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OF THE

PHILIPPINES

FROM

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2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 182523. September 13, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EFREN LAURIO *y* ROSALES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED GREAT WEIGHT AND RESPECT.—** The Court has often stated that factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect particularly when the Court of Appeals affirms the said findings, 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. It is the trial judge who had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore is in a better position to determine the veracity of the witnesses' testimony. In the present case, appellant has failed to produce any scintilla of evidence to warrant a reexamination of the facts and circumstances as found by the RTC and affirmed by the Court of Appeals.
2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, ELEMENTS OF; UNLAWFUL AGGRESSION AS THE MOST IMPORTANT ELEMENT, EXPLAINED.—**

Anent his claim of self-defense, appellant had to prove the following essential elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life."

3. **ID.; ID.; ID.; UNLAWFUL AGGRESSION, ABSENT IN CASE AT BAR.—** In the present case, the element of unlawful aggression is absent. Mere allegation by appellant that the victim pulled out a knife is insufficient to prove unlawful aggression and warrant the justification of the victim's killing. In fact, the testimony of eyewitness Pangan shows that the victim, who had fallen on the ground when he was repeatedly stabbed by appellant, was not capable of unlawful aggression. x x x On cross-examination, the same witness made no mention of any knife drawn by the victim. The testimony of the witness is bereft of any suggestion that there was unlawful aggression on the part of the victim.

4. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.—** [A]ppellant's act of stabbing the victim while he was down demonstrates treachery. We previously ruled that treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.

5. **ID.; MURDER; PENALTY.—** Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.

6. **ID.; ID.; CIVIL INDEMNITY, MORAL DAMAGES, EXEMPLARY DAMAGES, AND TEMPERATE DAMAGES, AWARDED.—** Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Also, pursuant to Article 2230 of the Civil Code, exemplary damages may be imposed as the crime was committed with the qualifying aggravating circumstance of treachery. Thus, the award of ₱30,000.00 as exemplary damages is in order. As regards actual damages and as noted by the RTC, the victim's sister, Wilfreda Villeza, testified that she and her family had incurred expenses for Alfredo's burial and wake, but failed to present receipts to substantiate her claim. This Court has previously ruled that where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted in lieu thereof. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proven.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO*, J.*:

Before this Court is an appeal of the December 12, 2007 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01446,[2] which affirmed with modification the December 1, 2000 **Decision**[3] of the Regional Trial Court (RTC), Branch 18, Manila in Crim. Case No. 98-169470, entitled *People of the Philippines v. Efren Laurio y Rosales and Juan Gullab y Mercader* wherein appellant Efren Laurio was found guilty of the crime of murder and co-accused Juan Gullab (Gullab) was found guilty of the crime of slight physical injuries.

The following information charging appellant and Gullab with the crime of murder was filed on December 15, 1998:

> That on or about December 11, 1998, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ALFREDO VILLEZA *y* VILLAS[4] by then and there punching and stabbing the latter several times causing him to fall down [on] the cemented pavement thereby inflicting upon the latter mortal stab wounds which were the direct and immediate cause of his death thereafter.[5]

On arraignment, appellant pleaded not guilty.[6] Thereafter, trial on the merits ensued.

---

[1] *Rollo*, pp. 2-11; penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring.

[2] Entitled *People of the Philippines v. Efren Laurio y Rosales*.

[3] CA *rollo*, pp.14-16; penned by Judge Perfecto A.S. Laguio, Jr.

[4] Referred to as "VILLEZA *y* VILLAR" in some parts of the *rollo* and records.

[5] Records, p. 1; signed by Assistant City Prosecutor Normando T. Garcia.

[6] *Id.* at 13; Hearing dated February 4, 1999.

During the trial a certain Irene Pangan (Pangan), a *kabataang barangay kagawad* and daughter of the owner of the vulcanizing shop where appellant worked, was presented as the prosecution's lone eyewitness. She narrated that at around 9:30 p.m. she went to the *sari-sari* store to buy cigarettes for her father. Upon her arrival at the store, she saw the victim, a *balut* vendor, drinking a bottle of Red Horse and inquiring from the saleslady about the price of the deposit for the bottle. As she was about to leave, the victim threw a bottle in the direction where appellant and Gullab were engaged in a drinking spree. Gullab confronted the victim. Gullab punched the victim, causing him to fall to the ground. It was while the victim was down that appellant stabbed him on the chest several times. Pangan related that she saw appellant wrapping a knife with a white hand towel bearing the inscription "Good Morning." She then told her father about the incident and called the police. The bloodstained towel was recovered by the second floor occupants of the vulcanizing shop from the rest room at the first floor and was later surrendered to the police officers.[7]

Dr. Emmanuel Aranas, medico-legal officer of the Western Police District, was also presented as a witness by the prosecution. He confirmed that the victim sustained seven fatal stab wounds in the chest and abdominal region, which caused his death. The stab wounds were inflicted using a single-bladed weapon.[8] Dr. Aranas presented the victim's death certificate.[9]

During his testimony, Gullab denied being involved in a drinking spree with appellant. He claimed that he only knew appellant because they were co-workers and they would once in a while drink together. However, on that night, Gullab said that he was not drinking but only loitering across the street from the *sari-sari* store. He testified that he saw appellant pulled out a knife and stabbed the victim. He then went upstairs to his house to sleep.

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[7] TSN, April 7, 2000, pp. 2-9.

[8] TSN, June 9, 1999, p. 5.

[9] Records, p. 22.

When called to the witness stand, appellant confirmed that he and his half-brother, Gullab, were drinking gin after work at the said *sari-sari* store. In the midst of their drinking spree, the victim threw a bottle at them. He maintained that at this point, he had only consumed a bottle of gin. Gullab confronted the victim who replied, "*Anong pakialam mo sa akin!*"[10] Gullab then hit the victim who thereafter pulled out a knife.[11] When appellant saw that the victim had a knife, he pulled out his own knife and stabbed the victim. After the altercation, he went to the vulcanizing shop to clean his bloodied hands.

After weighing the evidence presented by both parties, the RTC rendered the December 1, 2000 Decision finding appellant guilty of the crime of murder, *to wit*:

> The act of [appellant] in suddenly and repeatedly stabbing the defenseless and unarmed victim while he was sprawled on the ground after he was boxed by accused Gullab, thereby causing his instant and violent death, constitutes the crime of murder qualified by treachery under Article 248 of the Revised Penal Code. No other aggravating and/or mitigating circumstances attended the commission of the crime.
>
> The assertion of [appellant] that he stabbed the victim because the latter drew a knife and was about to stab him x x x, is not believable and persuasive. Other than his negative testimony to this effect, no hard and convincing evidence was adduced by the defense. Neither could his negative allegation prevail over the positive, logical, straightforward and credible testimony of prosecution eyewitness Irene Pangan, to whom no improper motive to testify falsely against the two accused had been proven. Settled is the rule that positive evidence is entitled to more weight than negative evidence such as [appellant's] spurious pretension.
>
> As regards the accused Gullab, this court finds that there is insufficient positive and direct evidence to establish beyond reasonable doubt that he had conspired with his co-accused in the killing of the victim. The crime was committed on the spur of the moment. The mere fact that accused Gullab punched the victim, before the latter was repeatedly stabbed to death by accused Laurio, is not sufficient

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[10] Roughly translated as "What do you care?"

[11] Parts of the records referred to this as an "ice pick."

and positive proof to justify a finding of conspiracy between the accused. In fact, as testified to by the prosecution's eyewitness, Irene Pangan, accused Gullab merely stood and watched while his co-accused repeatedly stabbed the victim. Accused Gullab was a passive spectator. He did not actively participate in the commission of the murder of the victim. Accused Gullab cannot therefore, be held liable for the crime charged. However, his act of punching the face of the victim without sufficient provocation on the part of the latter, who thereby suffered [an] abrasion on his nose, constitutes the crime of slight physical injuries under Article 266 of the Revised Penal Code.

WHEREFORE, [appellant] is hereby convicted of the crime of murder without any aggravating and/or mitigating circumstances and sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law and to pay the costs.

With regard to accused Juan Gullab *y* Mercader, he is convicted of the crime of slight physical injuries and sentenced to suffer 20 days imprisonment and to pay the costs.

On the civil liability of [appellant], he is ordered to pay the legal heirs of the victim, Alfredo Villeza *y* Villar, moral and nominal damages in the respective sums of ₱250,000.00 and ₱100,000.00 and compensation for the loss of the life of the victim in the sum of ₱50,000.00 with interest thereon at the legal rate of 6% per annum from this date until fully paid.[12]

On December 8, 2000, appellant, through counsel, manifested in open court that he would appeal the case to this Court. Gullab did not appeal the decision.[13]

Appellant's confinement was confirmed by the Bureau of Corrections on August 1, 2002.[14]

On July12, 2004, appellant, in a letter to the Court through the Office of the Chief Justice, manifested his intent to withdraw his appeal.[15]

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[12] CA *rollo*, pp. 15-16.

[13] Records, p. 83; Minutes dated December 8, 2000.

[14] CA *rollo*, p. 24.

[15] *Id.* at 61.

In its September 8, 2004 Resolution,[16] this Court noted the July 12, 2004 letter and transferred the case to the Court of Appeals for appropriate action and disposition in line with its ruling in *People v. Mateo*.[17]

The Court of Appeals in its December 12, 2007 decision affirmed the findings of the trial court but modified the award of damages, *to wit*:

This Court is in complete accord with the court *a quo* in its finding that [appellant] was unable to establish self-defense.

This Court also concurs that treachery was attendant to the killing. The position of the victim, the manner of the attack, and the circumstances which prevailed prior to and during the stabbing are clearly indicative of treachery.

The victim was already lying on the ground when he was stabbed by the [appellant]. As held by the Supreme Court, the crime can be qualified by treachery if the stabbing of the victim was done while the latter was lying on the ground, defenseless.

Stabbing the victim repeatedly for seven (7) times when the latter was already defenseless on the ground afforded accused impunity without risk to himself arising from any defense which the victim might make. This is the very essence of treachery as provided in Article 14, paragraph 16 of the Revised Penal Code.

The damages awarded to the heirs of the victim must, however, be modified.

When the death occurs due to a crime, the following damages may be recovered: (1) a civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in the proper cases.

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Thus, based on recent jurisprudence, the award of civil indemnity *ex delicto* of ₱50,000 is only proper.

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[16] *Id.* at 63.

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

For the expenses allegedly shouldered by the heirs of the victim, unfortunately, no proof was presented. Hence the lower court correctly denied the payment of actual damages. No documentary evidence was presented to substantiate the claim for actual damages.

The lack of documentary evidence notwithstanding, since loss was actually established in this case, temperate damages in the amount of ₱25,000 may be awarded to the heirs of the victim. Under Article 2224 of the Civil Code, temperate damages or moderate damages (which are more than nominal but less than compensatory damages) may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty.

While the courts have a wide latitude in ascertaining the proper award for moral damages, the award should not be to such an extent that it inflicts injustice on the accused. The award of ₱250,000 as moral damages should accordingly be reduced to ₱75,000, the crime having been committed under circumstances which justify imposition of the death penalty.

Under Article 2230 of the Civil Code, exemplary damages may also be imposed when the crime was committed with one or more aggravating circumstances. Here, given the presence of treachery which qualified the killing to murder, aforesaid damages must be awarded. The award of exemplary damages is pegged at ₱25,000.

WHEREFORE, premises considered, the decision of the lower court finding Efren Laurio *y* Rosales guilty beyond reasonable doubt of the crime of Murder is hereby AFFIRMED with MODIFICATION as to the award of damages. The heirs of the deceased Alfredo Villeza are entitled to the following:

(a) civil indemnity *ex delicto* in the amount of ₱50,000.00;

(b) temperate damages in the amount of ₱25,000.00;

(c) moral damages in the amount of ₱75,000.00; and

(d) exemplary damages in the amount of ₱25,000.00.[18] (Citations omitted.)

Appellant filed his notice of appeal on January 7, 2008.[19] He argues that the court *a quo* erred in appreciating the testimony

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[18] *Rollo*, pp. 9-11.

[19] CA *rollo*, p. 143.

of prosecution witness Pangan. He avers that the court failed to note his plea of self-defense as the victim was the one who drew a weapon first. Even assuming that self-defense was not availing, appellant claims that he could only be liable for the crime of homicide since the attack was sudden, thus negating the presence of treachery.

The appeal must be dismissed for lack of merit.

The Court has often stated that factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect particularly when the Court of Appeals affirms the said findings, 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.[20] It is the trial judge who had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies.[21] The trial judge therefore is in a better position to determine the veracity of the witnesses' testimony.[22]

In the present case, appellant has failed to produce any scintilla of evidence to warrant a reexamination of the facts and circumstances as found by the RTC and affirmed by the Court of Appeals. In any event, well-settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction, even in a charge of murder.[23]

Anent his claim of self-defense, appellant had to prove the following essential elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient

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[20] *People v. Molina*, G.R. No. 184173, March 13, 2009, 581 SCRA 519, 535-536.

[21] *People v. Antonio*, 433 Phil. 268, 272-273 (2002).

[22] *People v. Molina*, *supra* note 20 at 535.

[23] *People v. Sameniano*, G.R. No. 183703, January 20, 2009, 576 SCRA 840, 848.

provocation on the part of the person resorting to self-defense.[24] A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.[25]

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life."[26]

In the present case, the element of unlawful aggression is absent. Mere allegation by appellant that the victim pulled out a knife is insufficient to prove unlawful aggression and warrant the justification of the victim's killing. In fact, the testimony of eyewitness Pangan shows that the victim, who had fallen on the ground when he was repeatedly stabbed by appellant, was not capable of unlawful aggression. She testified as follows:

Q: And while at the store buying cigarette[s], what did you witness if any?

A: While I was buying cigarette[s], there was a balut vendor beside me drinking [R]ed [H]orse beer and he asked the store owner how much [was] the deposit for the bottle, sir.

Q: What did the store owner tell the balut vendor?

A: The balut vendor was told that the deposit [was] ₱2.50.

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[24] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 502-503.

[25] *Id.* at 503.

[26] *Id.* at 504.

Q: And what happened after that?

A: After the cigarette was handed to me and I was about to leave, the balut vendor threw the [R]ed [H]orse bottle [to] the street.

Q: And what happened next?

A: Mang Johnny approached the balut vendor and asked him what his problem was.

Q: And what is the complete name of Mang Johnny[,] if you know?

A: Juan Gullab, sir.

Q: Why do you know the person by that name Juan Gullab?

A: Because he worked in our vulcanizing shop as a casual worker, sir.

Q: And after Juan Gullab asked the balut vendor what his problem [was], what happened next?

A: The balut vendor did not answer and I left, sir.

Q: And when you were leaving, what happened next?

A: On my way home, I met Kuya Efren, sir.

Q: And what is the complete name of Efren?

A: Efren Laurio, sir.

Q: How did you know the person by the name of Efren Laurio?

A: He also worked in our vulcanizing shop, sir.

Q: When you met this Efren Laurio, what did you notice x x x, if any?

A: I saw him wrapping with a towel the knife he was holding.

Q: And where did Efren Laurio proceed when you met him?

A: He proceeded to the store, sir.

Q: And did you look back?

A: Yes, sir.

Q: And what did you see when you look[ed] back?

A: I saw Mang Johnny punch the balut vendor, sir.

Q: And what happened to the balut vendor after he was punched by Johnny?

A: He fell from his seat.

Q: And what did Efren Laurio do after the balut vendor fell to the ground?

A: He stabbed the balut vendor, sir.

Q: Did you see how many times Efren Laurio stabbed the balut vendor?

A: Many times, I was not able to count.

Court:

Q: At the time the balut vendor was stabbed by Laurio, he was seated on the ground?

A: He was seated in a reclined position on the ground.

Pros. Guray:

Q: He was in that position as a result of the punching by Johnny?

A: Yes, sir.

Q: What part of the body of the balut vendor was stabbed by Efren Laurio?

A: I am not sure in what particular part but it was on the upper part of the body.[27]

On cross-examination, the same witness made no mention of any knife drawn by the victim.[28] The testimony of the witness is bereft of any suggestion that there was unlawful aggression on the part of the victim.

Contrary to his claim of self-defense, appellant's act of stabbing the victim while he was down demonstrates treachery. We

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[27] TSN, April 7, 2000, pp. 3-4.

[28] *Id.* at 9-16.

previously ruled that treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[29]

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.[30]

Anent the award of damages, we agree with the Court of Appeals that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[31] However, to conform to existing jurisprudence, the Court modifies the award of damages by the Court of Appeals.

Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Also, pursuant to Article 2230 of the Civil Code, exemplary damages may be imposed as the crime was committed with the qualifying aggravating circumstance of treachery. Thus, the award of ₱30,000.00 as exemplary damages is in order.[32]

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[29] *People v. Asilan*, G.R. No. 188322, April 11, 2012. *Also see* REVISED PENAL CODE, Article 14, par. 16.

[30] *People v. Escleto*, G.R. No. 183706, April 25, 2012.

[31] *People v. Rebucan*, G.R. No. 182551, July 27, 2011, 654 SCRA 726, 758.

[32] *People v. Escleto*, *supra* note 30.

As regards actual damages and as noted by the RTC, the victim's sister, Wilfreda Villeza, testified that she and her family had incurred expenses for Alfredo's burial and wake, but failed to present receipts to substantiate her claim. This Court has previously ruled that where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted in lieu thereof. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proven.[33]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% from date of finality of this Decision until fully paid.[34]

WHEREFORE, the appeal is **DISMISSED**. The December 12, 2007 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01446 is **AFFIRMED**. Appellant **Efren Laurio** is found **GUILTY** beyond reasonable doubt of **MURDER**, and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant Efren Laurio is further ordered to pay the heirs of ALFREDO VILLEZA the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[33] *Id.*

[34] *Id.*

FIRST DIVISION

[G.R. No. 187052. September 13, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELISSA CHUA *a.k.a.* Clarita Ng Chua,** *accused-appellant.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995 (R.A. 8042); ILLEGAL RECRUITMENT; ELEMENTS, PRESENT IN CASE AT BAR.—** In order to hold a person liable for illegal recruitment, the following elements must concur: (1) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of the Republic Act No. 8042) and (2) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers. In the case of illegal recruitment in large sale, a third element is added: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group. All three elements are present in the case at bar. Inarguably, appellant Chua engaged in recruitment when she represented to private complainants that she could send them to Taiwan as factory workers upon submission of the required documents and payment of the placement fee. The four private complainants positively identified appellant as the person who promised them employment as factory workers in Taiwan for a fee of ₱80,000. More importantly, Severino Maranan the Senior Labor Employment Officer of the POEA, presented a Certification dated December 5, 2002, issued by Director Felicitas Q. Bay, to the effect that appellant Chua is not licensed by the POEA to recruit workers for overseas employment. The Court finds no reason to deviate from the findings and conclusions of the trial court and appellate court. The prosecution witnesses were positive and categorical in their testimonies that they personally met appellant and that the latter promised to send them abroad for employment. In fact, the substance of their

testimonies corroborate each other on material points, such as the amount of the placement fee, the country of destination and the nature of work.

2. **ID.; ID.; ID.; ACTING AS A CASHIER IS CONSIDERED A PRINCIPAL BY DIRECT PARTICIPATION.—** Appellant cannot escape liability by conveniently limiting her participation as a cashier of Golden gate. The provisions of Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042 are unequivocal that illegal recruitment may or may not be for profit. It is immaterial, therefore, whether appellant remitted the placement fees of "the agency's treasurer" or appropriated them. The same provision likewise provides that the persons criminally liable for illegal recruitment are the principals, accomplices and accessories. Just the same, therefore, appellant can be held liable as a principal by direct participation since she personally undertook the recruitment of private complainants without a license or authority to do so. Worth stressing, the Migrant Workers and Overseas Filipinos Act of 1995 is a special law, a violation of which is *malum prohibitum*, not *mala in se*. Intent is thus, immaterial and mere commission of the prohibited act is punishable.

3. **ID.; ID.; ID.; R.A. 8042 IN RELATION TO *ESTAFA* UNDER THE REVISED PENAL CODE; A PERSON MAY BE CONVICTED FOR BOTH ILLEGAL RECRUITMENT AND *ESTAFA*; ELEMENTS OF *ESTAFA* BY MEANS OF DECEIT, PRESENT IN CASE AT BAR.**— It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and *estafa*. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while *estafa* is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud. The elements of *estafa* by means of deceit are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency,

business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. In this case, the prosecution has established that appellant defrauded the complaining witnesses by leading them to believe that she has the capacity to send them to Taiwan for work, even as she does not have a license or authority for the purpose. Such misrepresentation came before private complainants delivered ₱80,000 as placement fee to appellant. Clearly, private complainants would not have parted with their money were it not for such enticement by appellant. As a consequence if appellant's false pretenses, the private complainants suffered damages as the promised employment abroad never materialized and the money they paid were never recovered.

4. **ID.; ID.; ID.; ID.; DAMAGE AS AN ELEMENT OF *ESTAFA* MUST BE PROVED AS CONCLUSIVELY AS THE OFFENSE ITSELF.—** Unlike in illegal recruitment where profit is immaterial, a conviction for *estafa* requires a clear showing that the offended party parted with his money or property upon the offender's false pretenses, and suffered damage thereby. In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused. It is imperative, therefore, that damage as an element of *estafa* under Article 315, paragraph 2(a) be proved as conclusively as the offense itself. The failure of the prosecution to discharge this burden concerning the *estafa* allegedly committed against Ursulum warrants the acquittal of appellant on the said charge.

5. **ID.; ID.; ID.; ID.; ID.; PROPER PENALTY FOR ILLEGAL RECRUITMENT IN A LARGE SCALE COMMITTED BY A NON-LICENSEE.—** Now on the matter of the appropriate penalty. Under Section 6, R.A. No. 8042, illegal recruitment when committed in large scale shall be considered as an offense involving economic sabotage. Accordingly, it shall be punishable by life imprisonment and a fine of not less than ₱500,000 not more than ₱1,000,000. The law provides

further that the maximum penalty shall be imposed if illegal recruitment is committed by a non-licensee or non-holder of authority. In the case at bar, the trial court imposed upon appellant Chua the penalty of life imprisonment and a fine of ₱500,000. However, considering that appellant is a non-licensee or non-holder of authority, we deem it proper to impose upon her the maximum penalty of life imprisonment and fine of ₱1,000,000.

6. **ID.; ID.; ID.; ID.; PROPER PENALTY FOR *ESTAFA* WHERE THE AMOUNT DEFRAUDED EXCEEDS PHP22,000.—** [T]he penalty for *estafa* under Article 315 of the Revised Penal Code is *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over ₱12,000 but does not exceed ₱22,000. If the amount exceeds ₱22,000, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000. But, the total penalty imposed shall not exceed 20 years. x x x In this case, the amount by which appellant defrauded private complainants Aglanao, Danan & Tajadao is ₱80,000, which exceeds ₱22,000. Hence, the penalty should be imposed in the maximum period of 6 years, 8 months and 21 days to 8 years. Since the total amount of fraud in this case exceeds the threshold amount of ₱22,000 by ₱58,000, an additional penalty of five years imprisonment should be imposed. Thus, the maximum period of appellant's indeterminate sentence should be 13 years of *reclusion temporal*. The minimum period of the indeterminate sentence, on the other hand, should be within the range of penalty next lower to that prescribed by Article 315, paragraph 2(a) of the Revised Penal Code for the crime committed. The penalty next lower to *prision correccional* maximum to *prision mayor* minimum is *prision correccional* minimum (6 months and 1 day to 2 years and 4 months) to *prision correccional* medium (2 years, 4 months and 1 day to 4 years and 2 months). Thus, the appellate court correctly modified the minimum period of appellant's sentence to 4 years and 2 months of *prision correccional*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is an appeal from the September 15, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01006. The Court of Appeals had affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 33, in Criminal Case No. 03-217999-403. The RTC found appellant Melissa Chua, *a.k.a.* Clarita Ng Chua, guilty beyond reasonable doubt of illegal recruitment in large scale and four counts of *estafa*. The Court of Appeals modified the penalty imposed upon appellant for each count of *estafa* to an indeterminate penalty of imprisonment for 4 years and 2 months of *prision correccional,* as minimum, to 13 years of *reclusion temporal*, as maximum.

Appellant Melissa Chua was charged on May 6, 2003, with the crime of illegal recruitment in large scale in an Information[3] which alleged:

> That on or about and during the period comprised between July 29, 2002 and August 20, 2002, both dates inclusive, in the City of Manila, Philippines, the said accused, representing herself to have the capacity to contract, enlist and transport Filipino workers overseas particularly to Taiwan, did then and there wilfully, unlawfully, for fee, recruit and promise employment/job placement to REY P. TAJADAO, BILLY R. DA[N]AN,[4] ROYLAN A. URSULUM and ALBERTO A. AGLANAO without first having secured the required license from the Department of Labor and Employment as required by law, and charge or accept directly or indirectly from said complainants various amounts as placement fees in consideration for their overseas employment, which amounts

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[1] *Rollo*, pp. 2-16. Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok concurring.

[2] CA *rollo*, pp. 14-18. The RTC decision was rendered on March 28, 2005 and penned by Judge Reynaldo G. Ros.

[3] *Id.* at 7.

[4] Sometimes spelled as “Daunan” or “Dauan” in other parts of the records.

are in excess of or greater than that specified in the schedule of allowable fees prescribed by the POEA, and without valid reasons and without the fault of said complainants, failed to actually deploy them and failed to reimburse expenses incurred in connection with their documentation and processing for purposes of their deployment.

Contrary to law.

Appellant was also charged with four counts of *estafa* in separate Informations, which, save for the date and the names of private complainants, uniformly read:

That on or about August 10, 2002, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud ALBERTO A. AGLANAO in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which she made to said ALBERTO A. AGLANAO prior to and even simultaneous with the commission of the fraud, to the effect that she [has] the power and capacity to recruit and employ the latter in Taiwan as a factory worker and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, induced and succeeded in inducing the said ALBERTO A. AGLANAO to give and deliver, as in fact he gave and delivered to the said accused the amount of ₱80,000.00 on the strength of the said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made solely to obtain, as in fact she did obtain the amount of ₱80,000.00 which amount, once in her possession, with intent to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of said ALBERTO A. AGLANAO in the aforesaid amount of ₱80,000.00, Philippine Currency.

Contrary to law.[5]

On arraignment, appellant pleaded not guilty to all charges. A joint trial of the cases ensued.

At the trial, private complainant Rey P. Tajadao testified that in August 2002, his fellow complainant, Alberto A. Aglanao,

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[5] Records, p. 99.

introduced him to appellant Chua. By then, Aglanao had already submitted his application for employment abroad with appellant. Since Tajadao was also interested to work overseas, he suggested that Tajadao apply as well.

Soon after, Tajadao met with appellant, who offered him a job as a factory worker in Taiwan for deployment within the month. Appellant then required him to undergo medical examination and pay a placement fee of ₱80,000. Chua assured Tajadao that whoever pays the application fee the earliest can leave sooner. Thus, Tajadao delivered to appellant staggered payments of ₱40,000, ₱35,000 and ₱5,000 at the Golden Gate International (Golden Gate) Office in Paragon Tower, Ermita, Manila. Said payments are evidenced by a voucher[6] signed by appellant.

After completing payment, Tajadao was made to sign a contract containing stipulations as to salary and conditions of work. On several occasions, thereafter, he returned to appellant's office to follow-up on his application. After several visits, however, Tajadao noticed that all the properties of Golden Gate in its Paragon Tower Office were already gone.

Tajadao filed a complaint for illegal recruitment against appellant before the Philippine Overseas Employment Agency (POEA). It was only then that he learned that appellant Chua was not licensed to recruit workers for overseas employment.

Another private complainant, Billy R. Danan, testified that Chua also offered employment abroad but failed to deploy him. He recalled meeting appellant on August 6, 2002 at the Golden Gate Office in Ermita, Manila. Danan inquired about the prospect of finding work in Taiwan as a factory worker, and appellant confirmed there was a standing "job order." The latter advised Danan to obtain a passport, undergo medical examination, secure an NBI clearance and prepare the amount of ₱80,000.

On August 10, 2002, Danan paid appellant in full as evidenced by a cash voucher signed by the latter. A month passed, however,

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[6] *Id.* at 10.

and he was still unable to leave for Taiwan. Appellant informed Danan that his departure would be re-scheduled because Taiwan had suspended admission of overseas workers until after the festival. After appellant advanced this explanation several times, Danan decided to verify whether she was licensed to recruit. Upon learning otherwise, Danan lodged a complaint for illegal recruitment against appellant with the POEA.

The third private complainant, Alberto Aglanao, testified that he met appellant Chua on August 5, 2002. Like Tajadao and Danan, Aglanao applied for work as a factory worker in Taiwan. Appellant similarly assured Aglanao of employment abroad upon payment of ₱80,000. But despite payment[7] of said amount on August 10, 2002, appellant failed to deploy Aglanao to Taiwan.

Roylan Ursulum,[8] the fourth private complainant, testified that he too went to the Golden Gate Office in Ermita, Manila to seek employment as a factory worker. He was introduced by Shirley Montano to appellant Chua. The latter told Ursulum that the first applicants to pay the placement fee of ₱80,000 shall be deployed ahead of the others. Thus, Ursulum obtained a loan of ₱80,000 to cover the placement fee, which he allegedly gave appellant in two installments of ₱40,000 each. As with the rest of the private complainants, Ursulum never made it to Taiwan. Ursulum did not submit proof of payment but presented, instead, ten text messages on his mobile phone supposedly sent by appellant. One of said text messages reads, "*Siguro anong laking saya nyo pag namatay na ko*."

The prosecution likewise presented as witness Severino Maranan, Senior Labor Employment Officer of the POEA. Maranan confirmed that appellant Chua was neither licensed nor authorized to recruit workers for overseas employment. In support, he presented to the court a certification issued by the POEA to that effect.

In her defense, appellant Chua denies having recruited private complainants for overseas employment. According to appellant,

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[7] *Id.* at 14.

[8] Also referred to as Roylan Ursulan in other parts of the records.

she was only a cashier at Golden Gate, which is owned by Marilen Callueng. However, she allegedly lost to a robbery her identification card evidencing her employment with the agency. Appellant denied any knowledge of whether the agency was licensed to recruit workers during her tenure as it has been delisted.

In a Decision dated March 28, 2005, the RTC of Manila, Branch 33, found appellant Melissa Chua, *a.k.a.* Clarita Ng Chua, guilty beyond reasonable doubt of illegal recruitment in large scale and four counts of *estafa*. The *fallo* of the RTC decision reads:

> WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt, judgment is hereby rendered CONVICTING the accused as principal in the crime of illegal recruitment in large scale and estafa (four counts) and she is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00) for illegal recruitment in large scale; and the indeterminate penalty of four (4) years and two (2) months of *prision* [*correccional*], as minimum, to Twelve (12) years of *prision mayor* as maximum for EACH count of Estafa.
>
> The accused is also ordered to pay each of the complainant[s] the amount of ₱80,000.00.
>
> In the service of the sentence, the accused is credited with a x x x the full extent of her [preventive] imprisonment if she agrees in writing to observe the same disciplinary rules imposed upon convicted prisoners; otherwise, only 4/5 of the time of such preventive imprisonment shall be credited to her.
>
> SO ORDERED.[9]

The trial court relied on the testimony of Severino Maranan, Senior Labor Employment Officer of the POEA, that appellant is not licensed to recruit workers for overseas employment at the time she promised but failed to place the four private complainants for work abroad. It accorded greater weight to the testimonies of private complainants who positively identified appellant as the person who recruited them for employment in Taiwan and received the placement fees.

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

The court *a quo* likewise found appellant guilty beyond reasonable doubt of *estafa* for misrepresenting herself as having the power and capacity to recruit and place private complainants as factory workers in Taiwan. Such misrepresentation, the trial court stressed, induced private complainants to part with their money. The RTC brushed aside appellant's defense that she was merely a cashier of Golden Gate and that the same is owned by Marilen Callueng. It gave little weight to the receipts submitted by appellant to prove that she turned over the placement fees to Callueng. The trial court observed nothing in said receipts indicating that the money came from private complainants.

Dissatisfied, appellant Chua filed a Notice of Appeal[10] on April 15, 2005.

By Decision dated September 15, 2008, the Court of Appeals affirmed with modification the RTC ruling. It modified the penalty for each of the four counts of *estafa* by imposing upon appellant an indeterminate sentence of 4 years and 2 months of *prision correccional*, as minimum, to 13 years of *reclusion temporal*, as maximum, for each count of *estafa*.

The appellate court held that the prosecution has established by proof beyond reasonable doubt that appellant had no license to recruit at the time she promised employment to and received placement fees from private complainants. It dismissed appellant's defense that she was only a cashier of Golden Gate and that she remitted the placement fees to "the agency's treasurer." The Court of Appeals explained that in order to hold a person liable for illegal recruitment, it is enough that he or she promised or offered employment for a fee, as appellant did.

The appellate court held further that the same pieces of evidence which establish appellant's commission of illegal recruitment also affirm her liability for *estafa*. It pointed out that appellant defrauded private complainants when she misrepresented that they would be hired abroad upon payment of the placement

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[10] *Id.* at 19.

fee. The Court of Appeals perceived no ill motive on the part of private complainants to testify falsely against appellant.

Lastly, the appellate court modified the penalty imposed by the trial court upon appellant Chua for each count of *estafa.* It raised the maximum period of appellant's indeterminate sentence from 12 years of *prision mayor* to 13 years of *reclusion temporal*.

On October 6, 2008, appellant Chua elevated the case to this Court by filing a Notice of Appeal.[11]

In a Resolution[12] dated July 1, 2009, we required the parties to file their respective supplemental briefs, if they so desire. On August 26, 2009, appellant Chua filed a Manifestation (In lieu of Supplemental Brief)[13] by which she repleaded and adopted all the defenses and arguments raised in her Appellant's Brief.[14] On September 3, 2009, the Office of the Solicitor General, for the People, filed a Manifestation[15] that it will no longer file a supplemental brief since it has discussed in its Appellee's Brief[16] all the matters and issues raised in the Appellant's Brief.

Before us, appellant Melissa Chua presents a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE OF ILLEGAL RECRUITMENT IN LARGE SCALE AND FOUR (4) COUNTS OF ESTAFA DESPITE THE INSUFFICIENCY OF THE EVIDENCE FOR THE PROSECUTION.[17]

The Office of the Solicitor General, for the people, submits that it has established all the elements necessary to hold appellant

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

[12] *Id.* at 21-22.

[13] *Id.* at 24-26.

[14] CA *rollo*, pp. 31-41.

[15] *Rollo*, pp. 28-29.

[16] CA *rollo*, pp. 55-73.

[17] *Id.* at 33.

Chua liable for illegal recruitment in large scale and *estafa.* It cites the testimony of Severino Maranan, Senior Labor Employment Officer of the POEA, and the certification issued by Felicitas Q. Bay, Director II of the POEA, to the effect that appellant was not authorized to engage in recruitment activities. The OSG argues against appellant's defense that she was only a cashier of Golden Gate on the argument that her act of representing to the four private complainants that she could send them to Taiwan as factory workers constitutes recruitment. It stresses that the crime of illegal recruitment in large scale is *malum prohibitum*; hence, mere commission of the prohibited act is punishable and criminal intent is immaterial. Lastly, the OSG points out that appellant failed to show any ill motive on the part of private complainants to testify falsely against her.

For her part, appellant Chua maintains that she was merely a cashier of Golden Gate International. She disowns liability for allegedly "merely acting under the direction of [her] superiors"[18] and for being "unaware that [her] acts constituted a crime."[19] Appellant begs the Court to review the factual findings of the court *a quo*.

The crime of illegal recruitment is defined and penalized under Sections 6 and 7 of Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, as follows:

> SEC. 6. *Definition*. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, x x x:
>
> x x x x x x x x x

[18] *Id.* at 39-40.

[19] *Id.* at 40.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

SEC. 7. *Penalties.* —

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

In order to hold a person liable for illegal recruitment, the following elements must concur: (1) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b)[20] of the Labor Code, or any of the prohibited practices enumerated under Article 34[21] of the

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[20] "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: *Provided*, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

[21] **ART. 34**. **Prohibited practices**. — It shall be unlawful for any individual, entity, licensee, or holder of authority:

(a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

Labor Code (now Section 6 of Republic Act No. 8042) and (2) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers.[22] In the case of illegal recruitment in large scale, a third element is added: that the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group.[23] All three elements are present in the case at bar.

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under this Code;

(d) To induce or to attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;

(e) To influence or to attempt to influence any person or entity not to employ any worker who has applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines[;]

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;

(h) To fail to file reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor;

(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;

(j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency; and

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations.

[22] *People v. Espenilla*, G.R. No. 193667, February 29, 2012, p. 3.

[23] *Id.*

Inarguably, appellant Chua engaged in recruitment when she represented to private complainants that she could send them to Taiwan as factory workers upon submission of the required documents and payment of the placement fee. The four private complainants positively identified appellant as the person who promised them employment as factory workers in Taiwan for a fee of ₱80,000. More importantly, Severino Maranan the Senior Labor Employment Officer of the POEA, presented a Certification dated December 5, 2002, issued by Director Felicitas Q. Bay, to the effect that appellant Chua is not licensed by the POEA to recruit workers for overseas employment.

The Court finds no reason to deviate from the findings and conclusions of the trial court and appellate court. The prosecution witnesses were positive and categorical in their testimonies that they personally met appellant and that the latter promised to send them abroad for employment. In fact, the substance of their testimonies corroborate each other on material points, such as the amount of the placement fee, the country of destination and the nature of work. Without any evidence to show that private complainants were propelled by any ill motive to testify falsely against appellant, we shall accord their testimonies full faith and credit. After all, the doctrinal rule is that findings of fact made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the other testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to the appellate court.[24] The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.[25]

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[24] *People v. Calonge*, G.R. No. 182793, July 5, 2010, 623 SCRA 445, 455.

[25] *People v. Ocden*, G.R. No. 173198, June 1, 2011, 650 SCRA 124, 146.

Appellant cannot escape liability by conveniently limiting her participation as a cashier of Golden Gate. The provisions of Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042 are unequivocal that illegal recruitment may or may not be for profit. It is immaterial, therefore, whether appellant remitted the placement fees to "the agency's treasurer" or appropriated them. The same provision likewise provides that the persons criminally liable for illegal recruitment are the principals, accomplices and accessories. Just the same, therefore, appellant can be held liable as a principal by direct participation since she personally undertook the recruitment of private complainants without a license or authority to do so. Worth stressing, the Migrant Workers and Overseas Filipinos Act of 1995 is a special law, a violation of which is *malum prohibitum*, not *mala in se*. Intent is thus, immaterial[26] and mere commission of the prohibited act is punishable.

Furthermore, we agree with the appellate court that the same pieces of evidence which establish appellant's liability for illegal recruitment in large scale likewise confirm her culpability for *estafa.*

It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and *estafa*. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while *estafa* is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. *Estafa* under Article 315, paragraph 2(a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[27]

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[26] *People v. Chua*, G.R. No. 184058, March 10, 2010, 615 SCRA 132, 141-142.

[27] *Id.* at 142, citing *People v. Comila*, G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167.

The elements of *estafa* by means of deceit are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[28]

In this case, the prosecution has established that appellant defrauded the complaining witnesses by leading them to believe that she has the capacity to send them to Taiwan for work, even as she does not have a license or authority for the purpose. Such misrepresentation came before private complainants delivered ₱80,000 as placement fee to appellant. Clearly, private complainants would not have parted with their money were it not for such enticement by appellant. As a consequence of appellant's false pretenses, the private complainants suffered damages as the promised employment abroad never materialized and the money they paid were never recovered.[29]

In an effort to exculpate herself, appellant presented in evidence 11 vouchers[30] amounting to ₱314,030, which was allegedly received by Marilen Callueng, the supposed owner of Golden Gate. Notably, the dates on which said vouchers were issued and the amounts purportedly remitted to Callueng by way thereof do not correspond with the placement fee given by private complainants and the dates on which they paid the same to appellant. For instance, private complainants Aglanao and Danan delivered ₱80,000 to appellant on August 10, 2002 but none of the vouchers presented by appellant was issued on said date. On August 20, 2002, private complainant Tajadao paid ₱40,000 to appellant but the latter's voucher for said date covers only

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[28] *Sy v. People*, G.R. No. 183879, April 14, 2010, 618 SCRA 264, 271.

[29] *Id.*

[30] Records, pp. 109-120.

₱22,480. More importantly, there is nothing in appellant's vouchers to indicate that the amounts listed therein were received from private complainants. On the other hand, while the vouchers presented by private complainants Aglanao, Danan and Tajadao do not bear their names, they could not have come into possession of said form except through appellant. Hence, appellant admitted in open court that she received ₱80,000 from private complainants and that she was authorized to issue receipts, thus:

ATTY: BETIC:

Q: Were you authorized to issue receipts in behalf of that Agency?
A: yes, Sir.

x x x x x x x x x

Q: Now, you said that you were employed with Golden Gate Agency owned and operated by Marilen Cal[l]ueng, and as a cashier did you [happen] to come across private complainants, Billy R. Da[n]an, Alberto Aglanao and Rey Tajadao?
A: Yes, Sir before they were asked to [sign] a contract they paid to me.

Q: Do you know how much were paid or given [by] the persons I have mentioned?
A: Eighty Thousand Pesos Only (₱80,000.00) Sir.

Q: Each?
A: Yes, Sir.[31]

Be that as it may, we take exception as regards private complainant Roylan Ursulum. The Court finds that the prosecution failed to establish the presence of the third and fourth elements of *estafa* as regards the incident with Roylan Ursulum. While Ursulum claims that he delivered to Chua two installments of ₱40,000 each on July 29, 2002 and August 3, 2002, he failed to produce receipts to substantiate the same. Instead, Ursulum relies on ten text messages allegedly sent by appellant as evidence

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[31] TSN, July 26, 2004, pp. 5-6.

of their transaction. Out of said series of messages, Ursulum presented only one which reads, "*Siguro anong laking saya nyo pag namatay na ko*." Notably, the prosecution did not present evidence to confirm whether said text message actually emanated from appellant. Assuming *arguendo* that it did, still, said message alone does not constitute proof beyond reasonable doubt that appellant was able to obtain ₱80,000 from Ursulum as a result of her false pretenses.

Unlike in illegal recruitment where profit is immaterial, a conviction for *estafa* requires a clear showing that the offended party parted with his money or property upon the offender's false pretenses, and suffered damage thereby. In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused.[32] It is imperative, therefore, that damage as an element of *estafa* under Article 315, paragraph 2(a) be proved as conclusively as the offense itself. The failure of the prosecution to discharge this burden concerning the *estafa* allegedly committed against Ursulum warrants the acquittal of appellant on the said charge.

Now on the matter of the appropriate penalty. Under Section 6, R.A. No. 8042, illegal recruitment when committed in large scale shall be considered as an offense involving economic sabotage. Accordingly, it shall be punishable by life imprisonment and a fine of not less than ₱500,000 nor more than ₱1,000,000. The law provides further that the maximum penalty shall be imposed if illegal recruitment is committed by a non-licensee or non-holder of authority.

In the case at bar, the trial court imposed upon appellant Chua the penalty of life imprisonment and a fine of ₱500,000. However, considering that appellant is a non-licensee or non-holder of authority, we deem it proper to impose upon her the maximum penalty of life imprisonment and fine of ₱1,000,000.

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[32] *Llamas v. Court of Appeals*, G.R. No. 149588, August 16, 2010, 628 SCRA 302, 308.

Meanwhile, the penalty for *estafa* under Article 315 of the Revised Penal Code is *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over ₱12,000 but does not exceed ₱22,000. If the amount exceeds ₱22,000, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000. But, the total penalty imposed shall not exceed 20 years.

The range of penalty provided for in Article 315 is composed of only two periods. Thus, to get the maximum period of the indeterminate sentence, the total number of years included in the two periods should be divided into three equal periods of time, forming one period for each of the three portions. The maximum, medium and minimum periods of the prescribed penalty are therefore:

Minimum period - 4 years, 2 months and 1 day to 5 years, 5 months and 10 days

Medium period - 5 years, 5 months and 11 days to 6 years, 8 months and 20 days

Maximum period - 6 years, 8 months and 21 days to 8 years.[33]

In this case, the amount by which appellant defrauded private complainants Aglanao, Danan and Tajadao is ₱80,000, which exceeds ₱22,000. Hence, the penalty should be imposed in the maximum period of 6 years, 8 months and 21 days to 8 years. Since the total amount of fraud in this case exceeds the threshold amount of ₱22,000 by ₱58,000, an additional penalty of five years imprisonment should be imposed. Thus, the maximum period of appellant's indeterminate sentence should be 13 years of *reclusion temporal*.

The minimum period of the indeterminate sentence, on the other hand, should be within the range of penalty next lower to that prescribed by Article 315, paragraph 2(a) of the Revised Penal Code for the crime committed. The penalty next lower to *prision correccional* maximum to *prision mayor* minimum

[33] *Pucay v. People*, G.R. No. 167084, October 31, 2006, 506 SCRA 411, 424-425.

is *prision correccional* minimum (6 months and 1 day to 2 years and 4 months) to *prision correccional* medium (2 years, 4 months and 1 day to 4 years and 2 months). Thus, the appellate court correctly modified the minimum period of appellant's sentence to 4 years and 2 months of *prision correccional*.

WHEREFORE, the appeal is **PARTLY GRANTED**. Appellant Melissa Chua, *a.k.a.* Clarita Ng Chua is **ACQUITTED** of one count of *estafa* filed by private complainant Roylan Ursulum in Criminal Case No. 03-217999-403.

The Decision dated September 15, 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01006 is **AFFIRMED** *with* **MODIFICATION** in that the appellant is ordered to pay a fine of ₱1,000,000 and to indemnify each of the private complainants Alberto A. Aglanao, Billy R. Danan and Rey P. Tajadao in the amount of ₱80,000.

With costs against the accused-appellant.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187801. September 13, 2012]

HEIRS OF LEONARDO BANAAG, namely: MARTA R. BANAAG, TERESITA B. MENDOZA, HONORATO R. BANAAG, IMELDA R. BANAAG, DIOSDADO R. BANAAG, PRECIOSA B. POSADAS, and ANTONIO R. BANAAG, SPOUSES PEDRO MENDOZA and TERESITA MENDOZA and HONORATO R. BANAAG, *petitioners, vs.* **AMS FARMING CORPORATION and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF AN ACTION; NOT PROPER WHERE THE PETITION DOES NOT SPECIFY THE RULE BY WHICH IT WAS FILED; PETITION MAY BE CONSIDERED AS PURSUED UNDER RULE 45.—** The fact that the present petition did not specify the rule by which it was filed does not *ipso facto* merit its outright dismissal. As ruled in *Mendoza v. Villas,* the Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court in accordance with the liberal spirit permeating the Rules of Court and in the interest of justice. The Court cannot treat the instant petition as filed under Rule 65 of the Rules of Court as such would breach the principle of hierarchy of courts[.] x x x While a direct invocation of the Court's power to issue a writ of *certiorari* may be allowed on special and important reasons, none of such instances, however, are obtaining in the petition at hand. Nonetheless, the petition may be considered pursued under Rule 45. Three (3) modes of appeal are available to a party aggrieved by a decision of the RTC rendered in the exercise of its original jurisdiction, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41 taken to the CA on questions of fact or mixed questions of fact and law; (2) by petition for review under Rule 42 to the CA on questions of fact, of law, or mixed questions of fact and law; and (3) by petition for review on *certiorari* to the Supreme Court under Rule 45 only on questions of law. Clearly, direct recourse to the Court, as in the instant case, is allowed for petitions filed under Rule 45 when only questions of law are raised. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. A perusal of the arguments in the petition shows that the only question posed is with respect to the jurisdiction of the DARAB over the determination of ownership of standing crops and improvements introduced by the lessee of an agricultural land placed under CARP coverage. The question is evidently one of law as it invites the examination and interpretation of the provisions of the Comprehensive Agrarian Reform Law (CARL) and that of the Civil Code provisions on lease *vis-à-vis* the

lease contract between the petitioners and AMS. It does not require a calibration of any evidence for its resolution.

2. **ID.; ID.; ID.; FEW DAYS LATE IN THE FILING OF THE PETITION DOES NOT WARRANT DISMISSAL THEREOF.—** On June 16, 2009 or six (6) days from the expiration of the extended period, the petitioners lodged the present petition. For such belated filing, LBP proffers that the petition should be dismissed. Again, the Court takes a liberal stance. Oft-repeated is the rule that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof. Moreover, strong considerations of substantial justice manifest in the petition deem it imperative for the Court to relax the stringent application of technical rules in the exercise of its equity jurisdiction. After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal. A definitive settlement of the ownership over the contested crops and improvements is essential to the effective implementation of the CARL particularly, the payment of just compensation. Such compensation entails an enormous amount of money from the coffers of the government and it is only proper for the Court to ensure that such amount is paid to the rightful owner. Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. The higher objective of procedural rule is to insure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities.

3. **ID.; ID.; ID.; FORUM SHOPPING; EXPLAINED.—** Forum-shopping is the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of *certiorari*." The test to determine whether forum-shopping exists is whether the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other. *Res judicata*, on the other hand, means a matter or thing adjudged, judicially acted upon or decided, or settled by judgment. Its requisites are:

(1) the former judgment or order must be final; (2) the judgment or order must be one on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) between the first and second actions, there must be identity of parties, subject matter, and causes of action.

4. **ID.; ID.; ID.; ID.; THE PARTIES DID NOT COMMIT FORUM-SHOPPING AS THE DECISION IN THE DARAB CASE WILL NOT CONSTITUTE *RES JUDICATA* TO THE CIVIL CASE BEFORE THE RTC.—** The [Land Bank] doctrines may be applied in interpreting the legal efficacy of the declarations made by the DARAB in its Consolidated Decisions dated October 17, 2005 and December 11, 2006 notwithstanding that the same were decreed two (2) to three (3) years before *Land Bank.* Judicial decisions, as part of the law they interpret, are covered by the rule on the prospective application of statutes. Retroactivity is, however, permissible if the decision neither: (1) overrules a previous doctrine; (2) adopts a different view; or (3) reverses an old construction, none of which characterize the pronouncement in *Land Bank.* The DARAB, therefore, has no jurisdiction to pass upon the issue of ownership over standing crops and improvements between a landowner and a lessee. This is the clear import of the above-stated doctrines declaring that the right of a lessor and lessee over the improvements introduced by the latter is not an agrarian dispute within the meaning of the CARL. Consequently, there is no doubt that the DARAB cannot adjudicate the ownership over standing crops and improvements installed by AMS in the subject agricultural parcels of land and as such, the DARAB Consolidated Decisions dated October 17, 2005 and December 11, 2006 cannot serve as *res judicata* to Civil Case No. 3867 filed by the petitioners with the RTC. Further, the subject DARAB decisions are not final determinations of the valuation made on the just compensation for the raw lands and the standing crops and improvements thereon as **these are only preliminary in nature**. Settled is the rule that only the RTC, sitting as a SAC, could make the final determination of just compensation. Moreover, it must be stressed that just compensation for the crops and improvements is inseparable from the valuation of the raw lands as the former are part and parcel of the latter. Even if separately valued, these must be awarded to the

landowner irrespective of the nature of ownership of the said crops and installations. Any valuation made by the DARAB is limited only to that — a mere valuation. The tribunal is not concerned with the nature of the ownership of the crops and improvements. In fine, the RTC erred in dismissing the complaint filed by the petitioners on the ground of forum-shopping.

APPEARANCES OF COUNSEL

Mojica Dalumpines Law Firm for petitioners.
Cesar M. Dureza and *Edwin O. Mendoza* for AMS Farming Corp.
LBP Legal Services for Land Bank of the Phils.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition[1] dated June 15, 2009 praying for the reversal of the Orders dated July 7, 2008[2] and March 23, 2009[3] of the Regional Trial Court (RTC), Tagum City, Davao Del Norte, Branch 30, in Civil Case No. 3867 entitled *Heirs of Leonardo Banaag, et al. v. AMS Farming Corporation and Land Bank of the Philippines.* The assailed Order dated July 7, 2008, dismissed the complaint for the determination of ownership over the standing crops and improvements on several parcels of agricultural land, on the ground of forum-shopping. The assailed Order dated March 23, 2009, on the other hand, denied reconsideration.

The Antecedent Facts

The petitioners were the owners and/or heirs of the owners of several parcels of land located at Sampao, Kapalong, Davao Del Norte, detailed as follows:

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[1] *Rollo*, pp. 50-84.

[2] Under the sala of Judge Rowena Apao-Adlawan; *id.* at 16-19.

[3] *Id.* at 43-46.

Name of Landowner	Transfer Certificate of Title No.	Land Area (in hectares)
TERESITA MENDOZA	T-9891	10
TERESITA MENDOZA	T-7778	34
LEONARDO BANAAG	(T-16604) T-7775	54.1748
TERESITA AND PEDRO MENDOZA	(T-16748) T-7894	10
HONORATO BANAAG	(T-16605) T-7776	25.5123[4]

From 1970 to 1995, the lands were leased to respondent AMS Farming Corporation (AMS), which devoted and developed the same to the production of exportable Cavendish bananas, and introduced thereon the necessary improvements and infrastructures for such purpose.[5] When the lease contract expired, it appears that a Memorandum of Agreement (MOA) was executed by the parties extending the term of the lease until September 30, 2002.

In 1999, the lands were placed under the coverage of the Compulsory Acquisition Scheme of the Comprehensive Agrarian Reform Program (CARP). Pursuant to its mandate, the Land Bank of the Philippines (LBP) determined the value of the raw lands as follows:

Transfer Certificate of Title No.	Land Area in hectares	LBP Valuation
T-9891	10	[₱] 689,865.62
T-7775	54.1748	3,880,041.73
T-7778	28.4207	1,798,523.29
T-7894	10	668,043.17
T-7776	19.1197	1,375,153.12[6]

When the petitioners rejected the valuation, the matter was referred for summary administrative proceedings for the fixing of just compensation to the Office of the Regional Agrarian

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[4] *Id.* at 241.

[5] *Id.* at 120-153.

[6] *Id.* at 339.

Reform Adjudicator (RARAD), Davao del Norte.[7] On July 31, 2000, the RARAD rendered a Decision adopting the amount of just compensation determined by the LBP.[8]

The present controversy arose when the petitioners, as landowners, and AMS, as lessee, both demanded for just compensation over the standing crops and improvements planted and built on the lands.

The Claim of AMS

In the same RARAD proceedings, AMS filed on June 10, 2003, an *Urgent Motion to Value the Standing Crops and Improvements*[9] alleging that it is the owner of the crops and improvements on the land by virtue of its MOA with the petitioners. On June 29, 2004, the RARAD issued an order directing LBP to submit a valuation of the standing crops. In compliance therewith, LBP manifested the amount of ₱32,326,218.82.[10]

The petitioners sought to intervene with their own claim for ownership but their *Motion for Leave to File Complaint-In-Intervention*[11] was denied by the RARAD on July 8, 2004, for the reason that the valuation of the standing crops in favor of AMS has long been resolved. However, the petitioners were instructed to instead plead their claim for valuation of the improvements in an appropriate initiatory proceeding.[12]

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[7] The cases were docketed respectively for each of the above-described parcels of land as DCN LV-XI-0021-DN-2000, DCN LV-XI-0022-DN-2000, DCN LV-XI-0042-DN-2000, DCN LV-XI-0043-DN-2000, and DCN LV-XI-0156-DN-2000 and were assigned to RARAD Norberto P. Sinsona.

[8] *Rollo*, pp. 100-107.

[9] *Id.* at 85-99.

[10] *Id.* at 320-324.

[11] *Id.* at 198-210.

[12] *Id.* at 211-213.

On December 11, 2006, the RARAD issued a Consolidated Decision[13] setting aside its earlier Decision dated July 31, 2000 and ruled anew on the just compensation, not only for the raw lands, but for the standing crops and improvements thereon as well. Just compensation for the lands was awarded to the petitioners as landowners, while just compensation for the crops and improvements was awarded to AMS, thus:

WHEREFORE, premises considered, judgment is hereby rendered setting aside the previous Decisions rendered in these cases and a new Consolidated Decision is rendered declaring the amounts indicated below as the just compensation of the subject landholdings as follows:

Title No.	**Value of raw Land**	**Value of the standing Crops and other Improvements**
T-9891	[P] 689,865.62	[P] 8,101,840.50
T-7775	3,880,041.73	44,379,299.00
T-7778	1,798,523.29	23,843,838.00
T-7894	688,043.17	7,695,784.80
T-7776	1,375,153.12	15,651,806.00

Directing LBP to pay AMS the value of the standing crops and other improvements and pay the corresponding owners of the value of their landholdings.

SO ORDERED.[14]

From this decision, the petitioners and LBP pursued an appeal before the Department of Agrarian Reform Adjudication Board (DARAB) Central Office but, their notice of appeal was denied due course for being an improper remedy. The denial was embodied in an Order[15] dated February 5, 2007. In so denying, the RARAD explained that an appeal from a RARAD decision must be filed with the RTC acting as a Special Agrarian Court (SAC) pursuant to Section 11, Rule XIII of the 1994 DARAB Rules of Procedure. In the same order, the RARAD issued a

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[13] *Id.* at 338-351.

[14] *Id.* at 351.

[15] *Id.* at 352-359.

writ of execution directing the Department of Agrarian Reform (DAR) sheriffs[16] to execute the Consolidated Decision dated December 11, 2006.

Conformably with the writ of execution, the DAR sheriffs sent a *Request to Allocate and Release the Amount of ₱99,672,568.30 from the Agrarian Reform Fund*[17] to the President of LBP.

On March 28, 2007, LBP applied for an injunction[18] with the DARAB seeking, in the main, to restrain the enforcement of the RARAD Consolidated Decision dated December 11, 2006 and to elevate its appeal to the DARAB. In its Resolution[19] dated October 24, 2007, the DARAB granted the injunction.

The Claim of the Petitioners

Meanwhile, the petitioners filed on February 16, 2005, their claim of ownership over the standing crops and improvements on the subject lands with the RARAD of Region XI, Ecoland, Davao City.[20] The petitioners averred that the lease contract with AMS already expired in 1995 and thus they automatically became the owners of the standing crops and the improvements constructed on the subject lands. They alleged that pursuant to the lease contract, the only right or option of AMS is to remove the buildings, facilities, equipment, machineries and similar structures and improvements on the leased premises and since AMS failed to exercise such option, the petitioners now own the standing crops and improvements. They denied signing

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[16] Crispin C. Nuñeza, Jr., Sheriff III of the DAR Provincial Office, Tagum City, and Adelaido Caminade, Sheriff III of the DAR Regional Office, Ecoland, Davao City.

[17] *Rollo*, p. 409.

[18] *Id.* at 360-369.

[19] *Id.* at 417-424.

[20] The claims were docketed as DCN LV-XI-1589-DN-05, DCN LV-XI-1590-DN-05, DCN LV-XI-1591-DN-05, DCN LV-XI-1592-DN-05, DCN LV-XI-1593-DN-05; all of which were again assigned to RARAD Sinsona; *id.* at 214-225.

a MOA and averred that a certain Martha Banaag signed the same without their consent. They prayed that the just compensation for the standing crops and improvements, after a determination made by the LBP, be awarded to them.

In its answer,[21] AMS insisted on the validity of the MOA. It also bolstered its claim of ownership by averring that it registered the crops and improvements on the land in its name for taxation purposes.

In a Consolidated Decision[22] dated October 17, 2005, the RARAD dismissed the petitioners' claim. The ownership of the standing crops and improvements and just compensation therefor were awarded to AMS, on the basis of these findings, *viz:* (1) the improvements were introduced and constructed by AMS; (2) the right to remove the improvements accorded to AMS by the contract of lease is a clear indication that it is the owner thereof; (3) AMS was, in effect, a planter in good faith who must be indemnified for its works pursuant to Article 448 of the Civil Code; and (4) AMS secured tax declarations and paid the corresponding realty taxes for the crops and improvements.

The petitioners sought reconsideration[23] but their motion was denied in the RARAD Resolution dated February 2, 2006.[24]

The petitioners filed a Notice of Appeal[25] with the RARAD expressing their desire to appeal its Consolidated Decision dated October 17, 2005 to the DAR Secretary, but was denied due course in an Order[26] dated March 23, 2006, on the ground of

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[21] *Id.* at 226-239.

[22] *Id.* at 240-247. The decretal portion of the DARAB Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing these instant cases.

SO ORDERED.

[23] *Id.* at 248-264.

[24] *Id.* at 334.

[25] *Id.* at 277-278.

[26] *Id.* at 285-288.

wrong venue and absence of a certification on non-forum shopping. In the same Order, the RARAD granted the Motion for Entry of Final and Executory Decision of AMS.

The petitioners moved for reconsideration but their motion was again denied in an Order[27] dated June 8, 2006. Consequently, the Consolidated Decision dated October 17, 2005 was entered in the books of entries of judgment on October 12, 2006.[28]

Unrelenting, the petitioners filed on June 22, 2007, before the RTC of Tagum City, Davao Del Norte, Branch 30, herein Civil Case No. 3867 against AMS for the determination of the rightful owner of the standing crops and improvements planted and/or built on the subject lands.[29]

Resisting the claim of the petitioners, AMS moved for the complaint's dismissal on the following grounds: (a) it is barred by the prior judgment of the DARAB; (b) the petitioners have no cause of action against AMS; (c) the petitioners are guilty of forum-shopping; and (d) not all the petitioners have signed the verification and certification of the complaint.[30]

In the assailed Order dated July 7, 2008, the RTC granted the motion to dismiss. Upholding the contentions of AMS, the RTC found the petitioners guilty of forum-shopping because the subject matter and the parties before it were similarly involved in the proceedings before the DARAB. The RTC also ruled that the petitioners should have appealed the DARAB's findings with the RTC acting as a SAC instead of initiating the herein civil suit.

The petitioners moved for reconsideration but the motion was denied in the assailed Order dated March 23, 2009. From such denial, the petitioners directly interposed the present recourse.

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[27] *Id.* at 274-276.

[28] *Id.* at 289-290.

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

[30] *Id.* at 16.

The petitioners argue that no valid prior judgment bars their complaint before the RTC because the DARAB had no jurisdiction over the issue of ownership on the standing crops and improvements on the subject lands and as such, its Decisions dated October 17, 2005 and December 11, 2006 were void. They anchor their contentions in the Court's pronouncement in the similar case of *Land Bank of the Philippines v. AMS Farming Corporation*[31] promulgated on October 15, 2008.

In its Comment,[32] the LBP, through the Office of the Solicitor General (OSG), prayed for the dismissal of the present petition on procedural and substantive grounds, to wit: (a) the petition was filed only on June 16, 2009 or beyond the extension granted by the Court for the filing of the same which expired on June 10, 2009; (b) factual issues, which necessitate a trial, must be initially resolved before the legal issue on ownership of the standing crops and improvements can be determined; and (c) the petitioners violated the rule against forum-shopping when they failed to disclose that proceedings before the DARAB were conducted involving the similar issue of ownership over the standing crops and improvements on the subject lands.

AMS, on the other hand, essentially re-pleads its contentions raised before the RTC and adds that the petition ought to be dismissed since it does not indicate under what rule it was filed and that is not sanctioned by any of the modes of appeal under the Rules of Court, specifically Rules 45 and 65 thereof.[33]

The Ruling of the Court

The procedural issues hoisted by the respondents in entreating the outright dismissal of the petition must be preliminarily resolved.

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[31] G.R. No. 174971, October 15, 2008, 569 SCRA 154.

[32] *Rollo*, pp. 294-317.

[33] *Id.* at 173-197.

The petition is deemed filed under Rule 45 of the Rules of Court.

The fact that the present petition did not specify the rule by which it was filed does not *ipso facto* merit its outright dismissal. As ruled in *Mendoza v. Villas,*[34] the Court has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court in accordance with the liberal spirit permeating the Rules of Court and in the interest of justice.

The Court cannot treat the instant petition as filed under Rule 65 of the Rules of Court as such would breach the principle of hierarchy of courts, which espouses:

> This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed**. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. x x x** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[35] (Emphasis supplied)

While a direct invocation of the Court's power to issue a writ of *certiorari* may be allowed on special and important reasons, none of such instances, however, are obtaining in the petition at hand.

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[34] G.R. No. 187256, February 23, 2011, 644 SCRA 347.

[35] *Id.* at 354.

Nonetheless, the petition may be considered pursued under Rule 45. Three (3) modes of appeal are available to a party aggrieved by a decision of the RTC rendered in the exercise of its original jurisdiction, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41 taken to the CA on questions of fact or mixed questions of fact and law; (2) by petition for review under Rule 42 to the CA on questions of fact, of law, or mixed questions of fact and law; and (3) by petition for review on *certiorari* to the Supreme Court under Rule 45 only on questions of law.[36] Clearly, direct recourse to the Court, as in the instant case, is allowed for petitions filed under Rule 45 when only questions of law are raised.

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. [37]

A perusal of the arguments in the petition shows that the only question posed is with respect to the jurisdiction of the DARAB over the determination of ownership of standing crops and improvements introduced by the lessee of an agricultural land placed under CARP coverage. The question is evidently one of law as it invites the examination and interpretation of the provisions of the Comprehensive Agrarian Reform Law (CARL) and that of the Civil Code provisions on lease *vis-à-vis* the lease contract between the petitioners and AMS. It does not require a calibration of any evidence for its resolution.

Considerations of substantial justice override the procedural consequence of the belated filing of the petition.

The petitioners received a copy of the RTC Order dated March 23, 2009 on May 11, 2009, which means that they had

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[36] RULES OF COURT, Rule 41, Section 2(b).

[37] *Dalton v. FGR Realty and Development Corporation*, G.R. No. 172577, January 19, 2011, 640 SCRA 92, 103, citing *Pagsibigan v. People,* G.R. No. 163868, June 4, 2009, 588 SCRA 249, 256.

fifteen (15) days or until May 26, 2009 to file a petition for review under Rule 45. On May 15, 2009, they requested for an extension of thirty (30) days or until June 10, 2009 within which to file a petition. On June 16, 2009 or six (6) days from the expiration of the extended period, the petitioners lodged the present petition. For such belated filing, LBP proffers that the petition should be dismissed.

Again, the Court takes a liberal stance. Oft-repeated is the rule that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof.[38] Moreover, strong considerations of substantial justice manifest in the petition deem it imperative for the Court to relax the stringent application of technical rules in the exercise of its equity jurisdiction.[39] After all, the policy of our judicial system is to encourage full adjudication of the merits of an appeal.[40] A definitive settlement of the ownership over the contested crops and improvements is essential to the effective implementation of the CARL particularly, the payment of just compensation. Such compensation entails an enormous amount of money from the coffers of the government and it is only proper for the Court to ensure that such amount is paid to the rightful owner.

Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. The higher objective of procedural rule is to insure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities.[41]

The Court will now proceed to discuss the substantial merits of the petition.

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[38] *Alfredo Jaca Montajes v. People of the Philippines,* G.R. No. 183449, March 12, 2012.

[39] *Id.*

[40] *PAGCOR v. Angara,* 511 Phil. 486, 498 (2005).

[41] *Supra* note 31.

Petitioners did not commit forum-shopping.

Forum-shopping is the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of *certiorari*." The test to determine whether forum-shopping exists is whether the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in the other.[42]

Res judicata, on the other hand, means a matter or thing adjudged, judicially acted upon or decided, or settled by judgment. Its requisites are: (1) the former judgment or order must be final; (2) the judgment or order must be one on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) between the first and second actions, there must be identity of parties, subject matter, and causes of action.[43]

The third element of *res judicata* is palpably wanting in this case in view of the Court's pronouncements in *Land Bank*.[44]

In *Land Bank,* the same respondent AMS was the lessee of an agricultural land owned by Totco Credit Corporation (TOTCO). AMS developed a banana plantation on the land and introduced thereon necessary improvements and infrastructures. During the term of the lease, the land was placed under the coverage of the CARP. The valuation for the just compensation of the land awarded to TOTCO included the standing crops and the improvements thereon. The RTC, acting

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[42] *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation,* G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213, citing *Gatmaytan v. CA*, 335 Phil. 155, 167 (1997).

[43] *Id.*

[44] *Supra* note 31.

as a SAC, found AMS to be the owner of the crops and improvements, hence, entitled to the value thereof.[45]

The Court held, however, that AMS had no right to just compensation under the CARL for the standing crops and improvements it introduced as a lessee on the agricultural land of TOTCO. It cannot claim just compensation from the LBP; instead, its remedy is to go after the lessor, TOTCO, pursuant to their lease contract being a lessee deprived of the peaceful and adequate enjoyment of the land during the lease period. The recourse of AMS was the Civil Code provisions on lease and not the provisions of the CARL. As a mere lessee and not an owner of the sequestered agricultural land, AMS had no right under the CARL to demand for just compensation for its standing crops and improvements from the LBP. Its rights as a lessee are totally independent of and unaffected by any judgment rendered in an agrarian case.[46]

The Court further explained that the CARL does not contain any *proviso* recognizing the rights of a lessee of a private agricultural land to just compensation for the crops it planted and improvements it built. Just compensation for the produce and infrastructure of a private agricultural land logically belongs to the landowner since the former are part and parcel of the latter, *viz*:

> [E]ven after an exhaustive scrutiny of the CARL, the Court could not find a provision therein on the right of a lessee of a private agricultural land to just compensation for the crops it planted and improvements it built thereon, which could be recognized separately and distinctly from the right of the landowner to just compensation for his land. The standing crops and improvements are valued simply because they are appurtenant to the land, and must necessarily be included in the final determination of the just compensation for the land to be paid to the landowner. Standing crops and improvements, if they do not come with the land, are totally inconsequential for CARP purposes.

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[45] *Id.* at 159-171.

[46] *Id.* at 188-193.

x x x [T]he CARL does not specially govern lease contracts of private agricultural lands. So that for the determination of the rights of AMS as a lessee in a lease contract terminated by the sale of the leased property to a third person (regardless of the fact that the third person was the Republic and the sale was made pursuant to the CARP), the Court resorts to the general provisions of the Civil Code on lease contracts; and not the CARL.[47]

The foregoing doctrines may be applied in interpreting the legal efficacy of the declarations made by the DARAB in its Consolidated Decisions dated October 17, 2005 and December 11, 2006 notwithstanding that the same were decreed two (2) to three (3) years before *Land Bank.*

Judicial decisions, as part of the law they interpret, are covered by the rule on the prospective application of statutes. Retroactivity is, however, permissible if the decision neither: (1) overrules a previous doctrine; (2) adopts a different view; or (3) reverses an old construction,[48] none of which characterize the pronouncement in *Land Bank.*

The DARAB, therefore, has no jurisdiction to pass upon the issue of ownership over standing crops and improvements between a landowner and a lessee. This is the clear import of the above-stated doctrines declaring that the right of a lessor and lessee over the improvements introduced by the latter is not an agrarian dispute within the meaning of the CARL. Consequently, there is no doubt that the DARAB cannot adjudicate the ownership over standing crops and improvements installed by AMS in the subject agricultural parcels of land and as such, the DARAB Consolidated Decisions dated October 17, 2005 and December 11, 2006 cannot serve as *res judicata* to Civil Case No. 3867 filed by the petitioners with the RTC.

Further, the subject DARAB decisions are not final determinations of the valuation made on the just compensation for the raw lands and the standing crops and improvements thereon as **these are only preliminary in nature**. Settled is the rule

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[47] *Id.* at 188-189.

[48] *Columbia Pictures, Inc. v. CA,* 329 Phil. 875 (1996).

that only the RTC, sitting as a SAC, could make the final determination of just compensation.[49] Moreover, it must be stressed that just compensation for the crops and improvements is inseparable from the valuation of the raw lands as the former are part and parcel of the latter. Even if separately valued, these must be awarded to the landowner irrespective of the nature of ownership of the said crops and installations. Any valuation made by the DARAB is limited only to that — a mere valuation. The tribunal is not concerned with the nature of the ownership of the crops and improvements.

In fine, the RTC erred in dismissing the complaint filed by the petitioners on the ground of forum-shopping. The case must be remanded to the RTC for the reception of the parties' respective evidence on the issue of ownership of the crops and improvements on the subject lands. The rights of AMS and the petitioners under their lease contract are beyond the ambit of the adjudicatory powers of the DARAB. Since the lease contract is governed by the Civil Code provisions on lease, it is the RTC, as a court of general jurisdiction that can resolve with finality the rights of a lessor and a lessee over the improvements built by the latter.

WHEREFORE, premises considered, the petition is **GRANTED.** The Orders dated July 7, 2008 and March 23, 2009 of the Regional Trial Court, Tagum City, Davao Del Norte, Branch 30 in Civil Case No. 3867 are hereby **ANNULLED** and **SET ASIDE.** Let the case be **REMANDED** to the said court for further proceedings.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[49] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines,* G.R. No. 166461, April 30, 2010, 619 SCRA 609, 629.

FIRST DIVISION

[G.R. No. 190680. September 13, 2012]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF TAX APPEALS and AYALA LAND, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING OF A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON* FOR THE FILING OF A PETITION FOR *CERTIORARI*; DISMISSAL OF PETITION WARRANTED IN CASE AT BAR.—** [T]his Court holds that a dismissal of the petition is warranted in view of the petitioner's failure to file before the CTA *en banc* a motion for reconsideration of the assailed resolution. The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. The "plain speedy, and adequate remedy" referred to in Section 1, Rule 65 of the Rules of Court is a motion for reconsideration of the questioned order or resolution. While the rule is not absolute and admits of settled exceptions, none of the exceptions attend the present petition.
2. **ID.; CIVIL PROCEDURE; RELIEF FROM JUDGMENT; PROPERLY DISMISSED SINCE IT WAS FILED OUT OF TIME; CASE AT BAR.—** By the CIR's own evidence and admissions, particularly in the narration of facts in the petition for relief, the OSG's letter and the affidavit of merit attached thereto, it is evident that both the CIR and the OSG had known of the CTA's Resolution dated March 25, 2009 long before August 3, 2009. Granting that we give credence to the CIR's argument that he could not have known of the

Resolution dated March 25, 2009 by his receipt on June 17, 2009 of the Resolution dated June 10, 2009, the CIR's petition for relief was still filed out of time. The CIR's claim that it was only on August 3, 2009 that he learned of the CTA's denial of his motion for reconsideration is belied by records showing that as of June 22, 2009, he already knew of such fact. The information was relayed by the CTA to the CIR, when the latter inquired from the court about the status of the case and the court's action on his motion for reconsideration. It was precisely because of such knowledge that he filed on July 2, 2009 the manifestation and motion pertaining to the CTA's order of entry of judgment. x x x The CIR then can no longer validly dispute that he had known of the CTA's Resolution dated March 25, 2009 on June 22, 2009. Even as we reckon the 60-day period under Section 3, Rule 38 from said date, the petitioner only had until August 21, 2009 within which to file a petition for relief. Since August 21, 2009, a Friday, was a non-working holiday, the petitioner should have filed the petition at the latest on August 24, 2009. The CIR's filing with the CTA of the petition for relief on October 2, 2009 then did not conform to the 60-day requirement.

APPEARANCES OF COUNSEL

BIR Litigation Division for petitioner.
Mildo Flor C. Sison for private respondent.

R E S O L U T I O N

REYES, *J.*:

Subject of this petition for *certiorari* under Rule 65 of the Rules of Court is the Resolution[1] dated October 30, 2009 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 402, which dismissed herein petitioner Commissioner of Internal Revenue's (CIR) petition for relief from judgment under Rule 38 of the Rules of Court.

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[1] *Rollo,* pp. 21-25.

The factual antecedents that led to the filing of this petition are as follows: In 2005, private respondent Ayala Land, Inc. (ALI) filed with the CTA a petition for review[2] to question the CIR's assessment against it for deficiency value-added tax (VAT) for the calendar year 2003. Before the tax court, the CIR and ALI filed their Joint Stipulation of Facts and Issues, which was cited in the present petition to read in part:

Petitioner (herein private respondent) is primarily engaged in the sale and/or lease of real properties and, among others, likewise owns and operates theatres or cinemas.

Petitioner received respondent's (herein petitioner) Final Assessment Notice (hereinafter referred to as the 2003 FAN) dated 29 October 2004 whereby respondent was assessing petitioner alleged deficiency 10% value added tax (VAT) on its alleged income from cinema operations for the taxable year 2003 in the aggregate amount of One Hundred Three Million Three Hundred Forty-Six Thousand Six Hundred Ninety[-]One and 40/100 Pesos ([₱]103,346,691.40) inclusive of 20% interest.

On 10 December 2004, petitioner filed its protest with the office of respondent contesting the factual and legal bases of the VAT assessment.

On 28 April 2005, petitioner received respondent's 25 April 2005 Decision denying petitioner's protest, with a notation that the same constitutes respondent's Final Decision on the matter.

Petitioner received on 23 November 2004, respondent's 19 November 2004 Letter of Authority No. 0002949 for the examination of ALL INTERNAL REVENUE TAXES of petitioner from 1 [J]anuary 2003 to 31 December 2003.

In order to protect its right, petitioner filed the Petition for Review pursuant to Section 228 of the Tax Code.[3]

Proceedings ensued. On April 11, 2008, the CTA Second Division rendered its Decision granting ALI's petition for review. The assessment against ALI for deficiency VAT in the amount

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[2] Docketed as CTA Case No. 7261.

[3] *Rollo*, pp. 4-5.

of ₱103,346,691.40 for the calendar year 2003 was ordered cancelled and set aside. The CIR's motion for reconsideration was denied, prompting him to file an appeal to the CTA *en banc*.

On February 12, 2009, the CTA *en banc* rendered its Decision affirming the decision of the CTA Second Division. Feeling aggrieved, the CIR filed a motion for reconsideration, but this was denied by the CTA *en banc* in its Resolution dated March 25, 2009.

The CIR claims that neither he nor his statutory counsel, the Office of the Solicitor General (OSG), received a copy of the CTA *en banc*'s resolution denying his motion for reconsideration. It then came as a surprise to him when he received on June 17, 2009 a copy of the CTA *en banc*'s Resolution dated June 10, 2009 which provided that the CTA Decision dated February 12, 2009 had become final and executory. The CIR then filed on July 2, 2009 a Manifestation with the Motion to Reconsider Resolution Ordering Entry of Judgment,[4] questioning the CTA's entry of judgment and seeking the following reliefs: (1) for the CTA to withdraw its resolution ordering the issuance of entry of judgment; (2) for the CTA to resolve the CIR's motion for reconsideration filed on March 4, 2009; and (3) should there be an existing resolution of the motion for reconsideration, for the CTA to serve a copy thereof upon the CIR and his counsel. The petitioner explained in his manifestation:

> **On 17 June 2009, he received Resolution dated 10 June 2009 holding that in the absence of an appeal, the Honorable Court's Decision dated 12 February 2009 has become final and executory**. Thus, the Honorable Court ordered the issuance of an Entry of Judgment in this case.
>
> Respondent respectfully manifests that on 4 March 2009, he filed a Motion for Reconsideration of the Honorable Court's Decision dated 12 February 2009, the same decision which the Honorable Court has now deemed to be final and executory.

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[4] *Id.* at 114-118.

Further, **a check with his records reveals that there is no Resolution which has been issued by the Honorable Court denying his Motion for Reconsideration**. To double check, on three (3) occasions he has inquired from his counsel the Office of the Solicitor General, particularly State Solicitor Bernardo C. Villar, on whether he has received any Resolution on the Motion for Reconsideration. Respondent was informed that there was none.

Finally, he checked with the Honorable Court and was informed that there is a Resolution dated 25 March 2009. In short, while petitioner and his counsel were of the mind that the Motion for Reconsideration still had to be resolved, it appears that it already was. However, it is respectfully manifested that petitioner and his counsel have not received the said Resolution and thus, such failure has prevented petitioner from filing the necessary Petition for Review before the Honorable Supreme Court. Such petition would have barred the Decision dated 12 February 2009 from attaining finality and eventual entry in the Book of Judgements.[5] (Emphasis ours)

On July 29, 2009, the CTA *en banc* issued its Resolution denying the motion. It reasoned that per its records, the CIR and OSG had received on March 27, 2009 and March 30, 2009, respectively, a copy of the resolution denying the motion for reconsideration.[6] The CIR received its copy of said Resolution dated July 29, 2009 on August 3, 2009.

The CIR then filed on October 2, 2009 with the CTA *en banc* a petition for relief[7] asking that the entry of judgment in the case be recalled, and for the CIR and OSG to be served with copies of the Resolution dated March 25, 2009. To show the timeliness of the petition for relief, the CIR claimed that he knew of the Resolution dated March 25, 2009 only on August 3, 2009, when he received a copy of the Resolution dated July 29, 2009. He then claimed that the sixty (60)-day period for the filing of the petition for relief should be reckoned from August 3, 2009, giving him until October 2, 2009 to file it. Further, CIR's counsel Atty. Felix Paul R. Velasco III (Atty. Velasco) tried to

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[5] *Id.* at 114-115.

[6] *Id.* at 7.

[7] *Id.* at 36-51.

explain the CIR's and OSG's alleged failure to receive the CTA's Resolution dated March 25, 2009, notwithstanding the CTA's records showing the contrary, by alleging in his Affidavit of Merit[8] attached to the petition for relief that:

14. I noted that, as stated by the Honorable CTA in its 29 July 2009 Resolution, there were rubber stamps of both petitioner and the OSG signifying receipt of the resolution. But given the fact that both petitioner and the OSG did not have copies of this Resolution, the only logical explanation is that the front notice page was indeed correct and stamped by both offices but the received enclosed order of the Honorable Court probably contained a different one. This error has happened to petitioner in other cases but these were subsequently and timely noticed and no detrimental effects occurred[.][9]

On October 30, 2009, the CTA *en banc* dismissed the petition for relief for having been filed out time, *via* the assailed resolution which reads in part:

The Supreme Court has ruled that "a party filing a petition for relief from judgment must strictly comply with two reglementary periods; first, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and second, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put at last an end to litigation."

x x x x x x x x x

In this case, petitioner seeks relief from judgment of the Court *En Banc*'s Resolution dated March 25, 2009. **Records show that petitioner learned of the Resolution dated March 25, 2009 when he received on June 17, 2009, the Resolution of the Court *En Banc* dated June 10, 2009 ordering the Entry of Judgment. This was in fact stated in petitioner's "Manifestation with Motion to**

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[8] *Id.* at 54-57.

[9] *Id.* at 55.

Reconsider Resolution Ordering Entry of Judgment" which petitioner filed on July 2, 2009. Hence, the 60 days should be counted from June 17, 2009 and the 60th day fell on August 16, 2009 which was a Sunday. Hence, the last day for the filing of the petition for relief was on August 17, 2009. Even if the 60-day period is counted from petitioner's receipt of the Entry of Judgment on July 1, 2009, with the 60th day falling on August 30, 2009, the petition for relief filed on October 2, 2009 will still be filed beyond the 60-day period.[10] (Emphasis ours)

Without filing a motion for reconsideration with the CTA *en banc*, the CIR filed the present petition for *certiorari*. The CIR argues that his 60-day period under Rule 38 should have been counted from August 3, 2009, when he received a copy of the Resolution dated July 29, 2009 and claimed to have first learned about the Resolution dated March 25, 2009 denying his motion for reconsideration.[11]

The issue then for this Court's resolution is: Whether or not the CTA committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the petition for relief of the CIR was filed beyond the 60-day reglementary period under Rule 38.

At the outset, this Court holds that a dismissal of the petition is warranted in view of the petitioner's failure to file before the CTA *en banc* a motion for reconsideration of the assailed resolution. The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. The "plain speedy, and adequate remedy" referred to in Section 1, Rule 65 of the Rules of Court is a motion for

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

[11] *Id.* at 12.

reconsideration of the questioned order or resolution.[12] While the rule is not absolute and admits of settled exceptions, none of the exceptions attend the present petition.

Even if we set aside this procedural infirmity, the petition is dismissible. In resolving the substantive issue, it is crucial to determine the date when the petitioner learned of the CTA *en banc*'s Resolution dated March 25, 2009, as Section 3, Rule 38 of the Rules of Court provides:

> Sec. 3. Time for filing petition; contents and verification. — **A petition** provided for in either of the preceding sections of this Rule **must be** verified, **filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside**, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis ours)

By the CIR's own evidence and admissions, particularly in the narration of facts in the petition for relief, the OSG's letter and the affidavit of merit attached thereto, it is evident that both the CIR and the OSG had known of the CTA's Resolution dated March 25, 2009 long before August 3, 2009. Granting that we give credence to the CIR's argument that he could not have known of the Resolution dated March 25, 2009 by his receipt on June 17, 2009 of the Resolution dated June 10, 2009, the CIR's petition for relief was still filed out of time.

The CIR's claim that it was only on August 3, 2009 that he learned of the CTA's denial of his motion for reconsideration is belied by records showing that as of June 22, 2009, he already knew of such fact. The information was relayed by the CTA to the CIR, when the latter inquired from the court about the status of the case and the court's action on his motion for reconsideration. It was precisely because of such knowledge

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[12] *Metro Transit Organization, Inc. v. Piglas NFWU-KMU*, G.R. No. 175460, April 14, 2008, 551 SCRA 326, 337.

that he filed on July 2, 2009 the manifestation and motion pertaining to the CTA's order of entry of judgment. Pertinent portions of his petition for relief read:

On 17 June 2009, he received a Resolution of the Honorable Court dated 10 June 2009 ordering the issuance of the Entry of Judgment in the present case, x x x:

x x x   x x x   x x x

Petitioner's handling counsel was surprised that the above emphasized decision dated 12 February 2009 had become final considering that he had filed a timely Motion for Reconsideration on 4 March 2009.

Investigating further, he called the Honorable Court and was informed that his Motion for Reconsideration filed by registered mail on 4 March 2009 was received by the Honorable Court on 11 March 2009. He was also informed that the last document on file there was a Resolution dated 25 March 2009. He then searched his records and found no such Resolution. [Petitioner] then tried to confirm the same from petitioner's official counsel[,] the Office of the Solicitor General (OSG) through the assigned Solicitor, Atty. Bernardo C. Villar. He was then informed that, same as handling counsel, the latter was also waiting for the resolution of the Motion for Reconsideration filed on 4 March 2009 and likewise, did not receive any copy of any resolution for that matter. The OSG then formalized this information through a letter dated 24 June 2009. x x x.[13] (Emphasis ours)

In the letter[14] dated June 24, 2009 attached to the petition for relief as Annex "A", State Solicitor Bernardo C. Villar mentioned that on June 22, 2009, he and Atty. Velasco had discussed the CTA's prior issuance of a resolution denying their motion for reconsideration, thus:

This pertains to the CTA Notice of Resolution dated June 10, 2009 (directing entry of judgment), a copy of which was received by the OSG on June 17, 2009, and **further to our telephone discussion on Monday, June 22, 2009**.

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[13] *Rollo*, pp. 38-39.

[14] *Id.* at 53.

As we have discussed, the OSG has not previously received any resolution on the motion for reconsideration which you filed with the CTA. However, you pointed out that CTA records tend to show that there had been such a resolution and that BIR was already notified of the same sometime in March 2009.[15] (Emphasis ours)

The CIR then can no longer validly dispute that he had known of the CTA's Resolution dated March 25, 2009 on June 22, 2009. Even as we reckon the 60-day period under Section 3, Rule 38 from said date, the petitioner only had until August 21, 2009 within which to file a petition for relief. Since August 21, 2009, a Friday, was a non-working holiday, the petitioner should have filed the petition at the latest on August 24, 2009. The CIR's filing with the CTA of the petition for relief on October 2, 2009 then did not conform to the 60-day requirement.

Significantly, the OSG also opined, and had so advised the CIR, that the petition for relief was indeed filed out of time. Attached to the petitioner's Compliance[16] with this Court's Resolution[17] dated May 30, 2011 is the OSG's letter[18] dated September 22, 2009, addressed to the BIR and which reads:

We regret to inform you that we cannot be of help to you in filing a petition for relief since you are the ones on record representing the BIR before the Court of Tax Appeals. As you well know, our participation in these matters are limited to filing an appeal with the Supreme Court in due time. This is precisely what we meant in our previous letters as the kind of assistance that we can provide you.

Furthermore, **as far as we are concerned, there is doubt in the propriety of filing a petition for relief at this time**. Please note that from your receipt on June 17, 2009 of the entry of judgment, you filed a *"Manifestation and Motion to Reconsider Resolution Ordering Entry of Judgment"* dated July 1, 2009 instead of a petition

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[15] *Id.*

[16] *Id.* at 90-95.

[17] *Id.* at 81-82.

[18] *Id.* at 96.

for relief. **In the meantime, the 60 days period (from actual knowledge) under Section 3, Rule 38 within which to file the petition for relief continued to run and has expired already**.[19] (Emphasis ours)

Given the foregoing, this Court finds no cogent reason to grant petitioner's plea for the issuance of a writ of *certiorari*. An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[20] There was no such grave abuse of discretion in this case because the CIR's petition for relief was indeed filed out of time.

WHEREFORE, premises considered, the petition is **DISMISSED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[19] *Id.*

[20] *Santos v. People,* G.R. No. 173176, August 26, 2008, 563 SCRA 341.

SECOND DIVISION

[G.R. No. 153799. September 17, 2012]

SOLIDBANK UNION, EVANGELINE J. GABRIEL, EVELYN A. SIA, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S. PASCUA, MA. VICTORIA M. VIDALLON, AUDREY A. ALJIBE, REY ANTHONY AMPARADO, JOSE A. ANTENOR,[1] AUGUSTO D. ARANDIA, JR., RUTH SHEILA M. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANOLO T. CABRERA, RACHEL[2] M. CASTILLO, VICTOR O. CHUA, VIRGILIO CO, JR., LEOPOLDO DABAY, HUBERT DIMAGIBA, MA. LOURDES CECILIA EMPERADOR,[3] FELIX B. ESTACIO, JR., JULIETA ESTRADA, MARICEL EVALLA, JOSE GUISADIO, ALEXANDER MARTINEZ, JOSEPHINE M. ONG, EDNA SARONG, GREGORIO S. SECRETARIO,[4] ROSIE UY, ARVIN D. VALENCIA, FERMIN JOSEPH[5] B. VENTURA, JR., EMAMNUEL C. YAPTANGCO,[6] ERNESTO ZUÑIGA, ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, MICHAEL MATTHEW BILLENA, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULONG,[7] MA. EDNA V. DATOR, RANIEL DAYAO,[8] RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS,

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[1] Also spelled as Anteenor in some parts of the records.

[2] Also spelled as Rache in some parts of the records.

[3] Also spelled as Emparador in some parts of the records.

[4] Also spelled as Seecretario in some parts of the records.

[5] Also spelled as Josseph in some parts of the records.

[6] Also spelled as Yaptanco in some parts of the records.

[7] Also spelled as Capuling in some parts of the records.

[8] Also spelled as Praniel in some parts of the records.

CAROLINA DIZON, JOCELYN L. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, GONZALO GUINIT, FERDINAND S. HABIJAN, JUN HERNANDEZ, MA. ANGELA JALANDONI,[9] MANUEL LIM, MA. LOURDES LIM, EMERSON LUNA, NOLASCO MACATANGAY, NORMAN MAÑACO, CHERRY LOU MANGROBANG, EDMUNDO MARASIGAN, ALLEN M. MARTINEZ, ARLENE P. NOBLE, SHIRLEY ONG, LOTIZ E. ORTIZ LUIS, PABLITO PALO, GEOFFREY PRADO, OMEGA MELANIE QUINTANO, AGNES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON REYES, SALVACIO ROGADO, ELMOR R. ROMANA, JR., LOURDES U. SALVADOR, ELMER S. SAYLON, BENNARD SIMBULAN, MA. LOURDES ROCEL SOLIVEN, EMILY[10] C. SUYAT, RAYMOND[11] D. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA[12] O. TISON, EVELYN T. UYLANGCO, MERVIN S. BAUTISTA, LEOPOLDO DE LA ROSA, DOROTEO FROILAN and JULIETE L. JUBAC, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

[G.R. No. 157169. September 17, 2012]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **SOLIDBANK UNION, EVANGELINE J. GABRIEL, EVELYN A. SIA, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S.**

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[9] Also spelled as Jalanddoni in some parts of the records.

[10] Also spelled as Emly in some parts of the records.

[11] Also spelled as Raymondd in some parts of the records.

[12] Also spelled as Theres in some parts of the records.

PASCUA, MA. VICTORIA M. VIDALLON, AUDREY A. ALJIBE, REY ANTHONY AMPARADO, JOSE A. ANTENOR, AUGUSTO D. ARANDIA, JR., RUTH SHEILA M. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANOLO T. CABRERA, RACHEL M. CASTILLO, VICTOR O. CHUA, VIRGILIO Y. CO, JR., LEOPOLDO S. DABAY, HUBERT V. DIMAGIBA, MA. LOURDES CECILIA B. EMPARADOR, FELIX B. ESTACIO, JR., JULIETA T. ESTRADA, MARICEL G. EVALLA, JOSE G. GUISADIO, ALEXANDER A. MARTINEZ, JOSEPHINE M. ONG, EDNA M. SARONG, GREGORIO S. SECRETARIO, ROSIE C. UY, ARVIN D. VALENCIA, FERMIN JOSEPH B. VENTURA, JR., EMAMNUEL C. YAPTANCO, ERNESTO C. ZUÑIGA,[13] ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, MICHAEL MATTHEW B. BILLENA, LEOPE L. CABENIAN, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULING, MARGARETTE B. CORDOVA, MA. EDNA V. DATOR, RANIEL C. DAYAO, RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS, CAROLINA C. DIZON, MARCHEL S. ESQUEJO,[14] JOCELYN L. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, MENCHIE R. FRANCISCO, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, GONZALO GUINIT, FERDINAND S. HABIJAN, JUN G. HERNANDEZ, LOURDES D. IBEAS, MA. ANGELA L. JALANDONI, JULIE T. JORNACION, MANUEL C. LIM, MA. LOURDES A. LIM, EMERSON V. LUNA, NOLASCO B. MACATANGAY, NORMAN C. MANACO, CHERRY LOU B. MANGROBANG, EDMUNDO G. MARASIGAN, ALLEN M.

[13] Also spelled as Zuniga in some parts of the records.

[14] Also spelled as Esquejjo in some parts of the records.

MARTINEZ, EMELITA C. MONTANO, ARLENE P. NOBLE, SHIRLEY A. ONG, LOTIZ E. ORTIZ LUIS, PABLITO M. PALO, GEOFFREY T. PRADO, OMEGA MELANIE M. QUINTANO, AGNES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON B. REYES, SALVACIO N. ROGADO, ELMOR R. ROMANA, JR.,LOURDES U. SALVADOR, ELMER S. SAYLON, BENHARD E. SIMBULAN, MA. TERESA S. SOLIS, MA. LOURDES ROCEL E. SOLIVEN, EMILY C. SUYAT, RAYMOND D. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA O. TISON, EVELYN T. UYLANGCO, MERVIN S. BAUTISTA, LEOPOLDO V. DE LA ROSA, DOROTEO S. FROILAN and JULIETE L. JUBAC, SOLID BANK CORPORATION and/or its successor-in-interest, FIRST METRO INVESTMENT CORPORATION, DEOGRACIAS N. VISTAN and EDGARDO MENDOZA, JR., *respondents.*

[G.R. No. 157327. September 17, 2012]

SOLIDBANK CORPORATION and/or its successor-in-interest, FIRST METRO INVESTMENT CORPORATION, DEOGRACIAS N. VISTAN and EDGARDO MENDOZA, JR., *petitioners, vs.* **SOLIDBANK UNION and its dismissed officers and members, namely: EVANGELINE J. GABRIEL, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S. PASCUA, EVELYN A. SIA, MA. VICTORIA M. VIDALLON, AUDREY A. ALJIBE, REY ANTHONY M. AMPARADO, JOSE A. ANTEENOR, AUGUSTO D. ARANDIA, JR., JANICE L. ARRIOLA, RUTH SHEILA M. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANOLO T. CABRERA, RACHEL M. CASTILLO, VICTOR O. CHUA, VIRGILIO Y. CO, JR., LEOPOLDO S. DABAY, ARMAND V. DAYANG-HIRANG, HUBERT V. DIMAGIBA, MA. LOURDES CECILIA B. EMPARADOR, FELIX B. ESTACIO, JR., JULIETA**

T. ESTRADA, MARICEL G. EVALLA, JOSE G. GUISADIO, JOSE RAINARIO C. LAOANG, ALEXANDER A. MARTINEZ, JUAN ALEX C. NAMBONG, JOSEPHINE M. ONG, ARMANDO B. OROZCO, ARLENE R. RODRIGUEZ, NICOMEDES P. RUIZO, JR., DON A. SANTANA, ERNESTO R. SANTOS, JR., EDNA M. SARONG, GREGORIO S. SEECRETARIO, ELLEN M. SORIANO, ROSIE C. UY, ARVIN D. VALENCIA, FERMIN JOSSEPH B. VENTURA, JR., EMAMNUEL C. YAPTANCO, ERNESTO C. ZUNIGA, ARIEL S. ABENDAN, EMMA R. ABENDAN, PAULA AGNES A. ANGELES, JACQUILINE B. BAQUIRAN, JENNIFER S. BARCENAS, ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, RODERICK M. BELLO, MICHAEL MATTHEW B. BILLENA, LEOPE L. CABENIAN, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULING, MARGARETTE B. CORDOVA, MA. EDNA V. DATOR, PRANIEL C. DAYAO, RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS, CARMINA M. DEGALA, EPHRAIM RALPH A. DELFIN, KAREN M. DEOCERA, CAROLINA C. DIZON, MARCHEL S. ESQUEJJO, JOCELYN L. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, MENCHIE R. FRANCISCO, ERNESTO U. GAMIEL,[15] MACARIO RODOLFO N. GARCIA, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, MA. JINKY P. GELERA, MA. TERESA G. GONZALES, GONZALO G. GUINIT, EMILY H. GUINO-O, FERDINAND S. HABIJAN, JUN G. HERNANDEZ, LOURDES D. IBEAS, MA. ANGELA L. JALANDDONI, JULIE T. JORNACION, MANUEL C. LIM, MA. LOURDES A. LIM, EMERSON V. LUNA, NOLASCO B. MACATANGAY,

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[15] Also spelled as Gamier in some parts of the records.

NORMAN C. MANACO, CHERRY LOU B. MANGROBANG, MARASIGAN G. EDMUNDO, ALLEN M. MARTINEZ, EMELITA C. MONTANO, ARLENE P. NOBLE, SHIRLEY A. ONG, LOTIZ E. ORTIZ LUIS, PABLITO M. PALO, MARY JAINE D. PATINO,[16] **GEOFFREY T. PRADO, OMEGA MELANIE M. QUINTANO, AGNES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON B. REYES, SALVACION N. ROGADO, ELMOR R. ROMANA, JR., LOURDES U. SALVADOR, ELMER S. SAYLON, BENHARD E. SIMBULAN, MA. TERESA S. SOLIS, MA. LOURDES ROCEL E. SOLIVEN, EMILY C. SUYAT, EDGAR ALLAN P. TACSUAN, RAYMONDD D. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA O. TISON, EVELYN T. UYLANGCO, CION E. YAP, MA. OPHELIA C. DE GUZMAN, MA. HIDELISA P. IRA, RAYMUND MARTIN A. ANGELES, MERVIN S. BAUTISTA, ELENA R. CONDEVILLAMAR, CHERRY T. CO, LEOPOLDO DE LA ROSA, DOROTEO S. FROILAN, EMMANUEL B. GLORIA, JULIETE L. JUBAC and ROSEMARIE L. TANG,** *respondents.*

[G.R. No. 157506. September 17, 2012]

SOLIDBANK UNION, EVANGELINE J. GABRIEL, EVELYN A. SIA, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S. PASCUA, MA. VICTORIA M. VIDALLON, AUDREY A. ALJIBE, REY ANTHONY AMPARADO, JOSE A. ANTENOR, AUGUSTO D. ARANDIA, JR., RUTH SHEILA M. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANOLO T. CABRERA, RACHEL M. CASTILLO, VICTOR O. CHUA, VIRGILIO Y. CO, JR., LEOPOLDO S. DABAY, HUBERT V. DIMAGIBA, MA. LOURDES CECILIA B.

[16] Also spelled as Jane in some parts of the records.

EMPERADOR, FELIX B. ESTACIO, JR., JULIETA T. ESTRADA, MARICEL EVALLA, JOSE GUISADIO, ALEXANDER A. MARTINEZ, JOSEPHINE M. ONG, EDNA M. SARONG, GREGORIO S. SECRETARIO, ARVIN D. VALENCIA, FERMIN JOSEPH B. VENTURA, JR., EMAMNUEL C. YAPTANGCO, ERNESTO C. ZUÑIGA, ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, MICHAEL MATTHEW B. BILLENA, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULONG, MA. EDNA V. DATOR, RANIEL C. DAYAO, RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS, CAROLINA C. DIZON, JOCELYN L. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, GONZALO GUINIT, FERDINAND S. HABIJAN, JUN G. HERNANDEZ, MA. ANGELA L. JALANDONI, MA. LOURDES A. LIM, EMERSON V. LUNA, NOLASCO B. MACATANGAY, NORMAN C. MAÑACO, CHERRY LOU MANGROBANG, EDMUNDO G. MARASIGAN, ALLEN M. MARTINEZ, ARLENE P. NOBLE, SHIRLEY A. ONG, LOTIZ E. ORTIZ LUIS, PABLITO M. PALO, GEOFFREY T. PRADO, OMEGA MELANIE M. QUINTANO, AGNES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON B. REYES, SALVACIO N. ROGADO, ELMOR R. ROMANA, JR., LOURDES U. SALVADOR, ELMER S. SAYLON, BENNARD SIMBULAN, MA. LOURDES ROCEL E. SOLIVEN, EMILY C. SUYAT, RAYMOND D. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA O. TISON, EVELYN T. UYLANGCO, MERVIN S. BAUTISTA, LEOPOLDO V. DE LA ROSA, DOROTEO S. FROILAN and JULIETE L. JUBAC, *petitioners, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA;* CONCEPT AND REQUISITES.—** "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'" It denotes "that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit." For *res judicata*, in its concept as a bar by former judgment to apply, the following must be present: 1. The former judgment or order is final; 2. It is rendered by a court having jurisdiction over the subject matter and the parties; 3. It is a judgment or an order on the merits; and, 4. There is between the first and the second action identity of parties, identity of subject matter, and identity of causes of action.

2. **ID.; ID.; ID.; ID.; REQUISITES OF *RES JUDICATA* AS A BAR BY PRIOR JUDGMENT, PRESENT.—** The Decision of this Court in G.R. Nos. 159460 and 159461, therefore, constitutes *res judicata* to the present consolidated cases. x x x The Decision of this Court in G.R. Nos. 159460 and 159461 became final and executory on May 20, 2011. It is a decision based on the merits of the case and rendered by this Court in the exercise of its appellate jurisdiction after the parties invoked its jurisdiction. There is also, between the two sets of consolidated cases, identity of the parties, subject matter and causes of action. The parties in G.R. Nos. 159460 and 159461 are also impleaded as parties in these consolidated cases. And while some of the parties herein are not included in G.R. Nos. 159460 and 159461, the same are only few. In any event, it is well-settled that only substantial, and not absolute, identity of the parties is required for *res judicata* to lie. "There is substantial identity of the parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case." With regard to identity of causes of action, it has been held that there is identity of causes of action when the same evidence will sustain both actions or when the facts essential to the maintenance of the two actions are identical. Here, the bone of contention in both sets of consolidated cases boils down

to the nature and consequences of complainants' April 3, 2000 mass action. The antecedent facts that gave rise to all the cases were the same. Necessarily, therefore, the same evidence would sustain all actions. Such similarity in the evidence required to sustain all actions is also borne out by the identity of the issues involved in all these cases. While the parties have presented a plethora of arguments which we earlier discussed at length, the same nonetheless boil down to the same crucial issues formulated in G.R. Nos. 159460 and 159461. *G.R. No. 153799 is also barred by res judicata.* It should be recalled that in G.R. No. 153799, the complainants assailed the Resolutions dated January 14, 2002 and February 20, 2002 of the CA's Fourth Division granting Metrobank's request for injunctive reliefs. They claimed that the reinstatement aspect of the Labor Arbiter's Decision is immediately executory. Hence, they are entitled to backwages from the time the Labor Arbiter promulgated his Decision until it was reversed by the NLRC. As discussed above, however, the November 15, 2010 Decision of this Court in G.R. Nos. 159460 and 159461 already adjudicated the respective rights and liabilities of the parties. Said Decision pronouncing the monetary awards to which the parties herein are entitled became final and executory on May 20, 2011. Under the rule on immutability of judgment, this Court cannot alter or modify said Decision. It is a well-established rule that once a judgment has become final and executory, it is no longer susceptible to any modification.

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. and *Jabla Damian & Associates* for Solidbank Union, *et al.*

Rivera Santos and Maranan and *Martinez & Mendoza* for Metrobank.

Dela Rosa Tejero & Nograles for Solidbak, *et al.*

Jose Max S. Ortiz for Jose Antenor.

D E C I S I O N

DEL CASTILLO, *J.*:

The issues presented in these consolidated petitions have been squarely resolved by this Court in its November 15, 2010 Decision

in *Solidbank Corporation v. Gamier*.[17] The said Decision constitutes *res judicata* in these consolidated petitions.

These petitions for review on *certiorari* assail the conflicting Decisions of the Court of Appeals (CA) in CA-G.R. SP Nos. 68054 and 68998. In CA-G.R. SP No. 68054, the CA's Second Division ruled that the public demonstration conducted by the employees on April 3, 2000 after the Secretary of Labor assumed jurisdiction over the labor dispute was a valid exercise of their constitutional rights to freedom of expression, to peaceful assembly, and to petition the government for redress of their grievances and, hence, their dismissal from employment was illegal. Said division of the CA thus set aside the ruling of the National Labor Relations Commission's (NLRC's) Second Division and reinstated the Decision[18] dated March 16, 2001 of Labor Arbiter Luis D. Flores (Labor Arbiter Flores).

In CA-G.R. SP No. 68998, however, the Special Third Division of the CA held that the employees staged an illegal strike. It also held that Metropolitan Bank and Trust Company (Metrobank) could not be held jointly and solidarily liable with Solidbank Corporation (Solidbank) and First Metro Investment Corporation (First Metro) because each of them have separate and distinct legal personalities.

Factual Antecedents

Solidbank Union (Union) was a legitimate labor organization and the duly certified sole bargaining representative of all rank-and-file employees of Solidbank. On November 17, 1999, the Union and Solidbank negotiated for a new economic package for the remaining two years of the 1997-2001 collective bargaining agreement (CBA). However, the parties reached an impasse. Thus, on January 18, 2000, then Secretary of Labor Bienvenido

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[17] G.R. Nos. 159460 and 159461, November 15, 2010, 634 SCRA 554; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Conchita Carpio Morales, Arturo D. Brion, Lucas P. Bersamin, and Maria Lourdes P. A. Sereno, now Chief Justice.

[18] Records (G.R. No. 153799), Vol. I, pp. 436-453.

E. Laguesma (Secretary Laguesma) assumed jurisdiction over the dispute and enjoined the parties from holding a strike or lockout or any activity which might exacerbate the situation.[19]

Thereaftter, on March 24, 2000, Secretary Laguesma issued an Order[20] disposing as follows:

> WHEREFORE, premises considered, judgment is hereby issued:
>
> a. Directing Solidbank Corporation and Solidbank Union to conclude their Collective Bargaining Agreement for the years 2000 and 2001, incorporating the dispositions above set forth;
>
> b. Dismissing the unfair labor practice charge against Solidbank Corporation;
>
> c. Directing Solidbank to deduct or check-off from the employees' lump sum payment an amount equivalent to seven percent (7%) of their economic benefits for the first (1st) year, inclusive of signing bonuses, and to remit or turn over the said sum to the Union's authorized representative, subject to the requirements of check-off;
>
> d. Directing Solidbank to recall the show-cause memos issued to employees who participated in the mass actions if such memos were in fact issued.
>
> SO ORDERED.[21]

Displeased with Secretary Laguesma's ruling, about 712 union members and officers skipped work in the morning of April 3, 2000 (a Monday) and trooped to his office in Intramuros, Manila, not only to accompany their lawyer in filing the Union's Motion for Reconsideration but also to stage a brief public demonstration. Other rank and file employees in the provincial branches of Solidbank also absented themselves from work that day.

Solidbank also filed its Motion for Reconsideration. With respect to the mass demonstration conducted by its employees,

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[19] See Order of even date, *id.* at 50-51.

[20] *Id.* at 52-58.

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

however, Solidbank perceived the same to be an illegal strike, a deliberate abandonment of work calculated to paralyze its operations. Thus, Solidbank issued a memorandum[22] informing all the participants in the mass demonstration that they had put their jobs at risk. In another memorandum, Solidbank informed the employees that the bank was willing to take back those who would report for work on April 6, 2000.

About 513 of the striking employees obliged with the second memorandum. With regard to the 199 employees who did not comply with the aforesaid memorandum, another memorandum[23] was issued requiring them to explain within 24 hours from notice thereof why they should not be dismissed from employment. Pending receipt of explanations, Solidbank placed the concerned employees under preventive suspension status.

On April 17, 2000, Solidbank dismissed all 199 employees.[24] Eventually, however, it re-admitted 70 employees, bringing down the number of dismissed employees to 129. On varying dates, some 21 employees executed a Release, Waiver, and Quitclaim[25] in favor of Solidbank.

On May 8, 2000, Secretary Laguesma issued an Order[26] denying the motions for reconsideration separately filed by Solidbank and the Union.

Meanwhile, First Metro and Solidbank entered into a merger agreement, with Solidbank as the surviving entity and First Metro ceasing to exist as a corporation. However, the surviving corporation was renamed First Metro Investment Corporation. Subsequently, Metrobank bought all banking-related assets and liabilities of Solidbank (renamed First Metro), which ceased operations on August 31, 2000.

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[22] See sample copy, *id.* at 181.

[23] See sample copy, *id.* at 180.

[24] See sample memorandum of even date, *id.* at 179.

[25] See sample copies, *id.* at 105-120.

[26] *Rollo* (G.R. No. 157169), pp. 1028-1029.

Proceedings before the Labor Arbiter

On July 21, 2000, the Union, together with its members who were dismissed by Solidbank (hereinafter collectively referred to as complainants), filed, thru E. R. Jabla Law Offices, a Complaint for illegal dismissal[27] against Solidbank, its President and Chief Executive Officer Deogracias N. Vistan (Vistan), Senior Vice-President Diwata Castanos (Castanos), and First Metro. This complaint was subsequently amended by dropping 32[28] individual complainants and Castanos and by impleading Metrobank and its Assistant Vice-President for Human Resources Edgardo Mendoza, Jr. (Mendoza) as party respondents. Complainants contended that the mass demonstration they conducted was not a strike but was a legitimate exercise of their constitutional rights to freedom of expression, to peaceful assembly and to petition the government for redress of their grievances.

On September 29, 2000, Sycip Salazar Hernandez and Gatmaitan, representing the respondents in the Amended Complaint, filed a Position Paper with Motion to Dismiss (with respect to several individual complainants).[29] Said law firm asserted that Solidbank validly terminated the employment of those who participated in the strike which was illegal. And

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[27] Docketed as NLRC Case No. 30-07-02920-00; records (G.R. No. 153799), Vol. I, pp. 2-6.

[28] Namely: 1) Janice L. Arriola; 2) Rachel M. Castillo; 3) Armand V. Dayanhirang; 4) Hubert V. Dimagiba; 5) Juan Alex C. Nambong; 6) Armando B. Orozco; 7) Arlene R. Rodriquez; 8) Don A. Santana; 9) Ernesto R. Santos, Jr.; 10) Ellen M. Soriano; 11) Arvin D. Valencia; 12) Emmanuel C. Yaptangco; 13) Jacquiline B. Baquiran; 14) Jennifer S. Barcenas; 15) Alvin F. Baricanosa; 16) Ferdinand Mel S. Capulong; 17) Ma. Edna V. Dator; 18) Ragcy L. De Guzman; 19) Karen M. Deocera; 20) Ernesto U. Gamiel; 21) Ma. Jinky P. Gelera; 22) Gonzalo G. Guinit; 23) Emily H. Guinoo; 24) Lourdes D. Ibeas; 25) Ma. Angela L. Jalandoni; 26) Allen M. Martinez; 27) Jocelyn Y. Tan; 28) Cion E. Yap; 29) Ma. Ophelia C. De Guzman; 30) Elena R. Condevillamar; 31) Emmanuel B. Gloria and 32) Rosemarie L. Tang.

[29] Records (G.R. No. 153799), Vol. I, pp. 27-49.

since the dismissal of said employees was based on justifiable cause, the Union's claim of unfair labor practice had no leg to stand on.

Said counsel further pointed out that on August 31, 2000, Solidbank ceased its banking operations. Consequently, pursuant to Article 283 of the Labor Code,[30] all of its employees were terminated from employment on said date.

Ruling of the Labor Arbiter

On March 16, 2001, Labor Arbiter Flores rendered his Decision[31] declaring the disputed April 3, 2000 incident not a strike but a mere expression of the employees' displeasure over the Secretary's ruling; that the 24-hour deadline imposed by Solidbank within which the employees should submit their written explanation was not sufficient to give them reasonable opportunity to refute the charges against them; and that Solidbank was guilty of unfair labor practice for using union membership as one of the bases for recalling or terminating employment. Accordingly, he awarded full backwages and attorney's fees in favor of the employees. The dispositive portion of the Labor Arbiter's Decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants' dismissal as illegal and unjustified and ordering the respondents Solid Bank Corporation and/or its successor-in-interest First Metro Investment Corporation and/or Metropolitan Bank and Trust Company and/or Deogracias Vistan and/or Edgardo Mendoza to reinstate complainants to their former positions. Concomitantly, said respondents are hereby ordered to jointly and severally pay the complainants their full backwages and other

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[30] Article 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x

[31] Records (G.R. No. 153799), Vol. I, pp. 436-453.

employee's benefits from the time of their dismissal up to the date of their actual reinstatement; payment of ten (10%) percent attorney's fees; payment of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) each as moral damages and ONE HUNDRED THOUSAND PESOS (₱100,000.00) each as exemplary damages which are computed, at the date of this decision in the amount of THIRTY THREE MILLION SEVEN HUNDRED NINETY FOUR THOUSAND TWO HUNDRED TWENTY TWO PESOS and 80/100 (₱33,794,222.80), by the Computation and Examination Unit of this branch and becomes an integral part of this Decision.

SO ORDERED.[32]

Then on April 26, 2001, complainants filed an Urgent Motion for the Issuance of A Writ of Execution[33] seeking the immediate enforcement of the Labor Arbiter's Decision insofar as the reinstatement aspect was concerned.

Proceedings before the National Labor Relations Commission

Solidbank and Metrobank separately filed their appeal. In its Memorandum of Appeal,[34] Solidbank imputed to Labor Arbiter Flores grave abuse of discretion in concluding that the concerted action of the complainants was a mere expression of displeasure and not a strike in defiance of Secretary Laguesma's assumption order. Solidbank likewise alleged that the Labor Arbiter erred in holding that it was guilty of unfair labor practice; that complainants were denied due process of law; that the 21 individual complainants who voluntarily settled their claims against the bank were still entitled to the avails of the suit; that complainants were entitled to damages and attorney's fees; and, that the officers of the bank were solidarily liable with it.

Metrobank, for its part, argued that it had a separate and distinct personality from Solidbank and First Metro and, hence, could not be held solidarily liable with said entities. It also

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[32] *Id.* at 452-453.

[33] *Id.* at 462-464.

[34] Records (G.R. No. 153799), Vol. II, pp. 16-64.

claimed that the labor tribunal did not acquire jurisdiction over its person because it was not served with summons. Metrobank stressed that it never engaged the services of Sycip Salazar Hernandez and Gatmaitan and only learned of the pending case when it was informed by First Metro about it. For these reasons, Metrobank contended that the assailed Decision of the Labor Arbiter was null and void insofar as it was concerned.

Metrobank likewise claimed that the complaint should have been outrightly dismissed for violating the rule against forum shopping, as six[35] of the complainants had earlier filed illegal dismissal cases. Moreover, each of the complainants failed to sign the certificate of non-forum shopping. It also echoed the contentions of Solidbank contained in the latter's Memorandum of Appeal.

On May 21, 2001, the Labor Arbiter issued a Partial Writ of Execution,[36] ordering the reinstatement of the dismissed employees to their former positions. Whereupon, Metrobank filed a Motion[37] seeking to restrain the enforcement of said writ.

Solidbank likewise filed an Urgent Motion (to Quash or Recall Writ of Execution),[38] claiming that the positions previously held by the complainants were no longer available because Solidbank had already ceased operations.

The complainants thereafter filed their Answer (To Respondents-Appellants' Memoranda of Appeal).[39]

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[35] Namely, Jose A. Antenor (RAB Case No. 05-10414-00), Elena R. Condevillamar and Janice L. Arriola (NLRC NCR Case No. 30-05-03002-00), Ma. Ophelia De Guzman (NLRC Case No. 30-05-02253-00), Rosemarie L. Tang (SUB-RAB-05-05-00147-00), Juan Alex C. Nambong (NLRC NCR Case No. 30-04-01808-00), and Ernesto Gamier (NLRC NCR Case No. 30-04-01891-00).

[36] CA *rollo* (CA-G.R. SP No. 68998), Vol. II, pp. 597-599.

[37] Records (G.R. No. 153799), Vol. I, pp. 204-215.

[38] CA *rollo* (CA-G.R. SP No. 68998), Vol. II, pp. 600-607.

[39] Records (G.R No. 153799), Vol. I, pp. 122-150.

On July 23, 2001, the NLRC's Second Division rendered its Decision[40] finding the dismissal of the complainants valid. It opined that the mass action held on April 3, 2000 was a strike within the contemplation of Article 212(o)[41] of the Labor Code and in violation of the Secretary of Labor's January 18, 2000 assumption order. Notably, however, the NLRC Second Division still awarded separation benefits in favor of the complainants on equitable grounds.

The NLRC Second Division likewise ruled that Solidbank did not interfere with complainants' right to self-organization and, hence, did not commit unfair labor practice. It also dismissed the complaint with respect to complainant Jose A. Antenor for violating the rule against forum shopping, as well as with respect to the 21 individual complainants who already executed Release, Waiver and Quitclaim.

The Second Division of the NLRC disposed as follows:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a new one entered dismissing the complaint for illegal dismissal and unfair labor practice for lack of merit. As equitable relief, respondents are hereby ordered to pay complainants separation benefits as provided under the CBA at least one (1) month pay for every year of service whichever is higher [sic].
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> SO ORDERED.[42]

The banks and the complainants filed their respective motions for reconsideration but these were all denied by the NLRC in its Resolution[43] dated September 28, 2001.

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[40] *Id.* at 379-394; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[41] Article 212. *Definitions*. x x x

(o) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

[42] Records (G.R. No. 153799), Vol. I, p. 393.

[43] *Id.* at 397-401.

On November 29, 2001, Labor Arbiter Flores issued an Order and an *Alias* Partial Writ of Execution directing the banks to pay complainants their accrued wages and other employees' benefits computed from the date of his Decision up to the date of the reversal thereof by the NLRC Second Division on July 23, 2001.

Incidentally, other similarly situated employees[44] filed their separate complaints for illegal dismissal against Solidbank, which were consolidated and assigned to Labor Arbiter Potenciano Canizares, Jr. (Canizares). On November 14, 2000, Labor Arbiter Canizares issued a Decision dismissing the complaints. In a Decision dated January 31, 2002, however, the NLRC's Third Division reversed the ruling of the Labor Arbiter and ruled in favor of said complainants. Thus:

WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one entered finding the respondent Solidbank Corporation liable for the illegal dismissal of complainants Ernesto U. Gamier, Elena P. Condevillamar, Janice L. Arriola and Maria Ophelia C. De Guzman, and ordering the respondent bank to reinstate the complainants to their former positions without loss of seniority rights and to pay full backwages reckoned from the time of their illegal dismissal up to the time of their actual/payroll reinstatement. Should reinstatement not be feasible, respondent bank is further ordered to pay in accordance with the provisions of the subsisting Collective Bargaining Agreement.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[45]

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[44] Namely, Ernesto U. Gamier, Elena R. Condevillamar, Janice Arriola and Maria Ophelia C. de Guzman.

[45] See March 1, 2003 Decision of the CA's Twelfth Division, *rollo* (G.R. No. 153799), pp. 485-499; penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine. See also *Solidbank Corporation v. Gamier*, *supra* note 17 at 567-568.

Proceedings before the Court of Appeals

From the conflicting Decisions of the Second and Third Divisions of the NLRC stemmed five interrelated petitions for *certiorari* separately filed by the parties before the CA.

CA-G.R. SP Nos. 67730 and 70820

CA-G.R. SP No. 67730 was a petition for *certiorari* filed by Solidbank, Vistan and Mendoza seeking to nullify the July 23, 2001 Decision of the NLRC's Second Division insofar as it ordered Solidbank to pay separation pay. CA-G.R. SP No. 70820, on the other hand, was another petition for *certiorari* filed by Solidbank praying for the reversal of the January 31, 2002 Decision of the NLRC's Third Division. These cases were consolidated and assigned to the CA's Twelfth Division. In its March 10, 2003 Decision,[46] the CA Twelfth Division denied both petitions on the ground that the mass action staged by the complainants was a legitimate exercise of their right to free expression. Its dispositive portion reads:

> WHEREFORE, the twin petitions are hereby DENIED. The dismissal of private respondents are hereby declared to be illegal. Consequently, petitioner is ordered to reinstate private respondents to their former position, consonant with the Decision of this Court in CA-G.R. SP No. 68054.
>
> SO ORDERED.[47]

Solidbank then filed with this Court petitions for review on *certiorari* questioning the above-mentioned Decision of the CA Twelfth Division. These petitions docketed as G.R. Nos. 159460 and 159461 were consolidated and raffled to the Third Division of this Court. On November 15, 2010, the Court's Third Division rendered its Decision which, as mentioned in our opening paragraph, constitutes *res judicata* in these consolidated petitions.

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[46] See March 1, 2003 Decision of the CA's Twelfth Division, *id.*

[47] *Id.* at 498.

CA-G.R. SP No. 68054

In their petition for *certiorari* in CA-G.R. SP No. 68054, complainants, thru Atty. Potenciano A. Flores, Jr., assailed the July 23, 2001 Decision of the NLRC's Second Division. On August 29, 2002, the Second Division of the CA rendered its Decision[48] finding the April 3, 2000 mass demonstration a valid exercise of complainant's right to petition the government for redress of their grievances. Thus:

WHEREFORE, premises considered, the instant petition for *certiorari* is GRANTED. The Labor Arbiter's decision, except with respect to the award of moral and exemplary damages which are heretofore lowered to PhP50,000.00 and PhP25,000.00, respectively, is hereby REINSTATED.

SO ORDERED.[49]

Solidbank and Metrobank separately moved for reconsideration,[50] which drew complainants' Consolidated Comment.[51] In a Resolution[52] dated January 30, 2003, the CA denied both motions.

The August 29, 2002 Decision of the CA's Second Division was assailed by Metrobank and Solidbank before this Court in two separate petitions for review on *certiorari* – G.R. No. 157169 and G.R. No. 157327, respectively.

CA-G.R. SP No. 68349

Atty. Emmanuel R. Jabla (Atty. Jabla), in collaboration with Attys. Federico C. Leynes and Jose C. Espinas, and in

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[48] CA *rollo* (GA-G.R. SP No. 68054), pp. 565-579; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

[49] *Id.* at 846.

[50] See Motion for Partial Reconsideration, *id.* at 877-915, and Motion for Reconsideration, *id.* at 916-931.

[51] *Id.* at 954-987.

[52] *Id.* at 1370.

representation of five individual complainants, initiated CA-G.R. SP No. 68349.[53] However, on April 24, 2002, the CA's Special Tenth Division issued a Resolution[54] outrightly dismissing the petition on the following grounds: (i) there was no proof that the signatories in the verification and certification against forum shopping were authorized to sign the same; (ii) violation of the rule against forum shopping; and, (iii) non-compliance with Section 11, Rule 13 of the Rules of Court.[55]

A motion for reconsideration was filed, but the same was denied in a Resolution[56] dated October 16, 2002.

Subsequently, said five complainants still represented by Jabla Damian and Associates filed with this Court a Motion for Extension of Time to File Petition for Review *on Certiorari*,[57] only to withdraw it afterwards. Accordingly, on February 5, 2003, this Court declared the case terminated.[58]

CA-G.R. SP No. 68998

CA-G.R. SP No. 68998 was a petition for *certiorari* with prayer for injunctive relief filed by Metrobank seeking to nullify the Decision of the Second Division of the NLRC insofar as it awarded separation benefits in favor of the complainants.

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[53] A petition for *certiorari* under Rule 65 of the Rules of Court.

[54] *Rollo* (G.R. No. 157169), pp. 752-755; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eliezer R. Delos Santos and Edgardo F. Sundiam.

[55] Section 11. — *Priorities in modes of service and filing*. —Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[56] CA *rollo* (CA-G.R. SP No. 68054), pp. 1365-1366.

[57] Docketed as G.R. No. 156097; *rollo* (G.R. No. 157169), pp. 757-761.

[58] *Id.* at 762.

During the pendency of said petition, the NLRC issued on January 9, 2002 a Notice of Garnishment[59] for the implemention of Labor Arbiter Flores's March 16, 2001 Decision against Solidbank, First Metro or Metrobank.

On January 14, 2002, the Fourth Division of the CA, thru Justice Bernardo P. Abesamis, issued a Resolution[60] granting Metrobank's request for a temporary restraining order. Then on February 20, 2002, upon Metrobank's filing of a Supplemental Motion, the Special Fourth Division of the CA issued another Resolution[61] granting Metrobank's prayer for the issuance of a writ of preliminary injunction. It enjoined the implementation of Labor Arbiter Flores's Decision,[62] November 29, 2001 Order and Alias Partial Writ of Execution, as well as the NLRC Second Division's July 23, 2001 Decision[63] and September 28, 2001 Resolution.[64]

In view of this turn of events, and believing that they can no longer expect fair and impartial justice, complainants filed a Motion to Inhibit Justice Bernardo P. Abesamis.[65] They averred that the issuance of the two resolutions granting Metrobank's prayer for injunctive relief was a blatant display of Justice Abesamis's bias and prejudice, if not gross ignorance of the law. Complainants also sought reconsideration of the above-

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[59] CA *rollo* (CA-G.R. SP No. 68998), Vol. IV, p. 1485. Annex "A" of Metrobank's Supplemental Motion [for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction], *id.* at 1479-1484.

[60] *Id.* at 1477-1478; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Eubulo G. Verzola and Perlita J. Tria Tirona.

[61] *Id.* at 1516-1520; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Bienvenido L. Reyes and Perlita J. Tria Tirona.

[62] Records (G.R. No. 153799), Vol. I, pp. 436-453.

[63] *Id.* at 379-394.

[64] *Id.* at 397-401.

[65] CA *rollo* (CA-G.R. SP No. 68998), Vol. IV, pp. 1587-1609.

mentioned resolutions on the ground that the reinstatement aspect of Labor Arbiter Flores's Decision was immediately executory.

In a Resolution[66] dated May 30, 2002, however, the CA's Third Division denied both motions, ratiocinating that the Labor Code's provision on the executory nature of the reinstatement aspect, even pending appeal, is not applicable to cases pending with the CA. With regard to complainants' motion to inhibit, the CA opined that the reasons stated therein do not constitute grounds for disqualification or inhibition of judges.

With the denial of their motion for reconsideration to set aside the CA's resolutions granting injunctive relief, complainants filed with this Court on July 18, 2002 a petition for review on *certiorari*. This was docketed as G.R. No. 153799.

Pending resolution of G.R. No. 153799, the CA's Special Third Division rendered its Decision[67] in CA-G.R. SP No. 68998 in favor of Metrobank. It held that since Metrobank was not duly served with summons, the Decisions of the labor tribunals insofar as said bank is concerned are null and void. In addition, the CA Special Third Division ruled that complainants are not entitled to separation pay because the mass demonstration they conducted on April 3, 2000 violated Secretary Laguesma's assumption order. Moreover, even assuming that complainants are entitled to separation pay, the CA opined that Metrobank cannot be held solidarily liable because there was no merger between Metrobank and Solidbank. Metrobank, which has a separate and distinct personality of its own, merely bought the banking-related assets and liabilities of Solidbank.

The dispositive portion of the July 26, 2002 Decision of the CA Special Third Division in CA-G.R. SP No. 68998 reads:

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[66] *Id.* at 1716-1720; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Eubulo G. Verzola and Josefina Guevara-Salonga.

[67] *Id.* at 1722-1732; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Josefina Guevara-Salonga and Amelita G. Tolentino.

WHEREFORE, premises considered, the instant petition is hereby GIVEN DUE COURSE and GRANTED. The Decision of the National Labor Relations Commission dated July 23, 2001 with respect to the portion reading: "*the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a new one entered dismissing the complaint for illegal dismissal and unfair labor practice for lack of merit*", is AFFIRMED; and the portion of the same decision which reads: "*As equitable relief, respondents are hereby ordered to pay complainants separation benefits as provided under the CBA at least one (1) month pay for every year of service whichever is higher*" [sic], is REVERSED and SET ASIDE.

SO ORDERED.[68]

Complainants filed a Motion for Reconsideration[69] but the same was denied in the Resolution[70] dated March 6, 2003. This prompted complainants to file with this Court a Petition for Review on *Certiorari*, which was docketed as G.R. No. 157506.

Issues

G.R. No. 153799

Citing Article 223 of the Labor Code,[71] complainants contend that the reinstatement aspect of Labor Arbiter Flores's ruling is immediately executory, even pending appeal.

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[68] *Id.* at 1732.

[69] *Id.* at 2081-2165.

[70] *Id.* Vol. V, at 2303-2307.

[71] Article 223. APPEAL — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is *prima facie* evidence of grave abuse of discretion on the part of the Labor Arbiter;
(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
(c) If made purely on questions of law; and
(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In resisting the petition, Metrobank counter-argues that complainants' resort to a petition for review on *certiorari* under Rule 45 of the Rules of Court is improper because it is available only to correct judgment or final order or resolution of the CA. Here, what complainants are assailing are interlocutory resolutions of the CA granting Metrobank's prayer for injunctive relief. Also, with the promulgation of the CA Special Third Division's Decision in CA-G.R. SP No. 68998 on July 26, 2002, this petition (G.R. No. 153799) has become moot and academic.[72]

Metrobank likewise argues that at the time the controversy reached the CA, the Decision of Labor Arbiter Flores was no longer on appeal. Therefore, the CA's Special Third Division was correct in holding that the provision of Article 223 of the

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In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards, or orders. (Emphasis supplied.)

[72] See Metrobank's Memorandum, *rollo* (G.R. No. 153799), pp. 687-721.

Labor Code was then no longer applicable. Furthermore, Metrobank asserts that the labor tribunals did not acquire jurisdiction over its person and that it cannot be held solidarily liable with Solidbank and First Metro.

G.R. No. 157506

In their petition, complainants contend, among others, that the April 3, 2000 mass demonstration was a legitimate exercise of their constitutional rights to freedom of expression, to peaceful assembly and to petition the government for redress of wrong; that Metrobank was not deprived of its right to due process, and that it should be held solidarily liable with its co-petitioners by reason of corporate affinity; that the Decision in CA-G.R. SP No. 68998 violated several constitutional provisions relative to labor; that the punishment of dismissal imposed upon the 129 employees is not commensurate to their half-day absence from work; that they believed in good faith that the April 3, 2000 mass demonstration was an ordinary protest action directed against Secretary Laguesma; and that Solidbank is guilty of illegal dismissal for hastily and unceremoniously carrying out their mass dismissal from work.

Complainants further state that Solidbank did not reinstate the 129 employees because of their membership in the union, which amounts to interference with the employees' right to self-organization and, hence, constitutes unfair labor practice; that Solidbank is equally guilty of illegal lockout for refusing to admit them back to work; that the 24 hours given them to show cause was unreasonably short; and worse, their preventive suspension practically prevented them from submitting their explanation because they were barred entry to the bank's premises.

Finally, complainants seek reinstatement of the award of damages granted them by Labor Arbiter Flores. They claim that Solidbank violated Article 277(b) of the Labor Code requiring employers to observe and comply with the two-notice rule and to conduct an inquiry before dismissing their employees. Hence, in view of these wrongful omissions in effecting their dismissal, Vistan and Mendoza should be held jointly and severally liable with Solidbank, First Metro and Metrobank.

G.R. Nos. 157169 and 157327

Metrobank and Solidbank separately filed their respective petitions for review on *certiorari* assailing the August 29, 2002 Decision[73] of the CA's Second Division in CA-G.R. SP No. 68054. On April 9, 2003, these petitions docketed as G.R. Nos. 157169 and 157327 were consolidated.[74]

In G.R. No. 157169, Metrobank maintains that the April 3, 2000 mass demonstration was an illegal strike; that the person against whom the mass action is directed as well as the true intention of the complainants in staging the mass action, is immaterial and has no bearing in determining whether said mass action is an illegal strike; that once the Secretary of Labor assumed jurisdiction over the dispute, the striking employees were prohibited from committing acts that would exacerbate the situation; and the mass action did not only take place in front of the office of Secretary Laguesma but also in front of Solidbank's Binondo branch and in the provinces.[75]

Metrobank likewise insists that the CA Second Division should have outrightly dismissed CA-G.R. SP No. 68054 because complainants violated the rule against forum shopping. For Metrobank, the following circumstances indubitably constitute forum shopping:

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[73] CA *rollo* (CA-G.R. SP No. 68054), pp. 835-846; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

[74] *Rollo* (G.R. No. 157169), p. 1101.

[75] "35. Disappointed and dissatisfied with the said order which they viewed as grossly disadvantageous to them, seven hundred [twelve] (712) regular rank and file employees of the bank, including individual petitioners herein, skipped their work in the morning of April 3, 2000 and they trooped to the office of said Secretary located at Intramuros, Manila, and staged a rally and demonstration to express their complaints, protests and indignation over the actuation of the Secretary. The occasion turned into a peaceful and orderly picketing in front of the said office. *Other rank and file employees in the provincial branches of the bank, e.g., Cebu, Iloilo, Bacolod and Naga, followed suit and absented themselves from work.*" CA *rollo* (CA-G.R. SP No. 68054), p. 19.

7.24 Attys. Emmanuel R. Jabla, Federico C. Leynes and Jose C. Espinas continue to represent Solidbank Union and its Members, despite the fact that Atty. Potenciano A. Flores, Jr. filed a similar but allegedly separate Petition with the Court of Appeals docketed as CA-G.R. SP No. 68054. It might be important to restate that the petition in CA-G.R. SP No. 68349 was already dismissed by the Court of Appeals primarily on the ground of forum shopping and such dismissal was declared final and executory by this Honorable Supreme Court in its Resolution in G.R. 156097 dated 05 February 2003. Nevertheless, Attys. Emmanuel R. Jabla, Federico C. Leynes and Jose C. Espinas were not disturbed by such adverse decision because they are now using to the benefit of Solidbank Union and its dismissed Members/employees the favorable decision obtained by Atty. Potenciano Flores, Jr. in CA-G.R. SP No. 68054. x x x

x x x x x x x x x

7.25 Furthermore, the Union's president, Evangeline J. Gabriel, after signing and verifying the Petition in CA-G.R. SP No. 68054 prepared by Atty. Potenciano Flores, verified several pleadings prepared by Attys. Emmanuel R. Jabla, Federico C. Leynes and Jose C. Espinas.

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7.26 If Attys. Emmanuel R. Jabla, Federico C. Leynes and Jose C. Espinas do not recognize Atty. Potenciano Flores as the counsel of Solidbank Union and its Members/Employees, then they should not recognize much less benefit from the favorable Decision obtained by Atty. Potenciano Flores in CA-G.R. SP No. 68054.[76]

Metrobank likewise contends that complainants are not entitled to moral damages because the same are recoverable only where the dismissal or suspension of the employee was attended with bad faith and fraud; or constituted an act oppressive to labor; or was done in a manner contrary to morals, good customs or public policy. This, according to Metrobank, is absent in this case.

Metrobank also points out that the Second Division of the CA grievously erred in reinstating the Decision of Labor Arbiter Flores with respect to those who (i) were excluded as party

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[76] *Rollo* (G.R. No. 157169), pp. 42-44.

complainants, (ii) were found guilty of forum shopping, or (iii) have executed quitclaims. Metrobank claims that several Union members/ employees can no longer benefit from the reinstatement aspect of said Labor Arbiter's Decision, considering that 32[77] of them were dropped from the original list of complainants, and that the NLRC had long ago considered the case dismissed insofar as they were concerned. In addition, there were 21[78] employees who executed Release, Waiver and Quitclaim documents discharging Solidbank, its parent company, and affiliate or subsidiary companies, from any action, claim or other obligations arising from their employment with Solidbank. Thus, the NLRC dismissed the complaint with respect to said 21 employees. This was never questioned by the complainants in any of the cases that reached the CA.

Moreover, there were 35[79] individuals who were not included as party-petitioners in CA-G.R. SP No. 68054. But with the

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[77] Namely: 1) Janice L. Arriola; 2) Rachel M. Castillo; 3) Armand V. Dayanghirang; 4) Hubert V. Dimagiba; 5) Juan Alex C. Nambong; 6) Armando B. Orozco; 7) Arlene R. Rodriquez; 8) Don A. Santana; 9) Ernesto R. Ramos, Jr.; 10) Ellen M. Soriano; 11) Arvin D. Valencia; 12) Emmanuel C. Yaptangco; 13) Jacquiline B. Baquiran; 14) Jennifer S. Barcenas; 15) Alvin F. Baricanosa; 16) Ferdinand Mel S. Capulong; 17) Ma. Edna V. Dator; 18) Ragcy L. De Guzman; 19) Karen M. Deocera; 20) Ernesto U. [Gamiel]; 21) Ma. Jinky P. Gelera; 22) Gonzalo G. Guinit; 23) Emily H. Ginoo; 24) Lourdes D. Ibeas; 25) Ma. Angela L. Jalandoni; 26) Allen M. Martinez; 27) Jocelyn Y. Tan; 28) Cion E. Yap; 29) Ma. Ophelia C. De Guzman; 30) Elena R. Condevillamar; 31) Emmanuel R. Gloria; and, 32) Rosemarie L. Tan.

[78] Namely: 1) Raymond Martin A. Angeles; 2) Lester Mark Z. Gatchalian; 3) Doroteo S. Froilan; 4) Armando B. Orozco; 5) Ma. Lourdes Cecilia B. Emperador; 6) Arvin D. Valencia; 7) Ragcy L. De Guzman; 8) Gonzalo G. Guinit; 9) Ferdinand Mel S. Capulong; 10) Allen M. Martinez; 11) Ma. Edna V. Dator; 12) Paula Agnes A. Angeles; 13) Audrey A. Aljibe; 14) Ma. Teresa G. Gonzales; 15) Nolasco B. Macatangay; 16) Arlene R. Rodriquez; 17) Hubert V. Dimagiba; 18) Ma. Jinky R. Gelera; 19) Alvin E. Baricanosa; 20) Rachel M. Castillo; and, 21) Emmanuel C. Yaptangco.

[79] Namely: 1) Armand V. Dayanghirang; 2) Jose Rainario C. Laong; 3) Juan Alex C. Nambong; 4) Armando B. Orozco; 5) Arlene R. Rodriguez; 6) Nicomedes P. Ruizo, Jr.; 7) Don A. Santana; 8) Ernesto R. Santos, Jr.; 9) Ellen M. Soriano; 10) Ariel S. Abendan; 11) Emma R. Abendan;

reinstatement of Labor Arbiter Flores's Decision, these 35 individuals will benefit therefrom despite the fact that they did not appeal Labor Arbiter Flores's Decision to the NLRC.

Furthermore, additional 21[80] Union members were included as complainants in G.R. No. 157506 despite their non-inclusion as party complainants in CA-G.R. SP No. 68998. Citing *People v. Velez*,[81] Metrobank asserts that said 21 new complainants are not real parties in interest in this case and, hence, the same should be dismissed insofar as they are concerned.

Metrobank prays for the reversal of the August 29, 2002 Decision of the CA's Second Division in CA-G.R. SP No. 68054.

With regard to G.R. No. 157327,[82] Solidbank claims that the CA's Second Division erred in exercising *certiorari* jurisdiction over the NLRC because, as can be readily seen from its Decision, there is nothing which says that the Second Division of the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in arriving at its

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12) Paula Agnes A. Angeles; 13) Jacquiline B. Baquiran; 14) Jennifer S. Barcenas; 15) Roderick M. Bello; 16) Carmina M. Degala; 17) Ephraim Ralph A. Delfin; 18) Karen M. Deocera; 19) Ernesto U. Gamiel; 20) Macario Rodolfo N. Garcia; 21) Jinky P. Galera; 22) Ma. Teresa G. Gonzales; 23) Emily H. Guinoo; 24) Janice L. Arriola; 25) Mary Jane D. Patino; 26) Margarette Cordova; 27) Cion E. Yap; 28) Ma. Ophelia C. De Guzman; 29) M. Hidelisa P. Ira; 30) Raymund Martin A. Angeles; 31) Elena R. Condevillamar; 32) Cherry T. Co; 33) Emmanuel B. Gloria; 34) Rosemarie L. Tang; and, 35) Lourdes D. Ibeas.

[80] Namely: 1) Ma. Edna V. Dator; 2) Ma. Angela Jalandoni; 3) Ma. Lourdes Emparador; 4) Doroteo Froilan; 5) Ma. Theresa O. Tison; 6) Jocelyn Y. Tan; 7) Hubert V. Dimagiba; 8) Emmanuel C. Yaptanco; 9) Rachel M. Castillo; 10) Jennifer S. Barcenas; 11) Audrey A. Aljibe; 12) Ragcy L. De Guzman; 13) Jose A. Antenor; 14) Gonzalo Guinit; 15) Arvin Valencia; 16) Nolasco Macatangay; 17) Alvin E. Baricanosa; 18) Allen M. Martinez; 19) Mel S. Capulong; 20) Agnes A. Ramirez; and, 21) Lester Mark Z. Gatchalian.

[81] 445 Phil. 784 (2003).

[82] Captioned as "*Solidbank Corporation and/or its successor-in-interest First Metro Investment Corporation, Deogracias N. Vistan and Edgardo Mendoza, Jr. v. Solidbank Union, et al*."

conclusion. On the contrary, the NLRC's Second Division Decision is supported by substantial evidence and, hence, should be respected and accorded finality.

