. 605

DUE PROCESS

Essence of — The essence of due process is simply an opportunity to be heard; requires notice and an opportunity to be heard before judgment is rendered. (Pangilinan *vs*. Balatbat, G.R. No. 170787, Sept. 12, 2012) p. 605

When satisfied — Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself; in administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

EJECTMENT

Complaint for — An unauthorized complaint does not produce any legal effect. (Atty. Palmiano-Salvador *vs*. Angeles, G.R. No. 171219, Sept. 03, 2012) p. 1

ELECTION CONTESTS

Election protest — Dismissal of the election protest does not constitute *res judicata* to bar the filing of a verified petition for correction in the Election Return; requisites of *res judicata* as a bar by prior judgment, enumerated. (Ceron *vs.* Commission on Elections, G.R. No. 199084, Sept. 11, 2012) p. 582

EMPLOYMENT, TERMINATION OF

Constructive dismissal — Committed to respondents as the substitution of their original contracts and the oppressive working and living conditions compelled them to give up their jobs. (PERT/CPM Manpower Exponent Co., Inc. *vs.* Vinuya, G.R. No. 197528, Sept. 05, 2012) p. 426

— 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. *(Id.)*

Dismissal — Requisites for a valid dismissal are: (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same code. (Park Hotel, J's Playhouse Burgos Cop., Inc., and/or Gregg Harbutt *vs.* Soriano, G.R. No. 171118, Sept. 10, 2012) p. 471

Illegal dismissal — Respondents entitled to payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent and separation pay instead of reinstatement; awards of separation pay and backwages are not mutually exclusive, and both may be awarded. (Park Hotel, J's Playhouse Burgos Cop., Inc., and/or Gregg Harbutt *vs.* Soriano, G.R. No. 171118, Sept. 10, 2012) p. 471

— The awards of moral and exemplary damages in favor of respondents are also justified; grant of attorney's fees, proper. *(Id.)*

Separation pay — Employees' commission forms part of their salary or wage; should be included in the computation of their separation pay. (Radio Mindanao Network, Inc. *vs*. Ybarola, Jr., G.R. No. 198662, Sept. 12, 2012) p. 689

EVIDENCE

Demurrer to evidence — Courts have wide latitude for denying the filing of demurrers to evidence; remedy. (Reyes *vs*. Sandiganbayan [4th Div.], G.R. No. 148607, Sept. 05, 2012) p. 206

Flight of the accused — Flight of the accused from the scene of the crime immediately after the ambush is an evidence of guilt. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

Preponderance of evidence — Established by the totality of evidence presented by respondent bank in support of their allegations in the complaint; in civil cases, the party having the burden of proof must establish his case only by a preponderance of evidence; explained. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

FORUM SHOPPING

Concept — No forum shopping between the filing of an application for retention of land and a complaint for annulment of emancipation patent; the parties involved and the reliefs prayed for are different; essence of forum shopping, explained. (Pangilinan *vs*. Balatbat, G.R. No. 170787, Sept. 12, 2012) p. 605

GOVERNMENT AUDITING CODE (P.D. NO. 1445)

Section 56(3)(C) of — Requires adequate evidentiary support in the audit working papers of findings contained in audit reports. (Reyes *vs*. Sandiganbayan [4th Div.], G.R. No. 148607, Sept. 05, 2012) p. 206

IMPEACHMENT

Betrayal of public trust, as a ground — Construed; acts may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

JUDGES

Administrative complaint against a judge — Inappropriate as a remedy for the correction of an act or omission where the remedy of appeal or certiorari is available to an aggrieved party; rationale. (GSIS *vs*. Exec. Judge Maria A. Cancino-Erum, A.M. No. RTJ-09-2182 [Formerly A.M. No. 08-3007-RTJ], Sept. 05, 2012) p. 189

Gross ignorance of the law and gross misconduct — Classified as serious charges under Rule 140, Section 8 of the Revised Rules of Court. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

— To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but must also be motivated by bad faith, fraud, dishonesty and corruption; grave misconduct refers to a wrongful act inspired by corruption or intention to violate the law. (GSIS *vs*. Exec. Judge Maria A. Cancino-Erum, A.M. No. RTJ-09-2182 [Formerly A.M. No. 08-3007-RTJ], Sept. 05, 2012) p. 189

Gross misconduct — Judges proscribed from engaging in self-promotion and indulging their vanity and pride; defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