Solidbank stresses that complainants' unjustified stoppage of work was actually an illegal strike and violated Article 264(a). Hence, for knowingly participating in an illegal activity, complainants are deemed to have lost their employment status.

Solidbank avers that the Second Division of the CA overlooked the fact that it had already ceased banking operations since August 31, 2000. Hence, it is legally impossible for it to comply with said court's Decision ordering the reinstatement of complainants to their former position.

Solidbank cries denial of due process claiming that it was not given the opportunity to file its comment on complainants' petition for *certiorari*. It alleges that on January 24, 2002 it filed a Manifestation[83] informing the CA that there are two identical petitions for *certiorari* (CA-G.R. SP No. 68054 and CA-G.R. SP No. 68349) filed by the complainants and that while it was furnished a copy of the petition in CA-G.R. SP No. 68349, complainants did not serve it with a copy of the petition in CA-G.R. SP No. 68054. Acting on Solidbank's Manifestation, the CA's Special Second Division issued a Resolution[84] dated June 14, 2002 dismissing CA-G.R. SP No. 68054 on the ground of forum shopping. Nonetheless, upon complainants' motion, the CA reinstated the petition and forthwith declared it submitted for decision, oblivious of the fact that Solidbank was not served with a copy of the petition in CA-G.R. SP No. 68054 nor given a chance to comment thereon.[85] To date, complainants have yet to furnish Solidbank with a copy of said petition. Worse, the CA, relying on complainants' allegations, sent its notices, orders, and resolutions to Solidbank's former principal office at 777 Paseo de Roxas, 1226 Makati City instead of at its new office address at First Metro Investment

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[83] CA *rollo* (CA-G.R. SP No. 68054), pp. 521-525.

[84] *Id.* at 683-684.

Corporation, 2nd Floor, GT Tower International, Ayala Avenue corner H. V. dela Costa St., Makati City.

Solidbank agrees with Metrobank in claiming that the CA's Second Division erred in ordering the reinstatement of Labor Arbiter Flores's Decision with respect to the 21[86] complainants who had previously executed Release, Waiver and Quitclaim in the presence of Mr. Reynaldo R. Ubaldo, a labor representative of the Labor Relations Division of DOLE.

In seeking to delete the award of damages, Solidbank invokes the principle of *damnum absque injuria.* It contends that the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. In the present case, since the dismissal of complainants is not a wrong but in accordance with law and settled jurisprudence, complainants are not entitled to damages.

Finally, in urging this Court to set aside the Decision of the CA's Second Division, Solidbank posits that to sustain the CA would create an absurd situation wherein the extraordinary authority of the Secretary of Labor under Article 263(g) of the Labor Code would be rendered nugatory.

On September 4, 2003, complainants filed thru Jabla Damian and Associates a Manifestation and Motion[87] alleging, among others, that per attached Board Resolution[88] dated August 25,

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[85] See Resolution dated July 25, 2002, *id.* at 706-707. The dispositive portion thereof reads:

> WHEREFORE, premises considered, the instant petition for *certiorari* is hereby REINSTATED and, with the submission of the required pleadings, the same is now submitted for decision.
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> SO ORDERED.

[86] *Supra* note 77.

[87] *Rollo* (G.R. No. 157327), pp. 611-616.

[88] Signed by Evangeline J. Gabriel, President, and with the conformity of: 1) Julie T. Jornacion; 2) Augusto D. Arandia, Jr; 3) Roderick M. Bello; 4) Ma. Elena G. Bello; 5) Jocelyn Y. Tan; 6) Jose G. Guisado; 7) Felix Estacio, Jr.; 8) Manuel Lim; 9) Ma. Lourdes A. Lim; 10) Fermin Joseph B. Ventura; 11) Armand V. Dayang-Hirang; 12) Neptali Caddarao;

2003 complainants terminated the services of Atty. Potenciano A. Flores, Jr. (Atty. Flores) as their counsel for loss of trust and confidence. This drew Atty. Flores's Comment/Counter-Manifestation and Opposition to Motion,[89] claiming that what were stated in the Manifestation and Motion were "malicious, grossly misleading and twisted allegations." Atty. Flores did not dispute the fact that the original counsel of complainants was Jabla Damian and Associates, who appeared before the labor tribunals. However, on October 20, 2001, the Union, through its President, wrote Atty. Jabla a letter terminating his services as counsel for the Union and sent him (Atty. Flores) a copy of their *Kasunduan Bilang Abogado*. Accordingly, complainants filed a Manifestation dated March 13, 2002 informing the CA in CA-G.R. SP No. 67730 that their counsel was Atty. Flores and that they did not hire or engage the services of Atty. Jabla to represent them in said case. Atty. Flores likewise averred that none of the complainants ever approached him to withdraw his appearance from any of the cases he handled for the Union. With respect to the Board Resolution alluded to by Jabla Damian and Associates, Atty. Flores posited that it was not valid because of the six members composing the Union Board, only one of them affixed her signature thereto.[90] Atty. Flores averred that —

> 8.05.5 These lawyers did not represent the union, its officers and members, in the proceedings before the two (2) divisions of the Court of Appeals chaired by Justices Rodrigo V. Cosico and Romeo Brawner. Therefore, it is unethical for them to file a motion for issuance of an *alias* writ of execution with the said labor arbiter relying

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13) Salvacion N. Rogado; 14) Joel S. Garmino; 15) Ernesto Gamier; 16) Leope Cabenian; 17) Candido Tison; 18) Ma. Theresa Tison; 19) Elena Condevillamar; 20) Janice Arriola; 21) Margarette B. Cordova; 22) Mary Jane Patino; 23) Jennifer S. Barcenas; 24) Macario Rodolfo N. Garcia; 25) Carmina M. Degala; and, 26) Doroteo S. Froilan, *id.* at 617-619.

[89] *Id.* at 696-719.

[90] Note that Annexes "A" and "B", the supposed proof of Atty. Flores, were not attached to his Comment/Counter-Manifestation and Opposition to Motion.

> on the decisions rendered by the two (2) divisions of the Court of Appeals wherein they did not participate or exert any effort to reinstate the decision of Labor Arbiter Luis Dizon Flores. Yet, they assisted the signatories to the said "Board Resolution" in the immoral scheme to ease out the undersigned counsel from participating in the executorial stage of the case at bar.[91]

The counsels' bickering did not end with Atty. Flores's Comment/Counter-Manifestation. In its Reply,[92] Jabla Damian and Associates retaliated by claiming that complainants never sent any word terminating its legal services. Said law firm also alleged that:

5. Had the Union officers made clear their intention of terminating Atty. Jabla's services, or had there been a valid notice and substitution of counsel, the undersigned counsels would not have gone [to] great lengths to file [complainants'] petition for *certiorari* in the Court of Appeals in CA.-G.R. SP No. 68349 which they felt obligated to do, lest they would be accused of being remiss in their professional duties as counsel.

6. At the time they filed their petition in the Court of Appeals, undersigned counsels were unaware that some individual respondents had already gone to Atty. Flores to engage his services in filing their petition for *certiorari* [with] the Court of Appeals which was eventually docketed therein as CA-G.R. SP No. 68054.

7. Their belated discovery of this separate petition filed by Atty. Flores in behalf of some respondents constrained the undersigned counsels to withdraw their appeal to the Supreme Court from the decision of the Court of Appeals in CA-G.R. SP No. 68349 for fear that, in addition to the reasons cited in their motion to withdraw, pursuing the same could only confuse the docket or adversely affect the other proceeding in CA-G.R. SP No. 68054 which case had been filed earlier.

8. There is therefore no truth to Atty. Flores's allegation that the period for its filing lapsed that is why the undersigned counsels withdrew their petition for review with the Supreme Court.

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[91] *Rollo* (G.R. No. 157327), p. 711.

[92] *Id.* at 773-779.

9. Assuming without admitting that Atty. Flores did send a Notice of Appearance and Urgent Manifestation and Motion to Atty. Jabla at his former office at Suite 2106 Cityland Condominium 10, Tower 1, H. V. dela Costa Street corner Ayala Avenue, Makati City, this was only in connection with the petition for *certiorari* filed by petitioner Solidbank Corporation in CA-G.R. SP No. 67730. There was no similar notice in the petition filed by petitioner Metropolitan Bank & Trust Company in CA-G.R. SP-UDK-4431 (68998) and in CA-G.R. SP No. 153799 [sic], the very petition filed by Atty. Flores himself in behalf of some of the respondents.

10. Finally, it is improper for Atty. Flores to boast of his victory in the Court of Appeals as if the same is a product of his uncommon brilliance. A cursory reading of Atty. Flores's petition will reveal that it contains nothing but a repetition or restatement of the arguments raised by the undersigned counsels before the labor arbiter below. x x x[93]

Jabla Damian and Associates also accused Atty. Flores of violating Canon 11 of the Canons of Professional Responsibility for not conducting himself with courtesy, fairness and candor towards his professional colleagues.[94]

Then on January 18, 2005, complainant Jose Antenor filed his own Memorandum[95] alleging among others that of the 19 employees of Solidbank Bacolod City Branch who joined the nationwide expression of displeasure he was the only one who was dismissed. He also claims that his suspension and eventual dismissal were not based on just or authorized cause; that he was not accorded procedural due process; and that he is entitled to full backwages.

Our Ruling

At balance, supposedly, in these consolidated cases is the management's right to discipline its employees who, without its permission, joined a public demonstration to protest the ruling of the Secretary of Labor *vis-à-vis* the employees' constitutional

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[93] *Id.* at 774-776.

[94] *Id.* at 924.

rights to freedom of expression, to peaceful assembly and to petition the government for redress of their grievances. This issue, however, had already been resolved and passed upon by this Court in its November 15, 2010 Decision in G.R. Nos. 159460 and 159461,[96] which reversed and set aside the March 10, 2003 Decision of the CA's Twelfth Division in CA-G.R. SP Nos. 67730 and 70820.

In G.R. Nos. 159460 and 159461, the Court's Third Division resolved the following issues: "(1) whether the protest rally and concerted work abandonment/ boycott staged by the respondents violated the Order dated January 18, 2000 of the Secretary of Labor; (2) whether the respondents were validly terminated; and (3) whether the respondents are entitled to separation pay or financial assistance."[97] In said November 15, 2010 Decision, this Court ruled that complainants' concerted mass action was actually a strike and not a legitimate exercise of their right to freedom of expression;[98] that complainants violated the January 18, 2000 Order of Secretary Laguesma;[99] that the union officers' dismissal was valid;[100] and that petitioners therein failed to present proof that the union members participated in the commission of an illegal act during the said strike;[101] hence, their dismissal was unjustified.[102] This Court likewise specified the individual rights and liabilities of all the parties, including those who were dropped from the original complaint;[103] had executed Release, Waiver and Quitclaim;[104] did not appeal to the CA but, with

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[95] *Id.* at 996-1006.

[96] *Solidbank Corporation v. Gamier*, *supra* note 17.

[97] *Id.* at 574.

[98] *Id.* at 575.

[99] *Id.* at 576-577.

[100] *Id.* at 579.

[101] *Id.* at 580.

[102] *Id.*

[103] *Supra* note 77.

[104] *Supra* note 78.

the reinstatement of the Labor Arbiter's Decision, will still benefit from the appellate court's Decision;[105] and were included in the appeal though not impleaded as parties in the original complaint.[106]

The Court's Third Division likewise held in its November 15, 2010 Decision in G.R. Nos. 159460 and 159461 that since reinstatement was no longer feasible due to the considerable lapse of time and the closure of Solidbank, respondents therein were awarded separation pay equivalent to one-month salary for every year of service. For those employees who executed quitclaims, their separation pay should be net of the amounts they had already received.[107]

As regards Metrobank, the Court's Third Division held that it cannot be held solidarily liable with Solidbank because it is not Solidbank's successor-in-interest.[108] Vistan and Mendoza were likewise not held solidarily liable with Solidbank, there being no showing that they acted with malice, ill-will, or bad faith.[109] The dispositive portion of the said November 15, 2010 Decision reads:

> WHEREFORE, the petitions are PARTLY GRANTED. The Decision dated March 10, 2003 of the Court of Appeals in CA-G.R. SP Nos. 67730 and 70820 is hereby SET ASIDE. Petitioner Solidbank Corporation (now FMIC) is hereby ORDERED to pay each of the above-named individual respondents, except union officers who are hereby declared validly dismissed, separation pay equivalent to one (1) month salary for every year of service. Whatever sums already received from petitioners under any release, waiver or quitclaim shall be deducted from the total separation pay due to each of them.
>
> The NLRC is hereby directed to determine who among the individual respondents are union members entitled to the separation

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[105] *Supra* note 79.

[106] *Supra* note 80.

[107] *Solidbank Corporation v. Gamier*, *supra* note 17 at 582.

[108] *Id.* at 583.

[109] *Id.* at 583-585.

pay herein awarded, and those union officer[s] who were validly dismissed and hence excluded from the said award.

No costs.

SO ORDERED.[110]

The Decision of this Court in G.R. Nos. 159460 and 159461, therefore, constitutes *res judicata* to the present consolidated cases. "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'"[111] It denotes "that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit."[112] For *res judicata*, in its concept as a bar by former judgment to apply, the following must be present:

1. The former judgment or order is final;
2. It is rendered by a court having jurisdiction over the subject matter and the parties;
3. It is a judgment or an order on the merits; and,
4. There is between the first and the second action identity of parties, identity of subject matter, and identity of causes of action.[113]

The Decision of this Court in G.R. Nos. 159460 and 159461 became final and executory on May 20, 2011. It is a decision based on the merits of the case and rendered by this Court in the exercise of its appellate jurisdiction after the parties invoked

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[110] *Id.* at 585.

[111] *Heirs of Panfilo F. Abalos v. Bucal*, G.R. No. 156224, February 19, 2008, 546 SCRA 252, 271; *Alamayri v. Pabale,* G.R. No. 151243, April 30, 2008, 553 SCRA 146, 157; *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 186-187; *Layos v. Fil-Estate Golf and Development, Inc.,* G.R. No. 150470, August 6, 2008, 561 SCRA 75, 102.

[112] *Taganas v. Hon. Emuslan*, 457 Phil. 305, 311 (2003).

[113] *Id.* at 311-312.

its jurisdiction. There is also, between the two sets of consolidated cases, identity of the parties, subject matter and causes of action. The parties in G.R. Nos. 159460 and 159461 are also impleaded as parties in these consolidated cases. And while some of the parties herein are not included in G.R. Nos. 159460 and 159461, the same are only few. In any event, it is well-settled that only substantial, and not absolute, identity of the parties is required for *res judicata* to lie. "There is substantial identity of the parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case."[114]

With regard to identity of causes of action, it has been held that there is identity of causes of action when the same evidence will sustain both actions or when the facts essential to the maintenance of the two actions are identical.[115] Here, the bone of contention in both sets of consolidated cases boils down to the nature and consequences of complainants' April 3, 2000 mass action. The antecedent facts that gave rise to all the cases were the same. Necessarily, therefore, the same evidence would sustain all actions. Such similarity in the evidence required to sustain all actions is also borne out by the identity of the issues involved in all these cases. While the parties have presented a plethora of arguments which we earlier discussed at length, the same nonetheless boil down to the same crucial issues formulated in G.R. Nos. 159460 and 159461.

G.R. No. 153799 is also barred by res judicata.

It should be recalled that in G.R. No. 153799, the complainants assailed the Resolutions dated January 14, 2002[116] and February 20, 2002[117] of the CA's Fourth Division granting

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[114] *Sempio v. Court of Appeals*, 348 Phil. 627, 636 (1998), citing *Santos v. Court of Appeals*, G.R. No. 101818, September 21, 1993, 226 SCRA 630, 637.

[115] *Escareal v. Philippine Airlines, Inc.*, 495 Phil. 107, 119 (2005).

[116] *Supra* note 60.

[117] *Supra* note 61.

Metrobank's request for injunctive reliefs. They claimed that the reinstatement aspect of the Labor Arbiter's Decision is immediately executory. Hence, they are entitled to backwages from the time the Labor Arbiter promulgated his Decision until it was reversed by the NLRC.

As discussed above, however, the November 15, 2010 Decision of this Court in G.R. Nos. 159460 and 159461 already adjudicated the respective rights and liabilities of the parties. Said Decision pronouncing the monetary awards to which the parties herein are entitled became final and executory on May 20, 2011. Under the rule on immutability of judgment, this Court cannot alter or modify said Decision. It is a well-established rule that once a judgment has become final and executory, it is no longer susceptible to any modification.[118]

On a final note, we find it lamentable that while complainants are embroiled in a perturbing legal battle, their counsels still manage to quibble over money, unabashedly unmindful that their bickering would only further muddle the already complicated issues in these cases. If any one of them truly believes that the other is guilty of unethical conduct, then he should bring the appropriate action before the proper forum.

WHEREFORE, these consolidated petitions are **DISMISSED.** No costs.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[118] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc*., G.R. No. 168382, June 6, 2011, 650 SCRA 545, 547.

THIRD DIVISION

[G.R. No. 166467. September 17, 2012]

DANILO R. QUERIJERO, JOHNNY P. LILANG and IVENE D. REYES, *petitioners, vs.* **LINA PALMES-LIMITAR, ISAGANI G. PALMES and THE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERLOCUTORY ORDERS; AN ORDER DENYING A MOTION TO QUASH IS INTERLOCUTORY AND NOT APPEALABLE NOR CAN IT BE THE SUBJECT OF A PETITION FOR *CERTIORARI*.—** [A]n order denying a motion to quash is interlocutory and, therefore, not appealable, nor can it be the subject of a petition for *certiorari*. In *Zamoranos v. People*, this Court emphasized that "a special civil action for *certiorari* is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that, when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari*, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law."

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN CONSIDERED AN APPROPRIATE REMEDY TO ASSAIL AN INTERLOCUTORY ORDER.—** [O]n a number of occasions, this Court had sanctioned a writ of *certiorari* as an appropriate remedy to assail an interlocutory order in the following circumstances: "(1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (2) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (3) in the interest of a more enlightened and substantial justice; (4) to promote public welfare and public policy; and (5) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof."

APPEARANCES OF COUNSEL

Pedro R. Lazo for petitioners.
Jose Bayani J. Usman for private respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to set aside the Decision[1] dated August 12, 2004 and the Resolution[2] dated December 20, 2004 of the Court of Appeals in CA-G.R. SP No. 80798.

The factual antecedents are as follows:

On January 5, 2001, petitioners were charged with violation of Section 3 (e) of Republic Act No. 3019 before the Regional Trial Court, Branch 51, Puerto Princesa City (*trial court*). Said Information[3] reads:

That on or about the 3rd day of June 1998, in Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, accused Edgardo Libiran, Vicente Señorin, Ivene D. Reyes, Johnny Lilang and Danilo Querijero, being then employees of the Community Environment and Natural Resources Office, Puerto Princesa City and Province of Palawan, and Fe Ylaya, being then the Barangay Chairwoman of Bgy. Sta. Lourdes, Puerto Princesa City, conspiring and confederating together and mutually helping one another, taking advantage of their official position and (sic) committing the offense in relation to their office, and thru (sic) manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously give Evelyn Bratchi, Leovelyn Bratchi and Marco Belmonte unwarranted benefits, advantage or preference in the discharge of their official function by issuing Original Certificate

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz, concurring. *rollo*, pp. 94-108.

[2] *Id.* at 110-115.

[3] Records, Vol. I, pp. 1-2.

of Titles Nos. 4120, 4121 and 4123 in favor of Leovelyn Bratchi, Marco Belmonte and Evelyn Bratchi, respectively, the accused knowing fully well that the said titleholders, did not till, occupy nor possess the parcel of land described as P1s 110 Lot No. 675, identical to Lot No. 5355, situated at Bgy. Sta. Lourdes, Puerto Princesa City, thus, causing undue injury to the heirs and family of Isidro R. Palmes.

CONTRARY TO LAW.

Thereafter, petitioners filed a Motion to Quash the above Information on the ground that the facts charged do not constitute an offense and that the case filed against them had been previously dismissed.

On September 10, 2003, the trial court issued an Order[4] denying petitioners' Motion to Quash. Pertinent portions of the assailed Order states:

This Court finds no compelling reason to quash the Information on the basis of the grounds pleaded in the Motion to Quash and the Manifestation and Suppletory Motion to Quash. A plain and cursory reading of the Information filed in this case shows that it has sufficiently stated the crime charged is (sic) a violation of Section 3 (e) of R.A. 3019 and the allegations therein alleged with particularity the overt acts committed by the accused as would constitute a violation of the particular provision of the law of which accused are being charged. The pendency and outcome of another case alleged now to be pending with the Supreme Court thru a Petition for Review on *Certiorari* does not and will not affect the instant case as said case is entirely different from the facts charged in the Information of which accused are now being charged, the dismissal of said case does not and will not affect the Information filed herein. Similarly, the allegations in the Manifestation and Suppletory Motion to Quash "that there is no conspiracy by and among the accused; that accused did not take advantage of their official position; that they did not commit an offense in relation to their office; that they did not perpetrate manifest partiality, evident bad faith or gross inexcusable negligence; nor did they give unwarranted benefits, advantage or preference upon the persons of x x x; and that they

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[4] *Rollo*, pp. 54-58.

merely perform (sic) their official functions regularly" are all allegations which are essentially and purely evidentiary in nature which could not be resolved until, and after a full trial proceeding is conducted by the Court in this particular case.

Essentially, therefore, there is no sufficient basis for this court to quash the Information in the above captioned case premised on the specific grounds relied upon by the movants.

x x x x x x x x x

WHEREFORE, the above premises considered, the Motion to Quash, Supplemental Motion to Quash, Manifestation and Suppletory Motion to Quash, along with the Motion to Suspend Proceedings are hereby **DENIED** for lack of merit. Finding the Motion to Suspend Accused to be impressed with merit, the same is hereby **GRANTED** and thus, all the accused, except accused Fe Ylaya are ordered preventively suspended within a period of ninety (90) days reckoned from the period wherein they are actually preventively suspended in office. Let a copy hereof be furnished the Secretary of the DENR for implementation and for said office to show compliance within thirty (30) days from receipt hereof.

The arraignment of all the accused are now intransferrably set on October 9, 2003 at 8:30 in the morning to proceed unless properly restrained by a court of higher jurisdiction. Let all the accused and counsels be furnished copies of this Order by the Sheriff of this court or by registered mail if necessary.

SO ORDERED.[5]

Petitioners filed a motion for reconsideration against said Order. However, the same was denied by the trial court in an Order[6] dated October 20, 2003.

Dissatisfied, petitioners sought relief from the Court of Appeals (*appellate court*) *via* a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court.

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[5] *Id.* at 55-58.

[6] *Id.* at 59-60.

On August 12, 2004, the appellate court rendered a Decision affirming the trial court's Order and, consequently, dismissing the petition filed by petitioners for lack of merit.

Petitioners filed their motion for reconsideration against said Decision, but the same was denied by the appellate court in a Resolution dated December 20, 2004, *viz.*:

It is indubitable that grave abuse of discretion amounting to lack or excess of jurisdiction is correctible by a petition for *certiorari* under Rule 65 of the Rules. Petitioners, however, failed to discharge the burden of proving the existence of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent. Hence, the denial of the petition for *certiorari*.

WHEREFORE, the instant Motion for Reconsideration is **DENIED**.

SO ORDERED.[7]

Ultimately, petitioners filed a Petition for *Certiorari* before this Court praying that the appellate court's Decision dated August 12, 2004 and Resolution dated December 20, 2004 be set aside on the following ground:

THE COURT OF APPEALS GROSSLY ERRED IN DENYING THE QUASHAL AND THE EVENTUAL PROHIBITION OF THE CRIMINAL CASE AGAINST THE PETITIONERS IN ORDER TO ABATE THEIR FURTHER [PROSECUTION] AND OPPRESSION UPON THE GROUNDS: THAT THE CASE AGAINST THE PETITIONERS, AMONG OTHERS, HAD BEEN PREVIOUSLY DISMISSED; and THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE.[8]

Simply, the issue for our resolution is: Did the appellate court err in denying petitioners' Motion to Quash?

We rule in the negative.

At the outset, we must reiterate the fundamental principle that an order denying a motion to quash is interlocutory and,

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[7] *Id.* at 114-115.

[8] *Id.* at 17.

therefore, not appealable, nor can it be the subject of a petition for *certiorari*.[9]

In *Zamoranos v. People*,[10] this Court emphasized that "a special civil action for *certiorari* is not the proper remedy to assail the denial of a motion to quash an information. The established rule is that, when such an adverse interlocutory order is rendered, the remedy is not to resort forthwith to *certiorari*, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law."

However, on a number of occasions, this Court had sanctioned a writ of *certiorari* as an appropriate remedy to assail an interlocutory order in the following circumstances:

(1) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion;
(2) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief;
(3) in the interest of a more enlightened and substantial justice;
(4) to promote public welfare and public policy; and
(5) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.[11]

None of the aforementioned special circumstances exist in the present case. Therefore, the appellate court did not err in denying petitioners' Motion to Quash.

Apropos, the Court is not persuaded with petitioners' claim that the ruling made in their favor in OMB-1-99-1974 (initiated by Douglas Hagedorn) should also be made applicable to OMB-1-01-0082-A (initiated by petitioners), since they both have the

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[9] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 360.

[10] G.R. Nos. 193902, 193908 and 194075, June 1, 2011, 650 SCRA 304, 316.

[11] *Zamoranos v. People*, *supra*.

same nature, involve the same property and indict the same parties.

As correctly pointed out by the appellate court, petitioners cannot capitalize on the favorable judgment made by the Office of the Deputy Ombudsman for Luzon in OMB-1-99-1974, since the facts and circumstances surrounding the two complaints are not identical. OMB-1-99-1974 deals with a falsified certification issued by Hagedorn, while OMB-1-01-0082-A deals with petitioners' disregard of private respondents' predecessor's application for free patent. Thus:

x x x **OMB-1-99-1974 basically deals with a <u>falsified certification</u> allegedly issued by complainant therein (Hagedorn)**, which petitioners (respondents therein) used as their basis in favorably acting upon the Free Patent Application of Evelyn Bratschi. Thus:

> x x x complainant is the claimant-applicant over a certain parcel of land situated at Brgy. Sta. Lourdes, Puerto Princesa City identified as Lot No. 5355 Cad-800-D. That as claimant-applicant, he applied before the CENRO Survey Authority and was issued Survey Authority No. 045316-97-06. That a certain Evelyn Bratschi filed her Free Patent Application No. 045316-855 before the PENRO over the same parcel of land, hence, complainant filed his protest thereto. That complainant came to discover that Free Patent Application No. 045316-855 of Evelyn Bratschi was given due course in an Order dated June 2, 1998, and title over the lot was issued in favor of the former. That the reason why the Survey Authority No. 045316-97-06 in complainant's favor was cancelled and given due course to the Free Patent Application No. 045316-855 of Evelyn Bratschi was the Certifcation dated February 27, 1998 allegedly issued by the complainant recognizing and acknowledging the priority rights of Evelyn Bratschi. That complainant never issued the alleged Certification in favor of Evelyn Bratschi nor did he recognize or acknowledge that the latter has priority rights over Lot No. 5355 Cad. 800-D. That the said Certification is a falsified document and the signature appearing thereon is forged. That the respondents conspired together to cause the complainant undue injury in giving unwarranted benefits, advantage and preference in the discharge of their respective functions through manifest partiality, evident bad faith and

> gross inexcusable negligence by conniving and helping Evelyn Bratschi in facilitating the dropping of his protest, cancellation of his Survey Authority and eventual approval of the Free Patent Application and issuance of the title over the parcel of land in the name of Evelyn Bratschi on the basis of an alleged falsified Certification date February 27, 1998.

OMB-1-01-0082-A, on the other hand, is premised on the alleged disregard by petitioners of the application for free patent of the predecessor of private respondents. In their complaint, private respondents herein alleged that:

> 7. That on March 6, 1985, my father formally filed his application with the Bureau of Lands and he was issued a corresponding receipt for application fee in the amount of ₱50.00 under Official Receipt No. 5166195. x x x;
>
> 8. That whenever we have time, my father and us, always followed-up his application with the Bureau of Lands and there were occasions that we are informed by the Office that the property was now owned by Douglas Hagedorn for my father's application as regard to Lot No. 675 P1s 110 has already been applied for titling by Douglas Hagedorn;
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> x x x x x x x x x
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> 15. That in one of our visits to the Office of the Bureau of Lands, x x x informed us that the lot we are occupying for is about to be titled to a certain Mrs. Evelyn Bratschi for according to her, she was the one who bought the glass which was used for the repair/renovation of their office "*kaya malakas ito sa amin*";
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> x x x x x x x x x
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> 20. That in the year 1997, we were informed by one of the employees of the Bureau of Lands that Lot 675 P1s 110 identical to Lot 5355 is already titled to one Evelyn Bratschi. x x x

Although the OMB-1-99-1974 and OMB-1-01-0082-A, filed by Hagedorn and private respondents in this case, respectively, appear to have indicted the same public officials, involve the same property, and speak of the same offense, the antecedents, and the rights asserted in these cases are not similar. Evidently, the totality of the evidence

in these cases differ. The judgment in OMB-1-99-1974 will not automatically and wholly apply to OMB-1-01-0082-A.[12]

In view of the foregoing circumstances, this Court finds that the appellate court did not err in ordering the denial of petitioners' Motion to Quash.

WHEREFORE, the petition is hereby **DISMISSED** for lack of merit. The Decision of the Court of Appeals, dated August 12, 2004, and the Resolution dated December 20, 2004, in CA-G.R. SP No. 80798, are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191753. September 17, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RONALD DE JESUS** ***y*** **APACIBLE and AMELITO DELA CRUZ** ***y*** **PUA,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREON AND THE

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[12] *Rollo*, pp. 103-105. (Emphasis supplied.) (Citations omitted.)

[*] Designated Additional Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated September 12, 2012.

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

FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL.— The settled rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.

2. **CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In *People of the Philippines v. Ricky Unisa y Islan*, we ruled that the sale of prohibited drugs is consummated upon delivery of the drugs to the buyer: "For a successful prosecution of the offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti***. Clearly, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, **merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller**." x x x As borne by the records, all the above elements constituting the sale of *shabu* by the appellants were clearly testified to by PO Hamdani who averred that he received ₱1,000.00 worth of *shabu* from Dela Cruz after the latter gave the buy-bust money to De Jesus.

3. **ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.—** [W]e also find that Dela Cruz' possession of prohibited drugs was duly proven by the prosecution's evidence. All the essential elements of illegal possession of prohibited drugs, namely, that — (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. All these were directly testified to by PO Paculdar who identified Dela Cruz as the person who had on his person two plastic sachets of *shabu* when he was arrested.

4. **ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IN DRUG CASES, THE PROSECUTION MUST PROVE, TO THE POINT**

OF MORAL CERTAINTY, THAT THE PROHIBITED DRUG PRESENTED IN COURT AS EVIDENCE AGAINST THE ACCUSED IS THE SAME ITEM RECOVERED FROM HIS POSSESSION.— [T]he *corpus delicti* in both the offenses of sale and of possession of *shabu* were proven with reasonable certainty as the police substantially complied with the prescribed procedure under Section 21(a), Article II of RA No. 9165, its implementing rules, and the chain of custody rule. What assumes primary importance in drug cases is the prosecution's proof, to the point of moral certainty, that the prohibited drug presented in court as evidence against the accused is the same item recovered from his possession. In this case, the prosecution achieved this level of proof through evidence sufficiently establishing the links in the chain of custody of the seized *shabu* from the time of its seizure until it was presented in court.

5. ID.; ID.; NONCOMPLIANCE WITH THE PRESCRIBED PROCEDURE DOES NOT AUTOMATICALLY RENDER THE SEIZURE OF THE DANGEROUS DRUG VOID AND THE EVIDENCE INADMISSIBLE; CONDITION.— [W]e also consider as significant the appellants' failure during the trial to raise and prove any attendant irregularity affecting the integrity and identity of the *shabu* seized and presented in court. We emphasize in this regard that noncompliance with the prescribed procedure does not automatically render the seizure of the dangerous drug void and the evidence inadmissible. The law itself lays down certain exceptions to the general compliance requirement — "**as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team,**" the seizure of and the custody over the dangerous drugs shall not be rendered void and invalid. From the evidence presented, the prosecution proved that the integrity and the evidentiary value of the *shabu* seized from the appellants had been duly preserved under the precautionary handling measures the police undertook after the *shabu* was confiscated.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

This is an appeal[1] of the decision[2] dated August 12, 2009 and the resolution[3] dated January 25, 2010 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 03185. The appealed decision affirmed the joint decision[4] dated February 1, 2008 of the Regional Trial Court (*RTC)*[5] (Branch 103, Quezon City) that convicted appellants Ronald de Jesus *y* Apacible and Amelito dela Cruz *y* Pua of the charges of violating Section 5, Article II of Republic Act (*RA*) No. 9165 (against appellants De Jesus and Dela Cruz)[6] and Section 11, Article II of the same law (against appellant Dela Cruz).

The Facts

The records show that the District Anti-Illegal Drugs Special Task Force (*DAID,* stationed at Camp Karingal) received a tip from its asset about the illegal drug activities of a certain Amel on Cartier St., Villa Carina Subdivision, Barangay Pasong Tamo, Quezon City. Acting on the tip, the DAID chief formed a team to conduct a buy-bust operation, and designated Police Officer 1 (PO) Abdulrahman Hamdani to act as *poseur-buyer*. PO Hamdani was given a ₱1,000.00 bill to be used in the operation, which bill he marked with his initials "AH." After coordinating with the Philippine Drug Enforcement Agency (*PDEA*), the buy-bust

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[1] Pursuant to Section 13(c) of Rule 124, as amended by A.M. No. 00-5-03-SC.

[2] Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Apolinario D. Bruselas, Jr.; *rollo*, pp. 2-21.

[3] CA *rollo*, p. 286.

[4] *Id.* at 26-35.

[5] Docketed as Criminal Case Nos. Q-05-136278 and Q-05-136279. The Joint Decision was penned by Judge Jaime N. Salazar, Jr.

[6] The Comprehensive Dangerous Drugs Act of 2002.

team and the asset proceeded to Cartier St. where they saw the appellants.

The asset introduced the appellants to PO Hamdani who expressed his intention to buy *shabu*, but no sale took place as the appellants had no stock of *shabu* at that time. At the instructions of De Jesus, the asset and PO Hamdani (together with the other members of the buy-bust team) returned the next day.

On their return, the asset and PO Hamdani again approached the appellants. De Jesus told them that he already had the "stuff." PO Hamdani handed the marked money to De Jesus, and Dela Cruz handed the *shabu* to PO Hamdani. After the exchange, PO Hamdani made the pre-arranged signal; the buy-bust team then immediately converged for the operation. PO Hamdani arrested De Jesus while PO2 Edmond Paculdar arrested Dela Cruz who was found in possession of two plastic sachets of suspected *shabu* and of the marked money. PO Hamdani and PO Paculdar placed their initials "AH," "EP" and "EP-1" on the plastic sachets of suspected *shabu* they seized.

The appellants and the items were brought to the DAID's office at Camp Karingal for booking and investigation. The confiscated materials were inventoried and photographed, and thereafter taken to the Philippine National Police (*PNP*) Crime Laboratory for chemical examination. Chemistry Report No. D-662-2005, dated August 14, 2005, showed that all the three specimens, weighing 0.31 grams (for buy-bust sale) and 0.06 grams and 0.11 grams (for possession) all tested positive for *shabu*.

The appellants denied the charges and, in their defense, claimed that no buy-bust operation ever took place.

De Jesus asserted that he was on his way home after playing a basketball game when he was accosted and handcuffed by four (4) armed men in civilian attire. De Jesus claimed that the men forced him to board a Toyota Revo. The vehicle later stopped in front of the house of his *kumpare*, Dela Cruz, who was also accosted, handcuffed and forced to board the Toyota Revo. Inside

the vehicle, the men introduced themselves as police officers and took them to the office of the DAID at Camp Karingal. The police informed him (De Jesus) and Dela Cruz that they were under arrest for selling drugs. The police did not inform them of their rights to remain silent and to counsel, nor were they allowed to make any phone call. De Jesus claimed that he and Dela Cruz only saw the *shabu* when it was photographed and underwent physical inventory. De Jesus also claimed that they signed the inventory receipt because of the physical threat the police made against them.

To corroborate his testimony, De Jesus presented John Michael Perez who confirmed that he and De Jesus played basketball prior to the incident. May Tagle, a *kagawad* from De Jesus' *barangay,* took the stand and presented a Certification issued by the *barangay* captain attesting to the good moral character of De Jesus.

Dela Cruz denied the charge of selling drugs. He claimed that he was then inside his house waiting for his family. When he opened the gate for his wife and kids, armed men suddenly grabbed him and forced him to board a Toyota Revo. He saw De Jesus already on-board the vehicle.

To corroborate his story, Dela Cruz presented Claire dela Cruz (his wife), Dr. Evelyn Braganza (a neighbor), and Julius Valdez (a tricycle driver). The three (3) testified that armed men (who turned out to be policemen) accosted Dela Cruz and forced him into a Toyota van. Claire further narrated that PO Hamdani informed her at the police station that her husband had been involved in drugs. She was told to produce ₱200,000.00 to settle the case. Claire informed PO Hamdani that she only had ₱5,000.00 which she gave to him. Claire denied her husband's involvement in drug activities.

In its decision, the RTC convicted both appellants of violating Section 5, Article II of RA No. 9165 for selling *shabu,* and Dela Cruz of violating Section 11, Article II of RA No. 9165 for possessing *shabu*. The decretal portion of the RTC's joint decision reads:

ACCORDINGLY, judgment is rendered as follows:

1. In Q-136278 both accused Ronald de Jesus *y* Apacible and Amelito dela Cruz *y* Pua are found GUILTY beyond reasonable doubt of the crime of violation of Sec. 5 of R.A. 9165 as charged and they are both hereby sentenced to a jail term of LIFE IMPRISONMENT and ordered to pay a fine of ₱500,000.00 each;

2. In Q-136279 accused Amelito dela Cruz *y* Pua is hereby sentenced to a jail term of twelve (12) years and one (1) day, as minimum to thirteen (13) years as maximum and ordered to pay a fine of ₱300,000.00.[7]

The RTC found the prosecution's evidence more credible than those of the defense; the court disbelieved the defense's inconsistent testimonial evidence and story of abduction at a residential subdivision in broad daylight and in the presence of witnesses. The RTC held that the close relationship of Claire and Dr. Braganza with Dela Cruz puts their credibility into question.

The RTC also rejected the allegation of police extortion for being contrary to human experience; police officers would not commit the serious crimes of abduction and extortion knowing that they would risk their liberty and employment to arrest the ablest appellants. The RTC also noted that the alleged extortion came only after the case had already been submitted by the police officers for proper disposition.

The appellants filed separate appeals to the CA, both claiming reversible errors in the RTC's appreciation of the evidence.

The CA's Ruling

In the presently assailed decision, the CA sustained the appellants' convictions and ruled that the prosecution's evidence duly established the crimes of sale and possession of *shabu*. Contrary to the appellants' assertions, the CA found that the identity and integrity of the *corpus delicti* had been duly preserved

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

in light of evidence duly recording the movements of the seized drugs and the identities of the custodians of these drugs, from the time of their seizure until their presentation in court.

Likewise, the CA found no reason to disturb the RTC's evaluation of the testimonies of the prosecution witnesses — PO Hamdani and PO Paculdar — whose testimonies were strengthened by the documentary evidence showing the details of the buy-bust operation and the physical evidence of the confiscated *shabu*. The CA also observed that the appellants failed to adduce evidence proving police extortion or any ill-motive against them by the police.

In the present appeal, the appellants question their conviction based on the same arguments they raised before the CA.

The Issues

The appellants ultimately question the sufficiency of the prosecution's evidence. The appellants argue that the CA erred in its conclusions when it failed to consider the following matters: (1) the inconsistencies in the testimonies of the prosecution witnesses relating to the sale of *shabu*; (2) the proper worth of Dela Cruz' testimony which was corroborated by other testimonial evidence; and (3) the absence of the *corpus delicti* for both the sale and possession of *shabu* as these were not proven with reasonable certainty.

The appellants subsequently submitted a Supplemental Brief, maintaining their innocence of the crimes charged. The appellants contend that the identities of the prohibited drugs were not proven, given the lapses in the safekeeping of the confiscated *shabu*, which lapses the CA simply brushed aside. The appellants also contend that the integrity and evidentiary value of the confiscated *shabu* were not preserved for lack of compliance with the requirements of Section 21, paragraph 1, Article II of RA No. 9165 and the chain of custody rule.

The Court's Ruling

We dismiss the appeal for lack of merit.

The settled rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.[8] A careful study of the records in this regard shows no compelling reason to overturn the lower courts' factual findings and their evaluation of the presented evidence.

First, the matter of assigning values to the testimonies of witnesses is best and most competently performed by the trial judge who, unlike the appellate courts, has the direct opportunity to observe and assess the conduct and demeanor of witnesses.[9] Under the circumstances, we find that the RTC judge committed no reversible error when he accorded greater evidentiary weight to the prosecution's version of the events. Buy-bust operations are recognized methods of trapping and capturing lawbreakers in drug-related crimes. These are the time-tested operations that have yielded positive results for the police. On the part of the defense, the theories raised are not also unusual. Upon proof and establishment of a *prima facie* case based on the buy-bust evidence, the burden of evidence shifts to the defense to support its denial or to show that irregularities attended the buy-bust story that the prosecution presented. The parties' positions both ran along these lines, with the defense relying mainly on denial.

Upon due consideration of these drug cases realities, we find that the testimonies of PO Hamdani and PO Paculdar on the buy-bust operation were clear, positive and unequivocal. PO Hamdani testified that he bought *shabu* from the appellants, while PO Paculdar testified that he found *shabu* in Dela Cruz's possession when he was frisked. The testimonies of PO Hamdani and PO Paculdar were corroborated by both the documentary

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[8] *People v. Jubail*, G.R. No. 143718, May 19, 2004, 428 SCRA 478, 495.

[9] *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700.

evidence and the physical evidence which outlined the detailed steps in the pre-operation, on-operation and post-operation activities of the police operations.

The records show the preparation by the police of a Pre-Operation Report/Coordination Sheet (dated August 13, 2005) which was sent to the PDEA before the buy-bust operation. The police also prepared a ₱1,000.00 bill (whose photocopy was submitted as evidence) that was used in the operation as buy-bust money, marked by PO Hamdani with his initials "AH." The records further show the Arrest and Booking Sheet of the appellants who were caught red-handed in selling and in possessing *shabu* during the buy-bust operation.

Moreover, the testimonies of PO Hamdani and PO Paculdar were corroborated by the Inventory Receipt (dated August 14, 2005) signed by the appellants which listed the items seized during the buy-bust operation. The prosecution likewise presented a photocopy of pictures showing the appellants together with the items seized and the Joint Affidavit of Arrest dated August 16, 2005, executed by PO Hamdani and PO Paculdar. In addition to these documents, the testimonies of PO Hamdani and PO Paculdar were supported by the presentation in court of the plastic sachets of *shabu* confiscated from the appellants during the buy-bust operation.

In stark contrast with the prosecution's evidence, the defense could only present testimonial evidence that cannot prevail over the documentary and physical evidence arrayed against the accused.[10] A consideration, too, of the defense's testimonial evidence was not persuasive for the following reasons: first, the appellants' testimonies were largely self-serving; second, the defenses of denial and police extortion cannot prevail over the positive and categorical assertions of the police officers who were strangers to the appellants and against whom no ill-motive was established; third, the testimonies of the other defense

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[10] *Romago Electric Co., Inc. v. Court of Appeals,* G.R. No. 125947, June 8, 2000, 333 SCRA 291, 302; and *People v. Aguinaldo*, 375 Phil. 295, 313 (1999).

witnesses did not negate the appellants' culpability for they did not discount or render impossible the participation of the appellants in the buy-bust operation; and fourth, the testimonies of the defense witnesses cannot but be viewed with caution because of the close relationship and friendship of some of these witnesses with the appellants.

Thus, the totality of the prosecution's evidence, showing the actual occurrence of a buy-bust operation leading to the appellants' arrest for sale and possession of prohibited drugs, simply must prevail over the defense's evidence and theory of denial and frame-up.

Second, the inconsistencies[11] pointed out by the appellants in the sworn statement, the Joint-Affidavit and the testimonies of PO Hamdani and PO Paculdar refer to trivial matters relating to the crimes charged which have no direct bearing on the actual sale of *shabu* between PO Hamdani and the appellants. In this light, we cannot consider the cited inconsistencies fatal to the prosecution's case as they all the more bolstered up, rather than disproved, the sale of *shabu* between PO Hamdani and the appellants. In *People of the Philippines v. Ricky Unisa y Islan,*[12] we ruled that the sale of prohibited drugs is consummated upon delivery of the drugs to the buyer:

> For a successful prosecution of the offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti***. Clearly, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, **merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller**. As long as the police officer went through the operation

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[11] With respect to: (1) the time when the exchange of *shabu* was made; (2) the amount of the buy-bust money used; and (3) the type of vehicle used in the buy-bust operation.

[12] G.R. No. 185721, September 28, 2011.

as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty. [italics and emphases supplied]

As borne by the records, all the above elements constituting the sale of *shabu* by the appellants were clearly testified to by PO Hamdani who averred that he received ₱1,000.00 worth of *shabu* from Dela Cruz after the latter gave the buy-bust money to De Jesus.[13]

Under the same standards, we also find that Dela Cruz' possession of prohibited drugs was duly proven by the prosecution's evidence. All the essential elements of illegal possession of prohibited drugs, namely, that — (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[14] All these were directly testified to by PO Paculdar who identified Dela Cruz as the person who had on his person two plastic sachets of *shabu* when he was arrested.

Third, the *corpus delicti* in both the offenses of sale and of possession of *shabu* were proven with reasonable certainty as the police substantially complied with the prescribed procedure under Section 21(a), Article II of RA No. 9165, its implementing rules, and the chain of custody rule. What assumes primary importance in drug cases is the prosecution's proof, to the point of moral certainty, that the prohibited drug presented in court as evidence against the accused is the same item recovered from his possession.[15] In this case, the prosecution achieved this level of proof through evidence sufficiently establishing the links in the chain of custody of the seized *shabu* from the time of its seizure until it was presented in court.

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[13] *Rollo*, pp. 11-12.

[14] *People v. Unisa*, *supra* note 12.

[15] *People v. Bautista*, *supra* note 9, at 708.

The records show that the plastic sachet containing *shabu,* subject of the buy-bust sale, was immediately marked by PO Hamdani with his initials "AH" after it was confiscated from Dela Cruz. PO Hamdani had custody of the *shabu* until he turned it over to the desk officer who, in turn, handed it to the investigator. With respect to the *shabu* subject of the possession charge, PO Paculdar marked the two plastic sachets with his initials "EP" and "EP-1," and these were handled in a similar manner.

After the investigation, the confiscated plastic sachets containing *shabu* were brought by PO Paculdar and other officers to the PNP Crime Laboratory for chemical examination. The forensic chemist was no longer presented in court, given the stipulation made by the prosecution and the defense on the correctness of the chemistry findings that the three (3) plastic sachets marked as "AH," "EP," and "EP-1" tested positive for *shabu*. The *shabu* presented in court was also identified by PO Hamdani and PO Paculdar as the same specimens recovered from the appellants.

Parenthetically, we also consider as significant the appellants' failure during the trial to raise and prove any attendant irregularity affecting the integrity and identity of the *shabu* seized and presented in court.[16] We emphasize in this regard that noncompliance with the prescribed procedure does not automatically render the seizure of the dangerous drug void and the evidence inadmissible.[17] The law itself lays down certain exceptions to the general compliance requirement — "**as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team**," the seizure of and the custody over the dangerous drugs shall not be rendered void and invalid.[18] From the evidence presented, the prosecution proved that the integrity and the evidentiary value of the *shabu* seized from the appellants had been duly

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[16] *People of the Philippines v. Cesar Bautista y Santos*, G.R. No. 177320, February 22, 2012.

[17] *Ibid.*

[18] *Ibid.*

preserved under the precautionary handling measures the police undertook after the *shabu* was confiscated.

Finally, we affirm the correctness of the penalties imposed by the CA and the RTC against the appellants as they are fully in accord with Sections 5[19] and 11,[20] Article II of RA No. 9165.

WHEREFORE, premises considered, we **DISMISS** the appeal and *AFFIRM* the decision dated August 12, 2009 and the resolution dated January 25, 2010 of the Court of Appeals in CA-G.R. CR-HC No. 03185, finding appellants Ronald de Jesus *y* Apacible and Amelito dela Cruz *y* Pua **GUILTY** of violating Section 5, Article II of Republic Act No. 9165, and appellant Amelito dela Cruz *y* Pua **GUILTY** of violating Section 11, Article II of Republic Act No. 9165.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[19] 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.

[20] Section 11. *Possession of Dangerous Drugs.* — x x x.

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

EN BANC

[A.M. No. P-10-2805. September 18, 2012]
(Formerly A.M. No. 10-4-57-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LIZA P. CASTILLO, Clerk of Court, 4th Municipal Circuit Trial Court, San Fabian-San Jacinto, Pangasinan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; PRIMARILY ACCOUNTABLE FOR ALL FUNDS COLLECTED FOR THE COURT AND MAY BE HELD LIABLE FOR ANY LOSS OR SHORTAGE OF THESE FUNDS.—** Castillo miserably failed to carry out the responsibilities of her office. As we stressed in *Office of the Court Administrator v. Dureza-Aldevera,* the clerk of court is primarily accountable for all funds collected for the Court, whether personally received by him or by a duly appointed cashier under his supervision and control. As the custodian of court funds, revenues, records, properties and premises, he is liable for any loss, shortage, destruction or impairment of these funds and properties, and may be dismissed from the service for violation of this duty. For her serious breach of duty as clerk of court, Castillo should be removed from office.

2. **ID.; ID.; ID.; ID.; ID.; PENALTY OF DISMISSAL; IMPOSED FOR INFIDELITY IN THE COLLECTION OF COURT FUNDS; CASE AT BAR.—** Under Section 58(a), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the penalty of dismissal shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service, unless otherwise provided in the decision. By jurisprudence, the Court has additionally imposed the forfeiture of all other benefits, except accrued leave credits, of an erring court employee who has failed to meet the strictest standards of honesty and integrity in the discharge of his/her judicial office in the management of court funds. With these

considerations and in view of the enormity of Castillo's infidelity in the collection of court funds, we deem it appropriate to order the forfeiture of Castillo's retirement benefits and all other benefits due her, except accrued leave credits. To clarify, she is entitled to be paid the salaries and allowances she has earned up to the time of her dismissal, save only for what may be needed to cover her confirmed deficiencies for her accounts with the Court.

D E C I S I O N

PER CURIAM:

We resolve the present administrative complaint against Clerk of Court II Liza P. Castillo of the 4th Municipal Circuit Trial Court (*MCTC*), San Fabian-San Jacinto, Pangasinan, arising from the financial audit conducted at this court in July and August 2007.

The Antecedents

The financial audit covered the accountabilities of the following:

ACCOUNTABLE OFFICER	POSITION	ACCOUNTABILITY PERIOD
Victorio A. Dion	Clerk of Court II	February 13, 1995 – February 28, 2001
Alicia Q. Carrera	Clerk of Court II	March 1 – August 21, 2001; November 14 – December 4, 2001
Aniceto L. Madronio, Sr.	Judge	August 22 – November 13, 2001
Liza P. Castillo	Clerk of Court II	December 5, 2001-October 11, 2007

On April 22, 2010, the Office of the Court Administrator (*OCA*) submitted a report[1] (based on the report of the financial

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[1] *Rollo,* pp. 1-12.

audit team headed by Management and Audit Analyst IV Nathaniel M. Sevilla[2]) to the Office of the Chief Justice.

Acting on the report, the Court issued a Resolution on June 23, 2010,[3] which we quote:

The OCA's financial audit team, from the Fiscal Monitoring Division of the Court Management Office, found that a huge amount of collections within the period of February 1995 to October 2007 was not deposited; these funds were successively handled by persons appointed as Clerk of Court II in the said court, namely: Victorio A. Dion, Alicia Q. Carrera, and Liza P. Castillo, and by retired Judge Aniceto L. Madronio, Sr. The Court previously required them to file compliance/explanation/comments. In this regard, the OCA reports that:

1. Mr. Dion's explanations/comments to the audit findings, together with the audit team's evaluation of his explanations and its recommendations, were taken up and discussed in a *separate report.*
2. Ms. Carrera made an over withdrawal of ₱3,000.00, representing a reduced cash bond deposit in Criminal Case No. 3982. She did not file any explanation/comment as she already left for the United States after [s]he resigned from her court position on May 15, 2002.
3. Judge Madronio made a withdrawal of cash bond in the amount of ₱2,000.00 in Criminal Case Nos. 4358-59, without a special power of attorney (*SPA*). Judge Madronio explained that the bondsman/payor, who should have issued the SPA, was already residing abroad Judge Madronio redeposited ₱2,000.00 to the Fiduciary Fund Account on September 23, 2008.
4. Ms. Castillo incurred a total shortage of ₱598,655.10, reduced to ₱597,155.10. The FMD withheld her salaries and allowances since August 2006. She expressed her willingness "to deposit all the amounts," subject to a recomputation and the application of the withheld salaries to her accountabilities. However, she offered no explanation for the shortages.

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[2] *Id.* at 13-25.

[3] *Id.* at 204-212.

Moreover, Ms. Castillo affixed her signature as Officer-in-Charge (*OIC*) in (1) the monthly reports of collections, deposits, and withdrawals covering the period of November 2001 to April 2002; and (2) the Supreme Court official receipts starting December 2001, although she was only verbally designated as OIC. She explained that she readily obeyed Judge Madronio's orders since nobody was willing to take on the responsibilities of the OIC. She also made requests that her designation as OIC be formalized but the same were ignored by Judge Madronio.

Further, Ms. Castillo also failed to include the SPA or authorization letter, or to indicate in several acknowledgement receipts (during her tenure as an accountable officer) the date the refund was made, thus precluding anyone from determining if a collection, deposited to and withdrawn from the Fiduciary Fund Account, was promptly returned to the recipient. She explained that the inadvertent omissions were caused by a heavy workload.

Lastly, she failed to attend to the disbursement vouchers, with a list of estimated expenses pertaining to the service of court processes within the period of January 16, 2006 to March 19, 2007, presented to her by Mr. Diego C. Iglesias. Mr. Iglesias admitted to have received ₱1,500.00 of the ₱4,400.00 being claimed in 15 disbursement vouchers. Ms. Castillo explained that she could not attend to these because they were not yet signed by the Presiding Judge, but she gave cash advances anyway (contrary to the audit rules). She gave cash advances to Mr. Iglesias for travel expenses in serving court processes. Ms. Castillo claimed that she had refunded unused deposits to the plaintiffs/petitioners, and requested for time to produce the corresponding acknowledgment receipt for each refund.

The financial audit team also discovered an unremitted interest of ₱1,518.69, earned on the Fiduciary Fund Account deposits (with the Land Bank of the Philippines) for the period of July to September 2007. Mr. Romulo L. Visperas, Jr., the court's incumbent OIC, stated that this amount was remitted to the Judiciary Development Fund Account on December 27, 2007.

In view of these findings and considering the Office of the Court Administrator recommendations, the Court resolves to:

1. **DIRECT** the present Report of the Office of the Court Administrator to be **DOCKETED** as a regular administrative complaint against Ms. Liza P. Castillo for gross neglect of

duty, dishonesty, and grave misconduct in the handling of judiciary funds;

2. **ISSUE** a Hold Departure Order against Ms. Liza P. Castillo to prevent her from leaving the country;

3. **DIRECT** the Financial Management Office of the Office of the Court Administrator to:

   (a) **COMPUTE** and **PROCESS** the withheld salaries, ADCOM and PERA (net deductions) and money value of leave credits due to Ms. Liza P. Castillo, DISPENSING with the usual documentary requirements, and **APPLY** the same to her accountabilities (enumerated below), OBSERVING the following order of preference; Fiduciary Fund, Sheriff's Trust Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund; and Mediation Fund:

      i. ₱63,868.62 – Judiciary Development Fund Savings Account No. 0591-0116-34;

      ii. ₱282,499.98 – Fiduciary Fund Savings Account No. 0821-0415-70;

      iii. ₱193,286.50 – Special Allowance for the Judiciary Fund Savings Account No. 0591-1744-28;

      iv. ₱34,000.00 – SC Philja PMC Trust Fund (Rule 141) Savings Account No. 3472-1000-08; and

      v. ₱23,500.00 – Fiduciary Fund Savings Account No. 0821-0415-70 or to a Sheriff Trust Fund Account to be opened by the Presiding Judge and the Officer-in-Charge/Clerk of Court with Land Bank of the Philippines, Dagupan City, Pangasinan Branch; and

   (b) **COORDINATE** with the Fiscal Monitoring Division (*FMD*), Court Management Office, Office of the Court Administrator on the release (to the incumbent Officer-in-Charge/Clerk of Court) of the checks to be applied to the shortages, in order for the FMD to **PROPERLY MONITOR** Ms. Liza P. Castillo's restitution of the portion of the deficit not covered by her withheld salaries, ADCOM and PERA (net deductions), and the money value of her leave credits;

4. **DIRECT** Ms. Liza P. Castillo to:

   (a) **MANIFEST**, within a non-extendible period of ten (10) days from receipt of this Resolution, whether she is submitting for decision or resolution the administrative complaint against her for gross neglect of duty, dishonesty, and grave misconduct in the handling of judiciary funds, based on the pleadings submitted; and

   (b) **DEPOSIT**, within a non-extendible period of one (1) month from receipt of this Resolution, the remaining balance of the indicated shortages (to the fund accounts listed above), after Ms. Liza P. Castillo's total withheld salaries, ADCOM, and PERA (net deductions), and the money value of her leave credits had been applied to her accountabilities; and FURNISH the Chief, Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator with copies of the corresponding machine-validated deposit slips;

5. **DIRECT** the Office of the Court Administrator to **IMMEDIATELY FILE** criminal and civil proceedings against Ms. Liza P. Castillo upon receipt of a Report from the Fiscal Monitoring Division, Court Management Office that she failed to restitute the portion of the shortages not covered by her withheld salaries, ADCOM, and PERA (net of deductions), and the money value of her leave credits, within a non-extendible period of one (1) month from her receipt of this resolution (dwelling on her case);

6. **DIRECT** Mr. Diego C. Iglesias to:

   (a) **SUBMIT** to the incumbent Officer-in-Charge/Clerk of Court of the MCTC, San Fabian-San Jacinto, Pangasinan, for processing, as reimbursement upon Ms. Liza P. Castillo's restitution of her Sheriff's Trust Fund shortage of ₱23,500.00, the fifteen (15) disbursement vouchers, with a total mount of ₱4,400.00 (presented to but not processed by Ms. Liza P. Castillo), which detailed the expenses incurred in the service of court processes for the period of January 16, 2006 to March 19, 2007; and

(b) **TAKE INTO ACCOUNT**, in the processing of said vouchers, the ₱1,500.00 that Mr. Iglesias admitted (in his sworn statement of October 16, 2008) having received from Ms. Liza P. Castillo (as partial reimbursement of his traveling expenses);

7. **DIRECT** Mr. Romulo L. Visperas, Jr., the court's incumbent OIC, to:

(a) **DEPOSIT** to the respective fund accounts, as instructed by the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator, the checks to be sent to him by the Financial Management Office, OCA, to partially settle Ms. Liza P. Castillo's accountabilities; and FURNISH Ms. Liza P. Castillo and the Chief of the FMD, CMO with copies of the machine-validated deposit slips;

(b) **CAUSE** the serving of a Summons to Ms. Alicia Q. Carrera at her last known address in order for her to account the over withdrawal of ₱3,000.00 she made against the Fiduciary Fund Account on July 20, 2001, reflected as follows:

O.R. No./Date	Case No.	Litigants/Payor	Date of Withdrawal/ Amount/ Recipient of Refund	Remarks
8264742/May 18, 2000	3982	PP *vs*. Emelio L. Abuan, Jr./ Pedro C. Flores	July 20, 2001/ ₱10,000/Celma F.Pascua	Collected cash bond of ₱10,000.00 was reduced by the Judge to ₱7,000.00. ₱3,000.00 was refunded on 16 June 2000, leaving a balance of ₱7,000.00 only. Therefore, there was an overwithdrawal of ₱3,000.00

(c) **HOLD IN ESCROW** the ₱2,000.00 which was deposited by Judge Aniceto L. Madronio, Sr. to the Fiduciary Fund Account on September 23, 2008, and **REFUND** the same to him upon his submission to the court's OIC/Clerk of Court and the Chief of the Fiscal Monitoring Division, Court Management Office, OCA of the required Special Power of Attorney supposedly issued by the bondsman in connection with the bond withdrawal listed below:

O.R. No./Date	Case No.	Litigants/Payor	Date of Withdrawal/ Amount/ Recipient of Refund	Remarks
1147782/ August 31, 2001	4358-59	PP *v*. Ador Ulanday/Dr. Eric Lazo	October 2, 2001/ ₱2,000.00/Clarita G. Bati	No SPA/ authorization letter

(d) **HOLD IN ESCROW**, upon Ms. Liza P. Castillo's restitution of her Fiduciary Fund shortage of ₱282,499.98, the amount of ₱34,000.00 (representing the total amount of her withdrawals with lacking supporting documents), which shall be REFUNDED to her partially (on a per case basis) or its entirety upon her presentation of some or all of the missing documents (mentioned underneath) to the court's OIC/ Clerk of Court and the Chief of the Fiscal Monitoring Division, Court Management Office, OCA:

O.R. No./Date	Case No.	Litigants/Payor	Date of Withdrawal/ Amount/ Recipient of Refund	Remarks
8264740/ May 5, 2000	1067	Armando Gonzales III *vs*. Lorenzo Maramba/Armando Gonzales III	May 15, 2002/ ₱10,000.00/ Imelda Consolacion	No SPA/ authorization letter
11477864/ December 10, 2001	4430	PP *vs*. Noel Cerviza/Emily Cañero	August 14, 2003/ ₱2,000.00	No acknowledgment receipt

8264716/ October 8, 1999	3717 3719	People *vs*. Emelita Soriano/Emelita Soriano	April 29, 2004/ ₱4,000.00	No acknowledgment receipt
8264703/ July 19, 1999	3544	PP *vs*. Jaime Aquino/ Dionisio Sison	July 28, 2005/ ₱6,000.00	No acknowledgment receipt
4241227/ December 29, 2006	5299	PP *vs*. Jimmy Recodos/Marilou Recodos	January 2007/ ₱12,000.00/ Jimmy Recodos	No acknowledgment receipt

(e) **PROCESS** as reimbursement, upon Ms. Liza P. Castillo's restitution of her Sheriff's Trust Fund shortage of ₱23,500.00, the fifteen (15) disbursement vouchers with a total amount of ₱4,400.00 (presented to but [not] processed by Ms. Liza P. Castillo) which detailed the expenses to be incurred by Mr. Diego C. Iglesias in the service of court processes for the period January 16, 2006 to March 19, 2007; and

(f) **TAKE INTO ACCOUNT**, in the processing of the disbursement vouchers, the ₱1,500.00 that Mr. Iglesias admitted (in his sworn affidavit of October 16, 2008) having received from Ms. Liza P. Castillo (as partial reimbursement of his traveling expenses); and

8. **DIRECT** Presiding Judge Ma. Theresa D. Guadaña-Tano to:

(a) **CLOSELY MONITOR** the financial transactions of the court, **otherwise**, she shall be held equally liable for the transactions committed by the employees under her supervision; and

(b) **STUDY and IMPLEMENT** procedures that shall strengthen the internal control over financial transactions. [emphases, italics and underscoring supplied]

On August 12, 2010, Castillo manifested before the Court that she intends to submit her comment on the complaint,[4] which she did on September 14, 2010.[5] She then reiterated the explanation she gave to the OCA regarding her accountabilities. Additionally, she expressed regrets for her failure to exercise the highest degree of diligence, efficiency, care and integrity in the custody of court collections. She averred that she persevered in her work although her salaries had been withheld. She pledged that she would not commit the same mistakes again and would be more careful in the performance of her duties. She pleaded that she be given the chance to continue serving in the Judiciary. In a different vein, she also alleged that there were several instances in the past when Judge Aniceto Madronio, Sr. would verbally order her to secure advances from court collections of cashbonds ordered released to the bondsmen.

Castillo also informed the Court that she had been asking the OCA's Fiscal Management Office (*FMO*) for the computation of her withheld salaries, ADCOM and PERA and the money value of her leave credits[6] to determine how much she still had to raise to cover her accountabilities, but the FMO had not finished the computation yet; thus, she could not then deposit the remaining balance of her shortages. For this reason, she asked (by letter dated September 3, 2010[7]) for an extension of the period (which expired on September 5, 2010) given to her to settle her shortages until her withheld salaries, other benefits, leave credits and loan could be completely determined.

In a Resolution dated November 22, 2010,[8] the Court referred Castillo's comment and letter to the OCA, and directed it to

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[4] *Id.* at 215-216.

[5] *Id.* at 225-226.

[6] *Id.* at 229-231.

[7] *Id.* at 232-233.

[8] *Id.* at 235-236.

submit its recommendation on the case. On July 20, 2011, the OCA submitted a memorandum-report[9] based substantially on the audit team's report,[10] and on the subsequent developments on the case. It decried Castillo's "delaying tactics" in settling her accountabilities. It noted that up to the issuance of the Court's November 22, 2010 Resolution,[11] Castillo's shortages remained outstanding and she needed to request for an extension of the period to settle these shortages. By January 2011, the OCA found that Castillo's withheld salaries and allowances were enough to cover her entire shortfall, and she applied a very large portion of the money value of her leave credits to her accountabilities.

The OCA reported that on January 25 and 26, 2011, the FMO issued several Land Bank checks (indicated in the matrix below) representing Castillo's withheld salaries and allowances, and the money value of the leave credits that had been applied to her accountabilities totaling ₱597,155.10:

FUND	SHORTAGE	CHECK NO.	DATE OF ISSUANCE	AMOUNT	DATE OF DEPOSIT
Judiciary Develop-ment Fund	₱ 63,868.62	416390	01/26/11	₱ 32,424.41	02/04/11
-do-	282,499.98	416391	01/26/11	31,444.21	-do-
Fiduciary Fund & Sheriff's Trust Fund	23,500.00	416386	01/26/11	5,445.28	02/15/11
-do-		416387	01/26/11	42,887.35	-do-
Fiduciary Fund		416388	01/26/11	116,506.06	-do-
-do-		416389	01/26/11	141,161.29	-do-

[9] *Id.* at 237-245.

[10] *Supra* note 2.

[11] *Supra* note 8.

Special Allowance for the Judiciary Fund	193,286.50	416296	01/25/11	13,492.08	02/04/11
-do-		416392	01/26/11	179,794.42	-do-
Mediation Fund	34,000.00	416297	01/25/11	9,642.03	02/09/11
-do-		416298	01/25/11	24,323.85	-do-
-do-				34.12	02/03/11
TOTAL	**₱597,155.10**			**₱597,155.10**[12]	

The OCA recommended that dismissal from the service (for gross neglect of duty, dishonesty and grave misconduct), be imposed on Castillo, together with accompanying administrative disabilities.

In a Resolution[13] dated August 22, 2011, the Court required the parties to manifest whether they were willing to submit the case for resolution on the basis of the records.

On October 19, 2011, Castillo manifested that she was submitting the case for resolution, praying for a "more [humanitarian] resolution of her case" as she had been through so much suffering and anxiety because of the administrative complaint against her.[14]

The Court's Ruling

We find the OCA's recommendation for Castillo's dismissal well-founded. Her transgressions as Clerk of Court II of the MCTC, San Fabian-San Jacinto, Pangasinan have been graver and have resulted in larger shortages in court collections than

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[12] *Rollo,* p. 243.

[13] *Id.* at 375-376.

[14] *Id.* at 378.

those of Clerk of Court II Victorio A. Dion, her predecessor.[15] In *Office of the Court Administrator v. Dion,*[16] the Court dismissed Victorio Dion based on the same charges lodged against Castillo, but for a court collection shortage amounting to ₱30,000.00 only or 5% of Castillo's accountability of ₱597,155.10. As the OCA noted, Dion tried to refute the evidence presented against him, but in the end, he admitted his misdeed; he later settled his accountability, but was nevertheless dismissed from the service by the Court.

Castillo deserves no less than the sanction meted on Dion. She readily admitted the large amounts of shortages she incurred in the court collections but failed to explain these shortages. Although she ultimately settled her accountabilities through her salaries, allowances and part of the monetary value of her leave credits, restitution of the deficit cannot erase the serious breach she committed in the handling of court funds, to the grave prejudice of the Court and the Judiciary as a whole.

Castillo miserably failed to carry out the responsibilities of her office. As we stressed in *Office of the Court Administrator v. Dureza-Aldevera,*[17] the clerk of court is primarily accountable for all funds collected for the Court, whether personally received by him or by a duly appointed cashier under his supervision and control. As the custodian of court funds, revenues, records, properties and premises, he is liable for any loss, shortage, destruction or impairment of these funds and properties, and may be dismissed from the service for violation of this duty.[18] For her serious breach of duty as clerk of court, Castillo should be removed from office.

Under Section 58(a), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the penalty of dismissal

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[15] Who served from February 13, 1995 to February 28, 2001.

[16] A.M. No. P-10-2799, January 18, 2011, 639 SCRA 640, 643.

[17] A.M. No. P-01-1499, September 26, 2006, 503 SCRA 18, 45-46.

[18] *Ibid.,* citing *OCA v. Bernardino*, A.M. No. P-97-1258, January 31, 2005, 450 SCRA 88, 119-120.

shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service, unless otherwise provided in the decision. By jurisprudence, the Court has additionally imposed the forfeiture of all other benefits, except accrued leave credits, of an erring court employee who has failed to meet the strictest standards of honesty and integrity in the discharge of his/her judicial office in the management of court funds.[19]

With these considerations and in view of the enormity of Castillo's infidelity in the collection of court funds, we deem it appropriate to order the forfeiture of Castillo's retirement benefits and all other benefits due her, except accrued leave credits. To clarify, she is entitled to be paid the salaries and allowances she has earned up to the time of her dismissal, save only for what may be needed to cover her confirmed deficiencies for her accounts with the Court.

WHEREFORE, premises considered, Clerk of Court II Liza P. Castillo is **DISMISSED** from the service, effective from the date of finality of this decision, for gross neglect of duty, dishonesty and grave misconduct. She shall also suffer the **FORFEITURE** of all benefits still due her, except accrued leave credits, salaries and allowances earned that are in excess of what have been applied to her accountabilities, and **PERPETUAL DISQUALIFICATION FROM REEMPLOYMENT** in the government service, including government-owned and controlled corporations.

Acting Presiding Judge Rusty M. Naya is **DIRECTED** to:

1. Closely monitor the financial transactions of the 4th Municipal Circuit Trial Court (MCTC), San Fabian-San Jacinto, Pangasinan; otherwise, he shall be held equally liable for the infractions committed by employees under his supervision; and

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[19] *Office of the Court Administrator v. Nacuray,* 521 Phil. 32, 41 (2006); see also *OCA v. Yan*, 496 Phil. 843, 853 (2005); and *Office of the Court Administrator v. Dion, supra* note 16, at 644.

2. Study and implement procedures that shall strengthen internal control over financial transactions of the MCTC.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Villarama, Jr., J., on official leave.

EN BANC

[A.M. No. P-12-3086. September 18, 2012]
(Formerly A.M. No. 11-7-75-MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **SUSANA R. FONTANILLA, Clerk of Court, Municipal Circuit Trial Court, San Narciso-Buenavista, San Narciso, Quezon,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; MANDATED TO IMMEDIATELY DEPOSIT WITH THE LAND BANK OF THE PHILIPPINES OR WITH THE AUTHORIZED GOVERNMENT DEPOSITORIES THEIR COLLECTIONS ON VARIOUS FUNDS.—** SC Circular No. 13-92 mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Section 3, in relation to Section 5 of SC Circular No. 5-93, specifically designates the LBP as the authorized government depositary of the JDF. x x x [The] directives in the circulars are mandatory,

designed to promote full accountability for government funds. Clerks of Court, tasked with the collections of court funds, are duty bound to immediately deposit with the LBP or with the authorized government depositories their collections on various funds because they are not authorized to keep funds in their custody. The unwarranted failure to fulfill this responsibility deserves administrative sanction and not even the full payment, as in this case, of the collection shortages will exempt the accountable officer from liability.

2. **ID.; ID.; ID.; ID.; ID.; LIABLE FOR ANY LOSS OR SHORTAGE OF COURT FUNDS AS CUSTODIANS OF THESE FUNDS.—** Although the Court understands the plight of Fontanilla, it cannot condone her wrongdoing. As custodian of the court's funds and revenues, she was entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. She was an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. She was, therefore, liable for any loss, shortage, destruction, or impairment of said funds and property. As held in *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar,* shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the clerk of court shall be administratively liable.

3. **ID.; ID.; ID.; ID.; ID.; DISHONESTY; DELAY IN THE REMITTANCE OF COLLECTION, A CASE OF.—** Delay in the remittance of collection is a serious breach of duty. It deprives the Court of the interest that may be earned if the amounts are promptly deposited in a bank; and more importantly, it diminishes the faith of the people in the Judiciary. This act constitutes dishonesty which carries the extreme penalty of dismissal from the service even if committed for the first time. In this case, however, Fontanilla, in a show of remorse, immediately returned the withdrawals and complied with the directives of the audit team. Considering that this is her first offense, the Court finds the penalty of ₱40,000.00 fine as sufficient.

4. **ID.; ID.; ID.; ID.; MUST ACT WITH PROPRIETY AND DECORUM AND BEYOND SUSPICION.—** Every public

official should realize that "public office is a public trust. Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct, at all times, be characterized by propriety and decorum but, above all else, it must be beyond suspicion."

R E S O L U T I O N

MENDOZA, *J.*:

This administrative matter stemmed from the financial audit report,[1] dated November 22, 2011, conducted by the Court Management Office, Office of the Court Administrator *(CMO-OCA)*, on the books of accounts of Susana R. Fontanilla *(Fontanilla)*, Clerk of Court, Municipal Circuit Trial Court, San Narciso-Buenavista, San Narciso, Quezon *(MCTC)*.

On January 26, 2009, the OCA requested for authority from the Court to withhold Fontanilla's salaries for her continuous failure to submit the required monthly reports of collections, deposits and withdrawals for the Judiciary Development Fund *(JDF)*, Special Allowance for the Judiciary Fund and Fiduciary Fund. The request was approved on January 27, 2009.[2]

In her Letter,[3] Fontanilla admitted that she used some of her collections for her personal needs because of financial difficulties. She explained that, as she was the bread winner of the family, she used the money for the family's sustenance, education of her children and medical expenses of her husband and parent.

In another Letter,[4] dated December 17, 2010, Fontanilla informed the OCA that she had submitted the required monthly reports and deposited all the cash balances on hand and attached

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[1] *Rollo*, pp. 14-29.

[2] *Id.* at 5.

[3] *Id.* at 4.

[4] *Id.* at 8.

the validated deposit slips as proof thereof. In the same letter, Fontanilla requested the release of her withheld salaries.

Upon recommendation of the OCA, the Court, in its Resolution,[5] dated July 19, 2011, ordered the release of the salaries of Fontanilla beginning April 2011 and authorized the Fiscal Monitoring Division, CMO-OCA, to conduct a financial audit on the books of accounts covering the period from October 1984 to September 8, 2011. Subsequently, Fontanilla was relieved as Clerk of Court and Ericson E. Musa *(Musa),* Court Stenographer I, was designated as Officer-in-Charge.

Based on the audit conducted, Fontanilla's collections were all accounted for in the Court's financial records. It was, however, revealed that there were unauthorized withdrawals amounting to ₱28,000.00, resulting in a cash shortage in the Fiduciary Fund. The amounts and dates of the withdrawals were: ₱4,000.00 on March 8, 2006, ₱12,000.00 on December 11, 2006, and another ₱12,000.00 on January 23, 2008. On October 20, 2011, Fontanilla restituted the said amounts.

The audit team noted that although no cash shortage was found in the other judiciary funds, Fontanilla delayed the remittances of collections which deprived the Court of the interests that would have accrued had the collections been deposited on time.

During the audit, it was also discovered that, as of August 31, 2011, the MCTC had Fiduciary Fund deposits with the Municipal Treasurer's Office, San Narciso, Quezon, in the amount of ₱141,500.00, which should have been withdrawn and deposited in the Land Bank of the Philippines *(LBP),* Mulanay, Quezon Branch, the Court's authorized depository bank.

The audit team likewise found out that the MCTC was not collecting the Process Server's Fee and the Mediation Fee as required under Section 9 of the Amended Administrative Circular No. 35-2004. The audit team, thus, advised Musa to collect the process server's fee and disburse the same in accordance with

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[5] *Id.* at 10.

the aforementioned circular; and to collect the mediation fee, remit it to its corresponding account, and prepare the monthly reports relative thereto.

In its Memorandum,[6] dated July 25, 2012, the OCA adopted the recommendation of the audit team, as follows:

> 1) This report be DOCKETED as a regular administrative matter against Ms. Susana R. Fontanilla, Clerk of Court, Municipal Circuit Trial Court, San Narciso-Buenavista, Quezon;
>
> 2) A FINE of ₱10,000.00 be IMPOSED upon Ms. Fontanilla for not depositing her collections and not submitting the required Monthly Reports of Collections, Deposits and Withdrawals within the prescribed period;
>
> 3) The Finance Division, FMO, OCA, be DIRECTED to RELEASE the withheld salaries of Ms. Susana R. Fontanilla and to DEDUCT therefrom the FINE of ₱10,000.00 and the amount of ₱52,799.87 representing interests that could have been earned had the collections [been] deposited within the prescribed period;
>
> 4) The Cash Division, FMO, OCA, be DIRECTED to DEPOSIT amounts of ₱10,000.00 and ₱52,799.87 referred to in no. 3 above, to the accounts of the Special Allowance for the Judiciary Fund and Judiciary Development Fund, respectively, and FURNISH the Fiscal Monitoring Division, CMO, OCA, with copies of machine-validated deposits slips as proof of compliance thereof;
>
> 5) Incumbent Officer-in-Charge Mr. Ericson E. Musa be DIRECTED to:
>
> a. WITHDRAW the fiduciary fund deposits of ₱141,500.00 [from] the Municipal Treasurer's Office (MTO), San Narciso, Quezon and TRANSFER the amount to the fiduciary fund account with the Land Bank of the Philippines pursuant to Circular No. 50-95; and
>
> b. FURNISH the Fiscal Monitoring Division, CMO, OCA, with the copy of the machine-validated deposit

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

slip/certified true copy of passbook as proof of remittance of the amount of ₱141,500.00 transferred from MTO;

6) Hon. Walter Inocencio V. Arreza, Acting Presiding Judge, MCTC, San Narciso-Buenavista, Quezon, be DIRECTED to STRICTLY MONITOR the incumbent Officer-in-Charge relative to the compliance with the circulars and issuances of the Court particularly in the handling of judiciary funds, otherwise, he shall be held equally liable for the infraction committed by the employee under his command/supervision.

The Court finds the recommendation of the OCA to be well-taken except as to the amount of the fine.

SC Circular No. 13-92 mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Section 3, in relation to Section 5 of SC Circular No. 5-93, specifically designates the LBP as the authorized government depositary of the JDF. It reads:

3. Duty of the Clerks of Court, Officers-in-Charge or accountable officers. — The Clerks of Court, Officers-in-Charge, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefore, maintain a separate cash book properly marked x x x deposit such collections in the manner herein prescribed and render the proper Monthly Report of Collections for said Fund.

4. x x x x x x x x x

5. Systems and Procedures:

x x x x x x x x x

c. In the RTC, SDC, MeTC, MTCC, MTC, and SCC. — The daily collections for the Fund in these courts shall be deposited every day with the local or nearest LBP branch For the account of the Judiciary Development Fund, Supreme Court, Manila — Savings Account No. 159-01163; or if depositing daily is not possible, deposits of the Fund shall be

> every second and third Fridays and at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days before indicated.
>
> Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court at the latest before 3:00 of that particular week.
>
> x x x x x x x x x
>
> d. Rendition of Monthly Report. – Separate "Monthly Report of Collections" shall be regularly prepared for the Judiciary Development Fund, which shall be submitted to the Chief Accountant of the Supreme Court within ten (10) days after the end of every month, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.
>
> The aggregate total of the Deposit Slips for any particular month should always equal to, and tally with, the total collections for that month as reflected in the Monthly Report of Collections.
>
> If no collection is made during any month, notice to that effect should be submitted to the Chief Accountant of the Supreme Court by way of a formal letter within ten (10) days after the end of every month.

These directives in the circulars are mandatory, designed to promote full accountability for government funds.[7] Clerks of Court, tasked with the collections of court funds, are duty bound to immediately deposit with the LBP or with the authorized government depositories their collections on various funds because they are not authorized to keep funds in their custody.[8] The

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[7] *Re: Initial Report on the Financial Audit conducted in the Municipal Trial Court of Pulilan, Bulacan*, A.M. No. 01-11-291-MTC, July 7, 2004, 433 SCRA 486, 493.

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

unwarranted failure to fulfill this responsibility deserves administrative sanction and not even the full payment, as in this case, of the collection shortages will exempt the accountable officer from liability.[9]

In the case at bench, Fontanilla did not only delay the remittance of her collections but also incurred shortages amounting to ₱28,000.00. She admitted her fault, explaining that she used the money for her family's sustenance, for the education of her children, and for the medical expenses of her spouse and mother.

Although the Court understands the plight of Fontanilla, it cannot condone her wrongdoing. As custodian of the court's funds and revenues, she was entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. [10] She was an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. She was, therefore, liable for any loss, shortage, destruction, or impairment of said funds and property.[11] As held in *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar,*[12] shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the clerk of court shall be administratively liable.

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

[10] *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel , Bulacan*, 465 Phil. 24, 37, (2004).

[11] *Office of the Court Administrator v. Lising*, A.M. No. P-03-1736, March 8, 2005, 453 SCRA 16, 22.

[12] A.M. No. P-09-2721 (Formerly A.M. No. 09-9-162-MCTC), February 16, 2010, 612 SCRA 509.

Delay in the remittance of collection is a serious breach of duty.[13] It deprives the Court of the interest that may be earned if the amounts are promptly deposited in a bank;[14] and more importantly, it diminishes the faith of the people in the Judiciary.[15] This act constitutes dishonesty which carries the extreme penalty of dismissal from the service even if committed for the first time.[16]

In this case, however, Fontanilla, in a show of remorse, immediately returned the withdrawals and complied with the directives of the audit team. Considering that this is her first offense, the Court finds the penalty of ₱40,000.00 fine as sufficient.

Every public official should realize that "public office is a public trust. Those charged with the dispensation of justice, from the justices and judges to the lowliest clerks, should be circumscribed with the heavy burden of responsibility. Not only must their conduct, at all times, be characterized by propriety and decorum but, above all else, it must be beyond suspicion."[17]

Again, the OCA is reminded to expand the coverage of the check payment system in all cities and capital towns in the provinces in order to minimize, if not to eliminate the irregularities in the collection of court funds.[18]

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[13] *In re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan, Officer-in-charge, Regional Trial Court, Branch 117, Pasay City,* 445 Phil. 220 (2003).

[14] *In-House Financial Audit Conducted in the Books of Accounts of Khalil B. Dipatuan, RTC-Malabang, Lanao Del Sur,* A.M. No. P-06-2121 (Formerly OCA A.M. No. 05-12-746-RTC), June 26, 2008, 555 SCRA 417, 423.

[15] *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho,* A.M. No. P-06-2177, 526 Phil. 42 (2006).

[16] *Id.*

[17] *Office of the Court Administrator v. Nini*, A.M. No. P-11-3002 (Formerly A.M. No. 11-9-96-MTCC), April 11, 2012.

[18] *Office of the Court Administrator v. Lometillo*, A.M. No. P-09-2637, March 29, 2011, 646 SCRA 542, 565.

WHEREFORE, finding Susan R. Fontanilla, Clerk of Court, Municipal Circuit Trial Court, San Narciso-Buenavista, San Narciso, Quezon, **GUILTY** of grave misconduct for her failure to make timely remittance of judiciary funds in her custody, the Court hereby orders her to pay a **FINE** of ₱40,000.00 with a **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

The Finance Division, Fiscal Management Office, Office of the Court Administrator, is **DIRECTED** to **RELEASE** the withheld salary of Susana Fontanilla, *deducting* the fine of ₱40,000.00, to **DEPOSIT** said amounts to the accounts of the Special Allowance for the Judiciary Fund and Judiciary Development Fund, respectively, and to **FURNISH** the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, copies of machine validated deposit slips as proof of compliance.

Ericson E. Musa, Court Stenographer I and Officer-in-Charge, Municipal Circuit Trial Court, San Narciso-Buenavista, Quezon, is **DIRECTED** to **WITHDRAW** the fiduciary fund deposit of ₱141,500.00 from the Municipal Treasurer's Office, San Narciso, Quezon, and to **TRANSFER** the said amount to the fiduciary fund account with the Land Bank of the Philippines pursuant to SC Circular No. 50-95; and to **FURNISH** the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, copies of machine- validated deposit slips/ certified true copy of passbook as proof of compliance.

The Hon. Walter Inocencio V. Arreza, Acting Presiding Judge, Municipal Circuit Trial Court, San Narciso-Buenavista, Quezon, is **ENJOINED** to strictly monitor the financial transactions of MCTC, San Narciso-Buenavista, Quezon, in strict compliance with the issuances of the Court and to avoid recurrence of irregularity in the collection, deposit and withdrawal of court funds; otherwise, he will be held equally liable for the infractions to be committed by erring employees under his supervision.

Lastly, the Office of the Court Administrator is hereby ordered to expand the coverage of the check payment system in all cities and capital towns in the provinces.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Villarama, Jr., J., on official leave.

Perez, J., no part.

EN BANC

[G.R. No. 176343. September 18, 2012]

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **MA. ROSARIO S. MANALANG-DEMIGILLO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; THE REVISED ADMINISTRATIVE CODE OF 1987; CIVIL SERVICE OFFICER OR EMPLOYEE; PREVENTIVE SUSPENSION; WHEN AUTHORIZED.—** [T]he imposition of preventive suspension by the proper disciplining authority is authorized provided the charge involves dishonesty, oppression, or grave misconduct, or neglect in the performance of duty, *or* if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service. Section 51 nowhere states or implies that before a preventive suspension may issue there must be proof that the subordinate may unduly influence the witnesses against him or may tamper the documentary evidence on file in her office.

2. **ID.; ID.; CIVIL SERVICE UNIFORM RULES; PREVENTIVE SUSPENSION; PREREQUISITES.—** It is clear from Section 19 x x x [of Rule II of the CSC Uniform Rules] that before an order of preventive suspension pending an investigation may validly issue, only two prerequisites need be shown, namely: (1) that the proper disciplining authority has served a formal charge to the affected officer or employee; and (2) that the charge involves either dishonesty, oppression, grave misconduct, neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of the charges which would warrant her removal from the service. Proof showing that the subordinate officer or employee may unduly influence the witnesses against her or may tamper the documentary evidence on file in her office is not among the prerequisites.

3. **ID.; ID.; ID.; ID.; PREVENTING THE SUBORDINATE OFFICER OR EMPLOYEE FROM INFLUENCING THE WITNESSES AND TAMPERING THE DOCUMENTARY EVIDENCE UNDER HER CUSTODY ARE MERE PURPOSES FOR WHICH AN ORDER OF SUSPENSION MAY ISSUE.—** Preventing the subordinate officer or employee from influencing the witnesses and tampering the documentary evidence under her custody are mere purposes for which an order of preventive suspension may issue as reflected under paragraph 2 of Section 19 x x x [of Rule II of the CSC Uniform Rules]. This is apparent in the phrase "for the same purpose" found in paragraph 3 of Section 19. A "purpose" cannot be considered and understood as a "condition." A purpose means "reason for which something is done or exists," while a condition refers to a "necessary requirement for something else to happen;" or is a "restriction, qualification." The two terms have different meanings and implications, and one cannot substitute for the other.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Roberto A. Demigillo for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The issuance by the proper disciplining authority of an order of preventive suspension for 90 days of a civil service officer or employee pending investigation of her administrative case is authorized provided that a formal charge is served to her and the charge involves dishonesty, oppression, grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that she is guilty of the charge as to warrant her removal from the service. Proof showing that the respondent officer or employee may unduly influence the witnesses against her or may tamper the documentary evidence on file at her office is not a prerequisite before she may be preventively suspended.

Antecedents

Trade and Investment Development Corporation of the Philippines (TIDCORP) is a wholly owned government corporation whose primary purpose is to guarantee foreign loans, in whole or in part, granted to any domestic entity, enterprise or corporation organized or licensed to engage in business in the Philippines.[1]

On May 13, 2003, the Board of Directors of TIDCORP formally charged Maria Rosario Manalang-Demigillo (Demigillo), then a Senior Vice-President in TIDCORP, with grave misconduct, conduct prejudicial to the best interest of the service, insubordination, and gross discourtesy in the course of official duties. The relevant portions of the formal charge read:

> After a thorough study, evaluation, and deliberation, the Board finds merit to the findings and recommendation of the Investigating Committee on the existence of a probable cause for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service, Insubordination, and Gross Discourtesy in the Course of Official Duties. However and to avoid any suspicion of partiality in the conduct of the investigation, the Board hereby refers this case to the Office of the

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[1] Sections 2 and 3 of Republic Act No. 8494.

Government Corporate Counsel to conduct a formal investigation on the following:

1) The incident during the Credit Committee Meeting on 06 March 2002 where you allegedly engaged yourself in a verbal tussle with Mr. Joel C. Valdes, President and CEO. Allegedly, you raised your voice, got angry, shouted at Mr. Valdes and were infuriated by his remarks such as "are we talking of apples and apples here?", "everybody should focus on the issues at hand" and "out of the loop";

2) The incident during the Reorganization Meeting on 18 July 2002 where you appeared to have been rude and arrogant in the way you answered Mr. Valdes to some questions like "*Ano gusto mo? Bibigay ko personally sa iyo…sasabihan ko personally ikaw?", "You know Joel alam natin sa isa't-isa…that…I don't know how to term it…there is no love lost no?", "Ang ibig sabihin kung may galit ka…" "Let's be candid you know…" "What is the opportunity? Let me see…pakita ko sa'yo lahat ang aking ano…" and "Anong output tell me?*";

3) The incident during the Planning Session on 05 August 2002. Records show that you reacted to the statement of Mr. Valdes urging everybody to give support to the Marketing Group in this manner — "But of course, we would not want to be the whipping boy!" Records also show that in the same meeting, you used arrogant and threatening remarks to the President and CEO like "don't cause division to hide your inefficiency and gastos! If you push me to the wall, I have goods on you too…", "You want me to charge you to the Ombudsman?", "*May humihingi ng documents sa akin, sabayan ko na sila,*" "Now I'm fighting you openly…"and "I am threatening you";

4) The incident involving your Memorandum to Mr. Valdes dated 19 September 2002, the pertinent portions of which read, as follows:

> "I am repulsed and nauseated by the information that yesterday, 18 September 2002 at the OPCOM meeting, you claim to have talked to me or consulted me about the car you caused to be purchased for the Corporate Auditor Ms. Maria Bautista.
>
> I have never talked to you about your desire to give Ms. Bautista a car.

> This is a brazen lie, a fabrication. Such moral turpitude! How low, how base, how desperate!
>
> Accordingly, as you have given me no (sic), I am taking you to task for this and all the illegal acts you have done and are doing against me and TIDCORP."

It appears that the said Memorandum was circulated even to those who were not privy to the cause of the issuance of such statement.

5) The incident where you assisted and made it appear to be acting as counsel of Mr. Vicente C. Uy in the case involving the latter relative to the conduct of the APEC Capacity Building for Trade and Investment Insurance Training Program in April 2002;

6) The incident on 13 November 2002 where you allegedly urged and induced officials and employees at the 3rd floor of TIDCORP to proceed to the Office of the President and CEO to give support to EVP Jane Tambanillo who was allegedly then being forced to resign by Mr. Valdes. This caused not only a commotion but disturbance and disruption of the office work at both 3rd and 4th floors;

7) The incident on 13 November 2002 where you allegedly shouted at Atty. Jane Laragan and berated Mr. Valdes in front of officers and employees whom you gathered as per allegation number 6; and

8) Relative to allegation number 7, your stubborn refusal to obey the order of Mr. Valdes to go back to work as it was only 9:30 a.m. and instead challenged him to be the one to bring you down to the 3rd floor instead of asking the guard to do so.

Pursuant to Section 16, Rule II of the Uniform Rules on Administrative Cases in the Civil Service and in the spirit of justice, fair play, and due process, you are hereby given the opportunity to submit additional evidence to what you have already submitted during the preliminary investigation, if any to the Board, through the OGCC, within seventy two (72) hours from receipt of this Memorandum.

In this regard, you are informed of your right to be assisted by a counsel of your choice and to indicate in your answer whether or not you elect a formal investigation. Nevertheless, and in accordance with the aforecited provision of the Uniform Rules on Administrative Cases in the Civil Service, any requests for clarification, bills of

particulars or motion to dismiss which are obviously designed to delay the administrative proceeding shall not be entertained. If any of these pleadings are interposed, the same shall be considered as an answer and shall be evaluated as such.

Finally, and after considering Section 19 of the same Rules, which gives authority to the disciplining body to issue an order of preventive suspension, you are hereby preventively suspended for a period of ninety (90) days from receipt hereof.

Let a copy of this memorandum and the complete records of the case be forwarded immediately to the Office of the Government Corporate Counsel (OGCC) for appropriate action.[2]

TIDCORP referred the charge to the Office of the Government Corporate Counsel (OGCC) for formal investigation and reception of evidence. Pending the investigation, TIDCORP placed Demigillo under preventive suspension for 90 days.[3]

Demigillo assailed her preventive suspension in the Civil Service Commission (CSC),[4] which issued on January 21, 2004 Resolution No. 040047 declaring her preventive suspension to be "not in order."[5] The CSC stated that under Section 19(2), Rule II, of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules), a civil service officer like Demigillo might be preventively suspended by the disciplining authority only if any of the two grounds were present, to wit: (1) there was a possibility that the civil service employee might unduly influence or intimidate potential witnesses against him; or (2) there was a possibility that the civil service employee might tamper the documentary evidence on file in her office.[6] According to the CSC, TIDCORP did not prove with substantial evidence the existence of any of such grounds, explaining thus:

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[2] *Rollo*, pp. 56-59.

[3] *Id.*

[4] *Id.* at 60-68.

[5] *Id.* at 124-130.

[6] *Id.* at 128.

xxx. As the party claiming affirmative evidence, that is, Demigillo's possibility of influencing potential witnesses or tampering with evidence, TIDCORP is bound to prove the same by substantial evidence. However, it failed to. TIDCORP claims that its witnesses *"refused to issue any sworn statement during the preliminary investigation in deference to their immediate superior x x x and that the same witnesses, however, intimated that they may be compelled to tell the truth if called to testify during the investigation."* On the basis of these statements, it is clear that the witnesses' refusal to execute sworn statement is by reason of their *"deference"* to Demigillo not on account of her *"intimidation or influence."* Further, the fact that said witnesses *"will be compelled to tell the truth"* is not because of Demigillo's continued presence or absence in the office but because they are bound by their oath to tell the truth during the investigation. Under these circumstances, it is not difficult to ascertain that the order of preventive suspension is not necessary.

Anent the potential tampering of documents by Demigillo, the Commission similarly finds the same remote. There is no showing that the documentary evidence of the case leveled against her were in her possession or custody as would otherwise justify the imposition of preventive suspension. As borne by the evidence on record, the acts complained of against Demigillo constitute verbal tussles between her and President Valdes which were all recorded and documented by the TIDCORP. In this situation, there is no chance of Demigillo's tampering with documents.

From the foregoing disquisition, the Commission finds that the preventive suspension of Demigillo for ninety (90) days was improvidently made because the possibility of exerting/influencing possible witnesses or tampering with documents, which is the evil sought to be avoided in this case, does not exist.[7]

Upon denial of its motion for reconsideration by the CSC,[8] TIDCORP appealed to the Court of Appeals (CA),[9] submitting the sole issue of:

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[7] *Id.* at 129.

[8] *Id.* at 131-137.

[9] *Id.* at 191-204.

WHETHER OR NOT THE CSC ERRED IN SO HOLDING THE PREVENTIVE SUSPENSION OF APPELLANT DEMIGILLO WAS NOT IN ORDER.[10]

On November 7, 2006, the CA promulgated its decision affirming the CSC,[11] holding and ruling as follows:

The main issue in this case is whether or not respondent Demigillo was validly placed under preventive suspension on the ground that she could possibly influence or intimidate potential witnesses or tamper the evidence on record in her office, thus, affecting the investigation of the case against her.

Petitioner argues that the preventive suspension imposed against respondent Demigillo is valid as it is in accordance with the CSC rules and regulations and Section 51, Chapter 6, Title I (A), Book V of Executive Order No. 292 which states that "the proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service", hence, the CSC erred in holding the same not in order. Further, petitioner contends that since the provision of the Administrative Code of 1987 on preventive suspension does not set any condition on its imposition, the provision in the Uniform Rules on Administrative Cases in the Civil Service promulgated by the CSC should be stricken out as it is not found in the law itself.

We are not persuaded.

We agree with the CSC Resolution No. 040047 which cited Section 19 (paragraph 2), Rule II, Uniform Rules on Administrative Cases in the Civil Service as basis in ruling against the order of preventive suspension against herein respondent. The pertinent portion of the provision reads, as follows:

> An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his

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[10] *Id.* at 194-195.

[11] *Id.* at 45-53.

> misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office.

Based on the aforequoted provision, any of the two grounds: (1) to preclude the possibility of exerting undue influence or pressure on the witnesses against him; or (2) tampering of documentary evidence on file with his office, can be validly invoked by the disciplining authority to justify the imposition of the preventive suspension. As correctly pointed out by respondent in her motion for leave to file and admit attached comment, and comment to amended petition for review, under Section 19 (paragraph 2), Rule II, of the Uniform Rules of Administrative Cases in the Civil Service (URACCS), preventive suspension is warranted in order to preclude the respondent from exerting "undue influence" on the witnesses against her. But in this case, TIDCORP failed to prove the possibility of respondent exerting undue influence on the witnesses, but instead CSC found TIDCORP to have admitted unequivocally that it is because of the witnesses' deference or respect for respondent that they did not execute sworn statements. Indeed, the esteem or respect given is not undue influence; it even negates any wrongdoing on the part of respondent. Indeed, the alleged incidents being harped about by TIDCORP do not in any way prove undue influence of respondent on the witnesses. The incidents involved mere verbal tussles between Mr. Joel Valdes, TIDCORP President and CEO, respondent Demigillo and Jane Larangon, who had already executed her affidavit even before respondent's preventive suspension. In brief, TIDCORP failed to prove undue influence as there is nothing in those incidents showing the commission or coercion or compulsion upon one to do what is against his will.

We agree with the findings of the CSC that respondent's possibility to exert undue influence or pressure on the witnesses against her is remote. The purpose of preventive suspension is to avoid the possibility on the part of the person charged of a certain offense, to exert influence or undue pressure on the potential witnesses against her. In *Gloria vs. Court of Appeals,* the High Court said that preventive suspension pending investigation is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. And as correctly pointed out by the CSC, the possibility of exerting influence or pressure on the potential witnesses does

not exist in this case because the complainant or the person who stands to be a witness for the government is influential, so to speak, as he holds the highest position in TIDCORP. It is really difficult to imagine that a person who occupies the highest position in an organization could be influenced or intimidated by his subordinate. The president of the organization has greater degree of control in the organization, and to claim that he could be intimated or influenced by his subordinate is baseless and unbelievable. Considering that Valdes was President of TIDCROP and a primary witness against respondent who is his mere subordinate, we find no valid ground for petitioner to impose preventive suspension against respondent.

Moreover, as correctly pointed out by the CSC in its resolution, as the party claiming affirmative relief, TIDCORP is bound to prove the basis thereof, *i.e.* respondent's possibility of influencing potential witnesses or tampering with the evidence, by substantial evidence, which it failed to do. There is no showing that the documentary evidence against respondent are in her possession or custody. The acts complained of against respondent arose out of the verbal tussles between her and President Valdes which were all recorded and documented by TIDCORP. In this situation, there is no chance for respondent's tampering with the documents.

As regards the argument that since the provision of the Administrative Code of 1987 on preventive suspension does not set any condition on its imposition, the provision in the Uniform Rules on Administrative Cases in the Civil Service promulgated by the CSC should be stricken out as it is not found in the law itself, we rule in the negative.

We agree with respondent that the aforequoted argument of petitioner is misplaced and unfounded. Section 12 (2), Chapter 3, Tile I (A) of Book V of the Revised Administrative Code, provides that among the powers and functions of the Civil Service Commission is to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws. It is on the basis of this grant of power to the CSC that CSC Resolution No. 991936, otherwise known as the *Uniform Rules on Administrative Cases in the Civil Service* was promulgated.

Indeed, the rule-making power of the administrative body is intended to enable it to implement the policy of the law and to provide for the more effective enforcement of its provisions. Through the exercise of this power of subordinate legislation, it is possible for

the administrative body to transmit "the active power of the state from its source to the point of application," that is, apply the law and so fulfill the mandate of the legislature. It is an elementary rule in administrative law that administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, are entitled to great respect, and have in their favor a presumption of legality.

Furthermore, Section 10 of Rule 43 of the 1997 Rules of Civil Procedure, provides that the findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals. Indeed, jurisprudence is replete with the rule that findings of fact of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect, but at times even finality if such findings are supported by substantial evidence.

WHEREFORE, the instant petition is **DENIED**. The assailed Resolutions dated January 21, 2004 and June 7, 2004, issued by the Civil Service Commission, are **AFFIRMED**.

SO ORDERED.[12]

Hence, TIDCORP has appealed to the Court.[13]

Issue

The sole issue concerns the validity of TIDCORP's 90-day preventive suspension of Demigillo.

Ruling

We grant the petition, and hold that the 90-day preventive suspension order issued against Demigillo was valid.

The *Revised Administrative Code of 1987* (RAC) embodies the major structural, functional and procedural principles and rules of governance of government agencies and constitutional bodies like the CSC. Section 1, Chapter 1, Subtitle A, Title I, Book V, of the RAC states that the CSC is the central personnel

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[12] *Id.* at 49-52.

[13] *Id.* at 18-39.

agency of the government. Section 51 and Section 52, Chapter 6, Subtitle A, Title I, Book V of the RAC respectively contain the rule on preventive suspension of a civil service officer or employee pending investigation, and the duration of the preventive suspension, *viz*:

Section 51. *Preventive Suspension*. — The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

Section 52. *Lifting of Preventive Suspension Pending Administrative Investigation*. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

Under Section 51, *supra*, the imposition of preventive suspension by the proper disciplining authority is authorized provided the charge involves dishonesty, oppression, or grave misconduct, or neglect in the performance of duty, *or* if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service. Section 51 nowhere states or implies that before a preventive suspension may issue there must be proof that the subordinate may unduly influence the witnesses against him or may tamper the documentary evidence on file in her office.

In *Gloria v. Court of Appeals*,[14] several public school teachers were preventively suspended for 90 days while being investigated for the charge of grave misconduct, among others. Citing

[14] G.R. No. 131012, April 21, 1999, 306 SCRA 287.

Section 51 of the RAC, the Court sustained the imposition of the 90-day preventive suspension pending investigation of the charges, saying:

The preventive suspension of civil service employees charged with dishonesty, oppression or grave misconduct, or neglect of duty is authorized by the Civil Service Law. It cannot, therefore, be considered "unjustified," even if later the charges are dismissed so as to justify the payment of salaries to the employee concerned. It is one of those sacrifices which holding a public office requires for the public good xxx.[15]

Pursuant to its rule-making authority, the CSC promulgated the Uniform Rules on August 31, 1999. Section 19 and Section 20 of Rule II of the Uniform Rules defined the guidelines in the issuance of an order of preventive suspension and the duration of the suspension, to wit:

Section 19. *Preventive Suspension*. — Upon petition of the complainant or *motu proprio*, the proper disciplining authority may issue an order of preventive suspension upon service of the Formal Charge, or immediately thereafter to any subordinate officer or employee under his authority pending an investigation, if the charge involves:

a. dishonesty;

b. oppression;

c. grave misconduct;

d. neglect in the performance of duty; or

e. if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office.

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[15] *Id.* at 301.

In lieu of preventive suspension, for the same purpose, the proper disciplining authority or head of office may reassign respondent to other unit of the agency during the formal hearings.

Section 20. *Duration of Preventive Suspension*. — When the administrative case against an officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of his preventive suspension, unless otherwise provided by special law, he shall be automatically reinstated in the service; provided that, when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the 90 calendar days period of preventive suspension. Provided further that should the respondent be on Maternity/Paternity leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully enjoyed.

It is clear from Section 19, *supra*, that before an order of preventive suspension pending an investigation may validly issue, only two prerequisites need be shown, namely: (1) that the proper disciplining authority has served a formal charge to the affected officer or employee; and (2) that the charge involves either dishonesty, oppression, grave misconduct, neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of the charges which would warrant her removal from the service. Proof showing that the subordinate officer or employee may unduly influence the witnesses against her or may tamper the documentary evidence on file in her office is not among the prerequisites.

Preventing the subordinate officer or employee from influencing the witnesses and tampering the documentary evidence under her custody are mere purposes for which an order of preventive suspension may issue as reflected under paragraph 2 of Section 19, *supra*. This is apparent in the phrase "for the same purpose" found in paragraph 3 of Section 19. A "purpose" cannot be considered and understood as a "condition." A purpose means "reason for which something is done or exists," while a condition refers to a "necessary requirement for something else

to happen;" or is a "restriction, qualification."[16] The two terms have different meanings and implications, and one cannot substitute for the other.

In *Gloria v. Court of Appeals*,[17] we stated that preventive suspension pending investigation "*is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him*." As such, preventing the subordinate officer or employee from intimidating the witnesses during investigation or from tampering the documentary evidence in her office is a purpose, not a condition, for imposing preventive suspension, as shown in the use of the word "intended."

Relevantly, CSC Resolution No. 030502, which was issued on May 5, 2003 for the proper enforcement of preventive suspension pending investigation, provides in part as follows:

WHEREAS, Sections 51 and 52, Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987, set out the controlling standards on the imposition of preventive suspension, as follows:

x x x x x x x x x

WHEREAS, in order to effectuate the afore-quoted provisions of law, the Civil Service Commission, as the central personnel agency of the government empowered, inter alia, with the promulgation, amendment and enforcement of rules and regulations intended to carry out into effect the provisions of the Civil Service Law and other pertinent laws, adopted **Sections 19, 20, and 21 of the Uniform Rules on Administrative Cases in the Civil Service (CSC Memorandum Circular No. 19, s. 1999**), to wit:

x x x x x x x x x

4. The imposition of preventive suspension shall be confined to the well-defined instances set forth under the pertinent provisions of the Administrative Code of 1987 and the Local Government Code of 1991. Both of these laws decree that recourse may be had to preventive suspension where the formal charge involves any of the

[16] Collins, *English Dictionary*, 1999 Edition.

[17] *Supra,* note 12, at 297.

following administrative offenses, or under the circumstances specified in paragraph (e) herein:

a. Dishonesty;

b. Oppression;

c. Grave Misconduct;

d. Neglect in the performance of duty; or

e. If there are reasons to believe that the respondent is guilty of the charge/s, which would warrant his removal from the service.

x x x x x x x x x

a. A declaration by a competent authority that an order of preventive suspension is null and void on its face entitles the respondent official or employee to immediate reinstatement and payment of back salaries corresponding to the period of the unlawful preventive suspension.

The phrase "null and void on its face" in relation to a preventive suspension order imports any of the following circumstances:

i) The order was issued by one who is not authorized by law;

ii) The order was not premised on any of the grounds or causes warranted by law;

iii) The order of suspension was without a formal charge; or

iv) While lawful in the sense that it is based on the enumerated grounds, the duration of the imposed preventive suspension has exceeded the prescribed periods, in which case the payment of back salaries shall correspond to the excess period only.

CSC Resolution No. 030502 apparently reiterates the rule stated in Section 19 of the Uniform Rules, *supra*, that for a preventive suspension to issue, there must be a formal charge and the charge involves the offenses enumerated therein. The resolution considers an order of preventive suspension as null and void if the order was not premised on any of the mentioned grounds, or if the order was issued without a formal charge. As in the case of Section 19, the resolution does not include as a

condition for issuing an order of preventive suspension that there must be proof adduced showing that the subordinate officer or employee may unduly influence the witnesses against her or tamper the documentary evidence in her custody.

Consequently, the CSC and the CA erred in making the purpose of preventive suspension a condition for its issuance. Although, as a rule, we defer to the interpretation by administrative agencies like the CSC of their own rules, especially if the interpretation is affirmed by the CA, we withhold deference if the interpretation is palpably erroneous,[18] like in this instance.

We hold that TIDCORP's issuance against Demigillo of the order for her 90-day preventive suspension pending the investigation was valid and lawful.

WHEREFORE, we **GRANT** the petition for review on *certiorari*; **SET ASIDE** the decision of the Court of Appeals promulgated on November 7, 2006; and **DECLARE AS VALID** the order for the preventive suspension for 90 days of **MA. ROSARIO S. MANALANG-DEMIGILLO** pending her investigation for grave misconduct.

The respondent shall pay the costs of suit.

SO ORDERED.

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

Villarama, Jr., J., on official leave.

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[18] *Eastern Telecommunications Philippines, Inc. vs. International Communication Corporation*, G.R. No. 135992, January 31, 2006, 481 SCRA 163, 167.

EN BANC

[G.R. Nos. 180880-81. September 18, 2012]

KEPPEL CEBU SHIPYARD, INC., *petitioner, vs.* **PIONEER INSURANCE AND SURETY CORPORATION,** *respondent.*

[G.R. Nos. 180896-97. September 18, 2012]

PIONEER INSURANCE AND SURETY CORPORATION, *petitioner, vs.* **KEPPEL CEBU SHIPYARD, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; MATTERS AND CASES COGNIZABLE BY THE COURT *EN BANC*.—** The Internal Rules of the Supreme Court provides that the Court *En Banc* shall act on the following matters and cases: (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question; (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*; (c) cases raising novel questions of law; (d) cases affecting ambassadors, other public ministers, and consuls; (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit; (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos; (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law; (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court; (i) cases where a doctrine

or principle laid down by the Court *en banc* or by a Division may be modified or reversed;(j) cases involving conflicting decisions of two or more divisions; (k) cases where three votes in a Division cannot be obtained; (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community; (m) Subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*; (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.

2. **ID.; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENT; EXCEPTION.—** "[U]nder the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land." This rule notwithstanding, the Court *En Banc* had re-opened and accepted several cases for review and reevaluation for special and compelling reasons. Among these cases were *Manotok IV v. Heirs of Homer L. Barque*, *Apo Fruits Corporation and Hijo Plantation*, *Inc. v. Land Bank of the Philippines*, *League of Cities of the Philippines v. Commission on Elections*, and *Navarro v. Ermita*. In these cases, the exception to the doctrine of immutability of judgment was applied in order to serve substantial justice. The application was in line with its *power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it.* "The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final."

3. **ID.; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; RESOLUTION AND DISPOSITION OF A CASE BY THE COURT *EN BANC*, EXPLAINED.—** [W]hen the Court *En Banc* entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of rendering objective

and fair justice. The action of the Court simply means that the nature of the cases calls for *en banc* attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It is merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership that, indeed, the subject case is of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of the Highest Court of the land are always imbued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and resolutions of the Court to the end that public interest be duly safeguarded and the rule of law be observed.

4. **ID.; CIVIL PROCEDURE; APPEALS; THE REVIEWING COURT CAN DETERMINE THE MERITS OF THE PETITION SOLELY ON THE BASIS OF PLEADINGS, SUBMISSIONS AND CERTIFIED ATTACHMENTS BY THE PARTIES.—** [T]he rule is that the reviewing court can determine the merits of the petition solely on the basis of the pleadings, submissions and certified attachments by the parties. The purpose of the rule is to prevent undue delay that may result as the elevation of the records of lower tribunals to the Court usually takes time. After all, the parties are required to submit to the Court certified true copies of the pertinent records of the cases. In this case, the Third Division of the Court deemed the attachments to the petition and the voluminous pleadings filed sufficient and, on the basis thereof, ruled on the merits of these cases. The Court finds no fault in the procedure undertaken by the members of the Division in this regard.

5. **ID.; ID.; ID.; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT FINALITY WHEN AFFIRMED BY THE COURT OF APPEALS.—** It is a hornbook doctrine that, save for certain exceptions, the findings of fact of administrative agencies and quasi-judicial bodies like the CIAC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA. It is well-settled that "the consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said

administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial." Moreover, in petitions for review on *certiorari*, only questions of law may be put into issue.

6. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS OF ADHESION; NOT INVALID *PER SE*.—** Basic is the rule that parties to a contract may establish such stipulations, clauses, terms, or conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, and public policy. While greater vigilance is required in determining the validity of clauses arising from contracts of adhesion, the Court has nevertheless consistently ruled that contracts of adhesion are not invalid *per se* and that it has, on numerous occasions, upheld the binding effect thereof.

7. **ID.; ID.; ID.; WHEN MAY BE DECLARED VOID AND UNENFORCEABLE.—** While contracts of adhesion may be struck down as void and unenforceable for being subversive of public policy, the same can only be done when, under the circumstances, the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely depriving the former of the opportunity to bargain on equal footing.

8. **ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; THE INSURER CAN BE SUBROGATED ONLY TO THE RIGHTS AS THE INSURED MAY HAVE AGAINST THE WRONGDOER.—** With the liability of KCSI to WG&A for the loss of Superferry 3 being limited to ₱50,000,000.00, it goes without saying that Pioneer, as subrogee of WG&A, may only claim the amount of ₱50,000,000.00 from KCSI. Well-settled is the rule that the insurer can be subrogated only to the rights as the insured may have against the wrongdoer.

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

1. **REMEDIAL LAW; COURTS; SUPREME COURT; COURT *EN BANC*; HAS REOPENED AND ACCEPTED FOR REVIEW DECISIONS THAT HAVE ATTAINED FINALITY IN EXCEPTIONAL CASES.—** The Court *En Banc* has, in exceptional cases, reopened and accepted for review decisions that have otherwise attained finality. Indeed, it has

suspended the rules of procedure when there are special and compelling reasons to alter a judgment that has been declared final even by the Court itself.

2. **ID.; CIVIL PROCEDURE; JUDGMENTS; A FINAL JUDGMENT MAY BE REOPENED AND REVIEWED BY THE SUPREME COURT IN ORDER TO RENDER JUST AND EQUITABLE RELIEF.—** It is argued that the Court violated the principle on immutability of judgments and that it is proscribed from accepting motions for reconsideration after finality of the assailed decision. But, as shown by jurisprudence x x x, a final judgment may be reopened and reviewed by the Court in order to render just and equitable relief. We are of course aware that the departure from the rules of procedure may provoke criticism from various quarters. But, to be sure, the Court does not recall entries of judgment indiscriminately or without sufficient justification. In granting KCSI's motion, there is no resulting "monumental imbalance in the legal structure" but merely an affirmation that, in rendering justice, courts should be mindful first of substantive rights rather than technicalities.

3. **ID.; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; THE COURT *EN BANC* HAS THE POWER TO REVIEW AND TAKE COGNIZANCE OF CASES UNDER EXCEPTIONAL CIRCUMSTANCES.—** [T]he Court acted in accordance with its internal rules which recognize the *En Banc's* power to review and take cognizance of cases under exceptional circumstances. Section 3(m), Rule 2 of the rules expressly provides that the Court *En Banc* shall act on cases that it deems of sufficient importance to merit its attention. In this regard, the rules also state that a second motion for reconsideration may be entertained, in the higher interest of justice, by a two-thirds vote of the Court *En Banc's* members.

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

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE AND MAY NO LONGER BE MODIFIED IN ANY RESPECT.—**

A basic principle that supports the stability of a judicial system, as well as the social, economic and political ordering of society, is the ***principle of immutability of judgments.*** "[A] decision that has acquired finality becomes immutable and unalterable[,] and may no longer be modified in any respect ***even if the modification is meant to correct erroneous conclusions of fact or law and whether it* [*will be*] *made by the court that rendered it or by the highest court of the land*.**" "Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest." No additions can be made to the decision, and no other action can be taken on it, except to order its execution.

2. ID.; ID.; ID.; ID.; CANNOT BE DISREGARDED BY THE SUPREME COURT WITHOUT CAUSING DAMAGE TO ITSELF AND TO THE SOCIETY THAT IT SERVES.— In the context of the actions of the Supreme Court – the highest court that decides on the interpretation of the law with binding effect for the whole country — it cannot simply disregard fundamental principles (such as the principle of immutability of judgments) in its actions without causing damage to itself and to the society that it serves. ***A supreme court exists in a society and is supported by that society as a necessary and desirable institution because it can settle disputes and can do this with finality. Its rulings lay to rest the disputes that can otherwise disrupt the harmony in society.*** This is the role that courts generally serve; specific to the Supreme Court — as the highest court — is the finality, at the highest level, that it can bestow on the resolution of disputes. Without this element of finality, the core essence of courts, and of the Supreme Court in particular, completely vanishes. This is the reality that must necessarily confront the Court in its present action in reopening its ruling on a case that it has thrice passed upon. After the Court's unsettling action in this case, ***society will inevitably conclude that the Court, by its own action, has established that judgments can no longer achieve finality in this country***; an enterprising advocate, who can get a Justice of the Court interested in the reopening of the final judgment in his case, now has an even greater chance of securing a reopening and a possible reversal, even of final rulings, because the Court's judgment never really becomes final. Others in society may think further and simply conclude that this Supreme

Court no longer has a reason for its being, as it no longer fulfills the basic aim justifying its existence. ***At the very least, the Court loses ground in the areas of respect and credibility***.

3. **ID.; ID.; ID.; THE COURT LOSES JURISDICTION OVER A CASE THAT HAS ATTAINED FINALITY EXCEPT FOR PURPOSES OF ITS EXECUTION.—** The Rules of Court amply provides the rules on the finality of judgments, supported by established rulings on this point. In fact, the Rules itself expressly provides that no second motion for reconsideration shall be entertained. The operational reason behind this rule is not hard to grasp — a party has 15 days to move for reconsideration of a decision or final resolution, and, thereafter, the decision lapses to finality if no motion for reconsideration is filed. If one is filed, the denial of the motion for reconsideration signals the finality of the judgment. Thereafter, no second motion for reconsideration shall be entertained. At that point, the final judgment begins to carry the effect of *res adjudicata* – the rule, expressly provided in the Rules of Court, that a judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been adjudged, binding on the parties and can no longer be reopened; execution or implementation of the judgment thereafter follows. ***Most importantly, at that point, the court – even the Supreme Court — loses jurisdiction over the case except for purposes of its execution.***

4. **POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; HAS NO POWER TO REOPEN AND REVIEW ITS OWN JUDGMENT THAT HAS LAPSED TO FINALITY.—** Even the Constitution itself recognizes that the reopening of a case that has lapsed to finality is outside the powers of the Supreme Court; ***the express constitutional power given to the Supreme Court is to review judgments of lower courts, on appeal or on certiorari, and not to reopen and review its own judgment that has lapsed to finality.*** Thus, the Court itself effectively becomes a transgressor for acting with grave abuse of discretion that the Constitution itself, under Section 1, Article VIII, has mandated the Court to check in all areas and branches of government. It becomes a question now of the old dilemma bedeviling all governments — **who will guard and check on the guardians**? Unnerving, to say the least, for the ordinary citizen who goes about his or her

daily life relying on the order that the community has established by social compact.

5. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; THE SUPREME COURT SHOULD BE BOUND BY THE FINALITY OF A JUDGMENT.—** The finality of a judgment is a consequence that directly affects the immediate parties to a case. In a sense, it affects the public as well because the public must respect the finality of the judgment that prevails between the immediate parties. Where a ruling affects the public at large, as in the declaration of the constitutionality or unconstitutionality of a statute, the Court's declaration is binding on the general public. Under this scheme, it is only right and proper that the Supreme Court itself be bound by the finality of the judgment because: (1) the finality is by reason of the Rules that the Court itself promulgated; and (2) of societal reasons deeper than what the Rules of Court expressly provides. If the rules for the immediate parties and the public were to be one of finality, while the rule for the Court is one of flexibility and non-binding effect because the Court may reopen at will and revisit even final rulings, what results is a ***monumental imbalance in the legal structure*** that the Constitution and our laws could not have intended. If an imbalance were intended or tolerated, then a serious restudy must perhaps be made – for a society with a heavy tilt towards unregulated power cannot but at some point fall, or, at the very least, suffer from it. If no imbalance is intended and the system is correct, then the Court may be seriously out of sync in respecting the system and must rectify its ways.

6. **ID.; ID.; ID.; ID.; EXCEPTIONS.—** The Rules of Court themselves recognize that the doctrine of finality of judgment is not absolute. Thus, these Rules allow, on specific grounds and for specific periods, petitions for annulment of judgment, petitions for relief from judgment, (and even petition for *certiorari*) as extraordinary and equitable remedies. The Supreme Court itself allows a second motion for reconsideration under its Internal Rules, but only a second motion and under very specific terms; the Internal Rules do not allow a third motion for reconsideration and no rules exist to guide (a party) and govern a third motion for reconsideration filed by a defeated litigant. If the Court allowed exceptions at all under our

jurisprudence, these exceptions only came because of strong justification. Under the Rules of Court, the only recognized exceptions to the rule on the non-reviewability of final judgments are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and when relief from judgment is provided when circumstances transpire rendering the execution of a final decision unjust and inequitable.

7. **ID.; ID.; ID.; ID.; A FINAL DECISION WHICH IS VOID CAN BE A SUBJECT OF REVIEW.—** The review of a final and executory decision, when it does occur, must necessarily take into account the nature of the decision. When the final decision is valid, it cannot be the subject of review, even by the Court *En Banc*. Neither can a review be entertained because of error in the judgment; ***the Supreme Court is supreme because its judgment is final, not because it cannot err***. A judgment even if erroneous is still valid if rendered within the scope of the courts' authority or jurisdiction. It is only when the decision is void, as when there is denial of due process or when it is rendered by a court without jurisdiction, that there can be a reopening of the case. The reason, of course, is that a void judgment is no judgment at all, and a new one must be entered in the fulfillment of the courts' dispute resolution function.

8. **ID.; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; SECOND MOTION FOR RECONSIDERATION; WHEN ENTERTAINED.—** A still debatable instance when a final decision can be reopened is through action on a second motion for reconsideration under Section 3, Rule 15 of the Internal Rules of the Supreme Court. x x x Under this provision (***that lays hidden in the Court's Internal Rules and is not reflected in the Rules of Court***), a second motion for reconsideration *shall not* be entertained, except in the "higher interest of justice" by a two-thirds vote of the Court *En Banc*'s members. Aside from the voting requirements, a movant must substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both (1) legally erroneous, and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. Clearly, even under this debatable Internal Rules provision, the judicially

subjective standard employed - *i.e.*, whether the case is of sufficient importance - to merit the *En Banc*'s consideration is in itself insufficient to disregard the settled black-letter rule on immutability of a final judgment.

REYES, *J.*, *dissenting opinion:*

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *STARE DECISIS*; APPLIED IN CASE AT BAR.—** [I]t bears stressing that the conclusions made by this Court in *Keppel Cebu Shipyard* was consistent with the principles enunciated in *Cebu Shipyard* and in observance of the principle of *stare decisis.* In fact, even without having to go through the rigorous exercise of determining whether Aboitiz consented to the limited liability clause (a supposed fine-print in the Ship Repair Agreement), the conclusion would be the same and KCSI's liability to Pioneer would still be within the range of ₱350,000,000.00 considering the pronouncement in *Cebu Shipyard* that a limitation of liability in that form is void for being against public policy. The same is true with respect to the issue on whether KCSI can be considered a co-assured in the insurance contract between Pioneer and Aboitiz. Even if KCSI's being a co-assured is expressly stipulated in the Ship Repair Agreement (compared to the Work Orders in *Cebu Shipyard*, which was not that explicit), that would not suffice to make it so. *Keppel Cebu Shipyard* echoed the pronouncements in *Cebu Shipyard* that one can only claim to be a co-assured if he is designated as one in the insurance contract itself, and no other contract where the insurer is not a party can be invoked. Therefore, to hold that KCSI's liability to Pioneer is limited only to ₱50,000,000.00 is tantamount to a reversal of the doctrine espoused in *Cebu Shipyard*; and if such is the intention then a categorical statement to that effect should be made. For several years, ship owners had relied on this formulation that any attempt on the part of the ship repairer and owner of docking facilities to limit their liability to a certain amount, which is way below that actual value of the ship, is an exercise in futility. This holds true even if the ship owner had consented to a contract where such limitation on liability has been stipulated.

2. **MERCANTILE LAW; INSURANCE LAW; INSURANCE CONTRACT; LIMITED LIABILITY CLAUSE; DECLARED INVALID FOR BEING AGAINST PUBLIC POLICY.—** It is not without reason that limited liability provisions had been struck down as void for being against public policy. It is indeed distasteful and an affront to one's sense of justice and fairness that: (a) ship owners would render themselves unqualified to the services of ship repairers and owners of docking facilities should they refuse to accede to a limited liability clause; and (b) ship repairers and owners of docking facilities would be relieved of liability to a significant degree even if it was by their fault or negligence that the vessel was placed in utter ruin. The consent of a ship owner to a limited liability clause is not freely given in a certain sense, most especially if the ship owner is confronted with no choice but to engage the services of that ship repairer for being the only one available. Such cutthroat practice is what this Court would intend to avoid by declaring such a limited liability clause invalid.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for Keppel Cebu Shipyard, Inc.
Arthur D. Lim Law Office for Pioneer Insurance & Surety Corp.

R E S O L U T I O N

MENDOZA, *J.*:

On June 7, 2011, the Court *En Banc,* acting on the referral by the Second Division, issued a Resolution[1] accepting these cases which stemmed from the *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc* filed by Keppel

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[1] *Rollo*, (G.R. Nos. 180880-81, Vol. II), pp. 3329-3342; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3457-3470, with dissents by Associate Justices Eduardo Antonio Nachura, Presbitero J. Velasco and Arturo D. Brion; Chief Justice Renato C. Corona and Associate Justice Lucas P. Bersamin took no part.

Cebu Shipyard, Inc. *(KCSI)* on the ground that "there are serious allegations in the petition that if the decision of the Court is not vacated, there is a far-reaching effect on similar cases already decided by the Court."[2]

Pioneer Insurance and Surety Corporation *(Pioneer)* sought reconsideration of the June 7, 2011 Resolution to re-open, but its motion was denied by the Court in its Resolution,[3] dated December 6, 2011.

Brief Statement of the Antecedents

On January 26, 2000, KCSI and WG&A Jebsens Shipmanagement, Inc. *(WG&A)* entered into, and executed, a Shiprepair Agreement[4] wherein KCSI agreed to carry out renovation and reconstruction of M/V Superferry 3 *(Superferry 3)*, owned by WG&A, using its (KCSI's) dry docking facilities. Among others, the Shiprepair Agreement provided the following terms and conditions:

We, WG & A JEBSENS SHIPMGMT. Owner/Operator of M/V "SUPERFERRY 3" and KEPPEL CEBU SHIPYARD, INC. (KCSI) enter into an agreement that the Drydocking and Repair of the above-named vessel ordered by the Owner's Authorized Representative shall be carried out under the Keppel Cebu Shipyard Standard Conditions of Contract for Shiprepair, guidelines and regulations on safety and security issued by Keppel Cebu Shipyard. Among the provisions agreed upon by the parties are the following:

x x x x x x x x x

3. Owner's sub-contractors or workers are not permitted to work in the yard without written approval of the Vice-President-Operations.

4. In consideration of Keppel Cebu Shipyard allowing Owner to carry out own repairs onboard the vessel, the Owner shall indemnify and hold Keppel Cebu Shipyard harmless from all claims, damages, or liabilities arising from death or bodily injuries to Owner's workers, or damages to the vessel or other property however caused.

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[2] *Id.* at 3349; *id.* at 3460.

[3] *Id.* at 3481-3483; *id.* at 3562-3564.

[4] CA *rollo*, pp. 174-175.

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12. The Owner and Keppel Cebu Shipyard shall endeavor to settle amicably any dispute that may arise under this Agreement. Should all efforts for an amicable settlement fail, the disputes shall be submitted for arbitration in Metro Manila in accordance with provisions of Executive Order No. 1008 under the auspices of the Philippine Arbitration Commission.

The Shiprepair Agreement also contained KCSI's "Standard Conditions of Contract for Shiprepair," which provided, among others, the following:

x x x x x x x x x

7. The Contractor shall perform the work in accordance with the usual practice at the Contractor's shipyard but shall comply with the Customer's reasonable requests regarding materials and execution of the order insofar as such requests fall within the scope of the Work specified in the contractual specifications, and are made prior to the commencement of the work.

x x x x x x x x x

20. The Contractor shall not be under any liability to the Customer either in contract or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, except:

(a) The total liability of the Contractor to the Customer (including the **liability** to replace under Clause 17) or of any Sub-Contractor shall be **limited** in respect of any and/or defect(s) or event(s) to the sum of Pesos Philippine Currency **Fifty Million** Only.

x x x x x x x x x

22. (a) The Customer shall keep the vessel adequately insured for the vessel's hull and machinery, her crew and the equipment on board and on other goods owned or held by the Customer against any and all risks and liabilities and ensure that such insurance policies shall include the Contractor as a co-assured.

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[Emphases supplied]

Prior to the execution of the Shiprepair Agreement, Superferry 3 was already insured by WG&A with Pioneer for US$8,472,581.78.

On February 8, 2000, while undergoing repair, Superferry 3 was gutted by fire. WG&A declared the vessel's damage as a "total constructive loss" and filed an insurance claim with Pioneer.

On June 16, 2000, Pioneer paid the insurance claim of WG&A in the amount of US$8,472,581.78. In exchange, WG&A executed a Loss and Subrogation Receipt in favor of Pioneer.

Believing that KCSI was solely responsible for the loss of Superferry 3, Pioneer tried to collect the amount of US$8,472,581.78 from KCSI but it was frustrated. Thus, Pioneer sought arbitration with the Construction Industry Arbitration Commission *(CIAC)* pursuant to the arbitration clause in the Shiprepair Agreement.

During the arbitration proceedings, an amicable settlement was forged between KCSI and WG&A. Pioneer, thus, stayed on as the remaining claimant.

On October 28, 2002, the CIAC rendered its Decision[5] finding that both WG&A and KCSI were **equally guilty of negligence** which resulted in the fire and loss of Superferry 3. The CIAC also ruled that the liability of KSCI was limited to the amount of ₱50,000,000.00 pursuant to Clause 20 of the Shiprepair Agreement.

Accordingly, the CIAC ordered KCSI to pay Pioneer the amount of ₱25,000,000.00, with interest at 6% per annum from the time of the filing of the case up to the time the decision was promulgated, and 12% interest per annum added to the award, or any balance thereof, after it would become final and executory. The CIAC further ordered that the arbitration costs be imposed on both parties on a *pro rata* basis.[6]

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[5] *Rollo* (G.R. Nos. 180880-81, Vol. I), pp. 1022-1113; *rollo* (G.R. Nos. 180896-97, Vol. I), pp. 229-320.

[6] *Id.* at 1113; *id.* at 319.

Both parties appealed to the Court of Appeals *(CA)*. In its final disposition of the cases, the CA, through its Amended Decision,[7] **affirmed the decision of the CIAC** but deleted its order that KCSI pay legal interest on the amount due to Pioneer.

Again, both parties appealed to this Court.

In its Decision,[8] dated September 25, 2009, the *Third Division*[9] of the Court partially granted the appeals of both parties. In granting the petition of Pioneer, the Court found that KCSI was *solely* liable for the loss of the vessel and that WG&A properly declared the loss of the vessel as constructive total loss. The Court also declared that Clause 20 of the Shiprepair Agreement which limited KCSI's liability to the amount of ₱50,000,000.00 was invalid. As for the petition of KCSI, the Court found merit in KCSI's assertion that the salvage recovery value of the vessel amounting to ₱30,252,648.09 must be considered and deducted from the amount KCSI was liable to Pioneer. Thus, the Court disposed:

WHEREFORE, the Petition of Pioneer Insurance and Surety Corporation in G.R. No. 180896-97 and the Petition of Keppel Cebu Shipyard, Inc. in G.R. No. 180880-81 are PARTIALLY GRANTED and the Amended Decision dated December 20, 2007 of the Court of Appeals is MODIFIED. Accordingly, KCSI is ordered to pay Pioneer the amount of ₱360,000,000.00 less ₱30,252,648.09, equivalent to the salvage value recovered by Pioneer from M/V "Superferry 3," or the net total amount of **₱329,747,351.91**, with six percent (6%) interest per annum reckoned from the time the Request for Arbitration was filed until this Decision becomes final and executory, plus twelve percent (12%) interest per annum on the said amount or any balance thereof from the finality of the Decision

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[7] *Id.* at 39-110; *id.* at 146-217.

[8] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2551-2589; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1945-1983.

[9] Associate Justice Consuelo Ynares-Santiago, as Chairperson, and Associate Justice Minita V. Chico-Nazario, Associate Justice Presbitero J. Velasco, Jr., Associate Justice Antonio Eduardo B. Nachura, and Associate Justice Diosdado M. Peralta, as members.

until the same will have been fully paid. The arbitration costs shall be borne by both parties on a *pro rata* basis. Costs against KCSI.

SO ORDERED.[10] [Emphasis and underscoring supplied]

Aggrieved, KCSI moved for the reconsideration[11] of the September 25, 2009 Decision and, subsequently, prayed that its motion be set for oral arguments.[12] Following the opposition filed by Pioneer and the reply filed by KCSI, the Special Third Division of the Court on June 21, 2010, resolved to deny with finality KCSI's motions for lack of merit.[13]

Undaunted, KCSI again sought reconsideration of the decision of the Third Division of the Court, reiterating its prayer that these cases be set for oral arguments. KCSI also prayed that these cases be referred to the Court *En Banc* and set for its consideration.[14] Following a reorganization of the divisions of the Court, these cases were transferred to the Second Division.[15] On October 20, 2010, the Second Division of the Court resolved to deny KCSI's second motion for reconsideration.[16]

On November 4, 2010, the Court issued an order for Entry of Judgment, stating that the decision in these cases had become final and executory.[17]

Through its *Motion to Re-Open Proceedings and Motion to Refer to the Court En Banc,*[18] dated November 23, 2010, and

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[10] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2551-2589; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1945-1983.

[11] *Id.* at 2686-2784; *id.* at 1984-2044.

[12] *Id.* at 2785-2790; *id.* at 2176-2181.

[13] *Id.* at 2893-2894.; *id.* at 2231-2232.

[14] *Id.* at 2896-2906; *id.* at 2233-2241.

[15] *Rollo* (G.R. Nos. 180880-81, Vol. II), p. 3004.

[16] *Rollo* (G.R. Nos. 180880-81, Vol. II); pp. 3262-3266; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3339-3343.

[17] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 3271-3272.

[18] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 3279-3290; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3351-3364.

its *Supplemental Motion,*[19] dated December 13, 2010, KCSI sought the re-opening of the proceedings, and pleaded that these cases be referred to the Court *En Banc*. Pioneer filed its Opposition[20] to KCSI's motions.

On April 11, 2011, persuaded by KCSI's arguments, the Second Division of the Court resolved to refer these cases to the Court *En Banc* for acceptance.[21] As earlier stated, on June 7, 2011, the Court *En Banc* resolved to accept the cases.[22] Pioneer sought reconsideration but its motion was denied.[23]

In the disposition of the subject petitions, the Court is confronted with procedural and substantive issues:

Procedural:

Is the Court *En Banc* in violation of the doctrine of immutability of judgment in taking cognizance of the foregoing cases, considering that these cases were already adjudged as final and executory?

Did the failure to elevate the records from the court of origin to the Court render void any decision made by the latter?

Substantive:

As restated by the Court in its September 25, 2009 Decision, the substantive issues for resolution of the Court are the following:

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[19] *Rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3392-3410.

[20] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 3297-3325; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 3425-3453.

[21] *Id.* at 3293; *id.* at 3421. Second Division members were Associate Justice Antonio T. Carpio, Associate Justice Antonio B. Nachura, Associate Justice Diosdado M. Peralta, Associate Justice Roberto A. Abad, and Associate Justice Jose Catral Mendoza.

[22] *Id.* at 3329-3342; *id.* at 3457-3470, with dissents by Associate Justices Eduardo Antonio Nachura, Presbitero J. Velasco and Arturo D. Brion; Chief Justice Renato C. Corona and Associate Justice Lucas P. Bersamin took no part.

[23] *Id.* at 3481-3486; *id.* at 3562-3567.

A. To whom may negligence over the fire that broke out on board M/V "Superferry 3" be imputed?

B. Is subrogation proper? If proper, to what extent can subrogation be made?

C. Should interest be imposed on the award of damages? If so, how much?

D. Who should bear the cost of the arbitration?[24]

The Court shall first dispose of the procedural issues.

Anent the first procedural issue, Pioneer, in essence, faults the Court *En Banc* when it took cognizance of the foregoing cases and ordered their reopening in its June 7, 2011 Resolution. It argues that the decision in the present cases had already become final and, according to the principle of immutability of judgment, once a judgment attains finality, it becomes immutable and unalterable, however unjust the result of error may appear.

The rule is not absolute.

The Internal Rules of the Supreme Court provides that the Court *En Banc* shall act on the following matters and cases:

(a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

(b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;

(c) cases raising novel questions of law;

(d) cases affecting ambassadors, other public ministers, and consuls;

(e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;

(f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of

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[24] *Id.* at 2569; *id.* at 1963.

them for a period of more than one year, or a fine exceeding forty thousand pesos;

(g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;

(i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division my be modified or reversed;

(j) cases involving conflicting decisions of two or more divisions;

(k) cases where three votes in a Division cannot be obtained;

(l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;

(m) Subject to Section 11(b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*;

(n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and

(o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[25] [Underscoring supplied]

On April 11, 2011, four (4) members of the Court's Second Division found that these cases were appropriate for referral-transfer to the Court *En Banc.*[26] Then, on June 7, 2011, the Court *En Banc* by a vote of two-thirds (2/3) of its members,[27] settled the issue of immutability of judgment when it accepted the referral, reasoning out that there were serious allegations in the petition that if the decision of the Court would not be vacated, there would be a far-reaching effect on similar cases.

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[25] A.M. No. 10-4-20-SC (May 4, 2010), Rule 2, Sec. 3.

[26] *Rollo* (G.R. Nos. 180896-97), p. 3421.

[27] *Id.* at 3457-3470.

Verily, "under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[28] This rule notwithstanding, the Court *En Banc* had re-opened and accepted several cases for review and reevaluation for special and compelling reasons. Among these cases were *Manotok IV v. Heirs of Homer L. Barque*,[29] *Apo Fruits Corporation and Hijo Plantation*, *Inc. v. Land Bank of the Philippines*,[30] *League of Cities of the Philippines v. Commission on Elections*,[31] and *Navarro v. Ermita*.[32]

In these cases, the exception to the doctrine of immutability of judgment was applied in order to serve substantial justice.[33] The application was in line with its *power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it.* The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final."[34]

It bears mentioning, however, that when the Court *En Banc* entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of

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[28] *FGU Insurance Corporation v. Regional Trial Court Of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50.

[29] G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468.

[30] G.R. No. 164195, April 5, 2011, 647 SCRA 207.

[31] G.R. Nos. 176951, 177499 and 178056, April 12, 2011, 648 SCRA 344.

[32] G.R. No. 180050, April 12, 2011, 648 SCRA 400.

[33] *Id.*

[34] *Navarro v. Executive Secretary Eduardo Ermita*, G.R. No. 180050, April 12, 2011, 648 SCRA 400; and *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468, 492.

rendering objective and fair justice. The action of the Court simply means that the nature of the cases calls for *en banc* attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It is merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership that, indeed, the subject case is of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of the Highest Court of the land are always imbued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and resolutions of the Court to the end that public interest be duly safeguarded and the rule of law be observed.[35]

On the second procedural issue, the rule is that the reviewing court can determine the merits of the petition solely on the basis of the pleadings, submissions and certified attachments by the parties.[36] The purpose of the rule is to prevent undue delay that may result as the elevation of the records of lower tribunals to the Court usually takes time.[37] After all, the parties are required to submit to the Court certified true copies of the pertinent records of the cases.

In this case, the Third Division of the Court deemed the attachments to the petition and the voluminous pleadings filed sufficient and, on the basis thereof, ruled on the merits of these cases. The Court finds no fault in the procedure undertaken by the members of the Division in this regard. As stated by the Court in its October 20, 2010 Resolution:

Second: The elevation of the case records is merely discretionary upon this Court. Section 8, Rule 45 of the Rules of Court provides

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[35] *Lu v. Lu*, G.R. No. 153690, February 15, 2011, 643 SCRA 23; *Firestone Ceramics v. Court of Appeals*, 389 Phil. 810 (2000); and *People v. Ebio*, 482 Phil. 647 (2004).

[36] See also *Eureka Personnel & Management Services, Inc. v. Valencia*, G.R. No. 159358, July 15, 2009, 593 SCRA 36.

[37] *B.E. San Diego v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402; *San Miguel Corporation v. Aballa*, 500 Phil. 170 (2005); *Atillo v. Bombay*, 404 Phil. 179 (2001).

that the Court **may** require the elevation of the complete records of the case or specified parts thereof within fifteen (15) days from notice. It also bears mentioning that, under Section 4(d) of the same rule, the petition for review on *certiorari* filed shall be "accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and **such material portions of the record as would support the petition**." Indeed, with the attachments to the consolidated petitions, the Court deemed it sufficient to rule on the merits of the case.[38]

At any rate, the records of the cases at bench are now before the Court.

The Court now proceeds to delve into the substantive issues.

With respect to the finding of negligence, the Court cannot maintain the earlier findings and rulings.

The CIAC and the CA arrived at the same Findings of Facts

In the September 25, 2009 Decision, the Third Division premised its re-evaluation of the facts regarding the issue of negligence on its finding that the CA and the CIAC differed in their findings. Thus, it stated:

> To resolve these issues, it is imperative that we digress from the general rule that in petitions for review under Rule 45 of the Rules of Court, only questions of law shall be entertained. Considering the **disparate** findings of fact of the CIAC and the CA which led them to **different conclusions**, we are constrained to revisit the factual circumstances surrounding this controversy.[39] [Emphases supplied]

It appears, however, that there was **no disparity** in the findings of fact of the CIAC and the CA. Neither was there any variance in the conclusions arrived at by the two tribunals — that both

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[38] *Rollo* (G.R. Nos. 180880-81, Vol. II), p. 3264; *rollo* (G.R. Nos. 180896-97, Vol. II), p. 3341.

[39] *Id.* at 2569; *id.* at 1963.

KCSI and WG&A were **equally negligent** in causing the fire which resulted in the burning and the loss of Superferry 3.

As to the immediate cause of the fire, there is no dispute that the same was caused by the ignition of the flammable lifejackets caused by the sparks or hot molten slags from the welding works being done at the upper deck. As stated by the CIAC:

> This tribunal rules that the immediate cause of the fire was the sparks or hot molten slag falling through holes on the deck floor and coming into contact with and igniting flammable lifejackets stored in the ceiling void directly below. The sparks or hot molten slag was the result of the cutting of the bulkhead door on Deck A. The presence of the holes and the life jackets underneath the deck directly contributed to the cause of the fire.[40]

As to who was responsible for causing the fire, **both the CIAC and the CA were one in finding that both KCSI and WG&A were equally negligent.** In fact, the CA, after its own review of the facts and evidence, quoted with approval a majority of the findings of the CIAC. Thus, it wrote:

THE YARD AND THE WG&A ARE EQUALLY NEGLIGENT

> The symbiotic relation between the litigants, insofar as the repair and reconstruction of the vessel, <u>is aptly summarized by the CIAC</u>, to quote:
>
> x x x x x x x x x
>
> The Tribunal rules that the Respondent has possession, control and custody of the vessel for all works related to the repairs and additional work under the ship repair agreement and where its rules and regulations cover the vessel and its crew. The Respondent, however, does not exercise control and custody of the Ship's crew, its maintenance and repair crews, subcontractors and workers where the work is not covered by the ship repair agreement, or where there is no work order, or where the Vessel has signed a waiver for its own work or for unauthorized works.
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> x x x x x x x x x

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[40] *Rollo* (G.R. Nos. 180880-81, Vol. I), p. 1060; *rollo* (G.R. Nos. 180896-97, Vol. I), p. 267.

A review of the records reveals that the fire broke out at around 10:25 in the morning of 8 February 2000. The CIAC summarized the immediate cause of the fire, as follows, thus:

> xxx. Angelino Sevillejo tried to put out the fire by pouring the contents of a five-liter drinking water container on it and as he did so, smoke came up from under Deck A. He got another container of water which he also poured whence the smoke was coming. In the meantime, other workers in the immediate vicinity tried to fight the fire by using fire extinguishers and buckets of water. But because the fire was inside the ceiling void, it was extremely difficult to contain or extinguish; and it spread rapidly because it was not possible to direct water jets or the fire extinguishers into the space at the source. Fighting the fire was extremely difficult because the life jackets and the construction materials of the Desk B ceiling were combustible and permitted the fire to spread within the ceiling void. From there, the fire dropped into the Deck B accommodation areas at various locations, where there were combustible materials. Respondent points to cans of paint and thinner, in addition to the plywood partitions and foam mattresses on Deck B x x x.

After investigation, the CIAC justified its finding of ***concurrent negligence,*** to wit:

> **<u>The Negligence of WG&A:</u>**
>
> x x x x x x x x x
>
> The Tribunal rules that work orders and additional works when duly signed and authorized form part of the ship repair agreement and other documents referred to in the agreement. The Tribunal also rules that the **Work Order of January 26, 2000 refers to five welders to work on the restaurant of the promenade deck only**.
>
> x x x x x x x x x
>
> The Tribunal finds sufficient evidence to rule that the original request for welders [was] for hot works for the restaurant at the promenade deck only. Based on this ruling, the Tribunal finds that the Claimant used the welders <u>beyond the scope of the Work Order</u> and therefore unauthorized when the welders were used <u>outside</u> of the promenade deck. **For the <u>hotworks</u> <u>outside</u> of the promenade deck to be authorized, the said**

work must be covered by another work order or at the very least, discussed, and included in the minutes of the production meeting and the **corresponding hotworks permit** issued.

x x x x x x x x x

[Emphases and underscoring supplied]

The Negligence of the Yard:

As aptly ruled by the CIAC, the negligent participation of the Yard in the fire incident is as follows:

"Precisely because of the requirement that all hot works are to be undertaken by the Yard, the Yard necessarily must obtain the hotworks permit. Looking at the Hotwork Permit document itself, the Tribunal finds that it is the Yard workers who apply and obtain the permit to perform hot works. The said permit carries a request by the Yard Foreman, Yard Supervisor, and Yard Superintendent, Inspected by the Yard Safety Assistant, and approved by Yard Safety Superintendent or Supervisor. Tribunal agrees with Claimant that hot works permit is the responsibility of the Yard worker to obtain prior to initiating any hot works."

Thus, while it is settled that it is the Yard employee who is required to secure a permit in order that all precautions could be taken, such as providing a fire watch, fire extinguisher, fire bucket, and removing the ceiling underneath as well as the flammable lifejackets, nonetheless, Dr. Joniga was equally negligent. Rebaca asked Sevillejo to stop the hot works in Deck A for lack of hot works permit and informed Dr. Joniga about it. He advised Dr. Joniga to call the ship's electrician to inspect the area. The ship electrician removed the ceiling panel and it was ascertained that, fortunately, no fire had started. However, when Sevillejo finished the task, Dr. Joniga again directed Sevillejo to cut an opening on the steel bulkhead below the stairway next to the beauty parlor in Deck A, without requiring or ascertaining that Sevillejo should first secure the required permit.[41] [Emphasis in the original. Underscoring supplied]

In other words, the issue of the conflicting claims between the parties - as to who should be responsible for the loss of

[41] *Id.* at 46-50; *id.* at 153-157.

Superferry 3 - was resolved by the CIAC against both parties. As this finding of fact by the CIAC was affirmed by the CA, the Court must have a strong and cogent reason to disturb it.

It is a hornbook doctrine that, save for certain exceptions,[42] the findings of fact of administrative agencies and quasi-judicial bodies like the CIAC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA.[43] It is well-settled that "the consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial."[44] Moreover, in petitions for review on *certiorari*, only questions of law may be put into issue.

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[42] Instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. *(Misa v. Court of Appeals, G.R. No. 97291, August 5, 1992, 212 SCRA 217, 221-222)*

[43] *National Housing Authority v. First United Constructors Corporation*, G.R. No. 176535, September 7, 2011, 657 SCRA 175, 231*; Public Estates Authority v. Elpidio Uy*, 423 Phil. 407, 416 (2001), citing *Cagayan Robina Sugar Milling Co v. Court of Appeals*, 396 Phil. 830, 840 (2000).

[44] *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. No. 154885, March 24, 2008, 549 SCRA 12, 21-22; *Blue Bar Coconut Philippines v. Tantuico*, 246 Phil. 714, 729 (1988).

Be that as it may, the Court, after making its own assiduous assessment of the case, concurs with the conclusions arrived at by the tribunals below that the loss of Superferry 3 cannot be attributed to one party alone.

WG&A was negligent because, although it utilized the welders of KCSI, it used them *outside* the agreed area, the restaurant of the promenade deck. If they did not venture out of the restaurant, the sparks or the hot molten slags produced by the welding of the steel plates would not have reached the combustible lifejackets stored at the deck below.

On the part of KCSI, it failed to secure a hot work permit pursuant to another work order. Had this been applied for by the KCSI worker, the hot work area could have been inspected and safety measures, including the removal of the combustible lifejackets, could have been undertaken. In this regard, KCSI is responsible.

In short, both WG&A and KCSI were equally negligent for the loss of Superferry 3. The parties being mutually at fault, the degree of causation may be impossible of rational assessment as there is no scale to determine how much of the damage is attributable to WG&A's or KCSI's own fault. Therefore, it is but fair that both WG&A and KCSI should *equally* shoulder the burden for their negligence.

With respect to the defenses of KCSI that it was a co-assured under Clause 22(a) of the contract and that its liability is limited to ₱50,000,000.00 under Clause 20 of the Shiprepair Agreement, the Court maintains the earlier ruling on the invalidity of Clause 22(a) of the Shiprepair Agreement.

It cannot, however, maintain the earlier ruling on the invalidity of Clause 20 of the Shiprepair Agreement, which limited KCSI's liability to ₱50,000,000.00. In the September 25, 2009 Decision, the Third Division found Clause 20 of the Shiprepair Agreement invalid, seeing it as an unfair imposition by KCSI, being the dominant party, on WG&A.

Basic is the rule that parties to a contract may establish such stipulations, clauses, terms, or conditions as they may deem

convenient, provided they are not contrary to law, morals, good customs, and public policy.[45] While greater vigilance is required in determining the validity of clauses arising from contracts of adhesion,[46] the Court has nevertheless consistently ruled that contracts of adhesion are not invalid *per se* and that it has, on numerous occasions, upheld the binding effect thereof.[47]

In its Decision, the Third Division placed great weight in the testimony of Engr. Elvin F. Bello, WG&A's fleet manager, that while he assented to the Shiprepair Agreement, he did not sign the fine-print portion thereof where Clause 20 was found because he did not want WG&A to be bound by them.[48] This testimony however, was correctly found by the CIAC as clearly self-serving, because such intention of WG&A was belied by its actions before, during and after the signing of the Shiprepair Agreement.

As pointed out by the CA, WG&A and its related group of companies, which were all extensively engaged in the shipping business, had previously dry-docked and repaired its various ships with KCSI under ship repair agreements incorporating the same standard conditions on at least 22 different occasions.[49] Yet, in all these instances, WG&A had not been heard to complain of being strong-armed and forced to accept the fine-print provisions imposed by KCSI to limit its liability.

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[45] *Philippine Airlines, Inc. v. Court of Appeals*, 325 Phil. 303 (1996); *St. Paul Fire & Marine Insurance Co. v. Macondray & Co.*, 162 Phil. 172 (1976); *Sea-Land Services, Inc. v. Intermediate Appellate Court,* 237 Phil. 531 (1987); *Pan American World Airways, Inc. v. Intermediate Appellate Court*, 247 Phil. 231 (1988); *Citadel Lines, Inc. v. Court of Appeals,* 263 Phil. 479 (1990).

[46] *Everett Steamship Corporation v. Court of Appeals*, 358 Phil. 129 (1998); *Ayala Corporation v. Ray Burton Development Corporation*, 355 Phil. 475 (1998).

[47] *Palmares v. Court of Appeals*, 351 Phil. 664 (1998); *Ridjo Tape and Chemical Corporation v. Court of Appeals*, 350 Phil. 184 (1998).

[48] *Rollo* (G.R. Nos. 180880-81, Vol. II), pp. 2584-2585; *rollo* (G.R. Nos. 180896-97, Vol. II), pp. 1978-1979.

[49] *Rollo* (G.R. Nos. 180880-81, Vol. I), pp. 53-54; *rollo* (G.R. Nos. 180896-97, Vol. I), pp. 160-161.

Also, as pointed out by the CIAC, if it were true that WG&A did not want to be bound under such an onerous clause, it could have easily transacted with other ship repairers, which may not have included such a provision.[50]

After the signing of the Shiprepair Agreement, the record is bereft of any other evidence to show that WG&A had protested such a provision limiting the liability of KCSI. Indeed, the parties bound themselves to the terms of their contract which became the law between them.

While contracts of adhesion may be struck down as void and unenforceable for being subversive of public policy, the same can only be done when, under the circumstances, the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely depriving the former of the opportunity to bargain on equal footing.[51] This is not the situation in this case.

The Court is not unaware of the case of *Cebu Shipyard Engineering Works, Inc. v. William Lines, Inc.,*[52] where the Court struck down an almost similar provision limiting the liability of the ship repairer. In the said case, however, the Court found the provision unconscionable not only because the ship repairer therein was solely negligent in causing the loss of the vessel in their custody, but also because the limited liability clause sought to be enforced unduly restricted the recovery of the insurer's loss of ₱45,000,000.00 to only ₱1,000,000.00. Careful in not declaring such a provision as being contrary to public policy, the Court said:

> Although in this jurisdiction, contracts of adhesion have been consistently upheld as valid *per se*; as binding as an ordinary contract, the Court recognizes instances when reliance on such contracts cannot

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[50] *Rollo* (G.R. Nos. 180896-97, Vol. 1), p. 248.

[51] *Philippine Airlines, Inc, v. Court of Appeals*, *supra* note 45, citing *Saludo, Jr. v. Court of Appeals,* G.R. No. 95536, March 23, 1992, 207 SCRA 498.

[52] 366 Phil. 439 (1999).

be favored especially where the facts and circumstances warrant that subject stipulations be disregarded. **Thus, in ruling on the validity and applicability of the stipulation limiting the liability of CSEW for negligence to One Million (₱1,000,000.00) Pesos only, the facts and circumstances *vis-a-vis* the nature of the provision sought to be enforced should be considered, bearing in mind the principles of equity and fair play.**

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Considering the aforestated circumstances, let alone the fact that negligence on the part of petitioner has been sufficiently proven, it would indeed be **unfair** and **inequitable** to **limit** the liability of petitioner to **One Million Pesos only**. As aptly held by the trial court, "it is rather **unconscionable** if not overstrained." To allow CSEW to limit its liability to One Million Pesos notwithstanding the fact that the total loss suffered by the assured and paid for by Prudential amounted to Forty Five Million (₱45,000,000.00) Pesos would sanction the exercise of a degree of diligence short of what is ordinarily required because, then, it would not be difficult for petitioner to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss suffered by William Lines, Inc. [Emphases supplied][53]

Therefore, to say that Clause 20 of the Shiprepair Agreement is invalid on the basis of the *Cebu Shipyard* is *non sequitur*. In *Cebu Shipyard*, the Court struck down an almost similar provision limiting the liability of the ship repairer only after taking into account the circumstances and the unconscionable effect thereof and, as earlier underscored, after applying the principles of equity and fair play.

The differences in the factual milieu in *Cebu Shipyard* and this case inevitably lead the Court to arrive at a different conclusion. In *Cebu Shipyard*, the ship repairer was **solely** negligent. In this case, both WG&A and KCSI were **equally negligent** in causing the loss of the Superferry 3. In *Cebu Shipyard*, the liability of the ship repairer was limited to ₱1,000,000.00 only. In this case, it was ₱50,000,000.00.

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[53] *Id.* at 457-458.

In *Cebu Shipyard*, the limited liability was conspicuously unconscionable and disproportionate as the ship repairer would only pay a paltry ₱1,000,000.00 of the ₱45,000,000.00 liability, or a ratio of 1:45. In this case, the ratio is a little over 1:3 considering that the liability of the ship repairer, KCSI, is only ₱164,873,675.95, as will be later shown.

The Court, thus, finds Clause 20 just and equitable under the circumstances and should be sustained as having the force of law between the parties to be complied with in good faith.

With the liability of KCSI to WG&A for the loss of Superferry 3 being limited to ₱50,000,000.00, it goes without saying that Pioneer, as subrogee of WG&A, may only claim the amount of ₱50,000,000.00 from KCSI. Well-settled is the rule that the insurer can be subrogated only to the rights as the insured may have against the wrongdoer. As Article 2207 of the Civil Code states:

> Article 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of***, the insurance company shall be subrogated to the rights of the insured*** against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. [Emphasis supplied)

In sum, both KCSI and WG&A should be held responsible for the loss of Superferry 3 assessed at ₱360,000,000.00. As stated by the Third Division of the Court in its Decision, the salvage value recovered by Pioneer from M/V Superferry 3, amounting to ₱30,252,648.09 should be deducted, thus, leaving ₱329,747,351.91 as the amount of the loss. This amount, divided between KCSI and WG&A, results in each party shouldering ₱164,873,675.95. Nevertheless, the limited liability clause of the Shiprepair Agreement being valid, Pioneer, as subrogee of WG&A, may only claim a maximum amount of ₱50,000,000.00 from KCSI.

The amount of ₱50,000,000.00 that KCSI is liable to pay Pioneer should be with interest at 6% *per annum* from the filing of the case until the award becomes final and executory. Thereafter, the rate of interest shall be 12% *per annum* from the date the award becomes final and executory until its full satisfaction. The arbitration costs shall be borne by both parties on a *pro rata* basis.[54]

A final point. As both KCSI and WG&A are equally responsible for the loss of Superferry 3, questions arise: should the liability of Pioneer to WG&A be proportionately limited? Is Pioneer entitled to any refund? Whether or not Pioneer is entitled to the restitution of any excess payment is a question that cannot be adjudicated in this case. The Court cannot make a final finding or pronouncement on the matter because WG&A is not a party in this case. WG&A should be heard in this regard as it may have defenses to fend off the possible claim for refund by Pioneer. It should be stressed that their relationship is governed by their contract of insurance, where their respective rights and obligations are defined, and by their subsequent settlement or arrangement, if any. Due process dictates that these should be threshed out in a separate action. Needless to state, this decision is without prejudice to such action.

WHEREFORE, the September 25, 2009 Decision of the Third Division is hereby **MODIFIED**. Accordingly, Keppel Cebu Shipyard, Inc. is ordered to pay Pioneer Insurance and Surety Corporation the amount of ₱50,000,000.00 plus interest at the rate of 6% *per annum* from the filing of the case until the award becomes final and executory. Thereafter, the rate of interest shall be 12% *per annum* from the date the award becomes final and executory until its full satisfaction.

The arbitration costs shall be borne by both parties on a *pro rata* basis.

SO ORDERED.

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[54] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 97.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

Abad, *J*., see concurring opinion.

Velasco, Jr., *J*., joins the dissent of *J*. Brion.

Brion and *Reyes*, *JJ*., see dissenting opinion.

Bersamin, *J*., took no part due to prior participation in the Court of Appeals.

Villarama, Jr., *J*., on official leave.

CONCURRING OPINION

ABAD, *J*.:

I concur with the main opinion in reconsidering the Division's decision in these cases. I especially address the dissenting opinion of Justice Arturo D. Brion.

On January 26, 2000 Keppel Cebu Shipyard, Inc. (KCSI) and WG&A Jebsens Shipmanagement, Inc. (WG&A) executed a Shiprepair Agreement where KCSI agreed to renovate and reconstruct WG&A's M/V Superferry 3 using its dry docking facilities pursuant to its safety and security rules and regulations. Under the agreement, KCSI's total liability was limited to ₱50 Million. Meanwhile, the ship was insured with Pioneer Insurance and Surety Corporation (Pioneer) for US$8,472,581.78.

In the course of the repairs, M/V Superferry 3 was destroyed by fire. WG&A declared a "total constructive loss" and filed an insurance claim with Pioneer which, in turn, paid WG&A the total sum insured equivalent to ₱360 Million. WG&A then executed a Loss and Subrogation Receipt in favor of Pioneer.

Pioneer tried to collect from KCSI the full amount of ₱360 Million that it had paid to WG&A, but KCSI denied any responsibility for the loss of the vessel. Consequently, Pioneer filed a Request for Arbitration before the Construction Industry Arbitration Commission (CIAC).

On October 28, 2002 the CIAC rendered a decision declaring both WG&A and KCSI guilty of negligence. Holding that the liability for damages was limited to ₱50 Million, the CIAC ordered KCSI to pay Pioneer ₱25 Million, with interest at 6% per annum from the time of filing of the case up to the time the decision is promulgated, and 12% interest after the decision becomes final and executory.

Pioneer and KCSI appealed to the Court of Appeals (CA) in CA-G.R. SP 74018 and CA-G.R. SP 73934, respectively. The CA dismissed Pioneer's petition, but granted KCSI's appeal. On Pioneer's motion for reconsideration, however, the CA issued an amended decision ordering KCSI to pay Pioneer ₱25 Million, without legal interest, within 15 days from the finality of its amended decision.

Both Pioneer and KCSI elevated the matter to the Court for review under Rule 45 of the Rules of Court. On September 25, 2009 the Court's Second Division partially granted the petitions and modified the CA's amended decision. The Court found KCSI solely liable for the loss of the vessel and ordered it to pay Pioneer ₱360 Million less the salvage value of ₱30,252,648.09, or the net amount of ₱329,747,351.91 with 6% per annum from the time the Request for Arbitration was filed until the decision becomes final and executory, plus 12% per annum on the amount or any balance from finality of the decision until full payment.

KCSI filed a motion for reconsideration, which the Court denied on June 21, 2010. KCSI then filed a second motion for reconsideration to refer to the Court *En Banc* and for oral arguments, which the Court also denied on October 20, 2010. The decision became final and executory on November 4, 2010.

On November 23, 2010 KCSI filed a motion to reopen proceedings and motion to refer to the Court *En Banc*. The Court's Second Division voted 4-1 to submit the case to the *En Banc*, while two-thirds of the Court *En Banc*, or ten members, voted to grant KCSI's motion. Three members dissented and two members took no part.

The Court *En Banc* has, in exceptional cases, reopened and accepted for review decisions that have otherwise attained finality. Indeed, it has suspended the rules of procedure when there are special and compelling reasons to alter a judgment that has been declared final even by the Court itself.

For instance, the Court set aside entry of judgment in *Manotok IV v. Heirs of Homer L. Barque*[1] to protect the Torrens system of registration. The Court did the same thing in *Tan Tiac Chiong v. Cosico*[2] owing to due process concerns. In *Barnes v. Judge Padilla*,[3] the Court allowed the recall of entries of judgment in the interest of justice. Meanwhile, in the more recent cases of *League of Cities of the Philippines v. Commission on Elections*[4] and *Navarro v. Ermita*[5] the Court vacated previous decisions in order to uphold congressional intent.

In *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*,[6] the Court *En Banc* also reversed a division ruling despite a final and executory judgment because the Court found the issue of just compensation a matter of public interest. Notably, the *ponente* then was Justice Brion who now vigorously opposes the reopening of these cases in his dissenting opinion.

It is argued that the Court violated the principle on immutability of judgments and that it is proscribed from accepting motions for reconsideration after finality of the assailed decision. But, as shown by jurisprudence cited above, a final judgment may be reopened and reviewed by the Court in order to render just and equitable relief.

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[1] G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468.

[2] 434 Phil. 753 (2002).

[3] 482 Phil. 903 (2004).

[4] G.R. Nos. 176951, 177499, and 178056, April 12, 2011, 648 SCRA 344.

[5] G.R. No. 180050, April 12, 2011, 648 SCRA 400.

[6] G.R. No. 164195, April 5, 2011, 647 SCRA 207.

We are of course aware that the departure from the rules of procedure may provoke criticism from various quarters. But, to be sure, the Court does not recall entries of judgment indiscriminately or without sufficient justification. In granting KCSI's motion, there is no resulting "monumental imbalance in the legal structure" but merely an affirmation that, in rendering justice, courts should be mindful first of substantive rights rather than technicalities.[7]

Here, the CIAC and the CA had the same factual findings with respect to the negligence of the parties. Both found WG&A and KCSI equally at fault for the loss of the vessel. The Court's Second Division, however, held only KCSI liable. What is more, it disregarded the limitation-of-liability clause in the Shiprepair Agreement that would have an impact on future commercial contracts.

KCSI argues that the Court's Second Division had no basis to reverse the factual findings of the CIAC and the CA without having asked for the case records. KCSI also points out that the limitation-of-liability clause is valid and that, on at least 22 different occasions, WG&A or its affiliate companies had willingly entered into similar agreements with the same conditions. Needless to say, these are serious allegations that the Court *En Banc*, by a vote of two-thirds or ten of its members, rightfully saw fit to evaluate.

Besides, the Court acted in accordance with its internal rules which recognize the *En Banc*'s power to review and take cognizance of cases under exceptional circumstances. Section 3 (m), Rule 2 of the rules expressly provides that the Court *En Banc* shall act on cases that it deems of sufficient importance to merit its attention. In this regard, the rules also state that a second motion for reconsideation may be entertained, in the higher interest of justice, by a two-thirds vote of the Court *En Banc's* members.

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[7] *Supra* note 3, at 916, citing *De Guzman v. Sandiganbayan*, 326 Phil. 182 (1996).

DISSENTING OPINION

BRION, *J.*:

I maintain my dissent, based on my objections against the reopening of the final judgment in this case and its acceptance by the Court *En Banc* for its review on the merits. Thus, ***I vote to DENY what effectively is the third motion for reconsideration in this case***.

In a September 25, 2009 Decision, the Second Division of the Supreme Court, thru Justice Antonio Eduardo B. Nachura, modified the Court of Appeals' (*CA's*) December 20, 2007 amended decision in CA-G.R. SP Nos. 74018 and 73934. It ordered Keppel Cebu Shipyard, Inc. (*KCSI*) to pay Pioneer Insurance and Surety Corporation (*Pioneer*) ₱329,747,351.91, with 6% interest per annum from the time the Request for Arbitration was filed until the Decision's finality, plus 12% interest per annum on the said amount or any balance thereof from the Decision's finality until it is paid.

In a June 21, 2010 Resolution, the Court **denied with finality** KCSI's *first* motion for reconsideration.

KCSI requested that the cases be referred to the Court *En Banc,* and set for oral arguments its second motion for reconsideration ***and*** its July 30, 2010 letter. KCSI's September 29, 2010 letter requested for the status of its July 30, 2010 letter.

In an October 20, 2010 Resolution, the Court **denied** the *second* motion for reconsideration and noted KCSI's July 30, 2010 and September 29, 2010 letters.

On November 4, 2010, after denial of KCSI's 2nd motion for reconsideration, the Decision of the Court became final and executory, and was recorded in the Book of Entries of Judgments.

On November 23, 2010, KCSI filed in a belated shot in the dark and **without leave of court**, a *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc*, claiming

that the Court gravely erred when it failed to consider the CA's principal and most crucial finding that both Pioneer and KCSI were guilty of negligence, and that their joint negligence was the cause of the fire that destroyed the vessel; thus, the shared liability of both parties on a 50-50 basis. In support of its motion to refer the case to the Court *En Banc*, KCSI posited that these cases involve issues of transcendental importance and of paramount public interest, as it would purportedly establish a precedent allowing courts to deny any litigant due process of law.

Pioneer filed a Manifestation alleging that KCSI did not mention the fact that an Entry of Judgment had already been made, and the September 25, 2009 Decision had already been recorded in the Book of Entries of Judgments. It also stated that on November 22, 2010, before KCSI filed its motion to reopen, it was given a copy of the motion for issuance of a writ of execution that Pioneer filed with the Construction Industry Arbitration Commission (*CIAC*) on that date.

In a December 6, 2010 letter to the Office of the Chief Justice, KCSI bewailed the Court's reversal of the purported uniform findings of the CA and the CIAC, without elevating the entire records of the case.

On December 13, 2010, KCSI filed its supplemental motion (to its *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc*), alleging that it was denied its substantive rights to due process; that the limitation-of-liability clause under the Shiprepair Agreement between KCSI and WG&A is valid, such that WG&A is estopped to question the same, and that the imposition of the 6% interest is unwarranted.

The Court *En Banc* deliberated on the case and by a vote of 10 in favor[*] and three against,[**] with two abstentions,[***] it decided

[*] *JJ*. Carpio Morales, De Castro, Peralta, Del Castillo, Abad, Perez, Mendoza, Villarama, and Sereno.

[**] *JJ*. Nachura, Velasco, and Brion.

[***] *C.J.* Corona, and *J*. Bersamin.

to lift the entry of judgment and to reopen the case. ***In acting as it did, the Court violated the most basic principle underlying the legal system — the immutability of final judgments — thereby acting without authority and outside of its jurisdiction. It grossly glossed over the violation of technical rules in its haste to override its own final and executory ruling.***

First. The elementary concept of immutability of judgments
A basic principle that supports the stability of a judicial system, as well as the social, economic and political ordering of society, is the ***principle of immutability of judgments.*** "[A] decision that has acquired finality becomes immutable and unalterable[,] and may no longer be modified in any respect ***even if the modification is meant to correct erroneous conclusions of fact or law and whether it [will be] made by the court that rendered it or by the highest court of the land***."[1] "Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest."[2] No additions can be made to the decision, and no other action can be taken on it,[3] except to order its execution.[4]

As recited above, the decision in this case was originally resolved by the unanimous vote of a Division of the Court. The Division also voted unanimously in denying the motion for reconsideration that subsequently came, and even in the denial

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[1] *Genato v. Viola,* G.R. No. 169706, February 5, 2010, 611 SCRA 677, 690; *Marcelo v. Philippine Commercial International Bank (PCIB),* G.R. No. 182735, December 4, 2009, 607 SCRA 778, 790; and *Heirs of Maura So v. Obliosca,* G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418.

[2] *Marcelo v. Philippine Commercial International Bank (PCIB), supra*; *Ang v. Grageda,* G.R. No. 166239, June 8, 2006, 490 SCRA 424, 440; and *Salva v. Court of Appeals,* G.R. No. 132250, March 11, 1999, 304 SCRA 632, 645.

[3] *Natalia Realty, Inc. v. Rivera,* G.R. No. 164914, October 5, 2005, 472 SCRA 189, 197; *Toledo-Banaga v. Court of Appeals,* G.R. No. 127941, January 28, 1999, 302 SCRA 331, 341.

[4] *Times Transit Credit Cooperative, Inc. v. NLRC*, G.R. No. 117105, March 2, 1999, 304 SCRA 11, 17; and *Yu v. National Labor Relations Commission*, G.R. Nos. 111810-11, June 16, 1995, 245 SCRA 134, 142.

of the second motion for reconsideration that followed. The Court changed its vote, however, on the subsequent (effectively, the third) motion for reconsideration, it set aside the final judgment and opened the case anew for review on the merits.

Faced with a renewed assault on the merits of a final judgment, the Court had only one recourse open to it — to simply note the motion (effectively, the third motion for reconsideration); it did not even have to deny this motion as it was way past the prohibited phase of filing pleadings under the express terms of the Rules of Court.[5] That the Court instead opened the case for further review despite the express prohibition of the Rules bodes ill for the respondent as this reopening could not but be a prelude to the reversal of the Division's final and executory judgment.

The capacity, capability and potential for imaginative ideas of those engaged in the law, in arguing about the law and citing justifications for their conclusions, have been amply demonstrated over the years and cannot be doubted. In this endeavor, however, lawyers should not forget that certain underlying realities exist that should be beyond debate, and that cannot and should not at all be touched even by lawyers' convincing prowess. They should not forget that their arguments and conclusions do not stand by themselves and do not solely address the dispute at hand; *what they say and conclude create ripple effects on the law and jurisprudence that ultimately become tsunamis enveloping the greater society where the law stands as an instrument aimed at fostering social, political and economic order*.

In the context of the actions of the Supreme Court – the highest court that decides on the interpretation of the law with binding effect for the whole country — it cannot simply disregard fundamental principles (such as the principle of immutability of judgments) in its actions without causing damage to itself and to the society that it serves. ***A supreme court exists in a***

[5] RULES OF COURT, Rule 52, Section 1, in relation to Rule 56, Section 4.

society and is supported by that society as a necessary and desirable institution because it can settle disputes and can do this with finality. Its rulings lay to rest the disputes that can otherwise disrupt the harmony in society.

This is the role that courts generally serve; specific to the Supreme Court — as the highest court — is the finality, at the highest level, that it can bestow on the resolution of disputes. Without this element of finality, the core essence of courts, and of the Supreme Court in particular, completely vanishes.

This is the reality that must necessarily confront the Court in its present action in reopening its ruling on a case that it has thrice passed upon. After the Court's unsettling action in this case, ***society will inevitably conclude that the Court, by its own action, has established that judgments can no longer achieve finality in this country***; an enterprising advocate, who can get a Justice of the Court interested in the reopening of the final judgment in his case, now has an even greater chance of securing a reopening and a possible reversal, even of final rulings, because the Court's judgment never really becomes final. Others in society may think further and simply conclude that this Supreme Court no longer has a reason for its being, as it no longer fulfills the basic aim justifying its existence. ***At the very least, the Court loses ground in the areas of respect and credibility***.

Second. The Court's loss of jurisdiction once judgment attains finality. The Rules of Court amply provides the rules on the finality of judgments,[6] supported by established rulings on this point.[7] In fact, the Rules itself expressly provides that

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[6] RULES OF COURT, Rule 36, Section 2.

[7] See *Government Service Insurance System v. Regional Trial Court of Pasig, Branch 71,* G.R. Nos. 175393 and 177731, December 18, 2009, 608 SCRA 552; *Gomez v. Correa,* G.R. No. 153923, October 2, 2009, 602 SCRA 40; *Obieta v. Cheok,* G.R. No. 170072, September 3, 2009, 598 SCRA 86; *Dacanay v. Yrastorza, Sr.,* G.R. No. 150664, September 3, 2009, 598 SCRA 20; *Julie's Franchise Corporation v Ruiz,* G.R. No. 180988, August 28, 2009, 597 SCRA 463; and *Heirs of Emiliano San Pedro v. Garcia,* G.R. No. 166988, July 3, 2009, 591 SCRA 593.

no second motion for reconsideration shall be entertained.[8] The operational reason behind this rule is not hard to grasp — a party has 15 days to move for reconsideration of a decision or final resolution, and, thereafter, the decision lapses to finality if no motion for reconsideration is filed. If one is filed, the denial of the motion for reconsideration signals the finality of the judgment. Thereafter, no second motion for reconsideration shall be entertained. At that point, the final judgment begins to carry the effect of *res adjudicata* — the rule, expressly provided in the Rules of Court, that a judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been adjudged, binding on the parties and can no longer be reopened;[9] execution or implementation of the judgment thereafter follows.[10] ***Most importantly, at that point, the court — even the Supreme Court — loses jurisdiction over the case except for purposes of its execution.***

In the present case, the Supreme Court has bent backwards to accommodate a second motion for reconsideration pursuant to its Internal Rules. After the denial of this 2nd motion for reconsideration, an entry of judgment was even made. At this point, the ***Supreme Court clearly no longer has jurisdiction to touch or reopen the case because the judgment has lapsed to finality and an entry of final judgment has, in fact, been made evidencing its finality.*** Even the Constitution itself recognizes that the reopening of a case that has lapsed to finality is outside the powers of the Supreme Court; ***the express constitutional power given to the Supreme Court is to review judgments of lower courts, on appeal or on certiorari, and not to reopen and review its own judgment that has lapsed to finality.***[11] Thus, the Court itself effectively becomes a transgressor for acting with grave abuse of discretion that the Constitution

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[8] RULES OF COURT, Rule 52, Section 2, in relation to Rule 56, Section 4.

[9] RULES OF COURT, Rule 39, Section 47(b).

[10] RULES OF COURT, Rule 39, Section 1.

[11] CONSTITUTION, Article VIII, Section 5(2).

itself, under Section 1, Article VIII, has mandated the Court to check in all areas and branches of government. It becomes a question now of the old dilemma bedeviling all governments — **who will guard and check on the guardians**? Unnerving, to say the least, for the ordinary citizen who goes about his or her daily life relying on the order that the community has established by social compact.

Third*. *The interest of the original victor is unduly prejudiced by an unwarranted departure from the doctrine of finality of judgment. The finality of a judgment is a consequence that directly affects the immediate parties to a case. In a sense, it affects the public as well because the public must respect the finality of the judgment that prevails between the immediate parties. Where a ruling affects the public at large, as in the declaration of the constitutionality or unconstitutionality of a statute, the Court's declaration is binding on the general public.

Under this scheme, it is only right and proper that the Supreme Court itself be bound by the finality of the judgment because: (1) the finality is by reason of the Rules that the Court itself promulgated; and (2) of societal reasons deeper than what the Rules of Court expressly provides. If the rules for the immediate parties and the public were to be one of finality, while the rule for the Court is one of flexibility and non-binding effect because the Court may reopen at will and revisit even final rulings, what results is a ***monumental imbalance in the legal structure*** that the Constitution and our laws could not have intended. If an imbalance were intended or tolerated, then a serious restudy must perhaps be made — for a society with a heavy tilt towards unregulated power cannot but at some point fall, or, at the very least, suffer from it. If no imbalance is intended and the system is correct, then the Court may be seriously out of sync in respecting the system and must rectify its ways.

The most graphic example perhaps of the resulting imbalance is the effect of a reopened decision on the respondent, as in this case. Let it be remembered that a judgment that becomes final does not do so in a vacuum. It affects the parties and one effect is on the prevailing party ***whose rights under the final judgment***

vest on the proceeds of the judgment. This vested right is the reason why a writ of execution follows. When and if a final judgment is reopened, the Court effectively dispossesses the winning party of its right and entitlement to what the final decision decrees, ***all because the Court at that point wants to change its mind on a matter that is already outside of its jurisdiction to rule upon***. This is no less than an act of injustice that is hard to live down for an institution whose guiding light and objective is justice.

Fourth. The recognized exceptions to the rule on immutability rise above the individual interest of the parties. The Rules of Court themselves recognize that the doctrine of finality of judgment is not absolute. Thus, these Rules allow, on specific grounds and for specific periods, petitions for annulment of judgment, petitions for relief from judgment, (and even petition for *certiorari*) as extraordinary and equitable remedies. The Supreme Court itself allows a second motion for reconsideration under its Internal Rules, but only a second motion and under very specific terms; the Internal Rules do not allow a third motion for reconsideration and no rules exist to guide (a party) and govern a third motion for reconsideration filed by a defeated litigant. If the Court allowed exceptions at all under our jurisprudence, these exceptions only came because of strong justification.

Under the Rules of Court, the only recognized exceptions to the rule on the non-reviewability of final judgments are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and when relief from judgment is provided when circumstances transpire rendering the execution of a final decision unjust and inequitable.[12]

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[12] *Peña v. Government Service Insurance System (GSIS),* G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162; and *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586.

To be sure, none of these exceptions exists in the present case. The majority has not claimed that the Second Division's September 25, 2009 Decision and its subsequent resolutions denying KCSI's first and second motions for reconsideration are void on due process ground or for lack of jurisdiction. On the contrary, the majority rejected KCSI's claims to this effect.[13] Rather, in entertaining KCSI's present motion and to justify the Court's assumption of jurisdiction, the majority could only rely on the overly abused legal precept of serving "substantial justice." The decision, though, is silent on the manner by which *substantial justice* may truly be served.

The review of a final and executory decision, when it does occur, must necessarily take into account the nature of the decision. When the final decision is valid, it cannot be the subject of review, even by the Court *En Banc*.[14] Neither can a review be entertained because of error in the judgment; ***the Supreme Court is supreme because its judgment is final, not because it cannot err***. A judgment even if erroneous is still valid if rendered within the scope of the courts' authority or jurisdiction. It is only when the decision is void, as when there is denial of due process or when it is rendered by a court without jurisdiction, that there can be a reopening of the case. The reason, of course, is that a void judgment is no judgment at all, and a new one must be entered in the fulfillment of the courts' dispute resolution function.

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[13] *Ponencia*, pp. 11-12.

[14] In *Apo Fruits Plantation v. Court of Appeals*, G.R. No. 164195, April 30, 2008, the Court stated:

> The Court *En Banc* is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court *En Banc* itself, and a decision of its Division is as authoritative and final as a decision of the Court *En Banc.* Referrals of cases from a Division to the Court *En Banc* do not take place as just a matter of routine but only on such specified grounds as the Court in its discretion may allow.
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> But the allowable discretion the Court has does not include the resuscitation of a final and executory judgment without the most compelling of reasons laid down in the decision itself.

Beyond these recognized exceptions, the Court has on several occasions modified or even reversed its rulings which have already become final and executory. These were done even if the questioned ruling already pertained to the execution aspect of the case on the forceful reasoning that the "*fallo* without any basis at all in fact and in law or in the opinion portion of the decision from which it draws its breath and life can only be considered as **null and void**."[15] In most (if not all) of these instances, however, the Court's ultimate decision, at the very least, rests on sufficiently compellingly grounds. A brief survey of some of these cases is in order.[16]

In *San Miguel Corporation v. National Labor Relations Commission*,[17] the Court reinstated the petition it had dismissed and reviewed the case on the merits after admitting that it had "prematurely" denied the petitioner's 1st motion for reconsideration.

In *Galman v. Sandiganbayan*,[18] the Court initially dismissed the petition and the motion for reconsideration subsequently filed. On second motion for reconsideration *filed with prior leave*, the Court set aside its previous actions and granted the petition upon finding that there were serious violations of the People's right to **due process**. The Court took a similar action on a second motion for reconsideration filed *with prior leave*

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[15] *Republic v. De Los Angeles*, G.R. No. L-26112, October 4, 1971, 41 SCRA 422.

[16] There are usually two instances or stages when the doctrine of finality of judgment is engaged; *first,* when a decision is rendered by a lower court or tribunal and the same is affirmed or modified on appeal by the Supreme Court *or* the ruling at the trial or appellate level becomes final without reaching the Supreme Court and its reconsideration on the merits is sought; *second*, when the decision becomes final whether at the trial or appellate level and the case have reached the execution stage which spawned litigation anew. The first instance is what is before the Court.

[17] G.R. No. 82467, June 29, 1989, 174 SCRA 510.

[18] G.R. No. 72670, September 12, 1986, 144 SCRA 43.

in *Philippine Consumers Foundation v. National Telecommunications Commission.*[19]

In *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*,[20] the Court *En Banc* entertained a third motion for reconsideration (previously denied twice by a Division of the Court) under its **constitutional authority** to resolve conflicting rulings laid down by different Divisions of the Court. In *Cosio v. de Rama,*[21] the Court partially granted the petitioner's plea on a second for reconsideration on the ground that what is involved is a "difficult question of law."

In *Munoz v. Court of Appeals*,[22] the Court reversed the judgment of acquittal on a second motion for reconsideration and opted to "resolve the same on its merits, rather than on mere procedural considerations" considering that what is at stake is the individual **liberty of an accused**; in this case, the Court initially dismissed the petition *for being filed late* (and the motion for reconsideration subsequently filed)[23]

In *Manotok IV v. Barque*,[24] after denying the petition and the two motions subsequently filed,[25] the Court *En Banc* recalled the entry of judgment and proceeded to reevaluate the cases "on a *pro hac vice* basis," considering that conflicting rulings of the Court on administrative reconstitution of titles is in issue.

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[19] G.R. No. 63318, August 18, 1984, 131 SCRA 200. The Court stated: "*It should be emphasized that the resolution of this Court xxx denying the first motion for reconsideration did not state that the denial is final.*" The decision was rendered in 1984 at the time when the 1964 Rules of Court expressly allows a second motion for reconsideration (Section 1, Rule 52).

[20] G.R. No. 58011, November 18, 1983, 125 SCRA 577.

[21] G.R. No. L-18452, May 20, 1966, 17 SCRA 207.

[22] G.R. No. 125451, January 20, 2000, 322 SCRA 741; August 22, 2001.

[23] *Tan Tiac Chiong v. Hon. Cosico*, 434 Phil. 753 (2002).

[24] G.R. No. 162335, December 18, 2008, 574 SCRA 468.

[25] A Motion for Reconsideration and Motion for Leave to File a Second Motion for Reconsideration with the Motion for Reconsideration attached.

More importantly, the "militating concern" of the Court *En Banc* in accepting and reviewing the cases is on the "stability of the Torrens system of registration" and "**not so much the particular fate of the parties.**"

In *Barnes v. Padilla,*[26] in recalling the entry of judgment, the Court relieved a party from the procedural negligence of his counsel (which made the appellate ruling lapsed into finality) because otherwise, the petitioner would suffer serious injustice.[27]

More importantly, in the case of *Apo Fruits Plantation v. Land Bank of the Philippines*,[28] - penned by this writer - the Court granted what is effectively the petitioner's third motion for reconsideration (with regard to the deletion of the award of interest originally awarded to it) *due to the* "**transcendental importance**" of the case in light of the constitutional underpinning involved - the agrarian reform program of the government - ***and*** the assailed decision's inconsistency with settled jurisprudence. Pointedly, the Court said:

> **To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor**. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. **Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected**.
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> The assailed decision patently and legally wrong, but is also morally unconscionable for being grossly unfair and unjust. if we continue to deny the petitioners' present motion for reconsideration, we would — illogically and without much thought to the fairness that the situation demands — uphold the interests of the LBP, not only at the expense of the landowners but also that of substantial justice as well.

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[26] 482 Phil. 903 (2004).

[27] See *Sanchez v. Court of Appeals*, 404 SCRA 544.

[28] G.R. No. 164195, October 12, 2010.

What runs throughout these cases, where the Court took an extraordinary step, is the presence of an exceptionally justifying circumstance of a fundamental value which goes beyond the interests of the litigants. It is the presence of this exceptional character that imposes upon the Court a measure of self-regulation to prevent itself from committing the very grave abuse of discretion which under the Constitution it is designed to perform as a checking measure.[29] Without this exceptional character, the underlying public policy in the crafting and applying the doctrine of immutability should dictate the Court's action; for, parties come to court to litigate on a dispute and not to prolong and perpetuate the dispute itself at the expense of supposed victor. The Court should not allow itself to be a party to this perpetuation for —

> Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law."[30]

What the majority cited in justifying the *En Banc*'s action in making an on-the-merits review of the case is the Court's own *Internal* Rules on matters or cases which calls for *En Banc* attention. This provision, however, does not altogether rule out the *Rules of Court's* prohibition against the filing of a second or subsequent motion for reconsideration, much less of a motion filed without prior leave — as was done here.[31] Worse, the

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[29] CONSTITUTION, Article VIII, Section 1, par. 2.

[30] *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009.

[31] The cases cited by the *ponencia* are likewise inapt. *Firestone Ceramics v. Court of Appeals* involves an *En Banc* action to take cognizance of a *first* motion for reconsideration *pending* with a Division. On the other hand, *Lu v. Lu* involves conflicting rulings of the Court of which only the Court *En Banc* has constitutional authority to ultimately resolve. *People v. Ebio* involves the issue of doubt on the constitutionality of the *En Banc's* action for lack of quorum, which warranted a re-deliberation. *Ebio* involves the Court's action on a *first* Motion for Reconsideration.

majority's reasoning "that there were serious allegations in the petition that if the decision of the Court would not be vacated, there would be far-reaching effect on similar cases" finds absolutely no substantiation at all anywhere in the decision!

***Fifth*: Grant of motions for reconsideration subsequent to the finality of judgment.** A still debatable instance when a final decision can be reopened is through action on a second motion for reconsideration under Section 3, Rule 15 of the Internal Rules of the Supreme Court.[32] The rule states:

> **Sec. 3*. Second motion for reconsideration*.** — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. [italics supplied]

Under this provision (***that lays hidden in the Court's Internal Rules and is not reflected in the Rules of Court***), a second motion for reconsideration *shall not* be entertained, except in the "higher interest of justice" by a two-thirds vote of the Court *En Banc*'s members. Aside from the voting requirements, a movant must substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both (1) legally erroneous, and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.

Clearly, even under this debatable Internal Rules provision, the judicially subjective standard employed - *i.e.*, whether the case is of sufficient importance - to merit the *En Banc*'s

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[32] A.M. No. 10-4-20-SC, The Internal Rules of the Supreme Court, effective May 22, 2010.

consideration is in itself insufficient to disregard the settled black-letter rule on immutability of a final judgment. In fact, if KCSI itself as petitioner is convinced that its cause is of sufficient importance to merit the attention of the *En banc*, it could not have moved for the referral of the case to *En banc only after* it failed to obtain a judgment favorable to it.

Then again, even this avenue under the Internal Rules may be closed, as the Court is proscribed from accepting motions for reconsideration filed after the finality of the assailed decision. In this case, KCSI filed its motion to reopen (a third motion for reconsideration), without leave of court, after the denial of its second motion for reconsideration, when a motion for the issuance of execution was already staring it in the face. This move can only be described as a brazen shot in the dark, unsupported by legal reason that the majority in the Court saw fit to entertain.

It was through the opening provided by the questionable provision of the Internal Rules that KCSI's *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc* sought its entry. Significantly, aside from a fig leaf reference to violation of due process (for allegedly deciding the case without the original records), the presented justification essentially referred to cited legal errors committed in the Court's three considerations of the case, *i.e.,* in the original *ponencia* and in the two motion for reconsideration that were denied.

An eyebrow-raising aspect is that all the Court's three considerations and ruling on the case were unanimous; not one dissent or sliver of a dissent was ever made. Yet, those who voted for the reopening were the same Members of the Division who supported the *ponencia*, except only for the *ponente*. Most unsettling of all is the realization that the Court's revisit of resolved issues, under the guise of "higher interest of justice," will mean the abandonment of settled principles of law to accommodate KCSI's arguments that had been considered and unanimously turned down in the Court's Decision and Resolutions.

These disturbing thoughts invariably lead to the question: if no finality can be secured even under the glaringly clear circumstances of this case, can the country's adjudication system

be in grave peril? I do not believe that the problem so far is systemic; the system has had (and it still does have) its share of problems, but these have not been on the finality of judgments as this principle has been with the Court in its more that a hundred years of existence. The problem, as I see it, is individual and remediable. If only the Court and its Members will go back to first principles, and will truly reflect on the place, role, and relevance of the Court in contemporary society, then our judicial system can be and can remain the stable and reliable system that society expects it to be.

For all these reasons, I vote to **DENY** KCSI's third motion for reconsideration for lack of jurisdiction, and to reiterate the finality of the Decision of the Second Division dated September 25, 2009.

DISSENTING OPINION

REYES, *J.*:

I find myself unable to concur in the majority opinion. I would like to emphasize the applicability of *Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc.*[1] in this case.

Below is a summary of *Cebu Shipyard* insofar as it is relevant to *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation.*[2]

M/V Manila City, a luxury passenger-cargo vessel owned by William Lines, Inc. (William Lines), was insured with Prudential Guarantee and Assurance Company, Inc. (Prudential) for ₱45,000,000.00 for hull and machinery. Among others, the policy provided as follows:

> Subject to the conditions of [the] Policy, [the] insurance also covers loss of or damage to Vessel directly caused by the following:

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[1] 366 Phil. 439 (1999).

[2] G.R. Nos. 180880-81 & G.R. Nos. 180896-97, September 25, 2009, 601 SCRA 96.

x x x x x x x x x

Negligence of Charterers and/or Repairers, provided such Charterers and/or Repairers are not an Assured hereunder.

x x x x x x x x x

provided such loss or damage has not resulted from want of due diligence by the Assured, the Owners or Managers of the Vessel, of any of them. Masters, Officers, Crew or Pilots are not to be considered Owners within the meaning of this Clause should they hold shares in the Vessel.[3]

During the effectivity of the insurance, M/V Manila City caught fire and sank on February 16, 1991 while it was undergoing dry-docking and repair within the premises of Cebu Shipyard and Engineering Works, Inc. (Cebu Shipyard). On February 5, 1991, William Lines brought M/V Manila City to Cebu Shipyard for dry-docking and repair. The Work Orders executed by William Lines and Cebu Shipyard contain the following stipulations:

11. Save as provided in Clause 10, the Contractor shall not be under any liability to the Customer either in contract or for delict or quasi-delict or otherwise except for negligence and such liability shall itself be subject to the following overriding limitations and exceptions, namely:

(a) The total liability of the Contractor to the Customer (over and above the liability to replace under Clause 10) or of any sub-contractor shall be limited in respect of any defect or event (and a series of accidents arising out of the same defect or event shall constitute one defect or event) to the sum of Pesos Philippine Currency One Million only.

x x x x x x x x x

20. The insurance on the vessel should be maintained by the customer and/or owner of the vessel during the period the contract is in effect.[4]

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[3] *Supra* note 1, at 444-445.

[4] *Id*. at 446.

After M/V Manila City caught fire and sank, William Lines filed a complaint with the Regional Trial Court (RTC) of Cebu City against Cebu Shipyard, alleging that the loss of the vessel was due to the latter's fault and negligence.

Subsequently, Prudential paid William Lines the value of the vessel's hull and machinery, resulting to Prudential's subrogation to the claims of William Lines against Cebu Shipyard. An amended complaint was filed to include Prudential as a co-plaintiff.

In its Decision dated June 10, 1994, the RTC ruled that it was Cebu Shipyard's negligence that caused the total loss of the vessel. Cebu Shipyard was ordered to pay Prudential the amount of ₱45,000,000.00, representing the amount the latter paid to William Lines.

On appeal, the Court of Appeals (CA) affirmed the RTC decision.

Cebu Shipyard filed a Petition for Review with this Court, claiming, among others, that: (a) it is a co-assured under the insurance contract between William Lines and Prudential by virtue of Clause 20 of the Work Orders; thus, its supposed negligence is an excluded risk; and (b) on the assumption that its negligence was the cause of the vessel's total loss, its liability is limited to ₱1,000,000.00.

In a Decision dated May 5, 1999 penned by Justice Fidel P. Purisima, this Court denied the petition finding no merit in any of Cebu Shipyard's claims. *First*, this Court, not being a trier of facts, is bound by the factual findings of the RTC and the CA that Cebu Shipyard's negligence was the cause of the loss. *Second*, the loss took place while the Cebu Shipyard had custody and control of the vessel, thus, the principle of *res ipsa loquitor* applies. *Third*, Clause 20 of the Work Orders does not make Cebu Shipyard a co-assured under the insurance contract between Prudential and William Lines. While William Lines is required to maintain an insurance contract while the vessel is being dry-docked and repaired by Cebu Shipyard and such coverage benefits Cebu Shipyard, this does not automatically make Cebu Shipyard

a co-assured. It is only William Lines who was designated as "assured" in the insurance contract and:

The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement because the insurance policy denominates the assured and the beneficiaries of the insurance. x x x.[5]

Fourth, the Work Orders are in the nature of adhesion contract, which is recognized as valid in this jurisdiction but reliance thereon is unfavored given a certain factual milieu. In this case, it is unfair and inequitable to limit the liability of Cebu Shipyard to ₱1,000,000.00 in view of the proven fact that its failure to exercise the required diligence was the proximate cause of the loss.

It is evident that the Decision dated September 25, 2009 of this Court in *Keppel Cebu Shipyard* shares a parallelism with its Decision dated May 5, 1999 in *Cebu Shipyard*. As to the validity of Clause 20, the limited liability clause of the Ship Repair Agreement between WG & A Jebsens Ship Management, Inc. (Aboitiz), this Court held that:

Indeed, the assailed clauses amount to a contract of adhesion imposed on WG&A on a "take-it-or-leave-it" basis. A contract of adhesion is so-called because its terms are prepared by only one party, while the other party merely affixes his signature signifying his adhesion thereto. Although not invalid, *per se*, a contract of adhesion is void when the weaker party is imposed upon in dealing with the dominant bargaining party, and its option is reduced to the alternative of "taking it or leaving it," completely depriving such party of the opportunity to bargain on equal footing.

x x x x x x x x x

Likewise, Clause 20 is a stipulation that may be considered contrary to public policy. To allow KCSI to limit its liability to only [₱]50,000,000.00, notwithstanding the fact that there was a constructive total loss in the amount of [₱]360,000,000.00, would

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[5] *Id*. at 456.

sanction the exercise of a degree of diligence short of what is ordinarily required. It would not be difficult for a negligent party to escape liability by the simple expedient of paying an amount very much lower than the actual damage or loss sustained by the other.[6]

As to the validity of Clause 22(a), the provision in the Ship Repair Agreement that required Aboitiz to maintain an insurance cover on the vehicle while it is being dry-docked and repaired by Keppel Cebu Shipyard, Inc. (KCSI), invoked by KCSI to claim that it is a co-assured in the insurance contract between Aboitiz and Pioneer Insurance and Surety Corporation (Pioneer), this Court held that:

Along the same vein, Clause 22(a) cannot be upheld. The intention of the parties to make each other a co-assured under an insurance policy is to be gleaned principally from the insurance contract or policy itself and not from any other contract or agreement, because the insurance policy denominates the assured and the beneficiaries of the insurance contract. Undeniably, the hull and machinery insurance procured by WG&A from Pioneer named only the former as the assured. There was no manifest intention on the part of WG&A to constitute KCSI as a co-assured under the policies. To have deemed KCSI as a co-assured under the policies would have had the effect of nullifying any claim of WG&A from Pioneer for any loss or damage caused by the negligence of KCSI. No ship owner would agree to make a ship repairer a co-assured under such insurance policy. Otherwise, any claim for loss or damage under the policy would be rendered nugatory. WG&A could not have intended such a result.[7]

The re-opening of our Decision dated September 25, 2009 despite the fact that this had already become final and executory, raises the presumption that there will be a reversal in KCSI's favor.

At the onset, it bears stressing that the conclusions made by this Court in *Keppel Cebu Shipyard* was consistent with the principles enunciated in *Cebu Shipyard* and in observance of

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[6] *Supra* note 2, at 143-144.

[7] *Id.* at 144.

the principle of *stare decisis.* In fact, even without having to go through the rigorous exercise of determining whether Aboitiz consented to the limited liability clause (a supposed fine-print in the Ship Repair Agreement), the conclusion would be the same and KCSI's liability to Pioneer would still be within the range of ₱350,000,000.00 considering the pronouncement in *Cebu Shipyard* that a limitation of liability in that form is void for being against public policy.

The same is true with respect to the issue on whether KCSI can be considered a co-assured in the insurance contract between Pioneer and Aboitiz. Even if KCSI's being a co-assured is expressly stipulated in the Ship Repair Agreement (compared to the Work Orders in *Cebu Shipyard*, which was not that explicit), that would not suffice to make it so. *Keppel Cebu Shipyard* echoed the pronouncements in *Cebu Shipyard* that one can only claim to be a co-assured if he is designated as one in the insurance contract itself, and no other contract where the insurer is not a party can be invoked.

Therefore, to hold that KCSI's liability to Pioneer is limited only to ₱50,000,000.00 is tantamount to a reversal of the doctrine espoused in *Cebu Shipyard*; and if such is the intention then a categorical statement to that effect should be made. For several years, ship owners had relied on this formulation that any attempt on the part of the ship repairer and owner of docking facilities to limit their liability to a certain amount, which is way below that actual value of the ship, is an exercise in futility. This holds true even if the ship owner had consented to a contract where such limitation on liability has been stipulated.

It is not without reason that limited liability provisions had been struck down as void for being against public policy. It is indeed distasteful and an affront to one's sense of justice and fairness that: (a) ship owners would render themselves unqualified to the services of ship repairers and owners of docking facilities should they refuse to accede to a limited liability clause; and (b) ship repairers and owners of docking facilities would be relieved of liability to a significant degree even if it was by their fault or negligence that the vessel was placed in utter ruin.

The consent of a ship owner to a limited liability clause is not freely given in a certain sense, most especially if the ship owner is confronted with no choice but to engage the services of that ship repairer for being the only one available. Such cutthroat practice is what this Court would intend to avoid by declaring such a limited liability clause invalid.

In light of the foregoing, and on the ground of immutability of judgment, I register my **DISSENT**. I vote to **AFFIRM** the Decision dated September 25, 2009 of the Court in this case.

EN BANC

[G.R. No. 189774. September 18, 2012]

DR. EMMANUEL T. VELASCO, FORMER CHAIRMAN, TARIFF COMMISSION, EDGARDO B. ABON, CHAIRMAN, JAIME A. CASAS, EPICTETUS PATALINGHUG, ANTHONY R. A. ABAD, ILUMINADA O. BOBADILLA, FLORDELIZA A. HERNANDEZ, MA. TERESITA M. PERALTA, RAYMUND GED T. VEGA, RIZALINA C. SOLANO, WILFREDO M. AQUINO, OCTAVILLA L. MALANA, GRACELYN L. RAMOS, RICO S. LOPEZ, REMEDIOS G. NAZARETH, CRISANTO ABARQUEZ, NELIA A. VARGAS, MA. FELICIDAD D. DONOR, EUNICE S. NARCISO, ISAGANI D. GARDUQUE, NINA EDISSA M. SANTOS, EDWIN B. DE GUZMAN, ROSALINDA D. LAMBOJON, ROMEO U. SALUTA, VICENTE M. QUEROL, JR., MERLY NAGAMOS, LIWAYWAY A. GUIAM, LOURDES C. DEL ROSARIO, WILSON M. RUIZ, DIANA MAR T. CASAS, DELIA T. DELLORO, MA. ISABEL M. DE GUZMAN, VIOLETA M. CASTRO,

EVANGELINE D. ALENSUELA, VERONICA S. DEVERA, ROBERTO A. LAVIÑA, ERIC F. DE LOS REYES, FATIMA P. COMSON, JULIETTA G. GUTIERREZ, RAQUEL H. SANTIAGO, TERESITA M. SAUS, RICARDO A. MALANA, ERENESTO T. TUMBAGAHAN, JR., WILFREDO C. PEÑAVERDE, MANUEL A. VALLEJO, PEDRO P. RAZO, PEDRO G. TAN, HERMINIO A. SANTOS, RODOLFO A. TANDAS, IÑIGO L. WANIWAN, WILSON V. PAMISAL, ALFREDO M. GOMEZ, NORBERTO M. BANTUG, MONTE R. DEL ROSARIO, LEONCIA N. AREVALO, BENJAMIN SANTOS, JR., DANILO T. POSTOLERO, DANILO VALDEMORO, VISITACION N. CABUNDOC, MICAELO P. DEL ROSARIO, FILOMENA M. GERONIMA, EDGARDO R. MARALIT, ARTEMIO D. BERNARDINO, ZAIDA B. PASCUAL, POE C. ALCAZAREN, SOLEDAD BANGAY, MA. LUISA D. LABORTE, NIEVES CRISTINA M. CAPULONG, THELMA G. JACOBE, VICTORIA TAGONG, MA. TERESITA RAPIRAP, VICTOR JOSE ZAMORA, MA. THERESA NORIEGA, LILIBETH CASAKIT, NORMA BUENVISTA, CESARIO S. GONZALES, JR., MARILYN BITANGA, EULALIA L. AQUINO, ENRIQUETA OCAMPO, GLORIA MELANIE R. LUIS-ISAAC, MILAGROSA TUAZON, JAIME G. DIZON, SALVADOR H. DE LUNA, EDWARD S. A. BESANA, REYNALDO G. CRUZ, RAMIRO CRUZ, LORETO CARSI-CRUZ, JENNIFER G. BONDOC, CESAR M. PALAFOX, JR., ATTY. REYNATO R. DEVERA, CEFERINO G. BAUTISTA, MANUEL R. AGDEPPA, RUBEN ROZAL, ROMAN ADRIOSULA, GUILLERMO COMAYAS, ISIDORA ACOLOLA, ESPERANZA PALOMATA, ELVIRA IGNACIO, MA. LOURDES SALUTA, GLORIA RUEDA, JOCELYN A. DE LOS REYES, ELISEO YUTOB, GLORIA M. AGATO, RAMON LUCERO, JR., DANNY JOSE MATUTINA, ANGELITA R. FERNANDO, JEAN

CABALLES, FRANKLIN PRESTOUSA, MEIJI TEMPLO, ZENAIDA LACAR, EMMANUEL A. CRUZ, MARISSA MARICOSA MACAM, MA. THERESA PACLIBARE, JESUS EMEN, REBECCA DOMINGO, VEDASTO TINANA, MA. SOCORRO CHUA, IMELDA LIGUATON, CHARITY MALTO, BEVERLY TUMBAGAHAN, LUCIA AYSON, LETICIA T. FERNANDEZ, LODIVINA PUNZALAN, MONETTE DEAPERA, AMELIA P. DOMINGO, MARILOU P. MENDOZA, LEONARDO D. GABRIEL, JR., NYDIA COMETA, ROMULO PANTI, ORLANDO TUPAZ, ZENAIDA SALDUA, ROWENA PAJE, BRAULIO BANGAY, DELIA CRUZ, MARILYN A. ALBAR, LOURDES SALAZAR, FERNANDA Z. NATIVIDAD, DIONISIA CANONIZADO, CECILIA DOMINGUEZ, MELITTA VELACRUZ, JONATHAN ALABOT, and RODELIO DAMPIL, *petitioners, vs.* **COMMISSION ON AUDIT AND THE DIRECTOR, NATIONAL GOVERNMENT AUDIT OFFICE I,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; EXECUTIVE DEPARTMENT; OFFICE OF THE PRESIDENT; POWER OF CONTROL; ADMINISTRATIVE ORDER 161; PROHIBITED THE ESTABLISHMENT OF SEPARATE PRODUCTIVITY AND PERFORMANCE INCENTIVE AWARDS.—** AO 161 was issued to rationalize the grant of productivity incentive benefits under a *uniform* set of rules. It sought to address the dissension and dissatisfaction — which came about when some department heads granted incentive benefits of varying amounts to their officials and employees based on the provisions of Sections 31, 35 and 36 (2), Chapter 5, Subtitle I, Book V of the Administrative Code of 1987 — among those government employees who received less or no benefits due to lack of funds. It recognized the need to have a "standard system of incentive pay based on productivity and performance among officials and employees of the Government." In accordance with its stated purposes, AO 161 prohibited the establishment of

separate productivity and performance incentive awards. It also expressly revoked all administrative authorization/ decrees relative to the grant of incentive award or bonus pursuant to Sections 31, 35 and 36 (2), Chapter 5, Subtitle A, Title I, Book V of EO 262.

2. **ID.; ID.; ID.; ID.; ADMINISTRATIVE ORDER 161 AND ADMINISTRATIVE ORDER 103 ARE ISSUED IN THE VALID EXERCISE OF THE PRESIDENT'S CONSTITUTIONAL POWER OF CONTROL AND AUTHORITY OVER EXECUTIVE DEPARTMENTS.—** The Tariff Commission's ESIAS cannot be implemented independently and without regard to subsequent presidential administrative orders such as AO 161. In *Blaquera v. Alcala*, the Court comprehensively discussed the effects of an administrative order similar to AO 161 on the implementation of the ESIAS. It ruled that in issuing an administrative order to regulate the grant of productivity incentive benefits, the President was only exercising his power of control x x x. In the present case, and in line with the pronouncements in *Casal v. Commission on Audit* and *Blaquera v. Alcala,* the Court finds that AO 161 was issued in the valid exercise of presidential control over the executive departments, which Chairman Velasco was duty bound to observe. "Executive officials who are subordinate to the President should not trifle with the President's constitutional power of control over the executive branch. There is only one Chief Executive who directs and controls the entire executive branch, and all other executive officials must implement in good faith his directives and orders. This is necessary to provide order, efficiency and coherence in carrying out the plans, policies and programs of the executive branch." Considering, therefore, that Special Order 95-02 and Resolution No. 96-01 as amended by Resolution No. 96-01A, were issued in direct contravention of the prohibition in AO 161, it follows that the grant of the incentive awards therein were invalid and lacked legal basis. Even prior to the issuance of AO 161, the subject incentive awards could not have been validly granted in the absence of prior approval from the Office of the President, pursuant to Section 2 of Administrative Order No. 103 (AO 103) x x x. AO 103, which took effect on January 14, 1994, enjoins heads of government agencies from granting incentive benefits without

prior approval of the President and, like AO 161, is also a valid exercise of the President's constitutional power of control and authority over executive departments. Thus, without the *imprimatur* of the Office of the President as required by AO 103, the grant of the subject incentives is null and void.

3. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CAN BE HELD PERSONALLY ACCOUNTABLE FOR ACTS CLAIMED TO HAVE BEEN PERFORMED IN CONNECTION WITH OFFICIAL DUTIES WHERE THEY HAVE ACTED BEYOND THEIR SCOPE OF AUTHORITY OR WHERE THERE IS A SHOWING OF BAD FAITH.—** Indeed, a public officer is presumed to have acted in good faith in the performance of his duties. However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith. Thus, in the case of *Casal v. Commission on Audit,* the Court held liable the approving officers who authorized the grant of productivity award in complete disregard of the prohibition declared by a presidential issuance x x x. Similarly in the present case, the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

4. **ID.; ID.; PUBLIC EMPLOYEES; NEED NOT BE REQUIRED TO REFUND THE BENEFITS WHICH THEY RECEIVED IN GOOD FAITH.—** [W]ith regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Directives and orders issued by the President in the valid exercise of his power of control over the executive department must be obeyed and implemented in good faith by all executive officials. Acts performed in contravention of such directives merit invalidation.

Challenged *via* petition for *certiorari* under Rule 64 *vis-à-vis* Rule 65 of the Rules of Court is the Decision[1] dated September 15, 2009 of respondent Commission on Audit (COA) disallowing the Merit Incentive Award and Birthday Cash Gift granted to petitioners.

The Facts

Sometime after the effectivity of the Administrative Code of 1987 (E.O. 292) and in accordance with Section 35,[2] Chapter 5, Subtitle A, Title I, Book V thereof and its implementing rules, the Tariff Commission established its own Employee Suggestions and Incentives Awards System (ESIAS),[3] which was approved by the Civil Service Commission (CSC) on December 2, 1993. Subsequently, however, the CSC ordered

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[1] *Rollo,* pp. 89-95.

[2] Section 35. *Employee Suggestions and Incentive Award System.* — There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

[3] *Rollo,* pp. 32-36.

the Tariff Commission to revise the ESIAS to comply with certain requirements.[4] On January 24, 1994, the revised ESIAS was submitted to the CSC for approval.[5]

Without the revised ESIAS having been acted upon by the CSC, the Tariff Commission, through its then Chairman Emmanuel T. Velasco, issued Special Order No. 95-02[6] on December 12, 1995, granting the subject Merit Incentive Award to its officials and employees in amounts ranging from ₱1,000.00 to ₱7,000.00, depending on the date of employment, for a total disbursement of ₱929,000.00. Subsequently, on December 16, 1996, the Tariff Commission also issued Resolution No. 96-01, as amended by Resolution No. 96-01A,[7] granting the subject Birthday Cash Gift of ₱2,000.00 to eligible officials and employees for calendar years 1994, 1995 and 1996, for which it disbursed ₱794,000.00.[8]

Upon post-audit conducted by the COA, the grant of the Merit Incentive Award was suspended for "lack of approval of the Office of the President."[9] The Birthday Cash Gift was likewise suspended for "lack of legal basis."[10] There being no settlement or submission by the Tariff Commission of the requirements for the lifting of both suspensions, the same eventually matured into disallowances.[11] Thus, Chairman

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[4] *Id.* at 6.

[5] *Id.* at 5-6.

[6] *Id.* at 37-40.

[7] *Id.* at 89.

[8] *Id.* at 6.

[9] *Id.* at 89.

[10] *Id.*

[11] Presidential Decree No. 1445 states:

Section 82. *Auditor's notice to accountable officer of balance shown upon settlement.* The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges,

Velasco, in a letter[12] to the COA, sought reconsideration with a request that if the disallowances are not reconsidered, the Merit Incentive Award be converted instead into "Hazard Pay," similar to that granted by the National Economic Development Authority (NEDA) to its employees, to dispense with the requirement of a separate approval from the Office of the President considering that the Tariff Commission is an attached agency of the NEDA.[13] He also informed the COA that the Tariff Commission adopted Resolution No. 96-01A which converted the Birthday Cash Gift into "Amelioration Assistance" to match the same benefit granted to NEDA officials and staff.

In a letter[14] dated March 17, 1999, State Auditor Malaya R. Ochosa denied Chairman Velasco's request for reconsideration, stating that the grant of the subject incentives was contrary to Presidential Administrative Order No. 161[15] (AO 161) dated December 6, 1994 and Department of Budget and Management (DBM) National Compensation Circular No. 73[16] (NCC 73) dated December 27, 1994, which prohibited heads of departments and agencies from establishing and authorizing a separate productivity and performance incentive award. She also found

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or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

[12] *Rollo*, pp. 689-690.

[13] *Id.* at 90.

[14] *Id.* at 691-692.

[15] Prescribing a Standard Incentive Pay System Based on Productivity and Performance, for all Officials and Employees of the Government, National and Local Including those of Government-Owned and/or Controlled Corporations and Government Financial Institutions and For Other Purposes. (1994)

[16] Grant of Productivity Incentive Benefit (PIB) for CY 1994 and Years Thereafter. (1994)

no legal basis for the conversion of the disallowed payments into other forms of allowances.[17]

The matter was elevated to COA Director IV Juanito Espino, Jr. who affirmed the pronouncements of State Auditor Ochosa, holding that since the revised ESIAS was never approved by the CSC, then the same could not be a valid basis for the grant of the subject incentives.[18]

Hence, the filing of a petition for review with the COA *En Banc* assailing the disallowance of the subject incentives.[19]

Ruling of the COA

On September 15, 2009, the COA *En Banc* rendered the assailed Decision[20] upholding the disallowances. It ruled that Section 7 of AO 161 revoked Section 35, Chapter 5, Subtitle A, Title I, Book V of EO 292 and therefore, presidential approval was required for the grant of the Merit Incentive Award. It found that the conversion of the subject incentives did not remove the grant from the coverage of the proscription under AO 161 and NCC 73. Finally, the COA held that the Tariff Commission officers did not act in good faith since they authorized the subject incentives even after AO 161 had already been in effect for more than a year. Thus, they must be held personally liable therefor. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, this Commission finds the instant petition undeserving of merit. Accordingly, the subject disallowances and credit notice are hereby AFFIRMED, and the approving officers and recipients of the subject Merit Incentive Award and Birthday Cash Gift are held liable therefor.[21]

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[17] *Rollo,* pp. 691-692.

[18] *Id.* at 90.

[19] *Id.* at 9.

[20] *Id.* at 89-95.

[21] *Id.* at 95.

Hence, the present petition.[22]

Issues Before The Court

Petitioners fault the COA and raise issues which may be summarized as follows:

(1) Whether or not the grant to petitioners of the Merit Incentive Award and Birthday Cash Gift has legal basis.

(2) Whether or not petitioners should refund the subject benefits which they received.

Ruling of the Court

The petition is partly meritorious.

AO 161 was issued to rationalize the grant of productivity incentive benefits under a *uniform* set of rules. It sought to address the dissension and dissatisfaction — which came about when some department heads granted incentive benefits of varying amounts to their officials and employees based on the provisions of Sections 31, 35 and 36 (2), Chapter 5, Subtitle I, Book V of the Administrative Code of 1987 — among those government employees who received less or no benefits due to lack of funds. It recognized the need to have a "standard system of incentive pay based on productivity and performance among officials and employees of the Government."[23]

In accordance with its stated purposes, AO 161 prohibited the establishment of separate productivity and performance

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[22] *See* Section 2, Rule 64, Rules of Court, which states: "A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided." *Also see* Section 50, PD 1445: "The party aggrieved by any decision, order or ruling of the Commission may within thirty days from his receipt of a copy thereof appeal on *certiorari* to the Supreme Court in the manner provided by law and the Rules of Court. When the decision, order, or ruling adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency."

[23] Sec. 1, AO 161.

incentive awards. It also expressly revoked all administrative authorization/decrees relative to the grant of incentive award or bonus pursuant to Sections 31,[24] 35 and 36 (2),[25] Chapter 5, Subtitle A, Title I, Book V of EO 262. The pertinent provisions of AO 161 read:

> Sec. 7. Prohibition from Establishing/Authorizing a Separate Productivity and Performance Incentive Award. Heads of departments, agencies, governing boards, commissions, offices including government-owned and/or controlled corporations and government financial institutions, and local government units, are hereby prohibited from establishing and authorizing a separate productivity and performance incentive award or any form of the same or similar nature;
>
> Accordingly, all administrative authorization/decrees issued to select government offices/agencies, government-owned and/or controlled corporations and government financial institutions, and local government units, relative to grant of any Incentive Award or Bonus; administrative, memorandum and/or any order issued authorizing the grant of Incentive Award or Bonus or any form of similar nature pursuant to the provisions of Sections 31, 35 and 36(2), Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987; and executive orders providing for the grant of said Incentive Award or Bonus that are not consistent with this Order are hereby revoked.

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[24] "Section 31. *Career and Personnel Development Plans.* — Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission. Such career and personnel development plans which shall include provisions on merit promotions, performance evaluation, in-service training, including overseas and local scholarships and training grants, job rotation, suggestions and incentive award systems, and such other provisions for employees' health, welfare, counseling, recreation and similar services. (Underscoring supplied)

[25] (2) Every Secretary or head of agency shall take all proper steps toward the creation of an atmosphere conducive to good supervisor-employee relations and the improvement of employee morale.

Subsequently, or on December 27, 1994, and conformably with the provisions of AO 161, the DBM issued NCC 73[26] which, echoing the presidential issuance, prohibited the different government agencies from establishing separate productivity and performance incentive awards.

On this score, it bears pointing out that while the Tariff Commission's ESIAS, which the CSC approved on December 2, 1993, established the general basis for allowing the Merit Incentive Award and Birthday Cash Gift, the specific grant and release of these cash benefits, however, were authorized only through Special Order 95-02 and Resolution No. 96-01 (as amended by Resolution No. 96-01A) dated December 12, 1995 and December 16 (17), 1996, respectively. Notably, when these authorizations were issued, AO 161 and NCC 73 were already in effect.[27]

Considering these antecedents, the Court cannot therefore give credence to petitioners' argument that the Tariff Commission's ESIAS provides the legal basis for the grant of the subject benefits,[28] and that AO 161 finds no application to their existing ESIAS as the said presidential issuance prohibits only the *future* establishment of separate incentive awards.[29]

The Tariff Commission's ESIAS cannot be implemented independently and without regard to subsequent presidential administrative orders such as AO 161. In *Blaquera v. Alcala*,[30] the Court comprehensively discussed the effects of an administrative order similar to AO 161 on the implementation of the ESIAS. It ruled that in issuing an administrative order to regulate the grant of productivity incentive benefits, the President was only exercising his power of control, thus:

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[26] *Supra* note 16.

[27] Sec.11 of AO 161 states that it takes effect on January 1, 1995.

[28] *Rollo*, p. 89.

[29] *Id.*

[30] G.R. No. 109406, September 11, 1998, 295 SCRA 366, 442-446.

Specifically, implementation of the Employee Suggestions and Incentive Award System has been decentralized to the President or to the head of each department or agency —

> Section 35. *Employee Suggestions and Incentive Award System.* — There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.
>
> In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

The President is the head of the government. Governmental power and authority are exercised and implemented through him. His power includes the control over executive departments-

> "*The president shall have control over all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed*." (Section 17, Article VII, 1987 Constitution)

Control means "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." It has been held that "[t]he President can, by virtue of his power of control, review, modify, alter or nullify any action, or decision of his subordinate in the executive departments, bureaus, or offices under him. He can exercise this power *motu proprio* without need of any appeal from any party."

x x x x x x x x x

<u>The President issued subject Administrative Orders to regulate the grant of productivity incentive benefits and to prevent discontentment, dissatisfaction and demoralization among government personnel by committing limited resources of government for the</u>

equal payment of incentives and awards. The President was only exercising his power of control by modifying the acts of the respondents who granted incentive benefits to their employees without appropriate clearance from the Office of the President, thereby resulting in the uneven distribution of government resources. In the view of the President, respondents [made] a mistake which had to be corrected. In so acting, the President exercised a constitutionally-protected prerogative-

x x x x x x x x x

Neither can it be said that the President encroached upon the authority of the Commission of Civil Service to grant benefits to government personnel. [The subject AOs] did not revoke the privilege of employees to receive incentive benefits. The same merely regulated the grant and amount thereof.

Sound management and effective utilization of financial resources of government are basically executive functions, not the Commission's. Implicit is this recognition in EC 292, which states:

x x x x x x x x x

Conformably, it is the President or the head of each department or agency who is authorized to incur the necessary expenses involved in the honorary recognition of subordinate officers and employees of the government." It is not the duty of the Commission to fix the amount of the incentives. Such function belongs to the President or his duly empowered alter ego. (underscoring supplied)

In the present case, and in line with the pronouncements in *Casal v. Commission on Audit*[31] and *Blaquera v. Alcala,*[32] the Court finds that AO 161 was issued in the valid exercise of presidential control over the executive departments, which Chairman Velasco was duty bound to observe. "Executive officials who are subordinate to the President should not trifle with the President's constitutional power of control over the executive branch. There is only one Chief Executive who directs and controls the entire executive branch, and all other executive

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[31] G.R. No. 149633, November 30, 2006, 509 SCRA 138, 150, citing *National Electrification Administration v. COA*, 427 Phil. 464, 485.

[32] *Supra*.

officials must implement in good faith his directives and orders. This is necessary to provide order, efficiency and coherence in carrying out the plans, policies and programs of the executive branch."[33]

Considering, therefore, that Special Order 95-02 and Resolution No. 96-01 as amended by Resolution No. 96-01A, were issued in direct contravention of the prohibition in AO 161, it follows that the grant of the incentive awards therein were invalid and lacked legal basis.

Even prior to the issuance of AO 161, the subject incentive awards could not have been validly granted in the absence of prior approval from the Office of the President, pursuant to Section 2 of Administrative Order No. 103 (AO 103),[34] which states:

> Sec. 2. All heads of government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Productivity Incentive Benefits or any and all similar forms of allowances/benefits without prior approval and authorization via Administrative order by the Office of the President. Henceforth, anyone found violating any of the mandates in this Order, including all officials/agency found to have taken part thereof, shall be accordingly and severely dealt with in accordance with the applicable provisions of existing administrative and penal laws.
>
> Consequently, all administrative authorizations to grant any form of allowance/benefits and all forms of additional compensation usually paid outside of the prescribed basic salary under R.A. No. 6758, the Salary Standardization Law, that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked. (Underscoring supplied)

AO 103, which took effect on January 14, 1994, enjoins heads of government agencies from granting incentive benefits without

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[33] *Casal v. Commission on Audit*, *supra*.

[34] Authorizing the Grant of CY-1993 Productivity Incentive Benefits to Government Personnel and Prohibiting Payments of Similar Benefit in Future Years Unless Duly Authorized by the President (1994).

prior approval of the President and, like AO 161, is also a valid exercise of the President's constitutional[35] power of control and authority over executive departments. Thus, without the *imprimatur* of the Office of the President as required by AO 103, the grant of the subject incentives is null and void.

On the other hand, petitioners contend that even if the grant of the subject incentives were invalidated, they should not be made to refund the same because the benefits were given to, and received by, them in good faith.

Indeed, a public officer is presumed to have acted in good faith in the performance of his duties.[36] However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith.[37] Thus, in the case of *Casal v. Commission on Audit,*[38] the Court held liable the approving officers who authorized the grant of productivity award in complete disregard of the prohibition declared by a presidential issuance, ratiocinating that:

> The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof.

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[35] Section 17, Article VII of the Constitution, to wit:

Section 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed. (Underscoring supplied)

[36] *Saber v. Court of Appeals,* G.R. No. 132981, August 31, 2004; *Mendiola v. People,* G.R. Nos. 89983-84, March 6, 1992, 207 SCRA 85, 98.

[37] *Wylie v. Rarang,* G.R. No. 74135, May 28, 1992, 209 SCRA 357, 368, citing *Chavez v. Sandiganbayan,* G.R. No. 91391, January 24, 1991, 193 SCRA 282, 289.

[38] G.R. No. 149633, November 30, 2006, 509 SCRA 138.

Similarly in the present case, the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

However, with regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards[39] certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.[40]

WHEREFORE, the petition is **PARTIALLY GRANTED.** The Decision dated September 15, 2009 of respondent COA is **AFFIRMED** with **MODIFICATION**. Only the approving officers are directed to return the amounts which they received as Merit Incentive Award under Special Order No. 95-02 and Birthday Cash Gift under Resolution No. 96-01 as amended by Resolution No. 96-01A.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, and *Reyes*, *JJ*., concur.

Villarama, *Jr*., *J*., on official leave.

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[39] *Id.*

[40] *Id.* at 150, *Philippine Ports Authority v. Commission on Audit*, G.R. No. 159200, February 16, 2006, 482 SCRA 490, 500.

EN BANC

[G.R. No. 192117. September 18, 2012]

ASSOCIATION OF SOUTHERN TAGALOG ELECTRIC COOPERATIVES, INC. (ASTEC), BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), QUEZON I ELECTRIC COOPERATIVE, INC. (QUEZELCO I), and QUEZON II ELECTRIC COOPERATIVE, INC. (QUEZELCO II), *petitioners, vs.* **ENERGY REGULATORY COMMISSION,** *respondent.*

[G.R. No. 192118. September 18, 2012]

CENTRAL LUZON ELECTRIC COOPERATIVES ASSOCIATION, INC. (CLECA) and PAMPANGA RURAL ELECTRIC SERVICE COOPERATIVE, INC. (PRESCO), *petitioners, vs.* **ENERGY REGULATORY COMMISSION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION; REQUIRED IN ORDER FOR ADMINISTRATIVE RULES AND REGULATIONS TO BE EFFECTIVE.—** Publication is a basic postulate of procedural due process. The purpose of publication is to duly inform the public of the contents of the laws which govern them and regulate their activities. Article 2 of the Civil Code, as amended by Section 1 of Executive Order No. 200, states that "[l]aws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." Section 18, Chapter 5, Book I of Executive Order No. 292 or the Administrative Code of 1987 similarly provides that "[l]aws shall take effect after fifteen(15) days following the completion of their publication in the *Official Gazette* or in a newspaper of general circulation, unless it is otherwise provided." Procedural due

process demands that administrative rules and regulations be published in order to be effective.

2. **ID.; ID.; ID.; EXCEPTIONS.—** There are, however, several exceptions to the requirement of publication. First, an interpretative regulation does not require publication in order to be effective. The applicability of an interpretative regulation "needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed." It add[s] nothing to the law" and "do[es] not affect the substantial rights of any person." Second, a regulation that is merely internal in nature does not require publication for its effectivity. It seeks to regulate only the personnel of the administrative agency and not the general public. Third, a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties does not require publication in order to be effective.

3. **ID.; ID.; ID.; NOT NECESSARY FOR THE EFFECTIVITY OF POLICY GUIDELINES; CASE AT BAR.—** The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are interpretative regulations. The policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR. x x x [T]he policy guidelines of the ERC on the treatment of discounts extended by power suppliers "give[] no real consequence more than what the law itself has already prescribed." Publication is not necessary for the effectivity of the policy guidelines.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; INTERPRETATIVE REGULATIONS; NOT REQUIRED TO BE FILED WITH THE UNIVERSITY OF THE PHILIPPINES LAW CENTER.—** As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in *Board of Trustees of the*

Government Service Insurance System v. Velasco, this Court pronounced that "[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.

5. **ID.; ID.; ID.; ENERGY REGULATORY COMMISSION (ERC); THE POLICY GUIDELINES OF THE ERC ON THE TREATMENT OF DISCOUNTS EXTENDED BY POWER SUPPLIERS ARE NOT RETROSPECTIVE.—** In *Republic v. Sandiganbayan,* this Court recognized the basic rule "that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so." A law is retrospective if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or consideration already past." The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective. The policy guidelines did not take away or impair any vested rights of the rural electric cooperatives. The usage and implementation of the PPA formula were provisionally approved by the ERB in its Orders dated 19 February 1997 and 25 April 1997. The said Orders specifically stated that the provisional approval of the PPA formula was subject to review, verification and confirmation by the ERB. Thus, the rural electric cooperatives did not acquire any vested rights in the usage and implementation of the provisionally approved PPA formula. Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. As previously discussed, the policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

6. **ID.; ID.; ID.; ID.; THE GROSSED-UP FACTOR MECHANISM IS AN ADMINISTRATIVE RULE THAT SHOULD BE PUBLISHED AND SUBMITTED TO THE UNIVERSITY OF THE PHILIPPINES LAW CENTER IN ORDER TO BE EFFECTIVE.—** This Court agrees with the ERC that the grossed-up factor mechanism "did not modify

the [PPA] formula or state how the PPA is to be computed." However, the grossed-up factor mechanism **amends** the IRR of R.A. No. 7832 as it serves as an **additional numerical standard** that must be observed and applied by rural electric cooperatives in the implementation of the PPA. While the IRR explains, and stipulates, the PPA formula, the IRR neither explains nor stipulates the grossed-up factor mechanism. The reason is that the grossed-up factor mechanism is admittedly "**new**" and provides a "**different result**," having been formulated only ***after*** the issuance of the IRR. The grossed-up factor mechanism is not the same as the PPA formula provided in the IRR of R.A. No. 7832. Neither is the grossed-up factor mechanism subsumed in any of the five variables of the PPA formula. Although both the grossed-up factor mechanism and the PPA formula account for system loss and use of electricity by cooperatives, they serve different quantitative purposes. x x x [T]he grossed-up factor mechanism does not merely interpret R.A. No. 7832 or its IRR. It is also not merely internal in nature. **The grossed-up factor mechanism amends the IRR by providing an additional numerical standard that must be observed and applied in the implementation of the PPA.** The grossed-up factor mechanism is therefore an administrative rule that should be published and submitted to the U.P. Law Center in order to be effective. As previously stated, it does not appear from the records that the grossed-up factor mechanism was published and submitted to the U.P. Law Center. Thus, it is ineffective and may not serve as a basis for the computation of over-recoveries. The portions of the over-recoveries arising from the application of the mechanism are therefore invalid.

7. **ID.; ID.; ID.; ID.; THE APPLICATION OF THE GROSSED-UP FACTOR MECHANISM PRIOR TO ITS PUBLICATION IS INVALID FOR HAVING BEEN APPLIED RETROACTIVELY.—** [T]he application of the grossed-up factor mechanism to periods of PPA implementation prior to its publication and disclosure renders the said mechanism invalid for having been applied retroactively. The grossed-up factor mechanism imposes an additional numerical standard that clearly "creates a new obligation and imposes a new duty x x x in respect of transactions or consideration already past." Rural electric cooperatives

cannot be reasonably expected to comply with and observe the grossed-up factor mechanism without its publication. This Court recognizes that the mechanism aims to reflect the actual cost of purchased power for the benefit of consumers. However, this objective must at all times be balanced with the viability of rural electric cooperatives.

APPEARANCES OF COUNSEL

Zenon S. Suarez and *Cesario E. Buscano* for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court. The petition assails the 23 December 2008 Decision[2] and 26 April 2010 Resolution[3] of the Court of Appeals in the consolidated cases, including CA-G.R. SP Nos. 99249 and 99253.[4] The Court of Appeals affirmed the Orders of the Energy Regulatory Commission (ERC) directing various rural electric cooperatives to refund their over-recoveries arising from the implementation of the Purchased Power Adjustment (PPA) Clause under Republic Act (R.A.) No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

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[1] *Rollo*, pp. 7-25.

[2] *Id.* at 26-55. Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Lucas P. Bersamin and Myrna Dimaranan-Vidal concurring.

[3] *Id.* at 56-64.

[4] The consolidated cases were CA-G.R. SP Nos. 99249, 99250, 99251, 99252, 99253, 99267, 99269, 99270, 99271, 99272, 99273, 99323, 99462, 99782, 100671, and 100822. The petitioners in CA-G.R. SP Nos. 99249 and 99253 appealed from the Court of Appeals Decision and Resolution subject-matter of this petition.

The Facts

Petitioners Batangas I Electric Cooperative, Inc. (BATELEC I), Quezon I Electric Cooperative, Inc. (QUEZELCO I), Quezon II Electric Cooperative, Inc. (QUEZELCO II) and Pampanga Rural Electric Service Cooperative, Inc. (PRESCO) are rural electric cooperatives established under Presidential Decree (P.D.) No. 269 or the National Electrification Administration Decree.[5] BATELEC I, QUEZELCO I and QUEZELCO II are members of the Association of Southern Tagalog Electric Cooperatives, Inc. (ASTEC). PRESCO is a member of the Central Luzon Electric Cooperatives Association, Inc. (CLECA). Petitioners are engaged in the distribution of electricity "on a non-profit basis for the mutual benefit of its members and patrons."[6]

On 8 December 1994, R.A. No. 7832 was enacted. The law imposed a cap on the recoverable rate of system loss[7] that may be charged by rural electric cooperatives to their consumers. Section 10 of R.A. No. 7832 provides:

Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as Component Thereof.* — There is hereby established a cap on the recoverable rate of system losses as follows:

x x x x x x x x x

(b) For rural electric cooperatives:

(i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;

(ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;

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[5] *Rollo*, p. 253.

[6] P.D. No. 269, as amended, Sec. 35.

[7] Guidelines Implementing Executive Order No. 473, Sec. 3, par. (p): "System Loss" refers to energy lost in an electric system in the process of delivering electricity to consumers or end-users. Lost energy may be caused either by technical factors or by non-technical factors like pilferage.

(iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;

(iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and

(v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

x x x x x x x x x

The Implementing Rules and Regulations (IRR) of R.A. No. 7832 required every rural electric cooperative to file with the Energy Regulatory Board (ERB), on or before 30 September 1995, an application for approval of an amended PPA Clause incorporating the cap on the recoverable rate of system loss to be included in its schedule of rates.[8] Section 5, Rule IX of the IRR of R.A. No. 7832 provided for the following guiding formula for the amended PPA Clause:

Section 5. *Automatic Cost Adjustment Formula.* –

x x x x x x x x x

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

(PPA) = $\frac{A}{B-(C+D)} - E$

Where:

A = Cost of electricity purchased and generated for the previous month

[8] IRR OF R.A. NO. 7832, Rule IX, Sec. 5.

B = Total Kwh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

In compliance with the IRR of R.A. No. 7832, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses. On 8 February 1996, ASTEC filed on behalf of its members (including BATELEC I, QUEZELCO I and QUEZELCO II) a verified petition for the approval of the amended PPA Clause. The verified petition of ASTEC was docketed as ERB Case No. 96-35.[9] On 9 February 1996, CLECA also filed on behalf of its members (including PRESCO) a verified petition for the approval of the amended PPA Clause. The verified petition of CLECA was docketed as ERB Case No. 96-37.[10]

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[9] ERB Case No. 96-35 was initially consolidated with ERB Case No. 96-36 (North Western Luzon Electric Cooperatives Association, Inc. and North Eastern Luzon Electric Cooperatives Association, Inc.), ERB Case No. 96-43 (Western Visayas Electric Cooperatives Association, Inc., Central Visayas Electric Cooperatives Association, Inc. and Leyte Samar Electric Cooperatives Association, Inc.) and ERB Case No. 96-49 (Association of Mindanao Rural Electric Cooperatives, Inc.). The consolidated cases were entitled "IN THE MATTER OF THE ADOPTION OF FORMULA FOR AUTOMATIC COST ADJUSTMENT AND ADOPTION OF RESTRUCTURED RATE ADJUSTMENT OF NPC [National Power Corporation]." See CA *rollo* (CA-G.R. SP No. 99249), p. 251.

[10] The case was entitled "IN THE MATTER OF THE APPLICATION FOR APPROVAL OF AMENDED PURCHASED POWER ADJUSTMENT CLAUSE." See CA *rollo* (CA-G.R. SP No. 99253), p. 180.

The ERB issued Orders on 19 February 1997[11] and 25 April 1997[12] provisionally authorizing the petitioners and the other rural electric cooperatives to use and implement the following PPA formula, subject to review, verification and confirmation by the ERB:

$$PPA = \frac{A}{B-(C+C1+D)} - E$$

Where:

A = Cost of Electricity purchased and generated for the previous month less amount recovered from pilferages, if any

B = Total Kwh purchased and generated for the previous month

C = Actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh

C1 = Actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

The ERB further directed petitioners to submit relevant documents regarding the monthly implementation of the PPA formula for review, verification and confirmation. The Orders dated 19 February 1997 and 25 April 1997 commonly provide:

Accordingly, all electric cooperatives are hereby directed to submit to the Board within ten (10) days from notice hereof their monthly implementation of the PPA formula from the February, 1996 to January, 1997 for the Board's review, verification and confirmation. The submission should include the following documents:

1. PPA computation following the formula provided above
2. Monthly NPC bill or such other power bill purchased or

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[11] The Order dated 19 February 1997 was issued in ERB Case Nos. 96-35, 96-36, 96-43, 96-49.

[12] The Order dated 25 April 1997 was issued in ERB Case No. 96-37.

generated not yet forwarded to ERB from January 1995 onward

3. Monthly Financial and Statistical Report (MFSRs) not yet forwarded to ERB from January 1995 onward

4. Sample bills for the month subject to confirmation for different types of customers.

Thereafter, (from February 1997 and onward) all electric cooperatives are hereby directed to submit on or before the 20th day of the current month, their implementation of the PPA formula of the previous month for the same purposes as indicated above.[13]

On 8 June 2001, R.A. No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) was enacted. Section 38 of the EPIRA abolished the ERB, and created the Energy Regulatory Commission (ERC). The ERC is an independent and quasi-judicial regulatory body mandated to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."[14] The powers and functions of the ERB not inconsistent with the provisions of the EPIRA were transferred to the ERC, together with the applicable funds and appropriations, records, equipment, property and personnel of the ERB.[15]

As a result, ERB Case No. 96-35 involving ASTEC and its members (including BATELEC I, QUEZELCO I and QUEZELCO II) was renamed and renumbered as ERC Case No. 2001-338.[16] ERB Case No. 96-37 involving CLECA and its members (including PRESCO) was also renamed and

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[13] CA *rollo* (CA-G.R. SP No. 99249), p. 259; CA *rollo* (CA-G.R. SP No. 99253), pp. 191-192.

[14] EPIRA, Sec. 43.

[15] EPIRA, Sec. 44.

[16] The other cases initially consolidated with ERB Case No. 96-35 were renamed and renumbered accordingly: ERB Case No. 96-36 as ERC Case No. 2001-339; ERB Case No. 96-43 as ERC Case No. 2001-341; and ERB Case No. 96-49 as ERC Case No. 2001-343. See CA *rollo* (CA-G.R. SP No. 99249), pp. 81-82.

renumbered as ERC Case No. 2001-340.[17] The records further show that these two cases were consolidated, together with the other cases previously consolidated with then ERB Case No. 96-35.[18]

Subsequently, the ERC issued an Order dated 17 June 2003. The ERC noted therein "that the PPA formula which was approved by the ERB was silent on whether the calculation of the cost of electricity purchased and generated in the formula should be 'gross' or 'net' of discounts."[19] The cost of electricity is computed at "gross" if the discounts extended by the power supplier to the rural electric cooperative are not passed on to end-users, while the cost of electricity is computed at "net" if the discounts are passed on to end-users.[20] The ERC ruled:

> To attain uniformity in the implementation of the PPA formulae, the Commission has resolved that:
>
> 1. In the confirmation of past PPAs, the power cost shall still be based on "gross"; and
>
> 2. In the confirmation of future PPAs, the power cost shall be based on "net."
>
> Relative thereto, petitioners are directed to implement their respective PPA using the power cost based on net at the next billing cycle upon receipt of this Order until such time that their respective rates have already been unbundled.
>
> Petitioners are hereby directed to submit to the Commission on or before the 20th day of the following month, their implementation of the PPA formula for review, verification and confirmation by the Commission.[21]

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[17] See CA *rollo* (CA-G.R. SP No. 99249), p. 81.

[18] Consequently, the consolidated cases included ERC Case Nos. 2001-338, 2001-339, 2001-340, 2001-341 and 2001-343.

[19] CA *rollo* (CA-G.R. SP No. 99249), p. 82.

[20] *Id.*

[21] *Id.* at 83.

On 29 March 2004, the ERC issued an Order in the consolidated cases resolving the motions for reconsideration filed by several rural electric cooperatives. In the said Order, the ERC explained the general framework of the new PPA confirmation scheme to be adopted by the regulatory body. The ERC stated:

> Majority of the issues raised in the motions for reconsideration can be properly addressed by the new PPA confirmation scheme to be adopted by this Commission. Under this scheme, the electric cooperatives shall be allowed to collect/refund the true cost of power due them *vis-a-vis* the amount already collected from their end-users. In turn, the end-users shall only be charged the true cost of power consumed.
>
> The Commission recognizes that the electric cooperatives implemented their PPA in the manner by which majority of them were implementing the same. Thus, they had no alternative but to adopt the most recent available data for the respective billing months which were based on estimates due to time lag differences. Under the new scheme, the actual data for the billing month shall be adopted as they are available at the time the verification is undertaken.
>
> In this regard, all the other issues raised by the electric cooperatives shall be properly addressed in the confirmation of their respective PPAs.[22]

Several rural electric cooperatives subsequently filed motions for clarification and/or reconsideration with respect to the ERC's process of computation and confirmation of the PPA. The rural electric cooperatives advanced the following allegations:

1. They are non-profit organizations and their rate components do not include any possible extra revenue except the discounts; and

2. They are burdened with expenses in their continuing expansion programs of rural electrification to the remotest barangays and sitios of their respective franchise areas and could not give any benefit or incentive to their employees.[23]

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[22] *Id.* at 87-88.

[23] *Id.* at 92.

On 14 January 2005, the ERC issued an Order addressing the motions for clarification and/or reconsideration filed by the rural electric cooperatives. In the said Order, the ERC expounded on the general framework of the new PPA confirmation scheme. The ERC stated that "the new PPA scheme creates a venue where both the [electric cooperatives] can recover and the end-users can be charged the true cost of power."[24] The ERC stressed that "[t]he purchased power cost is a pass through cost to customers and as such, the same should be revenue neutral."[25] In other words, rural electric cooperatives should only recover from their members and patrons the actual cost of power purchased from power suppliers.[26]

In the same Order, the ERC clarified certain aspects of the new PPA confirmation scheme. With respect to the data to be utilized in the confirmation of the PPA, the ERC stated:

> All electric cooperatives were directed to implement the PPA in the manner the then Energy Regulatory Board (ERB) had prescribed. In calculating their respective PPAs, the [electric cooperatives] had no alternative but to adopt the most available data for the respective billing months, *i.e.* the previous month, due to time lag differences. Under the new PPA confirmation scheme, the actual data for the billing month shall be adopted primarily because they reflect the true cost of power, they are available at the time the confirmation is undertaken and they have already been charged to the end-users. Thus, the new PPA scheme creates a venue where both the [electric cooperatives] can recover and the end-users can be charged the true cost of power. There will also be proper matching of revenue and cost.[27]

As regards the cap on the recoverable rate of system loss, the ERC explained:

> The caps on the recoverable system loss provided in R.A. 7832 were established to encourage distribution utilities to operate efficiently.

[24] *Id.* at 95.

[25] *Id.* at 96.

[26] *Id.*

[27] *Id.* at 95.

Since the PPA is merely a cost recovery mechanism, the [electric cooperatives] are not supposed to earn revenue nor suffer losses therefrom. To allow them to adopt the caps even in cases where the system losses are actually lower would be contrary to the underlying principle of a recovery mechanism.[28]

Finally, with respect to the Prompt Payment Discount (PPD) extended by power suppliers to rural electric cooperatives, the ERC reiterated that rural electric cooperatives should only recover the actual costs of purchased power.[29] Thus, any discounts extended to rural electric cooperatives must necessarily be extended to end-users by charging only the "net" cost of purchased power.

In light of the foregoing clarifications, the ERC outlined the following directives in the said Order:

A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA formula;

B. The computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and

C. If the approved PPA formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross", subject to the submission of proofs that said discounts are being extended to the end-users.[30]

Subsequently, the ERC issued the following Orders:

1. 22 March 2006 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of BATELEC I;

2. 16 February 2007 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO I;

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[28] *Id.*

[29] *Id.* at 96.

[30] *Id.* at 97.

3. 7 December 2005 Order in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO II; and

4. 27 March 2006 Order in ERC Case No. 2001-340 regarding the monthly PPA implementation of PRESCO.

In the said Orders, the ERC clarified its policy on the PPA confirmation scheme previously adopted in its Order dated 14 January 2005. For the distribution utilities to recover only the actual costs of purchased power, the ERC stated the following principles governing the treatment of the PPD granted by power suppliers to distribution utilities including rural electric cooperatives:

I. The over-or-under recovery will be determined by comparing the Allowable Power Cost with the Distribution Utility's Actual Revenue (AR) billed to end-users.

II. Calculation of the Allowable Power Cost as prescribed in the PPA Formula:

a. For a Distribution Utility which PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and

b. For a Distribution Utility which PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there is any.

III. Calculation of the Distribution Utility's Actual Revenues/ Actual Amount Billed to End-users.

a. On Actual PPA Computed at Net of Discounts Availed from Power Supplier/s:

a.1. If a Distribution Utility bills at net of discounts availed from the power supplier/s (*i.e*. Gross power cost minus discounts from power supplier/s) and the Distribution Utility is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

a.2. If a Distribution Utility bills at net of discounts availed from the power supplier/s (*i.e*. Gross power cost minus discounts from power supplier/s) and the Distribution Utility is extending discounts to end-users, the discount extended to end-users will be added back to actual revenue.

b. On Actual PPA Computed at Gross

b.1. If a Distribution Utility bills at gross (*i.e.* Gross power cost not reduced by discounts from power supplier/s) and the Distribution Utility is extending discounts to end-users, the actual revenue will be calculated as: Gross Power Revenue less Discounts extended to end-users. The result will then be compared to the allowable power cost; and

b.2. If a Distribution Utility bills at gross (*i.e*. Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is not extending discounts to end-users, the actual revenue will be taken as is which shall be compared to the allowable power cost.

IV. In calculating the Distribution Utility's actual revenues, in no case shall the amount of discounts extended to end-users be higher than the discounts availed by the Distribution Utility from its power supplier/s.[31]

The ERC then directed petitioners to refund their respective over-recoveries to end-users arising from the implementation of the PPA Clause under R.A. No. 7832 and its IRR, as follows:

1. 22 March 2006 Order[32]

In the Order dated 22 March 2006, the ERC evaluated the monthly PPA implementation of BATELEC I covering the period from February 1996 to September 2004. The verification and confirmation of the PPA implementation was based on the monthly implementation reports, documents and information submitted

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[31] *Id.* at 34-35, 52-53, 69-70; CA *rollo* (CA-G.R. SP No. 99253), pp. 27-28.

[32] CA *rollo* (CA-G.R. SP No. 99249), pp. 33-40.

by BATELEC I in compliance with the Order dated 19 February 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to **Fifty Nine Million Twenty One Thousand Nine Hundred Five Pesos (₱59,021,905.00)** equivalent to ₱0.0532/kWh. The ERC outlined the following bases for the over-recoveries:

1. For the period August 1998 to May 1999, NPC made an erroneous reading on BATELEC I's meter which resulted to the application of PPA charges at higher sales volume *vis-a-vis* those utilized in the PPA computation. The system loss adopted in the PPA formula was the running average of the preceding twelve (12) months, which is the period when the erroneous meter reading had not yet occurred. As a result, the PPA formula's denominator which represents the sales volume was lower than the actual sales for the period when the PPA was implemented and the impact of the different "E" (basic charge power cost component) on the said period resulted to a net over-recovery of PhP38,317,933.00;

2. For the period July 2003 to August 2004, BATELEC I erroneously added back the Power Act Reduction amounting to PhP20,565,981.00 to its total power cost; and

3. The new grossed-up factor mechanism adopted by the Commission which provided a true-up mechanism that allows the distribution utilities to recover the actual cost of purchased power.[33]

The ERC confirmed the PPA of BATELEC I covering the period from February 1996 to September 2004, and directed BATELEC I "to refund the amount of ₱0.0532/kWh starting on the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[34]

2. 16 February 2007 Order[35]

In the Order dated 16 February 2007, the ERC evaluated the monthly PPA implementation of QUEZELCO I for the period

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[33] *Id.* at 38-39.

[34] *Id.* at 39.

[35] *Id.* at 51-56.

from January 1999 to April 2004. QUEZELCO I previously submitted its monthly implementation reports, documents and information for review, verification and confirmation pursuant to the Order dated 19 February 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to **Twenty Million Twenty Seven Thousand Five Hundred Fifty Two Pesos** (**₱20,027,552.00**) equivalent to ₱0.0486/kWh. The ERC outlined the following bases for the over-recoveries:

1. For the period July 2003 to April 2004, QUEZELCO I's power cost was not reduced by the PPD availed from its suppliers resulting to an over-recovery of PhP8,457,824.00;

2. QUEZELCO I failed to comply with the Implementing Rules and Regulations (IRR) of Republic Act No. 7832 x x x which provides that the pilferage recoveries should be deducted from the total purchased power cost used in the PPA computation. Thus, QUEZELCO I's actual PPA should have been reduced by the pilferage recoveries amounting to PhP580,855.00;

3. QUEZELCO I failed to reflect the power cost adjustments on its PPA as a result of the billing adjustments of NPC under the Credit Memo for the month of June 2003 amounting to PhP4,210,855.00;

4. QUEZELCO I's power supply agreement with Camarines Norte Electric Cooperative, Inc. (CANORECO) was not approved by the Commission. Thus, the Commission pegged CANORECO's power cost at NPC's total average rate which resulted to an over-recovery of PhP849,324.00;

5. In computing its PPA, QUEZELCO I included the subsidized consumptions of 2,051,753 kWh which resulted to an over-recovery of PhP1,611,036.00;

6. The new grossed-up factor mechanism adopted by the Commission which provides a true-up mechanism to allow the DUs to recover the actual costs of purchased power.[36]

The PPA of QUEZELCO I for the period of January 1999 to April 2004 was confirmed by the ERC. In light of the over-

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

recovery, QUEZELCO I was directed "to refund the amount of ₱0.0486/kWh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[37]

3. 7 December 2005 Order[38]

In the Order dated 7 December 2005, the ERC reviewed and verified the monthly PPA implementation of QUEZELCO II covering the period from January 2000 to November 2003, based on the monthly implementation reports, documents and information submitted by the rural electric cooperative. The ERC established that there were over-recoveries amounting to **Five Million Two Hundred Forty Eight Thousand Two Hundred Eighty Two Peso**s **(₱5,248,282.00)** equivalent to ₱0.1000/kWh. The bases of the over-recoveries are as follows:

1. QUEZELCO II treated the penalty on excess/below contracted demand in April 2000 as a discount;

2. For the period May 2000 to November 2000, QUEZELCO II overstated its power cost due to accounts payable for fuel oil consumption from November 1999 to June 2000;

3. The new grossed-up factor scheme adopted by the Commission which provided a different result *vis-a-vis* the originally approved formula; and

4. The Purchased Power Cost was reduced by the Prompt Payment Discount availed from the power suppliers.[39]

The ERC confirmed the PPA of QUEZELCO II for the period of January 2000 to November 2003, and directed QUEZELCO II "to refund the amount of ₱0.1000/kWh starting on the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded."[40]

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[37] *Id.* at 55.

[38] *Id.* at 67-72.

[39] *Id.* at 68-69.

[40] *Id.* at 71.

4. 27 March 2006 Order[41]

In the Order dated 27 March 2006, the ERC evaluated the monthly PPA implementation of PRESCO covering the period of February 1996 to June 2004. PRESCO previously submitted its monthly PPA implementation reports, documents and information for review, verification and confirmation pursuant to the Order dated 25 April 1997 issued by the ERB. The ERC determined that there were over-recoveries amounting to **Eighteen Million Four Hundred Thirty Eight Thousand Nine Hundred Six Pesos (₱18,438,906.00)** equivalent to ₱0.1851/kWh. The over-recoveries were based on the following:

1. In its PPA computation, PRESCO excluded its subsidized consumers in the components of the kWh sales despite that these consumers where being charged with PPA;

2. Since PRESCO sources its power from the National Power Corporation (NPC) and Angeles Power Incorporated (API), the Commission used PRESCO's actual power cost from API for the years 1998, 1999 (except August), 2000, 2001 and 2002 (January to April only) being lower than NPC's rate. However, for the years 2002 (May to December), 2003 and 2004, the Commission applied NPC's rate being lower than API. x x x

3. For the period February 1996 to April 1999, PRESCO utilized the 1.4 multiplier scheme which is roughly equivalent to 29% system loss which resulted to an over-recovery of PhP5,701,173.00; and

4. The Commission computed PRESCO's allowable power cost at "net" of the Power Factor Discount (PFD) and Prompt Payment Discount (PPD) availed from NPC at PhP2,185,812.00. PRESCO did not extend the discounts to the end users. Thus, the Commission considered PRESCO's actual revenue.[42]

The ERC confirmed the PPA of PRESCO for the period of February 1996 to June 2004, and directed PRESCO "to refund the amount of ₱0.1851/kWh starting the next billing cycle from

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[41] CA *rollo* (CA-G.R. SP No. 99253), pp. 26-32.

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

receipt of this Order until such time that the full amount shall have been refunded."[43]

Petitioners thereafter filed their respective motions for reconsideration of the foregoing Orders. On 9 May 2007, the ERC issued Orders denying the motions for reconsideration filed by the petitioners.[44]

On 28 June 2007, BATELEC I, QUEZELCO I and QUEZELCO II filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court, assailing the 22 March 2006 Order, 16 February 2007 Order and 7 December 2005 Order of the ERC directing the rural electric cooperatives to refund their respective over-recoveries. The petition also assailed the 9 May 2007 Orders of the ERC denying the motions for reconsideration of BATELEC I, QUEZELCO I and QUEZELCO II. The case was docketed as CA-G.R. SP No. 99249. On the same date, PRESCO also filed with the Court of Appeals a Petition for Review under Rule 43 of the Rules of Court, assailing the 27 March 2006 Order of the ERC directing the rural electric cooperative to refund its over-recoveries. The petition likewise assailed the 9 May 2007 Order of the ERC denying the motion for reconsideration of PRESCO. The case was docketed as CA-G.R. SP No. 99253. The Court of Appeals subsequently consolidated these cases with the petitions filed by other rural electric cooperatives and their associations in relation to the refund of their respective over-recoveries. The consolidated cases include CA-G.R. SP Nos. 99249, 99250,[45]

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[43] *Id.* at 30.

[44] CA *rollo* (CA-G.R. SP No. 99249), pp. 50, 66, 76; CA *rollo* (CA-G.R. SP No. 55253), p. 43.

[45] The case was entitled: "*North Western Luzon Electric Cooperatives Association, Inc. (NWELECA), consisting of INEC, ISECO, LUELCO, PANELCO I, CENPELCO, and PANELCO III; and North Eastern Electric Cooperatives Association, Inc. (NELECA), consisting of BATANELCO, CAGELCO I, CAGELCO II, ISELCO I, ISELCO II, NUVELCO, and QUIRELCO v. Energy Regulatory Commission*."

99251,[46] 99252,[47] 99253, 99267,[48] 99269,[49] 99270,[50] 99271,[51] 99272,[52] 99273,[53] 99323,[54] 99462,[55] 99782,[56] 100671,[57] and 100822.[58]

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[46] The case was entitled: "*Association of Mindanao Rural Electric Cooperatives, Inc. (AMRECO), consisting of MOELCI I, MOELCI II, MORESCO I, MORESCO II, FIBECO, BUSECO, CAMELCO, and LANELCO v. Energy Regulatory Commission*."

[47] The case was entitled: "*Western Visayas Electric Cooperatives Association, Inc. (WEVECA), consisting of AKELCO, ANTECO, CAPELCO, ILECO I, ILECO II, ILECO III, GUIMELCO, VRESCO, CENECO, and NOCECO; Central Visayas Electric Cooperatives Association, Inc. (CEVECA), consisting of NORECO I, NORECO II, BANELCO, CEBECO I, CEBECO II, CEBECO III, PROSIELCO, CELCO, BOHECO I, and BOHECO II; and Leyte Samar Electric Cooperatives Association, Inc. (LESECA), consisting of LEYECO I, DORELCO, LEYECO II, LEYECO III, LEYECO IV, LEYECO V, SOLECO, BILECO, NORSAMELCO, SAMELCO I, SAMELCO II, and ESAMELCO v. Energy Regulatory Commission*."

[48] The case was entitled: "*Nueva Viscaya Electric Coop., Inc. (NUVELCO) v. Energy Regulatory Commission*."

[49] *The case was entitled: "Nueva Ecija II Electric Coop., Inc. - Area 2 (NEECO II-Area II) v. Energy Regulatory Commission*."

[50] *The case was entitled: "Sultan Kudarat Electric Coop., Inc. (SUKELCO) v. Energy Regulatory Commission*."

[51] *The case was entitled: "Lanao Del Norte Electric Coop., Inc. (LANECO) v. Energy Regulatory Commission*."

[52] *The case was entitled: "Ifugao Electric Coop., Inc. (IFELCO) v. Energy Regulatory Commission*."

[53] *The case was entitled: "Camarines Norte Electric Coop., Inc. (CANORECO) v. Energy Regulatory Commission*."

[54] *The case was entitled: "South Cotabato I Electric Coop., Inc. (SOTOTECO I) v. Energy Regulatory Commission*."

[55] *The case was entitled: "Misamis Occidental I Electric Coop., Inc. (MOELCI I) v. Energy Regulatory Commission*."

[56] *The case was entitled: "Misamis Oriental I Electric Coop., Inc. (MORESCO I) v. Energy Regulatory Commission*."

[57] *The case was entitled: "Misamis Oriental II Electric Coop., Inc. (MORESCO II) v. Energy Regulatory Commission*."

[58] *The case was entitled: "Davao Oriental Electric Coop., Inc. (DORECO) v. Energy Regulatory Commission*."

The rural electric cooperatives similarly raised the following issues in the consolidated cases:

1. Whether the system loss caps prescribed under Section 10 of R.A. 7832 are arbitrary and violative of the non-impairment clause, therefore, invalid and unconstitutional;

2. Whether the system loss caps should still be imposed even after the effectivity of R.A. 9136;

3. Whether the ERC may validly issue rules and regulations for the implementation of the provisions of R.A. No. 7832 by way of Orders or Decisions with retroactive effect;

4. Whether petitioners were denied due process of law by the non-disclosure and non-issuance of guidelines or rules in the implementation of the alleged "Gross Up Factor Mechanism" in the "confirmation process";

5. Whether the ERC observed the proper issuance of orders and resolutions;

6. Whether the denial of petitioners' motions for reconsideration of the assailed Orders with only one Commissioner affixing his signature thereto is valid;

7. Whether the ERC has legal and factual bases to charge petitioners with over-recoveries and to order the refund thereof for having (1) implemented an "E" that is different from that imposed in the ERB formula and (2) used the multiplier scheme originally approved by the NEA;

8. Whether the prompt payment discount and other discounts extended to petitioners by their power supplier, the NPC, may validly be refunded to the consumers;

9. Whether the alleged over-recoveries were arrived at without giving petitioners the opportunity to be heard.[59]

The Ruling of the Court of Appeals

In its 23 December 2008 Decision, the Court of Appeals denied the petitions for review of the rural electric cooperatives, and affirmed the Orders of the ERC directing the various rural electric

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[59] *Rollo*, pp. 45-46.

cooperatives to refund their respective over-recoveries. At the outset, the Court of Appeals stated that "to the extent that the administrative agency has not been arbitrary or capricious in the exercise of its power, the time-honored principle is that courts should not interfere."[60]

With respect to the constitutionality of Section 10 of R.A. No. 7832, the Court of Appeals ruled that the challenge amounts to a collateral attack that is prohibited by public policy.[61]

With regard to the imposition of the system loss caps after the effectivity of the EPIRA, the Court of Appeals recognized the amendment to Section 10 of R.A. No. 7832. Section 43 (f) of the EPIRA provides that "the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate." The Court of Appeals, however, stated:

> [W]hile the **EPIRA** had already specifically amended the system loss caps mandated under Section 10 of **R.A. No. 7832**, respondent **ERC** still had to go through the tedious process of determining the technical considerations in order to come up with the rate-setting methodology that shall promote the efficiency of distribution utilities as envisioned by the law. Before they could be replaced, however, the caps used in the ERB formula remain, as asserted by the **OSG**. For this reason, petitioners cannot insist that the reinforcement of said system loss caps be discontinued after the passage of the **EPIRA** on June 8, 2001. In fact, as already stated, it was only in October, 2004 that respondent **ERC** was able to promulgate the **AGRA** [or the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities], which could effectively replace the **PPA**. Thus, for the periods covered by the **ERC** confirmation (February 1996 to September 2004), respondent **ERC** did not abuse its discretion in using the system loss caps in the ERB formula.[62]

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[60] *Id.* at 46. Citation omitted.

[61] *Id.* at 47.

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

The Court of Appeals likewise rejected the contention of petitioners that the ERC issued rules and regulations for the implementation of the provisions of R.A. No. 7832 by way of orders or decisions with retroactive effect. According to the Court of Appeals, the confirmation process of the ERC encompassed PPA implementation periods after the effectivity of R.A. No. 7832, particularly from February 1996 to September 2004.[63] Thus, the Court of Appeals concluded that there was no retroactive application of the law.

The Court of Appeals further rejected the claim of denial of due process. The Court of Appeals ruled:

> Petitioners likewise failed to show to Our satisfaction that the guidelines contained in the assailed Orders of respondent **ERC** went beyond merely providing for the means that can facilitate or render less cumbersome the implementation of the law. Interpretative rules give no real consequence more than what the law itself has already prescribed, and are designed merely to provide guidelines to the law which the administrative agency is in charge of enforcing.[64]

As regards the validity of the denial of petitioners' motions for reconsideration, the Court of Appeals noted that the Orders specifically indicated that the signature of the Commissioner was "FOR AND BY AUTHORITY OF THE COMMISSION."[65] The Court of Appeals stated that the ERC examined the motions for reconsideration as a collegial body.[66] It further emphasized that the interests of substantial justice prevail over the strict application of technical rules.[67]

The Court of Appeals further ruled that the ERC had legal and factual bases in charging petitioners with over-recoveries. The Court of Appeals stated:

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[63] *Id.* at 49.

[64] *Id.* at 54. Citation omitted.

[65] *Id.*

[66] *Id.*

[67] *Id.*

Prior to the enactment of **R.A. No. 7832**, petitioners used the **Multiplier Scheme** implemented by the **NEA** [National Electrification Administration] to recover incremental costs in the power purchased from **NPC** — the sole agency authorized to generate electric power before the enactment of the **EPIRA** — and consequent system losses that are not included in their respective approved basic rates. With the use of multipliers ranging from 1.2 to 1.4, depending on their actual system losses, petitioners were allowed to automatically adjust their rates when cost of power purchased from **NPC** changes, thus:

1.2 Multiplier – For ECs with system loss of 15% and below;
1.3 Multiplier – For ECs with system loss ranging from 16% to 22%; and
1.4 Multiplier – For ECs with system loss ranging from 23% and above.

The **NEA** likewise approved the inclusion in the basic rates of a separate item for **Loss Levy Charge** for those electric cooperatives (**EC**s) whose loan covenants with financial institutions such as the Asian Development Bank (**ADB**) limit their recoverable system loss to 15%. Thus, petitioners charged their consumers "System Loss Levy" for system losses in excess of 15%.

Petitioners admitted having continued to use the pricing mechanisms authorized by the **NEA** even after the passage of **R.A. No. 7832**, which repealed the same. Needless to say, the use of said mechanisms allowed the recovery of system losses beyond the caps set by the said law. Petitioners cannot, therefore, successfully argue that respondent **ERC** had no basis in charging them of over-recoveries as a result of their failure to comply with the law.[68]

With respect to the PPD and other discounts extended by power suppliers, the Court of Appeals emphasized that rural electric cooperatives may only recover the actual cost of purchased power. The Court of Appeals stated:

[N]o error can likewise be attributed to respondent **ERC** in directing the implementation of the respective **PPA** of the petitioners using the power cost net of discounts. As held in the case of *National Power Corporation vs. Philippine Electric Plant Owners Associaton (PEPOA), Inc.*, discounts are not amounts paid or charged for the

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[68] *Id.* at 48. Citations omitted.

sale of electricity, but are reductions in rates. Moreover, We emphasized here that rate fixing calls for a technical examination and specialized review of specific details which the courts are ill-equipped to enter, hence, such matters are primarily entrusted to the administrative or regulating authority. Towards this end, the administrative agency, respondent **ERC** in this case, possesses the power to issue rules and regulations to implement the statute which it is tasked to enforce, and whatever is incidentally necessary to a full implementation of the legislative intent should be upheld as germane to the law. Respondent **ERC** is mandated to prescribe a rate-setting methodology "in the public interest" and "to promote efficiency," hence its goal of fixing purchased power at actual cost should be upheld.[69]

The Court of Appeals further rejected the claim that petitioners were deprived of the opportunity to be heard. The Court of Appeals gave credence to the assertion of the Office of the Solicitor General that "petitioners were allowed to justify their **PPA** charges through the documents that they were required to file; that the technical staff of the **ERC** conducted exit conferences with petitioners' representatives to discuss preliminary figures and they were authorized to go over the working papers to check out inaccuracies; and that petitioners were allowed to file their respective motions for reconsideration after the issuance of the **PPA** confirmation Orders."[70]

The rural electric cooperatives thereafter filed their respective motions for reconsideration of the 23 December 2008 Decision of the Court of Appeals. In its 26 April 2010 Resolution, the Court of Appeals denied the motions for reconsideration. The Court of Appeals observed that the issues raised in the motions for reconsideration were "mere reiterations" of the issues addressed in the 23 December 2008 Decision.[71] The Court of Appeals further stated:

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[69] *Id.* at 52-53. Citations omitted.

[70] *Id.* at 53.

[71] *Id.* at 62.

Nonetheless, We find that the following disquisition of the Office of the Solicitor General amply supports the affirmance of the assailed Decision, thus:

> "12. Notably, respondent did not impose rules to set new rates, rather, it merely confirmed whether petitioners have faithfully complied with the requirements of recoveries under the provisionally approved PPA formula. There is therefore nothing new or novel about the confirmation policies of respondent as to give any occasion to retroactivity.
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> 13. Equally significant, it should be underscored that from the beginning, petitioners' authority to recover their losses based on the PPA formula were PROVISIONAL, that is, the authority granted to petitioners for recoveries and the mode of its implementation is subject to further reconfirmation by respondent ERC. The erstwhile ERB earlier allowed electric cooperatives to implement their PPA based on the PPA formula that the ERB provisionally approved. As spelled out in the Order of approval, however, such authorization was provisional and temporary, that is, it is subject to regulation and post hoc review, verification and confirmation by the ERB.
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> x x x x x x x x x
>
> 14. By its very nature, the PPA confirmation process is a post hoc review of charges already implemented. It is therefore crystal clear from the approval of the application of the PPA that such authorization was conditioned on subsequent review by the regulating body. Thus, the Order did not only approve the implementation of the PPA but also (a) directed the electric cooperatives 'to submit their monthly implementation of the PPA formula for the board's review, verification and confirmation;' and (b) directed the Commission on Audit to cause an audit of all the accounts and other records of all the electric cooperatives to aid the Board in the determination of rates.
>
> 15. That the electric cooperatives were allowed to implement their PPA after the provisional approval of the PPA formula did not divest the regulator of the power to determine the reasonableness of the said charges or the electric cooperatives' entitlement thereto. Such power necessarily includes the power to adopt such policies as would assist the regulator in its determination of the 'reasonableness' of such PPA charges

> implemented by electric cooperatives. The implementation was provisionally approved and subject to the changes that the regulator can make, in the exercise of its rate-setting authority and subject to the 'reasonableness' standard under the law x x x."

Suffice to state that with regard to rate-determination, the government is not hidebound to apply any particular method or formula. What is a just and reasonable rate cannot be fixed by any immutable method or formula. In other words, no public utility has the vested right to any particular method of valuation. The administrative agency is not duty bound to apply any one particular formula or method simply because the same method has been previously used and applied.

The issues on the alleged retroactive application and denial of due process had been adequately addressed in the Decision dated December 23, 2008. We reiterate that the periods covered by the ERC confirmation subject of the petitions, spanning from February 1996 to September 2004, fell after the effectivity of R.A. No. 7832, the constitutionality of which petitioners continue, albeit erroneously, to assail in the instant motions. With respect to the alleged lack of trial-type hearing, it is settled that the essence of due process in administrative proceedings is merely the opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. Where an opportunity to be heard is accorded, as in this case, there is no denial of due process. Neither was there a need for the assailed Orders of the ERC to be published as petitioners so adamantly insist. As pointed out by the OSG, said Orders did not create a new obligation, impose a new duty, or attach a new disability on the electric cooperatives. They merely clarified the policy guidelines adopted in the implementation of the PPA. As We have said, interpretative rules give no real consequence more than what the law itself has already prescribed.[72]

Hence, this instant petition filed by BATELEC I, QUEZELCO I, QUEZELCO II and PRESCO.

<u>The Issues</u>

Petitioners raise the following issues:

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[72] *Id.* at 62-64. Citations omitted.

1. Whether the policy guidelines issued by the ERC on the treatment of discounts extended by power suppliers are ineffective and invalid for lack of publication, non-submission to the University of the Philippines (U.P.) Law Center, and their retroactive application; and

2. Whether the grossed-up factor mechanism implemented by the ERC in the computation of the over-recoveries is ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and its retroactive application.

The Ruling of the Court

The petition is partly meritorious.

I.

Petitioners assail the validity of the 22 March 2006 Order,[73] 16 February 2007 Order,[74] 7 December 2005 Order,[75] and 27 March 2006 Order[76] of the ERC directing the refund of over-recoveries for having been issued pursuant to ineffective and invalid policy guidelines. Petitioners assert that the policy guidelines on the treatment of discounts extended by power suppliers are ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and their retroactive application.

Publication is a basic postulate of procedural due process. The purpose of publication is to duly inform the public of the contents of the laws which govern them and regulate their activities.[77] Article 2 of the Civil Code, as amended by Section 1

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[73] The 22 March 2006 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of BATELEC I.

[74] The 16 February 2007 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO I.

[75] The 7 December 2005 Order was issued in ERC Case No. 2001-338 regarding the monthly PPA implementation of QUEZELCO II.

[76] The 27 March 2006 Order was issued in ERC Case No. 2001-340 regarding the monthly PPA implementation of PRESCO.

[77] *Tañada v. Tuvera*, 230 Phil. 528, 534-536 (1986). In *Tañada v. Tuvera*, this Court expounded on the reason for the requirement of publication in this wise:

of Executive Order No. 200, states that "[l]aws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided." Section 18, Chapter 5, Book I of Executive Order No. 292 or the Administrative Code of 1987 similarly provides that "[l]aws shall take effect after fifteen (15) days following the completion of their publication in the *Official Gazette* or in a newspaper of general circulation, unless it is otherwise provided."

Procedural due process demands that administrative rules and regulations be published in order to be effective.[78] In *Tañada v. Tuvera*, this Court articulated the fundamental requirement of publication, thus:

> We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

"It is not correct to say that under the disputed clause publication may be dispensed with altogether. The reason is that such omission would offend due process insofar as it would deny the public knowledge of the laws that are supposed to govern it. Surely, if the legislature could validly provide that a law shall become effective immediately upon its approval notwithstanding the lack of publication (or after an unreasonably short period after publication), it is not unlikely that persons not aware of it would be prejudiced as a result; and they would be so not because of a failure to comply with it but simply because they did not know of its existence.

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We note at this point the conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all. It is no less important to remember that Section 6 of the Bill of Rights recognizes 'the right of the people to information on matters of public concern,' and this certainly applies to, among others, and indeed especially, the legislative enactments of the government." *Tañada v. Tuvera*, 230 Phil. 528, 534 (1986).

[78] *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission*, 517 Phil. 23, 61-62 (2006); *Republic of the Phils. v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 393 (2002).

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation**.[79] (Boldfacing supplied)

There are, however, several exceptions to the requirement of publication. First, an interpretative regulation does not require publication in order to be effective.[80] The applicability of an interpretative regulation "needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed."[81] It "add[s] nothing to the law" and "do[es] not affect the substantial rights of any person."[82] Second, a regulation that is merely internal in nature does not require publication for its effectivity.[83] It seeks to regulate only the personnel of the administrative agency and not the general public.[84] Third, a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties does not require publication in order to be effective.[85]

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are interpretative regulations. The policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

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[79] *Tañada v. Tuvera*, 230 Phil. 528, 535 (1986).

[80] *Id.*

[81] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996).

[82] *The Veterans Federation of the Philippines v. Reyes*, 518 Phil. 668, 704 (2006).

[83] *Tañada v. Tuvera*, *supra* note 79.

[84] *Id.*

[85] *Id.*

The policy guidelines were first enunciated by the ERC in its 17 June 2003 Order. In the said Order, the ERC explained that the cost of electricity purchased and generated is computed at "gross" if the discounts extended by the power supplier are not passed on to end-users, while the cost of electricity is computed at "net" if the discounts are passed on to end-users.[86] The ERC subsequently issued its 14 January 2005 Order. It emphasized therein that rural electric cooperatives should only recover the actual costs of purchased power.[87] Any discounts extended to rural electric cooperatives must therefore be extended to end-users by charging only the "net" cost of purchased power. The ERC issued the following directives in the said Order:

> A. The computation and confirmation of the PPA prior to the Commission's Order dated June 17, 2003 shall be based on the approved PPA formula;
>
> B. The computation and confirmation of the PPA after the Commission's Order dated June 17, 2003 shall be based on the power cost "net" of discount; and
>
> C. If the approved PPA formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross", subject to the submission of proofs that said discounts are being extended to the end-users.[88]

The ERC thereafter clarified its policy guidelines in the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order. The ERC outlined the following principles governing the treatment of the PPD extended by power suppliers to distribution utilities including rural electric cooperatives:

I. The over-or-under recovery will be determined by comparing the Allowable Power Cost with the Distribution Utility's Actual Revenue (AR) billed to end-users.

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[86] CA *rollo* (CA-G.R. SP No. 99249), p. 82.

[87] *Id.* at 96.

[88] *Id.* at 97.

II. Calculation of the Allowable Power Cost as prescribed in the PPA Formula:

a. For a Distribution Utility which PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and

b. For a Distribution Utility which PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there is any.

III. Calculation of the Distribution Utility's Actual Revenues/ Actual Amount Billed to End-users.

a. On Actual PPA Computed at Net of Discounts Availed from Power Supplier/s:

a.1. If a Distribution Utility bills at net of discounts availed from the power supplier/s (*i.e.* Gross power cost minus discounts from power supplier/s) and the distribution utility is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

a.2. If a Distribution Utility bills at net of discounts availed from the power supplier/s (*i.e.* Gross power cost minus discounts from power supplier/s) and the distribution utility is extending discounts to end-users, the discount extended to end-users will be added back to actual revenue.

b. On Actual PPA Computed at Gross

b.1. If a Distribution Utility bills at gross (*i.e.* Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is extending discounts to end-users, the actual revenue will be calculated as: Gross Power Revenue less Discounts extended to end-users. The result will then be compared to the allowable power cost; and

b.2. If a Distribution Utility bills at gross (*i.e.* Gross power cost not reduced by discounts from power supplier/s) and the distribution utility is not extending

discounts to end-users, the actual revenue will be taken as is which shall be compared to the allowable power cost.

IV. In calculating the Distribution Utility's actual revenues, in no case shall the amount of discounts extended to end-users be higher than the discounts availed by the Distribution Utility from its power supplier/s.[89]

The above-stated policy guidelines of the ERC on the treatment of discounts merely interpret the cost of purchased power as a component of the PPA formula provided in Section 5, Rule IX of the IRR of R.A. No. 7832. The cost of purchased power is denominated as the variable "A" in the numerator of the PPA formula, particularly:

Section 5. *Automatic Cost Adjustment Formula.* —

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The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B-(C+D)} - E$$

Where:

A = **Cost of electricity purchased and generated for the previous month**

B = Total Kwh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

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[89] *Id.* at 34-35, 52-53, 69-70; CA *rollo* (CA-G.R. SP No. 99253), pp. 27-28.

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh (Boldfacing supplied)

The cost of purchased power expressed as the variable "A" in the numerator of the PPA formula is plain and unambiguous. Webster's Third New International Dictionary defines the term "cost" as "an item of outlay incurred in the operation of a business enterprise (as for the purchase of raw materials, labor, services, supplies) including the depreciation and amortization of capital assets."[90] Black's Law Dictionary defines the term "cost" as "[t]he amount paid or charged for something; price or expenditure."[91] When the policy guidelines of the ERC directed the exclusion of discounts extended by power suppliers in the computation of the cost of purchased power, the guidelines merely affirmed the plain and unambiguous meaning of "cost" in Section 5, Rule IX of the IRR of R.A. No. 7832. "Cost" is an item of outlay, and must therefore exclude discounts since these are "*not* amounts paid or charged for the sale of electricity, but are *reductions in rates*."[92]

Furthermore, the policy guidelines of the ERC uphold and preserve the nature of the PPA formula. The nature of the PPA formula precludes an interpretation that includes discounts in the computation of the cost of purchased power. The PPA formula is an adjustment mechanism the purpose of which is purely for the recovery of cost. In *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission*,[93] this Court noted the explanation of the ERC on the nature and purpose of an adjustment mechanism:

It is clear from the foregoing that "escalator" or "tracker" or any other similar automatic adjustment clauses are merely cost recovery

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[90] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 515 (1993).

[91] BLACK'S LAW DICTIONARY 371 (8th ed., 2005).

[92] *National Power Corporation v. Philippine Electric Plant Owners Association (PEPOA), Inc.,* 521 Phil. 73, 88 (2006).

[93] 517 Phil. 23 (2006).

or cost "flow-through" mechanisms; that what they purport to cover are operating costs only which are very volatile and unstable in nature and over which the utility has no control; and that the use of the said clauses is deemed necessary to enable the utility to make the consequent adjustments on the billings to its customers so that ultimately its rate of return would not be quickly eroded by the escalations in said costs of operation. The total of all rate adjustments should not operate to increase overall rate of return for a particular utility company above the basic rates approved in the last previous rate case (*Re Adjustment Clause in Telephone Rate Schedules, 3 PUR 4th 298, N.J. Bd. of Pub. Util.Comm'rs., 1973. Affirmed 66 N.J. 476, 33 A.2d 4, 8 PUR 4th 36, N.J.,1975*).[94]

Rural electric cooperatives cannot therefore incorporate in the PPA formula costs that they did not incur. Consumers must not shoulder the gross cost of purchased power; otherwise, rural electric cooperatives will unjustly profit from discounts extended to them by power suppliers. In the Consolidated Comment of the ERC, the Solicitor General correctly pointed out:

34.4. Second, [t]he ERC's PPA confirmation policies were in consonance with the rule that electric cooperatives may only recover costs to the extent of the amount they actually incurred in the purchase of electricity. **The PPA remained to be the difference between the electric cooperative's actual allowable power costs as translated to PhP/kWh and the electric cooperative's approved Basic Rate. This was also how the Cost Adjustment Formula was defined in the IRR of R.A. No. 7832.**

34.5. Contrary to petitioners' assertions, therefore, the policy did not deviate from the ERB's provisionally-approved PPA formula but merely implemented the policy set out in R.A. No. 7832, that is, it is *strictly for the purpose of cost recovery only*. Obviously, if the PPA is computed without factoring the discounts given by power suppliers to electric cooperatives, electric cooperatives will impermissibly retain or even earn from the implementation of the PPA.[95]

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

[95] *Rollo*, p. 276.

Thus, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers "give[] no real consequence more than what the law itself has already prescribed."[96] Publication is not necessary for the effectivity of the policy guidelines.

As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in *Board of Trustees of the Government Service Insurance System v. Velasco*,[97] this Court pronounced that "[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center."[98] Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.[99] Paragraph 9 (a) of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center[100] states:

> 9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:
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> a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public[.]

Petitioners further assert that the policy guidelines are invalid for having been applied retroactively. According to petitioners,

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[96] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996).

[97] G.R. No. 170463, 2 February 2011, 641 SCRA 372.

[98] *Id.* at 383.

[99] *Id.*

[100] Memorandum dated 21 May 1990 of Associate Dean Merlin M. Magallona, Supervisor of the U.P. Law Center, to the Acting Head, Information and Publication Division of the U.P Law Center.

the ERC applied the policy guidelines to periods of PPA implementation prior to the issuance of its 14 January 2005 Order.[101] In *Republic v. Sandiganbayan*,[102] this Court recognized the basic rule "that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so."[103] A law is retrospective if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or consideration already past."[104]

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective. The policy guidelines did not take away or impair any vested rights of the rural electric cooperatives. The usage and implementation of the PPA formula were provisionally approved by the ERB in its Orders dated 19 February 1997[105] and 25 April 1997.[106] The said Orders specifically stated that the provisional approval of the PPA formula was subject to review, verification and confirmation by the ERB. Thus, the rural electric cooperatives did not acquire any vested rights in the usage and implementation of the provisionally approved PPA formula.

Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. As previously discussed, the policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the IRR.

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[101] *Rollo*, pp. 10-11.

[102] 355 Phil. 181 (1998).

[103] *Id.* at 198.

[104] *Castro v. Sagales*, 94 Phil. 208, 210 (1953), citing 50 Am. Jur. p. 505.

[105] The Order dated 19 February 1997 was issued in ERB Case Nos. 96-35, 96-36, 96-43, 96-49.

[106] The Order dated 25 April 1997 was issued in ERB Case No. 96-37.

II.

Petitioners further assail the validity of the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order of the ERC directing the refund of over-recoveries for having been issued pursuant to an ineffective and invalid grossed-up factor mechanism. Petitioners claim that the grossed-up factor mechanism implemented by the ERC in the review, verification and confirmation of the PPA is ineffective and invalid for lack of publication, non-submission to the U.P. Law Center, and its retroactive application.

It does not appear from the records that the grossed-up factor mechanism was published or submitted to the U.P. Law Center. The ERC did not dispute the claim of petitioners that the grossed-up factor mechanism was not published, nor did the ERC dispute the claim that the grossed-up factor mechanism was not disclosed to the rural electric cooperatives prior to the review, verification and confirmation of the PPA.[107] The 22 March 2006 Order and 16 February 2007 Order merely stated that one of the bases of the over-recoveries was "[t]he **new** grossed-up factor mechanism adopted by the Commission which provided a true-up mechanism that allows the distribution utilities to recover the actual cost of purchased power."[108] The 7 December 2005 Order similarly stated that one of the bases of the over-recoveries was "[t]he **new** grossed-up factor scheme adopted by the Commission which provided a **different result** *vis-a-vis* the originally approved formula."[109] The ERC did not explain or disclose in the said Orders any details regarding the grossed-up factor mechanism.

Based on the records, the first instance wherein the ERC disclosed the details of the grossed-up factor mechanism was in its comments filed with the Court of Appeals in CA-G.R. SP Nos. 99249 and 99253 on 1 August 2008 and 9 October 2007,

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[107] *Rollo*, pp. 10-11.

[108] CA *rollo* (CA-G.R. SP No. 99249), pp. 39, 55. Boldfacing supplied.