Ground for disciplinary action — Failure to apply the Revised Rules on Summary Procedure in cases so obviously covered by the same is a ground for disciplinary action; good faith or lack of deliberate or malicious intent, not a defense. (Uy

vs. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

JUDGMENTS

Construction of — Due to development that altered the factual situation of the case, there is a need to clarify the *fallo* of the decision to reconcile it with said development. (Phil. Coconut Producers Federation, Inc. [COCOFED] *vs.* Rep. of the Phils., G.R. No. 177857-58, Sept. 04, 2012) p. 43

Execution of — Can only be issued against one who is a party to the action; petitioners were total strangers to the civil case and to order them to settle an obligation which they persistently denied is tantamount to deprivation of property without due process of law. (Vicente Atilano II *vs.* Hon. Judge Asaali, G.R. No. 174982, Sept. 10, 2012) p. 488

Satisfaction of — Proceedings when indebtedness is denied or another person claims the property; the trial court should have directed respondent to institute a separate action against petitioners for the purpose of recovering alleged indebtedness. (Vicente Atilano II *vs.* Hon. Judge Asaali, G.R. No. 174982, Sept. 10, 2012) p. 488

LAWS

Effect and application of laws — Laws have no retroactive effect, unless the contrary is provided; the amendment introduced by R.A. 10022 cannot be given retroactive effect. (PERT/CPM Manpower Exponent Co., Inc. *vs.* Vinuya, G.R. No. 197528, Sept. 05, 2012) p. 426

LEASE

Implied new lease — Where the principle of implied new lease is not applicable, the new lease should have been only on a monthly basis; implied new lease will set in if: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor. (Zosima Inc. *vs.* Salimbagat, G.R. No. 174376, Sept. 12, 2012) p. 636

MANAGEMENT PREROGATIVE

Bad faith in exercise of — Defined; must be established clearly and convincingly as the same is never presumed. (Misamis Oriental II Electric Service Cooperative [MORESCO II] *vs.* Cagalawan, G.R. No. 175170, Sept. 05, 2012) p. 268

Exercise of — Management prerogative to transfer employees should be exercised without grave abuse of discretion and with due regard to the basic elements of justice and fair play. (Misamis Oriental II Electric Service Cooperative [MORESCO II] *vs*. Cagalawan, G.R. No. 175170, Sept. 05, 2012) p. 268

MORTGAGES

Contract of — Requisites for a mortgage contract to be valid: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the persons constituting the mortgage have free disposal of their property, and in the absence of free disposal, that they be legally authorized for the purpose. (PNB *vs*. Sps. Alejandro and Myrna Reblando, G.R. No. 194014, Sept. 12, 2012) p. 669

MURDER

Frustrated and attempted murder — Where the killing and the wounding of the victims were not the result of the single act but of several acts, accused should not be convicted of a complex crime but of separate crimes; when various victims expire from separate shots, such acts constitute separate and distinct crimes. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

NATIONAL LABOR RELATIONS COMMISSION

Rules of procedure — Labor tribunals not bound by technical rules, hence, not precluded from receiving evidence submitted on appeal; exception. (Misamis Oriental II Electric Service Cooperative (MORESCO II) *vs*. Cagalawan, G.R. No. 175170, Sept. 05, 2012) p. 268

NEGOTIABLE INSTRUMENTS

Indorsement of checks — In the absence of clear authority to indorse a check for renegotiation, the indorsement of the check did not alter the nature thereof as for deposit. (Reyes *vs*. Sandiganbayan [4th Div.], G.R. No. 148607, Sept. 05, 2012) p. 206

OMBUDSMAN ACT OF 1989 (R.A. NO. 6770)

Removal of Deputy Ombudsman and Special Prosecutor — Congress has the power and discretion to delegate to the President the power to remove a Deputy Ombudsman or the Special Prosecutor under Section 8(2) of the Ombudsman Act. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012; *Carpio, J., concurring opinion*) p. 52

— The legislative intent is to grant concurrent jurisdiction to the President and the Ombudsman in the removal of the Deputy Ombudsman and the Special Prosecutor. *(Id.)*

— Two restrictions on the President's exercise of the power of removal over a Deputy Ombudsman: (1) that the removal of the Deputy Ombudsman must be for any of the grounds provided for the removal of the Ombudsman and (2) that there must be observance of due process. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

Section 8(2) of — Constitutionality thereof, when upheld. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

— Runs against the constitutional intent and should be declared void; rationale. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012; *Brion, J., concurring and dissenting opinion*) p. 52