[109] *Id.* at 68. Boldfacing supplied.

respectively.[110] The ERC reiterated the details of the grossed-up factor mechanism in its Consolidated Comment filed with this Court on 28 February 2011.[111] The ERC illustrated the application of the grossed-up factor mechanism in the following manner:

Given:

Kwh Purchased – 100,000 Kwh

Cost of Purchased Power – PhP300,000.00

Kwh Sales – 89,000 Kwh

Coop Use – 1,000 Kwh

System Loss – 10% or 10,000 Kwh

$$\textbf{Gross-Up Factor} = \frac{\textbf{\textit{Kwh Sales + Coop Use}}}{\textbf{\textit{Kwh Purchased}}\ \textbf{(1-\%}\ \textbf{\textit{System Loss}}\textbf{)}}$$

$$\text{Gross-Up Factor} = \frac{89{,}000 + 1{,}000}{100{,}000\ (1\text{-}10\%)}$$

$$\text{Gross-Up Factor} = \frac{90{,}000}{90{,}000} = 1$$

The Gross-up Factor, which [in this illustration] is equivalent to 1, will be used in determining the recoverable power cost of an [electric cooperative], such that:

Recoverable Cost = Gross-Up Factor x Cost of Purchased Power

Recoverable Cost = 1 x PhP300,000.00 = PhP300,000.00[112]
(Boldfacing supplied)

In its Consolidated Comment, the ERC stated that the PPA "captures the incremental cost in purchased and generated electricity plus recoverable system loss in excess of what had

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[110] See CA *rollo* (CA-G.R. SP No. 99249), p. 207 n. 11; CA *rollo* (CA-G.R. SP No. 99253), pp. 144-145 n. 3.

[111] *Rollo*, pp. 267-268.

[112] *Id.* at 267 n.12.

already been included as power cost component in the electric cooperative's basic rates."[113] On the other hand, the grossed-up factor mechanism is a "mathematical calculation that ensures that the electric cooperatives are able to recover costs incurred from electricity purchased and generated plus system loss components within allowable limits."[114] The ERC proceeded to explain the relationship between the PPA and the grossed-up factor mechanism thus:

> 20.2 This gross-up factor mechanism did not modify the [PPA] formula or state how the PPA is to be computed. The recoverable amount derived from applying the gross-up factor is still the maximum allowable cost to be recovered from the electric cooperative's customers for a given month. **If the PPA collected exceeded the recoverable cost, the difference should be refunded back to the consumers.**[115]

This Court agrees with the ERC that the grossed-up factor mechanism "did not modify the [PPA] formula or state how the PPA is to be computed."[116] However, the grossed-up factor mechanism **amends** the IRR of R.A. No. 7832 as it serves as an **additional numerical standard** that must be observed and applied by rural electric cooperatives in the implementation of the PPA. While the IRR explains, and stipulates, the PPA formula, the IRR neither explains nor stipulates the grossed-up factor mechanism. The reason is that the grossed-up factor mechanism is admittedly "**new**" and provides a "**different result**," having been formulated only ***after*** the issuance of the IRR.

The grossed-up factor mechanism is not the same as the PPA formula provided in the IRR of R.A. No. 7832. Neither is the grossed-up factor mechanism subsumed in any of the five variables of the PPA formula. Although both the grossed-up factor mechanism and the PPA formula account for system loss and use of electricity by cooperatives, they serve different quantitative purposes.

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[113] *Id.* at 261.

[114] *Id.* at 267.

[115] *Id.* at 268.

[116] *Id.*

The grossed-up factor mechanism serves as a threshold amount to which the PPA formula is to be compared. According to the ERC, any amount collected under the PPA that exceeds the Recoverable Cost computed under the grossed-up factor mechanism shall be refunded to the consumers.[117] The Recoverable Cost computed under the grossed-up factor mechanism is "the maximum allowable cost to be recovered from the electric cooperative's customers for a given month."[118] **In effect, the PPA alone does not serve as the variable rate to be collected from the consumers**. The PPA formula **and** the grossed-up factor mechanism will both have to be observed and applied in the implementation of the PPA.

Furthermore, the grossed-up factor mechanism accounts for a variable that is not included in the five variables of the PPA formula. In particular, the grossed-up factor mechanism accounts for the amount of power sold in proportion to the amount of power purchased by a rural electric cooperative, expressed as the Gross-Up Factor. It appears that the Gross-Up Factor limits the Recoverable Cost by allowing recovery of the Cost of Purchased Power only in proportion to the amount of power sold. This is shown by integrating the formula of the Gross-Up Factor with the formula of the Recoverable Cost, thus:

The grossed-up factor mechanism consists of the following formulas:

$$\textbf{Gross-Up Factor} = \frac{\textit{Kwh Sales + Coop Use}}{\textit{Kwh Purchased}\ (1\text{-}\%\ \textit{System Loss})}$$

Recoverable Cost = Gross-Up Factor x Cost of Purchased Power

Integrating the above-stated formulas will result in the following formula:

$$\textbf{Recoverable Cost} = \frac{\textit{Kwh Sales + Coop Use}}{\textit{Kwh Purchased}\ (1-\%\textit{System Loss})} \times \textbf{Cost of Purchased Power}$$

[117] *Id.*

[118] *Id.*

On the other hand, the PPA formula provided in the IRR of R.A. No. 7832 does not account for the amount of power sold. It accounts for the amount of power purchased and generated, expressed as the variable "B" in the following PPA formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B-(C+D)} - E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total Kwh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh[119] (Boldfacing supplied)

In light of these, the grossed-up factor mechanism does not merely interpret R.A. No. 7832 or its IRR. It is also not merely internal in nature. **The grossed-up factor mechanism amends the IRR by providing an additional numerical standard that must be observed and applied in the implementation of the PPA**. The grossed-up factor mechanism is therefore an administrative rule that should be published and submitted to the U.P. Law Center in order to be effective.

As previously stated, it does not appear from the records that the grossed-up factor mechanism was published and submitted to the U.P. Law Center. Thus, it is ineffective and may not

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[119] IRR OF R.A. NO. 7832, Rule IX, Sec. 5.

serve as a basis for the computation of over-recoveries. The portions of the over-recoveries arising from the application of the mechanism are therefore invalid.

Furthermore, the application of the grossed-up factor mechanism to periods of PPA implementation prior to its publication and disclosure renders the said mechanism invalid for having been applied retroactively. The grossed-up factor mechanism imposes an additional numerical standard that clearly "creates a new obligation and imposes a new duty x x x in respect of transactions or consideration already past."[120]

Rural electric cooperatives cannot be reasonably expected to comply with and observe the grossed-up factor mechanism without its publication. This Court recognizes that the mechanism aims to reflect the actual cost of purchased power for the benefit of consumers. However, this objective must at all times be balanced with the viability of rural electric cooperatives. The ERB itself made the following observation regarding the operational and economic condition of rural electric cooperatives in its Order dated 19 February 1997:

> Electric [c]ooperatives are created under Presidential Decree No. 269 in the nature of non-profit organizations. Thus, they do not have the funds they can dispose of to meet [their] future emergency obligations and operational needs. They are not entitled return on their investment as their rates are based on cash flow methodology. Hence, if the appropriate rate level x x x to keep them going or viable, shall not be provided, the finances and operations of the said cooperatives will be jeopardized which ultimately will result in inefficient electric service to their respective customers or [worse] shut down when they fail to pay the sources of their electricity (like National Power Corporation) and their loans to the NEA.[121]

Administrative compliance with due process requirements cultivates a regulatory environment characterized by predictability and stability. These characteristics ensure that rural electric

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[120] *Castro v. Sagales*, *supra* note 104.

[121] CA *rollo* (CA-G.R. SP No. 99249), p. 257.

cooperatives are given the opportunity to achieve efficiency, and that ultimately, consumers have access to reliable services and affordable electric rates.

WHEREFORE, we **PARTLY GRANT** the petition and rule that the grossed-up factor mechanism is **INEFFECTIVE** and **INVALID**. We further rule that the portions of the over-recoveries that may have arisen from the application of the grossed-up factor mechanism in the 22 March 2006 Order, 16 February 2007 Order, 7 December 2005 Order and 27 March 2006 Order of the Energy Regulatory Commission are **INVALID**. Respondent Energy Regulatory Commission is **DIRECTED** to compute the portions of the over-recoveries arising from the application of the grossed-up factor mechanism and to implement the collection of any amount previously refunded by petitioners to their respective consumers on the basis of the grossed-up factor mechanism. The 23 December 2008 Decision and 26 April 2010 Resolution of the Court of Appeals are hereby **MODIFIED** accordingly.

SO ORDERED.

Sereno, C.J., *Velasco, Jr.*, *Leonardo-de Castro*, *Brion*, *Peralta*, *del Castillo*, *Abad*, *Perez*, *Mendoza*, and *Reyes*, *JJ.*, concur.

Bersamin and *Perlas-Bernabe*, *JJ.*, took no part due to prior participation in the CA.

Villarama, *Jr.*, *J.*, on official leave.

EN BANC

[G.R. No. 196355. September 18, 2012]

BIENVENIDO WILLIAM D. LLOREN, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and ROGELIO PUA, JR.,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ELECTION LAWS; ELECTION CASES; THE TIMELY PERFECTION OF AN APPEAL IN AN ELECTION CASE REQUIRES THE PAYMENT OF TWO DIFFERENT APPEAL FEES; ELUCIDATED.—** The rules on the timely perfection of an appeal in an election case requires two different appeal fees, one to be paid in the trial court together with the filing of the notice of appeal within five days from notice of the decision, and the other to be paid in the COMELEC Cash Division within the 15-day period from the filing of the notice of appeal. In A.M. No. 07-4-15-SC, the Court promulgated the *Rules of Procedure In Election Contests Before The Courts Involving Elective Municipal and Barangay Officials* (hereafter, the Rules in A.M. No. 07-4-15-SC), effective on May 15, 2007, to set down the procedure for election contests and *quo warranto* cases involving municipal and *barangay* officials that are commenced in the trial courts. The Rules in A.M. No. 07-4-15-SC superseded Rule 35 ("*Election Contests Before Courts of General Jurisdiction*") and Rule 36 ("*Quo Warranto Case Before Courts of General Jurisdiction*") of the 1993 COMELEC Rules of Procedure. Under Section 8, of Rule 14 of the Rules in A.M. No. 07-4-15-SC, an aggrieved party may appeal the decision of the trial court to the COMELEC within five days after promulgation by filing a notice of appeal in the trial court that rendered the decision, serving a copy of the notice of appeal on the adverse counsel or on the adverse party if the party is not represented by counsel. Section 9, of Rule 14 of the Rules in A.M. No. 07-4-15-SC prescribes for that purpose an appeal fee of ₱1,000.00 to be paid to the trial court rendering the decision simultaneously with the filing of the notice of appeal. It should be stressed, however, that the Rules in A.M. No. 07-4-15-SC did not supersede the appeal fee prescribed by the COMELEC under its own rules of procedure. As a result, "the requirement of two appeal fees by two different jurisdictions caused a confusion in the implementation by the COMELEC of its procedural rules on the payment of appeal fees necessary for the perfection of appeals." To remove the confusion, the COMELEC issued Resolution No. 8486, effective on July 24, 2008, whereby the COMELEC clarified the rules on the payment of the two appeal fees by allowing the appellant to pay the COMELEC's appeal

fee of ₱3,200.00 at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC *within a period of 15 days from the time of the filing of the notice of appeal in the trial court* x x x. Following the clarification made by the COMELEC in Resolution No. 8486, the Court declared an end to the confusion arising from the requirement of two appeal fees effective on July 27, 2009, the date of promulgation of the ruling in *Divinagracia, Jr. v. Commission on Elections* by announcing that "**for notices of appeal filed *after* the promulgation of this decision, errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable*.**"

2. ID.; ID.; COMMISSION ON ELECTIONS (COMELEC); COMELEC 1993 RULES OF PROCEDURE; PRESCRIBED FEES; THE AUTHORITY TO DISMISS FOR NON-PAYMENT THEREOF IS DISCRETIONARY AND PERMISSIVE.— The non-payment of the motion fee of ₱300.00 at the time of the filing of the motion for reconsideration did not warrant the outright denial of the motion for reconsideration, but *might* only justify the COMELEC to refuse to take action on the motion for reconsideration until the fees were paid, or to dismiss the action or proceeding when no full payment of the fees is ultimately made. The authority to dismiss is discretionary and permissive, not mandatory and exclusive, as expressly provided in Section 18, Rule 40 of the 1993 Rules of Procedure x x x. The evident intent of rendering Section 18, Rule 40 of the 1993 Rules of Procedure discretionary and permissive is to accord the movant an opportunity to pay the motion fee in full. The dire outcome of denial of the motion for reconsideration should befall the movant only upon his deliberate or unreasonable failure to pay the fee in full. It appears, however, that petitioner's failure to pay the motion fee simultaneously with his filing of the motion for reconsideration was neither deliberate nor unreasonable. He actually paid the fee by postal money order on March 3, 2011.

3. ID.; ID.; ELECTION CONTESTS; AN ELECTION PROTEST MAY BE SUMMARILY DISMISSED WHEN IT IS INSUFFICIENT IN FORM AND CONTENT AND WHERE THE CASH DEPOSIT MADE IS INSUFFICIENT; CASE AT BAR.— As the findings of the RTC show, petitioner did

not indicate the total number of precincts in the municipality in his election protest. The omission rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC x x x. Likewise, the RTC found that the cash deposit made by petitioner was insufficient. Considering that the Court cannot disturb the findings on the insufficiency of petitioner's cash deposit made by the trial court, that finding was another basis for the summary dismissal of the election protest under Section 12. We note that the summary dismissal of the election protest upon any of the grounds mentioned in Section 12 is mandatory.

APPEARANCES OF COUNSEL

Avito C. Cahig, Jr. for petitioner.
The Solicitor General for public respondent.
Tan Igano Giron Evangelista Roa Law Offices for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

This special civil action for *certiorari* seeks to set aside the dismissal by the First Division of the Commission on Elections (COMELEC) of petitioner's appeal taken in his election protest on the ground that he did not pay the appeal fee on time, and the denial of his motion for reconsideration by the COMELEC *En Banc* on the ground that he did not pay the motion fee on time as required by the rules of the COMELEC.

The dismissal of petitioner's appeal was through the order issued on January 31, 2011 by the First Division of the COMELEC,[1] while the denial of the motion for reconsideration was through the order dated March 16, 2011 of the COMELEC *En Banc*.[2]

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[1] *Rollo,* p. 23.

[2] *Id.* at 25-27.

Antecedents

Petitioner and respondent Rogelio Pua, Jr. (Pua) were the candidates for Vice-Mayor of the Municipality of Inopacan, Leyte in the May 10, 2010 Automated National and Local Elections. The Municipal Board of Canvassers proclaimed Pua as the winning candidate with a plurality of 752 votes for garnering 5,682 votes as against petitioner's 4,930 votes.

Alleging massive vote-buying, intimidation, defective PCOS machines in all the clustered precincts, election fraud, and other election-related manipulations, petitioner commenced Election Protest Case (EPC) No. H-026 in the Regional Trial Court (RTC) in Hilongos, Leyte.

In his answer with special and affirmative defenses and counterclaim, Pua alleged that the election protest stated no cause of action, was insufficient in form and content, and should be dismissed for failure of petitioner to pay the required cash deposit.

On November 12, 2012, the RTC dismissed the election protest for insufficiency in form and substance and for failure to pay the required cash deposit,[3] *viz*:

> ALL THE FOREGOING CONSIDERED, for insufficiency in form and content as required under Rule 2, Sec. 10 (c) (ii) and (iv) and for failing to make the required cash deposit within the given period, the instant election protest is hereby DISMISSED.
>
> With costs against the protestant.
>
> SO ORDERED.[4]

On November 17, 2010, petitioner filed a notice of appeal in the RTC,[5] and paid the appeal fee of ₱1,000.00 to the same court. The RTC granted due course to the appeal on November 24, 2010.

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[3] *Id.* at 74-83.

[4] *Id.* at 83.

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

On December 2, 2010, the fifteenth day from the filing of the notice of appeal, petitioner remitted the appeal fee of ₱3,200.00 to the COMELEC Electoral Contests Adjudication Department (ECAD) by postal money order.[6]

Through the first assailed order of January 31, 2011, however, the COMELEC First Division dismissed the appeal on the ground of petitioner's failure to pay the appeal fee within the period set under Section 4, Rule 40 of the COMELEC Rules of Procedure,[7] holding:

> The Commission (First division) RESOLVED as it hereby RESOLVES to DISMISS the instant appeal case for protestant-appellant's failure to pay the amount of Three thousand Pesos (Php3,000.00) appeal fee within the reglementary period under the 1993 Comelec Rules of Procedure as amended by Comelec Resolution No. 02-0130 dated 18 September 2002.
>
> Section 4, Rule 40 of the Comelec Rules of Procedure mandates the payment of the appeal fee within the period to file the notice of appeal or five (5) days from receipt of the decision sought to be appealed, while Sec. 9, Rule 22 of the same Rules provides that failure to pay the appeal fee is a ground for the dismissal of the appeal. These provisions were reinforced by the ruling of the Supreme Court in the case of *Divinagracia vs. Comelec* (G.R. Nos. 186007 & 186016) promulgated on 27 July 2009. The Ruling declared that for notices of appeal filed after its promulgation, errors in the matters of non-payment or incomplete payment of appeal fees in the court *a quo* and the Commission on Elections are no longer excusable.
>
> SO ORDERED.

Petitioner moved for the reconsideration of the dismissal on February 14, 2011, and later sent a notice dated March 3, 2011, stating that he paid the motion fee of ₱300.00 by postal money order.

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[6] *Id.* at 89.

[7] *Id.* at 24.

On March 16, 2011, the COMELEC *En Banc* denied petitioner's motion for reconsideration through the second assailed order, *viz*: [8]

xxx the Commission *En Banc* hereby resolves to DENY the same for protestant-appellant's FAILURE to PAY the required motion fees prescribed under Section 7 (f), Rule 40, Comelec Rules of Procedure, as amended by Comelec Minute Resolution No. 02-0130 dated September 18, 2002, in relation to Section 18, Rule 40, same Comelec Rules.

In the same order of March 16, 2011, the COMELEC *En Banc* directed the Clerk of the Commission, ECAD, to issue an entry of judgment and to record the entry of judgment in the Book of Entries of Judgment.

Aggrieved, petitioner commenced this special civil action for *certiorari* to annul the assailed orders of the COMELEC.

Issue

Petitioner contends that he timely filed his notice of appeal in the RTC and timely paid the appeal fee of ₱1,000.00 on November 17, 2010; and that he also paid the appeal fee of ₱3,200.00 to the COMELEC ECAD on December 2, 2010 within the 15-day reglementary period counted from the filing of the notice of appeal, conformably with Resolution No. 8486 dated July 15, 2008.

In his comment, Pua maintains that petitioner paid the ₱3,200.00 beyond the five-day reglementary period under Section 4, Rule 40 of the COMELEC Rules of Procedure; and that petitioner did not pay the motion fee of ₱300.00 prescribed under Section 7(f), Rule 40 of the same rules. Hence, Pua submits that the dismissal of petitioner's appeal and denial of his motion for reconsideration did not constitute grave abuse of discretion.

The issue of whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders is approached through two questions: *firstly*,

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[8] *Id.* at 28.

the procedural, which concerns the determination of whether or not petitioner timely paid the appeal fee and motion fee under the COMELEC Rules of Procedure; and, *secondly*, the substantive, which delves on whether or not the appeal may still proceed.

Ruling

The petition is meritorious as to the procedural question, but not as to the substantive question.

1.
***Procedural Question*: Petitioner timely perfected his appeal**

The rules on the timely perfection of an appeal in an election case requires two different appeal fees, one to be paid in the trial court together with the filing of the notice of appeal within five days from notice of the decision, and the other to be paid in the COMELEC Cash Division within the 15-day period from the filing of the notice of appeal.

In A.M. No. 07-4-15-SC, the Court promulgated the *Rules of Procedure In Election Contests Before The Courts Involving Elective Municipal and Barangay Officials* (hereafter, the Rules in A.M. No. 07-4-15-SC), effective on May 15, 2007, to set down the procedure for election contests and *quo warranto* cases involving municipal and *barangay* officials that are commenced in the trial courts. The Rules in A.M. No. 07-4-15-SC superseded Rule 35 ("*Election Contests Before Courts of General Jurisdiction*") and Rule 36 ("*Quo Warranto Case Before Courts of General Jurisdiction*") of the 1993 COMELEC Rules of Procedure.

Under Section 8,[9] of Rule 14 of the Rules in A.M. No. 07-4-15-SC, an aggrieved party may appeal the decision of the

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[9] Section 8. *Appeal*. — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

trial court to the COMELEC within five days after promulgation by filing a notice of appeal in the trial court that rendered the decision, serving a copy of the notice of appeal on the adverse counsel or on the adverse party if the party is not represented by counsel. Section 9,[10] of Rule 14 of the Rules in A.M. No. 07-4-15-SC prescribes for that purpose an appeal fee of ₱1,000.00 to be paid to the trial court rendering the decision simultaneously with the filing of the notice of appeal.

It should be stressed, however, that the Rules in A.M. No. 07-4-15-SC did not supersede the appeal fee prescribed by the COMELEC under its own rules of procedure. As a result, "the requirement of two appeal fees by two different jurisdictions caused a confusion in the implementation by the COMELEC of its procedural rules on the payment of appeal fees necessary for the perfection of appeals."[11] To remove the confusion, the COMELEC issued Resolution No. 8486,[12] effective on July 24, 2008,[13] whereby the COMELEC clarified the rules on the payment of the two appeal fees by allowing the appellant to pay the COMELEC's appeal fee of ₱3,200.00 at the COMELEC's Cash Division through the ECAD or by postal money order payable to the COMELEC *within a period of 15 days from the time of the filing of the notice of appeal in the trial court*, to wit:

x x x x x x x x x

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[10] Section 9. *Appeal Fee*. — The appellant in an election contest shall pay to the court that rendered the decision an appeal fee of One Thousand Pesos (₱1,000.00), simultaneously with the filing of the notice of appeal.

[11] *Divinagracia, Jr. v. Commission on Elections,* G.R. Nos. 186007 & 186016, July 27, 2009, 594 SCRA 147, 158.

[12] Entitled *In the Matter of Clarifying the Implementation of COMELEC Rules Re: Payment Of Filing Fees for Appealed Cases involving Barangay and Municipal Elective Positions from the Municipal Trial Courts, Municipal Circuit Trial Courts, Metropolitan Trial Courts and Regional Trial Courts*.

[13] Resolution No. 8486 was to take effect "on the seventh day following its publication" in two newspapers of general circulation; the effectivity started on July 24, 2008 considering that the publication took place on July 17, 2008.

1. That if the appellant had already paid the amount of ₱1,000.00 before the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court or lower courts within the five-day period, pursuant to Section 9, Rule 14 of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials (Supreme Court Administrative Order No. 07-4-15) and his Appeal was given due course by the Court, said appellant is required to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court. If no payment is made within the prescribed period, the appeal shall be dismissed pursuant to Section 9 (a) of Rule 22 of the COMELEC Rules of Procedure, which provides:

> Sec. 9. *Grounds for Dismissal of Appeal*. — The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds:
>
> (a) Failure of the appellant to pay the correct appeal fee; xxx

2. That if the appellant failed to pay the ₱1,000.00-appeal fee with the lower court within the five (5) day period as prescribed by the Supreme Court New Rules of Procedure but the case was nonetheless elevated to the Commission, the appeal shall be dismissed outright by the Commission, in accordance with the aforestated Section 9 (a) of Rule 22 of the Comelec Rules of Procedure.

x x x x x x x x x

Following the clarification made by the COMELEC in Resolution No. 8486, the Court declared an end to the confusion arising from the requirement of two appeal fees effective on July 27, 2009, the date of promulgation of the ruling in *Divinagracia, Jr. v. Commission on Elections*[14] by announcing that "**for notices of appeal filed *after* the promulgation of this decision, <u>errors in the matter of non-payment or incomplete payment of the two appeal fees in election cases are *no longer excusable*</u>.**"[15]

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[14] *Supra*, note 11, at 161.

[15] Italics and bold emphasis are part of the original text of the ruling.

In light of the foregoing, the Court finds that petitioner perfected his appeal of the decision rendered on November 12, 2012 by the RTC in EPC No. H-026. He filed his notice of appeal and paid the ₱1,000.00 appeal fee to the RTC on November 17, 2012. Such filing and payment, being done within five days from the promulgation of the decision, complied with Section 8, Rule 14 of the Rules in A.M. No. 07-4-15-SC. Thereafter, he paid the appeal fee of ₱3,200.00 to the COMELEC Cash Division through the ECAD on December 2, 2012. Such payment, being done on the fifteenth day from his filing of the notice of appeal in the RTC, complied with Resolution No. 8486.

Yet, in determining whether petitioner had perfected his appeal, the COMELEC First Division relied on Section 4 of Rule 40 of its 1993 Rules of Procedure, a provision that required an appellant to pay the appeal fee prescribed by the COMELEC *within the period to file the notice of appeal.*[16]

The reliance on Section 4 of Rule 40 of the COMELEC 1993 Rules of Procedure was plainly arbitrary and capricious. The COMELEC First Division thereby totally disregarded Resolution No. 8486, whereby the COMELEC *revised* Section 4 of Rule 40 of the 1993 Rules of Procedure by expressly allowing the appellant "to pay the Comelec appeal fee of ₱3,200.00 at the Commission's Cash Division through the Electoral Contests Adjudication Department (ECAD) or by postal money order payable to the Commission on Elections through ECAD, within a period of fifteen days (15) from the time of the filing of the Notice of Appeal with the lower court." In effect, the period of perfecting the appeal in the COMELEC was extended from the original period of five days counted from promulgation of the decision by the trial court to a longer period of 15 days reckoned from the filing of the notice of appeal in the trial court.

Accordingly, the order issued on January 31, 2011 by the COMELEC First Division was null and void for being contrary to Resolution No. 8486.

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[16] Section 4. *Where and When to Pay.* — The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission **within a period to file the notice of appeal.**

As to the order issued on March 16, 2011 by the COMELEC *En Banc*, the Court finds that the COMELEC *En Banc* was capricious and arbitrary in thereby denying petitioner's motion for reconsideration on the ground that he did not simultaneously pay the motion fee of ₱300.00 prescribed by Section 7(f), Rule 40 of the 1993 Rules of Procedure.

The non-payment of the motion fee of ₱300.00 at the time of the filing of the motion for reconsideration did not warrant the outright denial of the motion for reconsideration, but *might* only justify the COMELEC to refuse to take action on the motion for reconsideration until the fees were paid, or to dismiss the action or proceeding when no full payment of the fees is ultimately made. The authority to dismiss is discretionary and permissive, not mandatory and exclusive, as expressly provided in Section 18, Rule 40 of the 1993 Rules of Procedure itself, to wit:

Section 18. *Non-payment of Prescribed Fees*. - If the fees above prescribed are not paid, the Commission **may refuse to take action thereon until they are paid and may dismiss the action or the proceeding.** (emphasis supplied)

The evident intent of rendering Section 18, Rule 40 of the 1993 Rules of Procedure discretionary and permissive is to accord the movant an opportunity to pay the motion fee in full. The dire outcome of denial of the motion for reconsideration should befall the movant only upon his deliberate or unreasonable failure to pay the fee in full. It appears, however, that petitioner's failure to pay the motion fee simultaneously with his filing of the motion for reconsideration was neither deliberate nor unreasonable. He actually paid the fee by postal money order on March 3, 2011.[17]

In light of his having complied with the requirements for a timely perfection of the appeal in both the RTC and the COMELEC, and considering that he actually paid the motion fee, the COMELEC *En Banc*'s strict and rigid application of the discretionary and permissive rule amounted to giving undue

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[17] *Rollo,* p. 95 (it is noted that the official receipt bears the date of March 16, 2011 as date of receipt).

primacy to technicality over substance. That outcome would not be just to petitioner, for the COMELEC *En Banc* would close its eyes to the patent error committed by the First Division in entirely ignoring Resolution No. 8486. Accordingly, the assailed order of March 16, 2011 is another nullity to be struck down.

2.
***Substantive Question*:**
Petitioner's election protest lacks merit

Nonetheless, we affirm the dismissal by the RTC of EPC No. H-026 for being in accord with the Rules in A.M. No. 10-4-1-SC.

Section 10(*c*), Rule 2 of the Rules in A.M. No. 10-4-1-SC pertinently provides as follows:

> Section 10. *Contents of the protest or petition.—*
> x x x x x x x x x
> c. An election protest shall also state:
>
> (i) that the protestant was a candidate who had duty filed a certificate of candidacy and had been voted for the same office;
>
> (ii) **the total number of precincts in the municipality**;
>
> (iii) the protested precincts and votes of the parties in the protested precincts per the Statement of Votes by Precinct or, if the votes of the parties are not specified, an explanation why the votes are not specified; and
>
> (iv) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies or irregularities in the protested precincts. (Emphasis supplied)

As the findings of the RTC show, petitioner did not indicate the total number of precincts in the municipality in his election protest. The omission rendered the election protest insufficient in form and content, and warranted its summary dismissal, in accordance with Section 12, Rule 2 of the Rules in A.M. No. 10-4-1-SC, to wit:

Section 12. *Summary dismissal of election contests.*—The court shall summarily dismiss, *motu proprio,* an election protest, counter-protest or petition for *quo warranto* on any of the following grounds:

(a) The court has no jurisdiction over the subject matter;

(b) **The petition is insufficient in form and content as required under Section 10**;

(c) The petition is filed beyond the period prescribed in these Rules;

(d) The filing fee is not paid within the period for filing the election protest or petition for *quo warranto;* and

(e) **In a protest case where cash deposit is required, the deposit is not paid within five (5) days from the filing of the protest.** (Emphasis supplied)

Likewise, the RTC found that the cash deposit made by petitioner was insufficient. Considering that the Court cannot disturb the findings on the insufficiency of petitioner's cash deposit made by the trial court, that finding was another basis for the summary dismissal of the election protest under Section 12.

We note that the summary dismissal of the election protest upon any of the grounds mentioned in Section 12 is mandatory.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for *certiorari*; **ANNULS AND SETS ASIDE** the assailed orders of the COMELEC First Division and the COMELEC *En Banc* respectively dated January 31, 2011 and March 16, 2011; **AFFIRMS** the Decision rendered on November 12, 2010 by the Regional Trial Court dismissing Election Protest Case No. H-026 for insufficiency in form and content of the election protest as well as for insufficiency of protestant's cash deposit; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Villarama, Jr., J., on official leave.

EN BANC

[G.R. No. 199082. September 18, 2012]

JOSE MIGUEL T. ARROYO, *petitioner, vs.* **DEPARTMENT OF JUSTICE; COMMISSION ON ELECTIONS; HON. LEILA DE LIMA, in her capacity as Secretary of the Department of Justice; HON. SIXTO BRILLANTES, JR., in his capacity as Chairperson of the Commission on Elections; and the JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE and FACT-FINDING TEAM,** *respondents.*

[G.R. No. 199085. September 18, 2012]

BENJAMIN S. ABALOS, SR., *petitioner, vs.* **HON. LEILA DE LIMA, in her capacity as Secretary of Justice; HON. SIXTO S. BRILLANTES, JR., in his capacity as COMELEC Chairperson; RENE V. SARMIENTO, LUCENITO N. TAGLE, ARMANDO V. VELASCO, ELIAS R. YUSOPH, CHRISTIAN ROBERT S. LIM AND AUGUSTO C. LAGMAN, in their capacity as COMELEC COMMISSIONERS; CLARO A. ARELLANO, GEORGE C. DEE, JACINTO G. ANG, ROMEO B. FORTES AND MICHAEL D. VILLARET, in their capacity as CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE ON THE 2004 AND 2007 ELECTION FRAUD,** *respondents.*

[G.R. No. 199118. September 18, 2012]

GLORIA MACAPAGAL-ARROYO, *petitioner, vs.* **COMMISSION ON ELECTIONS, represented by Chairperson Sixto S. Brillantes, Jr., DEPARTMENT OF JUSTICE, represented by Secretary Leila M. De**

Lima, JOINT DOJ-COMELEC PRELIMINARY INVESTIGATION COMMITTEE, SENATOR AQUILINO M. PIMENTEL III, and DOJ-COMELEC FACT-FINDING TEAM, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; ACTUAL CASE OR CONTROVERSY; REQUIRED FOR A COURT TO EXERCISE ITS POWER OF ADJUDICATION.—** It cannot be gainsaid that for a court to exercise its power of adjudication, there must be an actual case or controversy, that is, one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial.

2. **ID.; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; REQUIRES THAT RECOURSE MUST FIRST BE MADE TO THE LOWER-RANKED COURT EXERCISING CONCURRENT JURISDICTION WITH A HIGHER COURT; EXCEPTION.—** Neither can the petitions be dismissed solely because of violation of the principle of hierarchy of courts. This principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus, quo warranto,* and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals and the RTC, a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition, as in the present case. In the consolidated petitions, petitioners invoke exemption from the observance of the rule on hierarchy of courts in keeping with the Court's duty to determine whether or not the other branches of

government have kept themselves within the limits of the Constitution and the laws, and that they have not abused the discretion given to them.

3. **ID.; ID.; SUPREME COURT; SHALL EXERCISE ONLY APPELLATE JURISDICTION OVER CASES INVOLVING THE CONSTITUTIONALITY OF A STATUTE, TREATY OR REGULATION; EXCEPTION.—** It is noteworthy that the consolidated petitions assail the constitutionality of issuances and resolutions of the DOJ and the Comelec. The general rule is that this Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation. However, such rule is subject to exception, that is, in circumstances where the Court believes that resolving the issue of constitutionality of a law or regulation at the first instance is of paramount importance and immediately affects the social, economic, and moral well-being of the people. This case falls within the exception. An expeditious resolution of the issues raised in the petitions is necessary. Besides, the Court has entertained a direct resort to the Court without the requisite motion for reconsideration filed below or without exhaustion of administrative remedies where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioners and when there is an alleged violation of due process, as in the present case. We apply the same relaxation of the Rules in the present case and, thus, entertain direct resort to this Court.

4. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); PROSECUTORIAL POWER; THE COMELEC AND THE OTHER PROSECUTING ARMS OF THE GOVERNMENT HAVE CONCURRENT JURISDICTION TO INVESTIGATE AND PROSECUTE ELECTION OFFENSES.—** Section 2, Article IX-C of the 1987 Constitution enumerates the powers and functions of the Comelec. x x x The grant to the Comelec of the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws is intended to enable the Comelec to effectively insure to the people the free, orderly, and honest conduct of elections. The failure of the Comelec to exercise this power could result in the frustration of the

true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote. The constitutional grant of prosecutorial power in the Comelec was reflected in Section 265 of Batas Pambansa Blg. 881, otherwise known as the *Omnibus Election Code* x x x. Under the above provision of law, the power to conduct preliminary investigation is vested exclusively with the Comelec. The latter, however, was given by the same provision of law the authority to avail itself of the assistance of other prosecuting arms of the government. Thus, under Section 2, Rule 34 of the Comelec Rules of Procedure, provincial and city prosecutors and their assistants are given continuing authority as deputies to conduct preliminary investigation of complaints involving election offenses under election laws and to prosecute the same. The complaints may be filed directly with them or may be indorsed to them by the petitioner or its duly authorized representatives. Thus, under the Omnibus Election Code, while the exclusive jurisdiction to conduct preliminary investigation had been lodged with the Comelec, the prosecutors had been conducting preliminary investigations pursuant to the continuing delegated authority given by the Comelec. x x x Section 265 of the Omnibus Election Code was amended by Section 43 of R.A. No. 9369 x x x. [I]nstead of a mere delegated authority, the other prosecuting arms of the government, such as the DOJ, now exercise concurrent jurisdiction with the Comelec to conduct preliminary investigation of all election offenses and to prosecute the same. It is, therefore, not only the power but the duty of both the Comelec and the DOJ to perform any act necessary to ensure the prompt and fair investigation and prosecution of election offenses.

5. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAW; REQUIRES THAT ALL PERSONS UNDER LIKE CIRCUMSTANCES AND CONDITIONS SHALL BE TREATED ALIKE BOTH AS TO PRIVILEGES CONFERRED AND LIABILITIES ENFORCED.—** The equal protection guarantee exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, it does not demand absolute equality. It merely requires that all persons under like circumstances and conditions shall be treated alike both as to

privileges conferred and liabilities enforced. x x x Thus, as the constitutional body granted with the broad power of enforcing and administering all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, and tasked to ensure free, orderly, honest, peaceful, and credible elections, the Comelec has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the Comelec issues various resolutions prior to every local or national elections setting forth the guidelines to be observed in the conduct of the elections. This shows that every election is distinct and requires different guidelines in order to ensure that the rules are updated to respond to existing circumstances. Moreover, as has been practiced in the past, complaints for violations of election laws may be filed either with the Comelec or with the DOJ. The Comelec may even initiate, *motu proprio,* complaints for election offenses. Pursuant to law and the Comelec's own Rules, investigations may be conducted either by the Comelec itself through its law department or through the prosecutors of the DOJ. These varying procedures and treatment do not, however, mean that respondents are not treated alike. Thus, petitioners' insistence of infringement of their constitutional right to equal protection of the law is misplaced.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE.—** It is settled that the conduct of preliminary investigation is, like court proceedings, subject to the requirements of both substantive and procedural due process. Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer. The authority of a prosecutor or investigating officer duly empowered to preside over or to conduct a preliminary investigation is no less than that of a municipal judge or even an RTC Judge.

7. **ID.; ID.; ID.; THE POWER TO CONDUCT PRELIMINARY INVESTIGATION OF ELECTION OFFENSES IS GRANTED TO THE COMMISSION ON ELECTIONS AND THE DEPARTMENT OF JUSTICE BY THE CONSTITUTION, STATUTES AND THE RULES OF COURT.—** [T]he Comelec is granted the power to investigate, and where appropriate, prosecute cases of election offenses.

This is necessary in ensuring free, orderly, honest, peaceful and credible elections. On the other hand, the DOJ is mandated to administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system. It is specifically empowered to "investigate the commission of crimes, prosecute offenders and administer the probation and correction system." Also, the provincial or city prosecutors and their assistants, as well as the national and regional state prosecutors, are specifically named as the officers authorized to conduct preliminary investigation. Recently, the Comelec, through its duly authorized legal offices, is given the power, concurrent with the other prosecuting arms of the government such as the DOJ, to conduct preliminary investigation of all election offenses. Undoubtedly, it is the Constitution, statutes, and the Rules of Court and not the assailed Joint Order which give the DOJ and the Comelec the power to conduct preliminary investigation. No new power is given to them by virtue of the assailed order. As to the members of the Joint Committee and Fact-Finding Team, they perform such functions that they already perform by virtue of their current positions as prosecutors of the DOJ and legal officers of the Comelec. Thus, in no way can we consider the Joint Committee as a new public office.

8. **POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; HAS NOT ABDICATED ITS INDEPENDENCE TO THE EXECUTIVE DEPARTMENT IN CASE AT BAR.—** [T]he Comelec recognizes the need to delegate to the prosecutors the power to conduct preliminary investigation. Otherwise, the prompt resolution of alleged election offenses will not be attained. This delegation of power, otherwise known as deputation, has long been recognized and, in fact, been utilized as an effective means of disposing of various election offense cases. Apparently, as mere deputies, the prosecutors played a vital role in the conduct of preliminary investigation, in the resolution of complaints filed before them, and in the filing of the informations with the proper court. x x x [W]e find no impediment for the creation of a Joint Committee. While the composition of the Joint Committee and Fact-Finding Team is dominated by DOJ officials, it does not necessarily follow

that the Comelec is inferior. Under the Joint Order, resolutions of the Joint Committee finding probable cause for election offenses shall still be approved by the Comelec in accordance with the Comelec Rules of Procedure. This shows that the Comelec, though it acts jointly with the DOJ, remains in control of the proceedings. In no way can we say that the Comelec has thereby abdicated its independence to the executive department. The text and intent of the constitutional provision granting the Comelec the authority to investigate and prosecute election offenses is to give the Comelec all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. The Comelec should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this Court should not interfere. Thus, Comelec Resolution No. 9266, approving the creation of the Joint Committee and Fact-Finding Team, should be viewed not as an abdication of the constitutional body's independence but as a means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful and credible elections.

9. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; CONCURRENT JURISDICTION; MEANS EQUAL JURISDICTION TO DEAL WITH THE SAME SUBJECT MATTER.—** Although it belongs to the executive department, as the agency tasked to investigate crimes, prosecute offenders, and administer the correctional system, the DOJ is likewise not barred from acting jointly with the Comelec. It must be emphasized that the DOJ and the Comelec exercise concurrent jurisdiction in conducting preliminary investigation of election offenses. The doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter. Contrary to the contention of the petitioners, there is no prohibition on simultaneous exercise of power between two coordinate bodies. What is prohibited is the situation where one files a complaint against a respondent initially with one office (such as the Comelec) for preliminary investigation which was immediately acted upon by said office and the re-filing of substantially the

same complaint with another office (such as the DOJ). The subsequent assumption of jurisdiction by the second office over the cases filed will not be allowed. Indeed, it is a settled rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.

10. **CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION REQUIREMENT; COVERS ADMINISTRATIVE REGULATIONS AND ISSUANCES.—** Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof. The requirement of publication is intended to satisfy the basic requirements of due process. It is imperative for it will be the height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.

11. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT.—** Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of *certiorari*. There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same and related causes and/or to grant the same or substantially the same reliefs on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

12. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; CHARACTERIZED AS A SUBSTANTIVE RIGHT FORMING PART OF DUE PROCESS IN CRIMINAL JUSTICE.—** A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a

substantive one, forming part of due process in criminal justice. In a preliminary investigation, the Rules of Court guarantee the petitioners basic due process rights such as the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits, and other supporting documents in her defense.

13. **ID.; ID.; ID.; NOT THE OCCASION FOR THE FULL AND EXHAUSTIVE DISPLAY OF PARTIES' RESPECTIVE EVIDENCE.—** [D]uring the preliminary investigation, the complainants are not obliged to prove their cause beyond reasonable doubt. It would be unfair to expect them to present the entire evidence needed to secure the conviction of the accused prior to the filing of information. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence but the presentation only of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof and should be held for trial. Precisely there is a trial to allow the reception of evidence for the prosecution in support of the charge.

14. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; EXTENDS TO ALL PARTIES IN ALL CASES AND IN ALL PROCEEDINGS.—** The constitutional right to speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Any party to a case has the right to demand on all officials tasked with the administration of justice to expedite its disposition. Society has a particular interest in bringing swift prosecutions, and the society's representatives are the ones who should protect that interest.

15. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; ABSENCE OF IRREGULARITY THEREOF, EFFECT.—** It is well settled that the absence [or irregularity] of preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the criminal information or render it defective. Dismissal is not the remedy. Neither is it a ground

to quash the information or nullify the order of arrest issued against the accused or justify the release of the accused from detention. The proper course of action that should be taken is to hold in abeyance the proceedings upon such information and to remand the case for the conduct of preliminary investigation.

MENDOZA, *J., separate concurring opinion:*

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; INTENDED TO PROTECT THE ACCUSED FROM HASTY, MALICIOUS AND OPPRESSIVE PROSECUTION.—** The purpose of a preliminary investigation is the appropriate guidepost in this issue. The proceeding involves the reception of evidence showing that, more likely than not, a respondent could have committed the offense charged and, thus, should be held for trial. This underlines the State's right to prosecute the persons responsible and jumpstart the grinding of the wheels of justice. But the same is by no means absolute and does not in any manner grant the investigating officer the license to deprive a respondent of his rights. The office of a prosecutor does not involve an automatic function to hold persons charged with a crime for trial. Taking the cudgels for justice on behalf of the State is not tantamount to a mechanical act of prosecuting persons and bringing them within the jurisdiction of court. Prosecutors are bound to a concomitant duty *not* to prosecute when after investigation they have become convinced that the evidence available is not enough to establish probable cause. This is why, in order to arrive at a conclusion, the prosecutors must be able to make an objective assessment of the conflicting versions brought before them, affording both parties to prove their respective positions. Hence, the fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a *prima facie* case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of a corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party or any other party for that matter. Emphatically, the right to the oft-repeated preliminary investigation has been intended to protect the

accused from hasty, malicious and oppressive prosecution. In fact, the right to this proceeding, absent an express provision of law, cannot be denied. Its omission is a grave irregularity which nullifies the proceedings because it runs counter to the right to due process enshrined in the Bill of Rights.

2. **ID.; ID.; ID.; NATURE.—** Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The right to a preliminary investigation is not a mere formal or technical right but a substantive one, forming part of due process in criminal justice. The prosecutor conducting the same investigates or inquires into the facts concerning the commission of a crime to determine whether or not an Information should be filed against a respondent. A preliminary investigation is in effect a realistic appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. A preliminary investigation has been called a judicial inquiry; it is a judicial proceeding. An act becomes a judicial proceeding when there is an opportunity to be heard and for the production of, and weighing of, evidence, and a decision is rendered thereon.

3. **ID.; ID.; ID.; CAN BE HELD ONLY AFTER SUFFICIENT EVIDENCE HAS BEEN GATHERED AND EVALUATED WARRANTING THE EVENTUAL PROSECUTION OF THE CASE IN COURT.—** Since a preliminary investigation is designed to screen cases for trial, only evidence presented must be considered. While even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court. The fact that evidentiary issues can be better threshed out during the trial cannot justify deprivation of a respondent's right to refute allegations thrown at him during the preliminary investigation. Neither will an extension of a few days to enable him to submit his counter-affidavit mock the constitutional right to speedy disposition of cases because the very reason for granting such extension holds greater significance than the latter right.

CARPIO, ***J.*****,** ***separate concurring and dissenting opinion:***

CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PUBLICATION REQUIREMENT; DOES NOT APPLY TO THE COMMITTEE RULES IN CASE AT BAR DUE TO ITS COMPLEMENTARY NATURE.— *Tañada v. Tuvera* requires publication of administrative rules that have the force and effect of law and the Revised Administrative Code requires the filing of such rules with the U.P. Law Center as facets of the constitutional guarantee of procedural due process, to prevent surprise and prejudice to the public who are legally presumed to know the law. As the Committee Rules merely complement and even reiterate Rule 112 of the Rules on Criminal Procedure, I do not see how their non-publication and non-filing caused surprise or prejudice to petitioners. Petitioners' claim of denial of due process would carry persuasive weight if the Committee Rules ***amended***, ***superseded or revoked*** existing applicable procedural rules or contained original rules found nowhere in the corpus of procedural rules of the COMELEC or in the Rules of Court, rendering publication and filing imperative. Significantly, petitioner Macapagal-Arroyo encountered no trouble in availing of Rule 112 to file a motion with the Committee praying for several reliefs. x x x [T]he complementary nature of the Committee Rules necessarily means that the proceedings of the Committee would have continued and no prejudice would have been caused to petitioners even if the Committee Rules were non-existent. The procedure provided in Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure would have *ipso facto* applied since the Committee Rules merely reiterate Rule 112 and Rule 34. The *ponencia* concedes as much when it refused to invalidate the Committee's proceedings, observing that **"the preliminary investigation was conducted by the Joint Committee pursuant to the procedures laid down in Rule 112 of the Rules on Criminal Procedure and the 1993 COMELEC Rules of Procedure."**

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

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; SHALL BE INDEPENDENT LIKE ALL OTHER CONSTITUTIONAL

COMMISSIONS.— [A]s early as 1949, this Court has started to guard with zeal the COMELEC's independence, never losing sight of the crucial reality that its ***"independence [is] the principal justification for its creation."*** The people's protectionist policy towards the COMELEC has likewise never since wavered and, in fact, has ***prevailed even after two amendments of our Constitution in 1973 and 1987*** — an enduring policy highlighted by then Associate Justice Reynato Puno in his concurring opinion in *Atty. Macalintal v. COMELEC* x x x. At present, the 1987 Constitution (as has been the case since the amendment of the 1935 Constitution) now provides that the COMELEC, like all other Constitutional Commissions, shall be independent. x x x The unbending doctrine laid down by the Court in *Nationalista Party* was reiterated in *Brillantes, Jr. v. Yorac,* a 1990 case where *no less than the present respondent COMELEC Chairman Brillantes* challenged then President Corazon C. Aquino's des ignation of Associate Commissioner Haydee Yorac as Acting Chairman of the COMELEC, in place of Chairman Hilario Davide. In ruling that the Constitutional Commissions, labeled as "independent" under the Constitution, are not under the control of the President even if they discharge functions that are executive in nature, the Court again vigorously denied "Presidential interference" in these constitutional bodies x x x. In 2003, *Atty. Macalintal v. Commission on Elections* provided yet another opportunity for the Court to demonstrate how it ardently guards the independence of the COMELEC against unwarranted intrusions. This time, the stakes were higher as Mme. Justice Austria-Martinez, writing for the majority, remarked: "Under x x x [the] situation, the Court is left with no option but to withdraw x x x its usual reticence in declaring a provision of law unconstitutional." The Court ruled that Congress, a co-equal branch of government, had no power to review the rules promulgated by the COMELEC for the implementation of Republic Act (RA) No. 9189 or *The Overseas Absentee Voting Act* of 2003, since it "trample[s] upon the constitutional mandate of independence of the COMELEC."

2. **ID.; ID.; ID.; HAS CONCURRENT JURISDICTION WITH OTHER PROSECUTING ARMS OF THE GOVERNMENT TO CONDUCT PRELIMINARY INVESTIGATION OF ALL ELECTION OFFENSES AND TO PROSECUTE THESE OFFENSES.—** At the core of the present controversy

is the COMELEC's exercise of its power to investigate and prosecute election offenses under Section 2, Article IX (C) of the 1987 Constitution. x x x In *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, the Court traced the legislative history of the COMELEC's power to investigate and prosecute election offenses, and concluded that the grant of such power was not exclusive x x x. As outlined in that case, Section 265 of Batas Pambansa Blg. 881 (*BP 881*) of the Omnibus Election Code granted the COMELEC the exclusive power to conduct preliminary investigations and prosecute election offenses. Looking then at the practical limitations arising from such broad grant of power, Congress also empowered the COMELEC to avail of the assistance of the prosecuting arms of the government. Under the 1993 COMELEC Rules of Procedure, the Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants were given continuing authority, ***as deputies of the COMELEC,*** to conduct preliminary investigation of complaints involving election offenses under election laws that may be filed directly with them, or that may be indorsed to them by the COMELEC or its duly authorized representatives and to prosecute the same. Under the same Rules, the Chief State Prosecutor, Provincial Fiscal or City Fiscal were authorized to receive complaints for election offenses and after which the investigation may be delegated to any of their assistants. After the investigation, the investigating officer shall issue either a recommendation to dismiss the complaint or a resolution to file the case in the proper courts; this recommendation, however, was subject to the approval by the Chief State Prosecutor, Provincial or City Fiscal, and who shall also likewise approve the information prepared and immediately cause its filing with the proper court. The Rule also provide that resolution of the Chief State Prosecutor or the Provincial or City Fiscal, could be appealed with the COMELEC within ten (10) days from receipt of the resolution, provided that the same *does not divest the COMELEC of its power to motu proprio review, revise, modify or reverse* the resolution of the Chief State Prosecutor and/or provincial/city prosecutors. x x x **In 2007, Congress enacted RA No. 9369, amending BP 881, among others, on the authority to preliminarily investigate and prosecute**. x x x ***Thus, <u>as the law now stands</u>, the COMELEC has concurrent jurisdiction with other prosecuting***

arms of the government, such as the DOJ, to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute these offenses.

3. **ID.; ID.; ID.; DECISIONAL INDEPENDENCE; NEGATED BY THE FUSION OF RESPONSIBILITY BETWEEN THE COMMISSION ON ELECTIONS AND THE DEPARTMENT OF JUSTICE IN THE CONDUCT OF PRELIMINARY INVESTIGATION AND PROSECUTION OF ELECTION OFFENSES; CASE AT BAR.—** The independence of the COMELEC is a core constitutional principle that is shared and is closely similar to the judicial independence that the Judiciary enjoys because they are both expressly and textually guaranteed by our Constitution. **Judicial independence** has been characterized as "a concept that expresses the ideal state of the judicial branch of government; it encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence." The general concept of "judicial independence" can be "broken down into two distinct concepts: **decisional independence** and **institutional,** or branch, **independence**." **Decisional independence "refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law."** On the other hand, institutional independence "describes the separation of the judicial branch from the executive and legislative branches of government." "**Decisional independence is the *sine qua non* of judicial independence**." In the exercise of the COMELEC's power to investigate and prosecute election offenses, the "independence" that the Constitution guarantees the COMELEC should be understood in the context of the same "decisional independence" that the Judiciary enjoys since both bodies ascertain facts and apply the laws to these facts as part of their mandated duties. In concrete terms, the **"decisional independence" that the COMELEC should ideally have in the exercise of its power to investigate and prosecute election offenses, requires the capacity to exercise these functions according to its own discretion and independent consideration of the facts, the evidence and the applicable law, "free from attempts by the legislative or executive branches or even the public to influence the outcome of x x x [the] case**." And even if the power to investigate and prosecute election offences, upon determination

of the existence of probable cause, are executive and not judicial functions, the rationale behind the constitutional independence of the Judiciary and the COMELEC is geared towards the same objective of de-politicization of these institutions which are and should remain as non-political spheres of government. Tested under these considerations, the result cannot but be the unavoidable conclusion that what exists under **Joint Order No. 001-2011 and the Rules of Procedure** on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections **is not a scheme whereby the COMELEC exercises its power to conduct preliminary investigation and to prosecute election offenses independently of other branches of government but a *shared responsibility* between the COMELEC and the Executive Branch through the DOJ**. This is the incremental change at issue in the present case, whose adoption weakens the independence of the COMELEC, opening it to further incremental changes on the basis of the ruling in this case. Under the *ponencia's* ruling allowing a shared responsibility, the independence of the COMELEC ends up a **boiled frog;** we effectively go back to the country's situation before 1940 — with elections subject to intrusion by the Executive. x x x What appears to be the arrangement in this case is a novel one, whereby the COMELEC — supposedly an independent Constitutional body - has been ***fused*** with the prosecutorial arm of the Executive branch in order to conduct preliminary investigation and prosecute election offenses in the 2004 and 2007 National Elections. To my mind, ***this fusion or shared responsibility between the COMELEC and the DOJ completely negates the COMELEC's "decisional independence" so jealously guarded by the framers of our Constitution who intended it to be insulated from any form of political pressure***.

4. **ID.; ID.; ID.; THE CONSTITUTIONALLY GUARANTEED INDEPENDENCE OF THE COMELEC IS PRESERVED BY THE PRACTICE OF DELEGATION OF AUTHORITY.—** Considering the terms of the COMELEC-DOJ resolutions and exchanges and admissions from no less than the Solicitor General, ***the resulting arrangement — involving as it does a joint or shared responsibility between the DOJ and the COMELEC — cannot but be an***

arrangement that the Constitution and the law cannot allow, however practical the arrangement may be from the standpoint of efficiency*.** To put it bluntly, the joint or shared arrangement directly goes against the rationale that justifies the grant of independence to the COMELEC — to insulate it, particularly its role in the country's electoral exercise, from political pressures and partisan politics. As a qualification to the above views, I acknowledge — as the Court did in *People v. Hon. Basilla* — that "the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the [DOJ]." That the practice of ***delegation of authority by the COMELEC, otherwise known as ***deputation***, has long been upheld by this Court is not without significance, as ***it is the only means by which its constitutionally guaranteed independence can remain unfettered***. In other words, the only arrangement constitutionally possible, given the independence of the COMELEC and despite Section 42 of RA 9369, is ***for the DOJ to be a mere deputy or delegate of the COMELEC and not a co-equal partner in the investigation and prosecution of election offenses WHENEVER THE COMELEC ITSELF DIRECTLY ACTS.*** While the COMELEC and the DOJ have equal jurisdiction to investigate and prosecute election offenses (subject to the rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others), the COMELEC — whenever it directly acts in the fact-finding and preliminary investigation of election offenses — can still work with the DOJ and seek its assistance without violating its constitutionally guaranteed independence, ***but it can only do so as the principal in a principal-delegate relationship with the DOJ where the latter acts as the delegate.*** This arrangement preserves the COMELEC's independence as "being mere deputies or agents of the COMELEC, provincial or city prosecutors deputized . . . are expected to act in accord with and not contrary to or in derogation of its resolutions, directives or orders x x x in relation to election cases that such prosecutors are deputized to investigate and prosecute. Being mere deputies, provincial and city prosecutors, acting on behalf of the COMELEC, [shall also] proceed within the lawful scope of their delegated authority."

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The Solicitor General for public respondents.

Maria Cristina P. Yambot for oppositor-in-intervention.

D E C I S I O N

PERALTA, *J.*:

The Court is vested with the constitutional mandate to resolve justiciable controversies by applying the rule of law with due deference to the right to due process, irrespective of the standing in society of the parties involved. It is an assurance that in this jurisdiction, the wheels of justice turn unimpeded by public opinion or clamor, but only for the ultimate end of giving each and every member of society his just due without distinction.

Before the Court are three (3) consolidated petitions and supplemental petitions for *Certiorari* and Prohibition under Rule 65 of the Rules of Court filed by Jose Miguel T. Arroyo (Mike Arroyo) in G.R. No. 199082, Benjamin S. Abalos, Sr. (Abalos) in G.R. No. 199085 and Gloria Macapagal-Arroyo (GMA) in G.R. No. 199118 assailing the following: (1) Commission on Elections (Comelec) Resolution No. 9266 "In the Matter of the Commission on Elections and Department of Justice Joint Investigation on the Alleged Election Offenses Committed during the 2004 and 2007 Elections Pursuant to Law"[1] dated August 2, 2011; (2) Joint Order No. 001-2011 (Joint Order) "Creating and Constituting a Joint DOJ-Comelec Preliminary Investigation Committee [Joint Committee] and Fact-Finding Team on the 2004 and 2007 National Elections Electoral Fraud and Manipulation Cases"[2] dated August 15, 2011; (3)

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[1] *Rollo* (G.R. No. 199118), pp. 47-48.

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

Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections (Joint Committee Rules of Procedure)[3] dated August 23, 2011; and (4) Initial Report of the Fact-Finding Team dated October 20, 2011.[4] The consolidated petitions and supplemental petitions likewise assail the validity of the proceedings undertaken pursuant to the aforesaid issuances.

The Antecedents

Acting on the discovery of alleged new evidence and the surfacing of new witnesses indicating the occurrence of massive electoral fraud and manipulation of election results in the 2004 and 2007 National Elections, on August 2, 2011, the Comelec issued Resolution No. 9266 approving the creation of a committee jointly with the Department of Justice (DOJ), which shall conduct preliminary investigation on the alleged election offenses and anomalies committed during the 2004 and 2007 elections.[5]

On August 4, 2011, the Secretary of Justice issued Department Order No. 640[6] naming three (3) of its prosecutors to the Joint Committee.

On August 15, 2011, the Comelec and the DOJ issued Joint Order No. 001-2011 creating and constituting a Joint Committee and Fact-Finding Team on the 2004 and 2007 National Elections electoral fraud and manipulation cases. The Joint Committee and the Fact-Finding Team are composed of officials from the DOJ and the Comelec. Section 2 of the Joint Order lays down the mandate of the Joint Committee, to wit:

Section 2. Mandate. — The Committee shall conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team created and referred to in Section 4 hereof. Resolutions finding

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[3] *Id.* at 54-57.

[4] *Id.* at 58-139.

[5] *Id.* at 47.

[6] *Id.* at 50.

probable cause for election offenses, defined and penalized under the Omnibus Election Code and other election laws shall be approved by the Comelec in accordance with the Comelec Rules of Procedure. For other offenses, or those not covered by the Omnibus Election Code and other election laws, the corresponding criminal information may be filed directly with the appropriate courts.[7]

The Fact-Finding Team,[8] on the other hand, was created for the purpose of gathering real, documentary, and testimonial evidence which can be utilized in the preliminary investigation to be conducted by the Joint Committee. Its specific duties and functions as enumerated in Section 4 of the Joint Order are as follows:

a) Gather and document reports, intelligence information, and investigative leads from official as well as unofficial sources and informants;

b) Conduct interviews, record testimonies, take affidavits of witnesses, and collate material and relevant documentary evidence, such as, but not limited to, election documents used in the 2004 and 2007 national elections. For security reasons, or to protect the identities of informants, the Fact-Finding Team may conduct interviews or document testimonies discreetly;

c) Assess and evaluate affidavits already executed and other documentary evidence submitted or may be submitted to the Fact-Finding Team and/or Committee;

d) Identify the offenders, their offenses and the manner of their commission, individually or in conspiracy, and the provisions of election and general criminal laws violated, establish

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

[8] Composed of the following:

1. Asec. Zabedin M. Azis — Chairman;
2. CP Edward M. Togonon — DOJ Member;
3. CP Jorge G. Catalan, Jr. — DOJ Member;
4. Atty. Cesar A. Bacani — NBI Member;
5. Atty. Dante C. Jacinto — NBI Member;
6. Atty. Emmanuel E. Ignacio — Comelec Member; and
7. Atty. Arnulfo P. Sorreda — Comelec Member.

evidence for individual criminal and administrative liability and prosecution, and prepare the necessary documentation, such as complaints and charge sheets for the initiation of preliminary investigation proceedings against said individuals to be conducted by the Committee;

e) Regularly submit to the Committee, the Secretary of Justice and the Chairman of the Comelec periodic reports and recommendations, supported by real, testimonial and documentary evidence, which may then serve as the Committee's basis for immediately commencing appropriate preliminary investigation proceedings, as provided under Section 6 of this Joint Order; and

f) Upon the termination of its investigation, make a full and final report to the Committee, the Secretary of Justice, and the Chairman of the Comelec.[9]

Pursuant to Section 7[10] of the Joint Order, on August 23, 2011, the Joint Committee promulgated its Rules of Procedure.

The members of the Fact-Finding Team unanimously agreed that the subject of the Initial Report would be the electoral fraud and manipulation of election results allegedly committed during the May 14, 2007 elections. Thus, in its Initial Report[11] dated October 20, 2011, the Fact-Finding Team concluded that manipulation of the results in the May 14, 2007 senatorial elections in the provinces of North and South Cotabato and Maguindanao were indeed perpetrated.[12] The Fact-Finding Team recommended that petitioner Abalos and ten (10) others[13] be

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[9] *Rollo* (G.R. No. 199118), pp. 51-52.

[10] Section 7. *Rules of Procedure*. — Within forty-eight (48) hours from the issuance of this Joint Order, the Committee shall meet and craft its rules of procedure as may be complementary to the respective rules of DOJ and Comelec, and submit the same to the Secretary of Justice and the Comelec *En Banc* for approval within five (5) days from such initial meeting.

[11] *Rollo* (G.R. No. 199118), pp. 58-143.

[12] *Id.* at 124.

[13] Michael C. Abas; Col. Reuben Basiao; John Doe Alias Major Joey Leaban; John Doe *alias* Capt. Peter Reyes; Atty. Jaime Paz; Atty. Alberto Agra; Romy Dayday; Jeremy Javier; Atty. Lilian A. Suan-Radam and Atty. Yogie G. Martirizar.

subjected to preliminary investigation for electoral sabotage for conspiring to manipulate the election results in North and South Cotabato. Twenty-six (26)[14] persons, including petitioners GMA and Abalos, were likewise recommended for preliminary investigation for electoral sabotage for manipulating the election results in Maguindanao.[15] Several persons were also recommended to be charged administratively, while others, [16] including petitioner Mike Arroyo, were recommended to be subjected to further investigation.[17] The case resulting from the investigation of the Fact-Finding Team was docketed as DOJ-Comelec Case No. 001-2011.

Meanwhile, on October 17, 2011, Senator Aquilino Pimentel III (Senator Pimentel) filed a Complaint-Affidavit[18] for Electoral Sabotage against petitioners and twelve others[19] and several John Does and Jane Does. The case was docketed as DOJ-Comelec Case No. 002-2011.

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[14] Gloria Macapagal-Arroyo; Datu Andal Ampatuan, Sr.; Lintang H. Bedol; Norie K. Unas; John Doe alias Butch; Benjamin Abalos, [Sr.]; Nicodemo Ferrer; Estelita B. Orbase; Elisa A. Gasmin; Elsa Z. Atinen; Saliao S. Amba; Magsaysay B. Mohamad; Salonga K. Adzela; Ragah D. Ayunan; Susan U. Cabanban; Russam H. Mabang; Asuncion Corazon P. Reniedo; Nena A. Alid; Ma. Susan L. Albano; Rohaida T. Khalid; Araw M. Cao; Jeehan S. Nur; Alice A. Lim; Norijean P. Hangkal; Christina Roan M. Dalope; Maceda L. Abo.

[15] *Rollo* (G.R. No. 199118), pp. 132-134.

[16] Former First Gentleman Miguel Arroyo; Bong Serrano; Salonga K. Edzela; Election Assistant Gani Maliga; Members of the SPBOC of Maguindanao Atty. Emilio Santos, Atty. Manuel Lucero and Atty. Dinah Valencia; PES Faisal Tanjili; RED for Region XI Remlani Tambuang; RED for ARMM Ray Sumalipao; Boboy Magbutay from the Visayas; and certain Pobe from the Caraga Region.

[17] *Rollo* (G.R. No. 199118), p. 137.

[18] *Rollo* (G.R. No. 199085), pp. 163-194.

[19] Bong Serrano; Gabby Claudio; Nicodemo Ferrer; Michael C. Abas; Ben Basiao; John Oliver Leaban; Peter Reyes; Jaime Paz; Alberto Agra; Andrei Bon Tagum; Romy Dayday; Jeremy Javier.

On October 24, 2011, the Joint Committee issued two subpoenas against petitioners in DOJ-Comelec Case Nos. 001-2011 and 002-2011. [20] On November 3, 2011, petitioners, through counsel, appeared before the Joint Committee.[21] On that preliminary hearing, the Joint Committee consolidated the two DOJ-Comelec cases. Respondents therein were likewise ordered to submit their Counter-Affidavits by November 14, 2011.[22]

Thereafter, petitioners filed before the Court separate Petitions for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction assailing the creation of the Joint Panel.[23] The petitions were eventually consolidated.

On November 14, 2011, petitioner Mike Arroyo filed a Motion to Defer Proceedings[24] before the Joint Committee, in view of the pendency of his petition before the Court. On the same day, petitioner GMA filed before the Joint Committee an Omnibus Motion *Ad Cautelam*[25] to require Senator Pimentel to furnish her with documents referred to in his complaint-affidavit and for the production of election documents as basis for the charge of electoral sabotage. GMA contended that for the crime of electoral sabotage to be established, there is a need to present election documents allegedly tampered which resulted in the increase or decrease in the number of votes of local and national candidates.[26] GMA prayed that she be allowed to file her counter-affidavit within ten (10) days from receipt of the requested documents.[27] Petitioner Abalos, for his part, filed a Motion to

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[20] *Rollo* (G.R. No. 199118), p. 316.

[21] *Id.* at 17.

[22] *Rollo* (G.R. No. 199082), p. 21.

[23] Refers to the Joint Committee and Fact-Finding Team.

[24] *Rollo* (G.R. No. 199082), pp. 158-161.

[25] *Rollo* (G.R. No. 199118), pp. 250-259.

[26] *Id.* at 254.

[27] *Id.* at 257.

Suspend Proceedings (*Ex Abundante Ad Cautelam*),[28] in view of the pendency of his petition brought before the Court.

In an Order[29] dated November 15, 2011, the Joint Committee denied the aforesaid motions of petitioners. GMA subsequently filed a motion for reconsideration.[30]

On November 16, 2011, the Joint Committee promulgated a Joint Resolution which was later indorsed to the Comelec.[31] On November 18, 2011, after conducting a special session, the Comelec *en banc* issued a Resolution[32] approving and adopting the Joint Resolution subject to modifications. The dispositive portion of the Comelec Resolution reads:

WHEREFORE, premises considered, the Resolution of the Joint DOJ-COMELEC Preliminary Investigation Committee in DOJ-COMELEC Case No. 001-2011 and DOJ-COMELEC Case No. 002-2011, upon the recommendation of the COMELEC's own representatives in the Committee, is hereby **APPROVED** and **ADOPTED**, subject to the following **MODIFICATIONS**:

1. That information/s for the crime of **ELECTORAL SABOTAGE** under **Section 42 (b) of R.A. 9369, amending Section 27 (b) of R.A. 6646,** be filed against **GLORIA MACAPAGAL-ARROYO, BENJAMIN ABALOS, SR., LINTANG H. BEDOL, DATU ANDAL AMPATUAN, SR.** and **PETER REYES;**

2. That the charges against **MICHAEL C. ABAS, NICODEMO FERRER, REUBEN BASIAO, JAIME PAZ** and **NORIE K. UNAS** be subjected to further investigation;

3. That the charges against **JOSE MIGUEL T. ARROYO, BONG SERRANO, ALBERTO AGRA, ANDREI BON TAGUM, GABBY CLAUDIO, ROMY DAYDAY,**

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[28] *Rollo* (G.R. No. 199085), pp. 302-306.

[29] *Rollo* (G.R. No. 199118), pp. 260-264.

[30] *Id.* at 224.

[31] *Id.* at 319.

[32] *Id.* at 265-273.

JEREMY JAVIER, JOHN DOE *a.k.a* **BUTCH,** be **DISMISSED** for insufficiency of evidence to establish probable cause;

4. That the recommendation that **ESTELITA B. ORBASE, ELIZA A. GASMIN, ELSA Z. ATINEN, SALIAO S. AMBA, MAGSAYSAY B. MOHAMAD, SALONGA K. EDZELA, RAGAH D. AYUNAN, SUSAN U. CANANBAN, RUSSAM H. MABANG, ASUNCION CORAZON P. RENIEDO, NENA A. ALID, MA. SUSAN L. ALBANO, ROHAIDA T. KHALID, ARAW M. CAO, JEEHAN S. NUR, ALICE A. LIM, NORIJEAN P. HANGKAL, CHRISTINA ROAN M. DALOPE,** and **MACEDA L. ABO** be administratively charged be subjected to further review by this Commission to determine the appropriate charge/s that may be filed against them;

5. That the findings of lack of probable cause against **LILIAN S. SUAN-RADAM** and **YOGIE G. MARTIRIZAR** be **REJECTED** by reason of the pendency of their respective cases before the Regional Trial Court of Pasay (Branch 114) and this Commission for the same offense under consideration.

In the higher interest of justice and by reason of manifest attempts to frustrate the government's right to prosecute and to obtain speedy disposition of the present case pending before the Commission, the Law Department and/or any COMELEC legal officers as may be authorized by this Commission is hereby **ORDERED** to **IMMEDIATELY PREPARE** and **FILE** the necessary Information/s before the appropriate court/s.

SO ORDERED.[33] (Emphasis supplied.)

On even date, pursuant to the above Resolution, the Comelec's Law Department filed with the Regional Trial Court (RTC), Pasay City, an Information against petitioner GMA, Governor Andal Ampatuan, Sr., and Atty. Lintang H. Bedol, for violation of Section 42 (b) (3) of Republic Act (R.A.) No. 9369, amending Section 27 (b) of R.A. No. 6646, docketed as Criminal Case

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[33] *Id.* at 271-272.

No. RPSY-11-04432-CR.[34] The case was raffled to Branch 112 and the corresponding Warrant of Arrest was issued which was served on GMA on the same day.[35]

On November 18, 2011, petitioner GMA filed with the RTC an Urgent Omnibus Motion *Ad Cautelam*[36] with leave to allow the Joint Committee to resolve the motion for reconsideration filed by GMA, to defer issuance of a warrant of arrest and a Hold Departure Order, and to proceed to judicial determination of probable cause. She, likewise, filed with the Comelec a Motion to Vacate *Ad Cautelam*[37] praying that its Resolution be vacated for being null and void. The RTC nonetheless issued a warrant for her arrest which was duly served. GMA thereafter filed a Motion for Bail which was granted.

Issues

In G.R. No. 199082, petitioner Arroyo relies on the following grounds:

A. THE CREATION OF THE JOINT COMMITTEE *VIA* THE JOINT ORDER IS AT WAR WITH THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, HAVING BEEN CREATED WITH THE SOLE END IN VIEW OF INVESTIGATING AND PROSECUTING CERTAIN PERSONS AND INCIDENTS ONLY, SPECIFICALLY THOSE INVOLVING THE 2004 AND 2007 ELECTIONS TO THE EXCLUSION OF OTHERS, IN VIOLATION OF THE DOCTRINE IN *BIRAOGO V. TRUTH COMMISSION* AND COMPANION CASE.

B. NO LAW OR RULE AUTHORIZES THE JOINT COMMITTEE TO CONDUCT PRELIMINARY INVESTIGATION.

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[34] *Id.* at 321.

[35] *Id.* at 226.

[36] *Id.* at 274-280.

[37] *Id.* at 439-451.

C. THE CREATION OF THE JOINT COMMITTEE, WHICH FUSES THE COMMISSION ON ELECTIONS — A CONSTITUTIONALLY INDEPENDENT BODY — WITH THE DEPARTMENT OF JUSTICE — A POLITICAL AGENT OF THE EXECUTIVE — DEMOLISHES THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS AS PROVIDED IN ARTICLE IX (A), SECTIONS 1 AND 2 AND IX (C) OF THE CONSTITUTION.

D. IN VIEW OF THE NUMEROUS AND PERSISTENT PUBLIC PRONOUNCEMENTS OF THE PRESIDENT, HIS SPOKESPERSONS, THE HEADS OF THE DOJ AND THE COMELEC, AND MEMBERS OF THE JOINT COMMITTEE THAT CASES SHOULD BE FILED AGAINST PETITIONER AND HIS FAMILY AND ALLEGED ASSOCIATES BY THE END OF 2011, THE PROCEEDINGS THEREOF SHOULD BE ENJOINED FOR BEING PERSECUTORY, PURSUANT TO *ALLADO V. DIOKNO* AND RELATED CASES.

E. THE CREATION AND CONSTITUTION OF THE JOINT COMMITTEE TRAMPLES UPON PETITIONER'S RIGHT TO A FAIR PROCEEDING BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL.

F. THE COMELEC, AND SUBSEQUENTLY, THE RTC OF PASAY CITY, HAVE ASSUMED JURISDICTION OVER THE SUBJECT MATTER SOUGHT TO BE INVESTIGATED BY THE JOINT COMMITTEE, TO THE EXCLUSION OF ANY BODY, INCLUDING THE JOINT COMMITTEE.[38]

In G.R. No. 199085, petitioner Abalos raises the following issues:

I.

DOES JOINT ORDER NO. 001-2011, CREATING THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE VIOLATE PETITIONER'S

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[38] *Rollo* (G.R. No. 199082), pp. 21-23.

CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAW?

II.

DID THE CONDUCT AND PROCEEDINGS OF THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW?

III.

DID THE DOJ AND COMELEC VIOLATE THE PRINCIPLE OF SEPARATION OF POWERS BY CREATING THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE WHICH ENCROACHED UPON THE POWERS OF THE LEGISLATURE AND THE REGIONAL TRIAL COURT?

IV.

DOES THE JOINT DOJ-COMELEC FACT-FINDING TEAM AND PRELIMINARY INVESTIGATION COMMITTEE HAVE THE POWER AND LEGAL AUTHORITY TO CONDUCT A PRELIMINARY INVESTIGATION OF THE SAME ELECTORAL SABOTAGE CASES WHICH THE COMELEC HAD ALREADY TAKEN COGNIZANCE OF?[39]

In G.R. No. 199118, petitioner GMA anchors her petition on the following grounds:

I. THE EXECUTIVE DEPARTMENT, THROUGH THE DOJ, OSTENSIBLY ACTING "JOINTLY" WITH THE COMELEC, HAS ACTED BEYOND THE LIMITS OF THE CONSTITUTION, IN THAT IT HAS COMPROMISED THE INDEPENDENCE OF THE COMELEC.

II. THE COMELEC HAS EFFECTIVELY ABDICATED ITS CONSTITUTIONAL MANDATE "TO INVESTIGATE AND, WHERE APPROPRIATE, PROSECUTE CASES OF VIOLATIONS OF ELECTION LAWS, INCLUDING ACTS OR OMISSIONS CONSTITUTING ELECTION FRAUDS, OFFENSES, AND MALPRACTICES" (ARTICLE IX-C,

[39] *Rollo* (G.R. No. 199085), pp. 23-24.

SECTION 2[6], 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES) IN FAVOR OF THE EXECUTIVE DEPARTMENT, ACTING THROUGH RESPONDENT JUSTICE SECRETARY DE LIMA.

III. DOJ-COMELEC JOINT ORDER NO. 001-2011 AND THE JOINT COMMITTEE RULES HAVE NOT BEEN PUBLISHED PURSUANT TO *TAÑADA V. TUVERA*, G.R. No. L-63915 (29 DECEMBER 1986). AFTER ALL, AS THE HONORABLE COURT LIKEWISE DECLARED IN *REPUBLIC V. PILIPINAS SHELL PETROLEUM CORPORATION*, G.R. No. 173918 (08 APRIL 2008), (SIC)[40]

We deferred the resolution of petitioners' Motion for the Issuance of a TRO and, instead, required the respondents to comment on the petitions.[41] We likewise scheduled the consolidated cases for oral argument for which the parties were directed to limit their respective discussions to the following issues:

I. Whether or not Joint Order No. 001-2011 "*Creating and Constituting a Joint DOJ-COMELEC Preliminary Investigation Committee and Fact-Finding Team on the 2004 and 2007 National Elections Electoral Fraud and Manipulation Cases*" is constitutional in light of the following:

A. The due process clause of the 1987 Constitution
B. The equal protection clause of the 1987 Constitution
C. The principle of separation of powers
D. The independence of the COMELEC as a constitutional body

II. Whether or not the COMELEC has jurisdiction under the law to conduct preliminary investigation jointly with the DOJ.

A. Whether or not due process was observed by the Joint DOJ-COMELEC Fact-Finding Team and Preliminary Investigation Committee, and the COMELEC in the conduct of the preliminary investigation and approval of the Joint Panel's Resolution.[42]

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[40] *Rollo* (G.R. No. 199118), pp. 18-19.

[41] *Id.* at 281-282.

[42] *Id.* at 291-292.

The Court, thereafter, required the parties to submit their respective Memoranda.[43]

The Court's Ruling

Procedural Issues

Respondents claim that Mike Arroyo's petition is moot and that of GMA is moot and academic. They explain that the Mike Arroyo petition presents no actual controversy that necessitates the exercise by the Court of its power of judicial review, considering that he was not among those indicted for electoral sabotage in the 2007 national elections as the Comelec dismissed the case against him for insufficiency of evidence.[44] Anent the 2004 national elections, the Fact-Finding Team is yet to complete its investigation so Mike Arroyo's apprehensions are merely speculative and anticipatory.[45] As to the GMA petition, respondents aver that any judgment of the Court will have no practical legal effect because an Information has already been filed against her in Branch 112, RTC of Pasay City.[46] With the filing of the Information, the RTC has already acquired jurisdiction over the case, including all issues relating to the constitutionality or legality of her preliminary investigation.[47] Respondents also claim that the issues relating to the constitutionality and validity of the conduct of the preliminary investigation of GMA are best left to the trial court, considering that it involves questions of fact.[48] Respondents add that considering that the RTC has concurrent jurisdiction to determine a constitutional issue, it will be practical for the Court to allow the RTC to determine the constitutional issues in this case.[49]

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[43] *Id.* at 576-577.

[44] *Id.* at 326-327.

[45] *Id.* at 238.

[46] *Id.* at 330.

[47] *Id.* at 331.

[48] *Id.* at 333.

[49] *Id.* at 335.

We do not agree.

Mootness

It cannot be gainsaid that for a court to exercise its power of adjudication, there must be an actual case or controversy, that is, one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution.[50] The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.[51]

A case becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[52] However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial.[53]

Here, the consolidated cases are not rendered moot and academic by the promulgation of the Joint Resolution by the Joint Committee and the approval thereof by the Comelec. It must be recalled that the main issues in the three petitions before us are the constitutionality and legality of the creation of the Joint Committee and the Fact-Finding Team as well as the proceedings undertaken pursuant thereto. The assailed Joint Order specifically provides that the Joint Committee was created for purposes of investigating the alleged massive electoral fraud during the 2004 and 2007 national elections. However, in the Fact-Finding Team's Initial Report, the team specifically agreed that the report would focus on the irregularities during the 2007 elections. Also, in its November 18, 2011 Resolution, the Comelec,

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[50] *Mattel, Inc. v. Francisco*, G.R. No. 166886, July 30, 2008, 560 SCRA 504, 514.

[51] *Id.*

[52] *Garayblas v. Atienza, Jr.*, G.R. No. 149493, June 22, 2006, 492 SCRA 202, 216; See: *Tantoy, Sr. v. Abrogar*, G.R. No. 156128, May 9, 2005, 458 SCRA 301, 305.

[53] *Garayblas v. Atienza, Jr.*, *supra*, at 216-217.

while directing the filing of information against petitioners Abalos and GMA, ordered that further investigations be conducted against the other respondents therein. Apparently, the Fact-Finding Team's and Joint Committee's respective mandates have not been fulfilled and they are, therefore, bound to continue discharging their duties set forth in the assailed Joint Order. Moreover, petitioners question the validity of the proceedings undertaken by the Fact-Finding Team and the Joint Committee leading to the filing of information, on constitutional grounds. We are not, therefore, barred from deciding on the petitions simply by the occurrence of the supervening events of filing an information and dismissal of the charges.

Jurisdiction over the validity of the conduct of the preliminary investigation

This is not the first time that the Court is confronted with the issue of jurisdiction to conduct preliminary investigation and at the same time with the propriety of the conduct of preliminary investigation. In *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG],*[54] the Court resolved two issues, namely: (1) whether or not the PCGG has the power to conduct a preliminary investigation of the anti-graft and corruption cases filed by the Solicitor General against Eduardo Cojuangco, Jr. and other respondents for the alleged misuse of coconut levy funds; and (2) on the assumption that it has jurisdiction to conduct such a preliminary investigation, whether or not its conduct constitutes a violation of petitioner's right to due process and equal protection of the law.[55] The Court decided these issues notwithstanding the fact that Informations had already been filed with the trial court.

In *Allado v. Diokno*,[56] in a petition for *certiorari* assailing the propriety of the issuance of a warrant of arrest, the Court could not ignore the undue haste in the filing of the information

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[54] 268 Phil. 235 (1990).

[55] *Id.* at 241.

[56] G.R. No. 113630, May 5, 1994, 232 SCRA 192.

and the inordinate interest of the government in filing the same. Thus, this Court took time to determine whether or not there was, indeed, probable cause to warrant the filing of information. This, notwithstanding the fact that information had been filed and a warrant of arrest had been issued. Petitioners therein came directly to this Court and sought relief to rectify the injustice that they suffered.

Hierarchy of courts

Neither can the petitions be dismissed solely because of violation of the principle of hierarchy of courts. This principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.[57] The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals and the RTC, a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition, as in the present case.[58] In the consolidated petitions, petitioners invoke exemption from the observance of the rule on hierarchy of courts in keeping with the Court's duty to determine whether or not the other branches of government have kept themselves within the limits of the Constitution and the laws, and that they have not abused the discretion given to them.[59]

It is noteworthy that the consolidated petitions assail the constitutionality of issuances and resolutions of the DOJ and the Comelec. The general rule is that this Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation. However, such rule is subject to exception, that is, in circumstances where

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[57] *Bagabuyo v. Commission on Elections*, G.R. No. 176970, December 8, 2008, 573 SCRA 290, 296.

[58] *Id.*

[59] *Rollo* (G.R. No. 199082), p. 6; *rollo* (G.R. No. 199085), p. 5; *rollo* (G.R. No. 199118), p. 9.

the Court believes that resolving the issue of constitutionality of a law or regulation at the first instance is of paramount importance and immediately affects the social, economic, and moral well-being of the people.[60] This case falls within the exception. An expeditious resolution of the issues raised in the petitions is necessary. Besides, the Court has entertained a direct resort to the Court without the requisite motion for reconsideration filed below or without exhaustion of administrative remedies where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioners and when there is an alleged violation of due process, as in the present case.[61] We apply the same relaxation of the Rules in the present case and, thus, entertain direct resort to this Court.

Substantive Issues

Bases for the Creation of the Fact-Finding Team and Joint Committee

Section 2, Article IX-C of the 1987 Constitution enumerates the powers and functions of the Comelec. Paragraph (6) thereof vests in the Comelec the power to:

> (6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

This was an important innovation introduced by the 1987 Constitution, because the above-quoted provision was not in the 1935 and 1973 Constitutions.[62]

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[60] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198, 206.

[61] *Chua v. Ang*, G.R. No. 156164, September 4, 2009, 598 SCRA 229, 237-238.

[62] *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 493-494.

The grant to the Comelec of the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws is intended to enable the Comelec to effectively insure to the people the free, orderly, and honest conduct of elections. The failure of the Comelec to exercise this power could result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote.[63]

The constitutional grant of prosecutorial power in the Comelec was reflected in Section 265 of Batas Pambansa Blg. 881, otherwise known as the *Omnibus Election Code*, to wit:

> Section 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal [public prosecutor], or with the Ministry [Department] of Justice for proper investigation and prosecution, if warranted.

Under the above provision of law, the power to conduct preliminary investigation is vested exclusively with the Comelec. The latter, however, was given by the same provision of law the authority to avail itself of the assistance of other prosecuting arms of the government.[64] Thus, under Section 2,[65] Rule 34 of

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[63] *Baytan v. Comelec*, 444 Phil. 812, 817-818 (2003); *Pimentel, Jr. v. Comelec*, 352 Phil. 424, 439 (1998).

[64] *Diño v. Olivarez*, G.R. No. 170447, December 4, 2009, 607 SCRA 251, 261; *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, *supra* note 62, at 495-496; *Commission on Elections v. Español*, G.R. Nos. 149164-73, December 10, 2003, 417 SCRA 554, 565.

[65] Section 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. — The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation

the Comelec Rules of Procedure, provincial and city prosecutors and their assistants are given continuing authority as deputies to conduct preliminary investigation of complaints involving election offenses under election laws and to prosecute the same. The complaints may be filed directly with them or may be indorsed to them by the petitioner or its duly authorized representatives.[66]

Thus, under the Omnibus Election Code, while the exclusive jurisdiction to conduct preliminary investigation had been lodged with the Comelec, the prosecutors had been conducting preliminary investigations pursuant to the continuing delegated authority given by the Comelec. The reason for this delegation of authority has been explained in *Commission on Elections v. Español*:[67]

> The deputation of the Provincial and City Prosecutors is necessitated by the need for prompt investigation and dispensation of election cases as an indispensable part of the task of securing fine, orderly, honest, peaceful and credible elections. Enfeebled by lack of funds and the magnitude of its workload, the petitioner does not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases.[68]

Moreover, as we acknowledged in *People v. Basilla*,[69] the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible without the assistance of provincial and

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of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the Commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn anytime by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes that successful prosecution of the case can be done by the Commission.

[66] *Commission on Elections v. Español*, *supra* note 64, at 565.

[67] *Id.*

[68] *Id.* at 565-566.

[69] G.R. Nos. 83938-40, November 6, 1989, 179 SCRA 190.

city fiscals [prosecutors] and their assistants and staff members, and of the state prosecutors of the DOJ.[70]

Section 265 of the Omnibus Election Code was amended by Section 43 of R.A. No. 9369,[71] which reads:

> Section 43. Section 265 of Batas Pambansa Blg. 881 is hereby amended to read as follows:
>
> > SEC. 265. Prosecution. — The Commission shall, through its duly authorized legal officers, have the power, ***concurrent with the other prosecuting arms of the government,*** to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same.[72]

As clearly set forth above, instead of a mere delegated authority, the other prosecuting arms of the government, such as the DOJ, now exercise concurrent jurisdiction with the Comelec to conduct preliminary investigation of all election offenses and to prosecute the same.

It is, therefore, not only the power but the duty of both the Comelec and the DOJ to perform any act necessary to ensure the prompt and fair investigation and prosecution of election offenses. Pursuant to the above constitutional and statutory provisions, and as will be explained further below, we find no impediment for the Comelec and the DOJ to create the Joint Committee and Fact-Finding Team for the purpose of conducting a thorough investigation of the alleged massive electoral fraud and the manipulation of election results in the 2004 and 2007

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[70] *People v. Basilia*, *supra*, cited in *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*, *supra* note 62, at 496.

[71] An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes."

[72] Emphasis supplied.

national elections relating in particular to the presidential and senatorial elections.[73]

Constitutionality of Joint-Order No. 001-2011

A. Equal Protection Clause

Petitioners claim that the creation of the Joint Committee and Fact-Finding Team is in violation of the equal protection clause of the Constitution because its sole purpose is the investigation and prosecution of certain persons and incidents. They argue that there is no substantial distinction between the allegations of massive electoral fraud in 2004 and 2007, on the one hand, and previous and subsequent national elections, on the other hand; and no substantial distinction between petitioners and the other persons or public officials who might have been involved in previous election offenses. They insist that the Joint Panel was created to target only the Arroyo Administration as well as public officials linked to the Arroyo Administration. To bolster their claim, petitioners explain that Joint Order No. 001-2011 is similar to Executive Order No. 1 (creating the Philippine Truth Commission) which this Court had already nullified for being violative of the equal protection clause.

Respondents, however, refute the above contentions and argue that the wide array of the possible election offenses and broad spectrum of individuals who may have committed them, if any, immediately negate the assertion that the assailed orders are aimed only at the officials of the Arroyo Administration.

We agree with the respondents.

The equal protection clause is enshrined in Section 1, Article III of the Constitution which reads:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, ***nor shall any person be denied the equal protection of the laws.***[74]

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[73] *Rollo* (G.R. No. 199118), pp. 49-50.

[74] Emphasis supplied.

The concept of equal protection has been laid down in *Biraogo v. Philippine Truth Commission of 2010*:[75]

One of the basic principles on which this government was founded is that of the equality of right which is embodied in Section 1, Article III of the 1987 Constitution. The equal protection of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has been embodied in a separate clause, however, to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly-situated individuals in a similar manner. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.[76]

Unlike the matter addressed by the Court's ruling in *Biraogo v. Philippine Truth Commission of 2010*, Joint Order No. 001-2011 cannot be nullified on the ground that it singles out the officials of the Arroyo Administration and, therefore, it infringes the equal protection clause. The Philippine Truth Commission of 2010 was expressly created for the purpose of investigating alleged graft and corruption during the Arroyo Administration since Executive Order No. 1[77] specifically referred to the "previous administration"; while the Joint Committee was created for the

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[75] G.R. Nos. 192935 and 193036, December 7, 2010, 637 SCRA 78.

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

[77] Creating the Philippine Truth Commission.

purpose of conducting preliminary investigation of election offenses during the 2004 and 2007 elections. While GMA and Mike Arroyo were among those subjected to preliminary investigation, not all respondents therein were linked to GMA as there were public officers who were investigated upon in connection with their acts in the performance of their official duties. Private individuals were also subjected to the investigation by the Joint Committee.

The equal protection guarantee exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, it does not demand absolute equality. It merely requires that all persons under like circumstances and conditions shall be treated alike both as to privileges conferred and liabilities enforced.[78]

We once held that the Office of the Ombudsman is granted virtually plenary investigatory powers by the Constitution and by law and thus may, for every particular investigation, whether commenced by complaint or on its own initiative, decide how best to pursue each investigation. Since the Office of the Ombudsman is granted such latitude, its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws.[79] This same doctrine should likewise apply in the present case.

Thus, as the constitutional body granted with the broad power of enforcing and administering all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall,[80] and tasked to ensure free, orderly, honest, peaceful, and credible elections,[81] the Comelec has the authority to determine

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[78] *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341, 369.

[79] *Dimayuga v. Office of the Ombudsman*, G.R. No. 129099, July 20, 2006, 495 SCRA 461, 469.

[80] 1987 Constitution, Article IX (C), Section 2 (1).

[81] 1987 Constitution, Article IX (C), Section 2 (4).

how best to perform such constitutional mandate. Pursuant to this authority, the Comelec issues various resolutions prior to every local or national elections setting forth the guidelines to be observed in the conduct of the elections. This shows that every election is distinct and requires different guidelines in order to ensure that the rules are updated to respond to existing circumstances.

Moreover, as has been practiced in the past, complaints for violations of election laws may be filed either with the Comelec or with the DOJ. The Comelec may even initiate, *motu proprio*, complaints for election offenses.[82] Pursuant to law and the Comelec's own Rules, investigations may be conducted either by the Comelec itself through its law department or through the prosecutors of the DOJ. These varying procedures and treatment do not, however, mean that respondents are not treated alike. Thus, petitioners' insistence of infringement of their constitutional right to equal protection of the law is misplaced.

B. Due Process

Petitioners claim that the Joint Panel does not possess the required cold neutrality of an impartial judge because it is all at once the evidence-gatherer, prosecutor and judge. They explain that since the Fact-Finding Team has found probable cause to subject them to preliminary investigation, it is impossible for the Joint Committee to arrive at an opposite conclusion. Petitioners likewise express doubts of any possibility that the Joint Committee will be fair and impartial to them as Secretary De Lima and Chairman Brillantes had repeatedly expressed prejudgment against petitioners through their statements captured by the media.

For their part, respondents contend that petitioners failed to present proof that the President of the Philippines, Secretary of Justice, and Chairman of the Comelec actually made the statements allegedly prejudging their case and in the context in which they interpreted them. They likewise contend that assuming that said statements were made, there was no showing that

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[82] 1993 Comelec Rules of Procedure, Sec. 3.

Secretary De Lima had tried to intervene in the investigation to influence its outcome nor was it proven that the Joint Committee itself had prejudged the case. Lastly, they point out that Joint Order No. 001-2011 created two bodies, the Fact-Finding Team and the Joint Committee, with their respective mandates. Hence, they cannot be considered as one.

We find for respondents.

It is settled that the conduct of preliminary investigation is, like court proceedings, subject to the requirements of both substantive and procedural due process.[83] Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer.[84] The authority of a prosecutor or investigating officer duly empowered to preside over or to conduct a preliminary investigation is no less than that of a municipal judge or even an RTC Judge.[85] Thus, as emphasized by the *Court in Ladlad v. Velasco*:[86]

> x x x We cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may public's perception of the impartiality of the prosecutor be enhanced.[87]

In this case, as correctly pointed out by respondents, there was no showing that the statements claimed to have prejudged

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[83] *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449.

[84] *Id.*

[85] *Id.* at 450, citing *Cojuangco, Jr. v. PCGG, et al.*, *supra* note 54.

[86] G.R. Nos. 170270-72, June 1, 2007, 523 SCRA 318.

[87] *Id.* at 345, citing *Tatad v. Sandiganbayan*, G.R. Nos. 72335-39, March 21, 1998, 159 SCRA 70.

the case against petitioners were made by Secretary De Lima and Chairman Brillantes or were in the prejudicial context in which petitioners claimed the statements were made. A reading of the statements allegedly made by them reveals that they were just responding to hypothetical questions in the event that probable cause would eventually be found by the Joint Committee.

More importantly, there was no proof or even an allegation that the Joint Committee itself, tasked to conduct the requisite preliminary investigation against petitioners, made biased statements that would convey to the public that the members were favoring a particular party. Neither did the petitioners show that the President of the Philippines, the Secretary of Justice or the Chairman of the Comelec intervened in the conduct of the preliminary investigation or exerted undue pressure on their subordinates to tailor their decision with their public declarations and adhere to a pre-determined result.[88] Moreover, insofar as the Comelec is concerned, it must be emphasized that the constitutional body is collegial. The act of the head of a collegial body cannot be considered as that of the entire body itself.[89] In equating the alleged bias of the above-named officials with that of the Joint Committee, there would be no arm of the government credible enough to conduct a preliminary investigation.[90]

It must also be emphasized that Joint Order No. 001-2011 created two bodies, namely: (1) the Fact-Finding Team tasked to gather real, documentary and testimonial evidence which can be utilized in the preliminary investigation to be conducted by the Joint Committee; and (2) the Joint Committee mandated to conduct preliminary investigation. It is, therefore, inaccurate to say that there is only one body which acted as evidence-gatherer, prosecutor and judge.

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[88] *Santos-Concio v. Department of Justice*, G.R. No. 175057, January 29, 2008, 543 SCRA 70, 90.

[89] *Gutierrez v. House of Representatives Committee on Justice*, G.R. No. 193459, February 15, 2011, 643 SCRA 198, 234.

[90] *Santos-Concio v. Department of Justice*, *supra* note 88.

C. Separation of powers

Petitioners claim that the Joint Panel is a new public office as shown by its composition, the creation of its own Rules of Procedure, and the source of funding for its operation. It is their position that the power of the DOJ to investigate the commission of crimes and the Comelec's constitutional mandate to investigate and prosecute violations of election laws do not include the power to create a new public office in the guise of a joint committee. Thus, in creating the Joint Panel, the DOJ and the Comelec encroached upon the power of the Legislature to create public office.

Respondents dispute this and contend that the Joint Committee and Fact-Finding Team are not new public offices, but merely collaborations between two existing government agencies sharing concurrent jurisdiction. This is shown by the fact that the members of the Joint Panel are existing officers of the DOJ and the Comelec who exercise duties and functions that are already vested in them.

Again, we agree with respondents.

As clearly explained above, the Comelec is granted the power to investigate, and where appropriate, prosecute cases of election offenses. This is necessary in ensuring free, orderly, honest, peaceful and credible elections. On the other hand, the DOJ is mandated to administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system.[91] It is specifically empowered to "investigate the commission of crimes, prosecute offenders and administer the probation and correction system."[92] Also, the provincial or city prosecutors and their assistants, as well as the national and regional state prosecutors, are specifically named

[91] Section 1, Chapter I, Title III, Book IV of the Administrative Code of 1987.

[92] Section 3 (2), Chapter 1, Title III, Book IV, Administrative Code of 1987.

as the officers authorized to conduct preliminary investigation.[93] Recently, the Comelec, through its duly authorized legal offices, is given the power, concurrent with the other prosecuting arms of the government such as the DOJ, to conduct preliminary investigation of all election offenses.[94]

Undoubtedly, it is the Constitution, statutes, and the Rules of Court and not the assailed Joint Order which give the DOJ and the Comelec the power to conduct preliminary investigation. No new power is given to them by virtue of the assailed order. As to the members of the Joint Committee and Fact-Finding Team, they perform such functions that they already perform by virtue of their current positions as prosecutors of the DOJ and legal officers of the Comelec. Thus, in no way can we consider the Joint Committee as a new public office.

D. Independence of the Comelec

Petitioners claim that in creating the Joint Panel, the Comelec has effectively abdicated its constitutional mandate to investigate and, where appropriate, to prosecute cases of violation of election laws including acts or omissions constituting election frauds, offenses, and malpractices in favor of the Executive Department acting through the DOJ Secretary. Under the set-up, the Comelec personnel is placed under the supervision and control of the DOJ. The chairperson is a DOJ official. Thus, the Comelec has willingly surrendered its independence to the DOJ and has acceded to share its exercise of judgment and discretion with the Executive Branch.

We do not agree.

Section 1,[95] Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as independent.

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[93] Rules of Criminal Procedure, Rule 112, Section 1.

[94] R.A. 9369, Sec. 43.

[95] Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions.[96] The Constitution envisions a truly independent Comelec committed to ensure free, orderly, honest, peaceful, and credible elections and to serve as the guardian of the people's sacred right of suffrage — the citizenry's vital weapon in effecting a peaceful change of government and in achieving and promoting political stability.[97]

Prior to the amendment of Section 265 of the Omnibus Election Code, the Comelec had the exclusive authority to investigate and prosecute election offenses. In the discharge of this exclusive power, the Comelec was given the right to avail and, in fact, availed of the assistance of other prosecuting arms of the government such as the prosecutors of the DOJ. By virtue of this continuing authority, the state prosecutors and the provincial or city prosecutors were authorized to receive the complaint for election offense and delegate the conduct of investigation to any of their assistants. The investigating prosecutor, in turn, would make a recommendation either to dismiss the complaint or to file the information. This recommendation is subject to the approval of the state, provincial or city prosecutor, who himself may file the information with the proper court if he finds sufficient cause to do so, subject, however, to the accused's right to appeal to the Comelec.[98]

Moreover, during the past national and local elections, the Comelec issued Resolutions [99] requesting the Secretary of Justice

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[96] *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358, 360.

[97] *Gallardo v. Tabamo, Jr.*, G.R. No. 104848, January 29, 1993, 218 SCRA 253, 264.

[98] Comelec Rules of Procedure, Rule 34.

[99] ***Comelec Resolution No. 3467*** "In the Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force to Assist the Commission in the Investigation and Prosecution of Election Offenses in the May 14, 2001 National and Local Elections and reiterating the Continuing Deputation of Prosecutors under Rule 34 of the Comelec Rules of Procedure"; ***Resolution No. 8733*** "In the

to assign prosecutors as members of Special Task Forces to assist the Comelec in the investigation and prosecution of election offenses. These Special Task Forces were created because of the need for additional lawyers to handle the investigation and prosecution of election offenses.

Clearly, the Comelec recognizes the need to delegate to the prosecutors the power to conduct preliminary investigation. Otherwise, the prompt resolution of alleged election offenses will not be attained. This delegation of power, otherwise known as deputation, has long been recognized and, in fact, been utilized as an effective means of disposing of various election offense cases. Apparently, as mere deputies, the prosecutors played a vital role in the conduct of preliminary investigation, in the resolution of complaints filed before them, and in the filing of the informations with the proper court.

As pointed out by the Court in *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,[100] the grant of exclusive power to investigate and prosecute cases of election offenses to the Comelec was not by virtue of the Constitution but by the Omnibus Election Code which was eventually amended by Section 43 of R.A. 9369. Thus, the DOJ now conducts preliminary investigation of election offenses concurrently with the Comelec and no longer as mere deputies. If the prosecutors had been allowed to conduct preliminary investigation and file the necessary information by virtue only of a delegated authority, they now have better grounds to perform such function by virtue of the statutory grant of authority. If deputation was justified because of lack of funds

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Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force Created by the Commission to Conduct the Investigation and Prosecution of Election Offenses in Connection with the May 10, 2010 National and Local Elections"; ***Resolution No. 9057*** "In the Matter of Requesting the Honorable Secretary of Justice to Assign Prosecutors as Members of a Special Task Force to Assist the Commission in the Investigation and Prosecution of Election Offenses in Connection with the October 25, 2010 Barangay and Sangguniang Kabataan Elections." (Emphasis supplied.)

[100] *Supra* note 62.

and legal officers to ensure prompt and fair investigation and prosecution of election offenses, the same justification should be cited to justify the grant to the other prosecuting arms of the government of such concurrent jurisdiction.

In view of the foregoing disquisition, we find no impediment for the creation of a Joint Committee. While the composition of the Joint Committee and Fact-Finding Team is dominated by DOJ officials, it does not necessarily follow that the Comelec is inferior. Under the Joint Order, resolutions of the Joint Committee finding probable cause for election offenses shall still be approved by the Comelec in accordance with the Comelec Rules of Procedure. This shows that the Comelec, though it acts jointly with the DOJ, remains in control of the proceedings. In no way can we say that the Comelec has thereby abdicated its independence to the executive department.

The text and intent of the constitutional provision granting the Comelec the authority to investigate and prosecute election offenses is to give the Comelec all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections.[101] The Comelec should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created.[102] We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this Court should not interfere.[103] Thus, Comelec Resolution No. 9266, approving the creation of the Joint Committee and Fact-Finding Team, should be viewed not as an abdication of the constitutional body's independence but as a means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful and credible elections.

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[101] *Bedol v. Commission on Elections*, G.R. No. 179830, December 3, 2009, 606 SCRA 554, 569, citing *Loong v. Commission on Elections*, G.R. No. 133676, April 14, 1999, 305 SCRA 832.

[102] *Tolentino v. Comelec*, G.R. No. 148334, January 21, 2004, 465 SCRA 385, 416.

[103] *Id.*, citing *Pungutan v. Abubakar*, 150 Phil. 1 (1972).

Although it belongs to the executive department, as the agency tasked to investigate crimes, prosecute offenders, and administer the correctional system, the DOJ is likewise not barred from acting jointly with the Comelec. It must be emphasized that the DOJ and the Comelec exercise concurrent jurisdiction in conducting preliminary investigation of election offenses. The doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter.[104] Contrary to the contention of the petitioners, there is no prohibition on simultaneous exercise of power between two coordinate bodies. What is prohibited is the situation where one files a complaint against a respondent initially with one office (such as the Comelec) for preliminary investigation which was immediately acted upon by said office and the re-filing of substantially the same complaint with another office (such as the DOJ). The subsequent assumption of jurisdiction by the second office over the cases filed will not be allowed. Indeed, it is a settled rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.[105] As cogently held by the Court in *Department of Justice v. Hon. Liwag*:[106]

> To allow the same complaint to be filed successively before two or more investigative bodies would promote multiplicity of proceedings. It would also cause undue difficulties to the respondent who would have to appear and defend his position before every agency or body where the same complaint was filed. This would lead hapless litigants at a loss as to where to appear and plead their cause or defense.
>
> There is yet another undesirable consequence. There is the distinct possibility that the two bodies exercising jurisdiction at the same time would come up with conflicting resolutions regarding the guilt of the respondents.
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> Finally, the second investigation would entail an unnecessary expenditure of public funds, and the use of valuable and limited

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[104] *Department of Justice v. Hon. Liwag*, 491 Phil. 270, 285 (2005).

[105] *Id.* at 287.

[106] *Id.*

resources of Government, in a duplication of proceedings already started with the Ombudsman.[107]

None of these problems would likely arise in the present case. The Comelec and the DOJ themselves agreed that they would exercise their concurrent jurisdiction jointly. Although the preliminary investigation was conducted on the basis of two complaints — the initial report of the Fact-Finding Team and the complaint of Senator Pimentel — both complaints were filed with the Joint Committee. Consequently, the complaints were filed with and the preliminary investigation was conducted by only one investigative body. Thus, we find no reason to disallow the exercise of concurrent jurisdiction jointly by those given such authority. This is especially true in this case given the magnitude of the crimes allegedly committed by petitioners. The joint preliminary investigation also serves to maximize the resources and manpower of both the Comelec and the DOJ for the prompt disposition of the cases.

Citing the principle of concurrent jurisdiction, petitioners insist that the investigation conducted by the Comelec involving Radam and Martirizar bars the creation of the Joint Committee for purposes of conducting another preliminary investigation. In short, they claim that the exercise by the Comelec of its jurisdiction to investigate excludes other bodies such as the DOJ and the Joint Committee from taking cognizance of the case. Petitioners add that the investigation should have been conducted also by the Comelec as the 2007 cases of Radam and Martirizar include several John Does and Jane Does.

We do not agree.

While the Comelec conducted the preliminary investigation against Radam, Martirizar and other unidentified persons, it only pertains to election offenses allegedly committed in North and South Cotabato. On the other hand, the preliminary investigation conducted by the Joint Committee (involving GMA) pertains to election offenses supposedly committed in

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[107] *Id.* at 287-288.

Maguindanao. More importantly, considering the broad power of the Comelec to choose the means of fulfilling its duty of ensuring the prompt investigation and prosecution of election offenses as discussed earlier, there is nothing wrong if the Comelec chooses to work jointly with the DOJ in the conduct of said investigation. To reiterate, in no way can we consider this as an act abdicating the independence of the Comelec.

Publication Requirement

In the conduct of preliminary investigation, the DOJ is governed by the Rules of Court, while the Comelec is governed by the 1993 Comelec Rules of Procedure. There is, therefore, no need to promulgate new Rules as may be complementary to the DOJ and Comelec Rules.

As earlier discussed, considering that Joint Order No. 001-2011 only enables the Comelec and the DOJ to exercise powers which are already vested in them by the Constitution and other existing laws, it need not be published for it to be valid and effective. A close examination of the Joint Committee's Rules of Procedure, however, would show that its provisions affect the public. Specifically, the following provisions of the Rules either restrict the rights of or provide remedies to the affected parties, to wit: (1) Section 1 provides that "the Joint Committee will no longer entertain complaints from the public as soon as the Fact-Finding Team submits its final report, except for such complaints involving offenses mentioned in the Fact-Finding Team's Final Report"; (2) Section 2 states that "the Joint Committee shall not entertain a Motion to Dismiss"; and (3) Section 5 provides that a Motion for Reconsideration may be availed of by the aggrieved parties against the Joint Committee's Resolution. Consequently, publication of the Rules is necessary.

The publication requirement covers not only statutes but administrative regulations and issuances, as clearly outlined in *Tañada v. Tuvera*:[108]

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[108] 230 Phil. 528 (1986).

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[109]

As opposed to *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[110] where the Court held that OMB-DOJ Joint Circular No. 95-001 is only an internal arrangement between the DOJ and the Office of the Ombudsman outlining the authority and responsibilities among prosecutors of both offices in the conduct of preliminary investigation, the assailed Joint Committee's Rules of Procedure regulate not only the prosecutors of the DOJ and the Comelec but also the conduct and rights of persons, or the public in general. The publication requirement should, therefore, not be ignored.

Publication is a necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof.[111] The requirement of publication is intended to satisfy the basic requirements of due process. It is imperative for it will be the

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[109] *Id.* at 535.

[110] G.R. No. 159747, April 13, 2004, 427 SCRA 46.

[111] *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission (ERC)*, G.R. No. 163935, August 16, 2006, 499 SCRA 103, 125.

height of injustice to punish or otherwise burden a citizen for the transgressions of a law or rule of which he had no notice whatsoever.[112]

Nevertheless, even if the Joint Committee's Rules of Procedure is ineffective for lack of publication, the proceedings undertaken by the Joint Committee are not rendered null and void for that reason, because the preliminary investigation was conducted by the Joint Committee pursuant to the procedures laid down in Rule 112 of the Rules on Criminal Procedure and the 1993 Comelec Rules of Procedure.

Validity of the Conduct of Preliminary Investigation

In her Supplemental Petition,[113] GMA outlines the incidents that took place after the filing of the instant petition, specifically the issuance by the Joint Committee of the Joint Resolution, the approval with modification of such resolution by the Comelec and the filing of information and the issuance of a warrant of arrest by the RTC. With these supervening events, GMA further assails the validity of the proceedings that took place based on the following additional grounds: (1) the undue and unbelievable haste attending the Joint Committee's conduct of the preliminary investigation, its resolution of the case, and its referral to and approval by the Comelec, taken in conjunction with the statements from the Office of the President, demonstrate a deliberate and reprehensible pattern of abuse of inalienable rights and a blatant disregard of the envisioned integrity and independence of the Comelec; (2) as it stands, the creation of the Joint Committee was for the singular purpose of railroading the proceedings in the prosecution of the petitioner and in flagrant violation of her right to due process and equal protection of the laws; (3) the proceedings of the Joint Committee cannot be considered impartial

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[112] *Garcillano v. House of Representatives Committees on Public Information, Public Order and Safety, National Defense and Security, Information and Communication Technology, and Suffrage and Electoral Reforms*, G.R. No. 170338, December 23, 2008, 575 SCRA 170, 190.

[113] *Rollo* (G.R. No. 199118), pp. 222-249.

and fair, considering that respondents have acted as law enforcers, who conducted the criminal investigation, gathered evidence and thereafter ordered the filing of complaints, and at the same time authorized preliminary investigation based on the complaints they caused to be filed; (4) the Comelec became an instrument of oppression when it hastily approved the resolution of the Joint Committee even if two of its members were in no position to cast their votes as they admitted to not having yet read the voluminous records of the cases; and (5) flagrant and repeated violations of her right to due process at every stage of the proceedings demonstrate a deliberate attempt to single out petitioner through the creation of the Joint Committee.[114]

In their Supplement to the Consolidated Comment,[115] respondents accuse petitioners of violating the rule against forum shopping. They contend that in filing the Supplemental Petition before the Court, the Urgent Omnibus Motion *Ad Cautelam* with the RTC, and the Motion to Vacate *Ad Cautelam* with the Comelec, GMA raises the common issue of whether or not the proceedings before the Joint Committee and the Comelec are null and void for violating the Constitution. Respondents likewise claim that the issues raised in the supplemental petition are factual which is beyond the power of this Court to decide.

We cannot dismiss the cases before us on the ground of forum shopping.

Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of *certiorari*.[116] There can also be forum shopping when a party institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same and related causes and/or to grant the same or substantially the same reliefs on

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[114] *Id.* at 226-227.

[115] *Id.* at 472-488.

[116] *Philippine Radiant Products, Inc. v. Metropolitan Bank & Trust Company, Inc.*, 513 Phil. 414, 428 (2005).

the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[117]

Indeed, petitioner GMA filed a Supplemental Petition before the Court, an Urgent Omnibus Motion *Ad Cautelam* before the RTC, and a Motion to Vacate *Ad Cautelam* before the Comelec, emphasizing the unbelievable haste committed by the Joint Committee and the Comelec in disposing of the cases before them. However, a plain reading of the allegations in GMA's motion before the RTC would show that GMA raised the issue of undue haste in issuing the Joint Resolution only in support of her prayer for the trial court to hold in abeyance the issuance of the warrant of arrest, considering that her motion for reconsideration of the denial of her motion to be furnished copies of documents was not yet acted upon by the Joint Committee. If at all the constitutional issue of violation of due process was raised, it was merely incidental. More importantly, GMA raised in her motion with the RTC the finding of probable cause as she sought the judicial determination of probable cause which is not an issue in the petitions before us. GMA's ultimate prayer is actually for the court to defer the issuance of the warrant of arrest. Clearly, the reliefs sought in the RTC are different from the reliefs sought in this case. Thus, there is no forum shopping.

With respect to the Motion to Vacate *Ad Cautelam* filed with the Comelec, while the issues raised therein are substantially similar to the issues in the supplemental petition which, therefore, strictly speaking, warrants outright dismissal on the ground of forum shopping, we cannot do so in this case in light of the due process issues raised by GMA.[118] It is worthy to note that the main issues in the present petitions are the constitutionality of the creation of the Joint Panel and the validity of the proceedings undertaken pursuant thereto for alleged violation of the

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[117] *Huibonhoa v. Concepcion*, G.R. No. 153785, August 3, 2006, 497 SCRA 562, 569-570.

[118] See: *Disini v. Sandiganbayan*, G.R. No. 175730, July 5, 2010, 623 SCRA 354, 377.

constitutional right to due process. In questioning the propriety of the conduct of the preliminary investigation in her Supplemental Petition, GMA only raises her continuing objection to the exercise of jurisdiction of the Joint Committee and the Comelec. There is, therefore, no impediment for the Court to rule on the validity of the conduct of preliminary investigation.

In *Uy v. Office of the Ombudsman*,[119] the Court explained the nature of preliminary investigation, to wit:

> A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process.[120]

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.[121]

In a preliminary investigation, the Rules of Court guarantee the petitioners basic due process rights such as the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits,

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[119] G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73.

[120] *Id.* at 93-94.

[121] *Ladlad v. Velasco*, *supra* note 86, at 344.

and other supporting documents in her defense.[122] Admittedly, GMA received the notice requiring her to submit her counter-affidavit. Yet, she did not comply, allegedly because she could not prepare her counter-affidavit. She claimed that she was not furnished by Senator Pimentel pertinent documents that she needed to adequately prepare her counter-affidavit.

In her Omnibus Motion *Ad Cautelam*[123] to require Senator Pimentel to furnish her with documents referred to in his complaint-affidavit and for production of election documents as basis for the charge of electoral sabotage, GMA prayed that the Joint Committee issue an Order directing the Fact-Finding Team and Senator Pimentel to furnish her with copies of the following documents:

a. Complaint-affidavit and other relevant documents of Senator Aquilino Pimentel III filed before the Commission on Elections against Attys. Lilia Suan-Radam and Yogie Martirizar, as well as the Informations filed in the Regional Trial Court of Pasay City, Branch 114 in Criminal Case Nos. R-PSU-11-03190-CR to R-PSU-11-03200-CR.

b. Records in the petitions filed by complainant Pimentel before the National Board of Canvassers, specifically in NBC Case Nos. 07-162, 07-168, 07-157, 07-159, 07-161 and 07-163.

c. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Maguindanao."

d. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Lanao del Norte."

e. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Shariff Kabunsuan."

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[122] *Estandarte v. People*, G.R. Nos. 156851-55, February 18, 2008, 546 SCRA 130, 144.

[123] *Rollo* (G.R. No. 199118), pp. 250-259.

f. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Lanao del Sur."

g. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Sulu."

h. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Basilan."

i. Documents which served as basis in the allegations of "Significant findings specific to the protested municipalities in the Province of Sultan Kudarat."[124]

GMA likewise requested the production of election documents used in the Provinces of South and North Cotabato and Maguindanao.[125]

The Joint Committee, however, denied GMA's motion which carried with it the denial to extend the filing of her counter-affidavit. Consequently, the cases were submitted for resolution *sans* GMA's and the other petitioners' counter-affidavits. This, according to GMA, violates her right to due process of law.

We do not agree.

GMA's insistence of her right to be furnished the above-enumerated documents is based on Section 3 (b), Rule 112 of the Rules on Criminal Procedure, which reads:

(b) x x x x x x x x x

The respondent shall have the right to examine ***the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense.*** If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense,

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[124] *Id.* at 251-253.

[125] *Id.* at 255.

Objects as evidence need not be furnished a party but shall be made available for examination, copying or photographing at the expense of the requesting party.[126]

Section 6 (a), Rule 34 of the Comelec Rules of Procedure also grants the respondent such right of examination, to wit:

Sec. 6. *Conduct of preliminary investigation*. — (a) If on the basis of the complaint, affidavits and other supporting evidence, the investigating officer finds no ground to continue with the inquiry, he shall recommend the dismissal of the complaint and shall follow the procedure prescribed in Sec. 8 (c) of this Rule. Otherwise, he shall issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents giving said respondent ten (10) days from receipt within which to submit counter-affidavits and other supporting documents. ***The respondent shall have the right to examine all other evidence submitted by the complainant.***[127]

Clearly from the above-quoted provisions, the subpoena issued against respondent [therein] should be accompanied by a copy of the complaint and the supporting affidavits and documents. GMA also has the right to examine documents but such right of examination is limited only to the documents or evidence submitted by the complainants (Senator Pimentel and the Fact-Finding Team) which she may not have been furnished and to copy them at her expense.

While it is true that Senator Pimentel referred to certain election documents which served as bases in the allegations of significant findings specific to the protested municipalities involved, there were no annexes or attachments to the complaint filed.[128] As stated in the Joint Committee's Order dated November 15, 2011 denying GMA's Omnibus Motion *Ad Cautelam*, Senator Pimentel was ordered to furnish petitioners with all the supporting evidence.[129] However, Senator Pimentel manifested that he was

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[126] Emphasis supplied.

[127] Emphasis supplied.

[128] *Rollo* (G.R. No. 199085), p. 747.

[129] *Rollo* (G.R. No. 199118), p. 262.

adopting all the affidavits attached to the Fact-Finding Team's Initial Report.[130] Therefore, when GMA was furnished with the documents attached to the Initial Report, she was already granted the right to examine as guaranteed by the Comelec Rules of Procedure and the Rules on Criminal Procedure. Those were the only documents submitted by the complainants to the Committee. If there are other documents that were referred to in Senator Pimentel's complaint but were not submitted to the Joint Committee, the latter considered those documents unnecessary at that point (without foreclosing the relevance of other evidence that may later be presented during the trial)[131] as the evidence submitted before it were considered adequate to find probable cause against her.[132] Anyway, the failure of the complainant to submit documents supporting his allegations in the complaint may only weaken his claims and eventually works for the benefit of the respondent as these merely are allegations unsupported by independent evidence.

We must, however, emphasize at this point that during the preliminary investigation, the complainants are not obliged to prove their cause beyond reasonable doubt. It would be unfair to expect them to present the entire evidence needed to secure the conviction of the accused prior to the filing of information.[133] A preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence but the presentation only of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof and should be held for trial. [134] Precisely there is a trial to allow the reception of evidence for the prosecution in support of the charge.[135]

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[130] *Rollo* (G.R. No. 199085), p. 748.

[131] *Id.* at 763.

[132] *Id.* at 763-770.

[133] *PCGG v. Hon. Desierto*, 445 Phil. 154, 192 (2003).

[134] *Id.* at 193; *Raro v. Sandiganbayan*, 390 Phil. 917, 945 (2000).

[135] *PCGG v. Hon. Desierto*, *supra* note 133, at 193.

With the denial of GMA's motion to be furnished with and examine the documents referred to in Senator Pimentel's complaint, GMA's motion to extend the filing of her counter-affidavit and countervailing evidence was consequently denied. Indeed, considering the nature of the crime for which GMA was subjected to preliminary investigation and the documents attached to the complaint, it is incumbent upon the Joint Committee to afford her ample time to examine the documents submitted to [the Joint Committee] in order that she would be able to prepare her counter-affidavit. She cannot, however, insist to examine documents not in the possession and custody of the Joint Committee nor submitted by the complainants. Otherwise, it might cause undue and unnecessary delay in the disposition of the cases. This undue delay might result in the violation of the right to a speedy disposition of cases as enshrined in Section 16, Article III of the Constitution which states that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The constitutional right to speedy disposition of cases is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.[136] Any party to a case has the right to demand on all officials tasked with the administration of justice to expedite its disposition.[137] Society has a particular interest in bringing swift prosecutions, and the society's representatives are the ones who should protect that interest.[138]

Even assuming for the sake of argument that the denial of GMA's motion to be furnished with and examine the documents referred to in Senator Pimentel's complaint carried with it the denial to extend the filing of her counter-affidavit and other

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[136] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 146.

[137] *Id.*; *Yulo v. People*, G.R. No. 142762, March 4, 2005, 452 SCRA 705, 710.

[138] *Uy v. Adriano*, G.R. No. 159098, October 27, 2006, 505 SCRA 625, 647.

countervailing evidence rendering the preliminary investigation irregular, such irregularity would not divest the RTC of jurisdiction over the case and would not nullify the warrant of arrest issued in connection therewith, considering that Informations had already been filed against petitioners, except Mike Arroyo. This would only compel us to suspend the proceedings in the RTC and remand the case to the Joint Committee so that GMA could submit her counter-affidavit and other countervailing evidence if she still opts to. However, to do so would hold back the progress of the case which is anathema to the accused's right to speedy disposition of cases.

It is well settled that the absence [or irregularity] of preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the criminal information or render it defective. Dismissal is not the remedy.[139] Neither is it a ground to quash the information or nullify the order of arrest issued against the accused or justify the release of the accused from detention.[140] The proper course of action that should be taken is to hold in abeyance the proceedings upon such information and to remand the case for the conduct of preliminary investigation.[141]

In the landmark cases of *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG]*[142] and *Allado v. Diokno,*[143] we dismissed the criminal cases and set aside the informations and warrants of arrest. In *Cojuangco*, we dismissed the criminal case because the information was filed by the PCGG

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[139] *Raro v. Sandiganbayan*, G.R. No. 108431, July 14, 2000, 335 SCRA 581; *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, February 20, 1996, 253 SCRA 773, 792; *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 355, citing *Doromal v. Sandiganbayan*, G.R. No. 85468, September 7, 1989, 177 SCRA 354.

[140] *San Agustin v. People*, G.R. No. 158211, August 31, 2004, 437 SCRA 392, 401.

[141] *Raro v. Sandiganbayan*, *supra* note 139; *Socrates v. Sandiganbayan*, *supra* note 139; *Pilapil v. Sandiganbayan*, *supra* note 139.

[142] *Supra* note 54.

[143] *Supra* note 56.

which we declared to be unauthorized to conduct the preliminary investigation and, consequently, file the information as it did not possess the cold neutrality of an impartial judge. In *Allado*, we set aside the warrant of arrest issued against petitioners therein and enjoined the trial court from proceeding further for lack of probable cause. For one, there was serious doubt on the reported death of the victim in that case since the *corpus delicti* had not been established nor had his remains been recovered; and based on the evidence submitted, there was nothing to incriminate petitioners therein. In this case, we cannot reach the same conclusion because the Information filed before the RTC of Pasay City was filed by the Comelec *en banc* which had the authority to file the information for electoral sabotage and because the presence or absence of probable cause is not an issue herein. As can be gleaned from their assignment of errors/issues, petitioners did not question the finding of probable cause in any of their supplemental petitions. It was only in GMA's memorandum where she belatedly included a discussion on the "insufficiency" of the evidence supporting the finding of probable cause for the filing of the Information for electoral sabotage against her.[144] A closer look at her arguments, however, would show that they were included only to highlight the necessity of examining the election documents GMA requested to see before she could file her counter-affidavit. At any rate, since GMA failed to submit her counter-affidavit and other countervailing evidence within the period required by the Joint Committee, we cannot excuse her from non-compliance.

There might have been overzealousness on the part of the Joint Committee in terminating the investigation, endorsing the Joint Resolution to the Comelec for approval, and in filing the information in court. However, speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions.[145] The orderly administration of justice remains the

[144] Memorandum of GMA, *rollo* (G.R. No. 199118), pp. 74-84.

[145] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 606, citing *Santos-Concio v. Department of Justice*, G.R. No. 175057, January 29, 2008, 543 SCRA 70.

paramount consideration with particular regard to the peculiar circumstances of each case.[146] To be sure, petitioners were given the opportunity to present countervailing evidence. Instead of complying with the Joint Committee's directive, several motions were filed but were denied by the Joint Committee. Consequently, petitioners' right to submit counter-affidavit and countervailing evidence was forfeited. Taking into account the constitutional right to speedy disposition of cases and following the procedures set forth in the Rules on Criminal Procedure and the Comelec Rules of Procedure, the Joint Committee finally reached its conclusion and referred the case to the Comelec. The latter, in turn, performed its task and filed the information in court. Indeed, petitioners were given the opportunity to be heard. They even actively participated in the proceedings and in fact filed several motions before the Joint Committee. Consistent with the constitutional mandate of speedy disposition of cases, unnecessary delays should be avoided.

Finally, we take judicial notice that on February 23, 2012, GMA was already arraigned and entered a plea of "not guilty" to the charge against her and thereafter filed a Motion for Bail which has been granted. Considering that the constitutionality of the creation of the Joint Panel is sustained, the actions of the Joint Committee and Fact-Finding Team are valid and effective. As the information was filed by the Commission authorized to do so, its validity is sustained. Thus, we consider said entry of plea and the Petition for Bail waiver on the part of GMA of her right to submit counter-affidavit and countervailing evidence before the Joint Committee, and recognition of the validity of the information against her. Her act indicates that she opts to avail of judicial remedies instead of the executive remedy of going back to the Joint Committee for the submission of the counter-affidavit and countervailing evidence. Besides, as discussed earlier, the absence [or irregularity] of preliminary investigation does not affect the court's jurisdiction over the case nor does it impair the validity of the criminal information or render it defective.

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[146] *Id.*

It must be stressed, however, that this supervening event does not render the cases before the Court moot and academic as the main issues raised by petitioners are the constitutionality of the creation of the Joint Committee and the Fact-Finding Team and the validity of the proceedings undertaken pursuant to their respective mandates.

The Court notes that the Joint Committee and the Comelec have not disposed of the cases of the other respondents subjects of the preliminary investigation as some of them were subjected to further investigation. In order to remove the cloud of doubt that pervades that petitioners are being singled out, it is to the best interest of all the parties concerned that the Joint Committee and the Comelec terminate the proceedings as to the other respondents therein and not make a piecemeal disposition of the cases.

A peripheral issue which nonetheless deserves our attention is the question about the credibility of the Comelec brought about by the alleged professional relationship between Comelec Chairman Brillantes on one hand and the complainant Senator Pimentel and Fernando Poe, Jr. (FPJ), GMA's rival in the 2004 elections, on the other hand; and by the other Commissioners'[147] reasons for their partial inhibition. To be sure, Chairman Brillantes' relationship with FPJ and Senator Pimentel is not one of the grounds for the mandatory disqualification of a Commissioner. At its most expansive, it may be considered a ground for voluntary inhibition which is indeed discretionary as the same was primarily a matter of conscience and sound discretion on the part of the Commissioner judge based on his or her rational and logical assessment of the case.[148] Bare allegations of bias and prejudice are not enough in the absence of clear and convincing evidence to overcome the presumption that a judge will undertake his noble role to dispense justice

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[147] Commissioners Elias R. Yusoph and Christian Robert S. Lim.

[148] *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 53; *Argana v. Republic of the Philippines*, 485 Phil. 565, 591-592 (2004).

according to law and evidence without fear or favor.[149] It being discretionary and since Commissioner Brillantes was in the best position to determine whether or not there was a need to inhibit from the case, his decision to participate in the proceedings, in view of higher interest of justice, equity and public interest, should be respected. While a party has the right to seek the inhibition or disqualification of a judge (or prosecutor or Commissioner) who does not appear to be wholly free, disinterested, impartial, and independent in handling the case, this right must be weighed with his duty to decide cases without fear of repression.[150]

Indeed, in *Javier v. Comelec*,[151] the Court set aside the Comelec's decision against Javier when it was disclosed that one of the Commissioners who had decided the case was a law partner of Javier's opponent and who had refused to excuse himself from hearing the case. *Javier*, however, is not applicable in this case. *First*, the cited case involves the Comelec's exercise of its adjudicatory function as it was called upon to resolve the propriety of the proclamation of the winner in the May 1984 elections for Batasang Pambansa of Antique. Clearly, the grounds for inhibition/disqualification were applicable. *Second*, the case arose at the time where the purity of suffrage has been defiled and the popular will scorned through the confabulation of those in authority.[152] In other words, the controversy arose at the time when the public confidence in the Comelec was practically nil because of its transparent bias in favor of the administration.[153] *Lastly*, in determining the propriety of the decision rendered by the Comelec, the Court took into consideration not only the

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[149] *Kilosbayan Foundation v. Janolo, Jr.*, G.R. No. 180543, July 27, 2010, 625 SCRA 684, 697-698.

[150] *Philippine Commercial International Bank v. Dy Hong Pi*, G.R. No. 171137, June 5, 2009, 588 SCRA 612, 632.

[151] Nos. L-68379-81, September 22, 1986, 144 SCRA 194.

[152] *Javier v. Commission on Elections*, Nos. L-68379-81, September 22, 1986, 144 SCRA 194, 196.

[153] *Id.* at 199.

relationship (being former partners in the law firm) between private respondents therein, Arturo F. Pacificador, and then Comelec Commissioner Jaime Opinion (Commissioner Opinion) but also the general attitude of the Comelec toward the party in power at that time. Moreover, the questioned Comelec decision was rendered only by a division of the Comelec. The Court thus concluded in *Javier* that Commissioner Opinion's refusal to inhibit himself divested the Comelec's Second Division of the necessary vote for the questioned decision and rendered the proceedings null and void.[154]

On the contrary, the present case involves only the conduct of preliminary investigation and the questioned resolution is an act of the Comelec *En Banc* where all the Commissioners participated and more than a majority (even if Chairman Brillantes is excluded) voted in favor of the assailed Comelec resolution. Unlike in 1986, public confidence in the Comelec remains. The Commissioners have already taken their positions in light of the claim of "bias and partiality" and the causes of their partial inhibition. Their positions should be respected confident that in doing so, they had the end in view of ensuring that the credibility of the Commission is not seriously affected.

To recapitulate, we find and so hold that petitioners failed to establish any constitutional or legal impediment to the creation of the Joint DOJ-Comelec Preliminary Investigation Committee and Fact-Finding Team.

First, while GMA and Mike Arroyo were among those subjected to preliminary investigation, not all respondents therein were linked to GMA; thus, Joint Order No. 001-2011 does not violate the equal protection clause of the Constitution.

Second, the due process clause is likewise not infringed upon by the alleged prejudgment of the case as petitioners failed to prove that the Joint Panel itself showed such bias and partiality against them. Neither was it shown that the Justice Secretary herself actually intervened in the conduct of the preliminary

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[154] *Id.* at 207.

investigation. More importantly, considering that the Comelec is a collegial body, the perceived prejudgment of Chairman Brillantes as head of the Comelec cannot be considered an act of the body itself.

Third, the assailed Joint Order did not create new offices because the Joint Committee and Fact-Finding Team perform functions that they already perform by virtue of the Constitution, the statutes, and the Rules of Court.

Fourth, in acting jointly with the DOJ, the Comelec cannot be considered to have abdicated its independence in favor of the executive branch of government. Resolution No. 9266 was validly issued by the Comelec as a means to fulfill its duty of ensuring the prompt investigation and prosecution of election offenses as an adjunct of its mandate of ensuring a free, orderly, honest, peaceful, and credible elections. The role of the DOJ in the conduct of preliminary investigation of election offenses has long been recognized by the Comelec because of its lack of funds and legal officers to conduct investigations and to prosecute such cases on its own. This is especially true after R.A. No. 9369 vested in the Comelec and the DOJ the concurrent jurisdiction to conduct preliminary investigation of all election offenses. While we uphold the validity of Comelec Resolution No. 9266 and Joint Order No. 001-2011, we declare the Joint Committee's Rules of Procedure infirm for failure to comply with the publication requirement. Consequently, Rule 112 of the Rules on Criminal Procedure and the 1993 Comelec Rules of Procedure govern.

Fifth, petitioners were given the opportunity to be heard. They were furnished a copy of the complaint, the affidavits, and other supporting documents submitted to the Joint Committee and they were required to submit their counter-affidavit and countervailing evidence. As to petitioners Mike Arroyo and Abalos, the pendency of the cases before the Court does not automatically suspend the proceedings before the Joint Committee nor excuse them from their failure to file the required counter-affidavits. With the foregoing disquisitions, we find no reason to nullify the proceedings undertaken by the Joint Committee and the Comelec in the electoral sabotage cases against petitioners.

WHEREFORE, premises considered, the petitions and supplemental petitions are **DISMISSED**. Comelec Resolution No. 9266 dated August 2, 2011, Joint Order No. 001-2011 dated August 15, 2011, and the Fact-Finding Team's Initial Report dated October 20, 2011, are declared **VALID**. However, the Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections is declared **INEFFECTIVE** for lack of publication.

In view of the constitutionality of the Joint Panel and the proceedings having been conducted in accordance with Rule 112 of the Rules on Criminal Procedure and Rule 34 of the Comelec Rules of Procedure, the conduct of the preliminary investigation is hereby declared **VALID**.

Let the proceedings in the Regional Trial Court of Pasay City, Branch 112, where the criminal cases for electoral sabotage against petitioners GMA and Abalos are pending, proceed with dispatch.

SO ORDERED.

Velasco, Jr., Bersamin, del Castillo, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Sereno, C.J., I concur, except for the part where *J*. Carpio dissents.

Carpio, J., see separate concurring & dissenting opinion.

Leonardo-de Castro and *Abad, JJ.,* join the dissenting and concurring opinion of Justice Brion.

Brion, J., see dissenting & concurring opinion.

Villarama, Jr., J., on official leave.

SEPARATE CONCURRING OPINION

MENDOZA, *J*.:

I am in agreement with the *ponencia* that the arraignment of petitioner Gloria Macapagal-Arroyo *(GMA)*, *on her very own*

motion, is tantamount to her submission to the jurisdiction of the trial court. The entry of her plea of not guilty to the crime of electoral sabotage can only be deemed as a waiver of her right to question the alleged irregularities committed during the preliminary investigation conducted by the Joint DOJ-COMELEC Preliminary Investigation Committee, headed by the Prosecutor General *(Joint Committee)* and/or Comelec. Consequently, her own actions rendered the issues on probable cause and on the validity of the preliminary investigation as moot and academic.

This mootness, however, does not impinge on the issue of the constitutionality of the Comelec's "sharing" of its jurisdiction with another body, for this is an entirely different matter resting on a sundry of arguments involving not just the rules on criminal procedure, but the Constitution itself. Nevertheless, this very issue has been rendered likewise moot when the Comelec *En Banc* itself ruled that there was probable cause.

At any rate, in this separate opinion, I shall only dwell on the subject of due process. I find it proper to put on record my views in relation to the rights afforded a respondent in preparation of his defense during a preliminary investigation, *specially considering the gravity of the offense charged*. Had this case been resolved prior to the arraignment of GMA, I would have voted for a remand of the case to the Comelec, not the Joint Committee, to enable the petitioner to submit her counter-affidavit, if only to set things right before the trial court could properly act on the case. Although moot because of petitioner's arraignment and valid entry of plea, I am of the view that there was *undue haste* in the conduct of the preliminary investigation in violation of her right to due process.

The purpose of a preliminary investigation is the appropriate guidepost in this issue. The proceeding involves the reception of evidence showing that, more likely than not, a respondent could have committed the offense charged and, thus, should be held for trial. This underlines the State's right to prosecute the persons responsible and jumpstart the grinding of the wheels of justice. But the same is by no means absolute and does not in any manner grant the investigating officer the license to deprive a respondent of his rights.

The office of a prosecutor does not involve an automatic function to hold persons charged with a crime for trial. Taking the cudgels for justice on behalf of the State is not tantamount to a mechanical act of prosecuting persons and bringing them within the jurisdiction of court. Prosecutors are bound to a concomitant duty *not* to prosecute when after investigation they have become convinced that the evidence available is not enough to establish probable cause. This is why, in order to arrive at a conclusion, the prosecutors must be able to make an objective assessment of the conflicting versions brought before them, affording both parties to prove their respective positions. Hence, the fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a *prima facie* case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of a corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party[1] or any other party for that matter. Emphatically, the right to the oft-repeated preliminary investigation has been intended to protect the accused from hasty, malicious and oppressive prosecution.[2] In fact, the right to this proceeding, absent an express provision of law, cannot be denied. Its omission is a grave irregularity which nullifies the proceedings because it runs counter to the right to due process enshrined in the Bill of Rights.[3]

Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair.[4] The right to a preliminary investigation is not a mere

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[1] *Zulueta v. Nicolas*, 102 Phil. 944 (1958), citing *People vs. Liggayu*, 97 Phil. 865 (1955).

[2] *U.S. vs. Grant*, 18 Phil. 122 (1910).

[3] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[4] *Ang-Abaya v. Ang*, 573 SCRA 129, 146, citing *Sales v. Sandiganbayan*, 421 Phil. 176 (2001).

formal or technical right but a substantive one, forming part of due process in criminal justice.[5] The prosecutor conducting the same investigates or inquires into the facts concerning the commission of a crime to determine whether or not an Information should be filed against a respondent. A preliminary investigation is in effect a realistic appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.[6] A preliminary investigation has been called a judicial inquiry; it is a judicial proceeding. An act becomes a judicial proceeding when there is an opportunity to be heard and for the production of, and weighing of, evidence, and a decision is rendered thereon.[7]

Granting that the formation of the Joint Committee was valid, as applied to this case, the petitioner should have been given ample opportunity to prepare her defense by allowing her to examine documents purportedly showing the circumstance of how the offense charged was committed. The outright denial of petitioner's Omnibus *Motion Ad Cautelam*, praying that she be furnished with copies of pertinent documents and, at the same time, requesting for an extension of time to file her counter-affidavit, was nothing less of a violation of her right to due process. I cannot discount the fact that the cases were submitted for resolution without her affidavit and those of the other petitioners. Others may perceive these requests as dilatory tactics which might unduly delay the progress of the investigation, but I cannot share this conviction for being unfounded and speculative. It cannot be gainsaid that the right to file a counter-affidavit in a preliminary investigation is a crucial facet of due process. That right is guaranteed under the due process clause. This not only protects a respondent from the vast government machinery

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[5] *Ladlad v. Velasco*, G.R. No. 170270, June 1, 2007, 523 SCRA 318.

[6] *Peres v. Office of the Ombudsman*, 473 Phil. 372 (2004), citing *Cojuangco v. PCGG*, 421 Phil. 176 (2001).

[7] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, citing *Cojuangco v. PCGG*, G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

under the powers of which he is subdued, but more importantly, it also provides the prosecutor the opportunity to arrive at a fair and unprejudiced conclusion of the case.

The petitioner did not forfeit her right to submit her counter-affidavit when she insisted to be furnished with documents referred to in the complaint. In the normal course of things, this insistence is a naturally expected reaction to the situation.

It is likewise important to note that in his complaint, Senator Pimentel *adopted* all the affidavits attached to the Fact-Finding Team's Initial Report, which he claimed were unavailable to him. The reference to documents in a complaint, whether attached thereto or not, can influence the mind of the prosecutor. These documents were cited in the complaint precisely to convince the prosecutor of the guilt of petitioner. As far as my logical mind can comprehend, I think it is nothing short of fairness to give the petitioner opportunity to persuade the prosecutor otherwise. This chance can only be realized by giving her the opportunity to examine the documents and to submit her counter-affidavit.

Granting *arguendo* that GMA is not entitled to the adopted but unattached documents, this does not entail the automatic action of the Joint Committee to proceed and rule on probable cause *sans* the counter-affidavit. Whether or not the unfurnished documents were relevant in the line of defense to be relied on by petitioner, the Joint Committee, in all prudence expected from a body of esteemed membership, should have given the petitioner reasonable time to submit her counter-affidavit after the denial of her Omnibus Motion *Ad Cautelam*. Lamentably, the eagerness to file the complaint in court, at the soonest possible time, prevailed over this path of caution.

Since a preliminary investigation is designed to screen cases for trial, only evidence presented must be considered. While even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting

the eventual prosecution of the case in court.[8] The fact that evidentiary issues can be better threshed out during the trial cannot justify deprivation of a respondent's right to refute allegations thrown at him during the preliminary investigation. Neither will an extension of a few days to enable him to submit his counter-affidavit mock the constitutional right to speedy disposition of cases because the very reason for granting such extension holds greater significance than the latter right.

Next, although the Comelec's vital function of guarding the people's right to suffrage is recognized by the Court, I cannot carelessly shun the chronology of events which preceded the filing of this case.

From the denial of petitioner's Omnibus Motion *Ad Cautelam* on November 15, 2011, it took the Joint Committee only a day or on November 16, 2011, to issue a Joint Resolution recommending the filing of Information against the respondents.[9] The said issuance was later indorsed to the Comelec, which hastily stamped its imprimatur on it *two days after*, or on the morning of November 18, 2011, despite the voluminous record. In the Comelec proceeding that morning of November 18, 2011, one Commissioner took no part in the vote because he could not decide on the merits of the case as he had yet to read in full the resolution of the Joint Committee.

Wasting no time, on the *same day*, at 11:22 o'clock in the morning, the Comelec's Law Department filed an Information with the RTC Pasay City. The trial court, after *a few hours from receipt* of the Information, proceeded to issue the warrant of arrest.

Due process demands that the Comelec should have given the petitioner the opportunity to submit her counter-affidavit. And if its resolution would be adverse, as was the case, she should have been given time to file a motion for reconsideration

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[8] *Olivas v. Office of the Ombudsman*, G.R. No. 102420, December 20, 1994, 239 SCRA 283.

[9] Gloria Macapagal-Arroyo, Benjamin Abalos, Sr., Lintang H. Bedol, Datu Andal Ampatuan, Sr. and Peter Reyes.

before the Comelec. True, under Rule 13 of the Comelec Rules of Procedure, a motion for reconsideration of an en banc ruling, resolution, order or decision is generally proscribed. In "*election offenses cases*,"[10] however, such motions are allowed.

This display of alacrity, at the very least, caused nagging thoughts in my mind considering that allegations of bias and partiality on the part of the Chairman of the Comelec[11] have plagued this issue way before it had come to a conclusion. Stripped-off of the media-mileage received by this case, rest evades my mind at the thought of how the situation was handled. True, "speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be attributed to injudicious performance of functions."[12] When other factors, however, are taken into account, like claims of failure to review records by a commissioner due to the very short time given due to the conduct of the proceedings in whirlwind fashion, this swiftness garners a negative nuance that unfortunately affects the neutral facade which a judicial and quasi-judicial body must maintain. This earns my reluctance to fully concur with the *ponencia*.

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[10] Rule 13. Prohibited Pleadings. —

Section 1. *What Pleadings are not Allowed*. — The following pleadings are not allowed:

(a) motion to dismiss;

(b) motion for a bill of particulars;

(c) motion for extension of time to file memorandum or brief;

(d) **motion for reconsideration of an** *en banc* **ruling, resolution, order or decision** except in election offense cases;

(e) motion for re-opening or re-hearing of a case;

(f) reply in special actions and in special cases; and

(g) supplemental pleadings in special actions and in special cases. [Emphases supplied]

[11] The Chairman was alleged to be the counsel of another presidential candidate in the 2007 Elections and the one who made statements to the press that the petitioner would be behind bars before Christmas of 2011.

[12] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 606.

Lest it be misunderstood, this separate position is not a brief for the petitioner, whose fate is up for the trial court to decide. Rather it is a statement on my belief that the Bill of Rights enshrined in our Constitution, particularly the right to due process,[13] should be held sacred and inviolable.

SEPARATE CONCURRING AND DISSENTING OPINION

CARPIO, *J*.:

I concur with the *ponencia* in its conclusion that (1) there is no violation of the Due Process and Equal Protection Clause in the creation, composition, and proceedings of the Joint Department of Justice (DOJ) — Commission on Elections (COMELEC) Preliminary Investigation Committee (Committee) and the Fact-Finding Team; (2) petitioner Gloria Macapagal-Arroyo (Macapagal-Arroyo) in G.R. No. 199118 was not denied opportunity to be heard in the course of the Committee's preliminary investigation proceedings; and (3) the preliminary investigation against petitioners, which followed Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure, is valid.

Petitioners' attack against the impartiality of the Committee and the Fact-Finding Team because of their composition and source of funding is negated by (1) the express statutory authority for the DOJ and the COMELEC to conduct *concurrently* preliminary investigations on election-related offenses, (2) the separate funding for the Committee and Fact-Finding Team's personnel, and (3) the failure of petitioners to rebut the presumption of regularity in the performance of official functions. Similarly, the equal protection attack against Joint Order 001-2011 for its alleged underinclusivity fails as jurisprudence is

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[13] Due process of law means giving opportunity to be heard before judgment is rendered. It is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. (*Amarillo v. Sandiganbayan*, G.R. Nos. 145007-08, January 28, 2003, 396 SCRA 434).

clear that underinclusivity of classification, by itself, does not offend the Equal Protection Clause.[1]

Nor is there merit in petitioner Macapagal-Arroyo's claim that the Committee's denial of her request for time to file her counter-affidavit and for copies of documents relating to the complaint of Aquilino Pimentel III (Pimentel) and the Fact-Finding's partial investigation report robbed her of opportunity to be heard. Petitioner Macapagal-Arroyo was furnished with all the documents the Committee had in its possession. Further, the documents relating to Pimentel's complaint,[2] all based on an election protest he filed with the Senate Electoral Tribunal,[3] are not indispensable for petitioner Macapagal-Arroyo to prepare her counter-affidavit to answer the charge that she acted as principal by conspiracy, not by direct participation, to commit electoral sabotage in Maguindanao in the 2007 elections.

I am, however, unable to join the *ponencia* in its conclusion that the rules of procedure adopted by the Committee (Committee Rules) must be published.

Section 7 of the Joint Order provides that the "Committee shall meet and craft its rules of procedure ***as may be complementary to the respective rules of DOJ and COMELEC*** x x x." Section 2 of the Committee Rules provides that the "preliminary investigation shall be conducted in the following manner ***as may be complementary*** to Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure." This means that the Committee Rules will apply ***only if they complement*** Rule 112 or Rule 34. If the Committee Rules do not complement Rule 112 or Rule 34 because the Committee Rules conflict with Rule 112 or Rule 34, the Committee Rules will not apply and what will apply will

[1] See *e.g. Quinto v. Commission on Elections*, G.R. No. 189698, 22 February 2010, 613 SCRA 385 (reversing the earlier ruling of the Court striking down a law for its underinclusivity).

[2] Numerous election forms and 201,855 ballots from 1,078 precincts in Maguindanao.

[3] SET Case No. 001-07 (*Aquilino Pimentel III v. Juan Miguel F. Zubiri*).

either be Rule 112 or Rule 34. Clearly, the Committee Rules do not amend or revoke Rule 112 or Rule 34, but ***only complement*** Rule 112 or Rule 34 if possible. "Complementary" means an addition so as to complete or perfect.[4] The Committee Rules apply only to the extent that they "may be complementary to" Rule 112 or Rule 34. In short, despite the adoption of the Committee Rules, Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure indisputably remain **in full force and effect**.

Assuming, for the sake of argument, that the Committee Rules amend Rule 112 and Rule 34, the lack of publication of the Committee Rules renders them void, as correctly claimed by petitioners. In such a case, Rule 112 and Rule 34 remain in full force and effect unaffected by the void Committee Rules. The preliminary investigation in the present case was conducted in accordance with Rule 112 and Rule 34. Petitioners do not claim that any of their rights under Rule 112 or Rule 34 was violated because of the adoption of the Committee Rules. In short, petitioners cannot impugn the validity of the preliminary investigation because of the adoption of the Committee Rules, ***whether the adoption was void or not***.

As shown in the matrix drawn by public respondents in their Comment,[5] of the ten paragraphs in Section 2 (Procedure) of the Committee Rules, ***only one*** paragraph is not found in Rule 112 of the Rules on Criminal Procedure and this relates to an **internal procedure on the treatment of referrals by other government agencies or the Fact-Finding Team to the Committee**.[6] In *Honasan II v. Panel of Prosecutors of the*

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[4] Merriam-Webster Dictionary, Version 3 (2003).

[5] Consolidated Comment, pp. 78-82.

[6] Section 2(a), second paragraph which provides: "The Committee shall treat a referral made by a government agency authorized to enforce the law or the referral, report or recommendation of the Fact-Finding Team for the prosecution of an offense as a complaint to initiate preliminary investigation. In any of these instances, the referral, report or recommendation must be supported by affidavits, documentary, and such other evidence to establish probable cause."

DOJ,[7] the Court quoted and adopted the following argument of the Ombudsman:

OMB-DOJ Joint Circular No. 95-001 is **merely an internal circular** between the DOJ and the Office of the Ombudsman, outlining authority and responsibilities among prosecutors of the DOJ and of the Office of the Ombudsman in the conduct of preliminary investigation. **OMB-DOJ Joint Circular No. 95-001 DOES NOT regulate the conduct of persons or the public, in general**.

Accordingly, there is no merit to petitioner's submission that OMB-DOJ Joint Circular No. 95-001 has to be published. (Emphasis supplied)

In addition, Section 3 of the Committee Rules (Resolution of the Committee) is a substantial reproduction of the first paragraph of Section 4 of Rule 112, save for language replacing "investigating prosecutor" with "Committee." Section 4 of the Committee Rules (Approval of Resolution), while not appearing in Rule 112, is an **internal automatic review mechanism** (for the COMELEC *en banc* to review the Committee's findings) not affecting petitioners' rights.[8] **Thus, save for ancillary internal rules, the Committee Rules merely reiterate the procedure embodied in Rule 112**.

Nevertheless, the *ponencia* finds publication (and filing of the Committee Rules with the U.P. Law Center[9]) "necessary" because three provisions of the Committee Rules "either restrict the rights or provide remedies to the affected parties," namely:

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[7] G.R. No. 159747, 13 April 2004, 427 SCRA 46.

[8] The Committee Rules omit that portion of Section 3(b), Rule 112 which provides that "[I]f the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense." This, however, does not work prejudice to petitioner Macapagal-Arroyo because she was furnished with all the documents the Committee had in its possession relating to the two cases under investigation.

[9] Under Executive Order No. 292, Book VII, Chapter 2, Sections 3-4.

(1) Section 1 [which] provides that "the Joint Committee will no longer entertain complaints from the public as soon as the Fact-Finding Team submits its final Report, except for such complaints involving offenses mentioned in the Fact-Finding Team's Final Report"; (2) Section 2 [which] states that the "Joint Committee shall not entertain a Motion to Dismiss"; and (3) Section 5 [which] provides that a Motion for Reconsideration may be availed of by the aggrieved parties against the Joint Committee's Resolution.[10]

None of these provisions justify placing the Committee Rules within the ambit of *Tañada v. Tuvera*.[11]

Section 1 of the Committee Rules allows the Committee, after the submission by the Fact-Finding Team of its Final Report, to entertain complaints mentioned in the Final Report and disallows the Committee to entertain complaints unrelated to the offenses mentioned in the Final Report. This is still part of the fact-finding stage and the Committee has the discretion to require the Fact-Finding Team to take into account new complaints relating to offenses mentioned in the Final Report. ***At this stage, there is still no preliminary investigation***. Section 1 refers solely to the fact-finding stage, not the preliminary investigation. Thus, Section 1 cannot in any way amend, revoke or even clarify Rule 112 or Rule 34 which governs the preliminary investigation and not the fact-finding stage. Section 1 is merely an internal rule governing the fact-finding stage. To repeat, Section 1 does not have the force and effect of law that affects and binds the public in relation to the preliminary investigation. In short, there is no need to publish Section 1 because it deals solely with fact-finding, not with the preliminary investigation.

In barring acceptance of new complaints after the submission of the Fact-Finding Team's Final Report to the Committee, save for complaints on offenses covered in the Final Report, Section 1 merely states a commonsensical rule founded on logic. If the Final Report is with the Committee, it makes no sense to re-

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[10] Decision, p. 37.

[11] G.R. No. L-63915, 24 April 1985, 136 SCRA 27 (Decision); 29 December 1986, 146 SCRA 446 (Resolution).

open the investigation for the Fact-Finding Team to investigate offenses ***wholly unrelated to the Final Report***. For such new offenses, the Fact-Finding Team will have to open a new investigation. On the other hand, it makes eminent sense for the Fact-Finding Team to re-open investigation (and thus revise its Final Report) if the new complaints "***involv[e]*** offenses ***mentioned*** in the Fact-Finding Team's Final Report," allowing the Fact-Finding Team to submit as thorough and comprehensive a Report as possible on the offenses subject of the Final Report. Far from "restrict[ing] the rights" of the "affected parties," Section 1 favors the petitioners by letting the Fact-Finding Team parse as much evidence available, some of which may be exculpatory, even after the Final Report has been submitted to the Committee, provided they relate to offenses subject of the Final Report.

On Section 2 and Section 5 of the Committee Rules, these provisions merely reiterate extant rules found in the Rules of Court and relevant administrative rules, duly published and filed with the U.P. Law Center. Thus, Section 2's proscription against the filing of a motion to dismiss is already provided in Section 3(c) of Rule 112 which states that "[t]he respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit."[12] Similarly, the right to seek reconsideration from an adverse Committee Resolution under Section 5, again favoring petitioners, has long been recognized and practiced in the preliminary investigations undertaken by the DOJ.[13] DOJ Order

[12] Section 3(c) provides in full: "Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. **The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit**." (Emphasis supplied)

[13] See, *e.g. Adamson v. Court of Appeals*, G.R. No. 120935, 21 May 2009, 588 SCRA 27 (where the DOJ denied reconsideration of its Resolution for probable cause for violation of several provisions of the National Internal Revenue Code); *People v. Potot*, 432 Phil. 1028 (2002) (where a provincial

No. 223, dated 1 August 1993, as amended by DOJ Department Circular No. 70, dated 1 September 2000, grants to the aggrieved party the right to file "one motion for reconsideration" and reckons the period for the filing of appeal to the DOJ Secretary from the receipt of the order denying reconsideration.[14]

Tañada v. Tuvera requires publication of administrative rules that have the force and effect of law and the Revised Administrative Code requires the filing of such rules with the U.P. Law Center as facets of the constitutional guarantee of procedural due process, to prevent surprise and prejudice to the public who are legally presumed to know the law.[15] As the Committee Rules merely complement and even reiterate Rule 112 of the Rules on Criminal Procedure, I do not see how their non-publication and non-filing caused surprise or prejudice to petitioners. Petitioners' claim of denial of due process would carry persuasive weight if the Committee Rules ***amended***, ***superseded or revoked*** existing applicable procedural rules or contained original rules found nowhere in the corpus of procedural rules of the COMELEC or in the Rules of Court, rendering publication and filing imperative.[16] Significantly, petitioner

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prosecutor denied reconsideration to a finding of probable cause for Homicide.)

[14] Section 3 of DOJ Department Circular No. 70 provides in full: "*Period to Appeal*. — The appeal shall be taken within fifteen (15) days from receipt of the resolution or of the denial of the motion for reconsideration/ reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed." This amends Section 2 of DOJ Order No. 223 which provides: "*When to appeal*. — The appeal must be filed within a period of fifteen (15) days from receipt of the questioned resolution by the party or his counsel. The period shall be interrupted only by the filing of a motion for reconsideration within ten (10) days from receipt of the resolution and shall continue to run from the time the resolution denying the motion shall have been received by the movant or his counsel."

[15] Civil Code, Article 3.

[16] See *e.g*. *Republic v. Express Telecommunications, Inc*., G.R. No. 147096, 15 January 2002, 373 SCRA 316; *GMA Network, Inc. v. MTRCB*, G.R. No. 148579, 5 February 2007, 514 SCRA 191.

Macapagal-Arroyo encountered no trouble in availing of Rule 112 to file a motion with the Committee praying for several reliefs.[17]

Lastly, the complementary nature of the Committee Rules necessarily means that the proceedings of the Committee would have continued and no prejudice would have been caused to petitioners even if the Committee Rules were non-existent. The procedure provided in Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure would have *ipso facto* applied since the Committee Rules merely reiterate Rule 112 and Rule 34. The *ponencia* concedes as much when it refused to invalidate the Committee's proceedings, observing that "**the preliminary investigation was conducted by the Joint Committee pursuant to the procedures laid down in Rule 112 of the Rules on Criminal Procedure and the 1993 COMELEC Rules of Procedure**."[18]

Accordingly, I vote to **DISMISS** the petitions.

DISSENTING AND CONCURRING OPINION

The Boiling Frog

Place a frog in boiling water, and
it will jump out to save itself;
But place it in cold water
and slowly apply heat,
and the frog will boil to death.[1]

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[17] On 8 November 2011, petitioner Macapagal-Arroyo filed an "Omnibus Motion *Ad Cautelam*" requesting copies of documents relating to DOJ-COMELEC Case No. 001-2011 and DOJ-COMELEC Case No. 002-2011. In her motion, petitioner invoked Section 3, Rule 112 of the Rules on Criminal Procedure (Annex "A," Supplemental Petition, G.R. No. 199118).

[18] Decision, pp. 38-39. Emphasis supplied.

[1] See Eugene Volokh, *The Mechanisms of the Slippery Slope*, Harvard Law Review, Vol. 116, February 2003, available online at SSRN: http://ssrn.com/abstract=343640 or http://dx.doj.org/10.2139/ssrn.343640 (last visited September 17, 2012). Volokh notes: "Libertarians often tell of the parable of the frog. If a frog is dropped into hot water, it supposedly jumps

BRION, *J.*:

I open this Dissenting and Concurring Opinion with the tale of the metaphorical "boiling frog" to warn the Court and the readers about the deeper implications of this case — ***a case that involves a major breach of the Philippine Constitution where the frog stands for the independence of the Commission on Elections (COMELEC).***

As one American article on the metaphor puts it,[2] "[I]f people become acclimated to some policy or state of affairs over a sufficient period of time, they come to accept the policy or state of affairs as normal. . . The Boiling Frog Syndrome explains how the American public has come to accept breaches of Constitutional government that would have provoked armed resistance a hundred years ago. The public has grown accustomed to these breaches, and to the federal government conducting myriad activities that are nowhere authorized by the Constitution and accepts them as normal."[3]

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out. If a frog is put into cold water that is then heated, the flog doesn't notice the gradual temperature change, and dies. Likewise, the theory goes, with liberty: People resists attempts to take rights away outright, but not if the rights are eroded slowly."

[2] See Steven Yates, *The Boiling Frog Syndrome*, August 11, 2001, available online at http://www.lewrockwell.com/yates/yates38.html (last visited September 17, 2012).

[3] The cited article further explains: But there are other ways of changing one kind of socioeconomic system to a fundamentally different kind of system that minimize or localize abrupt, destabilizing change. Gramscian "revolutionaries" have learned this lesson well — although they do not speak the vocabulary of systems theory, of course. They have learned to get what they want by ***pursuing their goals gradually, one step at a time, through infiltrating and modifying existing institutions and other systems rather than overthrowing them and trying to create new ones from scratch***. Clearly, a central-government initiative calling for abolishing the U.S. Constitution would have provoked an armed upheaval at any time in U.S. history, and it is at least possible that anything this abrupt still would. U.S. citizens, that is, would jump out immediately if thrown into that pot of boiling water. But if the haters of Constitutional government proceed in small increments, they eventually gut the Constitution almost unnoticed — particularly if they carry out their initiatives in multiple components

In the Philippine setting, the various Philippine Constitutions have expressly guaranteed independence to the Judiciary, to the Office of the Ombudsman, and to the Constitutional Commissions, one of which is the COMELEC. The independence is mainly against the intrusion of the Executive,[4] the government department that implements the laws passed by the Legislature and that administered and controlled the conduct of elections in the past.[5] The Judiciary has so far fully and zealously guarded the role of these institutions and their independence in the constitutional scheme, but the nation cannot rest on this record and must ever be vigilant.

While gross and patent violations of the guarantee of independence will not sit well with, and will not be accepted by, the people, particularly in this age of information and awareness, ways other than the gross and the patent, exist to subvert the constitutional guarantee of independence. The way is through ***small**, **gradual** and **incremental changes — boiling the frog*** — that people will not notice, but which, over time, will slowly and surely result in the subjugation of the independent institutions that the framers of the Constitution established to ensure balance and stability in a democratic state where the

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of U.S. society (so-called public schools, the banking system, the major news media, the legal system, *etc*.). Moreover, Gramscians have found that the road to centralization is much easier if "paved with good intentions," expressed in pseudo-moral language and portrayed as a source of stability to come. Myriad small disruptions in the lives of individuals and local communities can be rationalized as the price to be paid for the utopia just over the horizon. "You can't make an omelet," so the saying goes, "without breaking a few eggs." ***So systems accommodate and incorporate these small steps, absorbing the disruptions as best they can and not allowing them to threaten the system's overall stability. But when a system absorbs these small steps instead of repelling them, it incorporates them into its basic functioning and its transformation to a different kind of system with entirely different arrangements between its components has begun***. Or in terms of the Boiling Frog Syndrome, the frog is in the pot, and the temperature of the water has begun, very slowly, to rise. *Ibid.* (emphasis supplied)

[4] As the discussion of the leading cases, discussed below, will show.

[5] Under the Department of the Interior, the executive department that administered elections before the COMELEC, which was first established in 1940, *infra* note 6.

separation of powers among the three branches of government, and checks and balances, are the dominant rules.

This is what the present case is all about — a subtle change that people will hardly notice except upon close and critical study, and until they look around them for other subtle changes in other areas of governance, all of them put into place with the best professed intentions but tending to subvert the structures that the framers of the Constitution very carefully and thoughtfully established. Unless utmost vigilance is observed and subtle subverting changes are immediately resisted, the people may never fully know how their cherished democratic institutions will come to naught; through slow and gradual weakening, these democratic institutions — like the frog — will end up dead. Sadly, this process of gradualism is what the Court allows in the present case.

It is in this context that I filed this Dissent from the majority's conclusion that COMELEC Resolution No. 9266 and Joint Order No. 001-2011 are valid and constitutional, although I ultimately concur with the majority's resulting conclusion, based on non-constitutional grounds, that the petitions should be dismissed. I maintain that these assailed issuances are fatally defective and should be struck down for violating the constitutionally guaranteed independence of *COMELEC*.

In its rulings, the majority held that the petitioners failed to establish any constitutional or legal impediment to the creation of the Joint Department of Justice (DOJ)-COMELEC Preliminary Investigation Committee (*Joint Committee*) and the Fact-Finding Team. It likewise held that the petitioners' issues relating to equal protection, due process, separation of powers, requirement of publication, and bias on the part of COMELEC Chairman Sixto Brillantes are unmeritorious.[6] The fountainhead of all these

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[6] The *ponencia* holds that:

a. Joint Order No. 001-2011 does not violate the equal protection clause of the Constitution because not all respondents were linked to former President Gloria Arroyo Macapagal (*GMA*);

issues, however, is the validity of the creation of, and the exercise of their defined functions by, the DOJ-COMELEC committees; the issues the majority ruled upon all spring from the validity of this creation. On this point, I completely disagree with the majority and its ruling that the COMELEC did not abdicate its functions and independence in its joint efforts with the DOJ.

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b. The due process clause is not infringed on the basis of prejudgment of the case since the petitioners failed to prove that the Joint Panel showed bias and partiality against them; neither was it shown that DOJ Secretary Leila De Lima actually intervened in the preliminary investigation and that the perceived prejudgment by COMELEC Chairman Sixto Brillantes, Jr. cannot be attributed to the COMELEC which acts as a collegial body;

c. Joint Order No. 001-2011 does not violate the principle of separation of powers since it did not create new offices — the Joint Committee and the Fact-Finding Team perform functions that they already perform under the law;

d. The COMELEC cannot be considered to have abdicated its independence from the executive branch of government by acting jointly with the DOJ; COMELEC validly issued Resolution No. 9266 as a means to fulfill its duty of investigating and prosecuting election offenses; the role of the DOJ in the conduct of preliminary investigation of election offenses has long been recognized by the COMELEC and is pursuant to Republic Act No. (RA) 9369 which vested the COMELEC and the DOJ the concurrent jurisdiction to conduct preliminary investigation of all election offenses;

e. The Joint Committee's Rules of Procedure are infirm for failure to comply with the publication requirement; thus, the Rules of Criminal Procedure and the COMELEC Rules of Procedure govern;

f. The petitioners were given the opportunity to be heard. They were furnished copies of the complaint, affidavits, and other supporting documents submitted to the Joint Committee, and were required to submit their counter-affidavit and countervailing evidence; thus, there is no reason to nullify the proceedings undertaken by the Joint Committee and the COMELEC;

g. As to petitioners Jose Miguel Arroyo and Benjamin Abalos, Sr., the pendency of the cases before the Court does not automatically suspend the proceedings before the Joint Committee, nor excuse them from their failure to file the required counter-affidavits; and

I submit that in the Resolutions creating the committees and providing for the exercise of their power to conduct fact-finding and preliminary investigation in the present case, the COMELEC *unlawfully ceded its decisional independence by sharing it with the DOJ — an agency under the supervision, control and influence of the President of the Philippines.*

The discussions below fully explain the reasons for my conclusion.

I. The Independence of the COMELEC

a. *Historical Roots*

The establishment of the COMELEC traces its roots to an amendment of the 1935 Constitution in 1940, prompted by dissatisfaction with the manner elections were conducted then in the country.[7] Prior to this development, the supervision of elections was previously undertaken by the Department of Interior, pursuant to Section 2, Commonwealth Act No. 357 of the First National Assembly. The proposal to amend the Constitution was subsequently embodied in Resolution No. 73, Article III of the Second National Assembly, adopted on April 11, 1940, and was later approved on December 2, 1940 as Article X of the 1935 Constitution:[8]

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h. With respect to the issue of the credibility of COMELEC Chairman Brillantes, who had a previous professional relationship with complainant Aquilino Pimentel III and Fernando Poe (GMA's rival, for presidency in 2004) and of other Commissioners, their positions should be respected since they had the objective of ensuring that the credibility of the COMELEC would not be seriously affected, *ponencia*, pp. 52-53.

[7] Bartolome C. Fernandez, Jr., *On the Power of the Commission on Elections to Annul Illegal Registration of Voters*, Philippine Law Journal 428, http://law.upd.edu.ph/plj/images/files/PLJ%20volume%2026/PLJ%20volume%2026%20number%204%_20-06%20_Bartolome%20C.%20Fernandez%20%20On%20the%20Power%20of%20the%20Commission%20on%2_Elections%20to%20Annul%20_Illegal%20Registration%20of%20Voters.pdf, last visited January 15, 2012.

[8] *Ibid.*

The administrative control of elections now exercised by the Secretary of Interior is what is sought to be transferred to the Commission on Elections by the proposed constitutional amendment now under discussion. The courts and the existing Electoral Commission (electoral tribunal) retain their original powers over contested elections.[9]

This development was described as "a landmark event in Philippine political history"[10] that put in place a "novel electoral device designed to have the entire charge of the electoral process of the nation."[11] A legal commentator noted:

The proposition was to entrust the conduct of our elections to an independent entity whose sole work is to administer and enforce the laws on elections, protect the purity of the ballot and safeguard the free exercise of the right of suffrage. The Commission on Elections was really existing before 1940 as a creation of a statute passed by the National Assembly; **but it necessitated a constitutional amendment to place it outside the influence of political parties and the control of the legislative, executive and judicial departments of the government. It was intended to be an independent administrative tribunal, co-equal with other departments of the government in respect to the powers vested in it.**[12] [emphasis and underscoring supplied]

Nine years later, the COMELEC's independence was tested in *Nacionalista Party v. Bautista*, [13] where the Court dealt with the question of whether the designation, by then President Elpidio Quirino, of Solicitor General Felix Angelo Bautista as Acting Member of the COMELEC — pending the appointment of a permanent member to fill the vacancy caused by the retirement of Commissioner Francisco Enage — was unlawful and unconstitutional. The Court ruled that the designation was

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 429.

[12] *Id.* at 428-429.

[13] 85 Phil. 101 (1949).

repugnant to the Constitution which guarantees the independence of the COMELEC, and said:

Under the Constitution, the Commission on Elections is an independent body or institution (Article X of the Constitution), just as the General Auditing Office is an independent office (Article XI of the Constitution). Whatever may be the nature of the functions of the Commission on Elections, **the fact is that the framers of the Constitution wanted it to be independent from the other departments of the Government. x x x**

By the very nature of their functions, the members of the Commission on Elections must be independent. They must be made to feel that they are secured in the tenure of their office and entitled to fixed emoluments during their incumbency (economic security), so as to make them impartial in the performance of their functions their powers and duties. They are not allowed to do certain things, such as to engage in the practice of a profession; to intervene, directly or indirectly, in the management or control of any private enterprise; or to be financially interested in any contract with the Government or any subdivision or instrumentality thereof (Sec. 3, Article X, of the Constitution). These safeguards are all conducive or tend to create or bring about a condition or state of mind that will lead the members of the Commission to perform with impartiality their great and important task and functions. **That independence and impartiality may be shaken and destroyed by a designation of a person or officer to act temporarily in the Commission on Elections.** And, although Commonwealth Act No. 588 provides that such temporary designation "shall in no case continue beyond the date of the adjournment of the regular session of the National Assembly (Congress) following such designation," still such limit to the designation does not remove the cause for the impairment of the independence of one designated in a temporary capacity to the Commission on Elections. **It would be more in keeping with the intent, purpose and aim of the framers of the Constitution to appoint a permanent Commissioner than to designate one to act temporarily. Moreover, the permanent office of the respondent may not, from the strict legal point of view, be incompatible with the temporary one to which he has been designated, tested by the nature and character of the functions he has to perform in both offices, but in a broad sense there is an incompatibility, because his duties and functions as Solicitor General require**

that all his time be devoted to their efficient performance. Nothing short of that is required and expected of him.[14] [emphasis ours]

Thus, as early as 1949, this Court has started to guard with zeal the COMELEC's independence, never losing sight of the crucial reality that its ***"independence [is] the principal justification for its creation."***[15] The people's protectionist policy towards the COMELEC has likewise never since wavered and, in fact, has ***prevailed even after two amendments of our Constitution in 1973 and 1987*** — an enduring policy highlighted by then Associate Justice Reynato Puno in his concurring opinion in *Atty. Macalintal v. COMELEC*:[16]

The Commission on Elections (COMELEC) is a constitutional body **exclusively** charged with the enforcement and administration of "all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall," and is invested with the power to decide all questions affecting elections save those involving the right to vote.

Given its important role in preserving the sanctity of the right of suffrage, the COMELEC was **purposely constituted** as a body separate from the executive, legislative, and judicial branches of government. **Originally**, the power to enforce our election laws was vested with the President and exercised through the Department of the Interior. According to Dean Sinco, however, the **view ultimately emerged** that an **independent body** could better protect the right of suffrage of our people. Hence, the enforcement of our election laws, while an executive power, was transferred to the COMELEC.

The **shift to a modified parliamentary system** with the adoption of the 1973 Constitution **did not alter the character of COMELEC as an independent body.** Indeed, a "definite tendency to **enhance and invigorate** the role of the Commission on Elections as the independent constitutional body charged with the safeguarding of

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[14] *Id.* at 106-109.

[15] Emmanuel Flores, The Commission on Elections and the Right to seek a public office, citing Jose P. Laurel, *Observations of the Philippine Constitutional Amendments* (June 13, 1940), published in *The Commercial and Industrial Manual of the Philippines*, 1940-1941, pp. 93-96.

[16] 453 Phil. 586.

free, peaceful and honest elections" has been observed. The 1973 Constitution **broadened** the power of the COMELEC by making it the **sole judge** of all election contests relating to the election, returns and qualifications of members of the national legislature and elective provincial and city officials. Thus, the COMELEC was given judicial power aside from its traditional administrative and executive functions.

The trend towards strengthening the COMELEC continued with the 1987 Constitution. Today, the COMELEC enforces and administers all laws and **regulations** relative to the conduct of elections, plebiscites, initiatives, referenda and recalls. Election contests involving regional, provincial and city elective officials are under its exclusive original jurisdiction while all contests involving elective municipal and *barangay* officials are under its appellate jurisdiction.[17] (citations omitted)

At present, the 1987 Constitution (as has been the case since the amendment of the 1935 Constitution) now provides that the COMELEC, like all other Constitutional Commissions, shall be independent. It provides that:

Section 1. The Constitutional Commissions, which shall be **independent**, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit. [emphasis ours]

The unbending doctrine laid down by the Court in *Nationalista Party* was reiterated in *Brillantes, Jr. v. Yorac*,[18] a 1990 case where *no less than the present respondent COMELEC Chairman Brillantes* challenged then President Corazon C. Aquino's designation of Associate Commissioner Haydee Yorac as Acting Chairman of the COMELEC, in place of Chairman Hilario Davide.

In ruling that the Constitutional Commissions, labeled as "independent" under the Constitution, are not under the control of the President even if they discharge functions that are executive in nature, the Court again vigorously denied "Presidential interference" in these constitutional bodies and held:

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[17] *Id.* at 765-767.

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

Article IX-A, Section 1, of the Constitution expressly describes all the Constitutional Commissions as "independent." Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions. Each of these Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on *certiorari* by this Court as provided by the Constitution in Article IX-A, Section 7.

The choice of a temporary chairman in the absence of the regular chairman comes under that discretion. That discretion cannot be exercised for it, even with its consent, by the President of the Philippines.

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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.

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The Court has not the slightest doubt that the President of the Philippines was moved only by the best of motives when she issued the challenged designation. But while conceding her goodwill, we cannot sustain her act because it conflicts with the Constitution. Hence, even as this Court revoked the designation in the Bautista case, so too must it annul the designation in the case at bar.[19]

In 2003, *Atty. Macalintal v. Commission on Elections*[20] provided yet another opportunity for the Court to demonstrate how it ardently guards the independence of the COMELEC against unwarranted intrusions.

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[19] *Id.* at 360-361.

[20] *Supra* note 16.

This time, the stakes were higher as Mme. Justice Austria-Martinez, writing for the majority, remarked: "Under . . . [the] situation, the Court is left with no option but to withdraw x x x its usual reticence in declaring a provision of law unconstitutional."[21] The Court ruled that Congress, a co-equal branch of government, had no power to review the rules promulgated by the COMELEC for the implementation of Republic Act (RA) No. 9189 or *The Overseas Absentee Voting Act of 2003*, since it "trample[s] upon the constitutional mandate of independence of the COMELEC."[22] Thus, the Court invalidated Section 25 (2) of RA No. 9189 and held:

The ambit of legislative power under Article VI of the Constitution is circumscribed by other constitutional provisions. One such provision is Section 1 of Article IX-A of the 1987 Constitution ordaining that constitutional commissions such as the COMELEC shall be "independent."

Interpreting Section 1, Article X of the 1935 Constitution providing that there shall be an *independent* COMELEC, the Court has held that "[w]hatever may be the nature of the functions of the Commission on Elections, the fact is that the framers of the Constitution wanted it to be independent from the other departments of the Government." In an earlier case, the Court elucidated:

> The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this court also. *It should be allowed considerable latitude in devising means and methods that will [e]nsure the accomplishment of the great objective for which it was created — free, orderly and honest elections*. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of

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[21] *Id.* at 660.

[22] *Ibid.*

> pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions. (italics supplied)

The Court has no general powers of supervision over COMELEC which is an independent body "except those specifically granted by the Constitution," that is, to review its decisions, orders and rulings. In the same vein, it is not correct to hold that because of its recognized extensive legislative power to enact election laws, Congress may intrude into the independence of the COMELEC by exercising supervisory powers over its rule-making authority.

By virtue of Section 19 of R.A. No. 9189, Congress has empowered the COMELEC to "issue the necessary rules and regulations to effectively implement the provisions of this Act within sixty days from the effectivity of this Act." This provision of law follows the usual procedure in drafting rules and regulations to implement a law — the legislature grants an administrative agency the authority to craft the rules and regulations implementing the law it has enacted, in recognition of the administrative expertise of that agency in its particular field of operation. Once a law is enacted and approved, the legislative function is deemed accomplished and complete. **The legislative function may spring back to Congress relative to the same law only if that body deems it proper to review, amend and revise the law, but certainly not to approve, review, revise and amend the IRR of the COMELEC.**

By vesting itself with the powers to approve, review, amend, and revise the IRR for *The Overseas Absentee Voting Act of 2003*, Congress went beyond the scope of its constitutional authority. Congress trampled upon the constitutional mandate of independence of the COMELEC. Under such a situation, the Court is left with no option but to withdraw from its usual reticence in declaring a provision of law unconstitutional.

The second sentence of the first paragraph of Section 19 stating that "[t]he Implementing Rules and Regulations shall be submitted to the Joint Congressional Oversight Committee created by virtue of this Act for prior approval," and the second sentence of the second paragraph of Section 25 stating that "[i]t shall review, revise, amend and approve the Implementing Rules and Regulations promulgated

by the Commission," whereby Congress, in both provisions, arrogates unto itself a function not specifically vested by the Constitution, should be stricken out of the subject statute for constitutional infirmity. Both provisions brazenly violate the mandate on the independence of the COMELEC.

Similarly, the phrase, "subject to the approval of the Congressional Oversight Committee" in the first sentence of Section 17.1 which empowers the Commission to authorize voting by mail in not more than three countries for the May, 2004 elections; and the phrase, "only upon review and approval of the Joint Congressional Oversight Committee" found in the second paragraph of the same section are unconstitutional as they require review and approval of voting by mail in any country after the 2004 elections. Congress may not confer upon itself the authority to approve or disapprove the countries wherein voting by mail shall be allowed, as determined by the COMELEC pursuant to the conditions provided for in Section 17.1 of R.A. No. 9189. Otherwise, Congress would overstep the bounds of its constitutional mandate and intrude into the independence of the COMELEC.[23] [citations omitted, emphases ours]

Thus, from the perspective of history, any ruling from this Court — as the *ponencia* now makes — allowing the COMELEC to share its decisional independence with the Executive would be ***a first as well as a major retrogressive jurisprudential development.*** ***It is a turning back of the jurisprudential clock that started ticking in favor of the COMELEC's independence in 1940 or 72 years ago.***

b. The COMELEC's Power to Investigate and Prosecute Election Offenses

At the core of the present controversy is the COMELEC's exercise of its power to investigate and prosecute election offenses under Section 2, Article IX (C) of the 1987 Constitution. It states that the COMELEC shall exercise the following power and function:

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; **investigate**

[23] *Id.* at 658-661.

and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offences and malpractices. [emphasis supplied]

In *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. Commission on Elections*,[24] the Court traced the legislative history of the COMELEC's power to investigate and prosecute election offenses, and concluded that the grant of such power was not exclusive:

Section 2(6), Article IX-C of the Constitution vests in the COMELEC the power to "investigate and, **where appropriate**, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices." **This was an important innovation introduced by the Constitution because this provision was not in the 1935 or 1973 Constitutions. The phrase "[w]here appropriate" leaves to the legislature the power to determine the kind of election offenses that the COMELEC shall prosecute exclusively or concurrently with other prosecuting arms of the government.**

The grant of the "exclusive power" to the COMELEC can be found in Section 265 of BP 881 [Omnibus Election Code], which provides:

> Sec. 265. *Prosecution*. — The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided*, *however*, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (Emphasis supplied)

This was also an innovation introduced by BP 881. **The history of election laws shows that prior to BP 881, no such "exclusive power" was ever bestowed on the COMELEC.**

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[24] G.R. No. 177508, August 7, 2009, 595 SCRA 477.

We also note that while Section 265 of BP 881 vests in the COMELEC the "exclusive power" to conduct preliminary investigations and prosecute election offenses, **it likewise authorizes the COMELEC to avail itself of the assistance of other prosecuting arms of the government.** In the 1993 COMELEC Rules of Procedure, the authority of the COMELEC was subsequently qualified and explained. The 1993 COMELEC Rules of Procedure provides:

Rule 34 — Prosecution of Election Offenses

Sec. 1. ***Authority of the Commission to Prosecute Election Offenses*****. — The Commission shall have the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.**[25] **(citations omitted, emphases ours)**

As outlined in that case, Section 265 of Batas Pambansa Blg. 881 (*BP 881*) of the Omnibus Election Code granted the COMELEC the exclusive power to conduct preliminary investigations and prosecute election offenses. Looking then at the practical limitations arising from such broad grant of power, Congress also empowered the COMELEC to avail of the assistance of the prosecuting arms of the government.

Under the 1993 COMELEC Rules of Procedure, the Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants were given continuing authority, ***as deputies of the COMELEC*****,** to conduct preliminary investigation of complaints involving election offenses under election laws that may be filed directly with them, or that may be indorsed to them by the COMELEC or its duly authorized representatives and to prosecute the same.[26]

Under the same Rules, the Chief State Prosecutor, Provincial Fiscal or City Fiscal were authorized to receive complaints for election offenses and after which the investigation may be delegated to any of their assistants.[27] After the investigation,

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[25] *Id.* at 493-496.

[26] Section 2, Rule 34 of the COMELEC Rules of Procedure.

[27] Section 4 (b), Rule 34 of the COMELEC Rules of Procedure.

the investigating officer shall issue either a recommendation to dismiss the complaint or a resolution to file the case in the proper courts; this recommendation, however, was subject to the approval by the Chief State Prosecutor, Provincial or City Fiscal, and who shall also likewise approve the information prepared and immediately cause its filing with the proper court.[28] The Rule also provide that resolution of the Chief State Prosecutor or the Provincial or City Fiscal, could be appealed with the COMELEC within ten (10) days from receipt of the resolution, provided that the same *does not divest the COMELEC of its power to motu proprio review, revise, modify or reverse* the resolution of the Chief State Prosecutor and/or provincial/city prosecutors.[29]

In the recent case of *Diño v. Olivarez,*[30] the Court had the occasion to expound on the nature and consequences of the delegated authority of the Chief State Prosecutor, Provincial or City Fiscal and their assistants to conduct preliminary investigations and to prosecute election offenses, as follows:

> From the foregoing, it is clear that the Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants have been given continuing authority, as deputies of the Commission, to conduct a preliminary investigation of complaints involving election offenses under the election laws and to prosecute the same. Such authority may be revoked or withdrawn anytime by the COMELEC, either expressly or impliedly, when in its judgment such revocation or withdrawal is necessary to protect the integrity of the process to promote the common good, or where it believes that successful prosecution of the case can be done by the COMELEC. **Moreover, being mere deputies or agents of the COMELEC, provincial or city prosecutors deputized by the Comelec are expected to act in accord with and not contrary to or in derogation of its resolutions, directives or orders of the Comelec in relation to election cases that such prosecutors are deputized to investigate and prosecute. Being mere deputies, provincial and city**

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[28] Section 9 (c), Rule 34 of the COMELEC Rules of Procedure.

[29] Section 10, Rule 34 of the COMELEC Rules of Procedure.

[30] G.R. No. 170447, December 4, 2009, 607 SCRA 251.

prosecutors, acting on behalf of the COMELEC, must proceed within the lawful scope of their delegated authority. [31] [citations omitted, emphasis ours]

In 2007, Congress enacted RA No. 9369, amending BP 881, among others, on the authority to preliminarily investigate and prosecute. Section 43 of RA No. 9369, amending Section 265 of BP 881, provides:

SEC. 43. Section 265 of Batas Pambansa Blg. 881 is hereby amended to read as follow[s]:

"SEC. 265. Prosecution. — The Commission shall, through its duly authorized legal officers, have the power, **concurrent** with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under this Code, and prosecute the same." [emphases and underscoring ours]

In 2009, the petitioner and the COMELEC in *BANAT v. Commission on Election*[32] questioned the constitutionality of Section 43 of RA No. 9369. They argued that the Constitution vests in the COMELEC the exclusive power to investigate and prosecute cases of violations of election laws. They also alleged that Section 43 of RA No. 9369 is unconstitutional because it gives the other prosecuting arms of the government concurrent power with the COMELEC to investigate and prosecute election offenses.

In ruling that Section 2, Article IX (C) of the Constitution did **not** give the COMELEC the exclusive power to investigate and prosecute cases of violations of election laws and, consequently, that Section 43 of RA No. 9369 is constitutional, the Court held:

We do not agree with petitioner and the COMELEC that the Constitution gave the COMELEC the "exclusive power" to investigate and prosecute cases of violations of election laws.

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[31] *Id.* at 262-263.

[32] *Supra* note 24.

It is clear that the grant of the "exclusive power" to investigate and prosecute election offenses to the COMELEC was not by virtue of the Constitution but by BP 881, a legislative enactment. If the intention of the framers of the Constitution were to give the COMELEC the "exclusive power" to investigate and prosecute election offenses, the framers would have expressly so stated in the Constitution. They did not.

In *People v. Basilla*, we acknowledged that without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the Department of Justice, the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible. In *COMELEC v. Español*, we also stated that enfeebled by lack of funds and the magnitude of its workload, the COMELEC did not have a sufficient number of legal officers to conduct such investigation and to prosecute such cases. The prompt investigation, prosecution, and disposition of election offenses constitute an indispensable part of the task of securing free, orderly, honest, peaceful, and credible elections. Thus, given the plenary power of the legislature to amend or repeal laws, if Congress passes a law amending Section 265 of BP 881, such law does not violate the Constitution.[33] [citations omitted; italics supplied]

Thus, as the law now stands, the COMELEC has concurrent jurisdiction with other prosecuting arms of the government, such as the DOJ, to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute these offenses.

c. The COMELEC and the Supreme Court

Separately from the COMELEC's power to investigate and prosecute election offenses (but still pursuant to its terms) is the recognition by the Court that the COMELEC exercises considerable latitude and the widest discretion in adopting its chosen means and methods of discharging its tasks, particularly in its broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite,

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[33] *Id.* at 493-497.

initiative, referendum and recall."[34] In the recent case of *Bedol v. Commission on Elections*,[35] the Court characterized the COMELEC's power to conduct investigations and prosecute elections offenses as "adjunct to its constitutional duty to enforce and administer all election laws."[36] For this reason, the Court concluded that the aforementioned power "should be construed broadly,"[37] *i.e.*, "to give the COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections."[38]

In this regard, I agree with the majority that the COMELEC must be given considerable latitude in the fulfillment of its duty of ensuring the prompt investigation and prosecution of election offenses. I duly acknowledge that the COMELEC exercises considerable latitude and the widest discretion in adopting its chosen means and methods of discharging its tasks, particularly its broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall."[39] An expansive view of the powers of the COMELEC has already been emphasized by the Court as early as 1941 (under the 1935 Constitution) in *Sumulong, President of the Pagkakaisa ng Bayan v. Commission on Elections*,[40] where the Court held:

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less

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[34] See Dissenting Opinion of Justice Arturo D. Brion in *Roque, Jr. v. Commission on Elections*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 299, citing CONSTITUTION, Article IX (C), Section 2 (1).

[35] G.R. No. 179830, December 3, 2009, 606 SCRA 554.

[36] *Id.* at 569.

[37] *Ibid.*

[38] *Ibid.*

[39] See Dissenting Opinion, *supra* note 32 at 299.

[40] 73 Phil. 288 (1941).

responsible organization. The Commission may err, so may this court also. **It should be allowed considerable latitude in devising means and methods that will [e]nsure the accomplishment of the great objective for which it was created — free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere.** Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.[41] [emphasis ours]

To place this view in constitutional perspective, the independence granted to the COMELEC is as broad as that granted to the Office of the Ombudsman, another constitutional entity engaged in the investigation and prosecution of offenses, this time with respect to those committed by public officers and employees in the performance of their duties. We have uniformly held that this Court shall fully respect the Office of the Ombudsman's independence in the performance of its functions, save only where it commits grave abuse of discretion;[42] in this eventuality it becomes the duty of this Court to intervene pursuant to Section 1, Article VIII of the Constitution.

As it has been with the Ombudsman, so should independence in investigative and prosecutory functions be with the COMELEC and its authority to investigate and prosecute election offenses. ***In the same manner, the broad discretion granted has its limits.*** Lest it be forgotten, in addition to its power to guard against grave abuse of discretion mentioned above, this Court, as the last resort tasked to guard the Constitution and our laws through interpretation and adjudication of justiciable controversies,

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[41] *Id.* at 294-295.

[42] *Quiambao v. Desierto*, 482 Phil. 154 (2004); *Espinosa v. Office of the Ombudsman*, 397 Phil. 829 (2000) and *Office of the Ombudsman v. Civil Service Commission*, G.R. No. 162215, July 30, 2007, 528 SCRA 537.

possesses oversight powers to ensure conformity with the Constitution — the ultimate instrument that safeguards and regulates our electoral processes and policies and which underlies all these laws and the COMELEC's regulations.[43]

In other words, while the Court acknowledges that the COMELEC "reigns supreme" in determining the means and methods by which it acts in the investigation and prosecution of election offenses, it cannot abdicate its duty to intervene when the COMELEC acts outside the contemplation of the Constitution and of the law,[44] such as when it sheds off its independence — contrary to the Constitution — by sharing its decision-making with the DOJ.

In the context of the present case, this constitutional safeguard gives rise to the question: *Did the COMELEC gravely abuse its discretion in issuing COMELEC Resolution No. 9266 and Joint Order No. 001-2011?* My answer is a resounding yes.

II. COMELEC Resolution No. 9266 and Joint Order No. 001-2011 Examined

COMELEC Resolution No. 9266 is merely a preparatory resolution reflecting the COMELEC *en banc*'s approval of the creation of a committee with the DOJ to conduct preliminary investigation on the alleged election offenses and anomalies committed during the 2004 and 2007 elections.[45]

Joint Order No. 001-2011, on the other hand, creates two committees or teams to investigate and conduct preliminary investigation on the 2004 and 2007 National Elections Electoral Fraud and Manipulation case — the **Fact-Finding Team** and the **Joint DOJ-COMELEC Preliminary Investigation Committee *(Joint Committee).***[46]

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[43] See Dissenting Opinion, *supra* note 32.

[44] *Id.* at 300-301.

[45] *Rollo* (G.R. No. 199118), p. 47.

[46] Annex A, Petition of Petitioner Arroyo in G.R. No. 199082.

Under Section 5 of the Joint Order, the Fact-Finding Team shall **be chaired by an Assistant Secretary of the DOJ,** and shall have six members: two (2) from the National Bureau of Investigation (NBI); two (2) from the DOJ and two (2) from the COMELEC. *Thus, effectively, the COMELEC has ceded primacy in fact-finding functions to the Executive, given the composition of this team as the NBI is an executive investigation agency under the DOJ.*

Under Section 4 of the Joint Order, the Fact-Finding Team is tasked to:

1) Gather and document reports, intelligence information and investigative leads from official as well as unofficial sources and informants;

2) Conduct interviews, record testimonies, take affidavits of witnesses and collate material and relevant documentary evidence, such as, but not limited to, election documents used in the 2004 and 2007 national elections. For security reasons, or to protect the identities of informants, the Fact-Finding Team may conduct interviews, or document testimonies discreetly;

3) Assess and evaluate affidavits already executed and other documentary evidence submitted or may be submitted to the Fact-Finding Team and/or the Committee;

4) Identify the offenders, their offenses and the manner of their commission, individually or in conspiracy, and the provisions of election and general criminal laws violated, establish evidence for individual criminal and administrative liability and prosecution, and prepare the necessary documentation such as complaints and charge sheets for the initiation of preliminary investigation proceedings against said individuals to be conducted by the Committee;

5) **Regularly submit to the Committee, the Secretary of Justice and the Chairman of the COMELEC periodic reports and recommendations, supported by real, testimonial and documentary evidence, which may then serve as the Committee's basis for immediately commencing appropriate preliminary investigation**

proceedings, as provided for under Section 6 of this Joint Order; and [emphases supplied]

6) Upon the termination of its investigation, make a full and final report to the Committee, the Secretary of Justice, and the Chairman of the COMELEC.[47]

The **Fact-Finding Team** shall be under the **supervision of the Secretary of the DOJ and the Chairman of the COMELEC** or, in the latter's absence, a Senior Commissioner of the COMELEC. Under the Joint Order, the Fact-Finding Team shall have a Secretariat to provide it with legal, technical and administrative assistance. **The Fact-Finding Team shall also have an office to be provided by either the DOJ or the COMELEC**.[48]

Section 1 of the Joint Order provides that the Joint Committee is composed of three (3) officials coming from the DOJ and two (2) officials from the COMELEC. Prosecutor General Claro A. Arellano from the DOJ was designated as Chairperson, to be assisted by the following members:[49]

1) Provincial Prosecutor George C. Dee, DOJ
2) City Prosecutor Jacinto G. Ang, DOJ
3) Director IV Ferdinand T. Rafanan, COMELEC
4) Atty. Michael D. Villaret, COMELEC

Section 2 of the Joint Order sets the mandate of the Joint Committee which is to "conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team." Resolutions finding probable cause for election offenses, defined and penalized under BP 881 and other election laws, shall be approved by the COMELEC in accordance with the COMELEC Rules of Procedure.[50]

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[47] *Ibid.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

The procedure by which the resolutions finding probable cause is to be reviewed and/or approved by the COMELEC is clearly set forth in Sections 3, 4 and 5 of the Rules of Procedure on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 Elections. Sections 3, 4 and 5 of the Rules state:

Section 3. *Resolution of the Committee*. — If the Committee finds cause to hold respondent for trial, it shall prepare the resolution and information. The Committee shall certify under oath in the information that it, or as shown by the record, has personally examined the complainant and the witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him; and that he was given the opportunity to submit controverting evidence. Otherwise, the Committee shall recommend the dismissal of the complaint.

Section 4. *Approval of the Resolution*. — **Resolutions of the Committee relating to election offenses, defined and penalized under the Omnibus Election Code, and other election laws shall be approved by the COMELEC** in accordance with the Comelec Rules of Procedure.

For other offenses, or those not covered by the Omnibus Election Code and other election laws, resolutions of the Committee shall be approved by the Prosecutor General except in cases cognizable by the Sandiganbayan, where the same shall be approved by the Ombudsman.

Section 5. *Motion for Reconsideration*. — Motions for Reconsideration on resolutions of the Committee involving violations of [the] Omnibus Election Code and other election laws shall be resolved by the COMELEC in accordance with its Rules.

For other cases not covered by the Omnibus Election Code, the Motion for Reconsideration shall be resolved by the Committee in accordance with the Rules of Criminal Procedure.[51] (emphasis ours)

Finally, Section 9 of the Joint Order provides for the budget and financial support for the operation of the Joint Committee

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[51] Annex C, Petition of Petitioner Arroyo in G.R. No. 199082.

and the Fact-Finding Team which shall be sourced from funds of the DOJ and the COMELEC, as may be requested from the Office of the President.[52]

a. The Unconstitutional Distortion of the Existing Legal Framework

Section 2, Article IX (C) of the Constitution specifically vests in the COMELEC the plenary power to "investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices." **To discharge its duty effectively, the Constitution endowed the COMELEC with special features which elevate it above other investigative and prosecutorial agencies of the government.**

First and foremost, **it extended independence to the COMELEC and insulated it from intrusion by outside influences, political pressures and partisan politics.** In *Atty. Macalintal v. COMELEC*,[53] already cited above, then Associate Justice Puno enumerated these safeguards to protect the independence of the COMELEC, *viz.*:

Several safeguards have been put in place to protect the independence of the COMELEC from unwarranted encroachment by the other branches of government. While the President appoints the Commissioners with the concurrence of the Commission on Appointments, **the Commissioners are not accountable to the President in the discharge of their functions.** They have a fixed tenure and are removable only by impeachment. To ensure that not all Commissioners are appointed by the same President at any one time, a staggered system of appointment was devised. Thus, of the Commissioners first appointed, three shall hold office for seven years, three for five years, and the last three for three years. Reappointment and temporary designation or appointment is prohibited. In case of vacancy, the appointee shall only serve the unexpired term of the predecessor. The COMELEC is likewise granted the power to

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[52] Annex A, Petition of Petitioner Arroyo in G.R. No. 199082.

[53] *Supra* note 16.

promulgate its own rules of procedure, and to appoint its own officials and employees in accordance with Civil Service laws.

The COMELEC exercises quasi-judicial powers but it is not part of the judiciary. This Court has no general power of supervision over the Commission on Elections except those specifically granted by the Constitution. As such, the Rules of Court are not applicable to the Commission on Elections. **In addition, the decisions of the COMELEC are reviewable only by petition for *certiorari* on grounds of grave abuse of discretion[.]** [54] [emphasis ours, citations omitted]

Under the Constitution, the Executive is tasked with the enforcement of the laws that the Legislature shall pass. In the administration of justice, the Executive has the authority to investigate and prosecute crimes through the DOJ, constituted in accordance with the Administrative Code.[55] Under our current laws, the DOJ has general jurisdiction to conduct preliminary investigation of cases involving violations of the Revised Penal Code.[56]

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[54] *Id.* at 767-768.

[55] See Separate Opinion of Justice Arturo D. Brion in *Biraogo v. Philippine Truth Commission* of 2010, G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 330-331.

[56] The DOJ's power to conduct preliminary investigation is based on Section 5 (2) of RA 10071, which states:

> (2) Conduct the preliminary investigation and prosecution of criminal cases involving national security, those for which task forces have been created and criminal cases whose venues are transferred to avoid miscarriage of justice, all when so directed by the Secretary of Justice as public interest may require[.]

and Section 3 (2), Chapter 1, Title III, Book IV of the Administrative Code, which states:

> Sec. 3. *Powers and Functions*. — To accomplish its mandate, the Department shall have the following powers and functions:
>
> x x x x x x x x x
>
> (2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system.

With respect to the power to conduct preliminary investigation and to prosecute election offenses, Congress has mandated under Section 42 of RA No. 9369 that the COMELEC shall have the power **concurrent** with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute these offenses. **Concurrent jurisdiction has been defined as "equal jurisdiction to deal with the same subject matter."**[57]

Thus, under the present legal framework, the COMELEC and the DOJ, and its prosecuting arms, have equal jurisdiction to conduct preliminary investigation and prosecute election offenses. Effectively, this means that the DOJ and its prosecuting arms can already conduct preliminary investigations and prosecute election offenses not merely as deputies, but independently of the COMELEC.

This concurrent jurisdiction mandated under Section 42 of RA No. 9369 must, however, be *read together with and cannot be divorced* from the provisions of the Constitution guaranteeing the COMELEC's independence as a Constitutional Commission, in particular, Sections 1, 2, 3, 4, 5 and 6 of Article IX (A) of the 1987 Constitution. This constitutional guaranty of independence cannot be taken lightly as it goes into the very purpose for which the COMELEC was established as an independent Constitutional Commission.

To briefly recall and reiterate statutory and jurisprudential history, the COMELEC was deliberately constituted as a separate and independent body from the other branches of government in order to ensure the integrity of our electoral processes; it occupies a distinct place in our scheme of government as the constitutional body charged with the administration of our election laws. **For this reason, the Constitution and our laws unselfishly granted it powers and independence in the exercise of its powers and the discharge of its responsibilities.**[58]

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[57] *Dept. of Justice v. Hon. Liwag*, 491 Phil. 270, 285 (2005).

[58] *Atty. Macalintal v. Comelec*, *supra* note 16, at 770-771.

The independence of the COMELEC is a core constitutional principle that is shared and is closely similar to the judicial independence that the Judiciary enjoys because they are both expressly and textually guaranteed by our Constitution. **Judicial independence** has been characterized as "a concept that expresses the ideal state of the judicial branch of government; it encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence."[59]

The general concept of "judicial independence" can be "broken down into two distinct concepts: **decisional independence** and **institutional**, or branch, **independence**." **Decisional independence "refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law."** On the other hand, institutional independence "describes the separation of the judicial branch from the executive and legislative branches of government."[60] "**Decisional independence is the *sine qua non* of judicial independence**."[61]

In the exercise of the COMELEC's power to investigate and prosecute election offenses, the "independence" that the Constitution guarantees the COMELEC should be understood in the context of the same "decisional independence" that the Judiciary enjoys since both bodies ascertain facts and apply the laws to these facts as part of their mandated duties.

In concrete terms, the "**decisional independence" that the COMELEC should ideally have in the exercise of its power to investigate and prosecute election offenses, requires the capacity to exercise these functions according to its own discretion and independent consideration of the facts, the**

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[59] Joseph M. Hood, *Judicial Independence*, 23 J. Nat'l Ass'n Admin. L. Judges 137, 138 (2003) citing American Judicature Society, What is Judicial Independence? (Nov. 27, 2002), at http://www.ajs.org/cji/cji_whatisji.asp (last visited Apr. 14, 2003).

[60] *Id.*

[61] Gordon Bermant, *Federal Judges and the Judicial Branch: Their Independence and Accountability*, 46 Mercer L. Rev. 835, 836 (1995).

evidence and the applicable law, "free from attempts by the legislative or executive branches or even the public to influence the outcome of x x x [the] case."[62] And even if the power to investigate and prosecute election offences, upon determination of the existence of probable cause, are executive and not judicial functions, the rationale behind the constitutional independence of the Judiciary and the COMELEC is geared towards the same objective of de-politicization of these institutions which are and should remain as non-political spheres of government.

Tested under these considerations, the result cannot but be the unavoidable conclusion that what exists under **Joint Order No. 001-2011 and the Rules of Procedure** on the Conduct of Preliminary Investigation on the Alleged Election Fraud in the 2004 and 2007 National Elections **is not a scheme whereby the COMELEC exercises its power to conduct preliminary investigation and to prosecute election offenses independently of other branches of government but a *shared responsibility* between the COMELEC and the Executive Branch through the DOJ.**

This is the incremental change at issue in the present case, whose adoption weakens the independence of the COMELEC, opening it to further incremental changes on the basis of the ruling in this case. Under the *ponencia*'s ruling allowing a shared responsibility, the independence of the COMELEC ends up a **boiled frog**; we effectively go back to the country's situation before 1940 — with elections subject to intrusion by the Executive.

Significantly, the Solicitor General admitted during the oral arguments that the reports and or recommendations of the Fact-Finding Team and Joint Committee were a shared responsibility between the DOJ and the COMELEC members, *viz.*:

JUSTICE BRION: With that agreement perhaps we have laid down the basis for the constitutional hierarchy in this case.

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[62] Stephen H. Legomsky, *Deportation and the War on Independence*, 91 Cornell L. Rev. 369, 386 (2006).

So that here we recognize that the Bill of Rights is very important, the due process clause is very important as against the police power of the State, particularly in criminal prosecutions. Okay. Let me go now to a very, very small point. The investigating team that was created by the COMELEC-DOJ resolution, can you tell me how it operates?

SOLGEN CADIZ: Your Honor, there are two (2) bodies created, collaborative effort most of them. One is the fact-finding team and the other one is the preliminary investigation committee.

JUSTICE BRION: In the fact-finding team, what is the composition?

SOLGEN CADIZ: DOJ, COMELEC and NBI.

JUSTICE BRION: Two (2) members each?

SOLGEN CADIZ: That is my recollection also, your Honor.

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JUSTICE BRION: So effectively the DOJ has four (4) representatives in that investigating team, right?

SOLGEN CADIZ: If that is the perspective, Your Honor, but the NBI of course, has a vastly different function from the prosecutors of the DOJ.

JUSTICE BRION: Who has supervision over this investigation team?

SOLGEN CADIZ: Your Honor, it is a collaborative effort. There is no one head of this panel. Likewise, as regards the preliminary investigation team which was collaborative effort.

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JUSTICE BRION: What do the rules say? My question is as simple as that. Who has supervision over the investigating team?

SOLGEN CADIZ: The Preliminary Investigation Committee, Your Honor, the Fact-Finding Team.

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SOLGEN CADIZ: **Your Honor, it's here. Both the Secretary of Justice and the COMELEC Chairman as I previously stated.**

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JUSTICE BRION: And I heard from you before that the decision here was unanimous among the members. They have no problem.

SOLGEN CADIZ: In fact, Your Honor, the resolution of the COMELEC *en banc* says that it gave great weight to the assent of the two COMELEC representatives in the preliminary investigation team.

JUSTICE BRION: Of the preliminary investigation, we are not there yet. We are only in the fact-finding team.

SOLGEN CADIZ: There was no dissension, Your Honor.

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JUSTICE BRION: They were unanimous. They agreed, they consulted with one another and they agreed as their decision on what to send to their superiors, right?

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SOLGEN CADIZ: There was a report to the preliminary investigation committee . . .

JUSTICE BRION: So the report was unanimous?

SOLGEN CADIZ: Yes, Your Honor.

JUSTICE BRION: So this was a shared report?

JUSTICE BRION: **Okay. A shared understanding between the COMELEC and the DOJ.**

SOLGEN CADIZ: But maintaining their own identities, your Honor.

JUSTICE BRION: Now, let's go to the preliminary investigation team. What was the membership?

SOLGEN CADIZ: Three (3) from DOJ and two (2) from COMELEC.

JUSTICE BRION: **Three (3) from DOJ and two (2) from COMELEC. They also came out with their recommendations, right?**

SOLGEN CADIZ: **Yes, Your Honor.**

JUSTICE BRION: **Were they also unanimous?**

SOLGEN CADIZ: **Yes, Your Honor.**

JUSTICE BRION: **So again this was a shared decision between the DOJ members and the COMELEC members, right?**

SOLGEN CADIZ: **Yes, your Honor.**

JUSTICE BRION: **Okay. Thank you very much for that admission . . .**[63] [emphasis supplied]

To point out the obvious, the Fact-Finding Team, on the one hand, is composed of five members from the DOJ and two members from the COMELEC. This team is, in fact, **chaired by a DOJ Assistant Secretary.** Worse, the Fact-Finding Team is **under the supervision of the Secretary of DOJ and the Chairman of the COMELEC or,** in the latter's absence, a Senior Commissioner of the COMELEC.

On the other hand, the Joint DOJ-COMELEC Preliminary Investigation Committee **is composed of three (3) officials coming from the DOJ and two (2) officials from the COMELEC. Prosecutor General Claro A. Arellano from the DOJ is also designated as Chairperson of the Committee.** Not to be forgotten also is that **budget and financial support** for the operation of the Committee and the Fact-Finding Team shall be sourced from funds of the DOJ and the COMELEC, as **may be requested from the Office of the President**. This, again, is a perfect example of an incremental change that the Executive can exploit.

What appears to be the arrangement in this case is a novel one, whereby the COMELEC — supposedly an independent Constitutional body — has been ***fused*** with the prosecutorial

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[63] TSN (December 8, 2011), pp. 230-237.

arm of the Executive branch in order to conduct preliminary investigation and prosecute election offenses in the 2004 and 2007 National Elections. To my mind, ***this fusion or shared responsibility between the COMELEC and the DOJ completely negates the COMELEC's "decisional independence" so jealously guarded by the framers of our Constitution who intended it to be insulated from any form of political pressure*.**

To illustrate, Justice Presbitero J. Velasco raised during the oral arguments the prejudicial effects (to the COMELEC's decisional independence) of the joint supervision by the DOJ and the COMELEC over the composite Fact-Finding Team and the Preliminary Investigation Committee, *viz*.:

JUSTICE VELASCO: Counsel, would you agree that it was actually DOJ and COMELEC that initially acted as complainant in this case?

ATTY. DULAY: No, Your Honor, that is not our understanding, Your Honor.

JUSTICE VELASCO: What precipitated the creation of the Preliminary Investigating Committee and the fact-finding team under Joint Order No. 001-2011?

ATTY. DULAY: Well, if you were to take it, Your Honor, based on their Joint Circular, it would be due to the recent discovery of new evidence and the surfacing of new witnesses, Your Honor.

JUSTICE VELASCO: Correct. So *motu proprio*, they initiated the investigation into possible breach of election laws because of this new evidence discovered and the surfacing of new witnesses, is that correct?

ATTY. DULAY: Yes, Your Honor.

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JUSTICE VELASCO: Okay. So initially DOJ and COMELEC were the complainants in this election matter. **Now, the fact finding committee under Section 4 of Joint Order 001-2011 is under the supervision of the Secretary of Justice and COMELEC Chairman, correct?**

ATTY. DULAY: Yes, Your Honor.

JUSTICE VELASCO: **What does it mean, what does it mean if these two heads of two powerful branches of government have supervision over the activities of the fact-finding team? What can it do?**

ATTY. DULAY: Well, Your Honor our contention is that the merger of the powers of the . . . an independent constitutional commission and an executive department, the executive branch, Your Honor, is a violation of the principle of separation of powers, Your Honor. Because while the law may provide that each body or entity the COMELEC or the DOJ have concurrent jurisdiction over election offenses, this does not mean that this can be exercised jointly, Your Honor. And what we are really objecting, Your Honor, is the fact that when they join, it is now a . . . it constitutes a violation of that principle of separation of powers, Your Honor.

JUSTICE VELASCO: Okay, as two branches or one department and a constitutional body supervising the fact finding, so under the Joint Order 001-2011 **it can give instructions to the fact-finding team as to how to go about in performing its functions under Section 4 of said joint order, is that correct?**

ATTY. DULAY: **Yes, Your Honor.**

JUSTICE VELASCO: **So they can issue instruction and orders to the fact-finding team in gathering reports, conducting interviews, assessing affidavits and the other functions of the fact-finding team, okay?**

ATTY. DULAY: Yes, Your Honor.

JUSTICE VELASCO: And Preliminary Investigation Committee is composed of representatives from the same, DOJ and COMELEC also, correct?

ATTY. DULAY: Yes, Your Honor.

JUSTICE VELASCO: **Now the reports of the fact finding team are submitted also to the Secretary of Justice and Chairman of COMELEC, is that correct?**

ATTY. DULAY: Yes, under the order, Your Honor.

JUSTICE VELASCO: Okay. So in short the investigation, the investigator actually is also the complainant in this electoral matter? What's your view on that?

ATTY. DULAY: Yes, Your Honor, and the judge also, Your Honor, because the same body. That's why our contention, **Your Honor, is that the fact-finding team and the Preliminary Investigation Committee, is one and the same creature, Your Honor.** They are both created by . . . jointly by the COMELEC and the DOJ.

JUSTICE VELASCO: And the resolutions of the Preliminary Investigation Committee will have to be submitted first to whom?

ATTY. DULAY: If it is an election offense, Your Honor, to the COMELEC, if it is a non-election offense to the Department of Justice, Your Honor.

JUSTICE VELASCO: **So the resolution of the criminal complaint will have to be done by one of the agencies over which has supervision and control over two members of the Preliminary Investigation Committee, is that correct?**

ATTY. DULAY: Yes, Your Honor. If, your Honor please, **the supervision of the Secretary of Justice and the COMELEC Chairman refers to the fact-finding team as well as to the Preliminary Investigation Committee which are composed . . . it's a composite team, really, Your Honor, as far as the fact finding team, there's the DOJ, there's the NBI, they are the two representatives from the COMELEC.** So if we were to take the line that they would be under the supervision of one of the other heads, **then it would be a head of an executive department supervising the work of a representative from an independent constitutional commission and** vice versa, **Your Honor.** So there is in that sense a diminution, Your Honor, of the power and authority of the COMELEC which it should have in the first place exercised solely or singularly in the same way that the DOJ under its concurrent jurisdiction could have exercised separately, Your Honor.[64] [emphasis supplied]

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[64] TSN (November 29, 2011), pp. 80-84.

Given that the membership of the composite Fact-Finding Team and Preliminary Investigation Committee is **numerically tilted in favor of the DOJ**, plus the fact that **a member of the DOJ exercises supervision over the representatives of the COMELEC,** it cannot be discounted that the latter runs the ***risk*** of being pressured into bending their analyses of the evidence to reach results (a finding of probable cause, in this case) more pleasing or tailor-fitted to the outcomes desired by their DOJ supervisors who belong to the majority. In this situation, the COMELEC's independent consideration of the facts, evidence and applicable law with respect to the complaints for electoral sabotage filed against the respondents cannot but be severely compromised. The following exchanges during the oral arguments are also very instructive:

ASSOCIATE JUSTICE ABAD: Now here, the Election Code grants the COMELEC and the other prosecution arms of the government concurrent authority to conduct preliminary investigation of election offenses, is that correct?

SOLICITOR GENERAL CADIZ: Yes, Your Honor.

ASSOCIATE JUSTICE ABAD: But your theory is that, given their concurrent authority they can conduct preliminary investigation of election offenses.

SOLICITOR GENERAL CADIZ: That was COMELEC and DOJ decided in this particular matter, Your Honor.

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ASSOCIATE JUSTICE ABAD: No, I'm asking you if you adopt that position or not, that they concurrently conduct a joint investigation, concurrent?

SOLICITOR GENERAL CADIZ: Yes, Your Honor.

ASSOCIATE JUSTICE ABAD: Alright. Now, the prosecution arm of the government are under the Secretary of Justice, do you agree?

SOLICITOR GENERAL CADIZ: Yes, Your Honor.

ASSOCIATE JUSTICE ABAD: And the Secretary of Justice is the alter ego of the President, do you agree?

SOLICITOR GENERAL CADIZ: I think that is true.

ASSOCIATE JUSTICE ABAD: The President is essentially a politician belonging to a political party, will you agree?

SOLICITOR GENERAL CADIZ: He is the President of the people, Your Honor.

ASSOCIATE JUSTICE ABAD: Oh yes.

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ASSOCIATE JUSTICE ABAD: As a matter of fact, he is also the titular President of the Liberal Party, is that correct?

SOLICITOR GENERAL CADIZ: Yes, but he is the President of a hundred million Filipinos.

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ASSOCIATE JUSTICE ABAD: Has the COMELEC which is an independent constitutional body any business doing work assigned to it by law hand-in-hand with an agency under the direct control of a politician?

SOLICITOR GENERAL CADIZ: I think that's a wrong premise, Your Honor.

ASSOCIATE JUSTICE ABAD: Explain to me. Where is the error in my premise?

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SOLICITOR GENERAL CADIZ: Thank you very much, Your Honor. Thank you very much, thank you, Your Honor. COMELEC and DOJ they decided to have a Fact-Finding Team and the Preliminary Investigating Committee. The Fact-Finding Team is composed of COMELEC personnel, DOJ personnel, and NBI personnel. The Preliminary Investigating Committee is composed to COMELEC people and DOJ personnel. Your Honor, they have, the Fact-Finding Team, made a report, submitted it both to COMELEC, to the Secretary of Justice, and to the Preliminary Investigating Committee. The Preliminary Investigating Committee had a unanimous finding and they made a report to the COMELEC *En Banc*. It is the COMELEC *En Banc*, Your Honor, which had the final say on the findings of Preliminary Investigating Committee. So, I think, Your Honor, the

premise is wrong, that the independent of the COMELEC has been compromised in this particular matter because, in fact, the COMELEC *En Banc*, Your Honor did not adopt *in toto* the findings of the Preliminary Investigating Committee. And Your Honor, there is a dimension here that not only election offenses are being investigated but also common crimes under the Revised Penal Code. So, in the collaboration between DOJ and the COMELEC, what was sought to be made, or what was sought to be achieved was efficiency, and what was sought to be avoided was redundancy, Your Honor. And again, if I may reiterate, Your Honor please, to your question about compromising the independence of the COMELEC, I respectfully beg to disagree with that premise, Your Honor, because at the end of the day it was the COMELEC *En Banc* who decided to file an Information or to have a Resolution asking the Law Department to file an information against the three (3) accused in this case Gloria Macapagal-Arroyo, Lintang Bedol, and former Governor Zaldy Ampatuan, Sr.

ASSOCIATE JUSTICE ABAD: **Acting on the findings of a Committee dominated by representatives of the DOJ, is that correct?**

SOLICITOR GENERAL CADIZ: **There was a unanimity, Your Honor.**

ASSOCIATE JUSTICE ABAD: **Yes, yes. Well, the Committee dominated . . .**

SOLICITOR GENERAL CADIZ: **I think the numbers are . . .**

ASSOCIATE JUSTICE ABAD: 3-2.

SOLICITOR GENERAL CADIZ: 3-2?

ASSOCIATE JUSTICE ABAD: Yes.

SOLICITOR GENERAL CADIZ: There was no dissention, there was a unanimity in finding and at the end of the day there were only recommendatory to the COMELEC *En Banc*.

ASSOCIATE JUSTICE ABAD: **Well, that is true but the COMELEC did not make an investigation. It was not the one that denied the respondents the right to ask for time to file counter-affidavit. These rulings were made**

by that Committee dominated by representatives of the DOJ. Anyway, you just answered it, although not exactly to my satisfaction but you answered it. Do you know if under the Election Code, tell me if I'm exceeded my time already, do you know if under the Election Code, the COMELEC must directly conduct the preliminary investigation of election offenses? Does it have to conduct directly by itself preliminary investigation of election offenses, the COMELEC?

SOLICITOR GENERAL CADIZ: The Law Department can do that, Your Honor.

ASSOCIATE JUSTICE ABAD: Well, so I will read to you Section 43 of Republic Act 9369, it says that, and I quote, **"That the COMELEC shall, through it's duly authorized legal officers, have the power concurrent with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses."** Now, since the law specifically provides that the COMELEC is to exercise its power to conduct preliminary investigation through its legal officers, by what authority did the COMELEC delegate that power to a joint committee dominated by strangers to its organization?

SOLICITOR GENERAL CADIZ: Your Honor, the power of the COMELEC to investigate and prosecute election related offenses is not exclusive. It is concurrent with prosecuting arms of the government, that is the Department of Justice. In other words, Your Honor, the Department of Justice under the amended law has the power to investigate and prosecute election related offenses likewise, so there was no undue delegation as premises in your question, Your Honor, but this is a concurrent jurisdiction with the DOJ.

ASSOCIATE JUSTICE ABAD: So, that's what made the COMELEC disregard what the law says, "shall" which is, as you say, you know in law "shall" means a command, "Shall, through its duly authorized legal officers, have the power to conduct preliminary investigation of all election offenses." At any rate, I think, you've have answered.

SOLICITOR GENERAL CADIZ: It is not exclusive, Your Honor.

ASSOCIATE JUSTICE ABAD: You've given your answer.

SOLICITOR GENERAL CADIZ: It is not exclusive, Your Honor, the law states its power.

ASSOCIATE JUSTICE ABAD: **No, the method is exclusive.** The power to investigate is not exclusive, if the law expressly says "through its fully authorized legal officers" precisely because this is in **consonance with the policy laid down by the Constitution that the COMELEC shall enjoy autonomy, independent of any branch of government. It should not be working with the political branch of the government to conduct its investigation. It should try to maintain its independence.** At any rate, I understand that . . . Can I continue Chief?[65] [emphasis supplied]

Considering the terms of the COMELEC-DOJ resolutions and exchanges and admissions from no less than the Solicitor General, ***the resulting arrangement — involving as it does a joint or shared responsibility between the DOJ and the COMELEC — cannot but be an arrangement that the Constitution and the law cannot allow, however practical the arrangement may be from the standpoint of efficiency.*** To put it bluntly, the joint or shared arrangement directly goes against the rationale that justifies the grant of independence to the COMELEC — to insulate it, particularly its role in the country's electoral exercise, from political pressures and partisan politics.

As a qualification to the above views, I acknowledge — as the Court did in *People v. Hon. Basilla*[66] — that "the prompt and fair investigation and prosecution of election offenses committed before or in the course of nationwide elections would simply not be possible without the assistance of provincial and city fiscals and their assistants and staff members, and of the state prosecutors of the [DOJ]."[67] That the practice of ***delegation of authority by the COMELEC,*** otherwise known as ***deputation,*** has long been upheld by this Court is not without significance,

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[65] TSN (December 8, 2011), pp. 86-99.

[66] 258-A Phil. 656 (1989).

[67] *Id.* at 663.

as ***it is the only means by which its constitutionally guaranteed independence can remain unfettered.***

In other words, the only arrangement constitutionally possible, given the independence of the COMELEC and despite Section 42 of RA 9369, is ***for the DOJ to be a mere deputy or delegate of the COMELEC and not a co-equal partner in the investigation and prosecution of election offenses WHENEVER THE COMELEC ITSELF DIRECTLY ACTS.*** While the COMELEC and the DOJ have equal jurisdiction to investigate and prosecute election offenses (subject to the rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others),[68] the COMELEC — whenever it directly acts in the fact-finding and preliminary investigation of election offenses — can still work with the DOJ and seek its assistance without violating its constitutionally guaranteed independence, ***but it can only do so as the principal in a principal-delegate relationship with the DOJ where the latter acts as the delegate.***

This arrangement preserves the COMELEC's independence as "being mere deputies or agents of the COMELEC, provincial or city prosecutors deputized . . . are expected to act in accord with and not contrary to or in derogation of its resolutions, directives or orders x x x in relation to election cases that such prosecutors are deputized to investigate and prosecute. Being mere deputies, provincial and city prosecutors, acting on behalf of the COMELEC, [shall also] proceed within the lawful scope of their delegated authority."[69]

III. The Consequences of Unconstitutionality

In the usual course, the unconstitutionality of the process undertaken in conducting the preliminary investigation would result in its nullity and the absence of the necessary preliminary investigation that a criminal information requires. Three important considerations taken together, however, frustrate the petitioners'

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[68] *Dept. of Justice v. Hon. Liwag*, *supra* note 57, at 285.

[69] *Diño v. Olivarez*, *supra* note 30 at 262-263.

bid to achieve this result so that the petitions ultimately have to be dismissed.

First, separate from the COMELEC's decisional independence, it also has the attribute of ***institutional independence***, rendered necessary by its key role in safeguarding our electoral processes; the Constitution's general grant of independence entitles it not only to the discretion to act as its own wisdom may dictate, but **the independence to act on its own separately and without interference from the other branches of the government.**

Thus, these other branches of government, including the Judiciary, cannot interfere with COMELEC decisions made in the performance of its duties, save only if the COMELEC abuses the exercise of its discretion[70] — a very high threshold of review from the Court's point of view. **Any such review must start from the premise that the COMELEC is an independent body whose official actions carry the presumption of legality, and any doubt on whether the COMELEC acted within its constitutionally allowable sphere should be resolved in its favor.**

In the context of the present case, the petitioners' allegations and evidence on the infirmity of the COMELEC's determination of probable cause should clearly be established; where the petitioners' case does not rise above the level of doubt — as in this case — the petition should fail.

Second, and taking off from where the first above consideration ended, Section 2 of Joint Order No. 001-2011 grants the COMELEC **the final say** in determining whether probable cause exists. Section 2 reads:

Section 2. Mandate. — The Committee shall conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team create and referred to in Section 4 hereof. Resolutions finding probable cause for election offenses, defined and penalized under the Omnibus Election Code and other election laws shall be approved by the

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[70] CONSTITUTION, Article VIII, Section 1, par. 2.

COMELEC in accordance with the COMELEC Rules of Procedure. For other offenses, or those not covered by the Omnibus Election Code and other election laws, the corresponding criminal information may be filed directly with the appropriate courts.

While the fact-finding and the preliminary investigation stages, as envisioned in the various COMELEC-DOJ instruments, may have resulted in a constitutionally impermissible arrangement between the COMELEC and the DOJ, Section 2 of Joint Order No. 001-2011 shows that it is the COMELEC that must still solely act and its actions can be constitutionally valid *if made in a process that is free from any attendant participation by the Executive*.

From the petitioners' perspective, while the disputed resolutions involved a fact-finding and a preliminary investigation phases that are constitutionally objectionable, ***the petitioners still have to show that indeed the COMELEC had left the matter of determining probable cause ultimately to the Fact-Finding Team and the Joint Committee.*** It is on this point that the petitioners' case is sadly deficient. In contrast with this deficiency, the records show that the COMELEC did indeed meet, *on its* own, to determine probable cause based on the evidence presented by its own representatives.

Third, since the corresponding informations have already been filed in court, *claims of absence of, or irregularity in, the preliminary investigation are matters which appropriately pertain to the lower court in the exercise of its jurisdiction*.[71] After the lower court has effectively assumed jurisdiction, what is left for this Court to act upon is solely the issue of the constitutionality of the creation and operation of the Fact-Finding Team and the Joint Committee for being violative of the COMELEC's independence. Other constitutional issues (equal protection, due process, and separation of powers) simply arose as incidents of the shared COMELEC-DOJ efforts, and need not be discussed after the determination of the unconstitutionality

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[71] *Doromal v. Sandiganbayan*, 258 Phil. 146 (1989).

of the shared COMELEC-DOJ arrangements for violation of the COMELEC's independence.

In sum, while the DOJ-COMELEC arrangements compromised the COMELEC's independence, the filing of the informations in court, upon the ***COMELEC's own determination of probable cause*, ** effectively **limited** not only the prosecution's discretion (for example, on whether to proceed or not), but also **the Court's jurisdiction** to pass upon the *entire* plaint of the petitioners. *Crespo v. Judge Mogul*[72] teaches us that —

> **The filing of a complaint or information** in Court initiates a criminal action. **The Court thereby acquires jurisdiction over the case,** which is the authority to hear and determine the case. x x x
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> x x x x x x x x x
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> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. **The determination of the case is within its exclusive jurisdiction** and competence. [emphases ours, citations omitted]

To reiterate, except for the resolution of the issue of the constitutionality of creating a Joint Committee and a Fact-Finding Team and of the incidental issues bearing on this constitutional interpretation — *matters which only this Court may authoritatively determine*[73] — this Court should now refrain from making any pronouncement relative to the disposition of the criminal cases now before the lower court.

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[72] 235 Phil. 465, 474-476, cited in *Galvez v. Court of Appeals*, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 699, and *Velasquez v. Undersecretary of Justice*, G.R. No. 88442, February 15, 1990, 182 SCRA 388, 391.

[73] *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372 (2005).

Based on these considerations — particularly, on the lack of a factual showing that the COMELEC did not determine the existence of probable cause by itself and relied solely on its unconstitutional arrangements with the DOJ — ***I support the dismissal of the petitions save for the ruling that the shared COMELEC-DOJ investigatory and prosecutory arrangements, as envisioned in the disputed resolutions, are unconstitutional*.**

Lest this opinion be misconstrued and for greater emphasis, while I ultimately sustain the COMELEC's finding of probable cause based on the collective considerations stated above, the constitutionally objectionable arrangement of a shared responsibility between the COMELEC and the DOJ was not necessarily saved by the existence of Section 2 of Joint Order No. 001-2011. I sustain the COMELEC's finding of probable cause under the unique facts and developments in this case, based on the institutional independence the COMELEC is entitled to; the lack of proof that the COMELEC did not act independently; and the adduced fact that the COMELEC did indeed meet to consider the findings presented to it by its representatives. I make this conclusion without prejudice to proof of other facts that, although bearing on the COMELEC's independence but are not here decided, may yet be submitted by the petitioners before the trial court if they are appropriate for that court's consideration on the issues properly raised.

For greater certainty for the COMELEC in its future actions in enforcing and administering election-related laws, let me advise that what I highlighted regarding the nature and breadth of the constitutionally guaranteed independence of the COMELEC should always be seriously considered as guiding lights.

For the Court *en banc*'s consideration.

FIRST DIVISION

[A.M. OCA IPI No. 04-1606-MTJ. September 19, 2012]

ATTY. ARTURO JUANITO T. MATURAN, *complainant, vs.* **JUDGE LIZABETH GUTIERREZ-TORRES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; ON SPEEDY DISPOSITION OF CASES. —** Article VIII, Section 15(1) of the 1987 Constitution requires that all cases or matters filed after the effectivity of the Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts. Thereby, the Constitution mandates all justices and judges to be efficient and speedy in the disposition of the cases or matters pending in their courts.
2. **POLITICAL LAW; ADMINISTRATIVE LAW; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; JUDICIAL DUTIES OF JUDGES RELATIVE TO SPEEDY DISPOSITION OF CASES. —** [T]he *New Code of Judicial Conduct for the Philippine Judiciary* requires judges to "devote their professional activity to judicial duties, which include xxx the performance of judicial functions and responsibilities in court and the making of decisions xxx," and to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Likewise, Rule 3.05, Canon 3 of the *Code of Judicial Conduct* imposes on all judges the duty to dispose of their courts' business promptly and to decide cases within the required periods. These judicial canons directly demand efficiency from the judges in obvious recognition of the right of the public to the speedy disposition of their cases. In such context, the saying *justice delayed is justice denied* becomes a true encapsulation of the felt need for efficiency and promptness among judges.

3. **ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 28; TIME WHEN A CASE PENDING BEFORE A COURT IS TO BE CONSIDERED SUBMITTED FOR DECISION. —** To fix the time when a case pending before a court is to be considered as submitted for decision, the Court has issued Administrative Circular No. 28 dated July 3, 1989, whose third paragraph provides: A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. **The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or upon the expiration** of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days for the completion of the transcripts within which to decide the same.

4. **ID.; ID.; JUDGES; GROSS INEFFICIENCY FOR FAILURE TO DECIDE A CASE WITHIN THE REQUIRED PERIOD WITHOUT ANY EXPLANATION; PENALTY. —** [Respondent Judge] was guilty of gross inefficiency, especially because her inability to decide the case within the required period became absolutely devoid of excuse after she did not bother to proffer any explanation for her inability. The gross inefficiency of Judge Gutierrez-Torres warranted the imposition of administrative sanction against her. Rule 140 of the *Rules of Court*, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge punishable by either: (*a*) suspension from office without salary and other benefits for not less than one nor more than three months; or (*b*) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. We adopt the OCA's recommendation as to the fine in the maximum of ₱20,000.00, considering that she had already been dismissed from the service due to a similar offense of unjustified delay in rendering decisions.

DECISION

BERSAMIN, *J.*:

A judge must exert every effort to timely rule upon a case submitted for decision. If she thinks that she would need a period to decide a case or to resolve an issue longer than what the Constitution prescribes, she may request an extension from the Court to avoid administrative sanctions.

Antecedents

On August 12, 2004, complainant Atty. Arturo Juanito T. Maturan (Maturan), the counsel for the private complainant in Criminal Case No. 67659 entitled *People v. Anicia C. Ventanilla*, filed a sworn complaint[1] against Judge Lizabeth Gutierrez-Torres, the former Presiding Judge of Branch 60 of the Metropolitan Trial Court in Mandaluyong City, charging her with unjustifiably delaying the rendition of the decision in his client's criminal case. Atty. Maturan averred that the criminal case had remained pending and unresolved despite its having been submitted for decision since June 2002 yet, pertinently alleging in detail as follows:

Court Record show that —

1. 10 April 2002- This is the date of the last hearing during which the defense counsel, Atty. Williard S. Wong, manifested in open court that he has no more documentary exhibit to offer and accordingly rested his case. The Honorable Court then ordered the parties to file their respective memorandum after which, the case was ordered submitted for decision.

2. 03 June 2002- The prosecution filed its MEMORANDUM. (*Copy attached as* ANNEX "A") The defense waived filing any MEMORANDUM as court records show that up to this day, the defense counsel, Atty. Wong, did not file any.

3. 09 December 2002- The prosecution filed a MOTION TO DECIDE case dated 09 December 2002. (*Copy attached as*

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

ANNEX "B") The Honorable Presiding Judge simply sat on said motion and did not take any action thereto.

4. 10 July 2003- The prosecution filed a SECOND MOTION TO DECIDE CASE dated 10 July 2003 (*Copy attached as* ANNEX "C"). The Honorable Presiding Judge denied it for the alleged failure to comply with the ORDER dated 03 May 2001. Said ORDER involves sur-rebuttal evidence, however, this has been rendered moot by the proceedings held on 10 April 2002. Court records would show that as mentioned above, Atty. Wong manifested in open court that the defense is already resting its case. In fact, the Honorable Court thereafter ordered the parties to file their respective memorandum and ordered the case submitted for decision thereafter.

5. 04 February 2004- The prosecution filed a THIRD MOTION TO DECIDE CASE dated 04 February 2004 (*Copy attached as* ANNEX "D").

6. 11 August 2004- In the morning of 11 August 2004, undersigned thoroughly reviewed the court records and discovered that the Hon. Presiding Judge has not taken any action to the motion. Records also show that the Hon. Presiding Judge has not yet made a decision on the case despite the lapse of more than 2 years. When undersigned came back to again examine the records in the afternoon of 11 August 2004, he was surprised to be shown with a newly-signed ORDER also dated 11 August 2004 stating completion of the transcript of records and considered the case is now supposedly "submitted for decision."[2]

Atty. Maturan stated that Judge Gutierrez-Torres' failure to render the judgment within the 90-day period from submission of the case for decision violated Canon 3, Rule 3.05 of the *Code of Judicial Conduct* and the Constitution, and constituted gross inefficiency.[3]

On August 27, 2004, the Office of the Court Administrator (OCA) directed Judge Gutierrez-Torres through its first

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

[3] *Id.* at 2.

indorsement of the complaint to submit her comment, and also to show cause why no disciplinary action should be taken against her for her violation of her professional responsibility as a lawyer pursuant to the Resolution dated September 17, 2002 issued in A.M. No. 02-9-02-SC.[4]

On September 24, 2004, Judge Gutierrez-Torres implored the OCA to grant her a 20-day extension of the period within which to submit her comment. Despite her request being granted, she failed to submit a comment, causing the Court to issue on June 29, 2005 its Resolution "to REQUIRE the respondent to (a) SHOW CAUSE why she should not be administratively dealt with for refusing to submit her comment despite the two directives from the Office of the Court Administrator; and (b) SUBMIT the required COMMENT, both within five (5) days from receipt hereof, failing which the Court shall take the necessary action against her and decide the administrative complaint on the basis of the record on hand."[5]

The records show that Judge Gutierrez-Torres sought four more extensions of the period within which to submit a comment; and that the Court granted her further requests through its Resolutions dated September 12, 2005,[6] October 19, 2005,[7] February 8, 2006,[8] and March 21, 2007.[9] The Court likewise granted her request to photocopy documents relevant to the complaint.[10] Notwithstanding the liberality of the Court in granting several extensions, she still did not submit a comment.

In its Memorandum dated August 25, 2011,[11] the OCA rendered the following findings, to wit:

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[4] *Id.* at 20.

[5] *Id.* at 24.

[6] *Id.* at 31.

[7] *Id.* at 39.

[8] *Id.* at 44.

[9] *Id.* at 48.

[10] *Id.* at 51.

[11] *Id.* at 57-60.

The respondent has consistently exhibited indifference to the Court's Resolutions requiring her to comment on the instant complaint. Her behavior constitutes gross misconduct and blatant insubordination, even outright disrespect for the Court. It must be borne in mind that a resolution of the Court requiring comment on an administrative complaint is not a mere request, nor should it be complied with partially, inadequately or selectively. Failure by the respondent to comply betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive.

Moreover, she has no defense whatsoever to refute the charges against her. The records are replete with documentary evidence that in Criminal Case No. 67659, entitled "*People of the Philippines vs. Anicia C. Ventenilla*," she miserably failed to decide the said case within the reglementary period of 90 days. In fact, three (3) successive Motions to Decide Case dated 9 December 2002, 10 July 2003 and 4 February 2004, were filed by the prosecution without any action on the part of the respondent. By the time the instant administrative complaint was filed on 12 August 2004, more than two (2) years had already elapsed since the said criminal case was submitted for decision. Clearly, the respondent is not only **guilty** of **insubordination** and **gross inefficiency**, but also of **grave** and **serious misconduct**, having violated Canon 3, Rule 3.05 of the Code of Judicial Conduct and Section 15, Article VIII of the 1987 Constitution.

Considering the gravity of the above-mentioned offenses committed by the respondent, the penalty of dismissal from the service is commensurate, imposing the penalty of dismissal from the service on the respondent will be in consonance with the ruling of the Court in the consolidated cases of *Alice Davila vs. Judge Joselito S.D. Generoso* and *Leticia S. Santos vs. Judge Joselito S.D. Generoso*, to wit:

> "**The failure of the respondent judge to comply with the show-cause resolutions aforecited constitutes 'grave and serious misconduct** *affecting his fitness and worthiness of the honor and integrity attached to his office*. It is noteworthy that respondent judge was afforded several opportunities to explain his failure to decide the subject cases long pending before his court and to comply with the directives of the Court, but he has failed, and continues to fail, to heed the orders of the Court; a glaring proof that he has become disinterested in his position in the judicial system to which he belongs.

> **It is beyond cavil that the inability of respondent judge to decide the cases in question within the reglementary period of ninety (90) days from their date of submission, constitutes gross inefficiency and is violative of Rule 3.05, Canon 3 of the Code of Judicial Conduct,** which provides that *'[a] judge shall dispose of the court's business promptly and decide cases within the required periods.'*
>
> **The separation of the respondent judge from the service is indeed warranted**, if only to see to it that the people's trust in the judiciary be maintained and speedy administration of justice be assured."

It bears mentioning that the instant case is not an isolated one. Several administrative cases against the respondent are still pending before the Court, all of which invariably charge her with gross misconduct and inexcusable inefficiency, among others, for failing to decide cases or resolve pending incidents for inordinately long periods of time. in similar lackadaisical fashion, the respondent has ignored the orders of the Court directing her to comment on said complaints. She has likewise been previously penalized with fines and suspensions. However, the respondent Judge has not shown any sign of remorse or contrition, even as the administrative complaints against her piled up. And worse, in her sala, hundreds of criminal and civil cases submitted for decision and/or resolution remained untouched and unresolved, gathering dust as they aged.

Finally, on 23 November 2010, in three (3) consolidated cases against the respondent, docketed as *A.M. No. MTJ-08-1719, A.M. No. MTJ-08-1722, and A.M. No. MTJ-08-1723,* the Court, in a *Per Curiam* Decision, finally DISMISSED the respondent from the service with forfeiture of all retirement benefits except earned leave and vacation benefits, with benefits, with prejudice to employment in any branch of the government or any of its instrumentalities including government-owned and controlled corporations. The court ruled therein that:

> "The magnitude of her transgressions in the present consolidated cases – gross inefficiency, gross ignorance of the law, dereliction of duty, violation of the Code of Judicial Conduct, and insubordination, taken collectively, cast a heavy shadow on her moral, intellectual and attitudinal competence. She has shown herself unworthy of the judicial robe and place

> of honor reserved for guardians of justice. Thus, the Court is constrained to impose upon her the severest of administrative penalties – dismissal from the service, to assure the people's faith in the judiciary and the speedy administration of justice."

Even though the respondent has been dismissed from the service, this does not necessarily mean that she cannot be held administratively liable in the instant case. In its fairly recent Decision in *Narag vs. Manio*, the Court ruled that:

> "Unfortunately for the respondent, this did not render her case moot. **She must not be allowed to evade administrative liability by her previous dismissal from the service**. Thus, for this case involving additional serious offenses, the Court finds it proper to impose upon her a fine of ₱20,000 to be deducted from her accrued leave credits in lieu of dismissal from the service."

Upon the foregoing findings, the OCA recommended that Judge Gutierrez-Torres be administratively sanctioned as follows:

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2. Respondent Lizabeth Gutierrez-Torres be found **GUILTY** of **INSUBORDINATION, GROSS INEFFICIENCY**, and **GRAVE** and **SERIOUS MISCONDUCT**;

3. In view of her previous dismissal from the service, a **FINE of ₱20,000.00** instead be imposed upon her, to be deducted from her accrued leave credits;

x x x x x x x x x

Ruling

We adopt the findings and uphold the recommendations of the OCA.

Article VIII, Section 15(1) of the 1987 Constitution requires that all cases or matters filed after the effectivity of the Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower

courts. Thereby, the Constitution mandates all justices and judges to be efficient and speedy in the disposition of the cases or matters pending in their courts.

Reiterating the mandate, the *New Code of Judicial Conduct for the Philippine Judiciary* requires judges to "devote their professional activity to judicial duties, which include xxx the performance of judicial functions and responsibilities in court and the making of decisions xxx,"[12] and to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."[13] Likewise, Rule 3.05, Canon 3 of the *Code of Judicial Conduct* imposes on all judges the duty to dispose of their courts' business promptly and to decide cases within the required periods.

These judicial canons directly demand efficiency from the judges in obvious recognition of the right of the public to the speedy disposition of their cases. In such context, the saying *justice delayed is justice denied* becomes a true encapsulation of the felt need for efficiency and promptness among judges.

To fix the time when a case pending before a court is to be considered as submitted for decision, the Court has issued Administrative Circular No. 28 dated July 3, 1989, whose third paragraph provides:

> A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. **The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or upon the expiration** of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period

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[12] Section 2, Canon 6.

[13] Section 5, Canon 6.

of ninety (90) days for the completion of the transcripts within which to decide the same.

The time when a case or other matter is deemed submitted for decision or resolution by a judge is, therefore, settled and well defined. There is no longer any excuse for not complying with the canons mandating efficiency and promptness in the resolution of cases and other matters pending in the courts. Hence, all judges should be mindful of the duty to decide promptly, knowing that the public's faith and confidence in the Judiciary are no less at stake if they should ignore such duty. They must always be aware that upon each time a delay occurs in the disposition of cases, their stature as judicial officers and the respect for their position diminish. The reputation of the entire Judiciary, of which they are among the pillars, is also thereby undeservedly tarnished.

A judge like Judge Gutierrez-Torres should be imbued with a high sense of duty and responsibility in the discharge of the obligation to promptly administer justice. She must cultivate a capacity for promptly rendering her decisions. Should she anticipate that she would need a period longer than what the Constitution and the issuances of the Court prescribe within which to render her decision or resolution, she should request a proper extension of the period from the Court, through the OCA, and lay out in the request the justification for her inability. Yet, she did not at all do so in Criminal Case No. 67659 entitled *People v. Anicia C. Ventanilla*. She was clearly guilty of gross inefficiency, especially because her inability to decide the case within the required period became absolutely devoid of excuse after she did not bother to proffer any explanation for her inability.

The gross inefficiency of Judge Gutierrez-Torres warranted the imposition of administrative sanction against her.[14] Rule 140 of the *Rules of Court*, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge punishable by either: (*a*) suspension from office

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[14] *Mina v. Mupas*, A.M. No. RTJ-07-2067, June 18, 2008, 555 SCRA 44, 50.

without salary and other benefits for not less than one nor more than three months; or (*b*) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. We adopt the OCA's recommendation as to the fine in the maximum of ₱20,000.00, considering that she had already been dismissed from the service due to a similar offense of unjustified delay in rendering decisions.[15]

As a final word, the Court must focus attention to the indifference of Judge Gutierrez-Torres towards the Court's directive for her to file her comment despite the repeated extensions of the period to do so liberally extended by the Court at her request. Such indifference reflected not only that she had no credible explanation for her omission, but also that she did not care to comply with the directives of the Court. The latter represents an attitude that no judge should harbor towards the Highest Tribunal of the country, and for that reason is worse than the former. She should not be emulated by any other judge, for that attitude reflected her lack of personal character and ethical merit. To be sure, the Court does not brook her insubordination, and would do more to her had she not been removed from the Judiciary. Accordingly, the Court must still hold her to account for her actuations as a member of the Law Profession, which is what remains to be done after first giving her the opportunity to show cause why she should not.

WHEREFORE, the Court finds former Metropolitan Trial Court **JUDGE LIZABETH GUTIERREZ-TORRES** guilty of gross inefficiency, and imposes on her a fine of ₱20,000.00, to be deducted from her accrued leave credits, if any.

The Court orders **JUDGE GUTIERREZ-TORRES** to show cause in writing within ten days from notice why she should not be suspended from membership in the Integrated Bar of the Philippines for her act of insubordination towards the Court.

The Court directs the Employees Leave Division, Office of Administrative Services–OCA to compute the balance of Judge

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[15] *Lugares v. Gutierrez-Torres*, A.M. No. MTJ-08-1719, November 23, 2010, 635 SCRA 716.

Gutierrez-Torres' earned leave credits and forward the same to the Finance Division, Fiscal Management Office–OCA which shall compute its monetary value.

SO ORDERED.

*Sereno, C.J., Leonardo-de Castro, Brion,** and *Reyes, JJ.*, concur.

FIRST DIVISION

[A.M. No. P-11-2920. September 19, 2012]
(Formerly OCA I.P.I. No. 09-3300-P)

LUCIA NAZAR *VDA. DE* FELICIANO, *complainant, vs.* **ROMERO L. RIVERA, SHERIFF IV, REGIONAL TRIAL COURT, OFFICE OF THE CLERK OF COURT, VALENZUELA CITY,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFF; DUTY TO PROMPTLY SERVE WRITS OF EXECUTION IS MANDATORY; FAILURE TO COMPLY THEREWITH CONSTITUTES INEFFICIENCY AND GROSS NEGLECT OF DUTY. —** [S]heriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. They must comply with their mandated ministerial duty as speedily as possible. Good faith on their part, or lack of it, in proceedings to properly execute their mandate would be of no moment, for they are chargeable with the knowledge that being officers of the court tasked therefore, it behooves them to make due

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* Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305.

compliances. Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty.

2. **ID.; ID.; ID.; ID.; ID.; A WRIT OF EXECUTION MAY ONLY BE RESTRAINED BY A COURT ORDER AND FAILURE TO SERVE THE WRIT WILL NOT BE EXCUSED BY THE FILING OF A MOTION TO QUASH THE SAME. —** In the instant case, x x x [r]espondent x x x explained to complainant that he did not take further action to implement the Writ of Execution because [the other party] Lota already filed a motion to quash said writ. More than two months from its issuance, the Writ of Execution remained unsatisfied. x x x The Court reiterates that it is the mandatory and ministerial duty of the sheriff to execute judgments without delay "unless restrained by a court order." x x x [Here,] Lota had just filed a motion to quash the Writ of Execution, and the motion was not yet even set for hearing. Also, the only basis for Lota's motion to quash was his pending appeal before the Court of Appeals. It is worthy to note that once the RTC has rendered a decision in the exercise of its appellate jurisdiction, such decision shall, under Rule 70, Section 21 of the Rules of Court, be immediately executory, without prejudice to an appeal *via* petition for review before the Court of Appeals and/or Supreme Court. x x x In the absence of a court order, it was incumbent upon respondent to proceed without haste and to employ such means as necessary to implement the subject Writ of Execution and to put complainant, as the prevailing party in Civil Case No. 174-V-07, in possession of the disputed properties. Respondent could hardly be considered as having discharged his duty by serving a notice to vacate upon Lota but nothing more for the two months following the issuance of the Writ of Execution.

3. **ID.; ID.; ID.; ID.; ID.; UNREASONABLE DELAY IN IMPLEMENTING THE WRIT IS SIMPLE NEGLECT OF DUTY; PENALTY. —** Respondent's unreasonable delay in implementing the Writ of Execution in Civil Case No. 174-V-07 constitutes simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission Memorandum Circular No. 19, series of 1999, classifies simple neglect of duty as a less grave offense, punishable by suspension

without pay for one (1) month and one (1) day to six (6) months for the first offense. However, the penalty of fine may be imposed instead of suspension. This being respondent's first offense in his twenty-four (24) years in government service, the penalty recommended by the OCA of a fine of ₱5,000.00 is appropriate.

APPEARANCES OF COUNSEL

George A. Coronacion for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an administrative complaint[1] for dishonesty, gross neglect of duty, and misconduct, filed by complainant Lucia Nazar *vda. de* Feliciano against respondent Romero L. Rivera, Sheriff IV of the Regional Trial Court (RTC), Office of the Clerk of Court, Valenzuela City, relative to Civil Case No. 174-V-07, entitled *Lucia Nazar vda. de Feliciano (Plaintiff/Appellee) v. Vitaliano Lota (Defendant/Appellant).*

Civil Case No. 174-V-07 was an appeal to the RTC, Branch 172, Valenzuela City of the Decision of the Metropolitan Trial Court (MeTC), Branch 81, Valenzuela City in Civil Case No. 9316, an ejectment case instituted by complainant against Vitaliano Lota (Lota).

In Civil Case No. 9316, the MeTC rendered on October 10, 2007 a Decision in complainant's favor. The dispositive portion of the MeTC Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the Barangay Council of Barangay Ugong, Valenzuela City, represented by their Barangay Chairman Vitaliano Lota and all *barangay* officials and persons claiming rights from them to immediately vacate the subject premises and restore peaceful possession thereof to the [herein complainant].[2]

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 6.

On appeal, the RTC rendered a Decision on May 11, 2009 affirming the assailed MeTC judgment. The RTC decreed:

> WHEREFORE, premises considered, the Court hereby AFFIRMS the decision dated October 10, 2007 of the Metropolitan Trial Court, Branch 81, City of Valenzuela, in Civil Case No. 9316.[3]

Complainant filed a motion for execution pending appeal which was granted by the RTC in an Order[4] dated September 4, 2009.

Accordingly, Atty. Levi N. Dybongco, Branch Clerk of Court, issued a Writ of Execution with the following directive to respondent, as the Acting Sheriff of RTC-Branch 172:

> NOW, THEREFORE, you are hereby commanded to execute and make effective the above-quoted decision and orders, in accordance with law and make a return of this writ immediately upon compliance hereof.[5]

On October 12, 2009, respondent served a notice[6] dated October 9, 2009 addressed to the *Barangay* Council of *Barangay* Ugong, represented by their *Barangay* Chairman Lota, and all *barangay* officials and persons claiming rights from them, which stated, as follows:

> You are hereby notified to vacate within ten (10) days upon receipt hereof the subject properties covered by T.C.T. Nos. (T-115916) T-83728 and 124243 together with all the improvements existing thereon pursuant to the Writ of Execution dated October 5, 2009 issued by Atty. Levi N. Dybongco, Clerk of Court of this court, copy of which is hereto attached.[7]

The above-quoted notice to vacate was received by Edwin de la Rosa, a *barangay* official.

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[3] *Id.*

[4] *Id.* at 7.

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

[6] *Id.* at 8.

[7] *Id.* at 27.

Thereafter, no other action was undertaken by respondent to implement the subject Writ of Execution.

Thus, complainant filed the instant Complaint-Affidavit dated November 26, 2009 against respondent, alleging, among other things, that:

1.03. On October 21, 2009, through my counsel, I asked that the implementation of the writ be made either on October 26 or 27 of 2009 because I have yet to raise the amount which might be needed for the implementation of the writ. The respondent acceded to my request and the implementation of the writ on October 22, 2009 was postponed.

1.04. To my surprise however, when I made a follow up of the implementation through my counsel on October 26, 2009, I had been told that the respondent was on leave and would not be back until October 30, 2009. It came as a surprise because the respondent never told me or my counsel and her representative of his intention to take a leave. Besides, we had an agreement that he would implement the writ either on the 26th or 27th of October 2009.

1.05. The foregoing notwithstanding, I patiently waited for his return from vacation and so on October 30, 2009, I inquired anew for the date when he would implement the writ issued by the court. On said date however, the respondent told me that he would not implement the writ because the defendant in the civil case had filed a motion to quash the writ.

1.06. When I got home, I received information from well meaning friends in Ugong, Valenzuela City that defendant Lota had given money to [respondent] as a sort of "consolation" for desisting from continuing with the implementation of the writ issued by the Honorable Court. Then, the said information was followed up by another report given to me by my granddaughter who told me that Mr. Lota had boasted that he will not be removed from the premises subject matter of Civil Case No. 174-V-07.

1.07. I immediately reported these incidents to my counsel who, through Ms. Yolanda P. Arca, persisted on calling the respondent on November 2, 2009 to talk about the implementation of the writ. On the said occasion, Ms. Arca, told the respondent that it is his ministerial duty to proceed

with the implementation of the writ there being no temporary restraining order having been issued by any court. Ms. Arca also reminded the respondent that he has no authority to desist from implementing the writ of execution by the mere filing of a motion to quash by the defendant. During their conversation, the respondent told Ms. Arca to give him until Thursday, or November 5, 2009, to implement the writ but when the said date came, the respondent was nowhere to be found.

1.08. From morning until afternoon of November 5, 2009, Ms. Arca called the office of the respondent but to no avail. Whenever she would call him, respondent would always be out of the office and even when he is there, he would give instruction to the person taking the call to inform Ms. Arca to call back on a certain time and day but when the [here complainant's] representative would call, still, he would not be there.

x x x x x x x x x

1.09. It appearing that the respondent had no intention to implement the writ of execution, the complainant was constrained to file a motion to designate another sheriff to implement the writ.

x x x x x x x x x

1.10. A copy of the said motion was served upon the respondent who even belligerently instructed my granddaughter - who happened to drop by the RTC, Valenzuela City to follow up on my other case with Branch 171 - to order my counsel to withdraw the motion as it might allegedly affect his pending application as sheriff with the RTC, Branch 172. Also, the respondent even tried to convince my granddaughter to just follow up the motion to quash filed by Mr. Lota with the court claiming that it was the reason why he did not implement the writ of execution.[8]

In his Comment[9] dated January 18, 2010, respondent categorically and vehemently denied complainant's allegations.

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

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

First, respondent did not coordinate with complainant's counsel before serving the notice to vacate upon Lota. To serve the notice to vacate, respondent only coordinated with the sheriff of another RTC branch. Second, respondent did not talk to complainant and the latter's counsel on October 21, 2009. In addition, respondent could not have agreed to complainant's request that respondent implement said Writ of Execution on October 26 or 27, 2009, since as early as October 10, 2009, respondent had already booked a flight to Cagayan de Oro for October 27, 2009 to implement the Writ of Execution issued in another case, Civil Case No. 218-V-00. Third, respondent did not receive any money from Lota. The information that reached complainant about respondent accepting money from Lota and Lota boasting that he would never be removed from the disputed properties were hearsay and inadmissible. Respondent never said that he had no intention to implement the subject Writ of Execution. In fact, respondent had already begun implementing the Writ of Execution by serving a notice to vacate upon Lota, but respondent failed to complete the eviction because Lota filed a motion to quash the Writ. Respondent admitted deferring the implementation of the subject Writ of Execution until a final determination by the RTC of Lota's motion to quash. Respondent cited *Quilo v. Jundarino,*[10] where the Court ruled that the prudent course of action of the Sheriff was to defer implementation of the writ of execution until a determination of the motion to quash. In the end, respondent prayed that he be absolved from any administrative liability.

On January 9, 2011, the Office of the Court Administrator (OCA) submitted its report[11] with the following recommendations:

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, are our recommendations that:

1. the instant matter be RE-DOCKETTED as a regular administrative matter against respondent Romero L.

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[10] A.M. No. P-09-2644, July 30, 2009, 594 SCRA 259.

[11] *Rollo,* pp. 39-42.

Rivera, Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Valenzuela City; and

2. Sheriff Romero L. Rivera be found GUILTY of Simple Neglect of Duty and be FINED in the amount of Five Thousand (₱5,000.00) Pesos and STERNLY WARNED that a repetition of the same or similar acts will be dealt with more severely.[12]

In a Resolution[13] dated March 14, 2011, the Court re-docketed the administrative complaint against respondent as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Complainant did not file any manifestation.

Respondent initially submitted a Manifestation[14] dated June 6, 2011, stating that he was submitting the case for resolution based on the pleadings filed. However, Atty. Leven S. Puno (Puno) made a formal appearance as respondent's counsel on August 24, 2011. Respondent, through Atty. Puno, moved to withdraw his Manifestation dated June 6, 2011 and to be allowed to file a Memorandum within 15 days from August 23, 2011 or until September 7, 2011. The Court granted respondent's motion in a Resolution[15] dated November 21, 2011. Respondent, through Atty. Puno, later filed a Manifestation and Motion dated January 31, 2012, averring that he received a copy of the Resolution dated November 21, 2011 only on January 27, 2012, and that the period requested and granted for the filing of respondent's Memorandum already lapsed on September 7, 2011. Hence, respondent prayed for another 15 days from January 31, 2012 or until February 15, 2012 within which to file his Memorandum. Respondent finally submitted his Memorandum dated March 9, 2012, which was admitted by the Court in a Resolution dated July 2, 2012.

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[12] *Id.* at 42.

[13] *Id.* at 43-44.

[14] *Id.* at 45.

[15] *Id.* at 51-52.

After review of the case records, the Court completely agrees with the findings and recommendations of the OCA.

In *Lacambra, Jr. v. Perez*,[16] the Court described the solemn duties of sheriffs:

> Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such decisions become empty victories of the prevailing parties. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its orders, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice. (Citation omitted.)
>
> The duty of sheriffs to promptly execute a writ is mandatory and ministerial. Sheriffs have no discretion on whether or not to implement a writ. There is no need for the litigants to "follow-up" its implementation. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. x x x. (Citations omitted.)

Indeed, sheriffs ought to know that they have a sworn responsibility to serve writs of execution with utmost dispatch. They must comply with their mandated ministerial duty as speedily as possible.[17] Good faith on their part, or lack of it, in proceedings to properly execute their mandate would be of no moment, for they are chargeable with the knowledge that being officers of the court tasked therefore, it behooves them to make due compliances. Their unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty.[18]

In the instant case, the Court perceives the respondent's indifferent attitude in the enforcement of the Writ of Execution in Civil Case No. 174-V-07. The Writ of Execution was issued

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[16] A.M. No. P-08-2430, July 14, 2008, 558 SCRA 36, 42.

[17] *Pesongco v. Estoya*, 519 Phil. 226, 241 (2006).

[18] *Escobar vda. de Lopez v. Luna*, 517 Phil. 467, 475-476 (2006).

on October 5, 2009. Respondent served notice on October 12, 2009 giving Lota and those claiming rights from Lota only 10 days from date of receipt or until October 22, 2009 within which to vacate the disputed properties and remove all improvements thereon. October 22, 2009 came to pass and Lota and those claiming rights from Lota were still occupying the disputed properties. Upon follow-up, complainant learned that respondent was not at the office on October 27, 2009 and was in Cagayan de Oro to implement the Writ of Execution in another case. When respondent returned, he explained to complainant that he was not taking further action to implement the Writ of Execution because Lota already filed a motion to quash said writ. More than two months from its issuance, the Writ of Execution remained unsatisfied, thus, prompting complainant to file the instant administrative complaint against respondent.

The Court reiterates that it is the mandatory and ministerial duty of the sheriff to execute judgments without delay "unless restrained by a court order." *Quilo* is an exception to the general rule, but respondent's reliance on the case is misplaced. There are particular circumstances in *Quilo* which justified the pronouncement of the Court that it would have been more prudent for Sheriff Jundarino to defer implementation of the writ of execution until a determination of the motion to quash the same. Sheriff Jundarino was liable for misconduct for his unreasonable insistence on implementing the writ of execution on March 27, 2008 despite the fact that Quilo's motion to quash said writ was already scheduled for hearing the very next day, March 28, 2008. Moreover, Quilo was precisely questioning in his motion to quash the proper address where the writ should be implemented, whether at No. 2519 Granate St., Sta. Ana, Manila or at No. 2518 Granate St., San Andres Bukid, Manila.

No such compelling circumstances exist in the case at bar. Lota had just filed a motion to quash the Writ of Execution, and the motion was not yet even set for hearing. Also, the only basis for Lota's motion to quash[19] was his pending appeal before

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[19] *Rollo*, pp. 31-33.

the Court of Appeals. It is worthy to note that once the RTC has rendered a decision in the exercise of its appellate jurisdiction, such decision shall, under Rule 70, Section 21[20] of the Rules of Court, be immediately executory, without prejudice to an appeal *via* petition for review before the Court of Appeals and/or Supreme Court.[21] More specifically, the 1991 Revised Rule on Summary Procedure, governing ejectment cases, clearly provides:

SEC. 21. *Appeal*. — The judgment or final order shall be appealable to the appropriate regional trial court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the regional trial court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

In the absence of a court order, it was incumbent upon respondent to proceed without haste and to employ such means as necessary to implement the subject Writ of Execution and to put complainant, as the prevailing party in Civil Case No. 174-V-07, in possession of the disputed properties. Respondent could hardly be considered as having discharged his duty by serving a notice to vacate upon Lota but nothing more for the two months following the issuance of the Writ of Execution.

Respondent's unreasonable delay in implementing the Writ of Execution in Civil Case No. 174-V-07 constitutes simple neglect of duty, defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference. Civil Service Commission Memorandum Circular No. 19, series of 1999, classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day

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[20] Rule 70, Section 21. *Immediate execution on appeal to Court of Appeals or Supreme Court*. - The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[21] *Uy v. Santiago*, 391 Phil. 575, 580 (2000).

to six (6) months for the first offense. However, the penalty of fine may be imposed instead of suspension.[22] This being respondent's first offense in his twenty-four (24) years in government service, the penalty recommended by the OCA of a fine of ₱5,000.00 is appropriate.[23]

WHEREFORE, respondent Romero L. Rivera is found *GUILTY* of simple neglect of duty and is ordered to pay a fine of Five Thousand Pesos (₱5,000.00). He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Brion,[*] *Bersamin,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 160446. September 19, 2012]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **DOLORES HILARIO, TERESITA HILARIO, THELMA HILARIO OCHOA and EDUARDO HILARIO,** *respondents.*

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[22] Civil Service Commission Memorandum Circular No. 30-89 dated July 20, 1989.

[23] *Flores v. Falcotelo*, 515 Phil. 648, 664 (2006).

[*] Per Special Order No. 1305 dated September 10, 2012.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; *RES JUDICATA*; ELEMENTS. —** A complaint may be dismissed pursuant to the doctrine of *res judicata* when, upon the juxtaposition and comparison of the action sought to be dismissed and a previous one, there is (1) an identity between the parties or at least such as representing the same interest in both actions; (2) a similarity of rights asserted and relief prayed for (that is, the relief is founded on the same facts); and (3) identity in the two particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, fully adjudicate or settle the issues raised in the action under consideration.

2. **ID.; ID.; ID.; ID.; ID.; ONLY SUBSTANTIAL IDENTITY OF THE PARTIES IS NECESSARY. —** As we held in *Heirs of Faustina Adalid v. Court of Appeals*, "[o]nly substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case."

3. **ID.; ID.; ID.; ID.; ID.; JUDICIAL COMPROMISE IN ANOTHER ACTION WHICH WILL FULLY ADJUDICATE ISSUES IN THE ACTION UNDER CONSIDERATION HAS THE EFFECT OF *RES JUDICATA*; CASE AT BAR. —** With regard to the third requisite, *i.e.*, that any judgment which may be rendered in the other action will, regardless of which party is successful, fully adjudicate or settle the issues raised in the action under consideration, we find that same is likewise availing in this instance. Settled is the rule that "a judicial compromise has the effect of *res judicata*. A judgment based on a compromise agreement is a judgment on the merits."

4. **ID.; ID.; ACTIONS; WHEN COURTS MAY DISMISS CASES *MOTU PROPRIO*. —** In *Heirs of Domingo Valientes v. Ramas*, we observed that "[Rule 9, Section 1 of the Rules of Court] also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds — (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription

— provided that the ground for dismissal is apparent from the pleadings or the evidence on record." Such a dismissal may be ordered even on appeal.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Venustiano S. Roxas & Associates for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse the July 25, 2002 Decision[1] and October 16, 2003 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 55891, entitled *Dolores Hilario, Teresita Hilario Duran, Thelma Hilario Ochoa, and Eduardo P. Hilario versus Rizal Commercial Banking Corporation.* These appellate court issuances granted the appeal filed by herein respondents Dolores Hilario, Teresita Hilario, Thelma Hilario Ochoa and Eduardo Hilario and reversed the September 23, 1996 Order[3] of the Regional Trial Court (RTC), Branch 131, Caloocan City (Caloocan RTC) dismissing Civil Case No. C-17332 on the grounds of *litis pendentia* and forum shopping.

The records of this case reveal that on August 29, 1991, a certain Edmund N. Perez, together with the heirs of Saviniano Perez, Sr. and Saviniano Perez, Jr. (herein collectively referred to as Edmund, *et al.*), filed a Complaint for the annulment of mortgage, reconveyance, receivership, accounting and damages

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[1] *Rollo*, pp. 39-47; penned by Associate Justice Eriberto U. Rosario, Jr. with Associate Justices Oswaldo D. Agcaoili and Danilo B. Pine, concurring.

[2] *Id.* at 49; penned by Associate Justice Danilo B. Pine with Associate Justices Josefina Guevara-Salonga and Edgardo F. Sundiam, concurring.

[3] *Id.* at 119-120; penned by Judge Antonio J. Fineza.

against his wife, Yolanda H. Perez,[4] Francisco Aniag, Jr., HPM International, Inc., Amvhil Garments, Inc. (or collectively Yolanda, *et al.*) and herein petitioner Rizal Commercial Banking Corporation (RCBC). Said Complaint was docketed as Civil Case No. Q-91-10079[5] and was raffled to the RTC Quezon City, Branch 24 (Quezon City RTC). One of the reliefs sought by Edmund, *et al*. in that case was the annulment of several mortgages constituted over a Caloocan City property covered by Transfer Certificate of Title (TCT) No. 21563 (the Caloocan property), among other real properties listed in the Complaint. The salient portion of this Complaint stated:

3.1. On October 24, 1983, Edmund and Yolanda executed a real estate mortgage over [a] certain property covered by TCT No. 21563 of the Registry of Deeds of Caloocan to secure a loan obtained by HPM from RCBC in the amount of ₱100,000.00. On 27 September 1984, Edmund and Yolanda again executed a real estate mortgage to secure a loan obtained by HPM from RCBC in the amount of ₱30,000.00. **In both mortgages, Edmund and Yolanda acted as attorney-in-fact of** [**Yolanda's parents**][6] **Dolores P. Hilario and Teofilo Hilario**.

x x x x x x x x x

3.5. Also on 3 August 1987, Edmund and Yolanda, as attorney-in-fact of Epifanio Alano and **Teofilo and Dolores Hilario**, **executed a real estate mortgage over** the aforesaid real properties covered by **TCT Nos. 21563** and 26589 to secure another loan of ₱250,000.00 obtained by HPM from RCBC.

3.6. Unknown to [Edmund, *et al.*], Yolanda, Aniag and RCBC had conspired to obtain loans and other credit facilities from RCBC for HPM [a conjugal business founded by Edmund and Yolanda][7]

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[4] *Id.* at 85. Edmund N. Perez and Yolanda Hilario Perez were married on June 12, 1971.

[5] *Id.* at 83-96.

[6] *Id.* at 51. In the complaint filed by respondents in Civil Case No. C-17332, respondents alleged that Yolanda was one of the legitimate children of Dolores P. Hilario and Teofilo Hilario, therefore, making her a sibling of Dolores's co-respondents in the present case.

[7] *Id.* at 85.

at amounts substantially greater than the original loans secured by the aforesaid mortgages. Thereafter and still in conspiracy, RCBC, instead of applying HPM's export proceeds to its loans, released said proceeds to Yolanda, which thus allowed Yolanda and Aniag to misappropriate and divert HPM funds to their own benefit.

3.7. Upon learning of the full payment by HPM of the original loans, Perez, Sr. and Perez, Jr. requested for the cancellation of their respective mortgages. RCBC replied denying the request for cancellation on the ground that HPM still had other outstanding obligations for which RCBC was holding on to the mortgages as security. In the case of Perez, Jr., he asked for details of the outstanding loans yet RCBC still denied the request without giving the information requested.

3.8. Thus, in conspiracy with one another, Yolanda, Aniag and RCBC saddled HPM with excessive loans, deprived HPM of the means to pay for these loans, and let [Edmund, *et al.*'s] properties stand as "hostages" for the non-payment of the same loans.

3.9. The additional loans were obtained without the knowledge nor consent of the aforesaid mortgagors, nor are the same annotated upon the corresponding certificates of title.

3.10. Considering that the mortgaged properties were given as security for specific loans, and these specific loans have been fully paid, [Edmund, *et al.*] are entitled, as a matter of law, to the cancellation of the mortgages. Moreover, [Yolanda, *et al.*], especially RCBC, cannot take said properties "hostage" for the additional loans in view of the bad faith attendant to their conspiracy.[8] (Emphases supplied; citations omitted.)

Yolanda and HPM International, Inc. (HPM) filed an Answer with Affirmative Defenses, Compulsory Counter-Claim and Cross-Claim, which pertinently averred that:

5. Answering defendants [Yolanda and HPM] ADMIT the allegations contained in paragraphs 3.1, 3.2., 3.3., 3.4, and 3.5 with the qualification that said mortgages were executed merely to accommodate the business of [HPM] and in fact two (2) of the mortgaged properties subject of this action are registered in the names of SPOUSES TEOFILO and DOLORES HILARIO (TCT

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[8] *Id.* at 87-90.

NO. 2156[3]) and EPIFANIA ALANO (TCT NO. 26589), the parents and aunt of answering defendant [Yolanda], respectively. Answering defendant [Yolanda] together with her husband [Edmund] were merely designated as attorneys-in-fact by virtue of a special power of attorney executed by the parents and aunt of answering defendant [Yolanda] in their favor, a very standard operating procedure.

6. Answering defendants specifically DENY the allegations contained in paragraphs 3.6 and 3.8, the truth being those essayed in paragraphs 3 and 4 hereof and those stated and alleged in the affirmative defenses, counter-claim and cross-claim hereinbelow.

7. Answering defendants DENY specifically the averments in paragraph 3.7 for lack of knowledge or information sufficient to form a belief as to the truths thereof;

8. Answering defendants specifically DENY the allegations in paragraphs 3.9 and 3.10, the truth being that [HPM], through answering defendant [Yolanda], was able to secure from co-defendant RCBC an omnibus credit line which was made available for export packing credit basically to finance and facilitate the production and shipment of the export orders of [HPM] and to secure this line the subject properties were mortgaged with co-defendant RCBC in accommodation of its needs. There were no additional loans obtained, there was only one credit line secured by these mortgages. This line was given on the basis of [HPM's] own credit worthiness, its financial standing and its capacity and/or viability. x x x.[9]

By way of cross-claim against RCBC, Yolanda alleged that RCBC unilaterally and maliciously suspended or cut-off her credit line on the flimsy excuse that Edmund informed said bank that he would no longer give his marital consent to any promissory note that Yolanda would execute. The suspension of her credit line purportedly led to the disruption of HPM's business operations and the loss of HPM's and Yolanda's business reputations. She also asserted that it was Edmund who was holding clandestine meetings with the officers of RCBC to her prejudice. She claimed that despite the harassment and hardship she suffered at the hands of Edmund and RCBC, she was able make a substantial payment to RCBC in the amount of

[9] *Id.* at 98-99.

₱6,612,712.09 but it was not applied to the principal and was instead applied to unconscionable penalty charges.[10] Apart from damages, Yolanda sought the following reliefs against RCBC:

III.

On the CROSS-CLAIM ordering co-defendant RCBC:

1. to cancel the various deeds of mortgage executed on and release the five (5) parcels of land covered by Transfer Certificate of Title Nos. **21563**, S-67729, 17564, 319891 and 26589;

2. to account for the amount of ₱6,612,712.09 and **to make a reasonable and justifiable re-computation of the subject omnibus line** given to [HPM], to answering defendant [Yolanda], in particular, **and to fix affordable terms of payment** thereof as the Honorable Court may deem reasonable[.][11] (Emphases supplied.)

On May 17, 1996, during the pendency of Civil Case No. Q-91-10079, respondents filed Civil Case No. C-17332 against RCBC with the Caloocan RTC. Respondents alleged in their Complaint that they were the heirs or successors-in-interest of Teofilo Hilario, the principal of Yolanda, who was one of the parties in Civil Case No. Q-91-10079.[12] Respondents sought the cancellation of the mortgages annotated on TCT No. 21563 for the reason that Yolanda had allegedly paid the loans secured by said mortgages. With respect to the mortgage executed on August 3, 1987, respondents further contended that the same was null and void, considering that said encumbrance was made two years after Teofilo's death and this circumstance rendered "ineffective" the Special Power of Attorney (SPA) that he previously executed in favor of Yolanda. We quote the pertinent portions of respondents' Complaint in Civil Case No. C-17332 here:

1.05. On 15 September 1983, Teofilo Hilario jointly with his wife, Dolores, executed a Special Power of Attorney [SPA] authorizing

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[10] *Id.* at 103-107.

[11] *Id.* at 108.

[12] *Id.* at 50-58.

one of their children, [Yolanda], to mortgage the [Caloocan property].

1.06. Utilizing the said [SPA] in 1983 and 1984, it appears that Yolanda executed two (2) real estate mortgages over the [Caloocan property] in favor of [petitioner] RCBC to secure two (2) loans granted to her by [petitioner] RCBC.

1.06.1. The first mortgage appears to have been executed by Yolanda on 24 October 1983 in favor of RCBC to secure a loan granted to her by [petitioner] in the amount of One Hundred Thousand Pesos (₱100,000.00).

1.06.2. The second mortgage appears to have been executed by Yolanda in favor of [petitioner] RCBC on 9 October 1984[13] to secure another loan granted to Yolanda by defendant in the amount of Thirty Thousand Pesos (₱30,000.00).

1.07. However, the above loans secured by the said mortgages were later paid in full by Yolanda.

1.07.1. Consequently, by operation of law, the said real estate mortgages over the [Caloocan property] became "*functus officio*" and of no legal effect.

1.08. On 24 February 1985, Teofilo Hilario died intestate and was survived by [respondents and Yolanda].

1.09. Among the properties which were left behind by Teofilo Hilario was the [Caloocan property].

1.09.1. By operation of law, ownership of the [Caloocan property] automatically vested in [respondent] and [Yolanda].

1.10. **Recently**, **however**, [**respondents**] **learned that on 03 August 1987, or more than two** (**2**) **years after the death of Teofilo Hilario**, **another mortgage was again executed by** [**Yolanda**] **over the** [**Caloocan property**] **in favor of** [**petitioner**] **RCBC purportedly to secure a loan in the sum of Two Hundred Fifty-Eight Thousand Pesos** (₱258,000.00).

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[13] *Id.* at 87. In the Complaint in Civil Case No. Q-91-10079, this second mortgage was allegedly entered into on September 27, 1984 and not October 9, 1984.

1.11. However, **when confronted by [respondents], [Yolanda] presented to [them] documents showing that the loan in the amount of ₱258,000.00 purportedly secured by the latest real estate mortgage over the [Caloocan property] has been fully paid by her**.

x x x x x x x x x

2.02. **The Real Estate Mortgage on 03 August 1987 executed by [Yolanda] over the [Caloocan property] in favor of [RCBC] is null and void**.

> 2.02.1. **The said real estate mortgage was executed on the strength of the [SPA] executed in 1983 by the spouses Teofilo and Dolores Hilario in favor of [Yolanda]**.
>
> 2.02.2. **However, at the time [Yolanda] executed the said real estate mortgage over the [Caloocan property], the said [SPA] executed by spouses Teofilo and Dolores Hilario authorizing her to mortgage the [Caloocan property], was already deemed withdrawn and rendered ineffective in view of the death of Teofilo two (2) years earlier**.

x x x x x x x x x

2.04. Considering that there [was] no other valid existing mortgage in favor of [RCBC] over the [Caloocan property], [RCBC] has no legal right to retain possession of the owner's duplicate of the transfer certificate of title thereto and should be ordered to surrender the same to [respondents] who are the owners thereof.[14] (Emphases supplied; citations omitted.)

RCBC moved to dismiss the aforementioned Complaint in Civil Case No. C-17332, on the grounds of forum shopping and *litis pendentia* since respondents essentially sought the same relief prayed for by Edmund, *et al.* in Civil Case No. Q-91-10079 and that the parties to the two cases represented related interests.[15]

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[14] *Id.* at 51-55.

[15] *Id.* at 74-82.

In an Order dated September 23, 1996, the Caloocan RTC dismissed Civil Case No. C-17332 on the grounds of forum shopping and *litis pendentia*. It held:

> Firstly, there is evidently forum shopping considering that a certain **Edmund Perez**, **who is not denied by** [**respondents**] **to be their close in-law** (either a son-in-law or a brother-in-law) **filed before the** [**Quezon City RTC**] **against RCBC and wherein he impleaded his wife**[, **Yolanda**], **who is not denied by** [**respondents**] **to be either their daughter or sister**, **as co-defendant**, **a complaint for cancellation of certain mortgages**, **including the very same mortgage over the same parcel of land which** [**respondents**] **also want to be cancelled in the instant complaint before this Court and**, **wherein**, **it appears that said** [**Yolanda**] **was left out**. [Respondents] also failed to destroy the substantial allegations of [RCBC] the allegations in the complaint filed by [Edmund, *et al.*] resemble those made in the instant complaint before this Court wherein the pertinent relief being similarly sought is the cancellation of the mortgage over the [Caloocan property].
>
> Secondly, there is identity of parties as the plaintiffs [respondents] in this case represent the same interest as [Yolanda] or [Edmund, *et al.*], or both, in the complaint before the Quezon City Regional Trial Court, Branch 84. **It has not been denied that** [**Yolanda**] **and** [**respondents**] **in this case have pro-indiviso interest in the** [**Caloocan property**] **as** "**surviving spouse**" **and** "**surviving legitimate children of Teofilo Hilario" x x x and they all pray for cancellation of** [**RCBC's**] **mortgage over the said property on the ground that the mortgage is void or was paid**, which fact also satisfies the second requisite on the identity of rights and reliefs prayed for. For the third requisite for *litis pendentia* as a ground for dismissal, **a decision in either Court**, ***i.e.,*** by [**the Calooocan RTC**] **or by the Quezon City Regional Trial Court, Branch 84 declaring the mortgagees as either void or valid, would be binding on the** [**Caloocan property**] **and all [the] parties who share the same interest pro-indiviso**. Consequently, the decision in either court would amount to *res judicata* and would put to rest the issue on the validity of [RCBC's] mortgage constituted on the subject property covered by TCT No. 21563.[16] (Emphases supplied.)

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[16] *Id.* at 120.

Respondents appealed the September 23, 1996 Order of the Caloocan RTC. However, while the appeal was pending, the parties in Civil Case No. Q-91-10079 entered into a compromise agreement which was approved by the Quezon City RTC.[17] In said agreement both Edmund and Yolanda admitted the outstanding obligation of HPM to RCBC and the subsistence of the real estate mortgages executed by them over several properties, including the mortgages over the property covered by TCT No. 21563. The material portions thereof provided:

PAYMENTS BY [YOLANDA] HILARIO

3.1. The payment of the amount of ₱3,000,000.00, representing the remaining balance of the Compromise Amount provided in this Agreement shall be the obligation of [Yolanda].

x x x x x x x x x

SECURITY

4.1. The following security shall secure the prompt and faithful fulfillment of the payment of the Compromise Amount by [Yolanda]:

> **4.1.1 Real Estate Mortgage, dated 27 September 1984, signed and executed by [Edmund and Yolanda], as attorneys-in-fact of Dolores Hilario and Teofilo Hilario constituted over the parcel of land, and the improvements thereon, covered by [TCT] No. 21563 registered under the name of spouses Dolores and Teofilo Hilario, located at 51-B Gen. Tinio St., Morning Breeze Subdivision, Caloocan City.**

4.2. The BANK shall cause the release of the RCBC MORTGAGES not subjected as security for the fulfillment of [Yolanda's] obligation under this AGREEMENT upon receipt of the initial PHP3,500,000.00 payment from [Edmund] provided in Clause 2.1 of this AGREEMENT and upon the execution of this AGREEMENT.[18] (Emphasis supplied.)

However, it appears that Yolanda failed to fulfill her obligation under the Compromise Agreement. Consequently, RCBC foreclosed on the aforementioned real estate mortgage and sold

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[17] *Id.* at 43.

[18] *Id.* at 999.

the Caloocan property in public auction on February 26, 2002.[19]

Nonetheless, in a Decision dated July 25, 2002, the Court of Appeals reversed the September 23, 1996 Order of the Caloocan RTC for the reason that "a compromise judgment upholding and affirming the validity of the assailed mortgage is not *res judicata* to an action seeking the cancellation of the same mortgage."[20]

RCBC moved for reconsideration but it was denied by the Court of Appeals in a Resolution dated October 16, 2003.

Aggrieved, RCBC availed of this recourse reiterating its previous arguments that Civil Case No. C-17332 should be dismissed because the causes of action, parties and reliefs were identical to those in Civil Case No. Q-91-10079. Noting the common elements between *litis pendentia* and *res judicata*, RCBC thus posited that the court-approved Compromise Agreement in Civil Case No. Q-91-10079 resolved the issues in both civil cases (Civil Case Nos. Q-91-10079 and C-17332) pursuant to the doctrine of *res judicata*.[21]

Respondents, on the other hand, insisted that there was no identity of parties nor causes of action between Civil Case No. C-17332 and Civil Case No. Q-91-10079. The first case involved them and RCBC while the second involved Edmund, *et al.* and Yolanda, *et al*. Moreover, the grounds for the nullification of the mortgages were purportedly different. Respondents allegedly cited in their Complaint the expiration of Yolanda's SPA in view of Teofilo's death while Edmund, *et al.* cited the collusion between Yolanda, *et al*. as their ground for seeking cancellation of the mortgages. Thus, despite the fact that both complaints sought the same relief, they did not raise the same legal issues. Consequently, the Compromise Agreement in Civil Case No. Q-91-10079 cannot bind respondents.[22]

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[19] *Id.* at 43.

[20] *Id.* at 45.

[21] *Id.* at 13-37.

[22] *Id.* at 972-982.

After a thorough review of the parties' arguments, we resolve to grant the petition.

A complaint may be dismissed pursuant to the doctrine of *res judicata* when, upon the juxtaposition and comparison of the action sought to be dismissed and a previous one, there is (1) an identity between the parties or at least such as representing the same interest in both actions; (2) a similarity of rights asserted and relief prayed for (that is, the relief is founded on the same facts); and (3) identity in the two particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, fully adjudicate or settle the issues raised in the action under consideration.[23]

In this instance, an examination of the pleadings establishes that there was an identity of parties in Civil Case No. C-17332 and Civil Case No. Q-91-10079. The following were culled from the pleadings submitted by the parties in both cases: Edmund and Yolanda are married;[24] thus, Edmund was a relative by affinity of the heirs of Teofilo Hilario. Yolanda is one of the legitimate children borne of the marriage of Teofilo and Dolores Hilario,[25] and, therefore, a child of Dolores and a sibling of Dolores's co-respondents. Upon Teofilo's death, Yolanda ceased to be a mere agent of Teofilo and became respondents' co-heir and co-owner with respect to the Caloocan property. It may reasonably be concluded therefore, that respondents herein, Yolanda and Edmund, with respect to the Caloocan property, all represent substantially the same interest against RCBC.

As we held in *Heirs of Faustina Adalid v. Court of Appeals*,[26] "[o]nly substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. There is substantial identity of parties when there is a community of interest between a party in the

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[23] *Cruz v. Court of Appeals,* 388 Phil. 550, 556 (2000).

[24] *Rollo,* p. 85.

[25] *Id.* at 51.

[26] 498 Phil. 75, 87 (2005).

first case and a party in the second case albeit the latter was not impleaded in the first case."

With regard to the second requirement, *i.e.,* identity in rights asserted and reliefs prayed for, it is noteworthy that respondents herein and Edmund, *et al*., respectively the plaintiffs in Civil Case No. 17332 and Civil Case No. Q-91-10079, similarly asserted as their principal argument for the cancellation of the mortgages the alleged full payment by Yolanda of the loan obtained from RCBC. Meanwhile, as a cross-claim against RCBC, Yolanda also sought the cancellation of the very same mortgages on the assertion that she has already made substantial payments to RCBC but which the latter supposedly in bad faith applied to unconscionable and exorbitant penalty charges. Verily, respondents, Edmund and Yolanda all sought the same relief against RCBC on substantially identical factual allegations and legal justifications. In other words, it cannot be denied that the primary issue to be litigated in both civil cases is whether or not Yolanda had indeed already paid the outstanding obligation secured by the mortgages constituted on the Caloocan property. This issue was settled with finality by the Compromise Agreement wherein Yolanda admitted she still had an outstanding balance on the loan to be paid to RCBC and said balance was to be secured by the Real Estate Mortgage dated September 27, 1984 over the Caloocan property.[27]

As for respondents' contention that Yolanda had no authority to constitute a mortgage on the subject property since the death of Teofilo extinguished Yolanda's SPA,[28] this was raised in their Complaint only in relation to the third mortgage (executed on August 3, 1987) and not to the first two mortgages (dated October 23, 1983 and September 27, 1984) which were

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[27] *Rollo,* p. 999. *See* paragraphs 3.1, 3.2 and 4.1.1 of the Compromise Agreement.