— The power of the President to remove the Deputy Ombudsman and the Special Prosecutor is unconstitutional and void; rationale. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012; *Abad, J., dissenting opinion*) p. 52

OMBUDSMAN, OFFICE OF THE

Jurisdiction — Concurrent disciplinary jurisdiction of the Ombudsman and the President over the Deputy Ombudsman and Special Prosecutor, intended by Congress. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

OMNIBUS ELECTION CODE (B.P. BLG. 881)

Section 216 of — Dispenses with the opening of the ballot box and recounting of the ballots where the discrepancy between the taras and the written words and figures is apparent on the face of the Election Return. (Ceron *vs*. Commission on Elections, G.R. No. 199084, Sept. 11, 2012) p. 582

— Refers to the Board of Election Inspectors and also to the Board of Election Tellers; their primary duties are identical. *(Id.)*

PARTIES TO CIVIL ACTIONS

Indispensable parties — Defined; expounded. (Guy *vs*. Guy, G.R. No. 189486, Sept. 05, 2012) p. 354

— Joinder of indispensable parties compulsory being a sine qua non for the exercise of judicial power; the corporation should have also been impleaded as an indispensable party. *(Id.)*

— One who must be included in an action before it may properly go forward; the absence of such party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. *(Id.)*

Real party-in-interest — In an action for reconveyance, the real party-in-interest against whom the action must be filed is the registered owner of the property; any judgment in this action is binding only upon the parties properly impleaded. (Guizano *vs*. Veneracion, G.R. No. 191128, Sept. 12, 2012) p. 658

— Must be impleaded; an attorney-in-fact is not the real party-in-interest; cannot bring an action in her own name for an undisclosed principal even if so authorized in the power of attorney. *(Id.)*

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — Application of Labor Code provisions in determining the disability benefits due a seafarer, upheld. (Pacific Ocean Manning, Inc. *vs*. Penales, G.R. No. 162809, Sept. 05, 2012) p. 239

— The initial treatment period of 120 days may be extended to a maximum of 240 days under the conditions prescribed by law. *(Id.)*

— To determine amount to be awarded, remand of the case to the Labor Arbiter is proper. *(Id.)*

PLEA BARGAINING

Concept — Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval; essence of a plea bargaining agreement is the allowance of an accused to plead guilty to a lesser offense than that charged against him. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

PLEADINGS

Filing of — Matter of admission of the respondents' pleadings, though belatedly filed, depended on the sound discretion of the court, the circumstances then attending the case and the particular consequences provided by law for the non-filing of pleadings. (Suico Industrial Corp. *vs*. Hon. Marilyn Lagura-Yap, G.R. No. 177711, Sept. 05, 2012) p. 286

PRESCRIPTION OF ACTIONS

Prescriptive period — The ten (10)-year prescriptive period to file an action based on the subject promissory notes was interrupted by the several letters exchanged between the

parties; circumstances that interrupt prescription of actions. (Magdiwang Realty Corp. *vs*. Mla. Banking Corp., G.R. No. 195592, Sept. 05, 2012) p. 392

PRESIDENT, POWERS OF

Doctrine of implication — Power of the President to remove a Deputy Ombudsman and Special Prosecutor, justified under the doctrine of implication. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

PRE-TRIAL

Pre-trial brief — Failure to file the pre-trial brief attributable to the fault or negligence of counsel and this binds his clients. (Suico Industrial Corp. *vs*. Hon. Marilyn Lagura-Yap, G.R. No. 177711, Sept. 05, 2012) p. 286

— Failure to file the pre-trial brief within the time prescribed by the Rules of Court constitutes sufficient ground for dismissal; has the same effect as failure to appear at the pre-trial. *(Id.)*

PROSECUTION OF OFFENSES

How prosecuted — The discretion on which witness to present in every case belongs to the prosecutor; possible to reach a conclusion of guilt on the basis of the testimony of a lone witness. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Bagong Kapisanan Sa Punta Tenement, Inc. *vs*. Dolot, G.R. No. 179054, Sept. 05, 2012) p. 305

Dismissal from service — When an individual is found guilty of dishonesty, the penalty is dismissal from employment or service; rationale; cannot be reduced by the court considering the facts in case at bar and the absence of

any mitigating circumstances. (Bagong Kapisanan Sa Punta Tenement, Inc. *vs*. Dolot, G.R. No. 179054, Sept. 05, 2012) p. 305