[28] CIVIL CODE, Article 1919. **Agency is extinguished**:

x x x x x x x x x

(3) By the **death**, civil interdiction, insanity or insolvency **of the principal** or of the agent[.] (Emphases supplied.)

undisputedly executed within the lifetime of Teofilo. Although this issue was not squarely raised in Civil Case No. Q-91-10079, the terms of the Compromise Agreement in that case already foreclosed the litigation of this particular issue in Civil Case No. C-17332. Under the Compromise Agreement, it was stipulated that Yolanda's remaining obligation to RCBC would be secured only by the Real Estate Mortgage dated September 27, 1984 (or the second mortgage) and all other mortgages would be released upon execution of the Compromise Agreement. Hence, litigating the issue of the supposed nullity of the third mortgage would no longer serve any legal or practical purpose.

With regard to the third requisite, *i.e.*, that any judgment which may be rendered in the other action will, regardless of which party is successful, fully adjudicate or settle the issues raised in the action under consideration, we find that same is likewise availing in this instance.

Settled is the rule that "a judicial compromise has the effect of *res judicata*. A judgment based on a compromise agreement is a judgment on the merits."[29] As discussed above, the court-approved Compromise Agreement in Civil Case No. Q-91-10079 disposed of the issue of Yolanda's payment of the outstanding loans and the validity of the mortgages involved in these civil cases. This being so, said Compromise Agreement bound the parties herein.

In *Heirs of Domingo Valientes v. Ramas*,[30] we observed that "[Rule 9, Section 1 of the Rules of Court] also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds — (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription — provided that the ground for dismissal is apparent from the pleadings or the evidence on record." Such a dismissal may be ordered even on appeal.

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[29] *Uy v. Ngo Chua*, G.R. No. 183965, September 18, 2009, 600 SCRA 806, 817.

[30] G.R. No. 157852, December 15, 2010, 638 SCRA 444, 451.

In view of the foregoing, we rule that the dismissal of Civil Case No. C-17332 is warranted under the circumstances. However, such dismissal should be premised, not on forum shopping and *litis pendentia*, but on *res judicata* in view of the court-approved Compromise Agreement in Civil Case No. Q-91-10079.

WHEREFORE, the petition is hereby **GRANTED.** The July 25, 2002 Decision and October 16, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 55891 are **REVERSED** and **SET ASIDE.** The Complaint in Civil Case No. C-17332 is **DISMISSED.**

No pronouncement as to cost.

SO ORDERED.

Sereno, C.J. (Chairperson), Brion,[*] *Bersamin,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174669. September 19, 2012]

BELLE CORPORATION, *petitioner, vs.* **ERLINDA DE LEON-BANKS, RHODORA DE LEON-TIATCO, BETTY DE LEON-TORRES, GREGORIO DE LEON, ALBERTO DE LEON, EUFRONIO DE LEON,**[*] **and MARIA ELIZA DE LEON-DE GRANO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELABORATED. —** Section 2, Rule 2 of the Rules of Court defines cause of action as the acts or omission by

[*] Per Special Order No. 1305 dated September 10, 2012.

which a party violates a right of another. A cause of action is a formal statement of the operative facts that give rise to a remedial right. The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant. Thus, it must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. Failure to make a sufficient allegation of a cause of action in the complaint warrants its dismissal. The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief. In determining whether a complaint states a cause of action, the RTC can consider all the pleadings filed, including annexes, motions, and the evidence on record. The focus is on the sufficiency, not the veracity, of the material allegations. Moreover, the complaint does not have to establish facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case.

2. **ID.; ID.; ALLEGATIONS IN PLEADINGS; "ULTIMATE FACTS" ON WHICH A PARTY PLEADING RELIES FOR HIS CLAIM OR DEFENSE; ELUCIDATED. —** [T]he first paragraph of Section 1, Rule 8 of the Rules of Court provides that "[e]very pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts." Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant. They refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests.

3. **ID.; ID.; ID.; ID.; ALLEGATION OF BAD FAITH IS BEST PASSED UPON FULL-BLOWN TRIAL ON THE MERITS. —** It is evident from the allegations in the Amended Complaint that respondents specifically alleged that they are owners of

the subject property being held in trust by their sister, Nelia Alleje, and that petitioner acted in bad faith when it bought the property from their sister, through her company, Nelfred, knowing that herein respondents claim ownership over it. x x x Petitioner contends that "it may be held liable ONLY IF it is proven by preponderance of evidence that [it] indeed acted in bad faith in dealing with the [subject] property." Indeed, bad faith is a question of fact and is evidentiary. Bad faith has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties. This is best passed upon after a full-blown trial on the merits.

4. **ID.; ID.; MOTION TO DISMISS; ISSUES WHICH ARE MATTERS OF DEFENSE ARE NOT PROPER THEREIN AND MUST BE THRESHED OUT IN A FULL BLOWN TRIAL. —** [T]he other assigned errors in the instant petition dwell on issues which are matters of defense on the part of petitioner. The questions of whether or not there is an implied or express trust and whether the said trust is null and void are assertions that go into the merits of the main case and still need to be proven or disproven by the parties and resolved by the RTC. In the same manner, the issues on prescription and estoppels x x x are matters of defense not proper in a motion to dismiss for failure to state a cause of action. They should be pleaded in the answer, to be resolved after the trial on the basis of the arguments and evidence submitted by the parties. As jurisprudence holds, so rigid is the norm prescribed that if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits. This dictum is in line with the policy that motions to dismiss should not be lightly granted where the ground invoked is not indubitable, as in the present case. In such a situation, the objections to the complaint must be embodied in the answer as denials or special and affirmative defenses and threshed out in a full-blown trial on the merits.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
Poblador Bautista & Reyes Law Offices for respondents.

DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] of the Court of Appeals (CA), dated May 18, 2006 in CA-G.R. CV No. 74669. The assailed Decision nullified the Order of the Regional Trial Court (RTC) of Tanauan, Batangas, Branch 6 in Civil Case No. T-1046, which dismissed herein petitioner's Amended Complaint. The petition also seeks to reverse and set aside the CA's Resolution denying petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case, as summarized by the CA, are as follows:

> Plaintiffs-appellants [herein respondents] Erlinda De Leon-Banks, Rhodora De Leon-Tiatco, Betty De Leon-Torres, Gregorio De Leon, Alberto De Leon, Eufronio De Leon, Jr. and defendant-appellee Nelia De Leon-Alleje were seven of the eight children of the late spouses Eufronio and Josefa De Leon (LATE SPOUSES), while plaintiff Maria Eliza De Leon-De Grano [also one of herein respondents] was the daughter and sole heir of the late Angelina De Leon-De Grano, the eighth child.
>
> Defendant-appellee Alfredo Alleje was the husband of Nelia De Leon-Alleje (both hereinafter referred to as SPOUSES ALLEJE), both of whom were the principal stockholders and officers of defendant-appellee Nelfred Properties Corporation (NELFRED). Meanwhile, defendant-appellee [herein petitioner] [Belle Corporation] BELLE was the purchaser of the disputed property.
>
> The disputed property was a 13.29 hectare parcel of unregistered land originally belonging to the late spouses Eufronio and Josefa De Leon. It [is] located at Paliparan, Talisay, Batangas and was covered by various tax declarations.

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring; *rollo,* pp. 53-62.

On February 9, 1979, a Deed of Absolute Sale (1979 DEED) was executed between the LATE SPOUSES and NELFRED, represented therein by defendant-appellee Nelia De Leon-Alleje, wherein ownership of the property was conveyed to Nelia De Leon-Alleje for ₱60,000.00. At that time, the disputed property was covered by Tax Declarations No. 0359 and No. 0361.

On December 19, 1980, the 1979 DEED was registered with the Register of Deeds. As time passed, several tax declarations over the disputed property were obtained by NELFRED in its own name.

On September 23, 1997, x x x [herein petitioner] BELLE, on one hand, and NELFRED and SPOUSES ALLEJE on the other, executed a Contract to Sell covering the disputed property for the purchase price of ₱53,124,000.00 to be paid in four installments. When the final installment had been paid, a Deed of Absolute Sale (1998 DEED) was executed on June 24, 1998 between BELLE and NELFRED wherein the latter transferred ownership of the disputed property to the former.

[Meanwhile], on January 19, 1998, x x x [herein respondents] filed a Complaint for "Annulment of Deed of Sale, Reconveyance of Property with Prayer for Issuance of a Writ of Preliminary Injunction and Damages" [against the SPOUSES ALLEJE, NELFRED and BELLE] wherein they sought the annulment of the Contract to Sell. They alleged that the 1979 DEED was simulated; that x x x NELFRED paid no consideration for the disputed property; that the disputed property was to be held in trust by x x x Nelia De Leon-Alleje, through, NELFRED, for the equal benefit of all of the LATE SPOUSES' children — x x x [herein respondents] and x x x Nelia De Leon-Alleje; that in the event of any sale, notice and details shall be given to all the children who must consent to the sale and that all amounts paid for the property shall be shared equally by the children; that on September 3, 1997, x x x SPOUSES ALLEJE gave x x x [herein respondents] ₱10,400,000.00 in cash, representing a portion of the proceeds of the sale of the disputed property; that it was only then that they were given notice of the sale; that their inquiries were ignored by the SPOUSES ALLEJE; that a final payment was to be made by x x x BELLE to x x x SPOUSES ALLEJE sometime in January 1998; and that the x x x SPOUSES ALLEJE had refused to compromise.

On February 2, 1998, x x x SPOUSES ALLEJE and NELFRED filed a Motion to Dismiss wherein they alleged that [herein

respondents'] cause of action, the existence of an implied trust between them and NELFRED on the one hand and the LATE SPOUSES on the other, was barred by prescription and laches because more than 10 years had passed since the execution of the 1979 DEED.

On February 9, 1998, x x x BELLE filed a Motion to Dismiss wherein it alleged that the Complaint stated no cause of action against [BELLE], which was an innocent purchaser for value; that assuming, for the sake of argument, that [herein respondents] had a cause of action against BELLE, the claim on which the Complaint is founded was unenforceable; and assuming that the cause of action was based on an implied trust, the same had already been barred by laches.

On September 23, 1998, the RTC promulgated an Order that dismissed the Complaint against x x x BELLE for failure to state a cause of action on the ground that there was no allegation in the Complaint that [BELLE] was a purchaser in bad faith. [Herein respondents] then filed a Motion for Reconsideration.

On November 11, 1998, pending the resolution of their Motion for Reconsideration of the September 23, 1998 Order, [herein respondents] filed a Manifestation/Motion to admit their Amended Complaint wherein they added the allegations that x x x NELFRED did not effect the registration of the disputed property, which remained unregistered land covered only by tax declarations; that at the time of the execution of the 1997 Contract to Sell, the disputed property was still unregistered land and remained unregistered; that a Deed of Absolute Sale (1998 DEED) had already been executed in favor of x x x BELLE; that x x x BELLE purchased the land with the knowledge that it was being claimed by other persons; and that x x x BELLE was in bad faith because when the 1998 DEED was executed between it and NELFRED on June 24, 1998, the Complaint in the case at bench had already been filed.

On April 29, 1999, the RTC reconsidered its Order of September 23, 1998 and lifted the dismissal against [BELLE]. At the same time, the RTC admitted the Amended Complaint of the plaintiffs-appellants.

On June 9, 1999, x x x BELLE filed a "Motion for Reconsideration or to Dismiss the Amended Complaint" wherein it alleged that the claim in the Amended Complaint was unenforceable; that the Amended Complaint still stated no cause of action against [BELLE]; and that the [Amended] Complaint was barred by prescription.

x x x x x x x x x

On December 16, 1999, the RTC promulgated its assailed Order in Civil Case No. T-1046 [dismissing the Amended Complaint].[2]

Aggrieved by the Order of the RTC, herein respondents filed an appeal with the CA.

On May 18, 2006, the CA rendered its assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, appeal is hereby **GRANTED** and the assailed December 16, 1999 Order of the RTC of Tanauan, Batangas, Branch 6, in Civil Case No. T-1046, is hereby **REVERSED and SET ASIDE** and defendant-appellee Belle Corporation is hereby **DIRECTED** within fifteen (15) days from finality of this Decision, to file its Answer.

SO ORDERED.[3]

Herein petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated September 4, 2006.

Hence, the instant petition based on the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT PETITIONER HYPOTHETICALLY ADMITTED RESPONDENTS' ALLEGATIONS THAT IT HAD FULL KNOWLEDGE OF THEIR CLAIM ON THE PROPERTY AND, THEREFORE, PURCHASED THE SAME IN BAD FAITH.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE TRUST CREATED BY THE LATE SPOUSES IN FAVOR OF NELFRED WAS AN IMPLIED TRUST INSTEAD OF AN EXPRESS TRUST.

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[2] *Rollo*, pp. 55-58. (Citations omitted.)

[3] *Id.* at 61-62. (Emphasis supplied.)

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE TEN-YEAR PRESCRIPTIVE PERIOD FOR AN IMPLIED TRUST SHOULD BE RECKONED FROM THE EXECUTION OF THE DEED OF SALE BY NELFRED IN FAVOR OF PETITIONER AND NOT FROM THE REGISTRATION OF THE SALE BETWEEN THE LATE SPOUSES AND NELFRED WITH THE REGISTER OF DEEDS.

IV

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT BECAUSE THE SUBJECT OF THE SALE IS UNREGISTERED LAND, PETITIONER'S GOOD FAITH IS IMMATERIAL AND BOUGHT THE PROPERTY AT ITS OWN PERIL EVEN AS RESPONDENTS WERE RESPONSIBLE FOR CREATING SUCH PERIL.

V

THE HONORABLE COURT [OF APPEALS] SERIOUSLY ERRED IN HOLDING THAT A TRUST WAS CREATED WHEN ITS VERY PURPOSE WAS TO AVOID COMPLIANCE WITH TAX LAWS AND THE COMPREHENSIVE AGRARIAN REFORM LAW.[4]

The basic issue in the instant case is whether the CA was correct in reversing the Order of the RTC which dismissed respondents' Amended Complaint on the ground of failure to state a cause of action.

The Court rules in the affirmative.

Section 2, Rule 2 of the Rules of Court defines cause of action as the acts or omission by which a party violates a right of another.

A cause of action is a formal statement of the operative facts that give rise to a remedial right.[5] The question of whether the

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[4] *Id.* at 26-27.

[5] *Philippine Daily Inquirer v. Alameda*, G.R. No. 160604, March 28, 2008, 550 SCRA 199, 207; *Zepeda v. China Banking Corporation*, G.R. No. 172175, October 9, 2006, 504 SCRA 126, 131.

complaint states a cause of action is determined by its averments regarding the acts committed by the defendant.[6] Thus, it must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action.[7] Failure to make a sufficient allegation of a cause of action in the complaint warrants its dismissal.[8]

The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[9]

In determining whether a complaint states a cause of action, the RTC can consider all the pleadings filed, including annexes, motions, and the evidence on record.[10] The focus is on the sufficiency, not the veracity, of the material allegations.[11] Moreover, the complaint does not have to establish facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case.[12]

Thus, the first paragraph of Section 1, Rule 8 of the Rules of Court provides that "[e]very pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts."

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Soloil, Inc. v. Philippine Coconut Authority*, G.R. No. 174806, August 11, 2010, 628 SCRA 185, 190.

[10] *Id.* at 191.

[11] *Id.*

[12] *Id.*

Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant.[13] They refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests.[14]

In the instant case, pertinent portions of respondents' allegations in their Amended Complaint are as follows:

x x x x x x x x x

5. Plaintiffs [herein respondents] Erlinda De Leon-Banks, Rhodora De Leon-Tiatco, Betty De Leon-Torres, Gregorio De Leon, Alberto De Leon and Eufronio De Leon, Jr. and defendant Nelia De Leon-Alleje are seven (7) of the eight (8) children of the late spouses Eufronio and Josefa De Leon, while plaintiff [also one of herein respondents] Maria Eliza De Leon-De Grano is the daughter and sole heir of the late Angelina De Leon-De Grano, the eight[h] child.

x x x x x x x x x

9. During their lifetime, the late Eufronio and Josefa Acquired several tracts of land located in the Province of Batangas, the City of Manila, Tagaytay City and Baguio City. The properties acquired included a 13.29 hectare property located at Paliparan, Talisay, Batangas covered by Tax Declaration Nos. 0359 and 0361 issued by the Provincial Assessor of Batangas, Tanauan Branch ("Paliparan Property").

10. The spouses Eufronio and Josefa, to protect and to ensure during their lifetime the interest of their children in the properties they acquired[,] planned and decided to transfer and in fact transferred without consideration several properties to their children to be held in trust by whoever the transferee is for the equal benefit of all of the late spouses['] children with the specific instruction in the event of any subsequent sale, that notice and details of the sale shall be given to all the children who must consent to the sale and that all

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[13] *Locsin v. Sandiganbayan*, G.R. No. 134458, August 9, 2007, 529 SCRA 572, 597.

[14] *Lazaro v. Brewmaster International, Inc.*, G.R. No. 182779, August 23, 2010, 628 SCRA 574, 581.

amounts paid for the property shall be shared equally by the children and the late spouses during their lifetime.

x x x x x x x x x

13. Sometime in 1979, in accordance with their already established plan and purpose of property disposition, the late spouses, during their lifetime, transferred to their daughter, defendant Nelia Alleje, the Paliparan Property, through NELFRED which was represented in said act by defendant Nelia Alleje, under a Deed of Absolute Sale, x x x.

14. Defendant NELFRED paid no consideration for the transfer of the Paliparan Property although the Deed of Absolute Sale mentioned ₱60,000.00 as consideration for the alleged transfer, as defendant Nelia Alleje knew fully well the nature and purpose of the transfer and the condition that, as in the case of earlier transfers made by the decedent spouses, in the event of a subsequent sale by defendant Nelia Alleje, through NELFRED, the proceeds thereof shall be distributed equally among all the children, the herein plaintiffs and defendant Nelia Alleje.

15. After the transfer in trust to defendant Nelia Alleje, through NELFRED, the late Eufronio and Josefa continued to receive during their lifetime their share in the produce of the Paliparan Property as landowner and likewise continued the payment of the real estate taxes due thereon. **In accordance with the transfer in trust to defendant Nelia Alleje, N[ELFRED] did not effect the registration of the Paliparan Property in its name and the same remained to be unregistered land covered only by tax declarations.**

16. In flagrant violation of the trust reposed on her and with intent to defraud the plaintiffs of their rightful share in the proceeds of the sale of the Paliparan Property, defendant Spouses Alleje surreptitiously sold the Paliparan Property to defendant Belle Corporation. **At the time of the sale to Belle Corporation in September 1997, the Paliparan Property was unregistered land covered only by tax declarations. Up to the present, the subject property is unregistered.**

x x x x x x x x x

23. By their acts, defendant Spouses Alleje clearly acted and continues to act to deprive herein plaintiffs of their lawful distributive share in the proceeds of the sale of the Paliparan Property. **Moreover,**

defendant Nelia Alleje repudiated the trust created over the Paliparan Property when said property was sold to Belle Corporation in September 1997. Plaintiffs were put on notice of this act of repudiation only when defendant Nelia Alleje tendered a total amount of ₱10,400,000.00 to plaintiffs and their children on 3 September 1997. Said amount turned out to be part of the proceeds of the sale of the Paliparan Property to Belle Corporation.

24. On the other hand, Belle Corporation knowingly purchased unregistered land covered only by tax declarations and knew that persons other than the individual defendants were paying for the land taxes. It should not have disregarded such knowledge, as well as other circumstances which pointed to the fact that its vendors were not the true owners of the property. Since the Paliparan Property is unregistered, Belle Corporation should have inquired further into the true ownership of the property.

25. Belle Corporation was likewise in bad faith when, despite having had notice of plaintiffs' claim over the Paliparan Property on 19 January 1998 when it was impleaded as a co-defendant in this civil case, Belle Corporation still entered into a Deed of Absolute Sale with defendant Spouses Alleje and NELFRED on 24 June 1998. Thus, Belle Corporation finalized its purchase of the subject property from its co-defendants with knowledge that some other persons are claiming and actually own the same.

x x x x x x x x x[15]

It is evident from the above allegations in the Amended Complaint that respondents specifically alleged that they are owners of the subject property being held in trust by their sister, Nelia Alleje, and that petitioner acted in bad faith when it bought the property from their sister, through her company, Nelfred, knowing that herein respondents claim ownership over it.

Assuming the above allegations to be true, respondents can, therefore, validly seek the nullification of the sale of the subject property to petitioner because the same effectively denied them their right to give or withhold their consent if and when the subject property is intended to be sold, which right was also

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[15] Records, pp. 286-291. (Emphasis supplied.)

alleged by respondents to have been provided for in the trust agreement between their parents and their sister, Nelia Alleje. The Court, thus, finds no error on the part of the CA in ruling that the allegations in the complaint are sufficient to establish a cause of action for the nullification of the sale of the subject property to herein petitioner.

Petitioner contends that "it may be held liable ONLY IF it is proven by preponderance of evidence that [it] indeed acted in bad faith in dealing with the [subject] property."[16] Indeed, bad faith is a question of fact and is evidentiary.[17] Bad faith has to be established by the claimant with clear and convincing evidence, and this necessitates an examination of the evidence of all the parties.[18] This is best passed upon after a full-blown trial on the merits.

Stated differently, the determination of whether or not petitioner is guilty of bad faith cannot be made in a mere motion to dismiss. An issue that requires the contravention of the allegations of the complaint, as well as the full ventilation, in effect, of the main merits of the case, should not be within the province of a mere motion to dismiss.[19]

The parties have gone to great lengths in discussing their respective positions on the merits of the main case. However, there is yet no need to do so in the instant petition. There will be enough time for these disputations in the lower court after responsive pleadings are filed and issues are joined for eventual trial of the case.

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[16] *Rollo*, p. 30.

[17] *NM Rothschild and Sons, (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011; *Magaling v. Ong*, G.R. No. 173333, August 13, 2008, 562 SCRA 152, 169.

[18] *Gubat v. National Power Corporation*, G.R. No. 167415, February 26, 2010, 613 SCRA 742, 757.

[19] *NM Rothschild and Sons, (Australia) Limited v. Lepanto Consolidated Mining Company, supra* note 17.

Indeed, the other assigned errors in the instant petition dwell on issues which are matters of defense on the part of petitioner. The questions of whether or not there is an implied or express trust and whether the said trust is null and void are assertions that go into the merits of the main case and still need to be proven or disproven by the parties and resolved by the RTC. In the same manner, the issues on prescription and estoppel raised in petitioner's *Opposition to Manifestation/Motion with Supplemental Motion to Dismiss*,[20] as well as in its *Motion for Reconsideration or to Dismiss the Amended Complaint*,[21] are matters of defense not proper in a motion to dismiss for failure to state a cause of action. They should be pleaded in the answer, to be resolved after the trial on the basis of the arguments and evidence submitted by the parties. As jurisprudence holds, so rigid is the norm prescribed that if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.[22] This dictum is in line with the policy that motions to dismiss should not be lightly granted where the ground invoked is not indubitable, as in the present case.[23] In such a situation, the objections to the complaint must be embodied in the answer as denials or special and affirmative defenses and threshed out in a full-blown trial on the merits.[24]

In sum, this Court finds that the CA did not commit error in reversing and setting aside the assailed Order of the RTC.

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[20] Records, pp. 337-347.

[21] *Id.* at 432-450.

[22] *Philippine Stock Exchange, Inc. v. Manila Banking Corporation*, G.R. No. 147778, July 23, 2008, 559 SCRA 352, 359, citing *Republic Bank v. Cuaderno*, G.R. No. L-22399, March 30, 1967, 19 SCRA 671, 677; *Boncato v. Siason*, G.R. No. L-29094, September 4, 1985, 138 SCRA 414, 420; *Sumalinong v. Doronio*, G.R. No. 42281, April 6, 1990, 184 SCRA 187, 189.

[23] *Del Bros Hotel Corporation v. Court of Appeals*, G.R. No. 87678, June 16, 1992, 210 SCRA 33, 42-43.

[24] *Id.* at 43.

WHEREFORE, the instant petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals, dated May 18, 2006 and September 4, 2006, respectively, in CA-G.R. CV No. 74669, are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 175284. September 19, 2012]

BP PHILIPPINES, INC. (FORMERLY BURMAH CASTROL PHILIPPINES, INC.), *petitioner, vs.* **CLARK TRADING CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MAIN ACTION FOR INJUNCTION; NATURE AND PROPRIETY THEREOF; DISTINGUISHED FROM A PRELIMINARY INJUNCTION. — [T]he present case deals with the main action for injunction. In *Bacolod City Water District v. Labayen*, we have discussed the nature of an action for injunction, to wit: Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action. The **main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction** which cannot exist except only as

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[*] Based on records, it should be Eufronio De Leon, Jr.

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

part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from and should not be confused with the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. x x x As we have already stated, the writ of injunction would issue: [U]pon the satisfaction of two requisites, namely: (1) the existence of a right to be protected; and (2) acts which are violative of said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Nino Baltazar Yu Enriquez & Mylene A. Yturralde-Chan for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Court of Appeals' Decision[1] dated August 3, 2006 and Resolution[2] dated October 30, 2006 in **CA-G.R. CV No. 79616**, entitled *Burmah Castrol Philippines, Inc.*

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[1] *Rollo*, pp. 76-108; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Lucas P. Bersamin and Martin S. Villarama, Jr. (both now members of the Supreme Court), concurring.

[2] *Id.* at 110-111.

v. Clark Trading Corporation, which affirmed the Decision[3] dated December 15, 2002 of the Regional Trial Court (RTC), Branch 57, Angeles City in **Civil Case No. 9301**.

BP Philippines, Inc. (petitioner), a corporation "engaged in the development, manufacture, importation, distribution, marketing, and wholesale of: (i) the products of the BURMAH CASTROL GROUP, including, x x x the CASTROL range of lubricants and associated products x x x,"[4] filed a Complaint[5] for "injunction with prayer for preliminary injunction and temporary restraining order (TRO) and damages" in the RTC against respondent Clark Trading Corporation, owner of Parkson Duty Free, which, in turn, is a duty free retailer operating inside the Clark Special Economic Zone (CSEZ). Parkson Duty Free sells, among others, imported duty-free Castrol products not sourced from petitioner.

Petitioner alleged that sometime in 1994 it had entered into a Marketing and Technical Assistance Licensing Agreement[6] and a Marketing and Distribution Agreement[7] (agreements) with Castrol Limited, U.K., a corporation organized under the laws of England, and the owner and manufacturer of Castrol products. Essentially, under the terms of the agreements,[8] Castrol Limited, U.K. granted petitioner the title "exclusive wholesaler importer and exclusive distributor" of Castrol products in the territory of the Philippines.[9] Under the July 22, 1998 Variation "territory" was further clarified to include duty-free areas.[10]

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[3] *Id.* at 112-124; penned by Judge Omar T. Viola.

[4] *Id.* at 45-74; Certificate of Filing of Amended Articles of Incorporation.

[5] *Id.* at 125-132; filed on February 8, 1999.

[6] *Id.* at 133-149.

[7] *Id.* at 150-170.

[8] *Id.* at 367 and 383; Agreements were amended twice over the years: March 24, 1995 and July 22, 1998.

[9] *Id.* at 369; Art. 1.1(f) "Territory" means the territory of the Philippines.

[10] *Id.* at 384; Art. 1(f), as amended by the Variation effective 22 July 1998, defines "territory" as "the territory of the Philippines and for the

Petitioner claimed that respondent, by selling and distributing Castrol products[11] not sourced from petitioner in the Philippines, violated petitioner's exclusive rights under the agreements. Despite a cease and desist letter[12] dated September 14, 1998 sent by petitioner, respondent continued to distribute and sell Castrol products in its duty-free shop. Petitioner, citing *Yu v. Court of Appeals*[13] as basis for its claim, contended that the unauthorized distribution and sale of Castrol products by respondent "will cause grave and irreparable damage to its goodwill and reputation."

To support the application for TRO, petitioner presented the testimony of a certain Farley[14] Cuizon, one of the people who conducted a test-buy on October 30, 1998 at Parkson Duty Free.[15] Cuizon testified that he had purchased one box containing twelve (12) bottles with red caps of Castrol GTX motor oil, and that these red caps signified that the Castrol motor oil did not come from petitioner, since the bottles of Castrol motor oil petitioner sold had white caps. Moreover, Cuizon further testified that the bottles of Castrol motor oil bought from Parkson Duty Free had on them printed labels stating that these "may not be resold outside North America."[16] However, on cross-examination, he testified that no patent violation existed since the red caps on the Castrol GTX products were not significant.

On March 4, 1999, the RTC issued an Order directing the issuance of a TRO for a period of twenty (20) days enjoining

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avoidance of doubt, including all duty free zones within and outside any special economic zones."

[11] *Id.* at 154; Art. 1(e) of the Marketing and Distribution Agreement defines Castrol "Products" as "all Castrol branded products."

[12] *Id.* at 346-347; Letter was served on September 15, 1998.

[13] G.R. No. 86683, January 21, 1993, 217 SCRA 328.

[14] "FERLEY" in some parts of the *rollo*.

[15] TSN, February 26, 1999, pp. 13-27.

[16] *Id.* at 15 and *rollo*, p. 194.

respondent "from selling and distributing Castrol products until further orders x x x."[17]

On April 15, 1999, the RTC denied petitioner's prayer for the issuance of a writ of preliminary injunction, there being no sufficient justification for the relief.[18]

Respondent, in its answer,[19] stated that petitioner had no cause of action. Respondent alleged that it was a stranger to the agreements, it being neither a party nor a signatory thereto. Based on the theory that only parties to a contract were bound by it, respondent claimed that it could not be held liable for violations of the terms of the agreements. While respondent admitted that it distributed and sold Castrol products, it also posited that it only conducted its business within the confines of the CSEZ in accordance with Executive Order Nos. 140,[20] 250[21] and 250-A.[22] Since petitioner was not authorized to operate, distribute and sell within the CSEZ, respondent did not violate the agreements because its efficacy only covers an area where petitioner is allowed by law to distribute.

After trial on the merits, the RTC dismissed the complaint. It ruled that the factual circumstances of the *Yu* case were different from the present case since respondent was operating a duty-free shop inside the CSEZ. It noted that "the Castrol products sold by [respondent] therefore [was] legal provided that they only [sold] the same in their store inside Clark and to customers

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[17] *Rollo*, pp. 248-249.

[18] Records, pp. 151-154.

[19] *Id.* at 91-95.

[20] *Rationalizing The Duty Free Stores/Outlets And Their Operations In The Philippines And For Other Purposes.*

[21] *Implementing The Rationalization Of Duty Free Stores/Outlets And Their Operations In The Philippines Pursuant To Executive Order No. 140 And For Other Purposes.*

[22] *Amending Executive Order No. 250 Dated 2 June 1995 Implementing The Rationalization Of Duty Free Stores/Outlets And Their Operations In The Philippines Pursuant To EO 140 And For Other Purposes.*

allowed to make said purchase and for their consumption."[23] With regard to the propriety of the issuance of a preliminary injunction, the RTC ruled:

[Petitioner] failed to show xxx [any] act by [respondent] [that constitutes] an injurious invasion of its rights stemming from a contract it signed with another party coupled by the limited scope of the transaction of [respondent] and its customers.

Hence, [petitioner] cannot be entitled to an injunction in the instant case. It has not shown that it has a right which must be protected by this court, and it failed to show also that defendant is guilty of acts which [violate] its rights."

x x x x x x x x x

WHEREFORE, premises considered, the complaint filed by [petitioner] is hereby ordered DISMISSED.[24]

On appeal, the Court of Appeals affirmed the ruling of the RTC. Petitioner was not able to establish the existence of a clear legal right to be protected and the acts which would constitute the alleged violation of said right. The circumstances under which the *Yu* case was decided upon were different from that of the present case. The Court of Appeals pointed out the different circumstances in the following manner:

Firstly, in *Yu*, the High Court did not make a final determination of the rights and obligations of the parties in connection with the exclusive sales agency agreement of wall covering products between Philip Yu and the House of Mayfair in England. Said case reached the High Court in connection with the incident on the preliminary injunction and the main suit for injunction was still pending with the Regional Trial Court of Manila. The High Court categorically stated that their "observations" do not in the least convey the message that they "have placed the cart ahead of the horse, so to speak." This is the reason why in the dispositive portion of said case, the High Court remanded the case to the court of origin.

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[23] *Rollo*, pp. 121-122.

[24] *Id.* at 123-124.

In the instant case, the trial court already rendered its assailed Decision which found that [petitioner] has not shown that it has a right which must be protected and that [respondent] is not guilty of acts which violate [petitioner's] right. Thus, We fail to see how the High Court's "observations" in the *Yu* case should be cited as a controlling precedent by [petitioner].

Secondly, in *Yu*, it appears that Philip Yu has an exclusive sales agency agreement with the House of Mayfair in England since 1987 to promote and procure orders for Mayfair wall covering products from customers in the Philippines. Despite [the] said exclusive sales agency agreement, Yu's dealer, Unisia Merchandising Co., Inc., engaged in a sinister scheme of importing the same goods, in concert with the FNF Trading in West Germany, and misleading the House of Mayfair into believing that the wallpaper products ordered via said trading German firm were intended for shipment to Nigeria, although they were actually shipped to and sold in the Philippines.

In the case at bar, [respondent], who is a registered locator doing business at the Parkson Duty Free Shop within the [CSEZ] administered by the Clark Development Corporation, was not a dealer of [petitioner] nor was there any business dealing or transaction at all between [petitioner] and [respondent]. In fact, it was established in evidence, through the testimony of Adrian Phillimore, [petitioner]'s very own witness, that respondent was already selling imported Castrol GTX products even prior to the execution of the Variation to Marketing and Distribution Agreement dated 23 July 1998 between [petitioner] and Castrol Limited, a corporation established under the laws of England. Further, [petitioner] failed to show that [respondent's] duty free importation of said Castrol GTX products which were sold at its Parkson Duty Free Shop was a sinister scheme employed by [respondent] in order to by-pass [petitioner].

Thirdly, in Yu, the House of Mayfair of England, in its correspondence to FNF Trading of West Germany, even took the cudgels for Philip Yu in seeking compensation for the latter's loss as a consequence of the scheme of the dealer Unisia Merchandising Co., Inc., in concert with FNF Trading.

In the case at bar, [petitioner] did not allege in its Complaint nor prove who the supplier of [respondent] was with respect to said Castrol GTX products sold in Parkson Duty Free Shop. There is no showing that [respondent] sought Castrol Limited of England in order to procure Castrol GTX products for retailing inside the duty

free shop of [respondent] within the Clark Special Economic Zone, with the intention of violating the purported exclusive marketing and distributorship agreement between [petitioner] and Castrol Limited of England. Neither do We find any showing that Castrol Limited of England took up the cudgels for [petitioner], by corresponding with [respondent], in connection with the latter's retailing of Castrol GTX products with red caps in its duty free shop at the Clark Special Economic Zone.

Fourthly, in Yu, the House of Mayfair in England was duped into believing that the goods ordered through FNF Trading of West Germany were to be shipped to Nigeria only, but the goods were actually sent to and sold in the Philippines. Considering this circumstance, the Supreme Court stated that "(a) ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other contracting party to relief therefrom (Article 1314, New Civil Code)."

In the instance case, there is no evidence that any party was duped and that [respondent], who is not a privy to the marketing and distribution agreement between [petitioner] and Castrol Limited of England, employed any sinister scheme or ploy at all. We do not find any showing of a scenario whereby [respondent] induced any party to renege or violate its undertaking under said agreement, thereby entitling [petitioner] to injunctive relief and damages. Thus, [petitioner's] insistence that [respondent's] obligation to [petitioner] does not arise from contract, but from law, which protects parties to a contract from the wrongful interference of strangers, does not have any factual or legal basis.

x x x x x x x x x

Considering the foregoing findings, [petitioner] is not entitled to a permanent injunction and damages. [Petitioner] failed to establish the existence of a clear legal right to be protected and the acts of [respondent] which are violative of said right. In the absence of any actual, existing, clear legal right to be protected, injunction does not lie and consequently, there is no ground for the award of damages as claimed by [petitioner].

In any event, We take note, at this juncture, that [respondent] is a registered locator operating the Parkson Duty Free Shop within the confines of the Clark Special Economic Zone. In said duty free

operation, goods sold within the duty free shops are imported duty free and also resold as such.

Section 1 of Executive Order No. 250, as amended, provides:

> SECTION 1. Allowable Areas for Duty Free Shop Operation. — The moratorium on the establishment of duty free stores/outlets imposed by E.O. No. 140 is hereby lifted. Accordingly, duty free stores/outlets, whether operated by the government and/or private entities, may be established within the country's international ports of entry subject to the terms and conditions set forth in E.O. No. 46, as amended, and in the secured and fenced-in areas of special economic zones/freeports pursuant to the provisions of the Bases Conversion and Development Act of 1992 (RA 7227), establishing the Subic Special Economic Zone/Freeport Zone, Clark Special Economic Zone, John Hay Special Economic Zone, Poro Point Special Economic and Freeport Zone; RA 7922 (Establishing the Sta. Ana, Cagayan Special Economic Zone and Freeport); RA 7903 (Creating the Zamboanga City Special Economic Zone and Freeport).
>
> x x x x x x x x x

WHEREFORE, premises considered, the appeal is **DENIED** for lack of merit. The Decision dated 15 December 2002 of the Regional Trial Court of Angeles City, Branch 57 in Civil Case No. 9301 is **AFFIRMED**. Costs against [petitioner].[25]

Petitioner moved for reconsideration but the same was denied for lack of merit.[26]

Hence, this petition.

Petitioner reiterates that it is entitled to have its proprietary rights under the agreements protected by an injunction. It argues that the fact that respondent was operating inside the CSEZ was inconsequential since the agreements specifically covered the whole Philippines, including duty-free zones pursuant to the agreements. Moreover, petitioner claims that the Court of Appeals erred in affirming the RTC ruling that the *Yu* case

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[25] *Id.* at 100-105.

[26] *Id.* at 110-111.

does not apply. Thus, respondent's continued unauthorized, illegal and illegitimate sale of Castrol GTX motor oil has caused petitioner to suffer damages to its goodwill and business reputation and resulted to losses in business opportunities.

Respondent, for its part, argues that the case should be dismissed for lack of merit. It contends that it is not a party to the agreements and as such, under Article 1311[27] of the Civil Code, it cannot be bound to the contract. It also argues that the *Yu* case is inapplicable here since, unlike in that case, unfair competition as defined under Article 28[28] of the Civil Code is not present in the case now before us.

The facts of this case and the allegations of the parties raise the question of whether petitioner is entitled to injunction against third-persons on the basis of its marketing and distribution agreements.

The petition is without merit.

We agree with the Court of Appeals that the *Yu* case is inapplicable to the present case. To reiterate and as pointed out by the Court of Appeals, aside from the *Yu* case being issued during the pendency of the main action for injunction, the Court made the following observation:

> Another circumstance which respondent court overlooked was petitioner's suggestion, which was not disputed by herein private respondent in its comment, that the House of Mayfair in England was duped into believing that the goods ordered through the FNF

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[27] Article 1311 of the Civil Code provides:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

[28] Article 28 of the Civil Code provides:

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damages.

Trading were to be shipped to Nigeria only, but the goods were actually sent to and sold in the Philippines. **A ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other contracting party to relief therefrom (Article 1314, New Civil Code)**. The breach caused by private respondent was even aggravated by the consequent diversion of trade from the business of petitioner to that of private respondent caused by the latter's species of unfair competition as demonstrated no less by the sales effected inspite of this Court's restraining order. This brings Us to the irreparable mischief which respondent court misappreciated when it refused to grant the relief simply because of the observation that petitioner can be fully compensated for the damage. x x x.[29] (Emphasis supplied.)

This badge of "irreparable mischief" as observed by the Court caused the *Yu* case to be remanded for the issuance of a preliminary injunction.

In contrast, the present case deals with the main action for injunction. In *Bacolod City Water District v. Labayen*,[30] we have discussed the nature of an action for injunction, to wit:

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.

The **main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction** which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment

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[29] *Yu v. Court of Appeals*, *supra* note 13 at 332.

[30] 487 Phil. 335, 346-347 (2004).

or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. (Emphasis supplied, citations omitted.)

In the present case, neither the RTC nor the Court of Appeals found any nefarious scheme by respondent to induce either party to circumvent, renege on or violate its undertaking under the marketing and distribution agreements. We note that no allegation was made on the authenticity of the Castrol GTX products sold by respondent. Thus, there is nothing in this case that shows a ploy of the character described in the *Yu* case, so this is clearly distinguishable from that case.

As we have already stated, the writ of injunction would issue:

> [U]pon the satisfaction of two requisites, namely: (1) the existence of a right to be protected; and (2) acts which are violative of said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.[31]

Respondent not being able to prove and establish the existence of a clear and actual right that ought to be protected, injunction cannot issue as a matter of course. Consequently, the Court does not find any ground for the award of damages.

WHEREFORE, the petition is **DENIED.** The Court of Appeals Decision in CA-G.R. CV No. 79616 is hereby **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio, Perez,[*] and *Reyes, JJ.,* concur.

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[31] *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, 508 Phil. 354, 375 (2005).

[*] Per Raffle dated September 5, 2012.

THIRD DIVISION

[G.R. No. 182045. September 19, 2012]

GULF AIR COMPANY, PHILIPPINE BRANCH (GF), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; TAX LAWS; OPERATE PROSPECTIVELY. —** [T]ax laws, including rules and regulations, operate prospectively unless otherwise legislatively intended by express terms or by necessary implication.

2. **ID.; ID.; RULES AND REGULATIONS INTERPRETING THE TAX CODE AND PROMULGATED BY THE SECRETARY OF FINANCE, RESPECTED AND THE SAME SUSTAINED APPLYING THE PRINCIPLE OF LEGISLATIVE APPROVAL BY RE-ENACTMENT. —** [R]ules and regulations interpreting the tax code and promulgated by the Secretary of Finance, who has been granted the authority to do so by Section 244 of the NIRC, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields." As such, absent any showing that Revenue Regulations No. 6-66 is inconsistent with the provisions of the NIRC, its stipulations shall be upheld and applied accordingly. This is in keeping with our primary duty of interpreting and applying the law. Regardless of our reservations as to the wisdom or the perceived ill-effects of a particular legislative enactment, the court is without authority to modify the same as it is the exclusive province of the law-making body to do so. x x x Moreover, the validity of the questioned rules can be sustained by the application of the principle of legislative approval by re-enactment. Under the aforementioned legal concept, "where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory

that the ruling carries out the legislative purpose." Thus, there is tacit approval of a prior executive construction of a statute which was re-enacted with no substantial changes. In this case, Revenue Regulations No. 6-66 was promulgated to enforce the provisions of Title V, Chapter I (Tax on Business) of Commonwealth Act No. 466 (National Internal Revenue Code of 1939), under which Section 192, pertaining to the common carrier's tax, can be found: x x x This provision has, over the decades, been substantially reproduced with every amendment of the NIRC, up until its recent reincarnation in Section 118 of the NIRC.

3. **ID.; COURT OF TAX APPEALS (CTA); FINDINGS THEREOF, RESPECTED. —** As a specialized court dedicated exclusively to the study and resolution of tax issues, the CTA has developed an expertise on the subject of taxation. The Court cannot be compelled to set aside its decisions, unless there is a finding that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority. Therefore, its findings are accorded the highest respect and are generally conclusive upon this court, in the absence of grave abuse of discretion or palpable error.

4. **ID.; TAX REFUNDS; STRICTLY CONSTRUED. —** [T]ax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.

APPEARANCES OF COUNSEL

Oscar C. Ventanilla for petitioner.
BIR Litigation Division for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing

the January 30, 2008 Decision[1] and the March 12, 2008 Resolution[2] of the Court of Tax Appeals *(CTA) En Banc* in C.T.A. E.B. No. 302 (C.T.A. Case No. 7030) entitled "*Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*."

The Facts

Petitioner Gulf Air Company Philippine Branch *(GF)* is a branch of Gulf Air Company, a foreign corporation duly organized in accordance with the laws of the Kingdom of Bahrain.[3]

On October 25, 2001, GF availed of the Voluntary Assessment Program of the Bureau of Internal Revenue (*BIR*) under Revenue Regulations 8-2001 for its 1999 and 2000 Income Tax and Documentary Stamp Tax and its Percentage Tax for the third quarter of 2000, paying a total of ₱11,964,648.00.[4]

GF also made a claim for refund of percentage taxes for the first, second and fourth quarters of 2000. In connection with this, a letter of authority was issued by the BIR authorizing its revenue officers to examine GF's books of accounts and other records to verify its claim.[5]

After its submission of several documents and an informal conference with BIR representatives, GF received its Preliminary Assessment Notice on November 4, 2003 for deficiency percentage tax amounting to ₱32,745,141.93. On the same day, GF also received a letter denying its claim for tax credit or refund of excess percentage tax remittance for the first, second and fourth

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[1] *Rollo*, pp. 35-53; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova and Associate Justice Olga Palanca-Enriquez.

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

[3] *Id.* at 4.

[4] *Id.* at 37.

[5] *Id.* at 37.

quarters of 2000, and requesting the immediate settlement of the deficiency tax assessment.[6]

GF then received the Formal Letter of Demand, dated December 10, 2003, for the payment of the total amount of ₱33,864,186.62. In response, it filed a letter on December 29, 2003 to protest the assessment and to reiterate its request for reconsideration on the denial of its claim for refund.[7]

On June 30, 2004, the Deputy Commissioner, Officer-in-Charge of the Large Taxpayers Service of the BIR, denied GF's written protest for lack of factual and legal basis and requested the immediate payment of the ₱33,864,186.62 deficiency percentage tax assessment.[8]

Aggrieved, GF filed a petition for review with the CTA.[9] On March 21, 2007, the Second Division of the CTA dismissed the petition, finding that Revenue Regulations No. 6-66 was the applicable rule providing that gross receipts should be computed based on the cost of the single one-way fare as approved by the Civil Aeronautics Board *(CAB).* In addition, it noted that GF failed to include in its gross receipts the special commissions on passengers and cargo. Finally, it ruled that Revenue Regulations No. 15-2002, allowing the use of the net net rate in determining the gross receipts, could not be given any or a retroactive effect. Thus, the CTA affirmed the decision of the BIR and ordered the payment of ₱41,117,734.01 plus 20% delinquency interest.[10]

GF elevated the case to the CTA *En Banc* which promulgated its Decision on January 30, 2008 dismissing the petition and affirming the decision of the CTA in Division. It found that Revenue Regulations No. 6-66 was the applicable rule because

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[6] *Id.* at 39-40.

[7] *Id.* at 41.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 43-44.

the period involved in the assessment covered the first, second and fourth quarters of 2000 and the amended percentage tax returns were filed on October 25, 2001. Revenue Regulations No. 15-2002, which took effect on October 26, 2002, could not be given retroactive effect because it was declarative of a new right as it provided a different rule in determining gross receipts.[11]

GF subsequently filed a motion for reconsideration but the same was denied by the CTA *En Banc* in its March 12, 2008 Resolution.

Hence, this petition.

The Issue

GF relies upon the following grounds for the allowance of its petition:

The honorable CTA *En Banc* erred in affirming the ruling of the Court in Division summarized on pages 8 to 9 of the January 30, 2008 decision, as follows:

1. **That the correct basis of the 3% Percentage Tax imposed under Section 118(A) of the 1997 NIRC on the quarterly gross receipts of international air carriers doing business in the Philippines is the fare approved by the CAB pursuant to Revenue Regulations 6-66; that Revenue Regulations 6-66 is the applicable implementing regulation and it is clearly provided therein that gross receipt shall be computed on the cost of the single one way fare as approved by the CAB on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo including mail, as reflected on the plane manifest of the carrier; and**

2. **That the respondent was correct in adding back the special commissions on passengers and cargo to the gross receipt per return of petitioner in order to come up with the gross receipts subject to tax under Section 118(A) of the 1997 NIRC.**[12]

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[11] *Id.* at 49-50.

[12] *Id.* at 11-12.

The sole issue to be resolved by the Court, as identified by the tax court, is whether the definition of "gross receipts," for purposes of computing the 3% Percentage Tax under Section 118(A) of the 1997 National Internal Revenue Code *(NIRC)*, should include special commissions on passengers and special commissions on cargo based on the rates approved by the CAB.[13]

The Court's Ruling

The petition has no merit.

GF questions the validity of Revenue Regulations No. 6-66, claiming that it is not a correct interpretation of Section 118(A) of the NIRC, and insisting that the gross receipts should be based on the "net net" amount — the amount actually received, derived, collected, and realized by the petitioner from passengers, cargo and excess baggage. It further argues that the CAB approved fares are merely notional and not reflective of the actual revenue or receipts derived by it from its business as an international air carrier.[14]

GF also insists that its construction of "gross receipts" to mean the "net net" amount actually received, rather than the CAB approved rates as mandated by Revenue Regulations No. 6-66, has been validated by the issuance of Revenue Regulations No. 15-2002 which expressly superseded the former.

Finally, GF contends that because the definition of gross receipts under the questioned regulations is contrary to that given under the other sections of the NIRC on value-added tax and percentage taxes, the legislative intention was to collect the percentage tax based solely on the actual receipts derived and collected by the taxpayer. Given that Revenue Regulations No. 6-66 allegedly conflicts with Section 118 of the NIRC as well as with the other sections on percentage tax, GF concludes

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[13] *Id.* at 11 and 44.

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

that the former was effectively repealed, amended or modified by the NIRC.[15]

Section 118(A) of the NIRC states that:

Sec. 118. Percentage Tax on International Carriers. —

(A) International air carriers doing business in the Philippines shall pay a tax of three percent (3%) of their quarterly gross receipts.

Pursuant to this, the Secretary of Finance promulgated Revenue Regulations No. 15-2002, which prescribes that "gross receipts" for the purpose of determining Common Carrier's Tax shall be the same as the tax base for calculating Gross Philippine Billings Tax.[16] Section 5 of the same provides for the computation of "Gross Philippine Billings":

Sec. 5. Determination of Gross Philippine Billings. —

(a) In computing for "Gross Philippine Billings," there shall be included the total amount of gross revenue derived from passage of persons, excess baggage, cargo and/or mail, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the passage documents.

The gross revenue for passengers whose tickets are sold in the Philippines shall be <u>the actual amount derived for transportation services</u>, for a first class, business class or economy class passage, as the case may be, on its continuous and uninterrupted flight from any port or point in the Philippines to its final destination in any port or point of a foreign country, <u>as reflected in the remittance area of the tax coupon forming an integral part of the plane ticket</u>. For this purpose, the Gross Philippine Billings shall be determined by computing the <u>monthly average net fare</u> of all the tax coupons of plane tickets issued for the month per point of final destination, per class of passage (*i.e.*, first class, business class, or economy class) and per classification of passenger (*i.e.*, adult, child or infant) and multiplied by the corresponding total number of passengers flown for the month as declared in the flight manifest.

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[15] *Id.* at 24-26.

[16] Section 10, Revenue Regulations No. 15-2002.

For tickets sold outside the Philippines, the gross revenue for passengers for first class, business class or economy class passage, as the case may be, on a continuous and uninterrupted flight from any port of point in the Philippines to final destination in any port or point of a foreign country shall be determined using the locally available net fares applicable to such flight taking into consideration the seasonal fare rate established at the time of the flight, the class of passage (whether first class, business class, economy class or non-revenue), the classification of passenger (whether adult, child or infant), the date of embarkation, and the place of final destination. Correspondingly, the Gross Philippine Billing for tickets sold outside the Philippines shall be determined in the manner as provided in the preceding paragraph.

Passage documents revalidated, exchanged and/or endorsed to another on-line international airline shall be included in the taxable base of the carrying airline and shall be subject to Gross Philippine Billings tax if the passenger is lifted/boarded on an aircraft from any port or point in the Philippines towards a foreign destination.

The gross revenue on excess baggage which originated from any port or point in the Philippines and destined to any part of a foreign country shall be computed based on the actual revenue derived as appearing on the official receipt or any similar document for the said transaction.

The gross revenue for freight or cargo and mail shall be determined based on the revenue realized from the carriage thereof. The amount realized for freight or cargo shall be based on the amount appearing on the airway bill after deducting therefrom the amount of discounts granted which shall be validated using the monthly cargo sales reports generated by the IATA Cargo Accounts Settlement System (IATA CASS) for airway bills issued through their cargo agents or the monthly reports prepared by the airline themselves or by their general sales agents for direct issues made. The amount realized for mails shall, on the other hand, be determined based on the amount as reflected in the cargo manifest of the carrier.

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[Emphasis and underscoring supplied]

This expressly repealed Revenue Regulations No. 6-66 that stipulates a different manner of calculating the gross receipts:

Sec. 5. Gross Receipts, how determined. — The total amount of gross receipts derived from passage of persons, excess baggage, freight or cargo, including, mail cargo, originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket, shall be subject to the common carrier's percentage tax (Sec. 192, Tax Code). **The gross receipts shall be computed on the cost of the single one way fare as approved by the Civil Aeronautics Board on the continuous and uninterrupted flight of passengers, excess baggage, freight or cargo, including mail, as reflected on the plane manifest of the carrier.**

Tickets revalidated, exchanged and/or indorsed to another international airline are subject to percentage tax if lifted from a passenger boarding a plane in a port or point in the Philippines.

In case of a flight that originates from the Philippines but transhipment of passenger takes place elsewhere on another airline, the gross receipts reportable for Philippine tax purposes shall be the portion of the cost of the ticket corresponding to the leg of the flight from port of origin to the point of transhipment.

In case of passengers, the taxable base shall be gross receipts less 25% thereof. [Emphasis and underscoring supplied]

There is no doubt that prior to the issuance of Revenue Regulations No. 15-2002 which became effective on October 26, 2002, the prevailing rule then for the purpose of computing common carrier's tax was Revenue Regulations No. 6-66. While the petitioner's interpretation has been vindicated by the new rules which compute gross revenues based on the actual amount received by the airline company as reflected on the plane ticket, this does not change the fact that during the relevant taxable period involved in this case, it was Revenue Regulations No. 6-66 that was in effect.

GF itself is adamant that it does not seek the retroactive application of Revenue Regulations No. 15-2002.[17] Even if it were inclined to do so, it cannot insist on the application of the said rules because tax laws, including rules and regulations,

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[17] *Rollo*, pp. 23-24 and 197.

operate prospectively unless otherwise legislatively intended by express terms or by necessary implication.[18]

Although GF does not dispute that Revenue Regulations No. 6-66 was the applicable rule covering the taxable period involved, it puts in issue the wisdom of the said rule as it pertains to the definition of gross receipts.

GF is reminded that rules and regulations interpreting the tax code and promulgated by the Secretary of Finance, who has been granted the authority to do so by Section 244 of the NIRC, "deserve to be given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields."[19]

As such, absent any showing that Revenue Regulations No. 6-66 is inconsistent with the provisions of the NIRC, its stipulations shall be upheld and applied accordingly. This is in keeping with our primary duty of interpreting and applying the law. Regardless of our reservations as to the wisdom or the perceived ill-effects of a particular legislative enactment, the court is without authority to modify the same as it is the exclusive province of the law-making body to do so.[20] As aptly stated in *Saguiguit v. People*,[21]

xxx Even with the best of motives, the Court can only interpret and apply the law and cannot, despite doubts about its wisdom, amend or repeal it. Courts of justice have no right to encroach on the prerogatives of lawmakers, as long as it has not been shown that they have acted with grave abuse of discretion. And while the judiciary may interpret laws and evaluate them for constitutional soundness and to strike them down if they are proven to be infirm, this solemn

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[18] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 460 (2003).

[19] *Chamber of Real Estate and Builders' Associations, Inc. v. The Hon. Executive Secretary Alberto Romulo*, G.R. No. 160756, March 9, 2010, 614 SCRA 605, 639-640.

[20] *Romualdez v. Marcelo*, 529 Phil. 90, 111 (2006) and *Paredes v. Manalo*, 313 Phil. 756, 762 (1995).

[21] 526 Phil. 618 (2006).

power and duty does not include the discretion to correct by reading into the law what is not written therein.[22]

Moreover, the validity of the questioned rules can be sustained by the application of the principle of legislative approval by re-enactment. Under the aforementioned legal concept, "where a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions without substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."[23] Thus, there is tacit approval of a prior executive construction of a statute which was re-enacted with no substantial changes.[24]

In this case, Revenue Regulations No. 6-66 was promulgated to enforce the provisions of Title V, Chapter I (Tax on Business) of Commonwealth Act No. 466 (National Internal Revenue Code of 1939), under which Section 192, pertaining to the common carrier's tax, can be found:

Sec. 192. Percentage tax on carriers and keepers of garages. — Keepers of garages, transportation contractors, persons who transport passenger or freight for hire, and **common carriers by land, air, or water**, except owners of bancas, and owners of animal-drawn two-wheeled vehicles, **shall pay a tax equivalent to two per centum of their monthly gross receipts**. [Emphasis supplied]

This provision has, over the decades, been substantially reproduced with every amendment of the NIRC, up until its recent reincarnation in Section 118 of the NIRC.

The legislature is presumed to have full knowledge of the existing revenue regulations interpreting the aforequoted provision of law and, with its subsequent substantial re-enactment, there is a presumption that the lawmakers have approved and

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[22] *Id.* at 624.

[23] *Howden v. Collector of Internal Revenue*, 121 Phil. 579, 587 (1965).

[24] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, 500 Phil. 586, 617 (2005).

confirmed the rules in question as carrying out the legislative purpose.[25] Hence, it can be concluded that with the continued duplication of the NIRC provision on common carrier's tax, the law-making body was aware of the existence of Revenue Regulations No. 6-66 and impliedly endorsed its interpretation of the NIRC and its definition of gross receipts.

Although the Court commiserates with GF in its predicament, it is left with no choice but to uphold the validity of Revenue Regulations No. 6-66 and apply it to the case at bench, thus upholding the ruling of the CTA. There is no cause to reverse the decision of the tax court. As a specialized court dedicated exclusively to the study and resolution of tax issues, the CTA has developed an expertise on the subject of taxation.[26] The Court cannot be compelled to set aside its decisions, unless there is a finding that the questioned decision is not supported by substantial evidence or there is a showing of abuse or improvident exercise of authority.[27] Therefore, its findings are accorded the highest respect and are generally conclusive upon this court, in the absence of grave abuse of discretion or palpable error.[28]

On a final note, it is incumbent on the Court to emphasize that tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. Consequently, they are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be

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[25] *Id.*

[26] *Commissioner of Internal Revenue v. Court of Appeals*, 363 Phil. 239, 246 (1999).

[27] *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561-562.

[28] *Hitachi Global Storage Technologies Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 174212, October 20, 2010, 634 SCRA 205, 213.

mistaken and too categorical to be misinterpreted.[29] Regrettably, the petitioner in the case at bench failed to unequivocally prove that it is entitled to a refund.

WHEREFORE, the petition is **DENIED.** The January 30, 2008 Decision and the March 12, 2008 Resolution of the Court of Tax Appeals in C.T.A. E.B. No. 302 (C.T.A. Case No. 7030) are hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182230. September 19, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO LUPAC *y* FLORES,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE RTC AFFIRMED BY THE CA, RESPECTED. —** We accord great weight to the assessment of [the RTC and the CA on] the credibility of AAA as a witness. x x x Verily, the personal observation of AAA's conduct and demeanor enabled the trial judge to discern if she was telling the truth or inventing it. x x x The accused made no showing that the RTC, in the first instance, and the

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[29] *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, 531 Phil. 264, 267-268 (2006).

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

CA, on review, had ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.

2. **CRIMINAL LAW; STATUTORY RAPE; MINORITY OF THE VICTIM, NOT SUFFICIENTLY ESTABLISHED IN ACCORDANCE WITH THE GUIDELINES SET UNDER *PEOPLE V. PRUNA*. —** Although the information alleged that AAA had been only 10 years of age at the time of the commission of the rape, the State did not reliably establish such age of the victim in accordance with the guidelines for competently proving such age laid down by the Court in *People v. Pruna*. x x x The Prosecution did not satisfy *Pruna* guidelines 4 and 5, *supra*, to wit: 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

3. **ID.; RAPE; PRESENT WHEN THERE IS CARNAL KNOWLEDGE OF A FEMALE WHILE SHE WAS ASLEEP. —** [T]he information also properly charged [Lupac] with raping AAA by its express averment that the carnal knowledge of her by him had been "against her will and consent." x x x The Prosecution showed during the trial that AAA had been asleep when he forced himself on her. Such showing competently established the rape thus charged, as defined by paragraph 1 of Article 266-A, *Revised Penal Code*, for AAA, being unconscious in her sleep, was incapable of consenting to his carnal knowledge of her. Indeed, the Court has uniformly held in several rulings that carnal knowledge of a female while she was asleep constituted rape.

4. **ID.; ID.; CAN BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE; CASE AT BAR. —** Direct evidence was not the only means of proving rape beyond reasonable doubt. Circumstantial evidence would also be the reliable means to do so.

5. **REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; PART OF THE *RES GESTAE*; RULE APPLIED IN CASE AT BAR. —** The Court holds that AAA's

denunciation of Lupac as her rapist to Tita Terry and her own mother with the use of the words *hindot* and *inano ako ni Kuya Ega* without any appreciable length of time having intervened following her discovery of the rape was part of the *res gestae* (that is, rape). x x x For the application of this rule [Section 42, Rule 130 of the Rules of Court], three requisites must be shown to concur, namely: (*a*) that the principal act, the *res gestae*, must be a startling occurrence; (*b*) the statements were made before the declarant had the time to contrive or devise a falsehood; and (*c*) the statements must concern the occurrence in question and its immediate attending circumstances.

6. **CRIMINAL LAW; RAPE; DAMAGES; EXEMPLARY DAMAGES PROPER WITH THE ATTENDANCE OF AGGRAVATING CIRCUMSTANCE OF MINORITY ALTHOUGH THE SAME WAS NOT USED TO CONVICT APPELLANT OF STATUTORY RAPE —** Under the *Civil Code*, exemplary damages are imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances." Such damages are awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Conformably with the *Civil Code*, AAA [is entitled] to exemplary damages on account of the attendance of the aggravating circumstance of her minority under 12 years. It should not matter that the CA disregarded her testimony on her age due to such testimony not measuring up to the *Pruna* guidelines. At least, the RTC found her testimony on her minority under 12 years at the time of the rape credible enough to convict the accused of statutory rape. Nor was it of any consequence that such minority would have defined the rape as statutory had it been sufficiently established. What mattered was to consider the attendance of an aggravating circumstance of any kind to warrant the award of exemplary damages to the victim. x x x For exemplary damages, therefore, the Court holds that the sum of ₱30,000.00 is reasonable and proper. The Court declares Lupac to be further liable to pay interest of 6% *per annum* on all the items of civil damages, to be reckoned from the finality of this decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Under appeal is the decision promulgated on November 23, 2007,[1] whereby the Court of Appeals (CA) affirmed the rape conviction of Edgardo Lupac *y* Flores but modified the trial court's characterization of the offense as statutory rape because of the failure of the People to properly establish the victim's minority under 12 years at the time of the commission of the rape.

The information filed on August 16, 1999 under which Lupac was arraigned and tried for statutory rape alleged as follows:

> That on or about the 21st day of May, 1999 in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one, AAA,[2] his niece, 10 years old against her will and consent.
>
> CONTRARY TO LAW.[3]

The version of the Prosecution follows.

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), with Associate Justice Jose C. Mendoza (now a Member of this Court) and Associate Justice Ramon M. Bato concurring.

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

[3] Records, p. 1.

AAA, her mother (BBB), and Lupac (allegedly BBB's brother) had originally been living together in the same house, but he eventually transferred to another place in the neighborhood. His transfer notwithstanding, he continued going to BBB's house, where he occasionally took afternoon naps in the bedroom of the house. On May 21, 1999, BBB left AAA in the house alone with Lupac to sell peanuts in Mandaluyong City. At around 1:30 p.m., AAA told him that she was going to take a nap in the bedroom. She did not lock the bedroom door as was her usual practice.

Waking up around 2:30 p.m., AAA was aghast to find herself naked from the waist down. She felt soreness in her body and pain in her genitalia. Momentarily, she noticed Lupac standing inside the bedroom near her, clad only in his underwear. He was apologetic towards her, saying that "he really did not intend to do 'that' to her."[4] He quietly handed her a towel. As soon as she absorbed what had happened, she started to cry. He opened the windows and unlocked the door of the house.[5] Seeing the chance, she rushed out of the house, and ran to the place of Tita Terry, a neighbor, who was a friend of her mother's. AAA revealed to Tita Terry what he had done to her, saying: *Inano ako ni Kuya Ega*.[6] She uttered the word *hindot*[7] — vernacular for sexual intercourse. She and Tita Terry left together to find BBB and inform her about what had happened to AAA.[8]

The three of them reported the rape to the *barangay*. A *barangay kagawad* accompanied them to the Taytay Police Station to lodge a complaint for rape against Lupac. AAA submitted to a medico-legal examination, which found her to have suffered injuries inflicted deep inside her genitalia (described as congested vestibule within the *labia minora*, deep fresh bleeding

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[4] TSN, December 12, 2000, p. 6.

[5] *Id.* at 7.

[6] TSN, July 31, 2001, p. 7.

[7] *Id.* at 7-8.

[8] *Id.* at 8.

laceration at 9 o'clock position of the hymen, and abraded and u-shape posterior fourchette).

During the trial, Dr. Emmanuel N. Reyes, the medico-legal officer who had examined AAA, attested that he had found AAA at the time of the examination to have recently lost her virginity based on her hymen revealing "a deep fresh bleeding at 9:00 o'clock position."[9]

Lupac's defense consisted of denial and *alibi*.

Lupac denied being related to AAA, either by consanguinity or otherwise, but admitted being her neighbor for a long time. He also denied the accusation, insisting that he had been asleep in his own house during the time of the rape. Nonetheless, he conceded not being aware of any motive for AAA to falsely charge him with rape.

After trial, on August 11, 2006, the Regional Trial Court, Branch 73, in Antipolo City (RTC) convicted Lupac of statutory rape,[10] disposing:

> WHEREFORE, PREMISES CONSIDERED, Edgardo Lupac is hereby found guilty of the crime of statutory rape and is sentenced to suffer the penalty of *RECLUSION PERPETUA*. He is also ordered to pay private complainant ₱50,000.00 as civil indemnity and ₱50,000.00 in moral damages plus the cost of the suit.
>
> SO ORDERED.

In convicting Lupac of statutory rape as defined and penalized under paragraph 1(d), Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353, the RTC concluded that although the qualifying circumstance of relationship had not been proven, AAA's testimony showing her age of only 11 years at the time of the rape, being born on December 23, 1988, sufficed to prove her age as an essential element in statutory rape.

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[9] TSN, January 22, 2002, pp. 4-5.

[10] CA *Rollo*, pp. 43-47.

On intermediate appeal, Lupac assailed the credibility of AAA and argued that the RTC erred in accepting AAA's testimony as proof of her date of birth and her minority under 12 years.

On November 23, 2007, the CA affirmed the conviction,[11] but modified it by holding that Lupac was guilty of simple rape under Article 266-A, paragraph 1(b) of the *Revised Penal Code*. It noted that the Prosecution was not able to effectively establish the victim's minority under 12 years because of the non-submission of AAA's birth certificate, such fact being essential in qualifying the offense to statutory rape. It observed, however, that the lack of consent as an element of rape was properly alleged in the information and duly established by the evidence showing that AAA had been asleep and unconscious at the time of the commission of the rape. It held that the variance in the mode of the commission of the rape was really a non-issue because he did not challenge the information at the arraignment, during the trial and even on appeal. It disposed:

IN VIEW THEREOF, the assailed Decision convicting the accused is hereby AFFIRMED. The penalty and the damages are likewise AFFIRMED.

SO ORDERED.

In his appeal, Lupac insists on his innocence, still impugning the credibility of AAA.

We affirm the CA.

Firstly, both the RTC and the CA considered AAA as a credible witness. We accord great weight to their assessment of the credibility of AAA as a witness as well as of her version. Verily, the personal observation of AAA's conduct and demeanor enabled the trial judge to discern if she was telling the truth or inventing it.[12] The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to

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[11] *Supra*, note 1.

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

our attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted but would materially affect the disposition of the case differently if duly considered.[13] Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, had ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.[14]

Secondly, the CA rectified the mistaken characterization by the RTC of the crime as statutory rape. We concur with the CA. Although the information alleged that AAA had been only 10 years of age at the time of the commission of the rape, the State did not reliably establish such age of the victim in accordance with the guidelines for competently proving such age laid down by the Court in *People v. Pruna*,[15] to wit:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

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

[14] *People v. Felan,* G.R. No. 176631, February 2, 2011, 641 SCRA 449, 453.

[15] G.R. No. 138471, October 10, 2002, 390 SCRA 577.

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[16]

The foregoing guidelines (*Pruna* guidelines, for short) apply herein despite their being promulgated subsequent to the filing of the information, for they were only an amalgamation of the norms on proving the age of the victim in rape variously defined in jurisprudence. With the minority under 12 years of AAA being an element in statutory rape, the proof of such minority age should conform to the *Pruna* guidelines in order that such essential element would be established beyond reasonable doubt. That was not done because the evidence adduced by the Prosecution did not satisfy *Pruna* guidelines 4 and 5, *supra*, to wit:

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the

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[16] *Id.* at 603-604.

testimonial evidence regarding age shall not be taken against him.

As such, the RTC erred in giving credence to AAA's declaration about her being under 12 years at the time of the rape.

Thirdly, the conviction of Lupac for rape is upheld despite AAA's minority under 12 years not being competently proved. This is because the information also properly charged him with raping AAA by its express averment that the carnal knowledge of her by him had been "against her will and consent." The essence of rape is carnal knowledge of a female either *against her will* (through force or intimidation) or *without her consent* (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented).[17] The Prosecution showed during the trial that AAA had been asleep when he forced himself on her. Such showing competently established the rape thus charged, as defined by paragraph 1 of Article 266-A, *Revised Penal Code*,[18] for AAA, being unconscious in her sleep, was incapable of consenting to his carnal knowledge of her. Indeed, the Court has uniformly held in several rulings that carnal knowledge of a female while she was asleep constituted rape.[19]

Lastly, Lupac assails the absence of credible direct evidence about his having carnal knowledge of AAA because she herself,

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[17] *People v. Taguilid*, G.R. No. 181544, April 11, 2012; *People v. Butiong*, G.R. No. 168932, October 19, 2011; *People v. Flores, Jr.,* G.R. Nos.128823-24, December 27, 2002, 394 SCRA 325, 333; see also *People v. Masalihit*, G.R. No. 124329, December 14, 1998, 300 SCRA 147, 155.

[18] Article 266-A. *Rape; When And How Committed*. — Rape is committed —

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

x x x x x x x x x

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

x x x x x x x x x

[19] *People v. Conde,* G.R. No. 112034, January 31, 1996, 252 SCRA 681, 689; *People v. Caballero,* 61 Phil. 900 (1935); *People v. Corcino,* 53 Phil. 234 (1929)*; People v. Dayo,* 51 Phil. 102 (1927).

being then asleep and unconscious, could not reliably attest to his supposed deed. Consequently, he argues that the evidence against him did not amount to proof beyond reasonable doubt.

Lupac's argument hews closely to what the Court has stated in *People v. Campuhan*[20] to the effect that there must be proof beyond reasonable doubt of at least the introduction of the male organ into the *labia* of the *pudendum* of the female genital organ, which required some degree of penetration beyond the vulva in order to touch the *labia majora* or the *labia minora*.

The position of Lupac is bereft of merit, however, because his conviction should still stand even if direct evidence to prove penile penetration of AAA was not adduced. Direct evidence was not the only means of proving rape beyond reasonable doubt. Circumstantial evidence would also be the reliable means to do so, provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt.[21] What was essential was that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.[22]

The following circumstances combined to establish that Lupac consummated the rape of AAA, namely: (*a*) when AAA went to take her afternoon nap, the only person inside the house with her was Lupac; (*b*) about an hour into her sleep, she woke up to find herself already stripped naked as to expose her private parts; (*c*) she immediately felt her body aching and her vaginal region hurting upon her regaining consciousness; (*d*) all doors and windows were locked from within the house, with only her and the brief-clad Lupac inside the house; (*e*) he exhibited a remorseful demeanor in unilaterally seeking her forgiveness

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[20] G.R. No. 129433. March 30, 2000, 329 SCRA 270, 280-281.

[21] Section 4, Rule 133, *Rules of Court.*

[22] See *People v. Tolentino*, G.R. No. 139834, February 19, 2001, 352 SCRA 228, 233*; People v. Gargar,* G.R. Nos. 110029-30, December 29, 1998, 300 SCRA 542, 552.

(*Pasensiya ka na AAA*), even spontaneously explaining that he did not really intend to do "*that*" to her, showing his realization of the gravity of the crime he had just committed against her; (*f*) her spontaneous, unhesitating and immediate denunciation of the rape to Tita Terry and her mother (*hindot* being the term she used); and (*g*) the medico-legal findings about her congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position in the hymen, and abraded and U-shaped posterior fourchette proved the recency of infliction of her vaginal injuries.

The fact that all her injuries — congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position of the hymen and abraded and U-shaped posterior fourchette — were confined to the posterior region area of her genitals signified the forceful penetration of her with a blunt instrument, like an erect penis.

The Court holds that AAA's denunciation of Lupac as her rapist to Tita Terry and her own mother with the use of the words *hindot* and *inano ako ni Kuya Ega* without any appreciable length of time having intervened following her discovery of the rape was part of the *res gestae* (that is, rape). Section 42, Rule 130 of the *Rules of Court* states:

> Section 42. *Part of the res gestae.* — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

For the application of this rule, three requisites must be shown to concur, namely: (*a*) that the principal act, the *res gestae*, must be a startling occurrence; (*b*) the statements were made before the declarant had the time to contrive or devise a falsehood; and (*c*) the statements must concern the occurrence in question and its immediate attending circumstances. The requisites were met herein. AAA went to Tita Terry's house immediately after fleeing from Lupac and spontaneously, unhesitatingly and

immediately declared to Tita Terry that Lupac had sexually abused her.[23] Such manner of denunciation of him as her rapist was confirmed by Tita Terry's testimony about AAA's panic-stricken demeanor that rendered it difficult to quickly comprehend what the victim was then saying.[24] Of course, AAA's use of the words *hindot* and *inano ako ni Kuya Ega* said enough about her being raped.

The nature of *res gestae* has been fittingly explained by the Court in *People v. Salafranca*,[25] *viz*:

> The term *res gestae* has been defined as "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." In a general way, *res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.

Lastly, the Court needs to add exemplary damages to the civil damages awarded to AAA. Under the *Civil Code*, exemplary damages are imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[26] Such damages are awarded "by

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[23] TSN, July 31, 2001, pp. 6-8.

[24] *Id.* at 8.

[25] G.R. No. 173476, February 22, 2012.

[26] Article 2230, *Civil Code.*

way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[27]

Conformably with the *Civil Code*, the CA and the RTC should have recognized the entitlement of AAA to exemplary damages on account of the attendance of the aggravating circumstance of her minority under 12 years. It should not matter that the CA disregarded her testimony on her age due to such testimony not measuring up to the *Pruna* guidelines. At least, the RTC found her testimony on her minority under 12 years at the time of the rape credible enough to convict the accused of statutory rape. Nor was it of any consequence that such minority would have defined the rape as statutory had it been sufficiently established. What mattered was to consider the attendance of an aggravating circumstance of any kind to warrant the award of exemplary damages to the victim. This was the point stressed in *People v. Catubig*,[28] to wit:

The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating**

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[27] Article 2229, *Civil Code*.

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

circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.

For exemplary damages, therefore, the Court holds that the sum of ₱30,000.00 is reasonable and proper.

The Court declares Lupac to be further liable to pay interest of 6% *per annum* on all the items of civil damages, to be reckoned from the finality of this decision until full payment.

WHEREFORE, we **AFFIRM** the decision promulgated on November 23, 2007 in all respects, subject to the modification that **EDGARDO LUPAC *y* FLORES** shall pay the further amount of ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* on the civil indemnity, moral damages, and exemplary damages, reckoned from the finality of this decision until full payment.

Costs of suit to be paid by the accused.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion,[*] and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 186002. September 19, 2012]

APO CHEMICAL MANUFACTURING CORPORATION and MICHAEL CHENG, *petitioners, vs.* **RONALDO A. BIDES,** *respondent.*

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[*] Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT, NOT ALLOWED; EXCEPTION IS IN CASE OF CONFLICT IN FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC. —** [I]t should be stressed that a determination of the applicability of the doctrine of strained relations is essentially a factual question and, thus, not a proper subject in this petition. This rule, however, admits of exceptions. In cases where the factual findings of the LA and the NLRC are conflicting, the Court, in the exercise of Its equity jurisdiction, may review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.
2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; REINSTATEMENT IS PROPER EXCEPT IN CASE OF STRAINED RELATIONS TO WHICH SEPARATION PAY IS GIVEN; ELUCIDATED. —** [R]einstatement is the rule and, for the exception of "strained relations" to apply, it should be proved that it is likely that, if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Moreover, the doctrine of strained relations has been made applicable to cases where the employee decides not to be reinstated and demands for separation pay. x x x In *Polyfoam-RGC International Corporation v. Concepcion,* the Court ruled that "if reinstatement is no longer feasible x x x, separation pay equivalent to one month salary for every year of service shall be awarded as an alternative."

APPEARANCES OF COUNSEL

Numeriano F. Rodriguez, Jr. for petitioners.
Romeo M. Flores for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court which seeks to partially set aside the October 23, 2008 Decision[1] of the Court of Appeals *(CA)* and its January 12, 2009 Resolution, in CA-G.R. SP No. 91323, affirming with modification the January 25, 2005 Decision[2] and the June 17, 2005 Resolution[3] of the National Labor Relations Commission *(NLRC).*

The Facts:

In January 1992, petitioner Apo Chemical Manufacturing Corporation *(ACMC)* hired respondent Ronaldo A. Bides *(Bides)*. In his eleven (11) years of service, Bides held various positions in ACMC. Initially, he served as a "laminator," then becoming a stay-in employee sometime in October 2000, before working as a "packager" in January 2003.[4]

On May 14, 2003, Matthew Cheng *(Matthew)*, the plant manager of ACMC, sent a written memorandum requiring Bides to explain in writing within forty eight (48) hours his refusal to sign the disciplinary form in connection with his alleged infractions of loitering in the comfort room for about five (5) to eight (8) minutes, two (2) to three (3) times a day, on March 5, 6, 7, 8, 9 and 10, 2003 under pain of revocation of his housing privileges.[5]

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[1] *Rollo* pp. 27-35. Penned by Associate Justice Mario L. Guariña III with Associate Justice Celia C. Librea-Leagogo and Associate Justice Arturo G. Tayag, concurring.

[2] *Id.* at 52-59. Penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring.

[3] *Id.* at 62-63.

[4] *Id.* at 27.

[5] *Id.* at 27-28.

On the same day, instead of submitting a written explanation in compliance with the memorandum, Bides orally explained to William Uy *(William)*, another plant manager of ACMC, his justification for his alleged infractions. First, Bides questioned the delay of more than two (2) months in requiring him to explain the alleged infraction. He then argued that urinating, as he was *"nababalisawsaw"* at the time, was not an infraction. He conveyed his willingness to have his housing privileges forfeited as stated in the memorandum.[6]

On May 19, 2003, Matthew allegedly confronted Bides and prohibited him from reporting for work the following day, as he would be terminated from the company. On May 20, 2003, the day he was supposed to be dismissed from the service, Bides instituted a complaint for illegal dismissal, with prayer for payment of pro-rata 13th month pay, backwages and separation pay, and with claim for damages against ACMC. Bides alleged that ACMC neither formally charged him with any infraction nor served him any written notice of his termination.[7]

In response, ACMC asserted that it never dismissed Bides and it had no intention to do so. On the contrary, it was Bides who voluntarily stopped working. It stressed that the alleged confrontation never took place. Further, Matthew had no authority to dismiss employees pursuant to the company's working rules which stated that "supervisors or managers could impose disciplinary measures on employees except dismissal."[8] ACMC went on to manifest its willingness to accept him back for work anytime he would decide to do so.[9]

On March 30, 2004, the Labor Arbiter *(LA)* rendered a decision[10] in favor of Bides. The *fallo* of which reads:

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[6] *Id.* at 28.

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

[8] *Id.* at 31.

[9] *Id.* at 45-46.

[10] *Id.* at 43-49. Penned by Labor Arbiter Elias H. Salinas.

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal as illegal. As such, respondent Apo Chemical Manufacturing Corporation is hereby ordered to pay complainant the following:

1. The sum of ₱82,361.07 as backwages;
2. The sum of ₱87,874.80 as separation pay;
3. The sum of ₱2,524.47 as pro-rata 13th month pay for the year 2003; and
4. The sum equivalent to ten percent of the foregoing monetary awards as attorney's fee.

All other claims are ordered dismissed for lack of merit.

SO ORDERED.[11]

In concluding that Bides was illegally dismissed, the LA explained that for him to quit his job without any reason, as ACMC had insisted, simply defied logic. The LA gave credence to Bides' version that indeed a confrontation took place between Matthew and him, and found Matthew's statement, prohibiting Bides to report for work, sufficient enough to create the impression in the latter's mind that his services were being terminated. The LA concluded that ACMC failed to discharge its evidentiary burden that Bides was dismissed for cause with due process. In awarding separation pay, the LA took into consideration his desire not to be reinstated due to strained relations.

Dissatisfied, ACMC sought recourse with the NLRC. In its Decision, dated January 25, 2005, the NLRC *reversed* the LA's Decision. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the assailed decision is hereby reversed. Respondents are adjudged not guilty of illegal dismissal. The awards of backwages and separation pay are deleted from the assailed decision. Respondents are hereby ordered to reinstate complainant to his former position or equivalent position, without loss of seniority rights and other privileges but without backwages. Respondents are likewise ordered to pay complainant the pro-rata 13th month pay for the year 2003.

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[11] *Id.* at 49.

SO ORDERED.[12]

In granting ACMC's appeal, the NLRC explained that "aside from the non-binding utterances of the plant manager, there was no overt act displayed by [ACMC] which would have indicated a desire to dismiss [Bides]."[13] Between an affirmative allegation of illegal dismissal and a negative allegation of non-dismissal, the NLRC believed that Bides, making the affirmative allegation, had the burden of proof which he failed to discharge. Moreover, the NLRC did not find any factual basis to support the payment of separation pay in lieu of reinstatement.

Bides moved for reconsideration but it was denied by the NLRC in its June 17, 2005 Resolution.

Aggrieved, Bides elevated the case to the CA *via* a petition for *certiorari* under Rule 65 alleging grave abuse of discretion on the part of the NLRC in rendering the assailed decision and resolution.

In its Decision, dated October 23, 2008, the CA affirmed with modification the January 25, 2005 Decision of the NLRC. The CA, in awarding separation pay in lieu of reinstatement, took into account the fact of strained relations between the parties. The decretal portion of its decision reads:

> IN VIEW OF THE FOREGOING, the assailed NLRC decision absolving the respondent of the charge of illegal dismissal and deleting the awards of backwages and separation, but providing 13th month pay pro-rata for the year 2003, [is] AFFIRMED. In lieu of reinstatement, the respondent is ordered to pay the petitioner financial assistance by way of separation pay of one-half month salary per year based on current rate, for eleven years.
>
> SO ORDERED.[14]

ACMC filed a motion for reconsideration, but it was denied by the CA in its January 12, 2009 Resolution.

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[12] *Id.* at 34.

[13] *Id.* at 58.

[14] *Id.* at 34.

Hence, this petition.

THE ISSUES

ACMC seeks relief from this Court raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE WERE "STRAINED RELATIONS" BETWEEN PETITIONERS AND BIDES NOTWITHSTANDING TOTAL ABSENCE OF EVIDENCE.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO PAY BIDES "FINANCIAL ASSISTANCE BY WAY OF SEPARATION PAY," IN LIEU OF REINSTATEMENT, SOLELY BASED ON THE UNFOUNDED CONCLUSION THAT THERE WERE "STRAINED RELATIONS" BETWEEN PETITIONERS AND BIDES.[15]

In sum, the sole issue to be resolved in this case is whether strained relations exist between ACMC and Bides to bar the latter's reinstatement and justify the award of separation pay.

In its Memorandum,[16] ACMC contends that there is absolutely no evidence of strained relations in the records. The refusal of Bides to be reinstated cannot, by itself, be used as basis to consider the relationship between ACMC and Bides as automatically strained.

In his Memorandum, Bides maintains that his refusal to be reinstated is clearly indicative of strained relations.

THE COURT'S RULING

The Court finds no merit in the petition.

At the outset, it should be stressed that a determination of the applicability of the doctrine of strained relations is essentially a factual question and, thus, not a proper subject in this petition.[17]

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[15] *Id.* at 130.

[16] *Id.* at 125-143.

[17] *Bank of Lubao, Inc. v. Manabat*, G.R. No. 188722, February 1, 2012.

This rule, however, admits of exceptions. In cases where the factual findings of the LA and the NLRC are conflicting, the Court, in the exercise of Its equity jurisdiction, may review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.[18]

As the records bear out, the LA found that patent animosity existed between ACMC and Bides considering the confrontation that took place between the latter and Matthew. This confrontation coupled with Bides' refusal to be reinstated led to the LA's finding of "strained relations" necessitating an award of separation pay in lieu of reinstatement. The NLRC, on the other hand, deleted the said award for lack of factual basis. The CA reinstated the LA's finding of "strained relations" and explained that too much enmity had developed between ACMC and Bides that necessarily barred the latter's reinstatement.

On this point, the Court agrees with the LA.

The Court is well aware that reinstatement is the rule and, for the exception of "strained relations" to apply, it should be proved that it is likely that, if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned.[19]

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[20] Moreover, the doctrine of strained relations has

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[18] *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012.

[19] *Cabigting v. San Miguel Foods Inc.*, G.R. No. 167706, November 5, 2009, 605 SCRA 14, 25-26.

[20] *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290.

been made applicable to cases where the employee decides not to be reinstated and demands for separation pay.[21]

In the present case, Bides has consistently maintained, from the proceedings in the LA up to the CA, his refusal to be reinstated due to his fear of reprisal which he could experience as a consequence of his return. By doing so, Bides unequivocally foreclosed reinstatement as a relief.

In *Polyfoam-RGC International Corporation v. Concepcion*,[22] the Court ruled that "if reinstatement is no longer feasible x x x, separation pay equivalent to one month salary for every year of service shall be awarded as an alternative." Clearly, the CA erred in awarding a half month salary only for every year of service. Considering, however, that Bides did not question that portion of the CA decision, the Court is of the view that he was satisfied and would no longer disturb it.

WHEREFORE, the petition is **DENIED.** The assailed October 23, 2008 Decision and January 12, 2009 Resolution of the Court of Appeals, in CA-G.R. SP No. 91323, are hereby **AFFIRMED.**

SO ORDERED.

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

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[21] *Cabigting v. San Miguel Foods, Inc.*, *supra* note 19 at 28.

[22] G.R. No. 172349, June 13, 2012, citing *Big AA Manufacturer v. Antonio*, 519 Phil. 30, 42 (2006).

[*] Designated additional member, per Special Order No. 1299, dated August 28, 2012.

SECOND DIVISION

[G.R. No. 191062. September 19, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MOHAMAD ANGKOB *y* MLANG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

2. **ID.; ID.; ID.; ID.; IDENTITY OF THE ILLEGAL DRUGS; HOW ASCERTAINED. —** To ascertain the identity of the illegal drugs presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of Republic Act No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165; and (b) there was an unbroken link in the chain of custody with respect to the confiscated items. x x x The duty of seeing to the integrity of the dangerous drugs and substances is discharged only when the arresting law enforcer ensures that the chain of custody is unbroken.

3. **ID.; ID.; ID.; ID.; ID.; THE CHAIN OF CUSTODY OF THE CONFISCATED ITEMS MUST BE ENSURED; MARKING OF THE SEIZED ITEM IMMEDIATELY UPON REACHING THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) OFFICE IS SUFFICIENT. —** The first link in the chain of custody starts with the seizure of the plastic sachet containing *shabu* during the buy-bust operation. Records show that only Sistemio was in possession of the *shabu* from the time it was given to him by appellant, while they were in the Security Office of the mall where the accused were initially

brought, while they were in transit, and up until they reached the PDEA Office. While the marking was not immediately made at the crime scene, it does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved. The marking of the seized items at the police station and in the presence of the accused was sufficient compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. In this case, Sistemio immediately marked the seized item upon reaching the PDEA Office. He marked it with his initials "PVS" and the date of the buy-bust sale.

4. **ID.; ID.; ID.; ID.; ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST, NOT CRUCIAL. —** Appellant harps on the non-presentation of the forensic chemist which could have established the final link in the chain of custody. The non-presentation as witnesses of other persons such as the investigator and the forensic chemist is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. Furthermore, it was already stipulated during the pre-trial that the forensic chemist, Abraham Tecson, had examined the illegal drugs taken from the accused.

5. **ID.; ID.; ID.; PROPER PENALTY. —** Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱I ,000,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J*.:

The Decision[1] of the Court of Appeals dated 19 November 2009 affirming with modification the Regional Trial Court's (RTC) judgment[2] finding appellant Mohamad Angkob *y* Mlang guilty of illegal sale of *shabu,* is the subject of this appeal.

In Criminal Case No. 05-899, appellant and his female companion were accused of illegal sale of *shabu* in an Information which reads:

> That on or about the 5th day of February 2005, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, they not being authorized by law, did then and there wilfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine Hydrochloride, a dangerous drug, weighing 45.47 grams contained in one (1) heat-sealed transparent plastic sachet, placed in one (1) white plastic bag in violation of the above-cited law.[3]

On arraignment, appellant pleaded not guilty. In a pre-trial conference conducted on 11 November 2005, the following facts were stipulated:

1. The identity of the accused whose name appears in the Information and the correctness of the spelling of his first, middle and last names.
2. The jurisdiction of the court, the alleged crime having been committed in Metropolis, Alabang, Muntinlupa City.
3. That the accused was the subject of inquest proceedings before Assistant City ProsecutorVicente Francisco.

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[1] Penned by Associate Justice Mario V. Lopez with Associate Justices Rebecca De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring. *Rollo,* pp. 2-16.

[2] Penned by Presiding Judge Juanita T. Guerrero. CA *rollo,* pp. 91-103.

[3] Records, p. 1.

4. That Abraham Tecson, a chemist from the PNP Crime Laboratory, examined the subject evidence taken from the accused which turned out to be positive for methamphetamine hydrochloride with a weight of 45.47 grams.

5. The existence of initial chemistry report number D-86-05.[4]

Trial thereafter ensued.

Based on the narration of prosecution witnesses, who were members of the buy-bust team, the following incident occurred. An informant disclosed the illegal drug activities of a certain Mhods of *Maharlika* Village, Taguig City, to the Special Enforcement Service at Philippine Drug Enforcement Agency (PDEA) in Quezon City. Acting on said tip, Police Chief Inspector Jaime Santos (Santos) instructed the informant to contact Mhods to arrange a drug deal. Thereafter, Santos formed a team composed of PO3 Peter Sistemio (Sistemio) as the *poseur*-buyer, and SPO1 Arnold Yu (Yu) and P/Chief Inspector Ricardo Base, as backups. Santos provided the marked money consisting of one (1) piece of ₱500.00 bill and some cut-out money-sized papers to be given in exchange for fifty (50) grams of *shabu*. Sistemio received the marked money and placed his initials "PVS" at the upper right corner of the bill.[5] He also prepared an operational coordination report,[6] copies of which were submitted to the National Operation Center and Southern Police District.[7]

At around 12:00 p.m. of 5 February 2005, the buy-bust team and the informant went to Metropolis Mall in Alabang, Muntinlupa City. Sistemio and the informant proceeded to a *Jollibee* restaurant at the ground floor of the mall while the two other police officers were posted strategically within in the vicinity.[8] The informant called up Mhods to inform him that

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[4] *Id.* at 38.

[5] *Id.* at 21. TSN, 20 June 2007, p. 7.

[6] *Id.* at 20.

[7] TSN, 22 February 2007, p. 13.

[8] TSN, 20 June 2007, p. 9.

he and the alleged buyer had arrived. When Mhods and a female companion came to the restaurant, introductions were made.[9] The informant introduced Mhods, who was using a wooden crutch,[10] to Sistemio as the buyer, while Mhods introduced his female companion as Sar, his business partner.[11]

Sistemio then asked Mhods for the price of 50 grams of *shabu* to which the latter replied ₱150,000.00. Sistemio questioned the high price of the *shabu* which prompted Sar to answer: "*Mataas talaga ang presyo ng Shabu ngayon magandang klase ito sa susunod na kuha mo babawas*[*a*]*n ko na ang presyo*."[12]

Sar then asked Sistemio and the informant to walk with them outside the restaurant for the exchange. While they were walking, Sar handed Sistemio a white plastic bag containing one white plastic sachet. Sistemio, in turn, gave the marked genuine money and the boodle money to Mhods.[13]

Sistemio gave the pre-arranged signal of tapping Mhods on his shoulder. Yu immediately rushed towards the group and arrested Mhods and Sar.[14] They were first brought to the Security Office of the mall where they revealed their real names as Mohamad Angkob Mlang and Sarkiya Daub. Thereat, Sistemio prepared the Certificate of Inventory of the items confiscated. They then proceeded to the PDEA office where markings were made. Sistemio marked his initials "PVS" on the plastic bag, and his initials "PVS" and the date "02-05-05" on the white plastic sachet. Sistemio likewise prepared and brought the request for a laboratory examination and specimen to the Philippine National Police (PNP) Crime Laboratory.[15]

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[9] *Id.* at 14-15.

[10] TSN, 29 March 2007, p. 4.

[11] TSN, 22 February 2007, p. 15.

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

[13] *Id.* at 18-20; TSN, 20 June 2007, p. 12.

[14] TSN, 20 June 2007, p. 13.

[15] *Id.* at 20-29.

Chemistry Report No. D-86-05 revealed that the specimen submitted yielded positive results for *Methylamphetamine Hydrochloride* or *shabu*.[16]

Appellant testified in his defense that on 5 February 2005, he was at a jeep terminal in FTI, Taguig City waiting for a friend named Wally Abdul. His friend did not arrive, instead, he met Sarkiya, who incidentally was his schoolmate in the province. Sarkiya asked him to accompany her to Metropolis Mall, Alabang, Muntinlupa City to meet an important person. Sarkiya told appellant that she was not familiar with the place. When they reached the mall, they went to a *Jollibee* restaurant where Sarkiya treated him to lunch. Thirty (30) minutes later, two (2) men arrived and talked to Sarkiya. Appellant could not hear them as they were seated one table away from him. Sarkiya then told appellant that she would go to the comfort room located outside the restaurant. When Sarkiya returned, she was already in handcuffs. Appellant was also handcuffed by one of the men he had earlier seen talking to Sarkiya. He was also hit by Yu with a pistol. They were boarded into a vehicle and brought to the PDEA office. The police officers later brought him to Bicutan where they tried to extort money from him. When appellant failed to pay, he was brought back to the PDEA office where he was incarcerated.[17]

Sarkiya was released during the preliminary investigation when she presented a fake birth certificate stating that she was only 17 years old at the time of her arrest.[18] She remains at large.

After trial, the RTC rendered a Decision finding appellant guilty of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 05-899 and sentencing him to suffer life imprisonment and to pay a fine of ₱1,000,000.00. The dispositive portion of the Decision reads:

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[16] Records, p. 15.

[17] TSN, 7 November 2007, pp. 4-15.

[18] TSN, 22 February 2007, p. 23.

WHEREFORE, premises considered and finding the accused MOHAMAD ANGKOB *Y* MLANG, GUILTY of violating Sec. 5 Art. II of the Comprehensive Dangerous Drugs Act of 2002 beyond reasonable doubt, he is sentenced to LIFE IMPRISONMENT and to suffer all the accessory penalties provided by law and to pay a fine of ONE MILLION PESOS (Php1,000,000.00) with subsidiary imprisonment in case of insolvency.

The Branch Clerk of Court is directed to transmit the subject "*shabu*" to the Philippine Drug Enforcement Agency for proper disposition.

Accused MOHAMAD ANGKOB *Y* MLANG is ordered committed to the National Bilibid Prisons until further orders.

The preventive imprisonment undergone by the accused shall be credited in his favor.[19]

The trial court found the testimonies of the prosecution witnesses as credible *vis-à-vis* the weak denial of appellant.

On appeal, the Court of Appeals affirmed the findings of the RTC. The dispositive portion reads:

FOR THESE REASONS, the instant appeal is DENIED. The RTC Decision convicting accused-appellant Mohamad M. Angkob for violation of Section 5, Article II of Republic Act No. 9165, is AFFIRMED with the MODIFICATION that no subsidiary penalty shall be imposed for failure to pay the fine. Further, the accessory penalty imposed with life imprisonment is DELETED.[20]

The Court of Appeals favored the integrity of the drug offered in evidence by ruling that there was sufficient compliance with the chain of custody rule. The appellate court was satisfied with the prosecution's presentation of "a complete picture detailing the buy-bust operation."[21] The appellate court however deleted the imposition of a subsidiary penalty on the ground that life imprisonment does not carry with it any accessory penalty.

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[19] CA *rollo*, pp. 102-103.

[20] *Rollo*, p. 15.

[21] *Id.* at 14.

Appellant argues that his guilt has not been proven beyond reasonable doubt. He cites several irregularities in the conduct of the buy-bust operation as well as in the presentation of the *corpus delicti*. First, appellant points out that the pre-operational report failed to identify him as Mhods, failed to indicate the place where the buy-bust operation took place, and failed to provide the quantity of the subject drugs. Second, appellant doubts if indeed, only one (1) piece of ₱500.00 bill was used in the buy-bust operation. Third, appellant questions the chain of custody of the *shabu*. He notes the discrepancy between the quantity of *shabu* sought by the *poseur*-buyer during the drug deal (50 grams) and the quantity of drugs as tested by the Crime Laboratory (45.47 grams). He also argues that Sistemio failed to show how he handled the drugs when he was preoccupied with preparing the request for laboratory exam, marking, booking sheet and arrest report. Further, the forensic expert, to whom the *shabu* was supposedly turned over, did not testify during the trial.

The appeal is unmeritorious.

The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[22]

Appellant's arguments go into the core of the two elements necessary for conviction. Appellant first dealt with the existence of the buy-bust sale which were evidenced by the pre-operation report and a photocopy of the purported buy-bust money. Appellant questions the authenticity of the pre-operation report and the preparation of the marked money. On this score, we find the Solicitor General's refutations apt:

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[22] *People v. Dela Cruz*, G.R. No. 181545, 8 October 2008, 568 SCRA 273, 280-281 citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449.

The irregularities in the pre-operational report did not in anyway affect the case established against Angkob. In fact, the non-presentation of [the] pre-operation orders and post operation report was not fatal to the cause of the prosecution. Pre-operational reports are not indispensable in a buy-bust operation. Further, the quantity of bills involved is a purely operational matter left to the discretion of the arresting team. The quantity of bills used will not affect the outcome of the case.[23]

Sistemio, the *poseur*-buyer, positively testified that the sale of *shabu* actually took place when he himself parted with the marked money and received the *shabu* from appellant, thus:

FISCAL BAYBAY:

And then what happened next?

A: I together with the confidential informant, Sar and Mhods walk[ed] along the ground floor of Metropolis Mall.

Q: And then while you are walking where was your buddy or partner at that time?

A: Sir, my immediate back up has positioned within the area of the other vendor of the mall, sir.

Q: Do you know his exact position at that time?

A: No, sir.

Q: Now, after that what happened?

A: Sir, after we are walking along the said mall, *alias* Sar handed to me one (1) white plastic bag, sir.

Q: Then, what happened next?

A: I accepted the said plastic bag and I found out the one transparent pack containing white crystalline substance[,] sir.

Q: Where was that item placed?

A: White plastic bag, sir.

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[23] CA *rollo*, p. 123.

Q: How big was that white plastic bag?

A: Medium size, a *sando* bag, sir.

Q: *Sando* bag?

A: *Sando* bag sir, used in the market, sir.

THE COURT:

Like a *sando*.

FISCAL BAYBAY:

What its color?

A: White, sir.

Q: What about Mhods what did he do at that time?

A: He demanded for the money for the payments of the said fifty (50) grams of *shabu*, sir.

Q: What was your reply?

A: Sir, I handed the said plastic bag containing the mark[ed] money and boodle money, sir, to *alias* Mhods.[24]

Yu corroborated Sistemio's narration, which he also personally witnessed when he was posted a few meters away from Sistemio and the accused, thus:

Q: When you reached Metropolis where did you proceed?

A: We proceeded to Jollibee fastfood chain, sir.

Q: Where is that Jollibee located?

A: At the ground floor of Metropolis, Alabang, sir.

Q: Who of the five went to Jollibee?

A: PO3 Sistemio together with the confidential informant, sir.

Q: What about the three of you where were you located?

A: We positioned strategically to the area, sir.

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[24] TSN, 22 February 2007, pp. 18-20.

Q: How far were you from Jollibee?

A: We are moving approximately 10 to 20 meters, sir.

Q: After your confidential informant and Sistemio went to Jollibee what did you observe?

A: A certain Mhods came together with his cohorts a certain Sarkiya, sir.

Q: How did you come to know the name of Mhods and Sarkiya?

A: During the briefing we know that the name of the suspect is Mhods, sir.

Q: What about Sarkiya?

A: She came later, she was the one who carr[ied] the item, sir.

Q: When for the first time you know that the woman was Sarkiya?

A: After the arrest, sir.

Q: Now, you saw Mhods arrived with a female companion, where did they go?

A: They [went] outside the Jollibee, sir. After that along the way a certain Sarkiya gave the item to PO3 Sistemio after that a certain Mhods received the marked money, sir.

x x x x x x x x x

Q: Where did they go now?

A: They went outside, sir.

Q: How far from Jollibee did they go?

A: I think 20 to 30 meters from Jollibee, sir.

Q: When they were 20 to 30 meters from Jollibee, how far were you from them?

A: About 10 meters, sir.

Q: What did you observe from them after distance of 10 meters?

A: The female gave the item to Sistemio and after Sistemio looked at the item to check for it he gave the marked money to Mhods then Sistemio tap the shoulder of Mhods, sir.[25]

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[25] TSN, 20 June 2007, pp. 9-12.

The second part of appellant's arguments rest on the *corpus delicti*.

To ascertain the identity of the illegal drugs presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of Republic Act No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165; and (b) there was an unbroken link in the chain of custody with respect to the confiscated items.[26]

Section 21(1), Article II of Republic Act No. 9165 provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The aforecited provision is elaborated on under Section 21(a) of the IRR which provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated

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[26] *People v. Alivio*, G.R. No. 177771, 30 May 2011, 649 SCRA 318, 330.

and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. [Emphasis supplied]

The duty of seeing to the integrity of the dangerous drugs and substances is discharged only when the arresting law enforcer ensures that the chain of custody is unbroken.[27] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody as:

b. "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 [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition[.]

While there is no strict compliance with the prescribed procedure, we hold that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule.

The first link in the chain of custody starts with the seizure of the plastic sachet containing *shabu* during the buy-bust operation. Records show that only Sistemio was in possession of the *shabu* from the time it was given to him by appellant,

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[27] *Reyes v. Court of Appeals*, G.R. No. 180177, 18 April 2012.

while they were in the Security Office of the mall where the accused were initially brought, while they were in transit, and up until they reached the PDEA Office. While the marking was not immediately made at the crime scene, it does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.[28] The marking of the seized items at the police station and in the presence of the accused was sufficient compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[29] In this case, Sistemio immediately marked the seized item upon reaching the PDEA Office. He marked it with his initials "PVS" and the date of the buy-bust sale.

The second link is the turnover of the drugs at the PDEA Office, which was brought and marked by Sistemio himself.

The third link constitutes the delivery of the request and the specimen to the PNP Crime Laboratory. It was likewise Sistemio who prepared the request and personally turned over the specimen to the forensic chemist.

The fourth link seeks to establish that the specimen submitted for laboratory examination is the one presented in court. Appellant harps on the non-presentation of the forensic chemist which could have established the final link in the chain of custody. The non-presentation as witnesses of other persons such as the investigator and the forensic chemist is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the

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[28] *People v. Mantawil*, G.R. No. 188319, 8 June 2011, 651 SCRA 642, 657 citing *People v. Morales*, G.R. No. 188608, 9 February 2011, 642 SCRA 612, 623 citing further *People v. Resurreccion*, G.R. No. 186380, 12 October 2009, 603 SCRA 510, 518-519.

[29] *Imson v. People*, G.R. No. 193003, 13 July 2011, 653 SCRA 826, 836 citing *People v. Resurreccion*, *id.* at 520 citing further *People v. Gum-Oyen,* G.R. No. 182231, 16 April 2009, 585 SCRA 668, 678.

right to choose whom it wishes to present as witnesses.[30] Furthermore, it was already stipulated during the pre-trial that the forensic chemist, Abraham Tecson, had examined the illegal drugs taken from the accused.

Under these circumstances, the prosecution has established beyond doubt an unbroken link in the chain of custody. The unbroken link in the chain of custody also precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence.

Chemistry Report No. D-86-05 confirmed that a qualitative examination conducted on the specimen with a specified quantity of 45.47 grams inside the plastic sachets seized from appellant yielded positive result for *Methylamphetamine Hydrochloride* or *shabu*.[31] Thus it is of no moment that there was a slight discrepancy in the quantity of *shabu* as indicated in the pre-operation report and the actual quantity of *shabu* as examined by the forensic chemist. Appellant was properly charged in the Information with selling 45.47 grams of *shabu*.

All told, it has been established by proof beyond reasonable doubt that appellant sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱1,000,000.00.

WHEREFORE, the Decision dated 19 November 2009 of the Court of Appeals convicting appellant Mohamad Angkob *y*

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[30] *People v. Padua*, G.R. No. 174097, 21 July 2010, 625 SCRA 220, 235 citing *People v. Zeng Hua Dian*, G.R. No. 145348, 14 June 2004, 432 SCRA 25, 32.

[31] Records, p. 15.

Mlang for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱1,000,000.00 is hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191837. September 19, 2012]

MARIA CONSOLACION RIVERA-PASCUAL, *petitioner, vs.* **SPOUSES MARILYN LIM and GEORGE LIM and the REGISTRY OF DEEDS OF VALENZUELA CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; LIBERAL CONSTRUCTION OF THE RULES; COURT WILL CONDONE NON-COMPLIANCE WITH PROCEDURAL RULES ONLY IF THERE IS SATISFACTORY AND PERSUASIVE EXPLANATION. — The Court is aware of the exceptional cases where technicalities were liberally construed. However, x x x [I]t was never the Court's intent "to forge a bastion for erring litigants to violate the rules with impunity." This Court will not condone a cavalier attitude towards procedural rules. It is the duty of every member of the bar to comply with these rules. They are not at liberty to seek exceptions should they fail to observe these rules and rationalize their omission by harking on liberal construction. While it is the negligence of Consolacion's counsel that led to this unfortunate result, she is bound by such.

APPEARANCES OF COUNSEL

Erwin G. Ruiz for petitioner.
Capacillo Law Offices for respondents.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* assailing the Resolutions dated October 15, 2009[1] and March 11, 2010[2] of the Court of Appeals (CA) in CA-G.R. SP No. 109265.

The facts leading to the filing of this petition are undisputed.

Subject of the present controversy is a parcel of land with an approximate area of 4.4 hectares and located at Bignay, Valenzuela City. The property is covered by Transfer Certificate of Title (TCT) No. V-73892, registered in the names of George and Marilyn Lim (Spouses Lim).

On September 8, 2004, Maria Consolacion Rivera-Pascual (Consolacion) filed before the Office of the Regional Agrarian Reform Adjudicator (RARAD) for Region IV-A a petition to be recognized as a tenant of a property located at Bignay, Valenzuela City against Danilo Deato (Deato). At that time, the property, which has an approximate area of 4.4 hectares, was covered by TCT No. 24759 under Deato's name. During the pendency of the petition, Deato sold the property to Spouses Lim. The sale was registered on December 21, 2004 leading to the issuance of TCT No. V-73892 in favor of Spouses Lim. Considering this development, Consolacion filed a motion on March 3, 2005 to implead Spouses Lim as respondents.[3]

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Myrna Dimaranan-Vidal and Romeo F. Barza, concurring; *rollo*, pp. 41-42.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Magdangal M. De Leon and Ruben C. Ayson, concurring; *id.* at 44-45.

[3] *Id.* at 59.

The petition, which was docketed as DARAB Case No. R-0400-0012-04, was granted by Regional Adjudicator Conchita C. Miñas (RA Miñas) in a Decision[4] dated December 2, 2005, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered:

1) Declaring that petitioner is the tenant of the subject landholding by succession from her deceased father;

2) Declaring respondents spouses George and Marilyn Lim to have subrogated to the rights and substituted to the obligation of spouses Danilo and Divina Deato;

3) Ordering the respondents and all persons claiming rights under them to maintain petitioner in peaceful possession and cultivation of the agricultural land subject hereof;

4) Declaring petitioner to have the right to exercise the right of redemption of the subject parcel of agricultural land pursuant to Section 12 of RA 3844 as [a]mended; and

5) Dismissing the petition against Louie Cruz, Fire Force Agency and Danny Boy Rivera for having no proximate tenurial relationship with the petitioner hence beyond the jurisdictional ambit of this Office.

SO ORDERED.[5]

On July 7, 2006, the foregoing decision became final.[6]

Upon Consolacion's motion for execution filed on January 7, 2008, RA Miñas issued a writ of execution on January 8, 2008.[7]

On January 21, 2008, Consolacion filed a petition against Spouses Lim and the Registrar of Deeds of Valenzuela City praying for the issuance of an order directing Spouses Lim to accept the amount of ₱10,000,000.00 which she undertook to

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[4] *Id.* at 55-67.

[5] *Id.* at 66.

[6] *Id.* at 68-69.

[7] *Id.* at 70-71.

tender during the initial hearing, declaring the property redeemed, and cancelling TCT No. V-73892.[8] Consolacion consigned with the RARAD the amount of ₱10,000,000.00 on March 3, 2008.[9]

Consolacion's petition, which was docketed as DARAB Case No. R-0400-001-08, was given due course by RA Miñas in a Decision[10] dated June 2, 2008, the dispositive portion of which states:

WHEREFORE, foregoing premises considered, judgment is hereby rendered:

1. As prayed for, declaring that the landholding subject of the petition as lawfully redeemed;
2. Ordering respondent spouses to accept and withdraw the amount of the redemption price consigned with this Office which was deposited for safekeeping indicated in Manager's Check No. 0000004518 issued by Allied Bank in the name of Spouses Marilyn and George Lim and/or DAR Adjudication Board Region IV-A in the amount of ten (10) million pesos;
3. Upon acceptance and the withdrawal of the redemption price as ordered in paragraph 2 hereof, ordering respondent spouses to execute a Deed of Redemption in favor of petitioner;
4. In case of refusal and/or failure of respondent spouses to execute the Deed of Redemption as ordered above, the Regional Clerk of the Board is hereby ordered to execute a Deed of Redemption in the name of the petitioner; and
5. Directing the Register of Deeds for Valenzuela City to cause the cancellation of TCT No. V-73892 registered in the name of respondent spouses Marilyn and George Lim and a new one issued in the name of petitioner upon presentment of the Deed of Redemption.

SO ORDERED.[11]

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[8] *Id.* at 73-75.

[9] *Id.* at 106.

[10] *Id.* at 97-108.

[11] *Id.* at 107-108.

On appeal, the Department of Agrarian Reform Adjudication Board (DARAB) issued a Decision[12] on February 18, 2009 reversing RA Miñas Decision dated June 2, 2008. Specifically:

WHEREFORE, in view of the foregoing, the appealed Decision dated 02 June 2008 is hereby **REVERSED** and **SET ASIDE**. A new judgment is hereby rendered:

1. **DECLARING** the landholding to be not lawfully redeemed;
2. **DECLARING** petitioner-appellee not a bona fide tenant of the subject landholding;
3. **DECLARING** that petitioner-appellee cannot redeem the subject parcel registered in the names of the respondents-appellants;
4. **ORDERING** the respondents-appellants to be maintained in peaceful possession of the subject landholding[; and]
5. **DIRECTING** the Clerk of the Board of the Regional Agrarian Reform Adjudicator of Region IV-A to return the Manager's Check No. 0000004518 issued by Allied Bank in the name of Spouses Marilyn and George Lim and/or DAR Adjudication Board Region IV-A in the amount of Ten Million pesos to herein petitioner-appellee.

SO ORDERED.[13]

On April 13, 2009, Consolacion moved for reconsideration,[14] which the DARAB denied in a Resolution[15] dated June 8, 2009 for being filed out of time.

SECTION 12 Rule X of the 2003 DARAB Rules provides that a Motion for Reconsideration shall be filed within fifteen (15) days from receipt of notice of the order, resolution, or decision of the Board or Adjudicator. Records show that both the petitioner-appellee and her counsel received a copy of the Decision dated 18 February 2009 on 27 February 2009 and that Legal Officer Nancy Geocada[,]

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[12] *Id.* at 140-155.

[13] *Id.* at 153-154.

[14] *Id.* at 157-163.

[15] *Id.* at 164-167.

the alleged new counsel of the herein petitioner[-]appellee[,] filed the Motion for Reconsideration only on 13 April 2009, clearly the Motion for Reconsideration was filed beyond the fifteen (15) days (sic) reglementary period thus the herein Decision has already become final and executory. x x x.[16]

On June 25, 2009, Consolacion filed a petition for review under Rule 43 of the Rules of Court with the CA.[17]

On July 1, 2009, the CA resolved to require Consolacion's counsel to submit within five (5) days from notice his Mandatory Continuing Legal Education (MCLE) Certificate of Compliance or Exemption and an amended Verification and Certification Against Non-Forum-Shopping.[18] Apparently, Consolacion's counsel failed to indicate in the petition his MCLE Certificate of Compliance or Exemption Number as required under Bar Matter No. 1922. Also, the jurat of Consolacion's verification and certification against non-forum-shopping failed to indicate any competent evidence of Consolacion's identity apart from her community tax certificate.

Considering the failure of Consolacion and her counsel to comply, the CA issued a Resolution[19] on October 15, 2009 dismissing the petition.

On July 7, 2009, the counsel for the petitioner received the above-mentioned Resolution. However, the counsel for the petitioner failed to comply with the said Resolution which was due on July 19, 2009.

For failure of the counsel for the petitioner to comply with the Resolution dated July 1, 2009, despite receipt of the notice thereof, the petition is hereby **DISMISSED**.

SO ORDERED.[20]

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[16] *Id.* at 165-166.

[17] *Id.* at 26.

[18] *Id.* at 26-27.

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

[20] *Id.* at 41.

Consolacion moved for reconsideration but this was denied by the CA in a Resolution[21] dated March 11, 2010.

Consolacion is, before this Court, claiming that the CA's summary dismissal of her petition on technical grounds is unwarranted. Consolacion invoked substantial justice against the CA's strict application of the rule requiring her counsel to note his MCLE Compliance or Exemption Certificate Number and the rule rendering the jurat of her verification and certification on non-forum-shopping defective in the absence of the details of any one of her current identification document issued by an official agency bearing her photograph and signature. That there was merit in her petition and that she complied, albeit belatedly as her counsel's MCLE Compliance Certificate Number was indicated and a verification and certificate on non-forum-shopping with a proper jurat was attached to her motion for reconsideration, should have sufficed for the CA to reverse the dismissal of her petition and decide the same on its merits. Consolacion alleged that procedural rules or technicalities are designed to facilitate the attainment of justice and their rigid application should be avoided if this would frustrate rather than promote substantial justice.

The Court finds no merit in the petition. The Court sees no reversible error committed by the CA in dismissing Consolacion's petition before it on the ground of petitioner's unexplained failure to comply with basic procedural requirements attendant to the filing of a petition for review under Rule 43 of the Rules of Court. Notably, Consolacion and her counsel remained obstinate despite the opportunity afforded to them by the CA to rectify their lapses. While there was compliance, this took place, however, after the CA had ordered the dismissal of Consolacion's petition and without reasonable cause proffered to justify its belatedness. Consolacion and her counsel claimed inadvertence and negligence but they did not explain the circumstances thereof. Absent valid and compelling reasons, the requested leniency and liberality in the observance of procedural rules appears to

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[21] *Id.* at 44-45.

be an afterthought, hence, cannot be granted. The CA saw no compelling need meriting the relaxation of the rules. Neither does this Court see any.

The Court is aware of the exceptional cases where technicalities were liberally construed. However, in these cases, outright dismissal is rendered unjust by the presence of a satisfactory and persuasive explanation. The parties therein who prayed for liberal interpretation were able to hurdle that heavy burden of proving that they deserve an exceptional treatment. It was never the Court's intent "to forge a bastion for erring litigants to violate the rules with impunity."[22]

This Court will not condone a cavalier attitude towards procedural rules. It is the duty of every member of the bar to comply with these rules. They are not at liberty to seek exceptions should they fail to observe these rules and rationalize their omission by harking on liberal construction. While it is the negligence of Consolacion's counsel that led to this unfortunate result, she is bound by such.

WHEREFORE, premises considered, the petition is **DISMISSED.** The Resolutions dated October 15, 2009 and March 11, 2010 of the Court of Appeals in CA-G.R. SP No. 109265 are **AFFIRMED.**

Costs against the petitioner.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *Bersamin, JJ.,* concur.

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[22] *Pates v. Commission on Elections,* G.R. No. 184915, June 30, 2009, 591 SCRA 481, 487, citing *Hon. Fortich v. Hon. Corona*, 359 Phil. 210, 220 (1998).

[*] Acting member per Special Order No. 1305 dated September 10, 2012 *vice* Associate Justice Martin S. Villarama, Jr.

THIRD DIVISION

[G.R. No. 193789. September 19, 2012]

ALEX Q. NARANJO, DONNALYN DE GUZMAN, RONALD V. CRUZ, ROSEMARIE P. PIMENTEL, and ROWENA B. BARDAJE, *petitioners, vs.* **BIOMEDICA HEALTH CARE, INC. and CARINA "KAREN" J. MOTOL,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; DUE PROCESS MUST BE OBSERVED. —**[I]n the dismissal of an employee, the law requires that due process be observed. Such due process requirement is two-fold, procedural and substantive, that is, "the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing."

2. **ID.; ID.; ID.; ID.; REQUIREMENTS OF NOTICE; WRITTEN NOTICE SERVED ON THE EMPLOYEE MUST SPECIFY THE GROUNDS FOR TERMINATION; MERE ALLEGATION OF "ILLEGAL STRIKE" WITHOUT MORE WILL NOT SUFFICE. —** Rule XIII, Book V, Sec. 2 I (a) of the Implementing Rules and Regulations of the Labor Code states: SEC. 2. Standards of due process; requirements of notice.— x x x I. For termination of employment based on just causes as defined in Article 282 of the Code: (a) **A written notice served on the employee specifying the ground or grounds for termination**, and giving said employee **reasonable opportunity within which to explain his side**. x x x Thus, the Court elaborated in *King of Kings Transport, Inc. v. Mamac* that a mere general description of the charges against an employee by the employer is insufficient to comply with the provisions of the law. x x x [Here,] petitioners were charged with conducting an illegal strike, not a mass leave, without specifying the exact acts that the company considers as constituting an illegal strike or violative of company policies. x x x A bare mention of an "illegal strike" will not suffice.

3. **ID.; ID.; ID.; ID.; ID.; THAT EMPLOYEE BE GIVEN "REASONABLE OPPORTUNITY" TO ANSWER; PERIOD OF 24 HOURS IS SEVERELY INSUFFICIENT. —** [T]he period of 24 hours allotted to petitioners to answer the notice was severely insufficient and in violation of the implementing rules of the Labor Code. Under the implementing rule of Art. 277, an employee should be given "reasonable opportunity" to file a response to the notice. *King of Kings Transport, Inc.* elucidates in this wise. x x x **This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint**.

4. **ID.; ID.; ID.; ID.; ID.; THAT CHARGES MUST BE SET FOR HEARING OR CONFERENCE; DISCUSSED. —** Biomedica did not set the charges against petitioners for hearing or conference in accordance with Sec. 2, Book V, Rule XIII of the Implementing Rules and Regulations of the Labor Code and in line with ruling in *King of Kings Transport, Inc.*. x x x During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement. While petitioners did not submit any written explanation to the charges, it is incumbent for Biomedica to set the matter for hearing or conference [and] to exert efforts, during said hearing or conference, to hammer out a settlement of its differences with petitioners.

5. **ID.; ID.; ID.; ID.; ID.; THAT FACTS AND CIRCUMSTANCES SUPPORTING THE GROUNDS FOR TERMINATION MUST BE EMBODIED; DISCUSSED. —** Sec. 2, Book V, Rule XIII of the Implementing Rules [provides thereof a written notice of termination] should embody the facts and circumstances to support the grounds justifying the termination. As amplified in *King of Kings Transport, Inc.*: (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the

employees have been considered; and (2) grounds have been established to justify the severance of their employment.

6. **ID.; ID.; ID.; GROUNDS; SERIOUS MISCONDUCT; ELUCIDATED. —** The just causes for the dismissal of an employee are exclusively found in Art. 282(a) of the Labor Code. [Thus,] x x x (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. x x x [I]n *Aliviado v. Procter & Gamble, Phils., Inc.* . x x x To justify the dismissal of an employee on the ground of serious misconduct, the employer must first establish that the employee is guilty of improper conduct, that the employee violated an existing and valid company rule or regulation, or that the employee is guilty of a wrongdoing. x x x Art. 277(b) of the Labor Code states, "The burden of proving that the termination was for a valid or authorized cause shall rest on the employer."

7. **ID.; ID.; MASS LEAVE; THAT LEAVE WAS LARGE-SCALE AND UNAUTHORIZED, MUST BE ESTABLISHED BY EMPLOYER. —** [T]he five (5) petitioners were absent on November 7, 2006. x x x There is no evidence on record that 5 employees constitute a substantial number of employees of Biomedica. [I]t is incumbent upon Biomedica to prove that the leave was large-scale in character and unauthorized. Having failed to show that there was a mass leave, the Court concludes that there were only individual availment of their leaves by petitioners and they cannot be held guilty of any wrongdoing, much less anything to justify their dismissal from employment.

8. **ID.; ID.; ILLEGAL STRIKE; THAT THERE WAS TEMPORARY STOPPAGE OF WORK BY THE "CONCERTED" ACTION OF EMPLOYEES, NOT PRESENT IN CASE AT BAR. —** Art. 212(o) of the Labor Code defines a strike as "any **temporary stoppage of work** by the concerted action of employees as a result of any industrial or labor dispute." "Concerted" is defined as "mutually contrived or planned" or "performed in unison." In the case at bar, the 5 petitioners went on leave for various reasons. x x x They did not go to the company premises to petition Biomedica for their grievance. To demonstrate their good faith in availing their leaves, petitioners reported for work and were at the company premises in the afternoon after they received text

messages asking them to do so. This shows that there was NO intent to go on strike. x x x Moreover, Biomedica did not prove that the individual absences can be considered as "temporary stoppage of work."

9. **ID.; ID.; ID.; EXPLANATION LETTERS THAT THE EMPLOYEES AGREED TO GO ON LEAVE TO STRESS THEIR DEMANDS AGAINST THE COMPANY, NOT SUFFICIENT EVIDENCE OF STRIKE. —** [T]he CA ruled that petitioners went on strike as evidenced by the explanation letters of Angeles and Casimiro sent by Biomedica. They stated in the letters that they, along with petitioners, agreed to go on leave on the birthday of Motol to stress their demands against the company. These statements do not deserve much weight and credit. x x x [M]ere explanation letters cannot be accepted as direct testimony of the authors. The requirement that the direct testimony can be contained in an affidavit (under Section 11(c) of the 2011 NLRC Rules of Procedure) is to ensure that the affiant swore under oath before an administering officer that the statements in the affidavit are true. The affiant knows that he or she can be charged criminally for perjury under solemn affirmation or at least he or she is bound to his or her oath. Thus, the affidavits or sworn statements of these employees should have been presented. At the very least, the workers should have been summoned to testify on such letters. x x x [T]he explanation letters [also] cannot overcome the clear and categorical statements made by the petitioners in their verified positions papers [which] must prevail and are entitled to great weight and value. Finally, it cannot be overemphasized that in case of doubt, a case should be resolved in favor of labor.

10. **ID.; ID.; ID.; DISMISSAL IS NOT THE PROPER PENALTY. —** [T]he penalty of dismissal from employment cannot be imposed even if we assume that petitioners went on an illegal strike. It has not been shown that petitioners are officers of the Union. On this issue, the NLRC correctly cited *Gold City Integrated Port Service, Inc. v. NLRC*, wherein We ruled that: "An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike."

11. ID.; ID.; ILLEGAL DISMISSAL; SEPARATION PAY IN LIEU OF REINSTATEMENT, BACKWAGES AND NOMINAL DAMAGES ARE PROPER IN CASE AT BAR. — Given the illegality of their dismissal, petitioners are entitled to reinstatement and backwages as provided in Art. 279 of the Labor Code. x x x [However, given the] convergence of the facts coupled with the filing by petitioners of their complaint with the DOLE shows a relationship governed by antipathy and antagonism as to justify the award of separation pay in lieu of reinstatement. x x x And in line with prevailing jurisprudence, petitioners are entitled to nominal damages in the amount of PhP 30,000 each for Biomedica's violation of procedural due process.

APPEARANCES OF COUNSEL

R.A. Din, Jr. & Associates Law Offices for petitioners.
Vincent D. Romarate for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to annul the June 25, 2010[1] Decision and September 20, 2010[2] Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 108205, finding that petitioners were validly dismissed. The CA Decision overturned the Decision dated November 21, 2008[3] of the National Labor Relations Commission (NLRC) and reinstated the Decision dated March 31, 2008[4] of Labor Arbiter Ligerio V. Ancheta.

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[1] *Rollo*, pp. 55-63. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez and Ramon M. Bato, Jr.

[2] *Id.* at 64.

[3] *Id.* at 314-329. Penned by Commissioner Gregorio O. Bilog, III and concurred in by Commissioners Lourdes C. Javier and Pablo C. Espiritu.

[4] *Id.* at 265-282.

The Facts

Respondent Biomedica Health Care, Inc. (Biomedica) was, during the material period, engaged in the distribution of medical equipment. Respondent Carina "Karen" J. Motol (Motol) was then its President.

Petitioners were former employees of Biomedica holding the following positions:

Alex Q. Naranjo (Naranjo)	-	Liaison Officer
Ronald Allan V. Cruz (Cruz)	-	Service Engineer
Rowena B. Bardaje (Bardaje)	-	Administration Clerk
Donnalyn De Guzman (De Guzman)	-	Sales Representative
Rosemarie P. Pimentel (Pimentel)	-	Accounting Clerk[5]

On November 7, 2006, which happened to be Motol's birthday, petitioners—with two (2) other employees, Alberto Angeles (Angeles) and Rodolfo Casimiro (Casimiro)—were all absent for various personal reasons. De Guzman was allegedly absent due to loose bowel movement,[6] Pimentel for an ophthalmology check-up,[7] Bardaje due to migraine,[8] Cruz for not feeling well,[9] and Naranjo because he had to attend a meeting at his child's school.[10] Notably, these are the same employees who filed a letter-complaint dated October 31, 2006[11] addressed to Director Lourdes M. Transmonte, National Director, National Capital

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[5] *Id.* at 266-267.

[6] *Id.* at 113.

[7] *Id.* at 118.

[8] *Id.* at 110.

[9] *Id.* at 107.

[10] *Id.* at 103.

[11] *Id.* at 174.

Region-Department of Labor and Employment (DOLE) against Biomedica for lack of salary increases, failure to remit Social Security System and Pag-IBIG contributions, and violation of the minimum wage law, among other grievances. Per available records, the complaint has not been acted upon.

Later that day, petitioners reported for work after receiving text messages for them to proceed to Biomedica. They were, however, refused entry and told to start looking for another workplace.[12]

The next day, November 8, 2006, petitioners allegedly came in for work but were not allowed to enter the premises.[13] Motol purportedly informed petitioners, using foul language, to just find other employment.

Correspondingly, on November 9, 2006, Biomedica issued a notice of preventive suspension and notices to explain within 24 hours (Notices)[14] to petitioners. In the Notices, Biomedica accused the petitioners of having conducted an illegal strike and were accordingly directed to explain why they should not be held guilty of and dismissed for violating the company policy against illegal strikes under Article XI, Category Four, Sections 6, 8, 12, 18 and 25 of the Company Policy. The individual notice reads:

Subject: Notice of Preventive Suspension
& Notice to explain within 24 hours

Effective upon receipt hereof, you are placed under preventive suspension for willfully organizing and/or engaging in illegal strike on November 7, 2006. Your said illegal act-in conspiracy with your other co-employees, paralyzed the company operation on that day and resulted to undue damage and prejudice to the company and is direct violation of Article XI, Category Four Section 6, 8, 12, 18 & 25 of our Company Policy, which if found guilty, you will be meted a penalty of dismissal.

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[12] *Id.* at 315.

[13] *Id.* at 316.

[14] *Id.* at 142.

Please explain in writing within 24 hours from receipt hereof why you should not be held guilty of violating the company policy considering further that you committed and timed such act during the birthday of our Company president.

On November 15, 2006, petitioners were required to proceed to the Biomedica office where they were each served their Notices.[15] Only Angeles and Casimiro submitted their written explanation for their absence wherein they alleged that petitioners forced them to go on a "mass leave" while asking Biomedica for forgiveness for their actions.

On November 20, 2006, petitioners filed a Complaint with the NLRC for constructive dismissal and nonpayment of salaries, overtime pay, 13th month pay as well as non-remittance of SSS, Pag-IBIG and Philhealth contributions as well as loan payments. The case was docketed as Case No. 00-09597-06.

Thereafter, Biomedica served Notices of Termination on petitioners. All dated November 29, 2006,[16] the notices uniformly stated:

We regret to inform you that since you did not submit the written letter of explanation as requested in your preventive suspension notice dated November 9, 2006, under Article XI, Category Four, Section 6, 8, 12, 18 and 25 you are hereby dismissed from service effective immediately.

On March 31, 2008, the Labor Arbiter issued a Decision,[17] the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered dismissing for lack of merit the instant complaint for illegal dismissal.

However, the respondents are hereby ORDERED, jointly and severally, to pay the complainants the following:

Unpaid salary for the period 08-15 November 2006;

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[15] *Id.* at 104, 107, 111, 114 & 119.

[16] *Id.* at 143, 145, 147 & 149.

[17] *Id.* at 264-284.

Pro-rated 13th month pay for 2006; and

Service Incentive Leave for 2006 (except for complainant Bardaje).

From the monetary award given to complainant Naranjo, the amount of PhP4,750.00 shall be deducted.

From the monetary award given to complainant Pimentel, the amount of PhP4,500.00 shall be deducted.

A detailed computation of the monetary awards, as of the date of this Decision, is embodied in Annex "A" which is hereby made an integral part hereof.

SO ORDERED.[18]

The Labor Arbiter found that, indeed, petitioners engaged in a mass leave akin to a strike. He added that, assuming that petitioners were not aware of the company policies on illegal strikes, such mass leave can sufficiently be deemed as serious misconduct under Art. 282 of the Labor Code. Thus, the Labor Arbiter concluded that petitioners were validly dismissed.

Petitioners appealed the Labor Arbiter's Decision to the NLRC which rendered a modificatory Decision dated November 21, 2008.[19] Unlike the Labor Arbiter, the NLRC found and so declared petitioners to have been illegally dismissed and disposed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered modifying the assailed Decision dated April 11, 2008 [sic];[20]

(a) DECLARING the Complainants to have been illegally dismissed for lack of just cause;

(b) ORDERING Respondents to pay separation pay in lieu of reinstatement and payment of backwages computed on the basis of one (1) month pay for every year of service up to the date of complainants illegal dismissal;

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[18] *Id.* at 282.

[19] *Id.* at 314-329.

[20] This should be March 31, 2008. April 11, 2008 refers to the date of the Notice of Judgment/Decision for the March 31, 2008 Decision of the Labor Arbiter.

(c) ORDERING the respondents to pay complainant De Guzman and Cruz their unpaid commission on the basis of their sale for year 2005-2006;

(d) Sustaining the monetary award as stated in the Decision dated April 11, 2008;

(e) ORDERING the respondents to pay attorney's fees in the amount of 10% of the total award of monetary claims.

All other claims and counterclaims are dismissed for lack of factual and legal basis.

SO ORDERED.[21]

Thereafter, Biomedica moved but was denied reconsideration per the NLRC's Resolution dated January 30, 2009.[22]

From the Decision and Resolution of the NLRC, Biomedica appealed the case to the CA which rendered the assailed Decision dated June 25, 2010, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Decision and Resolution of public respondent National Labor Relations Commission (NLRC) dated November 21, 2008 and January 30, 2009 respectively in NLRC NCR CN 00-11-09597-06 are hereby **ANNULLED** and **SET ASIDE**. Decision of the labor arbiter is hereby **REINSTATED**.

SO ORDERED.[23]

In its assailed Resolution dated September 20, 2010, the CA denied petitioners' Motion for Reconsideration. The CA ruled that, indeed, petitioners staged a mass leave in violation of company policy. This fact, coupled with their refusal to explain their actions, constituted serious misconduct that would justify their dismissal.

Hence, the instant appeal.

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[21] *Rollo*, pp. 328-329.

[22] *Id.* at 344-345.

[23] *Id.* at 63.

The Issues

I.

The Court of Appeals, with all due respect, gravely erred in concluding facts in the case which were neither rebutted nor proved as to its truthfulness.

II.

The Court of Appeals, with all due respect, gravely erred in ruling that grave abuse of discretion was committed by the NLRC and by reason of the same, it upheld the Decision of the Labor Arbiter stating that petitioners were not illegally dismissed.

III.

The Court of Appeals, with all due respect, gravely erred in ruling that grave abuse of discretion was committed by the NLRC and by reason of the same, it upheld the Decision of the Labor Arbiter in relation to petitioners['] money claims.[24]

The Court's Ruling

This petition is meritorious.

Petitioners were illegally dismissed

The fundamental law of the land guarantees security of tenure, thus:

Sec. 3. The State shall afford full protection to labor x x x.

x x x They shall be entitled to security of tenure, humane conditions of work and a living wage.[25] x x x

On the other hand, the Labor Code promotes the right of the worker to security of tenure protecting them against illegal dismissal:

ARTICLE 279. *Security of Tenure.* — In cases of regular employment, the employer shall not terminate the services of an

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

[25] CONSTITUTION, Art. XIII, Sec. 3.

employee except for a just cause or when authorized by this Title. An Employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

It bears pointing out that in the dismissal of an employee, the law requires that due process be observed. Such due process requirement is two-fold, procedural and substantive, that is, "the termination of employment must be based on a just or authorized cause of dismissal and the dismissal must be effected after due notice and hearing."[26] In the instant case, petitioners were not afforded both procedural and substantive due process.

Petitioners were not afforded procedural due process

Art. 277(b) of the Labor Code contains the procedural due process requirements in the dismissal of an employee:

Art. 277. Miscellaneous Provisions. — x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

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[26] *Mansion Printing Center v. Bitara, Jr.*, G.R. No. 168120, January 25, 2012.

On the other hand, Rule XIII, Book V, Sec. 2 I (a) of the Implementing Rules and Regulations of the Labor Code states:

SEC. 2. Standards of due process; requirements of notice.— In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) **A written notice served on the employee specifying the ground or grounds for termination**, and giving said employee **reasonable opportunity within which to explain his side**.

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. (Emphasis supplied.)

Thus, the Court elaborated in *King of Kings Transport, Inc. v. Mamac*[27] that a mere general description of the charges against an employee by the employer is insufficient to comply with the above provisions of the law:

x x x Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice.** Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

x x x x x x x x x

x x x We observe from the irregularity reports against respondent for his other offenses that such contained merely a general description

[27] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 123-127.

of the charges against him. The reports did not even state a company rule or policy that the employee had allegedly violated. Likewise, there is no mention of any of the grounds for termination of employment under Art. 282 of the Labor Code. Thus, KKTI's "standard" charge sheet is not sufficient notice to the employee. (Emphasis supplied.)

In the instant case, the notice specifying the grounds for termination dated November 9, 2006 states:

Effective upon receipt hereof, you are placed under preventive suspension for willfully organizing and/or engaging in **illegal strike** on November 7, 2006. Your said illegal act-in conspiracy with your other co-employees, **paralyzed the company operation on that day and resulted to undue damage and prejudice to the company and is direct violation of Article XI, Category Four Sections 6, 8, 12, 18 & 25 of our Company Policy, which if found guilty, you will be meted a penalty of dismissal**.

Please explain in writing within 24 hours from receipt hereof why you should not be held guilty of violating the company policy considering further that you committed and timed such act during the birthday of our Company president.[28]

Clearly, petitioners were charged with conducting an illegal strike, not a mass leave, without specifying the exact acts that the company considers as constituting an illegal strike or violative of company policies. Such allegation falls short of the requirement in *King of Kings Transport, Inc.* of "a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees." A bare mention of an "illegal strike" will not suffice.

Further, while Biomedica cites the provisions of the company policy which petitioners purportedly violated, it failed to quote said provisions in the notice so petitioners can be adequately informed of the nature of the charges against them and intelligently file their explanation and defenses to said accusations. The notice is bare of such description of the company policies. Moreover, it is incumbent upon respondent company to show that petitioners

[28] *Rollo*, p. 142.

were duly informed of said company policies at the time of their employment and were given copies of these policies. No such proof was presented by respondents. There was even no mention at all that such requirement was met. Worse, respondent Biomedica did not even quote or reproduce the company policies referred to in the notice as pointed out by the CA stating:

It must be noted that the company policy which the petitioner was referring to was not quoted or reproduced in the petition, a copy of which is not also appended in the petition, as such we cannot determine the veracity of the existence of said policy.[29]

Without a copy of the company policy being presented in the CA or the contents of the pertinent policies being quoted in the pleadings, there is no way by which one can determine whether or not there was, indeed, a violation of said company policies.

Moreover, the period of 24 hours allotted to petitioners to answer the notice was severely insufficient and in violation of the implementing rules of the Labor Code. Under the implementing rule of Art. 277, an employee should be given "reasonable opportunity" to file a response to the notice. *King of Kings Transport, Inc.* elucidates in this wise:

To clarify, the following should be considered in terminating the services of employees:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. **This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint**.[30] (Emphasis supplied.)

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[29] *Id.* at 60.

[30] *Supra* note 27, at 125.

Following *King of Kings Transport, Inc.*, the notice sent out by Biomedica in an attempt to comply with the first notice of the due process requirements of the law was severely deficient.

In addition, Biomedica did not set the charges against petitioners for hearing or conference in accordance with Sec. 2, Book V, Rule XIII of the Implementing Rules and Regulations of the Labor Code and in line with ruling in *King of Kings Transport, Inc.*, where the Court explained:

> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.[31]

While petitioners did not submit any written explanation to the charges, it is incumbent for Biomedica to set the matter for hearing or conference to hear the defenses and receive evidence of the employees. More importantly, Biomedica is duty-bound to exert efforts, during said hearing or conference, to hammer out a settlement of its differences with petitioners. These prescriptions Biomedica failed to satisfy.

Lastly, Biomedica again deviated from the dictated contents of a written notice of termination as laid down in Sec. 2, Book V, Rule XIII of the Implementing Rules that it should embody the facts and circumstances to support the grounds justifying the termination. As amplified in *King of Kings Transport, Inc.*:

> (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and

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

(2) grounds have been established to justify the severance of their employment.[32]

The November 26, 2006 Notice of Termination issued by Biomedica miserably failed to satisfy the requisite contents of a valid notice of termination, as it simply mentioned the failure of petitioners to submit their respective written explanations without discussing the facts and circumstances to support the alleged violations of Secs. 6, 8, 12, 18 and 25 of Category Four, Art. XI of the alleged company rules.

All told, Biomedica made mincemeat of the due process requirements under the Implementing Rules and the *King of Kings Transport, Inc.* ruling by simply not following any of their dictates, to the extreme prejudice of petitioners.

Petitioners were denied substantive due process

In any event, petitioners were also not afforded substantive due process, that is, they were illegally dismissed.

The just causes for the dismissal of an employee are exclusively found in Art. 282(a) of the Labor Code, which states:

ARTICLE 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

(a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work.

It was on this ground that the CA upheld the dismissal of petitioners from their employment. Serious misconduct, as a justifying ground for the dismissal of an employee, has been explained in *Aliviado v. Procter & Gamble, Phils., Inc.*:[33]

Misconduct has been defined as **improper or wrong conduct**; **the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful in character**

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[32] *Id.* at 126.

[33] G.R. No. 160506, March 9, 2010,614 SCRA 563, 583-584.

implying wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. To be a just cause for dismissal, such misconduct (a) must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer.

Clearly, to justify the dismissal of an employee on the ground of serious misconduct, the employer must first establish that the employee is guilty of improper conduct, that the employee violated an existing and valid company rule or regulation, or that the employee is guilty of a wrongdoing. In the instant case, Biomedica failed to even establish that petitioners indeed violated company rules, failing to even present a copy of the rules and to prove that petitioners were made aware of such regulations. In fact, from the records of the case, Biomedica has failed to prove that petitioners are guilty of a wrongdoing that is punishable with termination from employment. Art. 277(b) of the Labor Code states, "The burden of proving that the termination was for a valid or authorized cause shall rest on the employer." In the instant case, Biomedica failed to overcome such burden. As will be shown, petitioners' absence on November 7, 2006 cannot be considered a mass leave, much less a strike and, thus, cannot justify their dismissal from employment.

Petitioners did not stage a mass leave

The accusation is for engaging in a mass leave tantamount to an illegal strike.

The term "Mass Leave" has been left undefined by the Labor Code. Plainly, the legislature intended that the term's ordinary sense be used. "Mass" is defined as "participated in, attended by, or affecting a large number of individuals; having a large-scale character."[34] While the term "Leave" is defined as "an authorized absence or vacation from duty or employment usually with pay."[35]

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[34] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981).

[35] *Id.* at 1287.

Thus, the phrase "mass leave" may refer to a simultaneous availment of authorized leave benefits by a large number of employees in a company.

It is undeniable that going on leave or absenting one's self from work for personal reasons when they have leave benefits available is an employee's right. In *Davao Integrated Port Stevedoring Services v. Abarquez*,[36] the Court acknowledged sick leave benefits as a legitimate economic benefit of an employee, carrying a purpose that is at once legal as it is practical:

> Sick leave benefits, like other economic benefits stipulated in the CBA such as maternity leave and vacation leave benefits, among others, are by their nature, intended to be replacements for regular income which otherwise would not be earned because an employee is not working during the period of said leaves. They are non-contributory in nature, in the sense that the employees contribute nothing to the operation of the benefits. By their nature, upon agreement of the parties, they are intended to alleviate the economic condition of the workers.

In addition to sick leave, the company, as a policy or practice or as agreed to in a CBA, grants vacation leave to employees. Lastly, even the Labor Code grants a service incentive leave of 5 days to employees. Moreover, the company or the CBA lays down the procedure in the availment of the vacation leave, sick leave or service incentive leave.

In the factual milieu at bar, Biomedica did not submit a copy of the CBA or a company memorandum or circular showing the authorized sick or vacation leaves which petitioners can avail of. Neither is there any document to show the procedure by which such leaves can be enjoyed. Absent such pertinent documentary evidence, the Court can only conclude that the availment of petitioners of their respective leaves on November 7, 2006 was authorized, valid and in accordance with the company or CBA rules on entitlement to and availment of such leaves. The contention of Biomedica that the enjoyment of said leaves is in reality an illegal strike does not hold water in the absence

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[36] G.R. No. 102132, March 19, 1993, 220 SCRA 197, 207.

of strong controverting proof to overturn the presumption that "a person is innocent of x x x wrong."[37] Thus, the individual leaves of absence taken by the petitioners are not such absences that can be regarded as an illegal mass action.

Moreover, a mass leave involves a large number of people or in this case, workers.

Here, the five (5) petitioners were absent on November 7, 2006. The records are bereft of any evidence to establish how many workers are employed in Biomedica. There is no evidence on record that 5 employees constitute a substantial number of employees of Biomedica. And, as earlier stated, it is incumbent upon Biomedica to prove that petitioners were dismissed for just causes, this includes the duty to prove that the leave was large-scale in character and unauthorized. This, Biomedica failed to prove.

Having failed to show that there was a mass leave, the Court concludes that there were only individual availment of their leaves by petitioners and they cannot be held guilty of any wrongdoing, much less anything to justify their dismissal from employment. On this ground alone, the petition must be granted.

Petitioners did not go on strike

Granting for the sake of argument that the absence of the 5 petitioners on November 7, 2006 is considered a mass leave, still, their actions cannot be considered a strike.

Art. 212(o) of the Labor Code defines a strike as "any **temporary stoppage of work** by the concerted action of employees as a result of any industrial or labor dispute."

"Concerted" is defined as "mutually contrived or planned" or "performed in unison."[38] In the case at bar, the 5 petitioners went on leave for various reasons. Petitioners were in different places on November 7, 2006 to attend to their personal needs

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[37] RULES OF COURT, Rule 131(a).

[38] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 470 (1981).

or affairs. They did not go to the company premises to petition Biomedica for their grievance. To demonstrate their good faith in availing their leaves, petitioners reported for work and were at the company premises in the afternoon after they received text messages asking them to do so. This shows that there was NO intent to go on strike. Unfortunately, they were barred from entering the premises and were told to look for new jobs. Surely the absence of petitioners in the morning of November 7, 2006 cannot in any way be construed as a concerted action, as their absences are presumed to be for valid causes, in good faith, and in the exercise of their right to avail themselves of CBA or company benefits. Moreover, Biomedica did not prove that the individual absences can be considered as "temporary stoppage of work." Biomedica's allegation that the mass leave "paralyzed the company operation on that day" has remained unproved. It is erroneous, therefore, to liken the alleged mass leave to an illegal strike much less to terminate petitioners' services for it.

Notably, the CA still ruled that petitioners went on strike as evidenced by the explanation letters of Angeles and Casimiro sent by Biomedica. They stated in the letters that they, along with petitioners, agreed to go on leave on the birthday of Motol to stress their demands against the company.

These statements do not deserve much weight and credit.

Sec. 11(c) of the 2011 NLRC Rules of Procedure relevantly provides:

SECTION 11. SUBMISSION OF POSITION PAPER AND REPLY. — x x x

x x x x x x x x x

c) The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint, accompanied by all supporting documents, including the **affidavits of witnesses, which shall take the place of their direct testimony**, excluding those that may have been amicably settled. (Emphasis supplied.)

In the instant case, the CA accepted as evidence the explanation letters issued by Angeles and Casimiro when these are not

notarized. While notarization may seem to be an inconsequential requirement considering that the Labor Arbiter and the NLRC are not strictly bound by technical rules of evidence, however, mere explanation letters submitted to the company that the authors issued even before the case was filed before the NLRC cannot be accepted as direct testimony of the authors. The requirement that the direct testimony can be contained in an affidavit is to ensure that the affiant swore under oath before an administering officer that the statements in the affidavit are true. The affiant knows that he or she can be charged criminally for perjury under solemn affirmation or at least he or she is bound to his or her oath. Thus, the affidavits or sworn statements of these employees should have been presented. At the very least, the workers should have been summoned to testify on such letters. Ergo, these letters cannot be the sole basis for the finding that petitioners conducted a strike against Biomedica and for the termination of their employment. Lastly, the explanation letters cannot overcome the clear and categorical statements made by the petitioners in their verified positions papers. As between the verified statements of petitioners and the unsworn letters of Angeles and Casimiro, clearly, the former must prevail and are entitled to great weight and value.

Finally, it cannot be overemphasized that in case of doubt, a case should be resolved in favor of labor. As aptly stated in *Century Canning Corporation v. Ramil*:[39]

> x x x 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.

Biomedica has failed to adduce substantial evidence to prove that petitioners' dismissal from their employment was for a just or authorized cause. The conclusion is inescapable that petitioners were illegally dismissed.

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[39] G.R. No. 171630, August 8, 2010, 627 SCRA 192, 202.

Dismissal is not the proper penalty

But setting aside from the nonce the facts established above, the most pivotal argument against the dismissal of petitioners is that the penalty of dismissal from employment cannot be imposed even if we assume that petitioners went on an illegal strike. It has not been shown that petitioners are officers of the Union. On this issue, the NLRC correctly cited *Gold City Integrated Port Service, Inc. v. NLRC*,[40] wherein We ruled that: "An ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during a strike."

In the instant case, Biomedica has not alleged, let alone, proved the commission by petitioners of any illegal act during the alleged mass leave. There being none, the mere fact that petitioners conducted an illegal strike cannot be a legal basis for their dismissal.

Petitioners are entitled to separation pay in lieu of reinstatement, backwages and nominal damages

Given the illegality of their dismissal, petitioners are entitled to reinstatement and backwages as provided in Art. 279 of the Labor Code, which states:

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, the Court ruled in *Golden Ace Builders v. Talde*,[41] citing *Macasero v. Southern Industrial Gases Philippines*:[42]

Thus, an illegally dismissed employee is entitled to two reliefs:

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[40] G.R. No. 103560, July 6, 1995, 245 SCRA 627, 637.

[41] G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289.

[42] G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. (Emphasis supplied.)

Petitioners were absent from work on Motol's birthday. Respondent Motol, in the course of denying entry to them on November 8, 2006, uttered harsh, degrading and bad words. Petitioners were terminated in swift fashion and in gross violation of their right to due process revealing that they are no longer wanted in the company. The convergence of these facts coupled with the filing by petitioners of their complaint with the DOLE shows a relationship governed by antipathy and antagonism as to justify the award of separation pay in lieu of reinstatement. Thus, in addition to backwages, owing to the strained relations between the parties, separation pay in lieu of reinstatement would be proper. In *Golden Ace Builders*, We explained why:

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence — substantial evidence to show that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.[43]

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[43] *Supra* note 41.

And in line with prevailing jurisprudence,[44] petitioners are entitled to nominal damages in the amount of PhP 30,000 each for Biomedica's violation of procedural due process.

WHEREFORE, the Decision dated June 25, 2010 and the Resolution dated September 20, 2010 of the CA in CA-G.R. SP No. 108205 are hereby **REVERSED** and **SET ASIDE.** The Decision dated November 21, 2008 of the NLRC in NLRC LAC No. 08-002836-08 is hereby **REINSTATED** with **MODIFICATION.** As modified, the November 21, 2008 NLRC Decision shall read, as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered modifying the assailed Decision [of the Labor Arbiter] dated [March 31, 2008];

(a) DECLARING the Complainants to have been illegally dismissed for lack of just cause;

(b) ORDERING Respondents jointly and solidarily to pay Complainants separation pay in lieu of reinstatement computed on the basis of one (1) month pay for every year of service from date of employment up to November 29, 2006 (the date of complainants illegal dismissal);

(c) ORDERING Respondents jointly and solidarily to pay Complainants backwages from November 29, 2006 up to the finality of this Decision;

(d) ORDERING the Respondents jointly and solidarily to pay Complainants the following:

1. Unpaid salary for the period 08-15 November 2006;
2. Pro-rated 13th month pay for 2006;
3. Service Incentive Leave for 2006 (except for complainant Bardaje);
4. Unpaid commissions based on their sales for the years 2005 and 2006; and
5. Nominal damages in the amount of PhP 30,000 each.

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[44] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012.

(e) ORDERING the Respondents jointly and solidarily to pay Complainants attorney's fees in the amount of 10% of the total award of monetary claims.

All other claims and counterclaims are dismissed for lack of factual and legal basis.

The NLRC is ordered to recompute the monetary awards due to petitioners based on the aforelisted dispositions deducting from the awards to Naranjo and Pimentel their cash advances of PhP4,750.00 and PhP4,500.00, respectively.

SO ORDERED.

No costs.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 200529. September 19, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUANITO GARCIA *y* GUMAY @ WAPOG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELUCIDATED. — Statutory rape is committed by sexual intercourse with a woman below twelve years (12) of age regardless of her consent,

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

or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.

2. **ID.; ID.; ESTABLISHED BY THE VICTIM'S CATEGORICAL TESTIMONY CORROBORATED BY MEDICAL FINDINGS OF HYMENAL LACERATION. —** [T]he prosecution was able to prove that it was Juanito who raped AAA on April 30, 2001 by means of AAA's categorical and spontaneous testimony, which remained to be so under cross-examination. AAA's narration was likewise corroborated by Dr. Vergara's medical findings as to the existence of hymenal laceration, which is the best physical evidence of forcible defloration.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. —** This Court finds no cogent reason to reverse the RTC's assessment of AAA's credibility or of any of the prosecution's witnesses for that matter. Absent any evidence that it was tainted with arbitrariness or oversight of a fact of consequence or influence, the trial court's assessment is entitled to great weight, if not conclusive or binding on this Court. x x x The assessment made by the trial court is even more enhanced when the CA affirms the same, as in this case.

4. **ID.; ID.; ID.; TESTIMONIES OF CHILD RAPE-VICTIM, GIVEN FULL WEIGHT AND CREDIT. —** When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.

5. **CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; CRIME COMMITTED EVEN WHEN THE INFORMATION CHARGED STATUTORY RAPE AS THE FORMER IS AN OFFENSE SUBSUMED IN THE LATTER. —** While the information in Criminal Case No. C-3838-C charged statutory rape, he can be held liable for the lesser crime of acts of lasciviousness as the latter is an offense subsumed or included in the former. The elements of acts of lasciviousness, punishable under Article 336 of the RPC, are: (1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex. As the records of Criminal Case No. C-3838-C reveal, x x x Juanito kissed AAA's cheeks and touched her vagina x x x which by any standards, are lewd acts. It is certainly morally inappropriate, indecent, and lustful for Juanito to perform such acts on an 8-year old girl x x x.

6. **REMEDIAL LAW; EVIDENCE; ILL-MOTIVE; DEFENSE OF ILL-MOTIVE IN RAPE; CASE AT BAR, NOT APPRECIATED. —** This Court concurs with the lower courts' refusal to give credence to Juanito's allegation of ill-motive. This Court finds such defenses tenuous, shallow, specious and downright incredulous. Not a few offenders in rape cases attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.

APPEARANCES OF COUNSEL

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

DECISION

REYES, *J.*:

Before this Court for automatic review is the Decision[1] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04352, which affirmed the conviction of Juanito Garcia (Juanito) also known as "Wapog" for statutory rape and acts of lasciviousness in Criminal Case Nos. 3840-C and C-3838-C, respectively.

The Facts

Juanito was charged before Branch 63 of the Regional Trial Court (RTC), Calauag, Quezon with three (3) counts of statutory rape under three (3) separate informations, to wit:

Criminal Case No. 3840-C:

That on or about the 30th day of April 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

Contrary to Law.

Criminal Case No. C-3838-C:

That on or about the 1st day of May 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

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[1] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Fernanda Lampas Peralta and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 2-23.

Contrary to Law.

Criminal Case No. 3839-C:

That on or about the 2nd day of May 2001 at Sitio Gamboa, Barangay Ligpit Bantayan, Municipality of Guinayangan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, his cousin within the third civil degree of consanguinity [sic], then a minor, 8 years old, against her will.

Contrary to Law.[2] (Citations omitted)

Juanito pleaded not guilty to the charges.

During trial, the prosecution presented three (3) witnesses: (a) AAA, who was eleven (11) years old at the time she testified; (b) Rosalina Alcantara (Alcantara); and (c) Dr. Florentina Agno Vergara (Dr. Vergara).

AAA, an orphan under the care of her aunt BBB, testified that Juanito sexually abused her on three (3) successive occasions. The first time was at around 12 noon of April 30, 2001, while she was inside her aunt's *dampa*, sleeping. Awakened by movements on the floor, she saw Juanito standing in front of her and holding an axe. Juanito removed the blanket covering her, pointed the axe towards her and forcibly pulled her shorts and panty. Juanito kissed her cheeks, touched her vagina and, thereafter, forced his penis inside her vagina. She could tell that Juanito was drunk as she could smell alcohol in his breath. After a while, Juanito stopped and pulled out his penis. He stood up, raised his pants and threatened to kill her should she tell anyone of what happened.

The second incident took place on May 1, 2001, while she was inside her aunt's house preparing for bedtime. While the others were asleep, Juanito suddenly appeared in the dark and removed her blanket. He once again kissed her cheeks and touched her vagina. Done with the act, he left.

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

The third incident happened on May 2, 2001. While she was about to sleep, Juanito once again appeared. He kissed her cheeks and touched her vagina. He lowered his pants and inserted his penis in her vagina. Juanito thereafter left without saying anything to her.

She often felt sick, found it difficult to urinate and her stomach constantly ached. She walked oddly and frequented the restroom, which BBB eventually noticed. At BBB's prodding, she disclosed what Juanito did to her and that same day, they went to the police station and formally filed a complaint against him.[3]

Alcantara, a Municipal Social and Welfare Development Officer of Guinayangan, Quezon, testified that she assisted in preparing AAA's and BBB's affidavits and in securing a copy of AAA's birth certificate.[4]

Dr. Vergara, who conducted a medical examination of AAA, testified that the latter had a healed hymenal laceration at 3 o'clock position, which indicated penile penetration. According to Dr. Vergara, the laceration was two (2) weeks old at the time of the examination and AAA could no longer be considered a virgin. Dr. Vergara noted, however, the absence of spermatozoa.[5]

For his defense, Juanito and his mother, Nancy Garcia (Nancy), testified. Essentially, Juanito testified that he and AAA are cousins and BBB is his aunt, being his mother's sister. He denied raping AAA but could not recall where he was during the subject dates. He could not explain why AAA would accuse him of raping her but supposed that the ongoing feud between his family and BBB's may have been the reason.

Nancy corroborated Juanito's testimony relative to the dispute between her family and BBB's, which allegedly arose from BBB's refusal to give her share in the land that they inherited from

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[3] CA *rollo,* pp. 27-29.

[4] *Id.* at 30.

[5] *Id.*

their parents. This conflict, Nancy claimed, motivated BBB to instigate AAA to falsely accuse Juanito of raping her.[6]

The RTC Decision

On February 3, 2010, the RTC rendered a Decision[7] convicting Juanito of statutory rape in Criminal Case No. 3840-C and acts of lasciviousness in Criminal Case No. C-3838-C and acquitting him of statutory rape in Criminal Case No. 3839-C. The dispositive portion of the said decision states:

WHEREFORE, PREMISES CONSIDERED, this Court is morally convinced that the child, [AAA], was raped on the end of April, 2001 and that **JUANITO GARCIA** *y* Gumay, is the perpetrator thereof. The said accused is thus found **GUILTY** of one (1) count of **STATUTORY RAPE** beyond reasonable doubt. He is hereby sentenced to ***Reclusion Perpetua***. He is likewise ordered to pay the offended party civil indemnity of PhP50,000.00 and another PhP50,000.00 for moral damages, plus costs hereof.

Said accused is likewise found **GUILTY** of **ACTS OF LASCIVIOUSNESS** for that offense committed on May 1, 2001. He is hereby sentenced to ***Prision Correccional***.

Said accused is, however, **ACQUITTED** of the third charge of rape on reasonable doubt.

SO ORDERED.[8]

Finding Juanito guilty of raping AAA on April 30, 2001, the RTC found AAA's straightforward narration, as corroborated by the medical findings of Dr. Vergara, credible over which Juanito's denial cannot prevail. The RTC ruled that AAA's positive testimony cannot be discredited by Juanito's unsubstantiated denial and imputation of ill-motive.

In the case at bar, [AAA] positively identified in court the herein accused as the one who raped her while she was residing in the

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[6] *Id.* at 31-33.

[7] *Id.* at 26-39.

[8] *Id.* at 39.

house of her Tita [BBB]; that, he is commonly known as "Wapog" whose real name is Juanito Garcia x x x. She said that Wapog touched her private parts on April 30, May 1 and May 2 but she could not recall the year it was x x x. She also said that aside from kissing her cheeks and touching her private parts, Wapog raped her ("*Ni-rape po ako*") x x x; that, Wapog threatened to kill her if she complains to anyone x x x; that, Wapog held her hand and poked a bolo at her that she got frightened x x x; that, she could even smell alcohol in his breath x x x; that, when Wapog removed her blanket that night, she said in a straightforward manner, "*iniyot po ako*" x x x.

Such testimony of the victim that she had been raped has been supported by medical findings of the medical doctor who examined her on May 20, 2001 x x x. According to the said medical certificate, there is a finding of "healed hymenal laceration at 3 o'clock". The medical doctor testified in court and explained that healed hymenal laceration means "*bahaw na ang scar or marka ng sugat sa hymen ng pasyente; ibig sabihin ay two weeks na*"; and that, at the time of examination, the victim is no longer a virgin. x x x

x x x x x x x x x

The herein accused simply denied the accusations against him. He could not even remember where he was on April 30, May 1 and 2, 2001 (TSN, page 4, July 25, 2006). What he told the court was that there was a misunderstanding about land partition between his parents and the parents of [AAA]. But when confronted with the fact that the parents of [AAA were] already dead at [that] time, he only said "the one who have misunderstanding are my mother and her sister" (TSN, page 5). On cross-examination, he was made to admit that Sitio Gamboa, Barangay Ligpit Bantayan where [AAA] lives and Barangay Tulon where he resides are adjoining barangay that can be reached by foot within fifteen (15) minutes, more or less (TSN, page 6, July 25, 2006). In the case of People vs. Audine, 510 SCRA 531, the Supreme Court ruled: "Motives such as feuds, resentment, and revenge have never swayed the Court from giving full credence to the testimony of a minor complainant" x x x. In yet another case, *People vs. Espino*, G.R. No. 176742, June 17, 2008, the Supreme Court held: "Denial and alibi being weak defenses cannot overcome the positive testimony of the offended party. As this Court, has reiterated often enough, denial and alibi cannot prevail over positive identification of the accused by the complaining witness.

In order to merit credibility, alibi must be buttressed by strong evidence of non-culpability. Verily, for the said defense to prosper, accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity. The herein accused has dismally failed to discharge this *onus*.[9]

In Criminal Case No. C-3838-C, the RTC ruled that Juanito did not rape AAA on May 1, 2001 considering the absence of evidence that he actually attempted to force or forced his penis into AAA's vagina, which is the overt act showing the intent to have sexual intercourse. However, kissing AAA's cheeks and touching her vagina are overt acts of his lewd designs, which are penalized as acts of lasciviousness under Article 336 of the Revised Penal Code (RPC).

But she denied that she got raped the second time Wapog approached her on May 1:

Q. *Noong ikalawang gabi, paano nangyari iyong sinasabi mo? x x x*;
A. *Matutulog na rin po ako.*
Q. *Tapos?*
A. *Ako po ay hinipuan.*
Q. *Saan ka hinipuan?*
A. *Sa pipi po.*
Q. *Wala siyang sinasabi sa iyo?*
A. *Wala po.*
Q. *Ngayon, matapos ka niyang hinipuan, ano pa ang ginawa niya?*
A. *Hinalikan po.*
Q. *Noong hinalikan ka, noong hinipuan ka sa iyong ari, sabi mo hinalikan ka sa pisngi, pagkatapos ano pa ang ginawa niya?*
A. *Wala na po.*
Q. *Doon ba siya natulog sa tabi mo?*
A. *Hindi po.* x x x

x x x x x x x x x

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

Q. *Doon sa ikalawa ay hinalikan ka lang, ang ibig sabihin hindi pinasok ang kanyang "otin" n sa iyong "puki" noong May 1?*

A. *Hindi po*. x x x

Since the prosecution had established that therein accused kissed the victim and touched her private parts on May 1, Wapog must be held liable for the lesser crime of acts of lasciviousness. This latter crime is considered included or subsumed in the rape charge[.] Thus in *Dulla vs. Court of Appeals* and *People vs. Bon*, the Supreme Court convicted the accused with the crime of acts of lasciviousness even though the information charged the crime of rape (*People vs. Mendoza*, G.R. No. 180501, December 24, 2008).[10]

In Criminal Case No. 3839-C, the RTC ruled that the prosecution failed to prove beyond reasonable doubt that Juanito raped AAA on May 2, 2001.

Insofar as the third occasion of rape is concerned, the court finds it hard to appreciate the evidence to convict the accused with another rape. While it may have indeed happened, the prosecution failed to convince the court that such is the case. The questions and answers were overly generalized and lacked many specific details on how they were committed. Her bare statement that the herein accused raped her just like what he had done to her the first time is inadequate to establish beyond reasonable doubt the third incident of rape.[11]

The RTC refused to appreciate the aggravating circumstances of "use of a deadly weapon" and "relationship," ratiocinating that:

Both the accused and [his] mother admitted the family relationship between the former and the herein offended party. Accused Juanito Garcia said that [AAA] is his cousin on the maternal side, his mother being the sister of [AAA's] mother. But the mother of Juanito testified that [AAA] is the daughter of her brother Ildefonso Gunay, Jr. The birth certificate of [AAA], however, showed that the father of the said child is unknown and her mother is Apolonia P. Gunay. In *People vs. Balbarona* which was cited by the Supreme Court in

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[10] *Id.* at 35.

[11] *Id.* at 36.

People vs. Agustin, G.R. No. 175325, February 27, 2008, the Supreme Court held that "the relationship of the accused to the victim cannot be established by mere testimony or even by the accused's very own admission of such relationship." In *People vs. Mangubat*, also cited in the Agustin case, the Supreme Court ruled: as a special qualifying circumstance raising the penalty for rape to death, the minority of the victim and her relationship to the offender must be alleged in the criminal complaint or information and **proved conclusively and indubitably as the crime itself** [(]emphasis and underscoring supplied)[.] Just the same, the alleged relationship does not qualify the offense. For the offense of rape to be qualified, the victim must be below 18 years of age and the offender is a relative by consanguinity or affinity within the third civil degree (Article 266-B (1), Revised Penal Code). Cousins are in the fourth degree (Article 966, New Civil Code).

The victim testified that her rapist threatened her with a weapon. But the same has not been alleged either in the complaint or in the information. Rule 110 of the 2000 Rules of Criminal Procedure is clear and unequivocal that both qualifying and aggravating circumstances must be alleged with specificity in the information.[12] (Underscoring and emphasis supplied)

The CA Decision

The CA, in its assailed decision, affirmed Juanito's conviction. The CA ruled that the prosecution was able to prove the existence of all the essential elements of statutory rape beyond reasonable doubt. Juanito's denial and claim of ill-motive against AAA's aunt are mere self-serving assertions that are inherently weak compared to AAA's precise and undeviating testimony.

The CA, however, modified the award of civil indemnity and moral damages in Criminal Case No. 3840-C by increasing their respective amounts to ₱75,000.00 and awarded exemplary damages in the amount of ₱30,000.00. In Criminal Case No. C-3838-C, the CA, in observance of the Indeterminate Sentence Law, modified the penalty to imprisonment from six (6) months of *arresto mayor* as minimum term to four (4) years and two (2) months of *prision correccional* as maximum. The CA also

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[12] *Id.* at 36-37.

imposed civil indemnity, moral damages and exemplary damages amounting to ₱20,000.00, ₱30,000.00 and ₱2,000.00, respectively.[13]

Issue

Juanito prays for his acquittal, arguing that the CA erred in finding that his criminal culpability was proved beyond reasonable doubt.

This Court's Ruling

This Court finds no merit in the present appeal for reasons to be discussed hereunder.

Statutory rape is committed by sexual intercourse with a woman below twelve years (12) of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary; they are not elements of statutory rape; the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[14] As the records of Criminal Case No. 3840-C would show, the prosecution was able to prove the existence of all the elements of statutory rape.

First, as evidenced by her birth certificate,[15] which Juanito does not dispute, AAA was only eight (8) years old at the time she was sexually molested on April 30, 2001.

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[13] *Rollo*, pp. 22-23.

[14] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 523-524.

[15] CA *rollo,* p. 31.

Second, the prosecution was able to prove that it was Juanito who raped AAA on April 30, 2001 by means of AAA's categorical and spontaneous testimony, which remained to be so under cross-examination. AAA's narration was likewise corroborated by Dr. Vergara's medical findings as to the existence of hymenal laceration, which is the best physical evidence of forcible defloration.[16]

This Court finds no cogent reason to reverse the RTC's assessment of AAA's credibility or of any of the prosecution's witnesses for that matter. Absent any evidence that it was tainted with arbitrariness or oversight of a fact of consequence or influence, the trial court's assessment is entitled to great weight, if not conclusive or binding on this Court. Time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the CA affirms the same, as in this case.[17]

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth

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[16] *People v. Balunsat*, G.R. No. 176743, July 28, 2010, 626 SCRA 77, 95, citing *People v. Clores*, *Jr.*, G.R. No. 130448, June 8, 2004, 431 SCRA 210.

[17] *People v. Dalipe*, G.R. No. 187154, April 23, 2010, 619 SCRA 426, 442.

and immaturity are generally badges of truth and sincerity.[18] A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[19]

Nonetheless, in accordance with prevailing jurisprudence,[20] this Court deems it proper to reduce the amount of civil indemnity and moral damages to ₱50,000.00 each.

As regards Juanito's conviction for acts of lasciviousness, the Court finds no reason to disturb it. While the information in Criminal Case No. C-3838-C charged statutory rape, he can be held liable for the lesser crime of acts of lasciviousness as the latter is an offense subsumed or included in the former.

The elements of acts of lasciviousness, punishable under Article 336 of the RPC, are:

(1) That the offender commits any act of lasciviousness or lewdness;
(2) That it is done under any of the following circumstances:
 a. By using force or intimidation; or
 b. When the offended party is deprived of reason or otherwise unconscious; or
 c. When the offended party is under 12 years of age; and
(3) That the offended party is another person of either sex.[21]

As the records of Criminal Case No. C-3838-C reveal, there is no evidence that Juanito attempted or commenced the act of sexual intercourse by inserting his penis into AAA's sexual

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[18] *People v. Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 307, citing *Llave v. People*, 522 Phil. 340 (2006) and *People v. Guambor*, 465 Phil. 671, 678 (2004).

[19] *Supra* note 17, at 444.

[20] *People v. Pacheco*, G.R. No. 187742, April 20, 2010; *People v. Mingming*, G.R. No. 174195, December 10, 2008.

[21] *Amployo v. People*, 496 Phil. 747, 755 (2005), citing *People v. Abadies*, 433 Phil. 814, 822 (2002).

organ. What was firmly established was that Juanito kissed AAA's cheeks and touched her vagina on May 1, 2001, which by any standards, are lewd acts. It is certainly morally inappropriate, indecent, and lustful for Juanito to perform such acts on a young girl whilst taking advantage of her vulnerability given her minority, the darkness afforded by nighttime and the fact that she was practically alone as the others who were with her were sound asleep to notice. Nonetheless, not every act of sexual abuse constitutes carnal knowledge. Without proof that there was an attempt to introduce the male organ into the labia majora of the victim's genitalia, rape cannot be concluded. As ruled in *People v. Mendoza*,[22] the touching of a female's sexual organ, standing alone, is not equivalent to rape, not even an attempted one.

This Court concurs with the lower courts' refusal to give credence to Juanito's allegation of ill-motive. This Court finds such defenses tenuous, shallow, specious and downright incredulous. Not a few offenders in rape cases attributed the charges brought against them to family feuds, resentment or revenge, but such alleged motives cannot prevail over the positive and credible testimonies of complainants who remained steadfast throughout the trial.[23] The purported family feud is too flimsy a reason for an aunt to force her niece to accuse Juanito with serious crimes, publicly disclose that she was raped, and subject her to trauma, humiliation and anxiety concomitant to a rape trial in order to exact revenge. The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint. In so testifying, she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.[24]

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[22] G.R. No. 180501, December 24, 2008, 575 SCRA 616.

[23] *People v. Dalisay*, 455 Phil. 810, 824 (2003), citing *People v. Salalima*, 415 Phil. 414, 426-427 (2011).

[24] *People v. Dimaano*, 506 Phil. 630, 641 (2005).

WHEREFORE, the appeal is **DENIED.** The Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 04352 is **AFFIRMED with MODIFICATION.** The Court finds Juanito "Wapog" Garcia guilty of:

(a) statutory rape under Article 266-B of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay the victim Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(b) acts of lasciviousness under Article 336 of the Revised Penal Code and sentencing him to suffer the indeterminate penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum and ordering him to pay the victim the amounts of Thirty Thousand Pesos (₱30,000.00) as moral damages, Twenty Thousand Pesos (₱20,000.00) as civil indemnity, and Two Thousand Pesos (₱2,000.00) as exemplary damages.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Brion,[*] and *Bersamin, JJ.,* concur.

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[*] Acting member per Special Order No. 1305 dated September 10, 2012 *vice* Associate Justice Martin S. Villarama, Jr.

SECOND DIVISION

[A.M. No. P-12-3087. September 24, 2012]
(Formerly A.M. OCA IPI No. 08-2720-P)

DIONISIO P. PILOT, *petitioner, vs.* **RENATO B. BARON, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 264, PASIG CITY,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFF; DUTY IN THE EXECUTION OF FINAL JUDGMENTS, EMPHASIZED. —** Sheriffs are tasked to execute final judgments of the courts. x x x As a ministerial officer, a sheriff is expected to faithfully perform what is incumbent upon him, even in the absence of instruction. Thus, he must discharge his duties with due care and utmost diligence. In serving court writs and processes and in implementing court orders, he cannot afford to err without affecting the integrity of his office and the efficient administration of justice.

2. **ID.; ID.; ID.; DISHONESTY, GRAVE MISCONDUCT AND DERELICTION OF DUTY; COMMITTED IN CASE AT BAR. —** [T]he Court finds respondent sheriff guilty of dishonesty and grave misconduct when he unlawfully collected and pocketed the amount of ₱15,000.00 intended to defray the expenses for the publication of the notice and enforcement of the writ of execution but which was not accordingly spent. He is likewise guilty of dereliction of duty in failing to observe the proper procedure in collecting execution expenses and conducting an execution sale. Moreover, he violated Canon III, Section 2(b) of A.M. No. 03-06-13-SC, which prohibits court employees from receiving tips or any remuneration from parties to the actions or proceedings with the courts.

3. **ID.; ID.; ID.; ID.; PENALTIES; PENALTY OF ₱40,000 FINE MADE PROPER AS RESPONDENT ALREADY DROPPED FROM THE ROLLS. —** Under Section 52 of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and grave misconduct are classified as grave offenses meriting the supreme penalty of dismissal from service even for the

first offense. On the other hand, dereliction of duty for failure to comply with Section 10, Rule 141 of the Rules of Court is punishable with a fine of ₱5,000.00. Considering, however, the Resolution which declared respondent sheriff dropped from the rolls for having been on absence without official leave (AWOL), the only appropriate imposable penalty is fine. Under the premises, the Court imposes upon him a fine in the reasonable amount of ₱40,000.00, which may be deducted from his accrued leave credits, if sufficient.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

On October 8, 2007, complainant filed a letter-complaint[1] before the Office of the Court Administrator (OCA) of the Supreme Court charging respondent sheriff of grave misconduct[2] for his failure/refusal to conduct the auction sale of the levied property pursuant to the Order of Execution issued by the Regional Trial Court (RTC) of Pasig City, Branch 264 in Civil Case No. 66262.[3]

Complainant is the judgment obligee in the Decision[4] dated February 25, 2006 rendered in the aforementioned case, in the amount of ₱516,297.50 with legal interest from December 1993, moral and exemplary damages and attorney's fees, each in the amount of ₱50,000.00, as well as the costs of the suit.

To implement the writ of execution (writ) issued therein and for the payment of publication expenses, respondent sheriff asked and received from complainant the amount of ₱15,000.00 and

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[1] *Rollo*, pp. 1-3.

[2] The OCA described the offense as one for grave misconduct in its 1st Indorsement dated October 11, 2007 which required respondent sheriff to submit his comment to the letter-complaint, *id.* at 27.

[3] A collection case against Philippine National Bank, Philippine State College of Aeronautics, Policarpio R. Zacarias and Spouses Noel and Gregoria Bambalan.

[4] *Rollo*, pp. 4-18.

thereafter, levied the house and lot of the judgment obligors, Spouses Noel and Gregoria Bambalan (Sps. Bambalan), located in Bo. Rosario, Pasig City and covered by Transfer Certificate of Title No. PT-78872. While the auction sale was scheduled on September 3, 2007, the same did not push through purportedly for lack of publication. Instead, it was reset to September 19, 2007, then to September 25, 2007 and later to October 5, 2007, which were all canceled on account of complainant's failure to heed respondent sheriff's additional demand of the amount of ₱18,000.00 for publication expenses.

On September 25, 2007, respondent sheriff instructed complainant to proceed to his office to receive the amount of ₱500,000.00 paid by the daughter of Sps. Bambalan. When the latter ignored the instruction, he offered to deliver the said amount for a sheriff's fee of 2.5% of the amount indicated in the notice of auction sale.[5] Moreover, on several occasions, he solicited money from complainant for his cellphone load and transportation expenses in the service of the notice of sale.

Despite directives[6] from the Court, respondent sheriff failed to submit his comment to the letter-complaint. A fine of ₱1,000.00,[7] later increased to ₱2,000.00,[8] was imposed upon him which he likewise failed to pay, prompting the Court to declare the case submitted for decision on the basis of the pleadings filed.[9]

The complaint has merit.

Sheriffs play an important role in the administration of justice since they are tasked to execute final judgments of the courts

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[5] *Id.* at 20.

[6] 1st Indorsement dated October 11, 2007, *id.* at 27; 1st Tracer letter dated January 9, 2008, *id.* at 28; and Resolutions of the Court dated April 1, 2009, *id.* at 31-32, September 9, 2009, *id.* at 33-34, and March 22, 2010, *id.* at 35-36.

[7] Resolution dated September 9, 2009, *id.* at 33-34.

[8] Resolution dated March 22, 2010, *id.* at 35-36.

[9] Resolution dated June 1, 2011, *id.* at 38-39.

that would otherwise become empty victories for the prevailing party if not enforced.[10] The 2002 Revised Manual for Clerks of Court characterizes sheriffs' functions as purely ministerial, to wit:

Sheriffs are ministerial officers. They are agents of the law and not agents of the parties, neither of the creditor nor of the purchaser at a sale conducted by him. It follows, therefore, that the sheriff can make no compromise in an execution sale.

As a ministerial officer, a sheriff is expected to faithfully perform what is incumbent upon him, even in the absence of instruction.[11] Thus, he must discharge his duties with due care and utmost diligence. In serving court writs and processes and in implementing court orders, he cannot afford to err without affecting the integrity of his office and the efficient administration of justice.[12]

Respondent sheriff, by his omission to file the required comment and to pay the fine imposed by the Court, disregarded the duty of every employee in the judiciary to obey the orders and processes of the Court without delay. The same evinces lack of interest in clearing his name in the face of grave imputations, constituting an implied admission of the charges.[13] Nonetheless, the Court evaluated and examined the records of the case and found sufficient basis in complainant's charges.

Records disclose that after levying on the property of the judgment obligors, respondent sheriff issued a notice of auction sale (notice) and accordingly scheduled the sale on September 3, 2007. It was, thus, incumbent upon him to comply with the

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[10] *Santuyo v. Benito*, A.M. No. P-05-1997 (Formerly A.M. OCA I.P.I. No. 04-1963-P), August 3, 2006, 497 SCRA 461, 467-468.

[11] *Erdenberger v. Aquino*, A.M. No. P-10-2739 (Formerly A.M. OCA I.P.I. No. 08-3015-P), August 24, 2011, 656 SCRA 44, 48.

[12] *Supra* note 10.

[13] *Re: Criminal Case No. MC-02-5637 Against Arturo V. Peralta and Larry C. De Guzman, Employees of MeTC, Br. 31, Q.C.*, A.M. No. 02-8-198-MeTC, June 08, 2005, 459 SCRA 278, 285.

requirements of Section 15, Rule 39 of the Rules of Court (Rules) prior to the sale, namely, (*a*) to cause the posting of the notice for 20 days in 3 public places in Pasig City where the sale was to take place; (*b*) to cause the publication of the notice once a week for two consecutive weeks in a newspaper of general circulation, selected by raffle; (*c*) to serve a written notice of the sale to the judgment obligors at least three days before the sale. However, notwithstanding receipt from the complainant of the amount of ₱15,000.00 under an assurance that he would take care of everything, no auction sale was conducted on the scheduled date for lack of the required publication. Worse, he asked anew for publication expenses in a higher amount, and solicited money for his cellphone load, transportation expenses in the service of the notice, as well as sheriff's fee of 2.5% of the minimum bid amount indicated in the notice. Moreover, instead of conducting the auction sale as re-scheduled, he unjustifiably insisted that complainant accept the ₱500,000.00 paid by the daughter of Sps. Bambalan which is below the amount sought to be recovered under the subject decision. He likewise failed to observe the proper procedural steps laid down in Section 10,[14] Rule 141 of the Rules in collecting sums of money from a party-litigant. He should have (*a*) prepared an estimate of expenses to be incurred; (*b*) obtained court approval for such estimated expenses; (*c*) caused the interested party to deposit with the Clerk of Court and *Ex Officio* Sheriff the corresponding amount; (*d*) secured from the Clerk of Court the said amount; (*e*) disbursed/liquidated his expenses within the same period for rendering a return on the writ; and (*f*) refunded any unspent amount[15] to the complainant.

Consequently, the Court finds respondent sheriff guilty of dishonesty and grave misconduct when he unlawfully collected[16] and pocketed the amount of ₱15,000.00 intended to defray the

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[14] As amended by A.M. No. 04-2-04-SC dated August 16, 2004.

[15] *Pasok v. Diaz*, A.M. No. P-07-2300 (Formerly A.M. OCA I.P.I. No. 05-2231-P), November 29, 2011, 661 SCRA 483, 492-493.

[16] *Geronca v. Magalona*, A.M. No. P-07-2398 (Formerly A.M. OCA I.P.I. No. 03-1621-P), February 13, 2008, 545 SCRA 1, 6-7.

expenses for the publication of the notice and enforcement of the writ of execution but which was not accordingly spent. He is likewise guilty of dereliction of duty in failing to observe the proper procedure in collecting execution expenses and conducting an execution sale.[17] Moreover, he violated Canon III, Section 2(b) of A.M. No. 03-06-13-SC,[18] which prohibits court employees from receiving tips or any remuneration from parties to the actions or proceedings with the courts.[19]

Under Section 52[20] of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and grave misconduct are classified as grave offenses meriting the supreme penalty of dismissal from service[21] even for the first offense. On the other hand, dereliction of duty for failure to comply with Section 10, Rule 141 of the Rules of Court is punishable with a fine of ₱5,000.00.[22]

Considering, however, the Resolution of the Court dated April 19, 2010 in A.M. No. 10-3-76-RTC which declared respondent sheriff dropped from the rolls effective May 4, 2009

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[17] *Id.*

[18] Otherwise known as the Code of Conduct for Court Personnel.

[19] *Supra* note 15.

[20] Section 52 pertinently provides:

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

1. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1st offense – Dismissal

x x x x x x x x x

3. Grave Misconduct

1st offense – Dismissal.

x x x x x x x x x

[21] *Taguinod v. Tomas*, A.M. No. P-09-2660, November 29, 2011, 661 SCRA 496, 502.

[22] *Tiongco v. Molina*, A.M. No. P-00-1373 (Formerly A.M. OCA IPI No. 97-365-P), September 4, 2001, 364 SCRA 294, 300-301.

for having been on absence without official leave (AWOL), the only appropriate imposable penalty is fine. Under the premises, the Court imposes upon him a fine in the reasonable amount of ₱40,000.00, which may be deducted from his accrued leave credits, if sufficient.

WHEREFORE, the Court finds respondent **RENATO B. BARON GUILTY** of dishonesty and grave misconduct, violation of Canon III, Section 2(b) of A.M. No. 03-06-13-SC and dereliction of duty, and is **FINED** in the amount of **FORTY THOUSAND PESOS (₱40,000.00)** to be deducted from his accrued leave credits, if sufficient.

Let copies of this Resolution be filed in the personal record of respondent and furnished him at his address of record.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *Reyes,*[**] *JJ.,* concur.

THIRD DIVISION

[A.M. No. RTJ-09-2179. September 24, 2012]
(Formerly A.M. OCA I.P.I. No. 08-2873-RTJ)

PROSEC. JORGE D. BACULI, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, RTC, Br. 36, Calamba City, Laguna,** *respondent.*

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[*] Acting Member per Special Order No. 1308 dated September 21, 2012.

[**] Designated Member per Raffle dated September 24, 2012.

[A.M. No. RTJ-10-2234. September 24, 2012]
(Formerly A.M. OCA I.P.I. No. 08-2879-RTJ)

PROSEC. JORGE D. BACULI, *complainant, vs.* **JUDGE MEDEL ARNALDO B. BELEN, RTC, Br. 36, Calamba City, Laguna,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE COMPLAINT CANNOT SUBSTITUTE FOR LOST JUDICIAL REMEDIES IN CONTEMPT PROCEEDINGS; CASE AT BAR. —** The complaints, in the main, challenge several Orders issued by Judge Belen in the respective contempt proceedings, and the four contempt Decisions. x x x Rule 71, Secs. 2 and 11 of the Rules of Court lay down the proper remedies from a judgment in direct and indirect contempt proceedings, respectively. x x x [Thus,] the complainant could have filed an appeal under Rule 41 of the Rules of Court on the Decisions in the indirect contempt cases. For the direct contempt citations, a petition for *certiorari* under Rule 65 was available to him. He failed to avail himself of both remedies. He chose instead to question the proceedings and the judgments in the form of motions and manifestations, and administrative complaints. Due to the failure of the complainant here to avail himself of these remedies, Judge Belen correctly ruled that the assailed judgments have become final and executory.

2. **ID.; ID.; JUDGES; CANNOT BE HELD ADMINISTRATIVELY LIABLE FOR ERRONEOUS DECISION. —** In the absence of any evidence to the contrary, the following presumptions stand: (1) that official duty has been regularly performed; and (2) that a judge, acting as such, was acting in the lawful exercise of jurisdiction. x x x A judge cannot be held administratively liable at every turn for every erroneous decision. The error must be gross and deliberate, a product of a perverted judicial mind, or a result of gross ignorance of the law.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT OF COURT; INDIRECT CONTEMPT; COURT MUST ENSURE THAT PROCEEDINGS ARE CONDUCTED**

RESPECTING THE RIGHT TO DUE PROCESS OF PARTY BEING CITED IN CONTEMPT. — Under the Rules of Court, there are two ways of initiating indirect contempt proceedings: (1) *motu proprio* by the court; or (2) by a verified petition. x x x Thus, where there is a verified petition to cite someone in contempt of court, courts have the duty to ensure that all the requirements for filing initiatory pleadings have been complied with. It behooves them too to docket the petition, and to hear and decide it separately from the main case, unless the presiding judge orders the consolidation of the contempt proceedings and the main action. But in indirect contempt proceedings inititated *motu proprio* by the court, x x x the court has the duty to inform the respondent in writing, in accordance with his or her right to due process. This formal charge is done by the court in the form of an Order requiring the respondent to explain why he or she should not be cited in contempt of court. x x x What remains in any case, whether the proceedings are initiated by a verified petition or by the court *motu proprio*, is the duty of the court to ensure that the proceedings are conducted respecting the right to due process of the party being cited in contempt. In both modes of initiating indirect contempt proceedings, if the court deems that the answer to the contempt charge is satisfactory, the proceedings end. The court must conduct a hearing, and the court must consider the respondent's answer. Only if found guilty will the respondent be punished accordingly.

D E C I S I O N

VELASCO, JR., *J.*:

These two cases stem from two separate administrative complaints filed by then State Prosecutor II (and currently Provincial Prosecutor of Zambales) Jorge D. Baculi (Baculi) against respondent Judge Medel Arnaldo B. Belen (Judge Belen) of the Regional Trial Court (RTC), Branch 36 in Calamba City, Laguna. In both administrative complaints, including the supplemental complaints he later filed, Baculi charged Judge Belen with gross ignorance of the law, gross misconduct, violation of Section 3(e) of Republic Act No. (RA) 3019, as amended,

grave abuse of authority, violation of RA 6713, conduct prejudicial to the interest of the public service, oppressive conduct, harassment, issuance of fraudulent and unjust order/s and decisions, among other offenses.

On April 28, 2010, the Court ordered the consolidation of the two complaints pursuant to the recommendation of the Office of the Court Administrator (OCA), as they involve the same parties and raise the same issues.

The Facts

A.M. No. RTJ-09-2179

In the first complaint dated April 10, 2008 docketed as OCA I.P.I. No. 08-2873-RTJ, and later redocketed as A.M. No. RTJ-09-2179, Baculi alleged that Judge Belen committed the above-mentioned inculpatory acts in relation to *People of the Philippines v. Azucena Capacete*,[1] then pending in RTC, Branch 36 in Calamba City, presided by Judge Belen.

The principal cause of action, as stated in the complaint, is the "unlawful, unconstitutional, illegal, arbitrary, malicious, capricious and immoral orders"[2] issued by Judge Belen. The adverted issuances refer to the December 18, 2006 Decision, in which Baculi was found guilty of direct contempt, and the June 7, 2007 Decision, wherein Judge Belen declared Baculi guilty of indirect contempt of court, for the contemptuous nature of pleadings that Baculi filed in his sala.[3]

On August 9, 2005, Baculi, then stationed at the Hall of Justice of San Pablo City, Laguna, and partially detailed with the City Prosecutor's Office of Calamba City, filed an Information for Qualified Theft against one Azucena Capacete. On August 30, 2005, Judge Belen, based on his finding that the crime committed was not Qualified Theft but Estafa, dismissed the

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[1] Criminal Case No. 13567-2005-C.

[2] *Rollo* (A.M. No. RTJ-09-2179), p. 1.

[3] *Id.*

case. Baculi then filed a Motion for Reconsideration[4] to reverse the dismissal order, but the motion was denied.

On February 27, 2006, Judge Belen issued an Order[5] directing Baculi to explain why he should not be cited in contempt of court for the following statement in his Motion for Reconsideration, which, to Judge Belen, attacked the integrity of the Court and is, thus, subject to indirect contempt proceedings:

> The dismissal of the information by the court was motivated by hatred, ill-will, and prejudice against Asst. State Prosecutor II Jorge Baculi, the Investigating Prosecutor at the Preliminary Investigation.

In due time, Baculi filed a Comment,[6] alleging that Judge Belen's orders reveal his "premeditated, vitriolic, personal attacks, resentment and vendetta"[7] against Baculi. This was followed by several motions to postpone, among which is denominated as an "Urgent Reiterative Motion to Dismiss and/or Hold in Abeyance the Proceedings and/or Resolution of the Citation for Contempt with Voluntary Inhibition and Complaints for Gross Ignorance of the Law, Grave Misconduct, Abuse of Authority and Acts Unbecoming of a Lawyer and a Member of the Judiciary, Harassment and Oppressive Conduct"[8] dated November 17, 2006 (Reiterative Motion). In it, Baculi alleged that the sheer unprecedented number of pending contempt cases against him reveals Judge Belen's determination to place him in contempt of court. Personal resentment and hatred, he added, was the real reason why Judge Belen initiated contempt cases against him. Meanwhile, Baculi also moved for the postponement of the hearings in the contempt proceedings set for the month of December. In the Order[9] of December 11, 2006, Judge Belen

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[4] *Id.* at 15.

[5] *Id.* at 14.

[6] Dated March 14, 2006, *id.* at 144.

[7] *Id.*

[8] *Id.* at 49.

[9] *Id.* at 200.

moved the hearings on the contempt proceedings to February 7 and 14, 2007.

In the meantime, on December 18, 2006, Judge Belen issued a Decision, finding Baculi guilty of direct contempt of court for violating the decency and propriety of the judicial system in using, as he did, unethical language in his November 17, 2006 Reiterative Motion, copies of which he furnished to various judicial and executive officers. Judge Belen's December 18, 2006 Decision dispositively reads:

> WHEREFORE, the Court finds the respondent Jorge Baculi GUILTY of direct contempt and sentenced him to pay the fine of ONE THOUSAND (₱1,000.00) PESOS and suffer imprisonment of TWELVE (12) HOURS.
>
> The bail for the provisional liberty of the accused is fixed at ₱5,000.[10]

Therefrom, Baculi filed a Motion for Reconsideration[11] with new/additional complaints, dated January 24, 2007.

Meanwhile, in relation to the indirect contempt proceedings, Baculi continued to file manifestations and motions to postpone or cancel the hearings, also seeking the voluntary inhibition of Judge Belen. Eventually, Judge Belen promulgated a Decision on June 7, 2007 finding Baculi in contempt of court, thus:

> WHEREFORE, this court finds Respondent Jorge D. Baculi ***GUILTY*** **of** ***contempt of court and sentenced him to pay*** the penalty of TWENTY THOUSAND (₱20,000.00) PESOS and suffer imprisonment of FOUR (4) DAYS.[12]

Baculi then filed on July 11, 2007 a Notice of Appeal, and a motion/manifestation praying for the stay of execution of the judgment. On August 6, 2007, Judge Belen directed Baculi to post a supersedeas bond in the amount of PhP 40,000 within

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[10] *Id.* at 73.

[11] *Id.* at 74.

[12] *Id.* at 159.

two days from notice to stay the execution of the two contempt decisions.[13]

Baculi moved to reconsider the amount of the supersedeas bond, insisting that it is arbitrary, whimsical, punitive, prohibitive, exorbitant, confiscatory, and excessive.[14] However, in an Order[15] issued on August 29, 2007, the motion was stricken off the records of the case.

In another Order[16] issued on August 20, 2007, Judge Belen directed the issuance of a writ of execution and a warrant of arrest against Baculi, to implement the December 18, 2006 and June 7, 2007 Decisions. On March 24, 2008, Judge Belen issued two Orders, declaring both the December 18, 2006 and June 7, 2007 Decisions, respectively, final and executory.

On April 10, 2008, Baculi filed the instant verified administrative complaint, alleging that Judge Belen's December 18, 2006 and June 7, 2007 Decisions violated his right to due process of law. As Baculi argued, he was not formally charged, and no notice or hearing was conducted to afford him the opportunity to air his side. He also alleged that the same decisions imposed oppressive and excessive penalties, and that the acts of Judge Belen were whimsical and oppressive. Judge Belen, Baculi averred, had already predetermined the outcome of the cases, and was only perfunctorily going through the motions to give a semblance of legality to his illegal actions.[17]

In a Supplemental Complaint filed on April 21, 2008, Baculi alleged that Judge Belen acted in bad faith when he ordered on December 11, 2006 the resetting of the hearings, but cited him in direct contempt on December 18, 2006. Hence, the

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[13] *Id.* at 204-205.

[14] *Id.* at 168.

[15] *Id.* at 175-176.

[16] *Id.* at 206.

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

December 18, 2006 Decision was rendered without waiting for the rescheduled hearings.[18]

In his Comment,[19] Judge Belen averred that the contempt proceedings would not have been initiated had Baculi not filed the contemptuous pleadings. He further alleged that Baculi's failure to avail himself of any remedy with respect to the December 18, 2006 and June 7, 2007 Decisions rendered such decisions final and executory. Judge Belen added that he cannot be held administratively liable absent a declaration from a competent tribunal that the Decisions in question are legally infirm or have been rendered with grave abuse of discretion. He also argued that the administrative complaint cannot be resorted to only to reverse, nullify, or modify the orders and decisions that he issued as a judge.

A.M. No. RTJ-10-2234

The facts surrounding A.M. No. RTJ-10-2234 are substantially similar to those in A.M. No. RTJ-09-2179. It involves the same parties, and similar direct and indirect contempt proceedings, albeit related to a different case.

In the Complaint he filed on April 21, 2008, docketed as OCA I.P.I. No. 08-2879-RTJ, and later redocketed as A.M. No. RTJ-10-2234, Baculi charged Judge Belen with committing acts similar to those specified in the first complaint but this time in relation to *People of the Philippines v. Jenelyn Estacio*,[20] then also pending in RTC, Branch 36 in Calamba City, where Judge Belen is the Presiding Judge. The case was prosecuted by Prosecutor Albert Josep Comilang (Comilang).

The subject of the Complaint here relates to similar decisions of Judge Belen dated December 18, 2006 and June 7, 2007, finding Baculi guilty of direct contempt and indirect contempt, respectively. Noticeably, these are the same dates when the

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[18] *Id.* at 192.

[19] *Id.* at 576-579.

[20] Criminal Case No. 12654-C.

Decisions subject of the first Complaint have been issued, albeit referring to different contempt citations.

On February 24, 2005, Judge Belen issued an Order, requiring Comilang to explain why he did not inform the court of the preliminary investigation he earlier set. In time, Comilang filed an explanation with Motion for Reconsideration, followed by a Reiterative Supplemental Motion for Reconsideration, which became the subject of Judge Belen's show-cause order dated May 30, 2005.

Comilang timely filed his Comment/Explanation, where Baculi, along with Regional State Prosecutor Ernesto Mendoza (Mendoza), participated in the form of a "notation." In an Order dated December 12, 2005, Judge Belen directed both Baculi and Mendoza to explain why they should not be cited in contempt of court (indirect contempt proceedings) for their participation in Comilang's Comment/Explanation.

As what happened in the first administrative complaint, Baculi filed several motions and manifestations, including a similar Reiterative Motion on November 16, 2006, resulting in a direct contempt citation on December 18, 2006, the *fallo* of which states:

> WHEREFORE, the Court finds respondent Jorge Baculi GUILTY of direct contempt and sentenced him to pay the fine of TWO THOUSAND (₱2,000) PESOS and to suffer imprisonment of TWO (2) DAYS.
>
> The bail for the provisional liberty of the respondent is fixed at ₱5,000.

In response, Baculi filed a Motion for Reconsideration with new/additional Complaints dated January 24, 2007.

In the indirect contempt proceedings, Baculi also filed several motions to postpone/cancel the hearings. On June 7, 2007, Judge Belen issued a Decision finding Baculi guilty of indirect contempt of court due to his failure to file his explanation as required by the Order issued on December 15, 2005, despite the lapse of more than one year. The decretal portion of the Decision reads:

WHEREFORE, this Court finds Respondent Jorge D. Baculi ***GUILTY of contempt of court and sentenced him to pay*** the penalty of TWENTY THOUSAND (₱20,000) PESOS and suffer imprisonment of TWO (2) DAYS.

Baculi filed a Notice of Appeal. The court required Baculi to post a supersedeas bond in the amount of PhP 30,000 to stay the execution of the June 7, 2007 judgment, but denied the stay of the execution of the December 18, 2006 Decision, because the reglementary period to file a petition for *certiorari* or prohibition has already lapsed. Baculi failed to pay the supersedeas bond. Thus, Judge Belen ordered the issuance of a writ of execution and a warrant of arrest against him, and declared the two contempt Decisions as final and executory.

On April 21, 2008, Baculi filed the present administrative complaint, predicated on substantially similar arguments presented in A.M. No. RTJ-09-2179. Judge Belen's Joint Comment dated July 1, 2008 is a virtual substantive repeat of his Comment in the first complaint.

The Issues

The issues presented in these consolidated cases are:

1. Whether the respondent Judge acted beyond his authority, or in a despotic manner, in conducting the contempt proceedings against the complainant; and
2. Whether the respondent Judge committed reprehensible conduct in issuing the Orders and Decisions relating to the contempt proceedings.

The OCA Recommendation

This Court referred the consolidated cases to the OCA for investigation. The OCA, accordingly, rendered its Report,[21] finding the complaint partially meritorious. The OCA stated the observation that the complaint infringes on the judicial prerogatives of Judge Belen, which may only be questioned

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[21] *Rollo* (A.M. No. RTJ-09-2179), pp. 581-595.

through judicial remedies under the Rules of Court, and not by way of an administrative complaint.[22] The OCA wrote:

> [T]he complainant did not contest the soundness of the assailed Decisions and Orders through the proper judicial channels. An Appeal under Rule 41 or Petition for *Certiorari* under Rule 65 of the Rules of Court, whichever is applicable under the premises, would have been the appropriate recourse to question the assailed decisions and orders.[23]

Nonetheless, the OCA found Judge Belen liable for having "incorporated" the indirect contempt proceeding with the main case, *People vs. Capacete*, when the proper procedure, as laid down in Rule 71, Sec. 4 of the Rules of Court, is for the indirect contempt proceedings to be "docketed, heard, and decided separately," unless the court orders the consolidation of the main action and the contempt proceedings.

For his failure to follow the elementary rules of procedure, the OCA recommended that Judge Belen be adjudged guilty of gross ignorance of the law, and be fined in the amount of thirty thousand pesos (PhP 30,000), with a stern warning that a similar offense in the future shall merit a more severe penalty.

Our Ruling

We partially uphold the findings of the OCA.

Indeed, as the OCA correctly stated, administrative complaints cannot substitute for the lost remedies in the judgments of contempt. The OCA's determination, however, that Judge Belen failed to follow the proper procedure in indirect contempt proceedings is erroneous. We take exception in this finding.

Administrative complaint cannot substitute for lost judicial remedies

The OCA correctly found that these administrative cases cannot be resorted to as substitutes for the remedies not availed of in

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[22] Citing *Tam v. Regencia*, A.M. No. MTJ-05-1604 (Formerly OCA I.P.I. No. 04-1580-MTJ), June 27, 2006, 493 SCRA 26, 36-37.

[23] *Rollo* (A.M. No. RTJ-09-2179), p. 592.

the contempt proceedings. The complaints, in the main, challenge several Orders issued by Judge Belen in the respective contempt proceedings, and the four contempt Decisions issued on December 18, 2006 and June 7, 2007. But as correctly observed by the OCA, issuances in the exercise of judicial prerogatives may only be questioned through judicial remedies under the Rules of Court and not by way of an administrative inquiry, absent fraud, ill intentions, or corrupt motive.[24] The institution of an administrative complaint is not the proper remedy for correcting the action of a judge alleged to have gone beyond the norms of propriety, where a sufficient judicial remedy exists.[25]

Rule 71, Secs. 2 and 11 of the Rules of Court lay down the proper remedies from a judgment in direct and indirect contempt proceedings, respectively. For direct contempt, the Rules states:

Sec. 2. *Remedy therefrom.*—The person adjudged in direct contempt by any court may not appeal therefrom, but may avail himself of the remedies of *certiorari* or prohibition. The execution of the judgment shall be suspended pending resolution of such petition, provided such person files a bond fixed by the court which rendered the judgment and conditioned that he will abide by and perform the judgment should the petition be decided against him.

In indirect contempt proceedings, the Rules states:

Sec. 11. *Review of judgment or final order; bond for stay.*—The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

The remedies provided for in the above-mentioned Rules are clear enough. The complainant could have filed an appeal under

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[24] *Tam v. Regencia*, *supra* note 22.

[25] *Government Service Insurance System v. Pacquing*, A.M. No. RTJ-04-1831 (Formerly OCA I.P.I. No. 99-796-RTJ), February 2, 2007, 514 SCRA 1, 12.

Rule 41 of the Rules of Court on the Decisions in the indirect contempt cases. For the direct contempt citations, a petition for *certiorari* under Rule 65 was available to him. He failed to avail himself of both remedies. He chose instead to question the proceedings and the judgments in the form of motions and manifestations, and administrative complaints. Due to the failure of the complainant here to avail himself of these remedies, Judge Belen correctly ruled that the assailed judgments have become final and executory. They cannot anymore be reviewed by this Court.

Time and again, We have stressed that disciplinary proceedings and criminal actions brought against a judge in relation to the performance of his or her official functions are neither complementary nor suppletory to the appropriate judicial remedies. They are also not a substitute to such remedies. Any party who may feel aggrieved should resort to these remedies, and exhaust them, instead of resorting to disciplinary proceedings and criminal actions.[26]

Even assuming that the Orders are infirm, they have already become final and executory, which even this Court cannot review or disturb. Public policy demands that even at the risk of occasional errors, judgments or orders rendered by a court of competent jurisdiction should become final at some definite time fixed by law and that parties should not be permitted to litigate the same issues over again.[27] Q*uieta non movere*.

Complainant failed to prove bad faith, evil motive or corrupt intention on the part of Judge Belen

Complainant Baculi tags all the contempt proceedings against him as sham, and were taken, so he claims, as a direct result

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[26] *Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of FH-Gymn Multi-Purpose and Transport Service Cooperative, against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals*, A.M. OCA I.P.I. No. 11-184-CA-J, January 31, 2012, 664 SCRA 465, 474-475.

[27] *Antique Sawmills, Inc. v. Zayco, et al.*, No. L-20051, May 30, 1966, 17 SCRA 316, 321.

of a prior incident between him and Judge Belen where he issued a Resolution recommending that Judge Belen be charged for libel. He has belabored this point in his complaint and supplemental complaints, pointing out that the judge has deep-seated hatred for him and is bent on repeatedly citing him in contempt.

Aside from his bare allegations, the complainant, however, has not presented any credible evidence to support his allegations against Judge Belen. The fact that Judge Belen had initiated contempt proceedings against him, and in fact convicted him in such contempt proceedings, does not by itself amount to ill motives on the part of Judge Belen. The initiation of the contempt proceedings stemmed from the acts of the complainant himself. His unsupported claim that the prior libel case he filed against Judge Belen created animosity between them is not sufficient to prove his claim of evil motives on the part of Judge Belen.

As the proponent of these allegations, the complainant should have adduced the necessary evidence to prove the claim of bad faith. This he failed to do. In the absence of any evidence to the contrary, the following presumptions stand: (1) that official duty has been regularly performed;[28] and (2) that a judge, acting as such, was acting in the lawful exercise of jurisdiction.[29]

Judge Belen cannot be administratively liable on the final and executory decision, in the absence of evil or corrupt motives or gross ignorance of the law

A judge cannot be held administratively liable at every turn for every erroneous decision. The error must be gross and deliberate, a product of a perverted judicial mind, or a result of gross ignorance of the law. This is as it should be, for no one tasked to determine the facts in light of the evidence adduced or interpret and apply the law, following prescribed rules, can be infallible.[30] All that is expected from a judge is to "follow

[28] RULES OF COURT, Rule 131, Sec. 3(m).

[29] *Id.*, Sec. 3(n).

[30] *Madredijo v. Loyao, Jr.*, A.M. No. RTJ-98-1424, October 13, 1999, 316 SCRA 544, 567.

the rules prescribed to ensure a fair and impartial hearing, assess the different factors that emerge therefrom and bear on the issues presented, and on the basis of the conclusions he finds established, adjudicate the case accordingly."[31] As We have held in *Dantes v. Caguioa*:[32]

Not every error bespeaks ignorance of the law, for if committed in good faith, it does not warrant administrative sanctions. To hold otherwise would be nothing short of harassment and would make his position double unbearable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in judgment.

As We have already stated, the complainant has failed to adduce evidence in support of his claim of evil or corrupt motives on the part of the judge. That, and the fact that the subject Decisions are already final and executory, lead Us to conclude that no administrative liability can arise on the part of Judge Belen, if the contempt proceedings that he conducted followed the required procedure under Rule 71 of the Rules of Court.

Judge Belen followed the proper procedure in citing complainant in contempt of court

The OCA Report found that Judge Belen failed to follow the mandatory procedure under Rule 71, because the contempt proceedings were heard and decided under the same docket or case number. We cannot sustain this finding of the OCA. Under the Rules of Court, there are two ways of initiating indirect contempt proceedings: (1) *motu proprio* by the court; or (2) by a verified petition.

In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr.[33] (*Calimlim*)

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[31] *Id.* at 567-568; citing *Re: Judge Silverio S. Tayao, RTC Branch 143, Makati*, A.M. No. 93-8-1204-RTC, February 7, 1994, 229 SCRA 723.

[32] A.M. No. RTJ-05-1919 (Formerly A.M. OCA I.P.I. No. 02-1634-RTJ), June 27, 2005, 461 SCRA 236, 245.

[33] G.R. No. 141668, August 20, 2008, 562 SCRA 393, 399.

clarified the procedure prescribed for indirect contempt proceedings. We held in that case:

In contempt proceedings, the prescribed procedure must be followed. Sections 3 and 4, Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. *First*, there must be an order requiring the respondent to show cause why he should not be cited for contempt. *Second*, the respondent must be given the opportunity to comment on the charge against him. *Third*, there must be a hearing and the court must investigate the charge and consider respondent's answer. *Finally*, only if found guilty will respondent be punished accordingly. (Citations omitted.)

As to the second mode of initiating indirect contempt proceedings, that is, through a verified petition, the rule is already settled in *Regalado v. Go*:

In cases where the court did not initiate the contempt charge, the Rules prescribe that a verified petition which has complied with the requirements of initiatory pleadings as outlined in the heretofore quoted provision of second paragraph, Section 4, Rule 71 of the Rules of Court, must be filed.[34]

The Rules itself is explicit on this point:

In **all other cases**, charges for indirect contempt shall be commenced by **a verified petition** with supporting particulars and certified true copies of documents or papers involved therein, and upon **full compliance with the requirements for filing initiatory pleadings** for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said **petition shall be docketed, heard and decided separately**, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.[35] (Emphasis added.)

Thus, where there is a verified petition to cite someone in contempt of court, courts have the duty to ensure that all the

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[34] G.R. No. 167988, February 6, 2007, 514 SCRA 616, 631.

[35] RULES OF COURT, Rule 71, Sec. 4.

requirements for filing initiatory pleadings have been complied with. It behooves them too to docket the petition, and to hear and decide it separately from the main case, unless the presiding judge orders the consolidation of the contempt proceedings and the main action.

But in indirect contempt proceedings inititated *motu proprio* by the court, the above rules, as clarified in *Regalado*, do not necessarily apply. *First*, since the court itself *motu proprio* initiates the proceedings, there can be no verified petition to speak of. Instead, the court has the duty to inform the respondent in writing, in accordance with his or her right to due process. This formal charge is done by the court in the form of an Order requiring the respondent to explain why he or she should not be cited in contempt of court.

In *Calimlim*, the Judge issued an Order requiring the petitioners to explain their failure to bring the accused before the RTC for his scheduled arraignment. We held in that case that such Order was not yet sufficient to initiate the contempt proceedings because it did not yet amount to a show-cause order directing the petitioners to explain why they should not be cited in contempt.[36] The formal charge has to be specific enough to inform the person, against whom contempt proceedings are being conducted, that he or she must explain to the court; otherwise, he or she will be cited in contempt. The Order must express this in clear and unambiguous language.

In the case at bar, the Orders issued by Judge Belen are in the nature of a show-cause order. The Orders clearly directed Baculi, as respondent, to explain within 10 days from receipt of the Order why he should not be cited in contempt. These Orders are formal charges sufficient to initiate the respective indirect contempt proceedings.

Second, when the court issues *motu proprio* a show-cause order, the duty of the court (1) to docket and (2) to hear and decide the case separately from the main case does not arise,

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[36] *In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr.*, *supra* note 33, at 400.

much less to exercise the discretion to order the consolidation of the cases. There is no petition from any party to be docketed, heard and decided separately from the main case precisely because it is the show-cause order that initiated the proceedings.

What remains in any case, whether the proceedings are initiated by a verified petition or by the court *motu proprio*, is the duty of the court to ensure that the proceedings are conducted respecting the right to due process of the party being cited in contempt. In both modes of initiating indirect contempt proceedings, if the court deems that the answer to the contempt charge is satisfactory, the proceedings end. The court must conduct a hearing, and the court must consider the respondent's answer. Only if found guilty will the respondent be punished accordingly.[37]

Complainant was afforded the opportunity to present his defense, but he failed to do so

In contempt proceedings, the respondent must be given the right to defend himself or herself and have a day in court––a basic requirement of due process. This is especially so in indirect contempt proceedings, as the court cannot decide them summarily pursuant to the Rules of Court. As We have stated in *Calimlim*, in indirect contempt proceedings, the respondent must be given the opportunity to comment on the charge against him or her, and there must be a hearing, and the court must investigate the charge and consider the respondent's answer.

In this case, however, complainant Baculi blatantly refused to answer the charges of indirect contempt initiated against him. Instead, he filed numerous motions and manifestations to postpone or cancel the hearings. In the facts surrounding both A.M. No. RTJ-09-2179 and A.M. No. RTJ-10-2234, Judge Baculi had set a date for the hearings on the indirect contempt proceedings in December 2006, but Baculi filed motions to postpone them. In the respective Orders issued on December 11, 2006, Judge Baculi granted the postponement of the hearings, moving them to February 2007.

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[37] *Id.* at 399.

Instead of answering the charges however, Baculi filed several motions, reiterating his argument that Judge Belen should be subject to disciplinary proceedings. Not once in his submissions did he controvert the charges against him, opting instead to merely harp on his contention that Judge Belen harbored a personal resentment against him.

It cannot be said that Judge Belen did not afford Baculi the opportunity to be heard on the contempt proceedings. Even as the respective hearings on the two indirect contempt cases set in February 2007 did not push through due to the numerous motions filed by Baculi, Judge Belen still waited for the former to answer the charges against him. No answer ever came, however––only numerous manifestations and motions for postponement.

In all, Judge Belen cannot plausibly be blamed for the fact that the June 7, 2007 Decisions were issued without any answer from Baculi. The fault belongs to Baculi himself, who insisted on resolving the indirect contempt proceedings in the form of an administrative complaint against the judge. Baculi was afforded ample time and opportunity to present his case in court, but he squandered the opportunity.

A final note. In its Decision of June 26, 2012[38] in A.M. No. RTJ-10-2216, the Court adjudged Judge Belen guilty of grave abuse of authority and gross ignorance of the law, and accordingly dismissed Judge Belen from service. The case stemmed from his actions also involving *People v. Jenelyn Estacio.* We held that the repeated infractions of Judge Belen warrant the penalty of dismissal from service.

WHEREFORE, the Court **DISMISSES** these two administrative complaints against Judge Medel Arnaldo B. Belen for lack of merit.

SO ORDERED.

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[38] *State Prosecutors II Josef Albert T. Comilang and Ma. Victoria Suñega-Lagman v. Judge Medel Arnaldo B. Belen.*

Leonardo-de Castro,[*] *Peralta, Bersamin,*[**] and *Mendoza, JJ.,* concur.

THIRD DIVISION

[A.M. No. RTJ-11-2271. September 24, 2012]
(Formerly OCA I.P.I. No. 09-3239-RTJ)

LUCIA O. MAGTIBAY, *complainant, vs.* **JUDGE CADER P. INDAR, Al Haj., Regional Trial Court, Branch 14, Cotabato City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; DISCRETION OF COURT THEREIN, RESPECTED. —** The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with. In the absence of fraud, dishonesty, or corruption, as in this case, the acts of a judge in his judicial capacity are not subject to disciplinary action.

2. **ID.; ID.; ID.; REQUIREMENT OF HEARING; ORDER TO SUBMIT COMMENTS ON THE APPLICATION FOR ISSUANCE OF TRO IS SUFFICIENT. —** [R]espondent judge's order for intervenors to submit their comments on the

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[*] Additional member per Special Order No. 1299-F dated August 28, 2012.

[**] Additional member per Special Order No. 1320-A dated September 21, 2012.

application for the issuance of TRO constitutes substantial compliance in so far as the parties' right to due process since the latter do not strictly call for a formal or trial-type hearing.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; UNDUE DELAY IN RESOLVING PENDING MOTIONS COMMITTED WHEN JUDGE FAILED TO ACT ON THE SAME. —** Respondent judge admitted that he did not act on the motion pending before his court, albeit, he justified this by saying that his silence or inaction should be construed as denial. We do not agree. Even assuming that respondent judge did not find the motion to be meritorious, he could have simply acted on the said motions and indicated the supposed defects in his resolutions instead of just leaving them unresolved. Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.

4. **ID.; ID.; ID.; ID.; PENALTY; FINE OF ₱20,000 PROPER AS JUDGE WAS ALREADY DISMISSED FROM SERVICE AT THE TIME OF DECISION. —** Under Section 9 (1), Rule 140 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, respondent's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In view of respondent's dismissal from service, the OCA's recommendation of a fine in the amount of ₱20,000.00 is, therefore, in order considering that respondent was found guilty for both undue delay in rendering an order and conduct unbecoming of a judge.

5. **ID.; ID.; ID.; CONDUCT UNBECOMMING OF A JUDGE MANIFESTED IN HIS DEALING WITH THE PUBLIC. —** [R]espondent exhibited rude behavior in dealing with the

public. Whether complainant and her counsel were entitled to the requested documents is not the issue, but the manner of how he declined the request. Certainly, his statement which he did not deny: "*Huwag mo ng ituloy ang sasabihin mo kumukulo ang dugo sa inyo lumayas na kayo marami akong problema*" does not speak well of his position as member of the bench. Noticeably, even in his Comment, respondent's choice of words was likewise inappropriate. This we will not tolerate.

APPEARANCES OF COUNSEL

Escobido & Pulgar Law Office for complainant.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an Administrative Complaint[1] filed by Lucia O. Magtibay (complainant), through counsel, Atty. Frumencio E. Pulgar, against Judge Cader P. Indar, Al Haj (respondent judge) of the Regional Trial Court of Cotabato City, Branch 14, for Gross Ignorance of the Law and deplorable conduct, relative to Special Proceedings No. 2004-074 entitled *In Re: Matter of Insolvencia Voluntaria De Olarte Hermanos y Cia, Heirs of the Late Jose P. Olarte, et al.*

The facts are as follows:

Complainant is one of the heirs of the late Jose Olarte, who was one of the original stockholders of *Olarte Hermanos y Cia.* Upon the death of the stockholders/owners, the surviving heirs, including herein complainant, filed a Petition for Involuntary Dissolution of the company before the Regional Trial Court, Branch 14, Cotabato City, docketed as Special Proceedings No. 2004-074. During the course of the proceedings, an Intervention was filed by Mercedita Taguba-Dumlao (Dumlao), acting as attorney-in-fact of one Vicente Olarte, who was allegedly an heir of the late Jose Olarte.

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[1] *Rollo*, pp. 2-9.

Thereafter, the Department of Public Works and Highways (DPWH) constructed a national highway that traversed about four kilometers of its distance within the property of *Olarte Hermanos y Cia*. Subsequently, the Regional Trial Court, Branch 14, Cotabato City granted petitioner's motion to direct the Regional Director (Region XII) of the DPWH to cause the payment of the partial consideration of the road right-of-way of the petitioners.

Complainant claimed that Dumlao collected a huge amount of money from the DPWH as compensation for the road right-of-way claims of the heirs of *Olarte Hermanos y Cia* by forging, manufacturing, falsifying documents and even fraudulently misrepresenting a non-existent person. Thus, complainant filed several criminal cases against Mercedita Taguba-Dumlao before the Department of Justice.

Complainant and other petitioners then filed an Application for Writ of Preliminary Injunction and/or Temporary Restraining Order, praying that an Order be issued enjoining the DPWH from entertaining any claims submitted by Dumlao as well as prohibiting the latter from representing the petitioners before the DPWH or any other government agency where the *Olarte Hermanos y Cia* have legal and subsisting claims. Complainant also filed a Manifestation with Motion for Correction or Amendment of Caption, accusing Dumlao of employing machination by making it appear in the pleadings that complainant's name was "Lucia Olarte-Ong," and praying that the caption in Special Proceedings No. 2004-074 be amended to reflect her legal and true name "Lucia Olarte-Magtibay."

On March 17, 2009, respondent judge issued an Order[2] noting the Motion for Amendment of Caption. However, anent the motion for the issuance of TRO, respondent judge required the intervenors to submit a Comment within ten days from receipt of the Order and further ordered that upon submission of said Comment, the case be set for hearing for reception of additional evidence and/or arguments from both parties. Complainant claimed that

[2] *Id.* at 216.

Intervenors only took one week from March 17, 2009 to submit their Comment but failed to furnish them a copy thereof.

In the disputed Order[3] dated March 26, 2009, respondent judge denied the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order for utter lack of merit and berated complainant for having allegedly filed libelous pleadings and threatened her with imposition of fine if the same allegations are repeated.

However, complainant argued that there was no hearing on the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order that would determine the veracity of their allegations. Complainant, hence, suspected that respondent judge was denying complainant's motions and request in order to favor the intervenors. Complainant likewise pointed out that the context of respondent judge's March 26, 2009 Order appeared as if he was "lawyering" for Dumlao and Vicente L. Olarte.

Complainant further claimed that they filed a Motion for Reconsideration with Motion for Inhibition of respondent judge, but the said motion was left unresolved by respondent judge. It likewise did not help that respondent judge exhibited rude behavior against complainant's counsel and authorized representative, Victoria S. Tolentino and Jommel L. Valles (Valles). Complainant claimed that said representatives, particularly Valles, experienced unwarranted boorish and scurrilous treatment from respondent judge.

In his *Sinumpaang Salaysay*,[4] Valles deposed that on May 18, 2009, he, together with complainant's daughter, Leonida M. Delos Santos, tried to secure some documents relative to Special Proceedings No. 2004-074. However, after waiting for several hours, Valles claimed that respondent judge confronted them and argued that they have no legal personality to acquire said documents, thus, denied their request. He further narrated that while they were explaining that they were the same people

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[3] *Id.* at 81-82.

[4] *Id.* at 39.

who filed for certain motions, respondent judge said, "*Denied na ung motion nyo*." Valles added that when Delos Santos insisted on their request, respondent judge retorted "*Huwag mo ng ituloy ang sasabihin mo kumukulo ang dugo sa inyo lumayas na kayo marami akong problema*." He claimed that respondent judge even stated: "*Ireklamo ninyo na ako ng administratibo sa Supreme Court at sila ang magsabi kung pwede ko kayong bigyan ng kopya ng records."*

Thus, the instant complaint against respondent judge.

On August 10, 2009, the Office of the Court Administrator (OCA) directed respondent judge to comment on the complaint against him.[5]

In his Comment[6] dated October 6, 2009, respondent judge argued that the Application for Preliminary Injunction and/or TRO, Manifestation with Motion for Correction or Amendment of Caption, and the Comment and Opposition thereto, presented no genuine issues that would warrant hearing of the same, thus, the denial for lack of merit. Respondent judge further added that in fact complainant was already estopped from asserting her claims and allegations as she had already received her share from the estate and the DPWH.

Anent the unresolved Motion for Reconsideration with Motion for Inhibition, respondent judge explained that it was filed out of time, or twenty-seven (27) days after the issuance of the Order dated March 26, 2009 and presented no new issues. As to the matter of his inhibition, respondent judge claimed that the same was merely based on suppositions and speculations without proof of his alleged bias. Thus, respondent judge pointed out that his silence in resolving the aforesaid motions meant that he has adopted the "Order of Denial" issued on March 26, 2009. Respondent judge further argued that ***"Pro forma pleading, like the Motion for Reconsideration filed by complainant, is at the court's discretion which may be disregarded, especially***

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[5] *Id.* at 52.

[6] *Id.* at 61-73.

if the main case are grounded on falsities and malicious imputations of unfounded accusation, hence, to the mind of the court, there is nothing more to reconsider."[7]

As to the allegation of respondent judge's denial of complainant's request to secure photocopies of certain documents, respondent judge insisted that the denial was proper considering the following circumstances, to *wit*: (a) complainant's counsel was already furnished with a copy of the Comment/Opposition, hence, there was no need to provide them with a new copy; (b) the authorization letter to request for copies of "other pertinent pleadings" failed to specify what documents were to be reproduced; (c) complainant has no personality in Special Proceedings No. 2004-074, since she is neither a petitioner nor an intervenor thereat; (d) the requested pleadings or documents would be used by complainant's counsel to support the criminal complaint they filed against the intervenors with the DOJ; (e) the request came at a later date after the Application for Writ of Preliminary Injunction and/or Temporary Restraining Order was denied on March 26, 2009; and (f) the two *Sinumpaang Salaysay* separately executed by Jommel Valles and Victoria Tolentino were self-serving documents containing allegations from "***demented persons like affiants.***"[8]

In a Memorandum[9] dated December 15, 2010, the OCA found respondent judge guilty of Undue Delay in Rendering an Order and Conduct Unbecoming a Judge, and recommended that respondent judge be sternly warned and be fined in the amount of ₱20,000.00. It further recommended that the administrative complaint against respondent judge be redocketed as a regular administrative matter.

On February 9, 2011, the Court resolved to re-docket the complaint as a regular administrative matter against respondent judge.[10]

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[7] *Id.* at 71. (Emphasis ours.)

[8] *Id.* at 70-71. (Emphasis supplied.)

[9] *Id.* at 218-226.

[10] *Id.* at 227.

RULING

The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with.[11] In the absence of fraud, dishonesty, or corruption, as in this case, the acts of a judge in his judicial capacity are not subject to disciplinary action.

However, in so far as the requirement of hearing in cases of denial of the application for the issuance of a TRO, it must be emphasized that while it is true that the right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense, the Court has time and again held that where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," there is no denial of due process. What the law proscribes is the lack of opportunity to be heard.[12] Indeed, respondent judge's order for intervenors to submit their comments on the application for the issuance of TRO constitutes substantial compliance in so far as the parties' right to due process since the latter do not strictly call for a formal or trial-type hearing.

However, on the charge of undue delay in resolving the Motion to Dismiss and Motion for Inhibition, we agree that respondent judge should be liable thereto. Respondent judge admitted that he did not act on the motion pending before his court, albeit, he justified this by saying that his silence or inaction should be construed as denial. We do not agree. Even assuming that respondent judge did not find the motion to be meritorious, he could have simply acted on the said motions and indicated the

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[11] *Barbieto v. Court of Appeals*, G.R. No. 184645, October 30, 2009, 604 SCRA 825, 840.

[12] *Id.* at 843-844.

supposed defects in his resolutions instead of just leaving them unresolved.[13]

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. No less than the Constitution mandates that lower courts must dispose of their cases promptly and decide them within three months from the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court concerned. In addition, a judge's delay in resolving, within the prescribed period, pending motions and incidents constitutes a violation of Rule 3.05 of the Code of Judicial Conduct requiring judges to dispose of court business promptly.[14]

There should be no more doubt that undue inaction on judicial concerns is not just undesirable but more so detestable, especially now when our all-out effort is directed towards minimizing, if not totally eradicating, the perennial problem of congestion and delay long plaguing our courts. The requirement that cases be decided within the reglementary period is designed to prevent delay in the administration of justice, for obviously, justice delayed is justice denied. An unwarranted slow down in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute.[15]

We likewise agree with the OCA's finding that respondent exhibited rude behavior in dealing with the public. Whether complainant and her counsel were entitled to the requested documents is not the issue, but the manner of how he declined the request. Certainly, his statement which he did not deny: "*Huwag mo ng ituloy ang sasabihin mo kumukulo ang dugo sa inyo lumayas na kayo marami akong problema*" does not speak well of his position as member of the bench. Noticeably,

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[13] *Heirs of Simeon Piedad v. Judge Estrera*, A.M. No. RTJ-09-2170, December 16, 2009, 608 SCRA 268, 278.

[14] *Id.*, citing *Biggel v. Pamintuan,* A.M. No. RTJ-08-2101, July 23, 2008, 559 SCRA 344.

[15] *Id.*

even in his Comment, respondent's choice of words was likewise inappropriate.[16] This we will not tolerate.

However, during the pendency of this case, we note that in *A.M. No. RTJ-10-2232*,[17] respondent has already been dismissed from the service that already attained finality considering that respondent did not file any motion for reconsideration. Nevertheless, it should be emphasized that the same does not render the instant case moot and academic because accessory penalties may still be imposed.

In *Pagano v. Nazarro, Jr.*,[18] indeed, we held:

> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, **there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.**[19]

Under Section 9 (1), Rule 140 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC, respondent's undue delay in rendering a decision is classified as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In view of respondent's dismissal from service, the OCA's recommendation of a fine in the amount of

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[16] 5. x x x hence, do not deserve any weight in law" but utmost an allegations of harassment **from demented persons like the affiants.**

6. x x x (*Rollo*, p. 71) (Emphasis supplied.)

[17] *Office of the Court Administrator v. Judge Cader P. Indar*, April 10, 2012.

[18] G.R. No. 149072, September 21, 2007, 533 SCRA 622.

[19] *Id.* (Emphasis ours; citation omitted.)

₱20,000.00 is, therefore, in order considering that respondent was found guilty for both undue delay in rendering an order and conduct unbecoming of a judge.

WHEREFORE, this Court finds respondent **CADER P. INDAR**, **Al Haj. GUILTY** of Undue Delay in Rendering an Order and Conduct Unbecoming of a Judge, and he is accordingly **FINED** in the amount of Twenty Thousand Pesos (₱20,000.00), to be deducted from his leave credits, if there is any.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 154470-71. September 24, 2012]

BANK OF COMMERCE, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK and BANGKO SENTRAL NG PILIPINAS,** *respondents.*

[G.R. Nos. 154589-90. September 24, 2012]

BANGKO SENTRAL NG PILIPINAS, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK,** *respondent.*

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[*] Designated Acting Member, in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1320-A dated September 21, 2012.

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

SYLLABUS

1. **COMMERCIAL LAW; CENTRAL BANK (CB) CIRCULARS; CB CIRCULAR NO. 769-80 IMPLIEDLY REPEALED CB CIRCULAR NO. 28; THEY BOTH OPERATE ON CB-ISSUED EVIDENCE OF INDEBTEDNESS AND PROVIDE BANGKO SENTRAL NG PILIPINAS (BSP) WITH COURSE OF ACTION IN CASE OF AN ALLEGEDLY FRAUDULENTLY ASSIGNED CERTIFICATE OF INDEBTNESS. —** CB Circular No. 769-80 impliedly repealed CB Circular No. 28. x x x There are two instances of implied repeal. One takes place when the provisions in the two acts on the same subject matter are irreconcilably contradictory, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The other occurs when the later act covers the whole subject of the earlier one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law. A general reading of the two circulars shows that the second instance of implied repeal is present in this case. CB Circular No. 28, entitled "Regulations Governing Open Market Operations, Stabilization of Securities Market, Issue, Servicing and Redemption of Public Debt," is a regulation governing the servicing and redemption of public debt, including the issue, inscription, registration, transfer, payment and replacement of bonds and securities representing the public debt. On the other hand, CB Circular No. 769-80, entitled "Rules and Regulations Governing Central Bank Certificate of Indebtedness," is the governing regulation on matters (i) involving certificate of indebtedness issued by the Central Bank itself and (ii) which are similarly covered by CB Circular No. 28. x x x [E]ven if CB Circular No. 28 applies broadly to both government-issued bonds and securities and Central Bank-issued evidence of indebtedness, given the present state of law, CB Circular No. 28 and CB Circular No. 769-80 now operate on the same subject — Central Bank-issued evidence of indebtedness. Under Section 1, Article XI of CB Circular No. 769-80, the continued relevance and application of CB Circular No. 28 would depend on the need to supplement any deficiency or silence in CB Circular No. 769-80 on a particular matter. In the present case, both CB Circular No. 28 and CB Circular No. 769-80 provide the BSP with a course of action in case of an allegedly fraudulently assigned certificate of

indebtedness. Under CB Circular No. 28, in case of fraudulent assignments, the BSP would have to "call upon the owner and the person presenting the bond to substantiate their respective claims" and, from there, determine who has a better right over the registered bond. On the other hand, under CB Circular No. 769-80, the BSP shall merely "issue and circularize a 'stop order' against the transfer, exchange, redemption of the [registered] certificate" *without any adjudicative function* (which is the precise root of the present controversy). As the two circulars stand, the patent irreconcilability of these two provisions does not require elaboration. Section 5, Article V of CB Circular No. 769-80 inescapably repealed Section 10 (d) 4 of CB Circular No. 28.

2. **ID.; ID.; ID.; ID.; DOES NOT INCLUDE ADJUDICATION ON COMPETING CLAIMS OF OWNERSHIP OF CB BILLS. —** [T]he jurisdictional provision of CB Circular No. 769-80 itself, in relation to CB Circular No. 28, on the matter of fraudulent assignment, has given rise to a question of jurisdiction — the ***core*** question of law involved in these petitions. x x x Significantly, when *competing* claims of ownership over the proceeds of the securities it has issued are brought before it, the law has not given the BSP the *quasi-judicial* power to resolve these competing claims as part of its power to engage in open market operations. Nothing in the BSP's charter confers on the BSP the jurisdiction or authority to determine this kind of claims, arising out of a subsequent transfer or assignment of evidence of indebtedness — a matter that appropriately falls within the competence of courts of general jurisdiction. That the statute withholds this power from the BSP is only consistent with the fundamental reasons for the creation of a Philippine central bank, that is, to lay down stable monetary policy and exercise bank supervisory functions. Thus, the BSP's assumption of jurisdiction over competing claims cannot find even a stretched-out justification under its corporate powers "to do and perform any and all things that may be necessary or proper to carry out the purposes" of R.A. No. 7653.

3. **ID.; ID.; ID.; ID.; ID.; INVOCATION OF THE DOCTRINE OF PRIMARY JURISDICTION, NOT APPRECIATED. —** [T]he PDB's invocation of the doctrine of primary jurisdiction is misplaced. x x x The absence of any express or implied

statutory power to adjudicate conflicting claims of ownership or entitlement to the proceeds of its certificates of indebtedness finds complement in the similar absence of any technical matter that would call for the BSP's special expertise or competence. In fact, what the PDB's petitions bear out is essentially the nature of the transaction it had with the subsequent transferees of the subject CB bills (BOC and Bancap) and not any matter more appropriate for special determination by the BSP or any administrative agency. In a similar vein, it is well-settled that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the courts construing such rule or regulation. While there are exceptions to this rule, the PDB has not convinced us that a departure is warranted in this case. Given the non-applicability of the doctrine of primary jurisdiction, the BSP's own position, in light of Circular No. 769-80, deserves respect from the Court. Ordinarily, cases involving the application of doctrine of primary jurisdiction are initiated by an action invoking the jurisdiction of a court or administrative agency to resolve the substantive legal conflict between the parties. In this sense, the present case is quite unique since the court's jurisdiction was, *originally*, invoked *to compel* an administrative agency (the BSP) to resolve the legal conflict of ownership over the CB bills — instead of obtaining a judicial determination of the same dispute.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INTERPLEADER; PROPRIETY THEREOF. —** Section 1, Rule 62 of the Rules of Court provides when an interpleader is proper: SECTION 1. When interpleader proper. — Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The remedy of an action of interpleader is designed to protect a person against double vexation in respect of a single liability. It requires, as an indispensable requisite, that conflicting claims upon the same subject matter are or may be made against the stakeholder (the possessor of the subject matter) who claims no interest whatever in the subject matter or an interest which in whole

or in part is not disputed by the claimants. Through this remedy, the stakeholder can join all competing claimants in a single proceeding to determine conflicting claims without exposing the stakeholder to the possibility of having to pay more than once on a single liability. ***When the court orders that the claimants litigate among themselves, in reality a new action arises***, where the claims of the interpleaders themselves are brought to the fore, the stakeholder as plaintiff is relegated merely to the role of initiating the suit. In short, the remedy of interpleader, when proper, merely provides an avenue for the conflicting claims on the same subject matter to be threshed out *in an* ***action***. Section 2 of Rule 62 provides: SEC. 2. Order. — Upon the filing of the complaint, the court shall issue an order requiring the conflicting claimants to interplead with one another. If the interests of justice so require, the court may direct in such order that the subject matter be paid or delivered to the court. This is precisely what the RTC did by granting the BSP's motion to interplead. The PDB itself "agree[d] that the various claimants should *now* interplead." Thus, the PDB and the BOC subsequently entered into two separate escrow agreements, covering the CB bills, and submitted them to the RTC for approval. In granting the BSP's motion, the RTC acted on the correct premise that it has jurisdiction to resolve the parties' conflicting claims over the CB bills — consistent with the rules and the parties' conduct — and accordingly required the BOC to amend its answer and for the PDB to comment thereon.

5. **ID.; ID.; ID.; PAYMENT OF DOCKET FEES TO BE MADE BY DEFENDANTS-IN-INTERPLEADER. —** When an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees by the party seeking affirmative relief from the court. It is the filing of the complaint or appropriate initiatory pleading, accompanied by the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the claim or the nature of the action. However, the non-payment of the docket fee at the time of filing does not automatically cause the dismissal of the case, so long as the fee is paid within the applicable prescriptive or reglementary period, especially when the claimant demonstrates a willingness to abide by the rules prescribing such payment.

In the present case, considering the lack of a clear guideline on the payment of docket fee by the claimants in an interpleader suit, compounded by the unusual manner in which the interpleader suit was initiated and the circumstances surrounding it, we surely *cannot* deduce from the BOC's mere failure to specify in its prayer the total amount of the CB bills it lays claim to (or the value of the subjects of the sales in the April 15 and April 19 transactions, in its alternative prayer) an intention to defraud the government that would warrant the dismissal of its claim. At any rate, regardless of the nature of the BOC's "counterclaims," for purposes of payment of filing fees, *both* **the BOC and the PDB**, properly as defendants-in-interpleader, must be assessed the payment of the correct docket fee arising from their respective claims.

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D E C I S I O N

BRION, *J*.:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45,[1] on pure questions of law, filed by the petitioners Bank of Commerce (*BOC*) and the Bangko Sentral ng Pilipinas (*BSP*). They assail the January 10, 2002 and July 23, 2002 Orders (*assailed orders*) of the Regional Trial Court (*RTC*) of Makati City, Branch 143, in Civil Case Nos. 94-3233 and 94-3254. These orders dismissed (i) the petition filed by the Planters Development Bank (*PDB*), (ii) the "counterclaim" filed by the BOC, and (iii) the counter-complaint/cross-claim for interpleader filed by the BSP; and denied the BOC's and the BSP's motions for reconsideration.

[1] Rules of Court.

THE ANTECEDENTS

The Central Bank bills

I. First set of CB bills

The Rizal Commercial Banking Corporation (*RCBC*) was the registered owner of seven Central Bank (*CB*) bills **with a total face value of ₱70 million,** issued on January 2, 1994 and would mature on January 2, 1995.[2] As evidenced by a "Detached Assignment" dated **April 8, 1994**,[3] **the RCBC sold these CB bills to the BOC**.[4] As evidenced by another "Detached Assignment"[5] of even date, the **BOC, in turn, sold these CB bills to the PDB**.[6] The BOC delivered the Detached Assignments to the PDB.[7]

On **April 15, 1994** *(April 15 transaction)*, the **PDB, in turn, sold to the BOC** Treasury Bills worth ₱70 million, with maturity date of June 29, 1994, as evidenced by a Trading Order[8] and a Confirmation of Sale.[9] However, instead of delivering the Treasury Bills, the PDB delivered the seven CB bills to the BOC, as evidenced by a PDB Security Delivery Receipt, bearing a "note: ** substitution in lieu of 06-29-94" — referring to the Treasury Bills.[10] Nevertheless, the PDB retained possession of the Detached Assignments. **<u>It is basically the nature of this</u>**

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[2] Records, Volume II, pp. 565, 571.

[3] *Rollo*, G.R. Nos. 154470-71, p. 69.

[4] Records, Volume II, pp. 565, 571.

[5] *Rollo*, G.R. Nos. 154470-71, p. 68.

[6] *Id.* at 55, 68, 193.

[7] On April 12, 1994, the PDB sold ₱70 million worth of securities to the BOC. For its failure to deliver the securities, the PDB delivered the CB bills to the BOC as substitute. On even date, the BOC sold the CB bills to Bancapital Development Corporation (*Bancap*). The PDB reacquired the CB bills from Bancap. *Id.* at 193-194.

[8] *Id.* at 111.

[9] *Id.* at 112.

[10] *Id.* at 100-101, 113.

April 15 transaction that the PDB and the BOC cannot agree on.

The transfer of the first set of seven CB bills

i. CB bill nos. 45351-53

On April 20, 1994, according to the BOC, it "sold back"[11] to the PDB three of the seven CB bills. In turn, the PDB transferred these three CB bills to Bancapital Development Corporation (*Bancap*). On April 25, 1994, the BOC bought the three CB bills from Bancap — so, ultimately, the BOC reacquired these three CB bills,[12] particularly described as follows:

Serial No.:	2BB XM 045351 2BB XM 045352 2BB XM 045353
Quantity:	Three (3)
Denomination:	Php 10 million
Total Face Value:	Php 30 million

ii. CB bill nos. 45347-50

On April 20, 1994, the BOC sold the remaining four (4) CB bills to Capital One Equities Corporation[13] which transferred them to All-Asia Capital and Trust Corporation (*All Asia*). On September 30, 1994, All Asia further transferred the four CB bills back to the RCBC.[14]

On November 16, 1994, the RCBC sold back to All Asia one of these 4 CB bills. When the BSP refused to release the amount of this CB bill on maturity, the BOC purchased from All Asia this lone CB bill,[15] particularly described as follows:[16]

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[11] *Id.* at 194.

[12] *Id.* at 127.

[13] *Id.* at 101, 195.

[14] *Ibid.*; Records, Volume II, p. 566.

[15] *Rollo*, G.R. Nos. 154470-71, p. 196.

[16] Records, Volume I, pp. 193-194.

Serial No.:	2BB XM 045348
Quantity:	One (1)
Denomination:	Php 10 million
Total Face Value:	Php 10 million

As the registered owner of the remaining three CB bills, the RCBC sold them to IVI Capital and Insular Savings Bank. Again, when the BSP refused to release the amount of this CB bill on maturity, the RCBC paid back its transferees, reacquired these three CB bills and sold them to the BOC — ultimately, the BOC acquired these three CB bills.

All in all, the BOC acquired the first set of seven CB bills.

II. Second set of CB bills

On April 19, 1994, the RCBC, as registered owner, (i) sold two CB bills with a total face value of ₱20 million to the PDB and (ii) delivered to the PDB the corresponding Detached Assignment.[17] The two CB bills were particularly described as follows:

Serial No.:	BB XM 045373
	BB XM 045374
Issue date:	January 3, 1994
Maturity date:	January 2, 1995
Denomination:	Php 10 million
Total Face value:	Php 20 million

On even date, the PDB delivered to Bancap the two CB bills[18] (*April 19 transaction*). In turn, Bancap sold the CB bills to Al-Amanah Islamic Investment Bank of the Philippines, which in turn sold it to the BOC.[19]

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[17] *Rollo*, G.R. Nos. 154470-71, p. 80; Records, Volume II, p. 552.

[18] As evidenced by a Security Delivery Receipt issued by the PDB and acknowledged by Bancap; *rollo*, G.R. Nos. 154589-90, p. 83.

[19] *Rollo*, G.R. Nos. 154470-71, pp. 81, 191.

PDB's move against the transfer of the first and second sets of CB bills

On June 30, 1994, upon learning of the transfers involving the CB bills, the PDB informed[20] the Officer-in-Charge of the BSP's Government Securities Department,[21] Lagrimas Nuqui, of the PDB's claim over these CB bills, based on the Detached Assignments in its possession. The PDB requested the BSP[22] to record its claim in the BSP's books, explaining that its non-possession of the CB bills is "on account of imperfect negotiations thereof and/or subsequent setoff or transfer."[23]

Nuqui denied the request, invoking Section 8 of CB Circular No. 28 (*Regulations Governing Open Market Operations, Stabilization of the Securities Market, Issue, Servicing and Redemption of the Public Debt*)[24] which requires the presentation of the bond before a registered bond may be transferred on the books of the BSP.[25]

In a July 25, 1994 letter, the PDB clarified to Nuqui that it was not "asking for the transfer of the CB Bills.... [rather] it

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[20] Through two separate letters dated June 30, 1994 of the PDB's Executive Vice President, Rodolfo V. Timbol. *Id.* at 74; *rollo*, G.R. Nos. 154589-90, pp. 37, 38.

[21] Now defunct.

[22] R.A. No. 7653 abolished the Central Bank and created a new corporate entity known as the BSP.

[23] *Rollo*, G.R. Nos. 154470-71, pp. 90, 115.

[24] Section 8 of CB Circular No. 28 reads:

A registered bond may be transferred on the books of the Central Bank into the name of another person upon presentation of the bond properly assigned in accordance with the regulations governing assignments. Specific instructions for the issue and delivery of the registered bonds to be issued upon transfer must accompany the bonds presented. (Use Securities Form No. 14) Assignment for transfer should be made to the transferee, or if desired, to the Central Bank of the Philippines for transfer into the name of the transferee, who should be named in the assignment. Assignment in blank will also be accepted for the purpose of transfer, if accompanied by the necessary instructions for the issue of the new bonds.

[25] Dated July 4, 1994. *Rollo*, G.R. Nos. 154470-71, pp. 116-117.

[intends] to put the [BSP] on formal notice that whoever is in possession of said bills is not a holder in due course," and, therefore the BSP should not make payment upon the presentation of the CB bills on maturity.[26] Nuqui responded that the BSP was "not in a position at [that] point in time to determine who is and who is not the holder in due course [since it] is not privy to all acts and time involving the transfers or negotiation" of the CB bills. Nuqui added that the BSP's action shall be governed by CB Circular No. 28, as amended.[27]

On November 17, 1994, the PDB also asked BSP Deputy Governor Edgardo Zialcita that (i) a notation in the BSP's books be made against the transfer, exchange, or payment of the bonds and the payment of interest thereon; and (ii) the presenter of the bonds upon maturity be required to submit proof as a holder in due course (of the first set of CB bills). The PDB relied on Section 10 (d) 4 of CB Circular No. 28.[28] This provision reads:

> (4) Assignments effected by fraud — Where the assignment of a registered bond is secured by fraudulent representations, the Central Bank can grant no relief if the assignment has been honored without notice of fraud. Otherwise, the Central Bank, **upon receipt of notice that the assignment is claimed to have been secured by fraudulent representations, or payment of the bond the payment of interest thereon, and when the bond is presented, will call upon <u>the owner</u> and <u>the person presenting the bond</u> to substantiate their respective claims**. If it then appears that the person presenting the bond stands in the position of bonafide holder for value, the Central Bank, after giving the owner an opportunity to assert his claim, will pass the bond for transfer, exchange or payments, as the case may be, without further question.

In a December 29, 1994 letter, Nuqui again denied the request, reiterating the BSP's previous stand.

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[26] Records, Volume 1, p. 71.

[27] *Id.* at 72.

[28] *Rollo*, G.R. Nos. 154470-71, pp. 118-119. The provision erroneously cited Section 10 (d) 3, instead of Section 10 (d) 4.

In light of these BSP responses and the impending maturity of the CB bills, the PDB filed[29] with the RTC two separate petitions for *Mandamus*, Prohibition and Injunction with prayer for Preliminary Injunction and Temporary Restraining Order, docketed as Civil Case No. 94-3233 (covering the first set of CB bills) and Civil Case 94-3254 (covering the second set of CB bills) against Nuqui, the BSP and the RCBC.[30]

The PDB essentially claims that in both the April 15 transaction (involving the first set of CB bills) and the April 19 transaction (involving the second set of CB bills), there was no intent on its part to transfer title of the CB bills, as shown by its non-issuance of a detached assignment in favor of the BOC and Bancap, respectively. The PDB particularly alleges that it merely "warehoused"[31] the first set of CB bills with the BOC, as security collateral.

On December 28, 1994, the RTC temporarily enjoined Nuqui and the BSP from paying the face value of the CB bills on maturity.[32] On January 10, 1995, the PDB filed an Amended Petition, additionally impleading the BOC and All Asia.[33] In a January 13, 1995 Order, the cases were consolidated.[34] On January 17, 1995, the RTC granted the PDB's application for a writ of preliminary prohibitory injunction.[35] In both petitions, the PDB identically prayed:

> WHEREFORE, it is respectfully prayed x x x that, after due notice and hearing, the Writs of *Mandamus*, Prohibition and Injunction, be issued; (i) commanding the [BSP] and [Nuqui], or whoever may take her place -

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[29] The first petition, docketed as Civil Case No. 94-3233 was filed on December 23, 1994 (*id.* at 344), while the second petition, docketed as Civil Case No. 94-3254 was filed on December 29, 1994 (*id.* at 345).

[30] *Id.* at 54, 79.

[31] *Id.* at 100.

[32] Records, Volume I, p. 53.

[33] *Rollo*, G.R. Nos. 154470-71, pp. 97-108.

[34] *Id.* at 96.

[35] Records, Volume I, pp. 243-246.

(a) to record forthwith in the books of BSP the claim of x x x PDB on the [two sets of] CB Bills in accordance with Section 10 (d) (4) of revised C.B. Circular No. 28; and

(b) also pursuant thereto, when the bills are presented on maturity date for payment, to call (i) x x x PDB[,] (ii) x x x RCBC x x x, (iii) x x x BOC x x x, and (iv) x x x ALL-ASIA x x x; or whoever will present the [first and second sets of] CB Bills for payment, to submit proof as to who stands as the holder in due course of said bills, and, thereafter, act accordingly;

and (ii) [ordering the BSP and Nuqui] to pay jointly and severally to x x x PDB the following:

(a) the sum of ₱100,000.00, as and for exemplary damages;

(b) the sum of at least ₱500,000.00, or such amount as shall be proved at the trial, as and for attorney's fees;

(c) the legal rate of interest from the filing of this Petition until full payment of the sums mentioned in this Petition; and

(d) the costs of suit.[36]

After the petitions were filed, the BOC acquired/reacquired all the nine CB bills — the first and second sets of CB bills (*collectively, subject CB bills*).

Defenses of the BSP and of the BOC[37]

The BOC filed its Answer, praying for the dismissal of the petition. It argued that the PDB has no cause of action against it since the PDB is no longer the owner of the CB bills. Contrary to the PDB's "warehousing theory,"[38] the BOC asserted that the (i) April 15 transaction and the (ii) April 19 transaction — covering both sets of CB bills - were valid contracts of sale, followed by a transfer of title (i) to the BOC (in the April 15

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[36] *Rollo*, G.R. Nos. 154470-71, pp. 106-107.

[37] The RCBC and All Asia filed their respective Answers, both seeking the dismissal of the PDB's petition, among others. (Records, Volume II, pp. 551-585).

[38] *Rollo*, G.R. Nos. 154470-71, p. 131.

transaction) upon the PDB's delivery of the 1st set of CB bills *in substitution* of the Treasury Bills the PDB originally intended to sell, and (ii) to Bancap (in the April 19 transaction) upon the PDB's delivery of the 2nd set of CB bills to Bancap, likewise by way of substitution.

The BOC adds that Section 10 (d) 4 of CB Circular No. 28 cannot apply to the PDB's case because (i) the PDB is not in possession of the CB bills and (ii) the BOC acquired these bills from the PDB, as to the 1st set of CB bills, and from Bancap, as to the 2nd set of CB bills, in good faith and for value. The BOC also asserted a compulsory counterclaim for damages and attorney's fees.

On the other hand, the BSP countered that the PDB cannot invoke Section 10 (d) 4 of CB Circular No. 28 because this section applies only to an "owner" and a "person presenting the bond," of which the PDB is neither. The PDB has not presented to the BSP any assignment of the subject CB bills, duly recorded in the BSP's books, in its favor to clothe it with the status of an "owner."[39] According to the BSP –

> Section 10 d. (4) applies only to a <u>registered bond</u> which is <u>assigned</u>. And the issuance of CB Bills x x x are required to be <u>recorded/ registered</u> in BSP's books. In this regard, <u>Section 4 a. (1)</u> of CB Circular 28 provides that <u>registered bonds "may be transferred only by an assignment</u> thereon duly executed by the registered owner or his duly authorized representative x x x <u>and duly recorded on the books of the Central Bank</u>."
>
> x x x x x x x x x
>
> <u>The alleged assignment of subject CB Bills in PDB's favor is not recorded/registered in BSP's books</u>.[40] (underscoring supplied)

Consequently, when Nuqui and the BSP refused the PDB's request (to record its claim), they were merely performing their duties in accordance with CB Circular No. 28.

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[39] *Id.* at 142, 145.

[40] *Id.* at 144-145.

Alternatively, the BSP asked that an interpleader suit be allowed between and among the claimants to the subject CB bills on the position that while it is able and willing to pay the subject CB bills' face value, it is duty bound to ensure that payment is made to the rightful owner. The BSP prayed that judgment be rendered:

a. Ordering the dismissal of the [PDB's petition] for lack of merit;

b. Determining which between/among [PDB] and the other claimants is/are lawfully entitled to the ownership of the subject CB bills and the proceeds thereof;

c. x x x;

d. Ordering PDB to pay BSP and Nuqui such actual/ compensatory and exemplary damages… as [the RTC] may deem warranted; and

e. Ordering PDB to pay Nuqui moral damages… and to pay the costs of the suit.[41]

Subsequent events

The PDB agreed with the BSP's alternative response for an interpleader —

4. PDB agrees that the various claimants should now interplead and substantiate their respective claims on the subject CB bills. However, the total face value of the subject CB bills should be deposited in escrow with a private bank to be disposed of only upon order [of the RTC].[42]

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[41] *Id.* at 150.

[42] *Id.* at 184. The PDB maintained this position in its Pre-Trial Brief (Records, Volume 4, p. 1004). While the PDB subsequently doubted the necessity of an interpleader, it reasoned as follows:

> 4.1 The parties are now in the process of threshing out among themselves their respective claims;
>
> 4.2 Pending final determination by [the RTC] or amicable settlement as to who shall eventually be entitled to the maturity proceeds of the subject CB bills, [PDB] and [BOC] have entered into an Escrow Agreement[.] (Records, Volume 4, p. 905.)

Accordingly, on June 9, 1995[43] and August 4, 1995,[44] the BOC and the PDB entered into two separate Escrow Agreements.[45] The first agreement covered the first set of CB bills, while the second agreement covered the second set of CB bills. The parties agreed to jointly collect from the BSP the maturity proceeds of these CB bills and to deposit said amount in escrow, "pending final determination by Court judgment, or amicable settlement as to who shall be eventually entitled thereto."[46] The BOC and the PDB filed a Joint Motion,[47] submitting these Escrow Agreements for court approval. The RTC gave its approval to the parties' Joint Motion.[48] Accordingly, the BSP released the maturity proceeds of the CB bills by crediting the Demand Deposit Account of the PDB and of the BOC with 50% each of the maturity proceeds of the amount in escrow.[49]

In view of the BOC's acquisition of all the CB bills, All Asia[50] moved to be dropped as a respondent (with the PDB's conformity[51]), which the RTC granted.[52] The RCBC subsequently followed suit. [53]

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[43] *Rollo*, G.R. Nos. 154470-71, pp. 156-159.

[44] *Id.* at 171-175.

[45] Considering that the proceeds of the CB bills do not earn interest while in the BSP's possession upon maturity and thereafter (Records, Volume 4, p. 869).

[46] *Rollo*, G.R. Nos. 154470-71, p. 156.

[47] *Rollo*, G.R. Nos. 154589-90, pp. 140-142, 150-152.

[48] *Id.* at 144, 154. The RTC granted the first Joint Motion to Approve covering the first set of bills excluding that in the possession of All Asia because of All Asia's Opposition, and the PDB and the BOC's Comment thereto (Records, Volume 4, pp. 784-789). However, the BOC and All Asia subsequently executed an Agreement wherein, essentially, the BOC would indemnify All Asia. On joint motion of the BOC and All Asia, the CB bill in All Asia's possession was likewise included in escrow.

[49] Records, Volume 4, pp. 884-885, 921-922.

[50] *Id.* at 959, 961-962.

[51] *Id.* at 967-971.

[52] *Rollo*, G.R. Nos. 154470-71, p. 349.

[53] Records, Volume 4, pp. 976, 980. Nuqui was also dropped as a defendant without objection from PDB (*id.* at 1022-1023).

In light of the developments, on May 4, 1998, the RTC required the parties to manifest their intention regarding the case and to inform the court of any amicable settlement; "otherwise, th[e] case shall be dismissed for lack of interest."[54] Complying with the RTC's order, the BOC moved (i) that the case be set for pre-trial and (ii) for further proceeding to resolve the remaining issues between the BOC and the PDB, particularly on "who has a better right over the subject CB bills."[55] The **PDB joined the BOC in its motion**.[56]

On September 28, 2000, the RTC granted the BSP's motion to interplead and, accordingly, required the BOC to amend its Answer and for the conflicting claimants to comment thereon.[57] In October 2000, the BOC filed its *Amended Consolidated Answer with Compulsory Counterclaim*, reiterating its earlier arguments asserting ownership over the subject CB bills.[58]

In the alternative, the BOC added that even assuming that there was no effective transfer of the nine CB bills ultimately to the BOC, the PDB remains obligated to deliver to the BOC, as buyer in the April 15 transaction and ultimate successor-in-interest of the buyer (Bancap) in the April 19 transaction, either the original subjects of the sales or the value thereof, plus whatever income that may have been earned during the pendency of the case.[59]

That BOC prayed:

1. To declare BOC as the rightful owner of the nine (9) CB bills and as the party entitled to the proceeds thereof as well as all

[54] *Id.* at 972.

[55] *Id.* at 973.

[56] *Id.* at 984.

[57] *Rollo*, G.R. Nos. 154470-71, p. 181.

[58] *Amended Consolidated Answer with Compulsory Counterclaims; id.* at 187-207. The BOC reiterated that it had already acquired whatever rights the other claimants had over the two sets of CB bills; *id.* at 16, 187, 204.

[59] *Id.* at 205.

income earned pursuant to the two (2) Escrow Agreements entered into by BOC and PDB.

2. In the alternative, ordering PDB to deliver the original subject of the sales transactions or the value thereof and whatever income earned by way of interest at prevailing rate.

Without any opposition or objection from the PDB, on February 23, 2001, the RTC admitted[60] the BOC's *Amended Consolidated Answer with Compulsory Counterclaims*.

In May 2001, the PDB filed an Omnibus Motion,[61] questioning the RTC's jurisdiction over the BOC's "additional counterclaims." The PDB argues that its petitions pray for the BSP (not the RTC) to determine who among the conflicting claimants to the CB bills stands in the position of the *bona fide* holder for value. The RTC cannot entertain the BOC's counterclaim, regardless of its nature, because it is the BSP which has jurisdiction to determine who is entitled to receive the proceeds of the CB bills.

The BOC opposed[62] the PDB's Omnibus Motion. The PDB filed its Reply.[63]

In a January 10, 2002 Order, the RTC dismissed the PDB's petition, the BOC's counterclaim and the BSP's counter-complaint/cross-claim for interpleader, holding that under CB Circular No. 28, it has no jurisdiction (i) over the BOC's "counterclaims" and (ii) to resolve the issue of ownership of the CB bills.[64] With the denial of their separate motions for reconsideration,[65] the BOC and the BSP separately filed the present petitions for review on *certiorari*.[66]

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[60] *Id.* at 239; records, Volume 4, p. 1151.

[61] *Rollo*, G.R. Nos. 154589-90, pp. 207- 216.

[62] *Id.* at 250-261.

[63] *Id.* at 272-273.

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

[65] *Id.* at 287-300. The BSP adopted the BOC's arguments in its motion for reconsideration.

[66] In a Resolution dated November 20, 2002, these two cases were consolidated on motion of BOC; *id.* at 224, 333.

THE BOC'S and THE BSP'S PETITIONS

The BOC argues that the present cases do not fall within the limited provision of Section 10 (d) 4 of CB Circular No. 28, which contemplates only of three situations: *first,* where the fraudulent assignment is not coupled with a notice to the BSP, it can grant no relief; *second,* where the fraudulent assignment is coupled with a notice of fraud to the BSP, it will make a notation against the assignment and require the *owner* and the *holder* to substantiate their claims; and *third*, where the case does not fall on either of the first two situations, the BSP will have to await action on the assignment pending settlement of the case, whether by agreement or by court order.

The PDB's case cannot fall under the first two situations. With particular regard to the second situation, CB Circular No. 28 requires that the conflict must be between an "owner" and a "holder," for the BSP to exercise its limited jurisdiction to resolve conflicting claims; and the word "owner" here refers to the registered owner giving notice of the fraud to the BSP. The PDB, however, is not the registered owner nor is it in possession (holder) of the CB bills.[67] Consequently, the PDB's case can only falls under the third situation which leaves the RTC, as a court of general jurisdiction, with the authority to resolve the issue of ownership of a registered bond (the CB bills) not falling in either of the first two situations.

The BOC asserts that the policy consideration supportive of its interpretation of CB Circular No. 28 is to have a reliable system to protect the registered owner; should he file a notice with the BSP about a fraudulent assignment of certain CB bills, the BSP simply has to look at its books to determine who is the owner of the CB bills fraudulently assigned. Since it is only the registered owner who complied with the BSP's requirement of recording an assignment in the BSP's books, then "the protective mantle of administrative proceedings" should necessarily benefit him only, without extending the same benefit

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[67] *Id.* at 21-22.

to those who chose to ignore the Circular's requirement, like the PDB.[68]

Assuming *arguendo* that the PDB's case falls under the second situation — *i.e.*, the BSP has jurisdiction to resolve the issue of ownership of the CB bills — the more recent CB Circular No. 769-80 (*Rules and Regulations Governing Central Bank Certificates of Indebtedness*) already superseded CB Circular No. 28, and, in particular, effectively amended Section 10 (d) 4 of CB Circular No. 28. The pertinent provisions of CB Circular No. 769-80 read:

> Assignment Affected by Fraud. – Any assignment for transfer of ownership of registered certificate obtained through fraudulent representation if honored by the Central Bank or any of its authorized service agencies shall not make the Central Bank or agency liable therefore unless it has previous formal notice of the fraud. The Central Bank, upon notice under oath that the assignment was secured through fraudulent means, shall immediately issue and circularize a "stop order" against the transfer, exchange, redemption of the Certificate including the payment of interest coupons. The Central Bank or service agency concerned shall continue to withhold action on the certificate until such time that the conflicting claims have been finally settled either by amicable settlement between the parties or by order of the Court.

Unlike CB Circular No. 28, CB Circular No. 769-80 limited the BSP's authority to the mere issuance and circularization of a "stop order" against the transfer, exchange and redemption upon sworn notice of a fraudulent assignment. Under this Circular, the BSP shall only continue to withhold action until the dispute is ended by an amicable settlement or by judicial determination. Given the more passive stance of the BSP — the very agency tasked to enforce the circulars involved - under CB Circular No. 769-80, the RTC's dismissal of the BOC's counterclaims is palpably erroneous.

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[68] *Rollo*, G.R. Nos. 154470-71, pp. 407-408.

Lastly, since Nuqui's office (Government Securities Department) had already been abolished,[69] it can no longer adjudicate the dispute under the second situation covered by CB Circular No. 28. The abolition of Nuqui's office is not only consistent with the BSP's Charter but, more importantly, with CB Circular No. 769-80, which removed the BSP's adjudicative authority over fraudulent assignments.

THE PDB'S COMMENT

The PDB claims that jurisdiction is determined by the allegations in the complaint/petition and not by the defenses set up in the answer.[70] In filing the petition with the RTC, the PDB merely seeks to compel the BSP to determine, pursuant to CB Circular No. 28, the party legally entitled to the proceeds of the subject CB bills, which, as the PDB alleged, have been transferred through fraudulent representations — an allegation which properly recognized the BSP's jurisdiction to resolve conflicting claims of ownership over the CB bills.

The PDB adds that under the doctrine of primary jurisdiction, courts should refrain from determining a controversy involving a question whose resolution demands the exercise of sound administrative discretion. In the present case, the BSP's special knowledge and experience in resolving disputes on securities, whose assignment and trading are governed by the BSP's rules, should be upheld.

The PDB counters that the BOC's tri-fold interpretation of Section 10 (d) 4 of CB Circular No. 28 sanctions split jurisdiction which is not favored; but even this tri-fold interpretation which, in the second situation, limits the meaning of the "owner" to the registered owner is flawed. Section 10 (d) 4 aims to protect not just the registered owner but anyone who has been deprived of his bond by fraudulent representation in order to deter fraud in the secondary trading of government securities.

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[69] Pursuant to Section 129 of Republic Act (*RA*) No. 7653 (the New Central Bank Act).

[70] *Rollo*, G.R. Nos. 154470-71, p. 353, citing *Alemar's (Sibal & Sons), Inc. v. Court of Appeals*, 403 Phil. 236 (2001).

The PDB asserts that the existence of CB Circular No. 769-80 or the abolition of Nuqui's office does not result in depriving the BSP of its jurisdiction: *first*, CB Circular No. 769-80 expressly provides that CB Circular No. 28 shall have suppletory application to CB Circular No. 769-80; and *second*, the BSP can always designate an office to resolve the PDB's claim over the CB bills.

Lastly, the PDB argues that even assuming that the RTC has jurisdiction to resolve the issue of ownership of the CB bills, the RTC has not acquired jurisdiction over the BOC's so-called "compulsory" counterclaims (which in truth is merely "permissive") because of the BOC's failure to pay the appropriate docket fees. These counterclaims should, therefore, be dismissed and expunged from the record.

THE COURT'S RULING

We grant the petitions.

At the outset, we note that the parties have not raised the validity of either CB Circular No. 28 or CB Circular No. 769-80 as an issue. What the parties largely contest is the applicable circular in case of an allegedly fraudulently assigned CB bill. The applicable circular, in turn, is determinative of the proper remedy available to the PDB and/or the BOC as claimants to the proceeds of the subject CB bills.

Indisputably, at the time the PDB supposedly invoked the jurisdiction of the BSP in 1994 (by requesting for the annotation of its claim over the subject CB bills in the BSP's books), CB Circular No. 769-80 has long been in effect. Therefore, the parties' respective interpretations of the provision of Section 10 (d) 4 of CB Circular No. 28 do not have any significance unless it is first established that that Circular governs the resolution of their conflicting claims of ownership. This conclusion is important, given the supposed repeal or modification of Section 10 (d) 4 of CB Circular No. 28 by the following provisions of CB Circular No. 769-80:

ARTICLE XI
SUPPLEMENTAL RULES

Section 1. Central Bank Circular No. 28 — The provisions of Central Bank Circular No. 28 shall have **suppletory application** to matters not specially covered by these Rules.

ARTICLE XII
EFFECTIVITY

Effectivity — The rules and regulations herein prescribed shall take effect upon approval by the Monetary Board, Central Bank of the Philippines, and **all circulars**, memoranda, or office orders **inconsistent herewith are revoked or modified accordingly**. (Emphases added)

We agree with the PDB that in view of CB Circular No. 28's suppletory application, an attempt to harmonize the apparently conflicting provisions is a prerequisite before one may possibly conclude that an amendment or a repeal exists.[71] Interestingly, however, even the PDB itself failed to submit an interpretation based on its own position of harmonization.

The repealing clause of CB Circular No. 769-80 obviously did not *expressly* repeal CB Circular No. 28; in fact, it even provided for the suppletory application of CB Circular No. 28 on "matters not specially covered by" CB Circular No. 769-80. While no express repeal exists, the intent of CB Circular No. 769-80 to operate as an implied repeal,[72] or at least to amend earlier CB circulars, is supported by its text "revok[i]ng]" or "modif[y]ing" "all circulars" which are inconsistent with its terms.

At the outset, we stress that none of the parties disputes that the subject CB bills fall within the category of a certificate or evidence of indebtedness and that these were issued by the Central Bank, now the BSP. Thus, even without resorting to statutory

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[71] Ruben E. Agpalo, *Statutory Construction*, pp. 388, 399, 5th ed., 2003.

[72] *Mecano v. Commission on Audit*, G.R. No. 103982, December 11, 1992, 216 SCRA 500, 505-506; and *Berces, Sr. v. Guingona, Jr.*, 311 Phil. 614, 620 (1995).

construction aids, matters involving the subject CB bills should necessarily be governed by CB Circular No. 769-80. Even granting, however, that reliance on CB Circular No. 769-80 alone is not enough, we find that CB Circular No. 769-80 impliedly repeals CB Circular No. 28.

An implied repeal transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws.[73] Repeal by implication is not favored, unless manifestly intended by the legislature, or unless it is convincingly and unambiguously demonstrated, that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist; the legislature is presumed to know the existing law and would express a repeal if one is intended.[74]

There are two instances of implied repeal. One takes place when the provisions in the two acts on the same subject matter are irreconcilably contradictory, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The other occurs when the later act covers the whole subject of the earlier one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law.[75]

A general reading of the two circulars shows that the second instance of implied repeal is present in this case. CB Circular No. 28, entitled "Regulations Governing Open Market Operations, Stabilization of Securities Market, Issue, Servicing and Redemption of Public Debt," is a regulation governing the servicing and redemption of public debt, including the issue, inscription, registration, transfer, payment and replacement of

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[73] *Berces, Sr. v. Guingona, Jr., supra*; and *Social Justice Society (SJS) v. Atienza, Jr.,* G.R. No. 156052, February 13, 2008, 545 SCRA 92, 129-130.

[74] *The United Harbor Pilots' Asso. v. Asso. of Int'l. Shipping Lines, Inc.,* 440 Phil. 188, 199 (2002).

[75] *Mecano v. Commission on Audit, supra* note 72, at 506.

bonds and securities representing the public debt.[76] On the other hand, CB Circular No. 769-80, entitled "Rules and Regulations Governing Central Bank Certificate of Indebtedness," is the governing regulation on matters[77] (i) involving certificate of indebtedness[78] issued by the Central Bank itself and (ii) which are similarly covered by CB Circular No. 28.

The CB Monetary Board issued CB Circular No. 28 to regulate the servicing and redemption of public debt, pursuant to Section 124 (now Section 119 of Republic Act [R.A.] No. 7653) of the old Central Bank law[79] which provides that "the servicing and redemption of the public debt shall also be effected through the [Bangko Sentral]." However, even as R.A. No. 7653 continued to recognize this role by the BSP, the law required a phase-out of all fiscal agency functions by the BSP, including Section 119 of R.A. No. 7653.

In other words, even if CB Circular No. 28 applies broadly to both government-issued bonds and securities and Central Bank-issued evidence of indebtedness, given the present state of law, CB Circular No. 28 and CB Circular No. 769-80 now operate on the same subject — Central Bank-issued evidence of indebtedness. Under Section 1, Article XI of CB Circular No. 769-80, the continued relevance and application of CB Circular No. 28 would depend on the need to supplement any

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[76] Section 2, CB Circular No. 28.

[77] CB Circular No. 769-80 provides the following: Article I (Issue of Central Bank Certificates of Indebtedness); Article II (Bearer and Registered Certificates); Article III (Registration and Inscription of Certificates); Article IV (Exchange of Certificates); Article V (Assignment for Transfer of Certificates); and Article VI (Pledge of Certificates).

[78] A certificate or evidence of indebtedness is a written representation of debt securities or obligations of corporations (like the BSP [Section 1, R.A. No. 7653]) such as long term commercial and short term commercial papers (*Securities and Regulations Code Annotated with Implementing Rules and Regulations*, Lucila M. Decasa, 2004, 1st ed., p. 7).

[79] Section 124. Servicing and redemption of the public debt. — The servicing and redemption of the public debt shall also be effected through the Central Bank.

deficiency or silence in CB Circular No. 769-80 on a particular matter.

In the present case, both CB Circular No. 28 and CB Circular No. 769-80 provide the BSP with a course of action in case of an allegedly fraudulently assigned certificate of indebtedness. Under CB Circular No. 28, in case of fraudulent assignments, the BSP would have to "call upon the owner and the person presenting the bond to substantiate their respective claims" and, from there, determine who has a better right over the registered bond. On the other hand, under CB Circular No. 769-80, the BSP shall merely "issue and circularize a 'stop order' against the transfer, exchange, redemption of the [registered] certificate" *without any adjudicative function* (which is the precise root of the present controversy). As the two circulars stand, the patent irreconcilability of these two provisions does not require elaboration. Section 5, Article V of CB Circular No. 769-80 inescapably repealed Section 10 (d) 4 of CB Circular No. 28.

The issue of BSP's jurisdiction, lay hidden

On that note, the Court could have written *finis* to the present controversy by simply sustaining the BSP's hands-off approach to the PDB's problem under CB Circular No. 769-80. However, the jurisdictional provision of CB Circular No. 769-80 itself, in relation to CB Circular No. 28, on the matter of fraudulent assignment, has given rise to a question of jurisdiction - the ***core*** question of law involved in these petitions - which the Court cannot just treat *sub-silencio*.

Broadly speaking, jurisdiction is the legal power or authority to hear and determine a cause.[80] In the exercise of judicial or quasi-judicial power, it refers to the authority of a court to hear and decide a case.[81] In the context of these petitions, we hark back to the basic principles governing the question of jurisdiction over the subject matter.

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[80] Webster's Third New Int'l. Dictionary.

[81] Oscar M. Herrera, *Remedial Law*, Volume 1, p. 71.

First, jurisdiction over the subject matter is determined only by the Constitution and by law.[82] As a matter of substantive law, procedural rules alone can confer no jurisdiction to courts or administrative agencies.[83] In fact, an administrative agency, acting in its quasi-judicial capacity, is a tribunal of limited jurisdiction and, as such, could wield only such powers that are specifically granted to it by the enabling statutes. In contrast, an RTC is a court of general jurisdiction, *i.e.*, it has jurisdiction over cases whose subject matter does not fall within the exclusive original jurisdiction of any court, tribunal or body exercising judicial or quasi-judicial functions.[84]

***Second*,** jurisdiction over the subject matter is determined not by the pleas set up by the defendant in his answer[85] but by the allegations in the complaint,[86] irrespective of whether the plaintiff is entitled to favorable judgment on the basis of his assertions.[87] The reason is that the complaint is supposed to contain a concise statement of the ultimate facts constituting the plaintiff's causes of action.[88]

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[82] CONSTITUTION, Article VIII, Section 2.

[83] *Fernandez v. Fulgueras*, G.R. No. 178575, June 29, 2010, 622 SCRA 174, 178; *Dept. of Agrarian Reform Adjudication Board v. Lubrica*, 497 Phil. 313, 322-324 (2005); and *Republic v. Court of Appeals*, G.R. No. 122256, October 30, 1996, 263 SCRA 758, 764.

[84] Batas Pambansa Blg. 129, Section 19(6).

[85] *Tamano v. Ortiz,* G.R. No. 126603, June 29, 1998, 291 SCRA 584, 588.

[86] *Mendoza v. Germino*, G.R. No. 165676, November 22, 2010, 635 SCRA 537, 544; *Eristingcol v. Court of Appeals*, G.R. No. 167702, March 20, 2009, 582 SCRA 139, 146; *Lacson Hermanas Inc. v. Heirs of Cenon Ignancio*, 500 Phil. 673, 678-679 (2005); and *Pilipinas Loan Co., Inc. v. Securities and Exchange Comm.*, 408 Phil. 291, 300 (2001).

[87] *Multinational Village Homeowners' Association, Inc. v. Court of Appeals*, G.R. No. 98023, October 17, 1991, 203 SCRA 104, 107.

[88] *Nocum v. Tan*, G.R. No. 145022, September 23, 2006, 470 SCRA 639, 644-645.

Third, jurisdiction is determined by the law in force at the time of the filing of the complaint.[89]

Parenthetically, the Court observes that none of the parties ever raised the issue of whether the BSP can simply disown its jurisdiction, assuming it has, by the simple expedient of promulgating a new circular (specially applicable to a certificate of indebtedness issued by the BSP itself), inconsistent with an old circular, assertive of its limited jurisdiction over ownership issues arising from fraudulent assignments of a certificate of indebtedness. The PDB, in particular, relied solely and heavily on CB Circular No. 28.

In light of the above principles pointing to jurisdiction as a matter of substantive law, the provisions of the law itself that gave CB Circular 769-80 its life and jurisdiction must be examined.

The Philippine Central Bank

On January 3, 1949, Congress created the Central Bank of the Philippines (*Central Bank*) as a corporate body with the primary objective of (i) maintaining the internal and external monetary stability in the Philippines; and (ii) preserving the international value and the convertibility of the peso.[90] In line with these broad objectives, the Central Bank was empowered to issue rules and regulations "necessary for the effective discharge of the responsibilities and exercise of the powers assigned to the Monetary Board and to the Central Bank."[91] Specifically, the Central Bank is authorized to organize (other) departments for the efficient conduct of its business and whose powers and duties "shall be determined by the Monetary Board, within the authority granted to the Board and the Central Bank"[92] under its original charter.

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[89] *Errectors, Inc. v. NLRC*, 326 Phil. 640, 645 (1996).

[90] Section 2 of R.A. No. 265, as amended.

[91] Section 14 of R.A. No. 265, as amended.

[92] Section 35 of R.A. No. 265.

With the 1973 Constitution, the then Central Bank was constitutionally made as the country's central monetary authority until such time that Congress[93] shall have established a central bank. The 1987 Constitution continued to recognize this function of the then Central Bank until Congress, pursuant to the Constitution, created a new central monetary authority which later came to be known as the *Bangko Sentral ng Pilipinas*.

Under the New Central Bank Act (*R.A. No. 7653*),[94] the BSP is given the responsibility of providing *policy* directions in the areas of money, banking and credit; it is given, too, the primary objective of maintaining price stability, conducive to a balanced and sustainable growth of the economy, and of promoting and maintaining monetary stability and convertibility of the peso.[95]

The Constitution expressly grants the BSP, as the country's central monetary authority, the power of supervision over the operation of banks, while leaving with Congress the authority to define the BSP's regulatory powers over the operations of finance companies and other institutions performing similar functions. Under R.A. No. 7653, the BSP's powers and functions include (i) supervision over the operation of banks; (ii) regulation of operations of finance companies and non-bank financial institutions performing quasi banking functions; (iii) sole power and authority to issue currency within the Philippine territory; (iv) engaging in foreign exchange transactions; (v) making rediscounts, discounts, loans and advances to banking and other financial institutions to influence the volume of credit consistent with the objective of achieving price stability; (vi) engaging in open market operations; and (vii) acting as banker and financial advisor of the government.

On the BSP's power of supervision over the operation of banks, Section 4 of R.A. No. 8791 (The General Banking Law of 2000) elaborates as follows:

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[93] The National Assembly.

[94] Took effect on July 3, 1993.

[95] Section 3 of R.A. No. 7653.

CHAPTER II
AUTHORITY OF THE BANGKO SENTRAL

SECTION 4. Supervisory Powers. — The operations and activities of banks shall be subject to supervision of the Bangko Sentral. "Supervision" shall include the following:

4.1. The issuance of rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered, taking into consideration the distinctive character of the operations of institutions and the substantive similarities of specific functions to which such rules, modes or standards are to be applied;

4.2. The conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board;

4.3. Overseeing to ascertain that laws and regulations are complied with;

4.4. Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis: Provided, That the deficiencies/irregularities found by or discovered by an audit shall be immediately addressed;

4.5. Inquiring into the solvency and liquidity of the institution (2-D); or

4.6. Enforcing prompt corrective action. (n)

The Bangko Sentral shall also have supervision over the operations of and exercise regulatory powers over quasi-banks, trust entities and other financial institutions which under special laws are subject to Bangko Sentral supervision. (2-Ca)

For the purposes of this Act, "quasi-banks" shall refer to entities engaged in the borrowing of funds through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes as defined in Section 95 of Republic Act No. 7653 (hereafter the "New Central Bank Act") for purposes of relending or purchasing of receivables and other obligations. [emphasis ours]

While this provision empowers the BSP to oversee the operations and activities of banks to "ascertain that laws and regulations are complied with," the existence of the BSP's jurisdiction in the present dispute cannot rely on this provision.

The fact remains that the BSP already made known to the PDB its unfavorable position on the latter's claim of fraudulent assignment due to the latter's own *failure to comply*[96] with existing regulations:

In this connection, Section 10 (b) 2 also requires that a "Detached assignment will be recognized or accepted only upon previous notice to the Central Bank x x x." In fact, in a memo dated September 23, 1991 xxx then CB Governor [Jose L.] Cuisia advised all banks (including PDB) xxx as follows:

> In view recurring incidents ostensibly disregarding certain provisions of CB circular No. 28 (as amended) covering assignments of registered bonds, ***all banks and all concerned are enjoined to observe strictly the pertinent provisions*** of said CB Circular as hereunder quoted:
>
> x x x x x x x x x
>
> Under Section 10.b. (2)
>
> x x x Detached assignment will be recognized or accepted **only upon previous notice** to the Central Bank and its use is authorized only under the following circumstances:
>
> (a) x x x x x x x x x
> (b) x x x x x x x x x
> (c) assignments of treasury notes and certificates of indebtedness in registered form which are not provided at the back thereof with assignment form.
> (d) Assignment of securities which have changed ownership several times.
> (e) x x x x x x x x x
>
> **Non-compliance herewith will constitute a basis for non-action or withholding of action** on redemption/ payment of interest coupons/transfer transactions or denominational exchange that may be directly affected thereby. [Boldfacing supplied]

Again, the books of the BSP do not show that the supposed assignment of subject CB Bills was ever recorded in the BSP's books. [Boldfacing supplied]

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[96] *Rollo*, G.R. Nos. 154470-71, pp. 145-146.

However, the PDB faults the BSP for not recording the assignment of the CB bills in the PDB's favor despite the fact that the PDB already requested the BSP to record its assignment in the BSP's books as early as June 30, 1994.[97]

The PDB's claim is not accurate. What the PDB requested the BSP on that date was ***not*** the recording *of the assignment* of the CB bills in its favor ***but*** the annotation *of its claim* over the CB bills at the time when (i) it was no longer in possession of the CB bills, having been transferred from one entity to another and (ii) all it has are the detached assignments, which the PDB has not shown to be compliant with Section 10 (b) 2 above-quoted. Obviously, the PDB cannot insist that the BSP take cognizance of its plaint when the basis of the BSP's refusal under existing regulation, which the PDB is bound to observe, is the PDB's own failure to comply therewith.

True, the BSP exercises supervisory powers (and regulatory powers) over banks (and quasi banks). The issue presented before the Court, however, does not concern the BSP's supervisory power over banks as this power is understood under the General Banking Law. In fact, there is nothing in the PDB's petition (even including the letters it sent to the BSP) that would support the BSP's jurisdiction outside of CB Circular No. 28, under its power of supervision, over conflicting claims to the proceeds of the CB bills.

BSP has quasi-judicial powers over a class of cases which does not include the adjudication of ownership of the CB bills in question

In *United Coconut Planters Bank v. E. Ganzon, Inc.*,[98] the Court considered the BSP as an administrative agency,[99]

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[97] *Rollo*, G.R. Nos. 154470-71, p. 182.

[98] G.R. No. 168859, June 30, 2009, 591 SCRA 321, 338-341.

[99] See also *Busuego v. Court of Appeals,* 364 Phil. 116, 127, 129-130 (1999).

exercising quasi-judicial functions through its Monetary Board. It held:

A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. A "quasi-judicial function" is a term which applies to the action, discretion, *etc.*, of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

Undoubtedly, the BSP Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. As aptly observed by the Court of Appeals, the BSP Monetary Board is an independent central monetary authority and a body corporate with fiscal and administrative autonomy, mandated to provide policy directions in the areas of money, banking and credit. It has power to issue subpoena, to sue for contempt those refusing to obey the subpoena without justifiable reason, to administer oaths and compel presentation of books, records and others, needed in its examination, to impose fines and other sanctions and to issue cease and desist order. Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same. [citations omitted]

The BSP is not simply a corporate entity but qualifies as an administrative agency created, pursuant to constitutional mandate,[100] to carry out a particular governmental function.[101]

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[100] CONSTITUTION, Article XII, Section 20.

[101] Ruben E. Agpalo, *Administrative Law*, *Law on Public Offices and Election Law*, 2005 ed., p. 7.

To be able to perform its role as central monetary authority, the Constitution granted it fiscal and administrative autonomy. In general, administrative agencies exercise powers and/or functions which may be characterized as administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of these five, as may be conferred by the Constitution or by statute.[102]

While the very nature of an administrative agency and the *raison d'être* for its creation[103] and proliferation dictate a grant of quasi-judicial power to it, ***the matters over which it may exercise this power*** must find sufficient anchorage on its enabling law, either by express provision or by necessary implication. Once found, the quasi-judicial power partakes of the nature of a limited and special jurisdiction, that is, to hear and determine a ***class of cases*** within its peculiar competence and expertise. In other words, the provisions of the enabling statute are the yardsticks by which the Court would measure the quantum of quasi-judicial powers an administrative agency may exercise, as defined in the enabling act of such agency.[104]

Scattered provisions in R.A. No. 7653 and R.A. No. 8791, *inter alia*, exist, conferring jurisdiction on the BSP on certain matters.[105] For instance, under the situations contemplated under

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[102] *Soriano v. Laguardia*, G.R. Nos. 164785 and 165636, April 29, 2009, 587 SCRA 79, 90; and *Smart Communications, Inc. v. Nat'l. Telecommunications Commission*, 456 Phil. 145, 155 (2003).

[103] The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. *Francisco, Jr. v. Toll Regulatory Board, et al.*, G.R. No. 166910, October 19, 2010, 633 SCRA 470, 520, citing *C.T. Torres Enterprises, Inc. v. Hibionada*, G.R. No. 80916, November 9, 1990, 191 SCRA 268.

[104] *Department of Agrarian Reform Adjudication Board (DARAB) v. Lubrica*, G.R. No. 159145, April 29, 2005, 457 SCRA 800; and *Fernandez v. Fulgeras*, G.R. No. 178575, June 29, 2010, 622 SCRA 174, 179.