Sworn duty — Respondents' inaction demonstrated a lack of concern for the welfare of their constituents; they reneged on their sworn duty to be true to their constituents. (Bagong Kapisanan sa Punta Tenement, Inc. *vs*. Dolot, G.R. No. 179054, Sept. 05, 2012) p. 305

RAPE

Attempted rape — Defined; ruling in *People vs. Publico*, reiterated. (People of the Phils. *vs*. Pareja *y* Velasco, G.R. No. 188979, Sept. 05, 2012) p. 338

Carnal knowledge — The act of a man having sexual bodily connections with a woman; rape consummated once the penis of the accused touches either labia of the pudendum; does not require penetration. (People of the Phils. *vs*. Pareja *y* Velasco, G.R. No. 188979, Sept. 05, 2012) p. 338

Commission of — Consummated by the slightest penile penetration of the *labia majora* or pudendum of the female organ; absent any testimonial or physical evidence to establish penile penetration, there can be no consummated rape. (People of the Phils. *vs*. Pareja *y* Velasco, G.R. No. 188979, Sept. 05, 2012) p. 338

— How committed. *(Id.)*

— May still be committed in a confined space and even in the presence of victim's siblings; rape is not a respecter of place and time. (People of the Phils. *vs*. Venturina, G.R. No. 183097, Sept. 12, 2012) p. 646

— Not negated by absence of external signs or physical injuries or fresh hymenal lacerations; not essential elements of rape. *(Id.)*

REALTY INSTALLMENT BUYER ACT/ MACEDA LAW (R.A. NO. 6552)

Rescission of contract to sell — No valid rescission of the contract to sell by notarial act pursuant to Section 3 (b) of R.A. No. 6552 in case at bar; right of the seller to cancel the contract must be done in conformity with the requirements therein prescribed. (Planters Dev't. Bank *vs.* Chandumal, G.R. No. 195619, Sept. 05, 2012) p. 411

RES JUDICATA

Principle of — The doctrine applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers; exemplified. (Gonzales *vs.* Office of the President of the Phils., G.R. No. 196231, Sept. 4, 2012) p. 52

RETIREMENT

Retirement benefits — Belong to a different class of benefits; given to one who is separated from employment either voluntarily or compulsorily, on the assumption that he can no longer work; a form of reward for the services he had rendered. (GSIS *vs*. COA, G.R. No. 162372, Sept. 11, 2012) p. 518

— The retirees not precluded from receiving retirement benefits provided by existing retirement laws but prohibited from getting additional benefits under the Government Service Insurance System Retirement/Financial Plan. *(Id.)*

RULES OF COURT

Application of — Liberal interpretation of the Rules; grounds to suspend strict adherence: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby. (Suico Industrial Corp. *vs.* Hon. Marilyn Lagura-Yap, G.R. No. 177711, Sept. 05, 2012) p. 286

— Technical rules of procedure not designed to frustrate the ends of justice; utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction. *(Id.)*

— The dismissal of the action for specific performance has not caused any injustice to petitioners, barring any special or compelling circumstances that would warrant a relaxation of the rules. *(Id.)*

Liberal application — The Court deems it in the interest of substantial justice and petitioners' constitutionally-guaranteed right to due process to relax the rules of procedure in order to prevent an apparent travesty of justice. (Vicente Atilano II *vs*. Hon. Judge Asaali, G.R. No. 174982, Sept. 10, 2012) p. 488

SEARCH AND SEIZURE

Search incidental to a lawful arrest — A person lawfully arrested may be searched, without search warrant, for dangerous weapons or anything which may have been used or constitute proof in the commission of the offense. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

— If the accused was caught *in flagrante delicto* and the arrest was valid, the arresting policemen thereby became cloaked with the authority to validly search his person and effects for weapons or any other article which might be used 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. *(Id.)*

SECURITIES

Purchase and sale of — Government-owned or controlled corporations shall transact their purchases or sales of government securities only with Central Bank or government financial institutions. (Reyes *vs*. Sandiganbayan (4th Div.), G.R. No. 148607, Sept. 05, 2012) p. 206

STATUTES

Construction of — In interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. (Gonzales *vs*. Office of the President of the Phils., G.R. No. 196231, Sept. 04, 2012) p. 52

SUMMARY PROCEDURE, REVISED RULES ON

Applicability — Applicable to cases involving the crime of malicious mischief; clarified. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

Preliminary investigation — The Rules does not provide for preliminary investigation prior to the filing of a criminal case. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

Prohibited pleadings, exception to — A motion to dismiss on the ground of failure to comply with the Lupon requirement is an exception to the pleadings prohibited by the Rules. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

Violation of — Judge's issuance of a warrant of arrest for the accused is in violation of Section 16 of the Rules; explained. (Uy *vs*. Judge Javellana, A.M. No. MTJ-07-1666, Sept. 05, 2012) p. 159

SUMMONS

Substituted service of summons — No valid substituted service of summons in case at bar; the alleged "efforts" exerted by the sheriff shown by the return merely states the alleged whereabouts of the defendant. (Planters Dev't. Bank *vs.* Chandumal, G.R. No. 195619, Sept. 05, 2012) p. 411

— Requisites for validity, enumerated and explained. *(Id.)*

Voluntary appearance — Respondent voluntarily submitted her person to the jurisdiction of trial court when she filed an urgent motion to set aside order of default and to admit

attached answer; where a party seeks an affirmative relief and files a pleading, the filing is equivalent to a service of summons and vests the trial court with jurisdiction over the defendant's person. (Planters Dev't. Bank *vs.* Chandumal, G.R. No. 195619, Sept. 05, 2012) p. 411

TAX EXEMPTION

Exemption from franchise taxes — Respondent cooperative not exempt from payment of franchise taxes; the Local Government Code of 1992 withdrew tax exemptions or incentives of certain persons and entities as well as cooperatives duly registered under the Cooperative Code of the Philippines. (City of Iriga *vs.* Camarines Sur III Electric Cooperative, Inc. (CASURECO III), G.R. No. 192945, Sept. 05, 2012) p. 378

Laws granting tax privileges to electric cooperatives — P.D. No. 269 granted registered electric cooperatives several tax privileges, one of which is exemption from payment of all national government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. (City of Iriga *vs.* Camarines Sur III Electric Cooperative, Inc. [CASURECO III], G.R. No. 192945, Sept. 05, 2012) p. 378

TAX REFUND

Concept — Grant thereof without prior tax payment is an expenditure of public funds without an appropriation law; Tax Code, particularly its provisions on VAT, is a revenue measure, not an appropriation law. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Carpio, J., dissenting opinion*) p. 7

— Tax refund or credit, without previous tax payment as source, is an expenditure of public funds for the exclusive benefit of a specific private individual or entity; violates the fundamental principle that public funds can be used only for a public purpose. *(Id.)*

Purpose — Explained; double taxation not present in case at bar; petitioner not entitled to tax refund or credit under the VAT system. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Carpio, J., dissenting opinion*) p. 7

Source — Source of the tax refund or credit is the tax that was previously paid, which is returned to the taxpayer due to double, excessive, erroneous, advance or creditable tax payment. (Fort Bonifacio Dev't. Corp. *vs.* Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Carpio, J., dissenting opinion*) p. 7

TAXES

Franchise tax — A tax on the privilege of transacting business in the state and exercising corporate franchises granted by the State; it is within this context that the phrase "tax on businesses enjoying a franchise" in Section 137 of the Local Government Code should be interpreted and understood. (City of Iriga *vs.* Camarines Sur III Electric Cooperative, Inc. [CASURECO III], G.R. No. 192945, Sept. 05, 2012) p. 378

— Respondent electric cooperative liable for franchise tax on gross receipts within the principal office; it is a tax on business, rather than on persons or property; expounded. *(Id.)*

Local franchise tax — Requisites to be liable for a local franchise tax: (1) that one has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the pertinent local government unit. (City of Iriga *vs.* Camarines Sur III Electric Cooperative, Inc. [CASURECO III], G.R. No. 192945, Sept. 05, 2012) p. 378

Local taxes — Petitioner city has the power to impose local taxes; power of local government units to impose and collect taxes derived from the Constitution. (City of Iriga *vs.* Camarines Sur III Electric Cooperative, Inc. [CASURECO III], G.R. No. 192945, Sept. 05, 2012) p. 378

Tax exemption — Availing of a tax credit and filing for a tax refund are alternative options; both in the nature of a claim for exemption and construed in strictissimi juris against the person or entity claiming it. (Fort Bonifacio Dev't. Corp. *vs*. Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Carpio, J., dissenting opinion*) p. 7

TRUSTS

Doctrine of implied trust, constructive trust, express trust — Defined and differentiated; doctrine that a constructive trust is substantially an appropriate remedy against unjust enrichment; payees considered as trustees of the disallowed amounts. (GSIS *vs*. COA, G.R. No. 162372, Sept. 11, 2012) p. 518

UNFAIR LABOR PRACTICES

Commission of — Respondents unceremoniously dismissed from work by reason of their intent to form and organize a union. (Park Hotel, J's Playhouse Burgos Cop., Inc., and/or Gregg Harbutt *vs*. Soriano, G.R. No. 171118, Sept. 10, 2012) p. 471

UNJUST ENRICHMENT

Principle of — Statutory basis; when applicable; no unjust enrichment when the person who will benefit has a valid claim to such benefit; the enrichment of the payees is without just or legal ground because the Government Service Insurance System Retirement/Financial Plan is contrary to law. (GSIS *vs*. COA, G.R. No. 162372, Sept. 11, 2012) p. 518

UNLAWFUL DETAINER

Award of reasonable compensation — Plaintiff in an unlawful detainer or forcible entry case is not obliged to pay compensation to defendants whose occupation was either illegal from the beginning or had become such when they refused to vacate premises upon demand by the owner; rationale. (Antioquia Dev't. Corp. *vs*. Rabacal, G.R. No. 148843, Sept. 05, 2012) p. 223

Burden of proof — The plaintiff bears the burden of proving that respondent had been in actual possession of the property when a demand to vacate was made; the party carrying the burden of proof must rely on the strength of his own evidence and not upon the weakness of the defendant's. (Zosima Inc. *vs*. Salimbagat, G.R. No. 174376, Sept. 12, 2012) p. 636

Concept — The principal issue is the right to possess a real property; defendant's possession of the plaintiff's property is based on the plaintiff's permission expressed through an express or implied contract between them; when it becomes illegal. (Zosima Inc. *vs*. Salimbagat, G.R. No. 174376, Sept. 12, 2012) p. 636

VALUE ADDED TAX (VAT)

Refund of — Refund of the VAT already paid, when proper. (Fort Bonifacio Dev't. Corp. *vs*. Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Abad, J., concurring opinion*) p. 7

Tax credit — Grant thereof to all first-time VAT payers without any precondition; denial thereof would amount to a denial of the right to fairness and to equal protection. (Fort Bonifacio Dev't. Corp. *vs*. Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012; *Abad, J., concurring opinion*) p. 7

— Limiting the application of 8% transitional input tax credit to the value of the improvements on the land is a nullity; should include the value of the real properties as well. (Fort Bonifacio Dev't. Corp. *vs*. Commissioner of Internal Rev., G.R. No. 173425, Sept. 04, 2012) p. 7

— Prior payment of taxes is not required to avail of tax credit; transitional input tax credit shall be 8% of the value of [the beginning] inventory or the actual [VAT] paid on such goods, materials and supplies, whichever is higher. *(Id.)*

WITNESSES

Credibility of — Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

— Findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. *(Id.)*

— In the absence of proof of motive to falsely impute a serious crime against accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over the accused's self-serving and uncorroborated denial. (People of the Phils. *vs.* Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

— Prosecution's credible witnesses firmly established identities of the accused as perpetrators of the ambush; their testimonies on who and how the crime was committed were simple and candid, and their answers to questions were simple, straightforward and categorical. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

— Testimonies of police officers in dangerous drugs cases carry the presumption of regularity in the performance of official functions; between the positive and categorical testimonies of the arresting officers on one hand, and the unsubstantiated denial of the appellant on the other, the Court upholds the former. (People of the Phils. *vs*. Calexto Duque Fundales, Jr., G.R. No. 184606, Sept. 05, 2012) p. 322

— Where the defense fails to prove that witnesses are moved by improper motives, the presumption is that they were not so moved and their testimonies are therefore entitled to full weight and credit; ill-motive and malice on the part of prosecution's witnesses, not proven in case at bar. (People of the Phils. *vs*. Nelmida, G.R. No. 184500, Sept. 11, 2012) p. 529

Testimony of — Credence given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on their part; testimonies of the prosecution witnesses were found convincing, categorical and credible in case at bar. (People of the Phils. *vs*. Almodiel, G.R. No. 200951, Sept. 05, 2012) p. 449

— Defense of denial cannot stand in the face of the credible testimony of a young victim pointing to her father as the one who raped her. (People of the Phils. *vs*. Venturina, G.R. No. 183097, Sept. 12, 2012) p. 646

— Left largely to the trial court; once found credible, the rape victim's lone testimony is sufficient to sustain a conviction; absent any substantial reason to justify the reversal of the assessments and conclusions of the trial court, the evaluation of the credibility of witnesses is conclusive to the Court. *(Id.)*

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