[105] See also *Koruga v. Arcenas, Jr.*, G.R. Nos. 168332 and 169053, June 19, 2009, 590 SCRA 49, 60-70.

Section 36, par. 2[106] (where a bank or quasi bank persists in carrying on its business in an unlawful or unsafe manner) and Section 37[107] (where the bank or its officers willfully violate the bank's charter or by-laws, or the rules and regulations issued by the Monetary Board) of R.A. No. 7653, the BSP may place

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[106] Section 36, par. 2 of R.A. No. 7653 reads:

Section 36. *Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions.* — xxx

Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.

[107] Section 37 reads:

Section 37. *Administrative Sanctions on Banks and Quasi-banks.* — Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (₱30,000.00) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

x x x x x x x x x

an entity under receivership and/or liquidation or impose administrative sanctions upon the entity or its officers or directors.

Among its several functions under R.A. No. 7653, the BSP is authorized to engage in open market operations and thereby "issue, place, buy and sell freely negotiable evidences of indebtedness of the Bangko Sentral" in the following manner.

SEC. 90. *Principles of Open Market Operations*. — The open market purchases and sales of securities by the Bangko Sentral shall be made exclusively in accordance with its primary objective of achieving price stability.

x x x x x x x x x

SEC. 92. *Issue and Negotiation of Bangko Sentral Obligations.* — In order to provide the Bangko Sentral with effective instruments for open market operations, the Bangko Sentral may, **subject to such rules and regulations as the Monetary Board may prescribe and in accordance with the principles stated in Section 90 of**

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten thousand pesos (₱10,000.00) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.

this Act, issue, place, buy and sell freely negotiable evidences of indebtedness of the Bangko Sentral: *Provided,* That issuance of such certificates of indebtedness shall be made only in cases of extraordinary movement in price levels. Said evidences of indebtedness may be issued directly against the international reserve of the Bangko Sentral or against the securities which it has acquired under the provisions of Section 91 of this Act, or may be issued without relation to specific types of assets of the Bangko Sentral.

The Monetary Board **shall determine the interest rates, maturities and other characteristics of said obligations of the Bangko Sentral**, and may, if it deems it advisable, denominate the obligations in gold or foreign currencies.

Subject to the principles stated in Section 90 of this Act, the evidences of indebtedness of the Bangko Sentral to which this section refers may be acquired by the Bangko Sentral before their maturity, either through purchases in the open market or through redemptions at par and by lot if the Bangko Sentral has reserved the right to make such redemptions. The evidences of indebtedness acquired or redeemed by the Bangko Sentral shall not be included among its assets, and shall be immediately retired and cancelled.[108] (italics supplied; emphases ours)

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[108] RA No. 265, as amended, is similarly worded, as follows:

Sec. 96. Principles of open market operations. — The open market purchases and sales of securities by the Central Bank shall be made exclusively for the purpose of achieving the objectives of the national monetary policy and shall be limited to the operations authorized in sections 97 and 98 of this Act.

x x x x x x x x x

Sec. 98. Issue and negotiation of Central Bank obligations. — In order to provide the Central Bank with effective instruments for open market operations, the Bank may, **subject to such rules and regulations as the Monetary Board may prescribe** and **in accordance with the principles stated in Section 96 of this Act**, issue, place, buy and sell freely negotiable evidences of indebtedness of the Bank. Said evidences of indebtedness may be issued directly against the international reserve of the Bank or against the securities which it has acquired under the provisions of Section 97 of this Act, or may be issued without relation to specific types of assets of the Bank.

The Monetary Board shall determine the interest rates, maturities and other characteristics of said obligations of the Bank, and may, if it deems it advisable, denominate the obligations in gold or foreign currencies.

The primary objective of the BSP is to maintain price stability.[109] The BSP has a number of monetary policy instruments at its disposal to promote price stability. To increase or reduce liquidity in the financial system, the BSP uses open market operations, among others.[110] Open market operation is a monetary tool where the BSP publicly buys or sells government securities[111] from (or to) banks and financial institutions in order to expand or contract the supply of money. By controlling the money supply, the BSP is able to exert some influence on the prices of goods and services and achieve its inflation objectives.[112]

Once the issue and/or sale of a security is made, the BSP would necessarily make a determination, in accordance with its own rules, of the entity entitled to receive the proceeds of the security upon its maturity. This determination by the BSP

Subject to the principles stated in Section 96 of this Act, the evidences of indebtedness of the Central Bank to which this section refers may be acquired by the Bank before their maturity, either through purchases in the open market or through redemptions at par and by lot if the Bank has reserved the right to make such redemptions. The evidences of indebtedness acquired or redeemed by the Central Bank shall not be included among its assets, and shall be immediately retired and cancelled. [emphasis ours]

[109] Since 2002, the BSP has adopted inflation targeting as a framework of monetary policy aimed at achieving the objective of price stability. Inflation targeting is focused mainly on achieving a low and stable inflation, supportive of the economy's growth objective. This approach entails the announcement of an explicit inflation target that the BSP promises to achieve over a given time period. (http://www.bsp.gov.ph/monetary/targeting.asp)

[110] http://www.bsp.gov.ph/monetary/targeting.asp (accessed on August 15, 2012).

[111] Republic Act No. 8799 defines securities as follows:

> 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes:
>
> (a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities[.]

[112] http://www.bsp.gov.ph/financial/open.asp (accessed on August 15, 2012).

is an exercise of its *administrative* powers[113] under the law as an incident to its power to prescribe rules and regulations governing open market operations to achieve the "primary objective of achieving price stability."[114] As a matter of necessity, too, the same rules and regulations facilitate transaction with the BSP by providing for an orderly manner of, among others, issuing, transferring, exchanging and paying securities representing public debt.

Significantly, when *competing* claims of ownership over the proceeds of the securities it has issued are brought before it, the law has not given the BSP the *quasi-judicial* power to resolve these competing claims as part of its power to engage in open market operations. Nothing in the BSP's charter confers on the BSP the jurisdiction or authority to determine this kind of claims, arising out of a subsequent transfer or assignment of evidence of indebtedness — a matter that appropriately falls within the competence of courts of general jurisdiction. That the statute withholds this power from the BSP is only consistent with the fundamental reasons for the creation of a Philippine central bank, that is, to lay down stable monetary policy and exercise bank supervisory functions. Thus, the BSP's assumption of jurisdiction over competing claims cannot find even a stretched-out justification under its corporate powers "to do and perform any and all things that may be necessary or proper to carry out the purposes" of R.A. No. 7653. [115]

To reiterate, open market operation is a monetary policy instrument that the BSP employs, among others, to regulate the supply of money in the economy to influence the timing,

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[113] Administrative functions are those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence (*In Re: Designation of Judge Rodolfo U. Manzano as member of the Ilocos Norte Provincial Committee on Justice*, 248 Phil. 487, 491-492).

[114] R.A. No. 7653, Section 90.

[115] R.A. No. 7653, Section 5.

cost and availability of money and credit, as well as other financial factors, for the purpose of stabilizing the price level.[116] What the law grants the BSP is a continuing role to shape and carry out the country's monetary policy – not the authority to adjudicate competing claims of ownership over the securities it has issued — since this authority would not fall under the BSP's purposes under its charter.

While R.A. No. 7653[117] empowers the BSP to conduct administrative hearings and render judgment for or against an entity under its supervisory and regulatory powers and even authorizes the BSP Governor to "render decisions, or rulings x x x on matters regarding *application or enforcement of* laws pertaining to institutions supervised by the [BSP] and laws pertaining to quasi-banks, as well as *regulations, policies or instructions* issued by the Monetary Board," it is precisely the text of the BSP's own regulation (whose validity is not here raised as an issue) that points to the BSP's limited role in case of an allegedly fraudulent assignment to simply (i) issuing and circularizing a '"stop order" against the transfer, exchange, redemption of the certificate of indebtedness, including the payment of interest coupons, and (ii) withholding action on the certificate.

A similar conclusion can be drawn from the BSP's administrative adjudicatory power in cases of "willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor."[118] The non-compliance with the pertinent requirements under CB Circular No. 28, as amended, deprives a party from any right to demand payment from the BSP.

In other words, the grant of quasi-judicial authority to the BSP cannot possibly extend to situations which do not call for

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[116] www.bsp.gov.ph/downloads/Publications/FAQs/targeting.pdf (accessed on August 12, 2012).

[117] See also Presidential Decree No. 72, Section 25.

[118] R.A. No. 7653, Section 37.

the exercise by the BSP of its supervisory or regulatory functions over entities within its jurisdiction.[119] The fact alone that the parties involved are banking institutions does not necessarily call for the exercise by the BSP of its quasi-judicial powers under the law.[120]

The doctrine of primary jurisdiction argues against BSP's purported authority to adjudicate ownership issues over the disputed CB bills

Given the preceding discussions, even the PDB's invocation of the doctrine of primary jurisdiction is misplaced.

In the exercise of its plenary legislative power, Congress may create administrative agencies endowed with quasi-legislative and quasi-judicial powers. Necessarily, Congress likewise defines the limits of an agency's jurisdiction in the same manner as it defines the jurisdiction of courts.[121] As a result, it may happen that either a court or an administrative agency has exclusive jurisdiction over a specific matter or both have concurrent jurisdiction on the same. It may happen, too, that courts and agencies may willingly relinquish adjudicatory power that is rightfully theirs in favor of the other. One of the instances when a court may properly defer to the adjudicatory authority of an agency is the applicability of the doctrine of primary jurisdiction.[122]

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[119] See *Cemco Holdings, Inc. v. National Life Insurance Company of the Philippines*, *Inc.,* G.R. No. 171815, August 7, 2007, 529 SCRA 355.

[120] In *Taule v. Santos* (G.R. No. 90336, August 12, 1991, 200 SCRA 512, 521), the Court ruled that

"…unless expressly empowered, administrative agencies are bereft of quasi- judicial powers. The jurisdiction of administrative authorities is dependent entirely upon the provisions of the statutes reposing power in them; they cannot confer it upon themselves. Such jurisdiction is essential to give validity to their determinations."

[121] CONSTITUTION, Article 8, Section 2; *Tropical Homes, Inc. v. National Housing Authority*, 236 Phil. 580, 587-588 (1987).

[122] Aaron J. Lockwood, *The Primary Jurisdiction Doctrine: Competing Standards of Appellate Review*.

As early as 1954, the Court applied the doctrine of primary jurisdiction under the following terms:

> 6. In the fifties, the Court taking cognizance of the move to vest jurisdiction in administrative commissions and boards the power to resolve specialized disputes xxx ruled that Congress in requiring the Industrial Court's intervention in the resolution of labor-management controversies xxx meant such jurisdiction to be exclusive, although it did not so expressly state in the law. The Court held that under the "sense-making and expeditious doctrine of primary jurisdiction ... the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the question demands the exercise of **sound administrative discretion** requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered."[123] (emphasis ours)

In *Industrial Enterprises, Inc. v. Court of Appeals,*[124] the Court ruled that while an action for rescission of a contract between coal developers appears to be an action cognizable by regular courts, the trial court remains to be without jurisdiction to entertain the suit since the contract sought to be rescinded is "inextricably tied up with the right to develop coal-bearing lands and the determination of whether or not the reversion of the coal operating contract over the subject coal blocks to [the plaintiff] would be in line with the [country's national program and objective on coal-development and] over-all coal-supply-demand balance." It then applied the doctrine of primary jurisdiction —

> In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a

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[123] *Sps. Abejo v. Judge De la Cruz*, 233 Phil. 668, 684-685 (1987), citing *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*, 94 Phil. 932, 941 (1954).

[124] 263 Phil. 352, 358-359 (1990).

particular case, which means that the matter involved is also judicial in character. **However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved**, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies "where a claim is *originally cognizable in the courts,* and **comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body**[.]"

Clearly, the doctrine of primary jurisdiction finds application in this case since the question of what coal areas should be exploited and developed and which entity should be granted coal operating contracts over said areas involves a **technical determination** by the [Bureau of Energy Development] as the administrative agency in possession of the specialized expertise to act on the matter. The Trial Court does not have the competence to decide matters concerning activities relative to the exploration, exploitation, development and extraction of mineral resources like coal. These issues preclude an initial judicial determination. [emphases ours]

The absence of any express or implied statutory power to adjudicate conflicting claims of ownership or entitlement to the proceeds of its certificates of indebtedness finds complement in the similar absence of any technical matter that would call for the BSP's special expertise or competence.[125] In fact, what the PDB's petitions bear out is essentially the nature of the transaction it had with the subsequent transferees of the subject CB bills (BOC and Bancap) and not any matter more appropriate for special determination by the BSP or any administrative agency.

In a similar vein, it is well-settled that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the courts construing such

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[125] See *Phil. Pharmawealth, Inc. v. Pfizer, Inc*., G.R. No. 167715, November 17, 2010, 635 SCRA 143, 153-154; and *GMA Network, Inc. v. ABS-CBN Broadcasting Corp., et al*., 507 Phil. 718, 724-726 (2005).

rule or regulation.[126] While there are exceptions[127] to this rule, the PDB has not convinced us that a departure is warranted in this case. Given the non-applicability of the doctrine of primary jurisdiction, the BSP's own position, in light of Circular No. 769-80, deserves respect from the Court.

Ordinarily, cases involving the application of doctrine of primary jurisdiction are initiated by an action invoking the jurisdiction of a court or administrative agency to resolve the substantive legal conflict between the parties. In this sense, the present case is quite unique since the court's jurisdiction was, *originally*, invoked *to compel* an administrative agency (the BSP) to resolve the legal conflict of ownership over the CB bills - instead of obtaining a judicial determination of the same dispute.

The remedy of interpleader

Based on the unique factual premise of the present case, the RTC acted correctly in initially assuming jurisdiction *over the PDB's petition for mandamus, prohibition and injunction.*[128] While the RTC agreed (albeit erroneously) with the PDB's view (that the BSP has jurisdiction), it, however, dismissed not only the BOC's/the BSP's counterclaims but *the PDB's petition itself* as well, on the ground that it lacks jurisdiction.

This is plain error.

Not only the parties themselves, but more so the courts, are bound by the rule on non-waiver of jurisdiction.[129] Even indulging

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[126] *Bagatsing v. Committee on Privatization, PNCC,* 316 Phil. 404, 429 (1995).

[127] The courts may disregard contemporaneous construction where there is no ambiguity in the law, where the construction is clearly erroneous, where a strong reason exists to the contrary, and where the courts have previously given the statute a different interpretation. (Ruben E. Agpalo, *Statutory Construction*, 5th ed., 2003, p. 116.)

[128] Batas Pambansa Blg. 129, Section 21(1).

[129] *Sps. Atuel v. Sps. Valdez,* 451 Phil. 631, 641, 645 (2003).

the RTC, if it believes that jurisdiction over the BOC's counterclaims and the BSP's counterclaim/crossclaim for interpleader calls for the application of the doctrine of primary jurisdiction, the allowance of the PDB's petition even becomes imperative because courts may raise the issue of primary jurisdiction *sua sponte.*[130]

Of the three possible options available to the RTC, the adoption of either of these two would lead the trial court into serious legal error: *first*, ***if*** it granted the PDB's petition, its decision would have to be set aside on appeal because the BSP has no jurisdiction as previously discussed; and *second* ***when*** it dismissed the PDB's petitions and the BOC's counterclaims *on the ground that it lacks jurisdiction*, the trial court seriously erred because precisely, the resolution of the conflicting claims over the CB bills falls within its general jurisdiction.

Without emasculating its jurisdiction, the RTC could have properly dismissed the PDB's petition ***but*** on the ground that *mandamus* does not lie against the BSP; but even this correct alternative is no longer plausible since the BSP, as a respondent below, already properly brought before the RTC the remaining conflicting claims over the subject CB bills by way of a counterclaim/crossclaim for interpleader. Section 1, Rule 62 of the Rules of Court provides when an interpleader is proper:

SECTION 1. When interpleader proper. — Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves.

The remedy of an action of interpleader[131] is designed to protect a person against double vexation in respect of a single liability.

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[130] *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 628 (2006).

[131] The action of interpleader is a remedy whereby a person who has property, whether personal or real, in his possession, or an obligation to render wholly or partially, without claiming any right in both, or claims

It requires, as an indispensable requisite, that conflicting claims upon the same subject matter are or may be made against the stakeholder (the possessor of the subject matter) who claims no interest whatever in the subject matter or an interest which in whole or in part is not disputed by the claimants.[132] Through this remedy, the stakeholder can join all competing claimants in a single proceeding to determine conflicting claims without exposing the stakeholder to the possibility of having to pay more than once on a single liability.[133]

When the court orders that the claimants litigate among themselves, in reality a new action arises,[134] where the claims of the interpleaders themselves are brought to the fore, the stakeholder as plaintiff is relegated merely to the role of initiating the suit. In short, the remedy of interpleader, when proper, merely provides an avenue for the conflicting claims on the same subject matter to be threshed out *in an* ***action***. Section 2 of Rule 62 provides:

SEC. 2. Order. —Upon the filing of the complaint, the court shall issue an order requiring the conflicting claimants to interplead

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an interest which in whole or in part is not disputed by the conflicting claimants, comes to court and asks that the persons who claim the said property or who consider themselves entitled to demand compliance of the obligation, be required to litigate among themselves, in order to determine finally who is entitled to one or the other thing. (Oscar M. Herrera, *Remedial Law*, Book III, 2006 ed., p. 224, citing *Alvarez v. Commonwealth*, 65 Phil. 302, 311-312.

[132] Rules of Court, Rule 62, Section 1.

[133] (digitalcommons.pace.edu/cgi/viewcontent.cgi?article =1044*).* The device was developed on the theory that the stakeholder should not be forced to take the personal risk of evaluating the claims (44B Am Jur 2d Interpleader § 1). If the BSP indeed has jurisdiction over the parties' conflicting claims, the remedy of interpleader would obviously be inappropriate since the exercise of a quasi-judicial discretion cannot generally, entail any personal risk to the official who exercises it. Having found that the BSP lacks jurisdiction to resolve the parties' conflicting claims, payment to anyone of the conflicting claimants would necessarily result in exposing the BSP to "double vexation in respect of a single liability."

[134] *Alvarez v. Commonwealth of the Philippines*, 65 Phil. 302, 312 (1938).

with one another. If the interests of justice so require, the court may direct in such order that the subject matter be paid or delivered to the court.

This is precisely what the RTC did by granting the BSP's motion to interplead. The PDB itself "agree[d] that the various claimants should *now* interplead." Thus, the PDB and the BOC subsequently entered into two separate escrow agreements, covering the CB bills, and submitted them to the RTC for approval.

In granting the BSP's motion, the RTC acted on the correct premise that it has jurisdiction to resolve the parties' conflicting claims over the CB bills - consistent with the rules and the parties' conduct - and accordingly required the BOC to amend its answer and for the PDB to comment thereon. Suddenly, however, the PDB made an about-face and questioned the jurisdiction of the RTC. Swayed by the PDB's argument, the RTC dismissed even the PDB's petition - which means that it did not actually *compel* the BSP to resolve the BOC's and the PDB's claims.

Without the motion to interplead and the order granting it, the RTC could only dismiss the PDB's petition since it is the RTC which has jurisdiction to resolve the parties' conflicting claims — not the BSP. Given that the motion to interplead has been actually filed, the RTC could not have really granted the relief originally sought in the PDB's petition since the RTC's order granting the BSP's motion to interplead - to which the PDB in fact acquiesced into - *effectively resulted in the dismissal of the PDB's petition*. This is not altered by the fact that the PDB additionally prayed in its petition for damages, attorney's fees and costs of suit "against the public respondents" because the grant of the order to interplead effectively sustained the propriety of the BSP's resort to this procedural device.

Interpleader

1. as a special civil action

What is quite unique in this case is that the BSP did not initiate the interpleader suit through an original complaint but

through its Answer. This circumstance becomes understandable if it is considered that insofar as the BSP is concerned, the PDB does not possess any right to have its claim recorded in the BSP's books; consequently, the PDB cannot properly be considered even as a potential claimant to the proceeds of the CB bills upon maturity. Thus, the interpleader was only an alternative position, made only in the BSP's Answer.[135]

The remedy of interpleader, as a special civil action, is primarily governed by the specific provisions in Rule 62 of the Rules of Court and secondarily by the provisions applicable to ordinary civil actions.[136] Indeed, Rule 62 does not expressly authorize the filing of a complaint-in-interpleader as part of, although separate and independent from, the answer. Similarly, Section 5, Rule 6, in relation to Section 1, Rule 9 of the Rules of Court[137] does not include a complaint-in-interpleader as a claim,[138] a form of defense,[139] or as an objection that a defendant may be

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[135] *Rollo*, G.R. Nos. 154470-71, pp. 147-151.

[136] Rule 1, Section 3.a of the Rules of Court.

[137] Section 1, Rule 9 of the Rules of Court reads:

Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[138] Section 6, Rule 6 of the Rules of Court reads:

Sec. 6. *Counterclaim.* — A counterclaim is any claim which a defending party may have against an opposing party.

[139] Sections 4, 5 and 6, Rule 6 of the Rules of Court read:

Sec. 4. *Answer.* — An answer is a pleading in which a defending party sets forth his defenses.

Sec. 5. *Defenses.* — Defenses may either be negative or affirmative.

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

allowed to put up in his answer or in a motion to dismiss. This does not mean, however, that the BSP's "counter-complaint/ cross-claim for interpleader" runs counter to general procedures.

Apart from a pleading,[140] the rules[141] allow a party to seek an affirmative relief from the court through the procedural device of a motion. While captioned "Answer with counter-complaint/ cross-claim for interpleader," the RTC understood this as in the nature of a motion,[142] seeking relief which essentially consists in an order for the conflicting claimants to litigate with each other so that "payment is made to the rightful or legitimate owner"[143] of the subject CB bills.

The rules define a "civil action" as "one by which a party sues another for the enforcement or protection of a right, or the *prevention* or redress *of a wrong*." Interpleader may be considered as a stakeholder's remedy to prevent a wrong, that is, from making payment to one not entitled to it, thereby rendering itself vulnerable to lawsuit/s from those legally entitled to payment.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

Sec. 6. *Counterclaim.* — A counterclaim is any claim which a defending party may have against an opposing party.

[140] Rule 6 (Kinds of Pleadings), Section 1 defines a pleading as the parties' "written statements of the[ir] respective claims and defenses[.]" The pleadings where a "claim" may be asserted are "in a complaint, counterclaim, cross-claim, third (fourth, *etc.*) party complaint, or complaint-in-intervention." Under Section 11, Rule 8 of the Rules of Court, a defendant's compulsory counterclaim or a cross-claim existing at the time he files his answer should be included in the answer.

[141] Rules of Court, Rule 15, Section 1.

[142] Records, Volume 4, p. 1091. Even then, the BOC filed a Manifestation and Motion praying that the BSP's own prayer for interpleader be granted (Records, Volume 4, pp. 1028-1030).

[143] *Rollo*, G.R. Nos. 154470-71, p. 148.

Interpleader is a civil action made special by the existence of particular rules to govern the *uniqueness* of its application and operation. Under Section 2, Rule 6 of the Rules of Court, governing *ordinary* civil actions, a party's claim is asserted "in a complaint, counterclaim, cross-claim, third (fourth, *etc.*)-party complaint, or complaint-in-intervention." In an interpleader suit, however, a claim is not required to be contained in any of these pleadings but in the answer-(of the conflicting claimants)-in-interpleader. This claim is different from the counter-claim (or cross-claim, third party-complaint) which is separately allowed under Section 5, par. 2 of Rule 62.

2. the payment of docket fees covering BOC's counterclaim

The PDB argues that, even assuming that the RTC has jurisdiction over the issue of ownership of the CB bills, the BOC's failure to pay the appropriate docket fees prevents the RTC from acquiring jurisdiction over the BOC's "counterclaims."

We disagree with the PDB.

To reiterate and recall, the order granting the "PDB's motion to interplead," already resulted in the dismissal of the PDB's petition. The same order required the BOC to amend its answer and for the conflicting claimants to comment, presumably to conform to the nature of an answer-in-interpleader. Perhaps, by reason of the BOC's denomination of its claim as a "compulsory-counterclaim" and the PDB's failure to fully appreciate the RTC's order granting the "BSP's motion for interpleader" (with the PDB's conformity), the PDB mistakenly treated the BOC's claim as a "permissive counterclaim" which necessitates the payment of docket fees.

As the preceding discussions would show, however, the BOC's "claim" - *i.e.*, its assertion of ownership over the CB bills — is in reality just that, a "claim" against the stakeholder and not as a "counterclaim,"[144] whether

[144] Section 6, Rule 6, precisely defines a counterclaim as a "claim which a defending party may have ***against*** an opposing party." In an interpleader

compulsory[145] or permissive. It is only the BOC's alternative prayer (for the PDB to deliver to the BOC, as the buyer in the April 15 transaction and the ultimate successor-in-interest of the buyer in the April 19 transaction, either the original subjects of the sales or the value thereof plus whatever income that may have been earned *pendente lite*) and its prayer for damages that are obviously compulsory counterclaims against the PDB and, therefore, does not require payment of docket fees.[146]

The PDB takes a contrary position through its insistence that a compulsory counterclaim should be one where the presence of third parties, of whom the court cannot acquire jurisdiction, is not required. It reasons out that since the RCBC and All Asia (the intervening holders of the CB bills) have already been dropped from the case, then the BOC's counterclaim must only be permissive in nature and the BOC should have paid the correct docket fees.

We see no reason to belabor this claim. Even if we gloss over the PDB's *own* conformity to the dropping of these entities as parties, the BOC correctly argues that a remedy is provided under the Rules. Section 12, Rule 6 of the Rules of Court reads:

SEC. 12. Bringing new parties. — When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained.

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suit, while the defendants are asserting conflicting claims against one another over "the same subject matter," in the ultimate, the prevailing party actually asserts it against the complainant-in-interpleader because he is the stakeholder.

[145] See Rule 6, Section 7.

[146] When BOC filed its *Answer with Compulsory Counterclaim*, the effective rule then was A.M. No. 00-2-01-SC (March 1, 2000), which does not require payment of docket fees for compulsory counterclaims. Effective August 16, 2004, however, under Section 7, Rule 141, as amended by A.M. No. 04-2-04-SC, docket fees are now required to be paid even in compulsory counterclaim or cross-claims. See *Korea Technologies Co., Ltd. v. Lerma*, G.R. No. 143581, January 7, 2008, 542 SCRA 1, 16-17.

Even then, the strict characterization of the BOC's counterclaim is no longer material in disposing of the PDB's argument based on non-payment of docket fees.

When an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees by the party seeking affirmative relief from the court. It is the filing of the complaint or appropriate initiatory pleading, accompanied by the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the claim or the nature of the action.[147] However, the non-payment of the docket fee at the time of filing does not automatically cause the dismissal of the case, so long as the fee is paid within the applicable prescriptive or reglementary period, especially when the claimant demonstrates a willingness to abide by the rules prescribing such payment.[148]

In the present case, considering the lack of a clear guideline on the payment of docket fee by the claimants in an interpleader suit, compounded by the unusual manner in which the interpleader suit was initiated and the circumstances surrounding it, we surely *cannot* deduce from the BOC's mere failure to specify in its prayer the total amount of the CB bills it lays claim to (or the value of the subjects of the sales in the April 15 and April 19 transactions, in its alternative prayer) an intention to defraud the government that would warrant the dismissal of its claim.[149]

At any rate, regardless of the nature of the BOC's "counterclaims," for purposes of payment of filing fees, ***both* the BOC and the PDB,** properly as defendants-in-interpleader, must be assessed the payment of the correct docket fee arising

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[147] *Fedman Development Corporation v. Agcaoili*, G.R. No. 165025, August 31, 2011, 656 SCRA 354, 362; and *Ungria v. Court of Appeals*, G.R. No. 165777, July 25, 2011, 654 SCRA 314, 325, citing *Tacay v. RTC of Tagum, Davao del Norte,* G.R. Nos. 88075-77, December 20, 1989, 180 SCRA 433; and *Sun Insurance Office, Ltd. v. Asuncion,* 252 Phil. 280 (1989).

[148] *Fedman Development Corporation v. Agcaoili*, *supra*, at 362-363.

[149] *Manchester Development Corporation v. Court of Appeals*, 233 Phil. 579, 585 (1987).

from their respective *claims*. The seminal case of *Sun Insurance Office, Ltd. v. Judge Asuncion*[150] provides us guidance in the payment of docket fees, to wit:

> 1. x x x Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
>
> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period. [underscoring ours]

This must be the rule considering that Section 7, Rule 62 of which reads:

> SEC. 7. Docket and other lawful fees, costs and litigation expenses as liens. — The docket and other lawful fees paid by the party who filed a complaint under this Rule, as well as the costs and litigation expenses, shall constitute a lien or charge upon the subject matter of the action, unless the court shall order otherwise.

only pertain to the docket and lawful fees to be paid by the one who initiated the interpleader suit, and who, under the Rules, actually "claims no interest whatever in the subject matter." By constituting a lien on the subject matter of the action, Section 7 in effect only aims to actually compensate the complainant-in-interpleader, who happens to be the stakeholder unfortunate enough to get caught in a legal crossfire between two or more conflicting claimants, for the faultless trouble it found itself into. Since the defendants-in-interpleader are actually the ones who make a claim - only that it was extraordinarily done through the procedural device of interpleader - then to them devolves the duty to pay the docket fees prescribed under Rule 141 of the Rules of Court, as amended.[151]

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[150] 252 Phil. 280, 291 (1989).

[151] Section 7, Rule 141 of the Rules of Court, as amended by A.M. No. 00-2-01-SC (March 1, 2000), the effective Rule at the time the RTC granted

The importance of paying the correct amount of docket fee cannot be overemphasized:

> The matter of payment of docket fees is not a mere triviality. These fees are necessary to defray court expenses in the handling of cases. Consequently, in order to avoid tremendous losses to the judiciary, and to the government as well, the payment of docket fees cannot be made dependent on the outcome of the case, except when the claimant is a pauper-litigant.[152]

WHEREFORE, premises considered the consolidated **PETITIONS are GRANTED.** The Planters Development Bank is hereby **REQUIRED** to file with the Regional Trial Court its comment or answer-in-interpleader to Bank of Commerce's *Amended Consolidated Answer with Compulsory Counterclaim*, as previously ordered by the Regional Trial Court. The Regional Trial Court of Makati City, Branch 143, is hereby **ORDERED**

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the BSP's motion to interplead and required the PDB and the BOC to assert their claims, reads:

> SEC. 7. *Clerks of Regional Trial Courts*. — (a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, *etc*. complaint, or a complaint in intervention, and for all clerical services in the same, **if the total sum claimed**, exclusive of interest, or the stated value of the property in litigation, **is**:

1. Less than ₱100,000.00	…………… ₱ 500.00
2. ₱100,000.00 or more but less than ₱150,000.00	…………... 800.00
3. ₱150,000.00 or more but less than ₱200,000.00	…………… 1,000.00
4. ₱200,000.00 or more but less than ₱250,000.00	…………… 1,500.00
5. ₱250,000.00 or more but less than ₱300,000.00	…………… 1,750.00
6. ₱300,000.00 or more but less than ₱350,000.00	…………… 2,000.00
7. ₱350,000.00 or more but not more than ₱400,000.00	…………… 2,250.00
8. For each ₱1,000.00 in excess of ₱400,000.00	………….. 10.00

[152] *Emnace v. Court of Appeals*, 422 Phil. 10, 22.

to assess the docket fees due from Planters Development Bank and Bank of Commerce and order their payment, and to resolve with **DELIBERATE DISPATCH** the parties' conflicting claims of ownership over the proceeds of the Central Bank bills.

The Clerk of Court of the Regional Trial Court of Makati City, Branch 143, or his duly authorized representative is hereby **ORDERED** to assess and collect the appropriate amount of docket fees separately due the Bank of Commerce and Planters Development Bank as conflicting claimants in Bangko Sentral ng Pilipinas' interpleader suit, in accordance with this decision.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 161122. September 24, 2012]

DARE ADVENTURE FARM CORPORATION, *petitioner, vs.* **HON. COURT OF APPEALS, MANILA, HON. AUGUSTINE VESTIL, as Presiding Judge of RTC-CEBU, Br. 56, MANDAUE CITY, SPS. FELIX NG AND NENITA NG, and SPS. MARTIN T. NG AND AZUCENA S. NG and AGRIPINA R. GOC-ONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; ANNULMENT OF JUDGMENT; MAY BE AVAILED OF ONLY WHEN

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[*] Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo per Raffle dated September 17, 2012.

OTHER REMEDIES ARE WANTING, AND ONLY IF THE JUDGMENT, FINAL ORDER OR FINAL RESOLUTION SOUGHT TO BE ANNULLED WAS RENDERED BY A COURT LACKING JURISDICTION OR THROUGH EXTRINSIC FRAUD.— A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

2. **ID.; ID.; ID.; DOCTRINE OF IMMUTABILITY AND UNALTERABILITY; TWO-FOLD PURPOSE.—** The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

3. **ID.; ID.; ID.; A PERSON CANNOT BE PREJUDICED BY A RULING RENDERED IN AN ACTION OR PROCEEDING IN WHICH HE HAS NOT BEEN MADE A PARTY.—** It is elementary that a judgment of a court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court. x x x. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law. The operation of this principle was illustrated in *Muñoz v. Yabut, Jr.*, where the Court declared that a person not impleaded and given the opportunity to take part in the proceedings was not bound by the decision declaring as null and void the title from which his title to the property had been derived. We said there that the effect of a judgment could not be extended to non-parties by simply issuing an *alias* writ of execution against them, for no man should be prejudiced by any proceeding to which he was a stranger. In the same manner, a writ of execution could be issued only against a party, not against a person who did not have his day in court. Accordingly, the petitioner's resort to annulment of judgment under Rule 47 was unnecessary if, after all, the judgment rendered in Civil Case No. MAN-2838 did not prejudice it.

4. **ID.; ID.; ID.; REMEDY OF ANNULMENT EXTENDS ONLY TO A PARTY IN WHOSE FAVOR THE REMEDIES OF NEW TRIAL, RECONSIDERATION, APPEAL, AND PETITION FOR RELIEF FROM JUDGMENT ARE NO LONGER AVAILABLE THROUGH NO FAULT OF SAID PARTY.—** Section 1 of Rule 47 extends the remedy of annulment only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. As such, the petitioner, being a non-party in Civil Case No. MAN-2838, could not bring the action for annulment of judgment due to unavailability to it of the remedies of new trial, reconsideration, appeal, or setting the judgment aside through a petition for relief.

5. **ID.; ID.; ID.; ANNULMENT OF JUDGMENT IS AN EQUITABLE RELIEF NOT BECAUSE A PARTY-LITIGANT THEREBY GAINS ANOTHER**

OPPORTUNITY TO REOPEN THE ALREADY-FINAL JUDGMENT BUT BECAUSE A PARTY-LITIGANT IS ENABLED TO BE DISCHARGED FROM THE BURDEN OF BEING BOUND BY A JUDGMENT THAT WAS AN ABSOLUTE NULLITY TO BEGIN WITH.— The petitioner probably brought the action for annulment upon its honest belief that the action was its remaining recourse from a perceived commission of extrinsic fraud against it. It is worthwhile for the petitioner to ponder, however, that permitting it despite its being a non-party in Civil Case No. MAN-2838 to avail itself of the remedy of annulment of judgment would not help it in any substantial way. Although Rule 47 would initially grant relief to it from the effects of the annulled judgment, the decision of the CA would not really and finally determine the rights of the petitioner in the property as against the competing rights of the original parties. To be borne in mind is that the annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with. We agree with the CA's suggestion that the petitioner's proper recourse was either an action for quieting of title or an action for reconveyance of the property. It is timely for the Court to remind that the petitioner will be better off if it should go to the courts to obtain relief through the proper recourse; otherwise, it would waste its own time and effort, aside from thereby unduly burdening the dockets of the courts.

6. **CIVIL LAW; PROPERTY OWNERSHIP AND ITS MODIFICATIONS; QUIETING OF TITLE; ACTION FOR QUIETING OF TITLE, EXPLAINED.—** The petitioner may vindicate its rights in the property through an action for quieting of title, a common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property. The action for quieting of title may be brought whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. In the action, the competent court is tasked to determine the respective rights of the plaintiff and the other claimants, not only to put things

in their proper places, and make the claimant, who has no rights to the immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.

7. **ID.; LAND REGISTRATION; ACTION FOR RECONVEYANCE OF PROPERTY, WHEN PROPER.—** The other proper remedy the CA suggested was an action for reconveyance of property. According to *Vda. de Recinto v. Inciong*, the remedy belongs to the landowner whose property has been wrongfully or erroneously registered in another person's name, and such landowner demands the reconveyance of the property in the proper court of justice. If the property has meanwhile passed into the hands of an innocent purchaser for value, the landowner may seek damages. In either situation, the landowner respects the decree as incontrovertible and no longer open to review provided the one-year period from the land coming under the operation of the Torrens System of land registration already passed.

APPEARANCES OF COUNSEL

Sinajon Esparagoza & Padilla-Steplaw Firm for petitioner.
Baduel Espina & Associates for Sps. Ng.

D E C I S I O N

BERSAMIN, *J.*:

A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party.[1] Hence, such person cannot bring an action for the annulment of the judgment under Rule 47 of the 1997 *Rules of Civil Procedure*, except if he has been a successor in interest by title subsequent

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[1] *Filamer Christian Institute v. Court of Appeals*, G.R. No. 75112, October 16, 1990, 190 SCRA 485, 492.

to the commencement of the action, or the action or proceeding is *in rem* the judgment in which is binding against him.

Antecedents

The petitioner acquired a parcel of land with an area of 65,100 square meters situated in San Roque, Lilo-an, Metro Cebu known as lot 7531-part (the property) through a deed of absolute sale executed on July 28, 1994 between the petitioner, as vendee, and Agripina R. Goc-ong (a respondent herein), Porferio Goc-ong, Diosdado Goc-ong, Crisostomo Goc-ong, Tranquilino Goc-ong, Naciancena Goc-ong and Avelino Goc-ong (collectively, the Goc-ongs), as vendors.[2]

The petitioner later on discovered the joint affidavit executed on June 19, 1990 by the Goc-ongs, whereby the Goc-ongs declared that they were the owners of the property, and that they were mortgaging the property to Felix Ng, married to Nenita N. Ng, and Martin T. Ng, married to Azucena S. Ng (collectively, the Ngs) to secure their obligation amounting to ₱648,000.00, subject to the condition that should they not pay the stipulated 36-monthly installments, the Ngs would automatically become the owners of the property.[3]

With the Goc-ongs apparently failing to pay their obligation to the Ngs as stipulated, the latter brought on January 16, 1997 a complaint for the recovery of a sum of money, or, in the alternative, for the foreclosure of mortgage in the Regional Trial Court, Branch 56, in Mandaue City (RTC) only against respondent Agripina R. Goc-ong.[4] The action was docketed as Civil Case No. MAN-2838.

With Agripina R. Goc-ong being declared in default for failing to file her answer in Civil Case No. MAN-2838,[5] the RTC rendered its Decision on October 16, 1997, disposing:

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[2] *Rollo,* pp. 92-94.

[3] *Id.* at 95.

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

[5] *Id.* at 103.

In the light of the foregoing, judgment is hereby rendered:

1) Declaring herein Plaintiffs the owners of lot 7531-part, situated at San Roque, Liloan, Cebu containing an area of Sixty Five Thousand One Hundred (65,100) square meters and assessed for ₱ 22,240.00 and

2) Directing Defendant to pay Plaintiff the sum of ₱ 10,000.00 as attorney's fees and

3) ₱10,000.00 as litigation expenses[.]

SO ORDERED.[6]

Ruling of the Court of Appeals

In 2001, the petitioner commenced in the Court of Appeals (CA) an action for the annulment of the October 16, 1997 decision of the RTC.

On June 19, 2001, however, the CA dismissed the petition for annulment of judgment, *viz*:

We are constrained to DISMISS OUTRIGHT the present petition for annulment of judgment under Rule 47 of the 1997 Rules of Civil Procedure, as amended, considering that nowhere therein is there an allegation on why "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.["][7]

The petitioner moved for the reconsideration of the outright dismissal, but the CA denied its motion for reconsideration on October 24, 2003 on the basis that petitioner did not show why it had not availed itself of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies as provided in Section 1, Rule 47 of the *Rules of Court*.

Issues

Hence, the petitioner ascribes to the CA the following errors, to wit:

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[6] *Id.* at 89.

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

I.

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PETITIONER FAILED TO EXPLAIN WHY IT DID NOT AVAIL OF THE OTHER REMEDIES ENUMERATED UNDER SECTION 1 RULE 47 OF THE 1997 RULES ON CIVIL PROCEDURE.

II.

THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT PETITIONER COULD HAVE ASSAILED THE DEED OF SALE AND QUESTIONED THE FORECLOSURE PROCEEDINGS OR SOUGHT THE QUIETING OF TITLE TO THE SUBJECT PROPERTY.

The decisive query is whether the action for annulment of judgment under Rule 47 was a proper recourse for the petitioner to set aside the decision rendered in Civil Case No. MAN-2838.

Ruling

We deny the petition for review.

I.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud.[8] Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions.[9] The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1[10] of Rule 47 of the *Rules of Court* that the petitioner

[8] *People v. Bitanga*, G.R. No. 159222, June 26, 2007, 525 SCRA 623, 629.

[9] *Fraginal v. Heirs of Toribia Belmonte Parañal,* G.R. No. 150207, February 23, 2007, 516 SCRA 530, 537.

[10] Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil

should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.[11] A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist.[12] As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land.[13] As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[14]

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actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (n)

[11] *Macalalag v. Ombudsman*, G.R. No. 147995, March 4, 2004, 424 SCRA 741, 744-745.

[12] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 4, 2009, 607 SCRA 200, 213.

[13] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 581.

[14] *Land Bank of the Philippines v. Arceo,* G.R. No. 158270, July 21, 2008, 559 SCRA 85, 94; *Gallardo-Corro v. Gallardo*, G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578.

II.

We uphold the CA's dismissal of the petitioner's action for annulment of judgment based on the foregoing considerations.

It is elementary that a judgment of a court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court.[15] Section 47(b) of Rule 39 of the *Rules of Court* explicitly so provides, to wit:

> Section 47. *Effect of judgments or final orders* .— The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x
>
> (b) In other cases, **the judgment or final order is**, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, **conclusive between the parties and their successors in interest by title subsequent to the commencement of the action** or special proceeding, litigating for the same thing and under the same title and in the same capacity; xxx.

The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law. The operation of this principle was illustrated in *Muñoz v. Yabut, Jr.*,[16] where the Court declared that a person not impleaded and given the opportunity to take part in the proceedings was not bound by the decision declaring as null and void the title from which his title to the property had been derived. We said there that the effect of a judgment could not be extended to non-parties by simply issuing an *alias* writ of execution against them, for no man should be prejudiced by

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[15] *Villanueva v. Velasco*, G.R. No. 130845, November 27, 2000, 346 SCRA 99, 107; *Ayala Corporation v. Ray Burton Development Corporation,* G.R. No. 126699, August 7, 1998, 294 SCRA 48, 65.

[16] G.R. No. 142676, June 6, 2011, 650 SCRA 344.

any proceeding to which he was a stranger. In the same manner, a writ of execution could be issued only against a party, not against a person who did not have his day in court.[17]

Accordingly, the petitioner's resort to annulment of judgment under Rule 47 was unnecessary if, after all, the judgment rendered in Civil Case No. MAN-2838 did not prejudice it.

Moreover, Section 1 of Rule 47 extends the remedy of annulment only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. As such, the petitioner, being a non-party in Civil Case No. MAN-2838, could not bring the action for annulment of judgment due to unavailability to it of the remedies of new trial, reconsideration, appeal, or setting the judgment aside through a petition for relief.

The petitioner probably brought the action for annulment upon its honest belief that the action was its remaining recourse from a perceived commission of extrinsic fraud against it. It is worthwhile for the petitioner to ponder, however, that permitting it despite its being a non-party in Civil Case No. MAN-2838 to avail itself of the remedy of annulment of judgment would not help it in any substantial way. Although Rule 47 would initially grant relief to it from the effects of the annulled judgment, the decision of the CA would not really and finally determine the rights of the petitioner in the property as against the competing rights of the original parties. To be borne in mind is that the annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with.[18]

We agree with the CA's suggestion that the petitioner's proper recourse was either an action for quieting of title or an action

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[17] *Id.* at 367-368.

[18] *Antonio v. The Register of Deeds of Makati*, G.R. No. 185663, June 20, 2012; *Barco v. Court of Appeals*, G.R. No. 120587, January 20, 2004, 420 SCRA 162, 180.

for reconveyance of the property. It is timely for the Court to remind that the petitioner will be better off if it should go to the courts to obtain relief through the proper recourse; otherwise, it would waste its own time and effort, aside from thereby unduly burdening the dockets of the courts.

The petitioner may vindicate its rights in the property through an action for quieting of title, a common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property. The action for quieting of title may be brought whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. In the action, the competent court is tasked to determine the respective rights of the plaintiff and the other claimants, not only to put things in their proper places, and make the claimant, who has no rights to the immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.[19]

The other proper remedy the CA suggested was an action for reconveyance of property. According to *Vda. de Recinto v. Inciong*,[20] the remedy belongs to the landowner whose property has been wrongfully or erroneously registered in another person's name, and such landowner demands the reconveyance of the property in the proper court of justice. If the property has meanwhile passed into the hands of an innocent purchaser for value, the landowner may seek damages. In either situation, the landowner respects the decree as incontrovertible and no longer open to review provided the one-year period from the land coming under the operation of the Torrens System of land registration already passed.

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[19] *Heirs of Enrique Toring v. Heirs of Teodosia Boquilaga*, G.R. No. 163610, September 27, 2010, 631 SCRA 278, 293-294.

[20] G.R. No. L-26083, May 31, 1977, 77 SCRA 196, 201.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on June 19, 2001; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

*Sereno, C.J., Leonardo-de Castro, Brion,** and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177438. September 24, 2012]

AMADA RESTERIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; BATAS PAMBANSA BLG. 22; VIOLATION THEREOF, ESSENTIAL ELEMENTS.—** For a violation of *Batas Pambansa Blg*. 22, the Prosecution must prove the following essential elements, namely: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.
2. **ID.; ID.; PUNISHES THE MERE ACT OF ISSUING WORTHLESS CHECK; ACTUAL OWNERSHIP OF THE CHECK OR THE ACCOUNT AGAINST WHICH IT WAS**

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* Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305 dated September 10, 2012.

MADE, DRAWN, OR ISSUED, OR THE INTENTION OF THE DRAWEE, MAKER OR ISSUER IS OF NO CONSEQUENCE IN INCURRING CRIMINAL LIABILITY; GRAVAMEN OF THE OFFENSE.— What *Batas Pambansa Blg. 22* punished was the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer. Also, that the check was not intended to be deposited was really of no consequence to her incurring criminal liability under *Batas Pambansa Blg. 22*. In *Ruiz v. People*, the Court debunked her contentions and cogently observed: In *Lozano v. Martinez*, this Court ruled that the gravamen of the offense is the act of making and issuing a worthless check or any check that is dishonored upon its presentment for payment and putting them in circulation. The law includes all checks drawn against banks. The law was designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient or no credit or funds therefor. Such practice is deemed a public nuisance, a crime against public order to be abated. **The mere act of issuing a worthless check, either as a deposit, as a guarantee, or even as an evidence of a pre-existing debt or as a mode of payment is covered by B.P. 22. It is a crime classified as *malum prohibitum*. The law is broad enough to include, within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment**. x x x.

3. **ID.; ID.; ID.; KNOWLEDGE OF INSUFFICIENCY OF FUNDS OR CREDIT AT THE TIME OF THE ISSUANCE OF THE CHECK; PRESUMPTION OF KNOWLEDGE WHEN IT ARISES; THERE MUST BE PROOF THAT A WRITTEN NOTICE OF THE DISHONOR WAS GIVEN TO THE DRAWER, MAKER OR ISSUER OF THE DISHONORED CHECK; RATIONALE FOR THE REQUIREMENT.—** To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*, to wit: To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a

check was issued and that the same was subsequently dishonored**, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment. This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge.** x x x. **For this presumption to arise,** the **prosecution must prove** the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) **the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee.** In other words, **the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor** and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. **The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.**

4. **ID.; ID.; ID.; ID.; THE WRITTEN NOTICE OF DISHONOR MUST BE ACTUALLY SERVED TO THE OFFENDER; THE ABSENCE OF A NOTICE OF DISHONOR NECESSARILY DEPRIVES AN ACCUSED AN OPPORTUNITY TO PRECLUDE A CRIMINAL PROSECUTION; EXPOUNDED.—** The giving of the written notice of dishonor does not only supply the proof for the second

element arising from the presumption of knowledge the law puts up but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. The nature of this opportunity for the accused to avoid criminal prosecution has been expounded in *Lao v. Court of Appeals*: It has been observed that the State, under this statute, actually offers the violator 'a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated' xxx In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a 'complete defense.' **The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulate of fairness require – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22.**

5. **ID.; ID.; ID.; ID.; ID.; WHEN THE WRITTEN NOTICE OF DISHONOR WAS DONE BY REGISTERED MAIL, THE REGISTRY RETURN RECEIPTS BY THEMSELVES WERE NOT PROOF OF THE SERVICE ON THE OFFENDER WITHOUT BEING ACCOMPANIED BY THE AUTHENTICATING AFFIDAVIT OF THE PERSON WHO HAD ACTUALLY MAILED THE WRITTEN NOTICES OF DISHONOR, OR WITHOUT THE TESTIMONY IN COURT OF THE MAILER ON THE FACT OF MAILING.—** The mere presentment of the two registry return receipts was not sufficient to establish the fact that written notices of dishonor had been sent to or served on the petitioner as the issuer of the check. Considering that the sending of the written notices of dishonor had been done by registered mail, the registry return receipts by themselves were not proof of the service on the petitioner without being accompanied by the authenticating affidavit of the person or persons who had

actually mailed the written notices of dishonor, or without the testimony in court of the mailer or mailers on the fact of mailing. The authentication by affidavit of the mailer or mailers was necessary in order for the giving of the notices of dishonor *by registered mail* to be regarded as clear proof of the giving of the notices of dishonor to predicate the existence of the second element of the offense.

6. **ID.; ID.; ID.; ID.; A VERBAL NOTICE OF DISHONOR IS NOT EFFECTIVE; A NOTICE OF DISHONOR MUST BE IN WRITING.—** [T]hat the wife of Villadolid *verbally* informed the petitioner that the check had bounced did not satisfy the requirement of showing that written notices of dishonor had been made to and *received* by the petitioner. The verbal notices of dishonor were not effective because it is already settled that a notice of dishonor must be *in writing*. The Court definitively ruled on the specific form of the notice of dishonor in *Domagsang v. Court of Appeals*: **Petitioner counters that the lack of a *written notice* of dishonor is fatal. The Court agrees. While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal*," a mere oral notice or demand to pay would appear to be insufficient for conviction under the law.** The Court is convinced that **both the spirit and letter of the Bouncing Checks Law would require** for the act to be punished thereunder not only that the accused issued a check that is dishonored, but **that** likewise **the accused has actually been notified in writing of the fact of dishonor.** The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.

7. **ID.; ID.; QUANTUM OF PROOF BEYOND REASONABLE TO CONVICT PETITIONER FOR VIOLATION THEREOF, NOT SATISFIED; CIVIL LIABILITY OF PETITIONER, ESTABLISHED.—** [T]he proof of the guilt of the petitioner for a violation of *Batas Pambansa Blg. 22* for issuing to Villadolid the unfunded Chinabank Check No. LPU-A0141332 in the amount of ₱50,000.00 did not satisfy the quantum of proof beyond reasonable doubt. According to Section 2 of Rule 133, *Rules of Court*, the accused is entitled

to an acquittal, unless his guilt is shown beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; only a moral certainty is required, or that degree of proof that produces conviction in an unprejudiced mind. This is the required quantum, *firstly*, because the accused is presumed to be innocent until the contrary is proved, and, *secondly*, because of the inequality of the position in which the accused finds herself, with the State being arrayed against her with its unlimited command of means, with counsel usually of authority and capacity, who are regarded as public officers, "and with an attitude of tranquil majesty often in striking contrast to that of (the accused) engaged in a perturbed and distracting struggle for liberty if not for life." Nonetheless, the civil liability of the petitioner in the principal sum of ₱50,000.00, being admitted, was established. She was further liable for legal interest of 6% *per annum* on that principal sum, reckoned from the filing of the information in the trial court. That rate of interest will increase to 12% *per annum* upon the finality of this decision.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cesar P. Kilaton for private complainant.

D E C I S I O N

BERSAMIN, *J.*:

The notice of dishonor required by *Batas Pambansa Blg. 22* to be given to the drawer, maker or issuer of a check should be written. If the service of the written notice of dishonor on the maker, drawer or issuer of the dishonored check is by registered mail, the proof of service consists not only in the presentation as evidence of the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient unless the mailer personally testifies in court on the sending by registered mail.

Antecedents

The petitioner was charged with a violation of *Batas Pambansa Blg. 22* in the Municipal Trial Court in Cities (MTCC) in Mandaue City through the information that alleged as follows:

That on May, 2002, or thereabouts, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent of gain, did there and then willfully, unlawfully and feloniously make, draw and issue ChinaBank Check bearing No. AO141332, dated June 3, 2002, in the amount of ₱50,000.00 payable to the order of Bernardo T. Villadolid to apply on account or for value, the accused fully knowing well that at the time of the issuance of said check that she does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; or the accused having sufficient funds in or credit with the drawee bank when she make/s or draw/s and issue/s a check but she failed to keep sufficient funds or maintain a credit to cover the full amount of the check, which check when presented for encashment was dishonored by the drawee bank for the reason "ACCT. CLOSED" or would have been dishonored for the same reason had not the drawer, without any valid reason ordered the bank to stop payment, and despite notice of dishonor and demands for payment, said accused failed and refused and still fails and refuses to redeem the check or to make arrangement for payment in full by the drawee of such check within five (5) banking days after receiving the notice of dishonor, to the damage and prejudice of the aforenamed private complainant, in the aforestated amount and other claims and charges allowed by civil law.

CONTRARY TO LAW.[1]

After trial, the MTCC found the petitioner guilty as charged, disposing as follows:

WHEREFORE, decision is hereby rendered finding the accused, AMADA Y. RESTERIO, GUILTY beyond reasonable doubt for Violation of Batas Pambansa Bilang 22 and sentences her to pay a fine of FIFTY THOUSAND PESOS (₱50,000.00) and to pay her

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[1] *Rollo,* pp. 34-39; penned by Associate Justice Isaias P. Dicdican, with Associate Justice Romeo F. Barza and Associate Justice Priscilla Baltazar-Padilla concurring.

civil liabilities to the private complainant in the sum of FIFTY THOUSAND PESOS (₱50,000.00), TEN THOUSAND PESOS (₱10,000.00) as attorney's fees and FIVE HUNDRED SEVENTY[-]FIVE PESOS (₱575.00) as reimbursement of the filing fees.

SO ORDERED.[2]

The petitioner appealed, but the RTC affirmed the conviction.[3]

By petition for review, the petitioner appealed to the CA, stating that: (*a*) the RTC erred in affirming the conviction and in not finding instead that the Prosecution did not establish her guilt beyond reasonable doubt; and (*b*) the conviction was contrary to existing laws and jurisprudence, particularly *Yu Oh v. Court of Appeals*.[4]

On December 4, 2006, the CA found the petition to be without merit, and denied the petition for review.[5]

Issues

The petitioner assails the affirmance of her conviction by the CA based on the following grounds, to wit:

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN IGNORING THE APPLICABILITY IN THE PRESENT CASE THE DECISION OF THE SUPREME COURT IN THE CASE OF ELVIRA YU OH *VS*. COURT OF APPEALS, G.R. NO. 125297, JUNE 26, 2003.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE PROSECUTION FAILED TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIME OF VIOLATION OF BATAS PAMBANSA BILANG 22.

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

[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 34.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT NO NOTICE OF DISHONOR WAS ACTUALLY SENT TO THE PETITIONER.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR AND WITH GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF THE PETITIONER BEYOND REASONABLE DOUBT.[6]

The appeal hinges on whether or not all the elements of a violation of *Batas Pambansa Blg*. 22 were established beyond reasonable doubt.

Ruling

The petition is meritorious.

For a violation of *Batas Pambansa Blg*. 22, the Prosecution must prove the following essential elements, namely:

(1) The making, drawing, and issuance of any check to apply for account or for value;

(2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and

(3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[7]

The existence of the first element of the violation is not disputed. According to the petitioner, she was "required to issue a check as a collateral for the obligation," and that "she was left with no alternative but to borrow the check of her friend xxx and

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[6] *Id.* at 13-14.

[7] *Ting v. Court of Appeals*, G.R. No. 140665, November 13, 2000, 344 SCRA 551, 556-557.

used the said check as a collateral of her loan."[8] During her cross-examination, she stated that she did not own the check that she drew and issued to complainant Bernardo Villadolid.[9]

Yet, to avoid criminal liability, the petitioner contends that *Batas Pambansa Blg. 22* was applicable only if the dishonored check was actually owned by her; and that she could not be held liable because the check was issued as a mere collateral of the loan and not intended to be deposited.

The petitioner's contentions do not persuade.

What *Batas Pambansa Blg. 22* punished was the mere act of issuing a worthless check. The law did not look either at the actual ownership of the check or of the account against which it was made, drawn, or issued, or at the intention of the drawee, maker or issuer. Also, that the check was not intended to be deposited was really of no consequence to her incurring criminal liability under *Batas Pambansa Blg. 22*. In *Ruiz v. People*,[10] the Court debunked her contentions and cogently observed:

> In *Lozano v. Martinez*, this Court ruled that the gravamen of the offense is the act of making and issuing a worthless check or any check that is dishonored upon its presentment for payment and putting them in circulation. The law includes all checks drawn against banks. The law was designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient or no credit or funds therefor. Such practice is deemed a public nuisance, a crime against public order to be abated. **The mere act of issuing a worthless check, either as a deposit, as a guarantee, or even as an evidence of a pre-existing debt or as a mode of payment is covered by B.P. 22. It is a crime classified as *malum prohibitum*. The law is broad enough to include, within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment.** As the Court in *Lozano* explained:

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[8] *Rollo*, p. 16.

[9] *Id.* at 49.

[10] G.R. No. 160893, November 18, 2005, 475 SCRA 476.

> The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. As aptly stated —
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>> The "check flasher" does a great deal more than contract a debt; he shakes the pillars of business; and to my mind, it is a mistaken charity of judgment to place him in the same category with the honest man who is unable to pay his debts, and for whom the constitutional inhibition against "imprisonment for debt, except in cases of fraud" was intended as a shield and not a sword.
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> Considering that the law imposes a penal sanction on one who draws and issues a worthless check against insufficient funds or a closed account in the drawee bank, **there is, likewise, every reason to penalize a person who indulges in the making and issuing of a check on an account belonging to another with the latter's consent, which account has been closed or has no funds or credit with the drawee bank**.[11] (Bold emphases supplied)

The State likewise proved the existence of the third element. On direct examination, Villadolid declared that the check had been dishonored upon its presentment to the drawee bank through the Bank of the Philippine Islands (BPI) as the collecting bank. The return check memorandum issued by BPI indicated that the account had already been closed.[12] The petitioner did not deny or contradict the fact of dishonor.

The remaining issue is whether or not the second element, *that is*, the knowledge of the petitioner as the issuer of the check that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, was existent.

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[11] *Id.* at 489-490.

[12] *Rollo*, p. 48.

To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*,[13] to wit:

> To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored**, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment.**
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> **This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge.** Said section reads:
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> > SEC. 2. *Evidence of knowledge of insufficient funds.* — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.
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> **For this presumption to arise,** the **prosecution must prove** the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) **the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee.** In other words, **the presumption is brought into existence only after it is proved that**

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[13] G.R. No. 141669, February 28, 2005, 452 SCRA 441.

the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. **The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.**

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.[14] (Bold emphases supplied)

The giving of the written notice of dishonor does not only supply the proof for the second element arising from the presumption of knowledge the law puts up but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid.[15] The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. The nature of this opportunity for the accused to avoid criminal prosecution has been expounded in *Lao v. Court of Appeals*:[16]

It has been observed that the State, under this statute, actually offers the violator 'a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the action is abated' xxx In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a 'complete defense.' **The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due**

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[14] *Id.* at 456-458.

[15] *Id.*

[16] G.R. No. 119178, June 20, 1997, 274 SCRA 572.

process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand – and the basic postulate of fairness require – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. 22."[17] (Bold emphases supplied)

To prove that he had sent the written notice of dishonor to the petitioner by registered mail, Villadolid presented the registry return receipt for the first notice of dishonor dated June 17, 2002 and the registry return receipt for the second notice of dishonor dated July 16, 2002. However, the petitioner denied receiving the written notices of dishonor.

The mere presentment of the two registry return receipts was not sufficient to establish the fact that written notices of dishonor had been sent to or served on the petitioner as the issuer of the check. Considering that the sending of the written notices of dishonor had been done by registered mail, the registry return receipts by themselves were not proof of the service on the petitioner without being accompanied by the authenticating affidavit of the person or persons who had actually mailed the written notices of dishonor, or without the testimony in court of the mailer or mailers on the fact of mailing. The authentication by affidavit of the mailer or mailers was necessary in order for the giving of the notices of dishonor *by registered mail* to be regarded as clear proof of the giving of the notices of dishonor to predicate the existence of the second element of the offense. No less would fulfill the quantum of proof beyond reasonable doubt, for, as the Court said in *Ting v. Court of Appeals*:[18]

Aside from the above testimony, no other reference was made to the demand letter by the prosecution. As can be noticed from the above exchange, the prosecution alleged that the demand letter had been sent by mail. **To prove mailing, it presented a copy of the demand letter as well as the registry return receipt. However, no attempt was made to show that the demand letter was indeed sent through registered mail nor was the signature on the registry**

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[17] *Id.* at 594.

[18] *Ting v. Court of Appeals, supra* note 7, at p. 560.

return receipt authenticated or identified. It cannot even be gleaned from the testimony of private complainant as to who sent the demand letter and when the same was sent. In fact, **the prosecution seems to have presumed that the registry return receipt was proof enough that the demand letter was sent through registered mail and that the same was actually received by petitioners or their agents.**

As adverted to earlier, it is necessary in cases for violation of Batas Pambansa Blg. 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service (58 Am Jur 2d, Notice, § 45). The burden of proving notice rests upon the party asserting its existence. Now, ordinarily, preponderance of evidence is sufficient to prove notice. **In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for Batas Pambansa Blg. 22 cases, there should be clear proof of notice.** Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existence, otherwise the evidence is insufficient to establish the fact of service (C.J.S., Notice, § 18). **In the instant case, the prosecution did not present proof that the demand letter was sent through registered mail, relying as it did only on the registry return receipt. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with Section 7 of Rule 13 (See Section 13, Rule 13, 1997 Rules of Civil Procedure). If, in addition to the registry receipt, it is required in civil cases that an affidavit of mailing as proof of service be presented, then with more reason should we hold in criminal cases that a registry receipt alone is insufficient as proof of mailing. In the instant case, the prosecution failed to present the testimony, or at least the affidavit, of the person mailing that, indeed, the demand letter was sent. xxx**

Moreover, petitioners, during the pre-trial, denied having received the demand letter (p. 135, *Rollo*). **Given petitioners' denial of receipt of the demand letter, it behooved the prosecution to present proof that the demand letter was indeed sent through registered mail and that the same was received by petitioners.** This, the prosecution miserably failed to do. Instead, it merely presented the demand letter and registry return receipt as if mere presentation of the same was equivalent to proof that some sort of mail matter was

received by petitioners. **Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters** (*Central Trust Co. v. City of Des Moines*, 218 NW 580).

Likewise, for notice by mail, **it must appear that the same was served on the addressee or a duly authorized agent of the addressee. In fact, the registry return receipt itself provides that "[a] registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it."** In the case at bar, no effort was made to show that the demand letter was received by petitioners or their agent. All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. **From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. There being insufficient proof that petitioners received notice that their checks had been dishonored, the presumption that they knew of the insufficiency of the funds therefor cannot arise.**

As we stated in *Savage v. Taypin* (G.R. No. 134217, May 11, 2000, 311 SCRA 397), "penal statutes must be strictly construed against the State and liberally in favor of the accused." Likewise, the prosecution may not rely on the weakness of the evidence for the defense to make up for its own blunders in prosecuting an offense. Having failed to prove all the elements of the offense, petitioners may not thus be convicted for violation of Batas Pambansa Blg. 22. (Bold emphases supplied)

Also, that the wife of Villadolid *verbally* informed the petitioner that the check had bounced did not satisfy the requirement of showing that written notices of dishonor had been made to and *received* by the petitioner. The verbal notices of dishonor were not effective because it is already settled that a notice of dishonor must be *in writing*.[19] The Court definitively ruled on the specific

[19] *Marigomen v. People*, G.R. No. 153451, May 26, 2005, 459 SCRA 169, 180.

form of the notice of dishonor in *Domagsang v. Court of Appeals*:[20]

> **Petitioner counters that the lack of a *written notice* of dishonor is fatal. The Court agrees.**
>
> **While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal*," a mere oral notice or demand to pay would appear to be insufficient for conviction under the law.** The Court is convinced that **both the spirit and letter of the Bouncing Checks Law would require** for the act to be punished thereunder not only that the accused issued a check that is dishonored, but **that** likewise **the accused has actually been notified in writing of the fact of dishonor.** The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. (Bold emphases supplied; italics in the original text)

In light of the foregoing, the proof of the guilt of the petitioner for a violation of *Batas Pambansa Blg. 22* for issuing to Villadolid the unfunded Chinabank Check No. LPU-A0141332 in the amount of ₱50,000.00 did not satisfy the quantum of proof beyond reasonable doubt. According to Section 2 of Rule 133, *Rules of Court*, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; only a moral certainty is required, or that degree of proof that produces conviction in an unprejudiced mind. This is the required quantum, *firstly*, because the accused is presumed to be innocent until the contrary is proved, and, *secondly*, because of the inequality of the position in which the accused finds herself, with the State being arrayed against her with its unlimited command of means, with counsel usually of authority and capacity, who are regarded as public officers, "and with an attitude of tranquil majesty often in striking contrast

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[20] G.R. No. 139292, December 5, 2000, 347 SCRA 75, 83-84.

to that of (the accused) engaged in a perturbed and distracting struggle for liberty if not for life."[21]

Nonetheless, the civil liability of the petitioner in the principal sum of ₱50,000.00, being admitted, was established. She was further liable for legal interest of 6% *per annum* on that principal sum, reckoned from the filing of the information in the trial court. That rate of interest will increase to 12% *per annum* upon the finality of this decision.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals promulgated on December 4, 2006, and **ACQUITS** petitioner **AMADA RESTERIO** of the violation of *Batas Pambansa Blg*. 22 as charged for failure to establish her guilt beyond reasonable doubt.

The Court **ORDERS** the petitioner to pay to **BERNARDO VILLADOLID** the amount of ₱50,000.00, representing the face value of Chinabank Check No. LPU-A0141332, with legal interest of 6% *per annum* from the filing of the information until the finality of this decision, and thereafter 12% *per annum* until the principal amount of ₱50,000.00 is paid.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion,[*] and *Reyes, JJ.,* concur.

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[21] 1 Wharton, § 1, quoted in Salonga, *Philippine Law on Evidence,* 3rd Ed., 1964, p. 771.

[*] Vice Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1305 dated September 10, 2012.

SECOND DIVISION

[G.R. No. 185282. September 24, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN BRAVO *y* ESTABILLO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; ARSON; THE *CORPUS DELICTI* RULE IS SATISFIED BY PROOF OF THE BARE FACT OF THE FIRE AND OF IT HAVING BEEN INTENTIONALLY CAUSED; THE UNCORROBORATED TESTIMONY OF A SINGLE EYEWITNESS, IF CREDIBLE IS ENOUGH TO PROVE *CORPUS DELICTI* AND TO WARRANT CONVICTION.—** In the prosecution for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire because of criminal agency; and (2) the identity of the defendant as the one responsible for the crime. In arson, the *corpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, is enough to prove the *corpus delicti* and to warrant conviction.

2. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION RATIONALE FOR THE RULE ON CIRCUMSTANTIAL EVIDENCE.—** The occurrence of the fire was established by the burnt house, the charred bodies of the two fire victims and testimonies of prosecution witnesses. As to the identity of the arsonist, no direct evidence was presented. However, direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Section 4 of Rule 133 of the Rules of Court provides: **Section 4**. *Circumstantial evidence, when sufficient*.— Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The reason for this rule was highlighted in *People v. Gallard*e and reiterated in *People v. Gil*, thus: There may, however, be instances where, although

a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to the only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitness are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection. In order to justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal responsibility of the accused.

3. **ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST DEMONSTRATE THAT HE WAS SO FAR AWAY AND COULD NOT HAVE BEEN PHYSICALLY PRESENT AT THE SCENE OF THE CRIME AND ITS IMMEDIATE VICINITY WHEN THE CRIME WAS COMMITTED.—** *Alibi* is inherently weak and unreliable in the face of positive and credible testimonies of prosecution witnesses. It becomes less plausible, especially when it is corroborated by relatives and friends who may not be impartial witnesses. Physical impossibility is essential in the defense of *alibi*. Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed. The Court of Appeals clearly stated in its

Decision that appellant failed to prove the physical impossibility of his presence at the crime scene which negated his *alibi* x x x.

4. **CRIMINAL LAW; ARSON; PROPER PENALTY.—** Under Section 5 of Presidential Decree No. 1613, the penalty of *reclusion perpetua* to death is imposed when death results. In the light of the passage of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty should be *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J*.:

Before us is an appeal from the Decision[1] dated 27 May 2008 of the Court of Appeals, which affirmed the judgment of the Regional Trial Court[2] (RTC) of Bauang, La Union, Branch 33, finding appellant Benjamin Bravo *y* Estabillo guilty of arson.

On 17 August 1989, an Information was filed against appellant charging him with Arson with Double Murder, committed as follows:

That on or about 9:30 P.M. of August 10, 1989, at Brgy[.] Magungunay, Municipality of Naguilian, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused motivated by anger, hatred and other evil motive and with intent to destruct (sic) life and property, did then and there wilfully, unlawfully and feloniously set on fire the house of MAURO CAMACHO, which causes (sic) said house to be razed to the ground and during the occasion thereof, one Mrs. Shirley Camacho

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[1] Penned by then Associate Justice Lucas P. Bersamin (now Supreme Court Associate Justice) with Associate Justices Conrado M. Vasquez, Jr. and Pampio A. Abarintos, concurring. *Rollo*, pp. 4-23.

[2] Presided by Judge Rose Mary R. Molina Alim. CA *rollo,* pp. 23-30.

and her four month old son Jerickson Camacho was trapped during the fire which causes (sic) their instantaneous death, and also the house of Dominador Camacho was also gutted down by the fire which comes (sic) from the house of Mauro Camacho, with a total losses of damages (sic) amounted to FOUR HUNDRED THOUSAND PESOS (₱400,000.00) Philippine Currency, to the damage and prejudice of the offended parties.[3]

Mauro Camacho (Mauro) was a resident of *Barangay* Magungunay, Naguilian, La Union. He lived in a two-storey house with his three (3) children: Merlita, Mauro, Jr. and Fidel; daughter-in-law Shirley, and grandson Jerickson. Mauro's bedroom occupied the southwest portion of the second floor; Merlita's room was on the north beside the stairs; Shirley and Jerickson on the northwest corner, and Mauro, Jr. slept on the *sala*, directly opposite Merlita's room.[4] The ground floor of the house contained a pile of tobaccos, lumber, container of *palay*, and water pump.[5]

On 10 August 1989 at around 9:30 p.m., Mauro, now deceased, was lying in bed inside his bedroom on the second floor of the house when he heard gunshots.[6] He then heard appellant calling for him to come down.[7] When Mauro did not heed appellant's call, the latter went up the stairs, pointed a gun at Mauro, and demanded that he bring out the *akusan*, apparently an object used in witchcraft. Appellant was accusing Mauro of putting a curse on the latter's father, who at that instance, was sick.[8] Mauro remained tight lipped prompting appellant to turn around. On his way down the stairs, appellant supposedly uttered: "I will burn you all. All of you will die." About fifteen (15) seconds thereafter, Mauro saw a big fire on the second

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[3] Records, p. 1.

[4] Per Sketch drawn by Mauro during the bail hearing on 15 March 1990. *Id.* at 293.

[5] *Id.* at 294.

[6] TSN, 15 March 1990, pp. 3-5.

[7] *Id.* at 14.

[8] *Id.* at 15-19.

floor coming from the northwest, in particular, the room of Shirley and Jerickson. While the fire was spreading, Mauro, together with his children Merlita and Mauro, Jr. were able to jump out of the window in the south.[9]

Fidel Camacho (Fidel), the husband of Merlita, was attending a wake of his brother-in-law at the adjacent barrio located one kilometer away from *Barangay* Magungunay, Naguilian, La Union when he heard gunshots at around 8:30 p.m. Fidel immediately ran home and saw the house burning. He was met by his father, Mauro, who informed him that his wife and son perished in the fire.[10]

Alejandro Marzan (Alejandro), Mauro's brother, was also attending the same wake when he heard gunshots. When he went out of the house, he already saw the fire razing in the north. While running towards the direction of the fire, Alejandro saw appellant who was holding a gun and running towards him. Instead of heading towards appellant, Alejandro changed his path and passed through a ricefield. Alejandro reasoned that he intentionally avoided appellant because not only was the latter carrying a gun, but that he had knowledge that appellant was accusing Mauro and his family of practicing witchcraft.[11] When Alejandro reached the house of Mauro, he saw it was already razed to the ground while the house of Dominador Camacho was still burning. He asked Mauro about the fire and the latter pointed to appellant as the one who came to the house pointing a gun at him and threatening to burn them.[12]

Fidel presented a list of the burnt personal belongings amounting to ₱27,000.00;[13] a receipt covering the burial expenses for his wife and child amounting to ₱10,800.00;[14] a tax declaration

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[9] *Id.* at 22-25.

[10] TSN, 15 March 1995, pp. 6-15.

[11] TSN, 22 March 1990, pp. 31-41.

[12] *Id.* at 46-48.

[13] Records, p. 289.

[14] *Id.* at 290.

of the burnt house;[15] and photographs of the house razed by the fire and the charred remains.[16]

In his defense, appellant denied burning the house and interposed *alibi*. He narrated that on 10 August 1989, he was at *Barangay* Magleva, San Fabian to accompany his father for treatment by a faith healer. He spent the night with his father, mother, and cousin at the convent. He arrived at Naguilian only on the following day at around 12:00 p.m. The police came to appellant's house at 1:00 p.m. to arrest him. On the way to the municipal hall, they passed by the burnt house and he helped in carrying the remains of the burnt victims.[17]

Appellant's father, Agripino, and cousin Carolino Estabillo, corroborated his statement.[18] *Barangay* Captain Wilfredo Gundran testified as to appellant's good moral character. He knew appellant since birth and attested that appellant is a law abiding citizen, of good moral character and a reliable person in the *barangay*.[19] Jimmy Sabado, the school principal at Magungunay Elementary School stated that appellant was the President of the school's Parents Teachers Association and that he has not observed any wrongful action on the part of appellant in the eight (8) years that he knew him.[20]

After trial, appellant was found guilty by the trial court of arson in a Decision dated 16 July 2002, the dispositive portion of which reads:

> WHEREFORE, the prosecution having established the guilt of the accused with moral certainty for the crime of ARSON punishable under Section 5, P.D. No. 1613, the Court hereby sentences the accused BENJAMIN BRAVO *Y* ESTABILLO, to suffer the penalty

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[15] *Id.* at 296.

[16] *Id.* at 297-298.

[17] TSN, 5 December 1995, pp. 4-22.

[18] TSN, 24 April 1996, pp. 3-9 and TSN, 20 March 2001, pp. 4-12.

[19] TSN, 3 July 1996, pp. 3-5.

[20] *Id.* at 8-11.

of *Reclusion Perpetua*; to indemnify the offended party Fidel Camacho the following amounts:

a) Php20,000.00 as nominal damages;
b) Php100,000.00 as death indemnity;
c) Php100,000.00 as moral damages.

To Mauro Camacho, the amount of Php50,000.00 as nominal damages; to Dominador Camacho, the amount of Php30,000.00 likewise as nominal damages, and to pay the costs.

In the service of his sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions prescribed under Art. 29 of the Revised Penal Code, as amended.[21]

The trial court relied on circumstantial evidence to convict appellant of arson.

The appellate court affirmed the factual findings of the trial court and agreed that the circumstantial evidence proved beyond reasonable doubt that appellant had set the houses on fire. In addition, the appellate court awarded exemplary damages of ₱50,000.00 to Fidel for the death of his wife and child. The dispositive portion of the Decision reads:

WHEREFORE, the DECISION DATED JULY 16, 2002 is AFFIRMED subject to the MODIFICATION that in addition to the monetary damages decreed the accused is ordered to pay exemplary damages of ₱50,000.00 to Fidel Camacho, the surviving heir of Shirley Camacho and Jerickson Camacho.[22]

On 19 January 2009, this Court required the parties to simultaneously submit their respective supplemental briefs. Appellant and the Office of the Solicitor General (OSG) both filed their manifestations stating that they would no longer file any supplemental briefs and instead adopt their respective briefs before us.[23]

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[21] CA *rollo*, pp. 29-30.

[22] *Rollo,* pp. 22-23.

[23] *Id.* at 33-34 and 37-38.

Appellant for his defense capitalizes on *alibi* as supposedly supported by numerous witnesses. He dismisses the prosecution's evidence as merely circumstantial and not enough to convict him of the crime imputed. Citing *People v. Ochate,*[24] appellant parroted the guidelines in the appreciation of circumstantial evidence without however offering any explanation as to how these guidelines were disregarded.

On the other hand, the OSG enumerated the chain of events which established the elements of the crime of arson and lead to the identification of appellant as the arsonist. The OSG also assails appellant's *alibi* as weak and corroborated by partial witnesses.

In the prosecution for arson, proof of the crime charged is complete where the evidence establishes: (1) the *corpus delicti*, that is, a fire because of criminal agency; and (2) the identity of the defendant as the one responsible for the crime. In arson, the *corpus delicti* rule is satisfied by proof of the bare fact of the fire and of it having been intentionally caused. Even the uncorroborated testimony of a single eyewitness, if credible, is enough to prove the *corpus delicti* and to warrant conviction.[25]

The occurrence of the fire was established by the burnt house,[26] the charred bodies of the two fire victims[27] and testimonies of prosecution witnesses. As to the identity of the arsonist, no direct evidence was presented. However, direct evidence is not the sole means of establishing guilt beyond reasonable doubt. Section 4 of Rule 133 of the Rules of Court provides:

Section 4. *Circumstantial evidence, when sufficient*.— Circumstantial evidence is sufficient for conviction if:

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[24] 434 Phil. 575 (2002).

[25] *People v. Murcia*, G.R. No. 182460, 9 March 2010, 614 SCRA 741, 749 citing *People v. De Leon*, G.R. No. 180762, 4 March 2009, 580 SCRA 617, 627; *Gonzales, Jr. v. People*, G.R. No. 159950, 12 February 2007, 515 SCRA 480, 486-487; *People v. Oliva*, 395 Phil. 265, 274-275 (2000).

[26] Records, p. 297.

[27] *Id.* at 298.

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The reason for this rule was highlighted in *People v. Gallard*e[28] and reiterated in *People v. Gil*,[29] thus:

There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to the only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. If the actual eyewitness are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.

In order to justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal responsibility of the accused.[30]

We fully agree with the Court of Appeals that the following circumstances form an unbroken chain that point to no other than that appellant is the arsonist, to wit:

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[28] 382 Phil. 718, 736-737 (2000).

[29] G.R. No. 172468, 15 October 2008, 569 SCRA 142, 151.

[30] *People v. Murcia, supra* note 25 at 750.

First: Prior to the burning incident, the Bravo family, including the accused, had denounced Mauro Camacho and his wife of engaging in witchcraft. The Bravos blamed the witchcraft to be the cause of the illness of the father of the accused.

Thus:

Q: Namely, who are these members of the family of Bravos who are blaming Mauro Camacho and his wife as witches?

x x x x x x x x x[x]

A: That one sir (the person pointed to by the witness standing up and when asked by the Interpreter, said person gave her name as Lourdes Bravo); that one also, sir (the witness pointing to the man who also stood up and when asked by the Interpreter, he gave his name as Agrifino [sic] Bravo); that one, sir, (the witness pointing to the accused Benjamin Bravo who also stood up); and that one sir (the witness pointing to another woman who stood up and when asked by the Interpreter, she gave her name as Leticia Bravo).

Second: A week after the rumors had spread that Mauro Camacho, Sr. and his wife had subjected the father of the accused to their witchcraft, their house got burned downed.

Thus:

Q: How many days before August 10, 1989 that you were informed that you were - that the father of Ben Bravo was blaming you as the one who employed witchcraft on him?

A: Less than one (1) week, sir.

Third: The accused was present at the scene of the crime at about 9:30 pm on August 10, 1989, daring Mauro Camacho, Sr. to go down from his house. The accused himself even went up the house of the Camachos and pointed his long firearm at Mauro[,] Sr.

Thus:

Q: On August 10, 1989 at around 9:30 O'clock [sic] in the evening, where were you?

A: I was in our house, sir.

x x x x x x x x x[x]

Q: On that particular date[,] time and place, what were you doing in your house at *Barangay* Magungunay, Naguilian, La Union?

A: I was already lying down about to sleep, sir.

Q: And while you were lying down what happened if any?

A: There was a shot that we heard, sir.

x x x x x x x x x[x]

Q: Now, after hearing those gun reports north of your house, what happened if any?

A: I was asked to go down, sir.

Q: Who was telling you to go down?

A: It was Ben, sir (witness pointing to the accused) I heard the voice of Ben asking me to go down.

Q: Ben?

A: Bravo, sir.

Q: Who is this Ben Bravo? The accused in this case?

A: Yes, sir.

Q: What was Ben Bravo uttering while he was on the ground?

A: Come down, sir.

Q: How many times did he utter those words, come down?

A: I did not count it anymore because I was then afraid, sir.

Q: You claimed that you know the voice of Ben Bravo the accused here. Why? How many years have you known him before August 10, 1989?

A: When he was still a small boy I have known him already because their place is not far from ours, sir.

Q: How many occasions did you talk to him entirely your life (sic)?

A: It could not be counted anymore, sir.

x x x x x x x x x[x]

Q: Now, what happened after you heard the accused uttering those words?

A: When I did not go down he went upstairs, sir.

x x x x x x x x x[x]

Q: Where did he proceed?

A: He proceeded to the place where I was pointing a gun at me *(sic)*, sir.

Q: Where did he enter?

A: He went up thru stairs, sir.

x x x x x x x x x[x]

Q: You said he was pointing a gun at you. How long was the gun he was pointing at you?

A: Like this, sir. (witness demonstrating by spreading his hands indicating a length of 36 inches)

Q: What happened when he was near you?

A: He said, you bring out your *akusan*, sir.

Q: By the way, Mr. witness, will you tell us what is this *akusan* referred to if you know?

A: Something that is used in witchcraft, sir.

Q: And what did you answer if any, if you answer?

A: I did not say anything because I do not know what he was telling, sir?

Q: How many times did he utter those words?

A: I did not count anymore how many times did he utter those words asking me to bring out the *akusan*, sir.

Q: How far were you that time?

A: Around two (2) meters, sir.

x x x x x x x x x[x]

Q: How would you able to recognize the accused Ben Bravo at that time?

A: I was looking at him, sir.

Q: What else aside from that?

A: I could clearly see him because it was bright in our house because the light is on and I was sidewise facing him, sir.

Q: You mean, at that time your face was facing him?

A: He was infront of me, sir.

x x x x x x x x x[x]

Q: When he was uttering those words telling you to bring out that *akusan* which is something used for witchcraft, what did you do?

A: I did not say anything, sir.

Q: Then what happened when you remain silent?

A: When I was not moving and say nothing, he turned around and went down, sir.

Q: How many seconds did Ben Bravo stay in the place where you were lying down at that time?

A: More than one (1) minute then he turned, sir.

x x x x x x x x x[x]

Fourth: The accused was heard uttering while going down the stairs of the house the Camachos: *Matay kayo aminen, po-urak daytoy balay yo* (all of you will die. I will burn your house). Fifteen seconds later, Mauro Camacho, Sr. heard gunshots and then saw a big fire in the room occupied by Shirley Camacho and her son.

Thus:

Q: And what happened when Ben Bravo proceeded to the door of your house?

A: When he went down already, he uttered: "I will burn you all. All of you will die," sir.

Q: What happened afterwards?

A: After fifteen (15) seconds, there was a big fire going inside, sir.

Q: Where was this fire coming from?

A: North, sir, where Shirley and Jerickson's room.

Q: By the way, will you tell us what kind of flooring does the room of Shirley and Jerickson constructed of?

A: It is made of wood but some of it I changed it with bamboo because they are already old, sir.

x x x x x x x x x[x]

Q: Was the fire inside or outside the room of Shirley and Jerickson?

A: The fire is also in the *sala* and in the room of Shirley, sir.

x x x x x x x x x[x]

Q: How about Shirley and Jerickson?

A: I did not hear about Shirley and Jerickson because the fire was already big. I did not hear of their move but the fire is already big, sir.

Q: Mr. witness, what were under your house which is the first floor at that time?

A: Under the room of Shirley and Jerickson are pile of tabaccos, sir.

Q: How about under the *sala*?

A: Lumber to be used for my children, water pump and "*garong*" container for *palay,* sir.

x x x x x x x x x[x]

Q: Then Ben Bravo descended from the stairs, is it not?

A: When he was going down he uttered that he is going to burn us all, sir.

Q: And then after he has said that, immediately your house went on fire, is it not?

A: After seconds fire broke up, sir.

Q: How many seconds?

A: Fifteen (15) seconds, sir.

Q: Mr. witness when Ben Bravo descended there was nothing else that you heard except his statement, "I will burn your house," is it not?

A: Then I heard successive gun reports, sir.

Q: How many gun reports?

A: I could not count, however, there were about 6 to 7 cartridges recovered by the police, sir.

x x x x x x x x x[x]

And fifth. *Barangay* councilman Alejandro Marzan, while at a wake in *Barangay* Ambaracao Sur, Naguilian, La Union at about 9:30 pm of August 10, 1989, heard gunshots that prompted him to go outside. He then saw a fire to the north about a kilometer away from where he was. He rushed towards the place of the fire. Midway, he encountered Benjamin Bravo running from the opposite direction and carrying a long firearm.

Thus:

Q: About 9:30 o'clock in the evening of August 10, 1989 where were you Mr. witness?

A: I was at the wake sir.

Q: Where was that wake?

A: In the house of Pedring Obena, sir.

Q: In what *barangay* is that house of Pedring Obena situated, Mr. witness?

A: In *Barangay* Ambaracao Sur, Naguilian, La Union, sir.

Q: And while you were there in the house of Pedring Obena attending a wake, what happened if any Mr. witness?

A: While we were in the wake, sir, I already heard a gun report and when we went out, I already saw the fire.

Q: And where is that fire in relation to the place where you were then?

A: I saw the fire in the north, sir.

Q: How far is it in relation to the place where you were attending that wake?

A: Maybe from here up to the second bridge on the south, of the municipal building, your honor, because it is going upward.

INTERPRETER: The witness indicating a distance of about one (1) kilometer.

x x x x x x x x x[x]

Q: And when you observed that the fire was a little bit northeast of the fire, Mr. witness, what did you do?

A: I ran towards the place, sir.

Q: And while you were proceeding to that particular place where there was a fire, what happened on your way?

A: I met Benjamin Bravo sir (the witness pointing to the accused whom he pointed to a while ago).

Q: How far from the place where you came from to the place where you met the accused Benjamin Bravo, Mr. Witness?

A: Maybe from here up to the northern end of the northern bridge, sir (the witness pointing somewhere to the south of the municipal building).

INTERPRETER: The witness indicating a distance of six hundred (600) to six hundred fifty (650) meters, that is from the courtroom to the northern end of the northern bridge or first bridge from the municipal building.

x x x x x x x x x[x]

Q: What did you observe on Benjamin Bravo when you met him Mr. witness?

A: He was running also, sir.

Q: What else aside from the fact that he was running did you observe on Benjamin Bravo, Mr. witness?

A: I observed him to be carrying a gun proceeding towards the north, sir.

Q: And anyway, what direction were you proceeding at that time, Mr. witness?

A: I was proceeding towards the south, sir, proceeding to the place where the fire was.

x x x x x x x x x[x]

Q: In what kind of path were [you] running at that time Mr. witness proceeding to the place of the fire?

A: An earthen dike, sir.

Q: It was nighttime and how come that you were able to recognize Benjamin Bravo as the one you met holding a gun at that time?

A: Because of the brightness of the moon, sir, there was moonlight at that time.

Q: When you passed at each other how far were you?

A: I could have met with him and we could have bumped with each other on the way, sir, however, I went to the field – to the ricefield and so we had a distance of one (1) arm's length away.

Q: So originally you were using the earthen dike while running towards the place?

A: Yes, sir.

Q: And when you met him he was also using the earthen dike?

A: Yes, sir.

Q: And so that you will not collide or bump with each other you went down on the ricefield about that length, is that correct Mr. witness?

A: Yes, sir.

x x x x x x x x x[x]

Q: Why did you go down the ricefield[,] Mr. witness?

A: Because he was running fast sir and he was holding a gun.

Q: How long was that gun he was holding then?

A: Like this, sir (the witness demonstrating).

INTERPRETER: The witness indicating a length of one (1) meter and seventeen (17) centimetres.[31]

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[31] *Rollo*, pp. 10-19.

Alibi is inherently weak and unreliable in the face of positive and credible testimonies of prosecution witnesses. It becomes less plausible, especially when it is corroborated by relatives and friends who may not be impartial witnesses.[32]

Physical impossibility is essential in the defense of *alibi*. Physical impossibility refers to distance and the facility of access between the *situs criminis* and the location of the accused when the crime was committed. He must demonstrate that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[33]

The Court of Appeals clearly stated in its Decision that appellant failed to prove the physical impossibility of his presence at the crime scene which negated his *alibi*, thus:

> Quite noticeable, too, is that the evidence on the *alibi* did not demonstrate the physical impossibility for the accused to be at the scene of the crime when the crime was committed at 9:30 pm of August 10, 1989. For, even assuming that the accused had gone to San Fabian earlier that day of the crime, his being in San Fabian did not preclude his going back to Naguilian, La Union after the treatment of the father had been completed by 5:00 pm in order for him to be in the place where the crime was committed at the time of the commission of the crime. In this regard, the RTC took judicial notice that it would take only about 2 hours more or less to negotiate the distance from Naguilian, La Union to San Fabian, Pangasinan. For *alibi* to prosper, it is not enough that the accused was somewhere else when the crime was committed, but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. That showing was not made by the accused.[34]

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[32] *People v. Albalate, Jr.*, G.R. No. 174480, 18 December 2009, 608 SCRA 535, 548-549 citing *People v. Manalili,* G.R. No. 184598, 23 June 2009, 590 SCRA 695, 711.

[33] *People v. Jacinto*, G.R. No. 182239, 16 March 2011, 645 SCRA 590, 614 citing *People v. Trayco*, G.R. No. 171313, 14 August 2009, 596 SCRA 233, 253.

[34] *Rollo*, pp. 19-20.

Under Section 5 of Presidential Decree No. 1613, the penalty of *reclusion perpetua* to death is imposed when death results. In the light of the passage of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty should be *reclusion perpetua*.[35]

We likewise affirm the award of damages.

WHEREFORE, the appealed decision finding appellant **BENJAMIN BRAVO *y* ESTABILLO** guilty beyond reasonable doubt of the crime of arson and sentencing him to *reclusion perpetua* is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 188417. September 24, 2012]

MILAGROS DE BELEN *VDA. DE* CABALU, MELITON CABALU, SPS. ANGELA CABALU and RODOLFO TALAVERA, and PATRICIO ABUS, *petitioners, vs.* **SPS. RENATO TABU and DOLORES LAXAMANA, Municipal Trial Court in Cities, Tarlac City, Branch II,** *respondents.*

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[35] *People v. Baluntong*, G.R. No. 182061, 15 March 2010, 615 SCRA 455, 463.

[*] Per Special Order No. 1308 dated 21 September 2012.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY CANNOT PREVAIL OVER THE FACT PROVEN AND ESTABLISHED IN THE RECORDS OF THE CASE.—** It is well to note that both the RTC and the CA found that the evidence established that the March 5, 1975 Deed of Sale of Undivided Parcel of Land executed by Domingo in favor of Laureano Cabalu was a fictitious and simulated document. x x x. Petitioners, in support of their claim of validity of the said document of deed, again invoke the legal presumption of regularity. To reiterate, the RTC and later the CA had ruled that the sale, dated March 5, 1975, had the earmarks of a simulated deed, hence, the presumption was already rebutted. Verily and as aptly noted by the respondent spouses, such presumption of regularity cannot prevail over the facts proven and already established in the records of this case.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBJECT OF CONTRACTS; A CONTRACT ENTERED INTO UPON FUTURE INHERITANCE IS VOID; REQUISITES; PRESENT.—** [U]nder Article 1347 of the Civil Code, "No contract may be entered into upon future inheritance except in cases expressly authorized by law." Paragraph 2 of Article 1347, characterizes a contract entered into upon future inheritance as void. The law applies when the following requisites concur: (1) the succession has not yet been opened; (2) the object of the contract forms part of the inheritance; and (3) the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature. In this case, at the time the deed was executed, Faustina's will was not yet probated; the object of the contract, the 9,000 square meter property, still formed part of the inheritance of his father from the estate of Faustina; and Domingo had a mere inchoate hereditary right therein. Domingo became the owner of the said property only on August 1, 1994, the time of execution of the Deed of Extrajudicial Succession with Partition by the heirs of Faustina, when the 9,000 square meter lot was adjudicated to him. The CA, therefore, did not err in declaring the March 5, 1975 Deed of Sale null and void.

3. **ID.; ID.; THE DEATH OF A PERSON TERMINATES CONTRACTUAL CAPACITY; IF ANY ONE PARTY TO A SUPPOSED CONTRACT WAS ALREADY DEAD AT THE TIME OF ITS EXECUTION, SUCH CONTRACT IS SIMULATED AND FALSE AND, THEREFORE, NULL AND VOID BY REASON OF ITS HAVING BEEN MADE AFTER THE DEATH OF THE PARTY WHO APPEARS AS ONE OF THE CONTRACTING PARTIES THEREIN.—** Regarding the deed of sale covering the remaining 4,500 square meters of the subject property executed in favor of Renato Tabu, it is evidently null and void. The document itself, the Deed of Absolute Sale, dated October 8, 1996, readily shows that it was executed on August 4, 1996 more than two months after the death of Domingo. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and a party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore, null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.

4. **ID.; ID.; A NULL AND VOID CONTRACT OF ABSOLUTE SALE PRODUCES NO LEGAL EFFECTS AND TRANSMITS NO RIGHTS WHATSOEVER.—** The contract being null and void, the sale to Renato Tabu produced no legal effects and transmitted no rights whatsoever. Consequently, TCT No. 286484 issued to Tabu by virtue of the October 8, 1996 Deed of Sale, as well as its derivative titles, TCT Nos. 291338 and 291339, both registered in the name of Renato Tabu, married to Dolores Laxamana, are likewise void. The CA erred in deleting that portion in the RTC decision declaring the Deed of Absolute Sale, dated October 8, 1996, null and void and canceling TCT Nos. 291338 and 291339.

APPEARANCES OF COUNSEL

Mosuela Buan & Associates Law Office for petitioners.
Servillano S. Santillan for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a "Petition for Review on *Certiorari* (under Rule 45)" of the Rules of Court assailing the June 16, 2009 Decision[1] of the Court of Appeals *(CA)* in CA-GR. CV No. 81469 entitled "*Milagros De Belen Vda de Cabalu v. Renato Tabu*."

The Facts

The property subject of the controversy is a 9,000 square meter lot situated in Mariwalo, Tarlac, which was a portion of a property registered in the name of the late Faustina Maslum *(Faustina)* under Transfer Certificate of Title *(TCT)* No. 16776 with a total area of 140,211 square meters.[2]

On December 8, 1941, Faustina died without any children. She left a holographic will, dated July 27, 1939, assigning and distributing her property to her nephews and nieces. The said holographic will, however, was not probated. One of the heirs was the father of Domingo Laxamana *(Domingo)*, Benjamin Laxamana, who died in 1960. On March 5, 1975, Domingo allegedly executed a *Deed of Sale of Undivided Parcel of Land* disposing of his 9,000 square meter share of the land to Laureano Cabalu.[3]

On August 1, 1994, to give effect to the holographic will, the forced and legitimate heirs of Faustina executed a *Deed of Extra-Judicial Succession with Partition*. The said deed imparted 9,000 square meters of the land covered by TCT No. 16776 to Domingo. Thereafter, on December 14, 1995, Domingo sold 4,500 square meters of the 9,000 square meters to his nephew, Eleazar Tabamo. The document was captioned *Deed of Sale of*

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[1] Annex "A" of Petition, *rollo*, pp. 13-23. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justice Andres B. Reyes, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[2] *Id.* at 14.

[3] *Id.* at 14-15.

a Portion of Land. On May 7, 1996, the remaining 4,500 square meters of Domingo's share in the partition was registered under his name under TCT No. 281353.[4]

On August 4, 1996, Domingo passed away.

On October 8, 1996, two months after his death, Domingo purportedly executed a *Deed of Absolute Sale* of TCT No. 281353 in favor of respondent Renato Tabu *(Tabu)*. The resultant transfer of title was registered as TCT No. 286484. Subsequently, Tabu and his wife, Dolores Laxamana *(respondent spouses)*, subdivided the said lot into two which resulted into TCT Nos. 291338 and 291339.[5]

On January 15, 1999, respondent Dolores Laxamana-Tabu, together with Julieta Tubilan-Laxamana, Teresita Laxamana, Erlita Laxamana, and Gretel Laxamana, the heirs of Domingo, filed an unlawful detainer action, docketed as Civil Case No. 7106, against Meliton Cabalu, Patricio Abus, Roger Talavera, Jesus Villar, Marcos Perez, Arthur Dizon, and all persons claiming rights under them. The heirs claimed that the defendants were merely allowed to occupy the subject lot by their late father, Domingo, but, when asked to vacate the property, they refused to do so. The case was ruled in favor of Domingo's heirs and a writ of execution was subsequently issued.[6]

On February 4, 2002, petitioners Milagros de Belen *Vda. De* Cabalu, Meliton Cabalu, Spouses Angela Cabalu and Rodolfo Talavera, and Patricio Abus *(petitioners)*, filed a case for *Declaration of Nullity of Deed of Absolute Sale, Joint Affidavit of Nullity of Transfer Certificate of Title Nos. 291338 and 291339, Quieting of Title, Reconveyance, Application for Restraining Order, Injunction and Damages* (Civil Case No. 9290) against respondent spouses before the Regional Trial Court, Branch 63, Tarlac City *(RTC)*.[7]

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[4] *Id.* at 15.

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

[6] *Id.* at 16.

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

In their complaint, petitioners claimed that they were the lawful owners of the subject property because it was sold to their father, Laureano Cabalu, by Domingo, through a Deed of Absolute Sale, dated March 5, 1975. Hence, being the rightful owners by way of succession, they could not be ejected from the subject property.[8]

In their *Answer*, respondent spouses countered that the deed of sale from which the petitioners anchored their right over the 9,000 square meter property was null and void because in 1975, Domingo was not yet the owner of the property, as the same was still registered in the name of Faustina. Domingo became the owner of the property only on August 1, 1994, by virtue of the Deed of Extra-Judicial Succession with Partition executed by the forced heirs of Faustina. In addition, they averred that Domingo was of unsound mind having been confined in a mental institution for a time.[9]

On September 30, 2003, the RTC dismissed the complaint as it found the Deed of Absolute Sale, dated March 5, 1975, null and void for lack of capacity to sell on the part of Domingo. Likewise, the Deed of Absolute Sale, dated October 8, 1996, covering the remaining 4,500 square meters of the subject property was declared ineffective having been executed by Domingo two months after his death on August 4, 1996. The *fallo* of the Decision[10] reads:

WHEREFORE, in view of the foregoing, the complaint is hereby **DISMISSED,** and the decision is hereby rendered by way of:

1. declaring null and void the Deed of Absolute Sale dated March 5, 1975, executed by Domingo Laxamana in favor of Laureano Cabalu;
2. declaring null and void the Deed of Absolute Sale dated October 8, 1996, executed by Domingo Laxamana in favor of Renato Tabu, and that TCT Nos. 293338 and 291339,

[8] *Id.* at 25.

[9] *Id.*

[10] *Id.* at 24-34.

both registered in the name of Renato Tabu, married to Dolores Laxamana be cancelled;

3. restoring to its former validity, TCT No. 16770 in the name of Faustina Maslum subject to partition by her lawful heirs.

Costs de oficio.

SO ORDERED.[11]

Not in conformity, both parties appealed to the CA. Petitioners contended that the RTC erred in declaring void the Deed of Absolute Sale, dated March 5, 1975. They claimed that Domingo owned the property, when it was sold to Laureano Cabalu, because he inherited it from his father, Benjamin, who was one of the heirs of Faustina. Being a co-owner of the property left by Benjamin, Domingo could dispose of the portion he owned, notwithstanding the will of Faustina not being probated.

Respondent spouses, on the other hand, asserted that the Deed of Sale, dated March 5, 1975, was spurious and simulated as the signature, PTR and the document number of the Notary Public were different from the latter's notarized documents. They added that the deed was without consent, Domingo being of unsound mind at the time of its execution. Further, they claimed that the RTC erred in canceling TCT No. 266583 and insisted that the same should be restored to its validity because Benjamin and Domingo were declared heirs of Faustina.

On June 16, 2009, the CA rendered its decision and disposed as follows:

WHEREFORE, in the light of the foregoing, the instant appeal is partially **GRANTED** in that the decision of the trial court is **AFFIRMED WITH MODIFICATION** that sub-paragraphs 2 & 3 of the disposition, which reads:

"2. declaring null and void the Deed of Absolute Sale dated October 8, 1996, executed by Domingo Laxamana in favor of Renato Tabu, and that TCT Nos. 291338 and 291339, both registered in the name of Renato Tabu, married to Dolores Laxamana be cancelled;

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

3. restoring to its former validity, TCT No. 16776 in the name of Faustina Maslum subject to partition by her lawful heirs," are DELETED.

IT IS SO ORDERED.[12]

In finding Domingo as one of the heirs of Faustina, the CA explained as follows:

> It appears from the records that Domingo was a son of Benjamin as apparent in his Marriage Contract and Benjamin was a nephew of Faustina as stated in the holographic will and deed of succession with partition. By representation, when Benjamin died in 1960, Domingo took the place of his father in succession. In the same vein, the holographic will of Faustina mentioned Benjamin as one of her heirs to whom Faustina imparted 9,000 square meters of her property. Likewise, the signatories to the Deed of Extra-judicial Succession with Partition, heirs of Faustina, particularly declared Domingo as their co-heir in the succession and partition thereto. Furthermore, the parties in this case admitted that the relationship was not an issue.[13]

Although the CA found Domingo to be of sound mind at the time of the sale on March 5, 1975, it sustained the RTC's declaration of nullity of the sale on the ground that the deed of sale was simulated.

The CA further held that the RTC erred in canceling TCT No. 266583 in the name of Domingo and in ordering the restoration of TCT No. 16770, registered in the name of Faustina, to its former validity, Domingo being an undisputed heir of Faustina.

Hence, petitioners interpose the present petition before this Court anchored on the following

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[12] *Id.* at 22.

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

GROUNDS

(A)

THE DEED OF SALE OF UNDIVIDED PARCEL OF LAND EXECUTED ON MARCH 5, 1975 BY DOMINGO LAXAMANA IN FAVOR OF LAUREANO CABALU IS VALID BECAUSE IT SHOULD BE ACCORDED THE PRESUMPTION OF REGULARITY AND DECLARED VALID FOR ALL PURPOSES AND INTENTS.

(B)

THE SUBPARAGRAPH NO. 2 OF THE DECISION OF THE REGIONAL TRIAL COURT SHOULD STAY BECAUSE THE HONORABLE COURT OF APPEALS DID NOT DISCUSS THE ISSUE AND DID NOT STATE THE LEGAL BASIS WHY SAID PARAGRAPH SHOULD BE DELETED FROM THE SEPTEMBER 30, 2003 DECISION OF THE REGIONAL TRIAL COURT.[14]

The core issues to be resolved are 1] whether the Deed of Sale of Undivided Parcel of Land covering the 9,000 square meter property executed by Domingo in favor of Laureano Cabalu on March 5, 1975, is valid; and 2] whether the Deed of Sale, dated October 8, 1996, covering the 4,500 square meter portion of the 9,000 square meter property, executed by Domingo in favor of Renato Tabu, is null and void.

Petitioners contend that the Deed of Absolute Sale executed by Domingo in favor of Laureano Cabalu on March 5, 1975 should have been declared valid because it enjoyed the presumption of regularity. According to them, the subject deed, being a public document, had in its favor the presumption of regularity, and to contradict the same, there must be clear, convincing and more than preponderant evidence, otherwise, the document should be upheld. They insist that the sale transferred rights of ownership in favor of the heirs of Laureano Cabalu.

They further argue that the CA, in modifying the decision of the RTC, should not have deleted the portion declaring null

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

and void the Deed of Absolute Sale, dated October 8, 1996, executed by Domingo in favor of Renato Tabu, because at the time of execution of the said deed of sale, the seller, Domingo was already dead. Being a void document, the titles originating from the said instrument were also void and should be cancelled.

Respondent spouses, in their Comment[15] and Memorandum,[16] counter that the issues raised are not questions of law and call for another calibration of the whole evidence already passed upon by the RTC and the CA. Yet, they argue that petitioners' reliance on the validity of the March 5, 1975 Deed of Sale of Undivided Parcel of Land, based on presumption of regularity, was misplaced because both the RTC and the CA, in the appreciation of evidence on record, had found said deed as simulated.

It is well to note that both the RTC and the CA found that the evidence established that the March 5, 1975 Deed of Sale of Undivided Parcel of Land executed by Domingo in favor of Laureano Cabalu was a fictitious and simulated document. As expounded by the CA, *viz*:

> Nevertheless, since there are discrepancies in the signature of the notary public, his PTR and the document number on the lower-most portion of the document, as well as the said deed of sale being found only after the plaintiffs-appellants were ejected by the defendants-appellants; that they were allegedly not aware that the said property was bought by their father, and that they never questioned the other half of the property not occupied by them, it is apparent that the sale dated March 5, 1975 had the earmarks of a simulated deed written all over it. The lower court did not err in pronouncing that it be declared null and void.[17]

Petitioners, in support of their claim of validity of the said document of deed, again invoke the legal presumption of regularity. To reiterate, the RTC and later the CA had ruled that the sale, dated March 5, 1975, had the earmarks of a simulated

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[15] Dated December 7, 2009, *id.* 41-43.

[16] Dated December 30, 2010, *id.* at 70-81.

[17] *Id.* at 21.

deed, hence, the presumption was already rebutted. Verily and as aptly noted by the respondent spouses, such presumption of regularity cannot prevail over the facts proven and already established in the records of this case.

Even on the assumption that the March 5, 1975 deed was not simulated, still the sale cannot be deemed valid because, at that time, Domingo was not yet the owner of the property. There is no dispute that the original and registered owner of the subject property covered by TCT No. 16776, from which the subject 9,000 square meter lot came from, was Faustina, who during her lifetime had executed a will, dated July 27, 1939. In the said will, the name of Benjamin, father of Domingo, appeared as one of the heirs. Thus, and as correctly found by the RTC, even if Benjamin died sometime in 1960, Domingo in 1975 could not yet validly dispose of the whole or even a portion thereof for the reason that he was not the sole heir of Benjamin, as his mother only died sometime in 1980.

Besides, under Article 1347 of the Civil Code, "No contract may be entered into upon future inheritance except in cases expressly authorized by law." Paragraph 2 of Article 1347, characterizes a contract entered into upon future inheritance as void. The law applies when the following requisites concur: (1) the succession has not yet been opened; (2) the object of the contract forms part of the inheritance; and (3) the promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.[18]

In this case, at the time the deed was executed, Faustina's will was not yet probated; the object of the contract, the 9,000 square meter property, still formed part of the inheritance of his father from the estate of Faustina; and Domingo had a mere inchoate hereditary right therein.

Domingo became the owner of the said property only on August 1, 1994, the time of execution of the Deed of Extrajudicial

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[18] *Arrogante v. Deliarte*, G.R. No. 152132, July 24, 2007, 528 SCRA 63, 69-70, citing Tolentino, *Civil Code of the Philippines Commentaries and Jurisprudence*, Vol. IV, p. 525, 1985.

Succession with Partition by the heirs of Faustina, when the 9,000 square meter lot was adjudicated to him.

The CA, therefore, did not err in declaring the March 5, 1975 Deed of Sale null and void.

Domingo's status as an heir of Faustina by right of representation being undisputed, the RTC should have maintained the validity of TCT No. 266583 covering the 9,000 square meter subject property. As correctly concluded by the CA, this served as the inheritance of Domingo from Faustina.

Regarding the deed of sale covering the remaining 4,500 square meters of the subject property executed in favor of Renato Tabu, it is evidently null and void. The document itself, the Deed of Absolute Sale, dated October 8, 1996, readily shows that it was executed on August 4, 1996 more than two months after the death of Domingo. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and a party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore, null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.[19]

The contract being null and void, the sale to Renato Tabu produced no legal effects and transmitted no rights whatsoever. Consequently, TCT No. 286484 issued to Tabu by virtue of the October 8, 1996 Deed of Sale, as well as its derivative titles, TCT Nos. 291338 and 291339, both registered in the name of Renato Tabu, married to Dolores Laxamana, are likewise void.

The CA erred in deleting that portion in the RTC decision declaring the Deed of Absolute Sale, dated October 8, 1996, null and void and canceling TCT Nos. 291338 and 291339.

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[19] *Gochan and Sons Realty Corp. v. Heirs of Raymundo Baba,* 456 Phil. 569, 578, (2003).

WHEREFORE, the petition is partially **GRANTED.** The decretal portion of the June 16, 2009 Decision of the Court of Appeals is hereby **MODIFIED** to read as follows:

1. The Deed of Absolute Sale, dated March 5, 1975, executed by Domingo Laxamana in favor of Laureano Cabalu, is hereby declared as null and void.

2. The Deed of Absolute Sale, dated October 8, 1996, executed by Domingo Laxamana in favor of Renato Tabu, and TCT No. 286484 as well as the derivative titles TCT Nos. 291338 and 291339, both registered in the name of Renato Tabu, married to Dolores Laxamana, are hereby declared null and void and cancelled.

3. TCT No. 281353 in the name of Domingo Laxamana is hereby ordered restored subject to the partition by his lawful heirs.

SO ORDERED.

*Velasco, Jr. (Chairperson), Brion,** *Perez,*** and *Perlas-Bernabe,**** *JJ.,* concur.

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* Designated acting member, per Special Order No. 1299-E, dated August 28, 2012.

** Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated August 31, 2011.

*** Designated additional member, in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1320, dated September 21, 2012.

THIRD DIVISION

[G.R. No. 193854. September 24, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DINA DULAY *y* PASCUAL,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THROWS THE WHOLE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION ON THE BASIS OF THE GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.—** An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors. The appellant in this case was charged in the Information as having committed the crime of Rape under Article 266-A, No. 1 (a) of the RPC, as amended by R.A. 8353 in relation to Section 5 (b) of R.A. 7610. She was eventually convicted by the trial court of the crime of rape as a co-principal by indispensable cooperation and was sentenced to suffer imprisonment of *reclusion perpetua* as provided under Article 266-B of the RPC. x x x. However, this Court is of another view and does not subscribe to the findings of the trial court, as sustained by the CA that appellant is guilty beyond reasonable doubt as co-principal by indispensable cooperation in the crime of rape.

2. **CRIMINAL LAW; PERSONS CRIMINALLY LIABLE FOR FELONIES; PRINCIPAL BY INDISPENSABLE COOPERATION; EXPLAINED; APPELLANT NOT CONSIDERED A PRINCIPAL BY INDISPENSABLE COOPERATION SINCE THE ACTS THEREOF WERE NOT INDISPENSABLE IN THE COMMISSION OF THE CRIME OF RAPE.—** Under the Revised Penal Code, an accused may be considered a principal by direct participation, by inducement, or by indispensable cooperation. To be a

principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished. Nothing in the evidence presented by the prosecution does it show that the acts committed by appellant are indispensable in the commission of the crime of rape. The events narrated by the CA, from the time appellant convinced AAA to go with her until appellant received money from the man who allegedly raped AAA, are not indispensable in the crime of rape. Anyone could have accompanied AAA and offered the latter's services in exchange for money and AAA could still have been raped. Even AAA could have offered her own services in exhange for monetary consideration and still end up being raped. Thus, this disproves the indispensable aspect of the appellant in the crime of rape. It must be remembered that in the Information, as well as in the testimony of AAA, she was delivered and offered for a fee by appellant, thereafter, she was raped by "Speed."

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE REVIEW OF A CRIMINAL CASE OPENS UP THE CASE IN ITS ENTIRETY; THE TOTALITY OF THE EVIDENCE PRESENTED BY THE PROSECUTION AND THE DEFENSE ARE WEIGHED, THUS, AVOIDING GENERAL CONCLUSIONS BASED ON ISOLATED PIECES OF EVIDENCE.—** It must be clear that this Court respects the findings of the trial court that AAA was indeed raped by considering the credibility of the testimony of AAA. The rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal. However, the review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence. In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel [this

Court] to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.

4. **CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. 7610), SECTION 5 (a) THEREOF; ELEMENTS; PROVED.—** [W]hile this Court does not find appellant to have committed the crime of rape as a principal by indispensable cooperation, she is still guilty of violation of Section 5 (a) of R.A. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act x x x. The elements of paragraph (a) are: 1. the accused engages in, promotes, facilitates or induces child prostitution; 2. the act is done through, but not limited to, the following means: a. acting as a procurer of a child prostitute; b. inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means; c. taking advantage of influence or relationship to procure a child as a prostitute; d. threatening or using violence towards a child to engage him as a prostitute; or e. giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution; 3. the child is exploited or intended to be exploited in prostitution and 4. the child, whether male or female, is below 18 years of age. Paragraph (a) essentially punishes acts pertaining to or connected with child prostitution. It contemplates sexual abuse of a child exploited in prostitution. In other words, under paragraph (a), the child is abused primarily for profit. As alleged in the Information and proven through the testimony of AAA, appellant facilitated or induced child prostitution. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. Thus, the act of appellant in convincing AAA, who was 12 years old at that time, to go with her and thereafter, offer her for sex to a man in exchange for money makes her liable under [Section 5(a) Article III R.A. 7610].

5. **ID.; ID.; PURPOSE OF THE LAW; A CHILD WHO IS A PERSON BELOW EIGHTEEN YEARS OF AGE OR THOSE UNABLE TO FULLY TAKE CARE OF**

THEMSELVES OR PROTECT THEMSELVES FROM ABUSE, NEGLECT, CRUELTY, EXPLOITATION OR DISCRIMINATION BECAUSE OF THEIR AGE OR MENTAL DISABILITY OR CONDITION IS INCAPABLE OF GIVING RATIONAL CONSENT TO ANY LASCIVIOUS ACT OR SEXUAL INTERCOURSE.— The purpose of the law is to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. A child exploited in prostitution may seem to "consent" to what is being done to her or him and may appear not to complain. However, we have held that a child who is "a person below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition" is incapable of giving rational consent to any lascivious act or sexual intercourse.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE SUFFICIENCY OF THE INFORMATION IS NOT NEGATED BY AN INCOMPLETE OR DEFECTIVE DESIGNATION OF THE CRIME IN THE CAPTION OR OTHER PARTS OF THE INFORMATION BUT BY THE NARRATION OF FACTS AND CIRCUMSTANCES WHICH ADEQUATELY DEPICTS A CRIME AND SUFFICIENTLY APPRISES THE ACCUSED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM.—** It must be noted that in the Information, it was alleged that appellant was accused of Rape under Article 266-A, No. 1 (a) of the RPC, as amended by R.A. 8353 in relation to **Section 5 (b) of R.A. 7610**, and then went on to enumerate the elements of **Section 5 (a) of R.A. 7610** in its body. x x x Undoubtedly, the above-quoted falls under Section 5 (a) of R.A. 7610, the appellant acting as a procurer of a child and inducing the latter into prostitution. It must be remembered that the character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they may be conclusions of law, but by the recital of the ultimate facts and circumstances in the complaint or information. The sufficiency of an information is not negated by an incomplete or defective designation of the crime in the caption or other parts of the information but by the narration

of facts and circumstances which adequately depicts a crime and sufficiently apprises the accused of the nature and cause of the accusation against him.

7. **ID.; EVIDENCE; DEFENSE OF DENIAL; ESSENTIALLY THE WEAKEST FORM OF DEFENSE.—** To dispute the allegation and the evidence presented by the prosecution, appellant merely interposes the defense of denial. It is well settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony, particularly when it comes from the mouth of a credible witness.

8. **CRIMINAL LAW; R.A. 7610, ARTICLE III, SECTION 5(a); PROPER PENALTY.—** Anent the penalty, for violation of the provisions of Section 5, Article III of R.A. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Therefore, in the absence of any mitigating or aggravating circumstance, the proper imposable penalty is *reclusion temporal* in its maximum period, the medium of the penalty prescribed by the law. Notwithstanding that R.A. 7610 is a special law, appellant may enjoy the benefits of the Indeterminate Sentence Law. Since the penalty provided in R.A. 7610 is taken from the range of penalties in the Revised Penal Code, it is covered by the first clause of Section 1 of the Indeterminate Sentence Law. Thus, appellant is entitled to a maximum term which should be within the range of the proper imposable penalty of *reclusion temporal* in its maximum period (ranging from 17 years, 4 months and 1 day to 20 years) and a minimum term to be taken within the range of the penalty next lower to that prescribed by the law: *prision mayor* in its medium period to *reclusion temporal* in its minimum period (ranging from 8 years and 1 day to 14 years and 8 months).

9. **ID.; ID.; CIVIL LIABILITY OF APPELLANT.—** As to the award of damages, the same must be consistent with the objective of R.A. 7610 to afford children special protection against abuse, exploitation and discrimination and with the principle that every person who contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same. Therefore, civil indemnity to the child is proper in a case involving violation of Section 5 (a), Article III of R.A. 7610. This is also in compliance with Article 100 of the RPC which states that every person criminally liable is civilly liable. Hence,

the amount of ₱50,000.00 civil indemnity *ex delicto* as awarded in cases of violation of Section 5 (b), Article III of R.A. 7610 shall also be the same in cases of violation of Section 5 (a), Article III of R.A. 7610.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is to resolve an appeal from the Decision[1] dated August 4, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03725 affirming with modification the Decision[2] dated October 8, 2008 of the Regional Trial Court (RTC), Branch 194, Parañaque City, finding appellant Dina Dulay guilty beyond reasonable doubt of the crime of Rape under Article 266-A, No. 1 (a) of the Revised Penal Code (RPC) as amended by Republic Act (R.A.) 8353 as a co-principal by indispensable cooperation.

The records bear the following factual antecedents:

Private complainant AAA[3] was 12 years old when the whole incident happened. AAA's sister introduced the appellant to

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[1] Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Noel G. Tijam and Danton Q. Bueser, concurring; *rollo*, pp. 2-14.

[2] Penned by Judge Leoncia Real-Dimagiba; CA *rollo*, pp. 48-53.

[3] In line with this Court's ruling in *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 426, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real names of the rape victims will not be disclosed. This Court will instead use fictitious initials to represent them throughout the decision. The personal circumstances of the victims or any other information tending to establish or compromise their identities will likewise be withheld.

AAA as someone who is nice. Thereafter, appellant convinced AAA to accompany her at a wake at GI San Dionisio, Parañaque City. Before going to the said wake, they went to a casino to look for appellant's boyfriend, but since he was not there, they went to Sto. Niño at Don Galo. However, appellant's boyfriend was also not there. When they went to Bulungan Fish Port along the coastal road to ask for some fish, they saw appellant's boyfriend. Afterwards, AAA, appellant and the latter's boyfriend proceeded to the *Kubuhan* located at the back of the Bulungan Fish Port. When they reached the *Kubuhan*, appellant suddenly pulled AAA inside a room where a man known by the name "Speed" was waiting. AAA saw "Speed" give money to appellant and heard "Speed" tell appellant to look for a younger girl. Thereafter, "Speed" wielded a knife and tied AAA's hands to the *papag* and raped her. AAA asked for appellant's help when she saw the latter peeping into the room while she was being raped, but appellant did not do so. After the rape, "Speed" and appellant told AAA not to tell anyone what had happened or else they would get back at her.

AAA went to San Pedro, Laguna after the incident and told her sister what happened and the latter informed their mother about it. AAA, her sister and mother, filed a complaint at *Barangay* San Dionisio. Thereafter, the *barangay* officials of San Dionisio referred the complaint to the police station.

The Parañaque City Police Office (Women's and Children Concern Desk) asked the assistance of the Child Protection Unit of the Philippine General Hospital, upon which the latter assigned the case to Dr. Merle Tan. Consequently, with the consent of AAA and her mother, and in the presence of a social worker of the Department of Social Welfare and Development (DSWD), Dr. Tan conducted the requisite interview and physical examination on AAA. Later on, Dr. Tan issued a Medico-Legal Report[4] stating that there was no evident injury in the body of AAA, but medical evaluation cannot exclude sexual abuse. During her testimony, Dr. Tan explained that such impression or conclusion pertains to the ano-genital examination and also stated

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[4] Exhibit "C".

that she found multiple abrasions on the back portion of the body of AAA.[5]

Thus, an Information was filed, which reads as follows:

That on or about the 3rd day of July 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one *alias* "Speed," whose true name and identity and present whereabouts is still unknown, and both of them mutually helping and aiding one another, the herein accused Dina P. Dulay having delivered and offered for a fee complainant AAA, 12 year old minor, to accused *alias* "Speed," who with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge on said minor complainant AAA against her will and without her consent, which act is prejudicial to the normal growth and development of the said child.

CONTRARY TO LAW.[6]

With the assistance of counsel *de oficio*, on August 3, 2005, appellant entered a plea of not guilty.[7] Therafter, trial on the merits ensued.

To support the above allegations, the prosecution presented the testimonies of AAA and Dr. Merle Tan. On the other hand, the defense presented the sole testimony of appellant which can be summarized as follows:

Appellant met AAA a few days before June 2005 when the latter was introduced to her by her cousin Eglay Akmad during the wake of a relative of AAA at Palanyag. The cousin of appellant was AAA's neighbor at Palanyag. Around 1 o'clock in the morning of July 3, 2005, appellant averred that she was at *La Huerta*, at the Bulungan Fish Port in Parañaque City with her cousin Eglay and stayed there for about thirty (30) minutes. They then proceeded to the house of appellant's cousin in Palanyag. In the said house, appellant saw "Speed" and two

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[5] TSN, November 27, 2006, pp. 12-13.

[6] Records, p. 1.

[7] *Id.* at 19.

(2) other male persons. She also saw AAA who was engaged in a conversation with "Speed" and his two (2) companions. She asked AAA what she was doing there and the latter said that it was none of her business ("*wala kang pakialam sa akin*"). Because of the response of AAA, appellant left the house and went home to General Trias, Cavite.

On October 8, 2008, the RTC found appellant guilty beyond reasonable doubt of the crime of rape as co-principal by indispensable cooperation. The dispositive portion of the decision reads:

> WHEREFORE, finding Accused Danilo guilty beyond reasonable doubt for rape as a co-principal by indispensable cooperation, she is hereby sentenced to suffer an imprisonment of *Reclusion Perpetua* under Article 266-B of the Revised Penal Code and to pay the offended party the amount of ₱50,000.00 by way of damages.
>
> The period of her detention shall be considered part of the service of her sentence.
>
> SO ORDERED.[8]

Not satisfied with the judgment of the trial court, the appellant brought the case to the CA. The latter, on August 4, 2010, promulgated its decision affirming the ruling of the RTC with a modification on the award of damages, thus:

> WHEREFORE, the appealed Decision of the court *a quo* is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and ordered to indemnify the offended party the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.
>
> SO ORDERED.[9]

Hence, the present appeal.

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[8] *Id.* at 208.

[9] *Rollo*, pp. 13-14.

In her Brief, appellant assigned the following errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF RAPE AS CO-PRINCIPAL BY INDISPENSABLE COOPERATION.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT [AAA].[10]

The Office of the Solicitor General, representing the appellee, refutes the above assignment of errors by stating the following arguments:

I.

CONSPIRACY WAS CLEARLY ESTABLISHED IN THIS CASE.

II.

THE LOWER COURT DID NOT ERR IN BELIEVING THE TESTIMONY OF PRIVATE COMPLAINANT.

III.

ACCUSED-APPELLANT'S DEFENSE OF DENIAL CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE TESTIMONY OF PRIVATE COMPLAINANT.[11]

An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.[12]

The appellant in this case was charged in the Information as having committed the crime of Rape under Article 266-A, No. 1 (a) of the RPC, as amended by R.A. 8353 in relation to

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[10] CA *rollo*, p. 39.

[11] *Id.* at 72.

[12] *People v. Listerio*, G.R. No. 122099, July 5, 2000, 335 SCRA 40, 65.

Section 5 (b) of R.A. 7610. She was eventually convicted by the trial court of the crime of rape as a co-principal by indispensable cooperation and was sentenced to suffer imprisonment of *reclusion perpetua* as provided under Article 266-B of the RPC.

In sustaining the conviction of the appellant as co-principal by indispensable cooperation, the CA, ratiocinated:

To cooperate means to desire or wish in common a thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case. The cooperation must be indispensable, that is, without which the commission of the crime would not have been accomplished. x x x

x x x x x x x x x

The proven facts and circumstances obtaining in this case fall squarely on the above-cited example. It will be noted that the cooperation of the accused-appellant consisted in performing an act which is different from the act of execution of the crime committed by the rapist. Accused-appellant cooperated in the perpetration of the crime of rape committed by "Speed" by acts without which the crime would not have been consummated, since she prepared the way for the perpetration thereof, convinced the victim to go with her under the guise of looking for her boyfriend and upon arrival at the *kubuhan*, she pulled the victim inside a room where "Speed" was waiting, delivered the victim to him, and then after receiving some amount of money from "Speed" she settled in another room together with her boyfriend so that "Speed" might freely consummate the rape with violence and intimidation, as he did.[13]

However, this Court is of another view and does not subscribe to the findings of the trial court, as sustained by the CA that appellant is guilty beyond reasonable doubt as co-principal by indispensable cooperation in the crime of rape.

Under the Revised Penal Code,[14] an accused may be considered a principal by direct participation, by inducement, or by

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[13] *Rollo*, pp. 7-8.

[14] Revised Penal Code, Art. 17.

indispensable cooperation. To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished.[15] Nothing in the evidence presented by the prosecution does it show that the acts committed by appellant are indispensable in the commission of the crime of rape. The events narrated by the CA, from the time appellant convinced AAA to go with her until appellant received money from the man who allegedly raped AAA, are not indispensable in the crime of rape. Anyone could have accompanied AAA and offered the latter's services in exchange for money and AAA could still have been raped. Even AAA could have offered her own services in exhange for monetary consideration and still end up being raped. Thus, this disproves the indispensable aspect of the appellant in the crime of rape. It must be remembered that in the Information, as well as in the testimony of AAA, she was delivered and offered for a fee by appellant, thereafter, she was raped by "Speed." Thus:

PROS. R. GARCIA: Now, what happened after you met this Dina Dulay?

WITNESS [AAA]: She invited me to go with her boyfriend, Sir.

x x x x x x x x x

Q: You went to the *bulungan*, what happened when you reached the fish port or *bulungan*, AAA?
A: *Pumunta kami sa kubuhan, Sir*.

Q: Where is this *kubuhan* located in relation to the fish port?
A: At the back portion, Sir.

Q: And, when you said *pumunta kami*, who was then your companion in going to that *kubuhan*?
A: Dina Dulay and her boyfriend, Sir.

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[15] *People v. Jorge,* G.R. No. 99379, April 22, 1994, 231 SCRA 693, 699.

Q: Do you know the name of the boyfriend of Dina Dulay?
A: No, Sir.

x x x x x x x x x

Q: All right. After reaching the *kubuhan*, what happened next?
A: *Pina-rape po ako, Sir.*

Q: What made you say [AAA] that accused here Dina Dulay had you raped at the *kubuhan*?
A: *Kasi po binayaran siya nung lalaki, Sir.*

Q: Now, do you know how much this Dina Dulay was paid by that person who was you said raped you?
A: No, Sir. I just saw them.

Q: And what did you see that was paid to Dina?
A: *Pera, Sir.*

Q: Aside from seeing a guy giving money to Dina Dulay, did you hear any conversation between this Dina Dulay and that man who gave money to her?
A: Yes, sir.

Q: Can you tell this Honorable Court [AAA], what was that conversation you heard between this Dina Dulay and the person who gave money to her?
A: He said to look for a younger girl, Sir.[16]

x x x x x x x x x

PROS. R. GARCIA:

Q: Okay. After that conversation and the giving of money to Dina Dulay, what happened to you and the man?
A: He raped me, Sir.

Q: Where were you raped?
A: At the *Kubuhan*, Sir.

Q: Can you describe to this Honorable Court how you were raped by that person?
A: He tied me up, Sir.

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[16] TSN, November 16, 2005, pp. 7-15. (Emphasis supplied.)

Q: How were you tied up as you said?
A: He tied up both my hands, Sir.

Q: Then after tying your hands what happened next?
A: He raped me and he pointed a knife at me, Sir.

Q: When you said you were raped, are you referring to the insertion of his penis into your sex organ?
A: Yes, Sir.

Q: And, how did you feel at that time when the organ of this man was inserted into your organ?
A: It was painful, Sir.

Q: And, how did you react when as you said you were being raped by this person?
A: I cannot talk. He put clothes in my mouth, Sir.

Q: For how long did you stay in that *kubuhan* with this man? *May isang oras ba kayo doon?*
A: Yes, Sir.

Q: Now, tell us how [AAA] many times did this person insert his penis into your organ?
A: Only one (1) [AAA], Sir.[17]

It must be clear that this Court respects the findings of the trial court that AAA was indeed raped by considering the credibility of the testimony of AAA. The rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal.[18] However, the review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence.[19] In the case of rape, a review begins with

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[17] TSN, November 16, 2005, pp. 17-19.

[18] *People v. Lim*, G.R. No. 141699, August 7, 2002, 386 SCRA 581, 593; *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684.

[19] *People v. Fabito*, G.R. No. 179933, April 16, 2009, 585 SCRA 591, 603, citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005, 463 SCRA 652.

the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the accused, although innocent, to disprove his guilt. These realities compel [this Court] to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.[20]

In this light, while this Court does not find appellant to have committed the crime of rape as a principal by indispensable cooperation, she is still guilty of violation of Section 5 (a) of R.A. 7610, or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, which states that:

Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as a prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

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[20] *Id.* at 603-604, citing *People v. Fernandez*, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224, 232.

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.[21]

The elements of paragraph (a) are:

1. the accused engages in, promotes, facilitates or induces child prostitution;

2. the act is done through, but not limited to, the following means:

   a. acting as a procurer of a child prostitute;
   b. inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
   c. taking advantage of influence or relationship to procure a child as a prostitute;
   d. threatening or using violence towards a child to engage him as a prostitute; or
   e. giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution;

3. the child is exploited or intended to be exploited in prostitution and

4. the child, whether male or female, is below 18 years of age.[22]

Paragraph (a) essentially punishes acts pertaining to or connected with child prostitution. It contemplates sexual abuse of a child exploited in prostitution. In other words, under paragraph (a), the child is abused primarily for profit.[23]

As alleged in the Information and proven through the testimony of AAA, appellant facilitated or induced child prostitution. Children, whether male or female, who for money, profit, or

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[21] Emphasis supplied.

[22] *Malto v. People of the Philippines*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 655-656.

[23] *Id.* at 656.

any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.[24] Thus, the act of apellant in convincing AAA, who was 12 years old at that time, to go with her and thereafter, offer her for sex to a man in exchange for money makes her liable under the above-mentioned law. The purpose of the law is to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.[25] A child exploited in prostitution may seem to "consent" to what is being done to her or him and may appear not to complain. However, we have held that a child who is "a person below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition" is incapable of giving rational consent[26] to any lascivious act or sexual intercourse.

It must be noted that in the Information, it was alleged that appellant was accused of Rape under Article 266-A, No. 1 (a) of the RPC, as amended by R.A. 8353 in relation to **Section 5 (b) of R.A. 7610**, and then went on to enumerate the elements of **Section 5 (a) of R.A. 7610** in its body. The Information partly reads:

> x x x the herein accused Dina P. Dulay having **delivered and offered for a fee** complainant AAA, 12 year old minor, **to accused *alias* "Speed," who with lewd design and by means of force and intimidation**, did then and there willfully, unlawfully and feloniously **have carnal knowledge on said minor** complainant AAA against her will and without her consent x x x[27]

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[24] R.A. 7610, Sec. 5.

[25] R.A. 7610, Sec. 2.

[26] *People v. Delantar,* G.R. No. 169143, February 2, 2007, 514 SCRA 115, 134-135, citing *People v. Manlapaz*, No. L-41819, February 28, 1979, 88 SCRA 704.

[27] Records, p. 1.

Undoubtedly, the above-quoted falls under Section 5 (a) of R.A. 7610, the appellant acting as a procurer of a child and inducing the latter into prostitution. It must be remembered that the character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they may be conclusions of law, but by the recital of the ultimate facts and circumstances in the complaint or information.[28] The sufficiency of an information is not negated by an incomplete or defective designation of the crime in the caption or other parts of the information but by the narration of facts and circumstances which adequately depicts a crime and sufficiently apprises the accused of the nature and cause of the accusation against him.[29]

To dispute the allegation and the evidence presented by the prosecution, appellant merely interposes the defense of denial. It is well settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony, particularly when it comes from the mouth of a credible witness.[30]

Anent the penalty, for violation of the provisions of Section 5, Article III of R.A. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Therefore, in the absence of any mitigating or aggravating circumstance, the proper imposable penalty is *reclusion temporal* in its maximum period, the medium of the penalty prescribed by the law.[31] Notwithstanding that R.A. 7610 is a special law, appellant may enjoy the benefits of the Indeterminate Sentence Law.[32] Since the penalty provided in R.A. 7610 is taken from the range

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[28] *Reyes v. Camilon*, G.R. No. 46198, December 20, 1990, 192 SCRA 445, 453.

[29] *Olivarez v. Court of Appeals,* G.R. No. 163866, July 29, 2005, 465 SCRA 465, 482.

[30] *People v. Mendoza*, 490 Phil. 737, 746 (2005).

[31] *Malto v. People of the Philippines, supra* note 22, citing *People v. Delantar, supra* note 26, at 135.

[32] *Id.,* citing *People v. Bon*, G.R. No. 149199, January 28, 2003, 396 SCRA 506, 516.

of penalties in the Revised Penal Code, it is covered by the first clause of Section 1 of the Indeterminate Sentence Law.[33] Thus, appellant is entitled to a maximum term which should be within the range of the proper imposable penalty of *reclusion temporal* in its maximum period (ranging from 17 years, 4 months and 1 day to 20 years) and a minimum term to be taken within the range of the penalty next lower to that prescribed by the law: *prision mayor* in its medium period to *reclusion temporal* in its minimum period (ranging from 8 years and 1 day to 14 years and 8 months).[34]

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[33] *Id.,* citing *Cadua v. Court of Appeals*, G.R. No. 123123, August 19, 1999, 312 SCRA 703, 725, citing *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555. Section 1 of the Indeterminate Sentence Law provides:

> SECTION 1. G..R.No. 93028. Hereafter, **in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense**; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Emphasis supplied)

Simon ruled:

> It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same." We hold that this **quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code** as discussed in the preceding illustrations, **such that it may be said that the "offense is punished" under that law**. (Emphasis supplied)

Cadua applied this rule by analogy and extension.

[34] *Id.*

As to the award of damages, the same must be consistent with the objective of R.A. 7610 to afford children special protection against abuse, exploitation and discrimination and with the principle that every person who contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same.[35] Therefore, civil indemnity to the child is proper in a case involving violation of Section 5 (a), Article III of R.A. 7610. This is also in compliance with Article 100 of the RPC which states that every person criminally liable is civilly liable. Hence, the amount of ₱50,000.00 civil indemnity *ex delicto* as awarded in cases of violation of Section 5 (b), Article III of R.A. 7610[36] shall also be the same in cases of violation of Section 5 (a), Article III of R.A. 7610.

WHEREFORE, the appeal of appellant Dina Dulay y Pascual is hereby **DISMISSED.** However, the Decision of the CA is hereby **MODIFIED** as appellant is not guilty beyond reasonable doubt of the crime of rape, but of violating Section 5 (a), Article III of R.A. 7610, as amended, for which she is sentenced to fourteen (14) years and eight (8) months of *reclusion temporal,* as minimum, to twenty (20) years of *reclusion temporal,* as maximum. Appellant is also **ORDERED** to pay AAA the amount of ₱50,000.00 as civil indemnity.

SO ORDERED.

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

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[35] *Id.,* citing Civil Code, Art. 20.

[36] *Id.*

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

[**] Designated Acting Member, in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1320 dated September 21, 2012.

SECOND DIVISION

[G.R. No. 199547. September 24, 2012]

THE NEW PHILIPPINE SKYLANDERS, INC. and/or JENNIFER M. EÑANO-BOTE, *petitioners, vs.* **FRANCISCO N. DAKILA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUE ON THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES IS ESSENTIALLY A QUESTION OF FACT, BEYOND THE AMBIT THEREOF; EXCEPTIONS; NOT PRESENT.—** The issue of illegal dismissal is premised on the existence of an employer-employee relationship between the parties herein. It is essentially a question of fact, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court unless there is a clear showing of palpable error or arbitrary disregard of evidence which does not obtain in this case. Records reveal that both the LA and the NLRC, as affirmed by the CA, have found substantial evidence to show that respondent Dakila was a regular employee who was dismissed without cause.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES AND TO HIS FULL BACKWAGES COMPUTED FROM THE TIME HE WAS ILLEGALLY DISMISSED; PAYMENT OF RETIREMENT BENEFITS, SUSTAINED.—** Following Article 279 of the Labor Code, an employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages computed from the time he was illegally dismissed. However, considering that respondent Dakila was terminated on May 1, 2007, or one (1) day prior to his compulsory retirement on May 2, 2007, his reinstatement is no longer feasible. Accordingly, the NLRC correctly held him entitled to the payment of his retirement benefits pursuant to the CBA. On the other hand, his backwages

should be computed only for days prior to his compulsory retirement which in this case is only a day. Consequently, the award of reinstatement wages pending appeal must be deleted for lack of basis.

3. **ID.; ID.; ID.; THE MERE LACK OF AUTHORIZED OR JUST CAUSE TO TERMINATE ONE'S EMPLOYMENT AND THE FAILURE TO OBSERVE DUE PROCESS DO NOT *IPSO FACTO* MEAN THAT THE CORPORATE OFFICER ACTED WITH MALICE OR BAD FAITH; AWARD OF MORAL AND EXEMPLARY DAMAGES DELETED FOR LACK OF FACTUAL AND LEGAL BASES.—** The Court finds no basis to hold petitioner Jennifer M. Eñano-Bote, President and General Manager of The New Philippine Skylanders, Inc., jointly and severally liable with the corporation for the payment of the monetary awards. The mere lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which was not established in this case. Perforce, petitioner Jennifer M. Eñano-Bote cannot be made personally liable for the liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. Moreover, for lack of factual and legal bases, the awards of moral and exemplary damages cannot also be sustained.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretaña for petitioners.
Public Attorney's Office for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The Petition for Review on *Certiorari*[1] assails the August 31, 2011[2] and November 23, 2011[3] Resolutions of the Court of

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Amelita G. Tolentino and Rodil V. Zalameda, *rollo*, pp. 43-45.

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

Appeals (CA) in CA-G.R. SP No. 113015 which affirmed the September 10, 2009 Decision[4] and December 15, 2009 Resolution[5] of the National Labor Relations Commission (NLRC) finding respondent Francisco N. Dakila (respondent Dakila) to have been illegally dismissed.

The Factual Antecedents

Respondent Dakila was employed by petitioner corporation as early as 1987 and terminated for cause in April 1997 when the corporation was sold. In May 1997, he was rehired as consultant by the petitioners under a Contract for Consultancy Services[6] dated April 30, 1997.

Thereafter, in a letter[7] dated April 19, 2007, respondent Dakila informed petitioners of his compulsory retirement effective May 2, 2007 and sought for the payment of his retirement benefits pursuant to the Collective Bargaining Agreement. His request, however, was not acted upon. Instead, he was terminated from service effective May 1, 2007.

Consequently, respondent Dakila filed a complaint for constructive illegal dismissal, non-payment of retirement benefits, under/non-payment of wages and other benefits of a regular employee, and damages against petitioners, The New Philippine Skylanders, Inc. and its President and General Manager, Jennifer M. Eñano-Bote, before the NLRC. He averred, among others, that the consultancy contract was a scheme to deprive him of the benefits of regularization, claiming to have assumed tasks necessary and desirable in the trade or business of petitioners and under their direct control and supervision. In support of his claim, he submitted, among others, copies of his time cards, Official Business Itinerary Slips, Daily Attendance Sheets and

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[4] Penned by Presiding Commissioner Benedicto R. Palacol, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro, concurring, *id.* at 300-306.

[5] *Id.* at 325-327.

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

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

other documents prescribing the manner in which his tasks were to be accomplished under the control of the petitioners and acknowledging his status as a regular employee of the corporation.

On the other hand, petitioners, in their position paper,[8] asserted that respondent Dakila was a consultant and not their regular employee. The latter was not included in petitioners' payroll and paid a fixed amount under the consultancy contract. He was not required to observe regular working hours and was free to adopt means and methods to accomplish his task except as to the results of the work required of him. Hence, no employer-employee relationship existed between them. Moreover, respondent Dakila terminated his contract in a letter dated April 19, 2007, thus, negating his dismissal.

Ruling of the Labor Arbiter

On May 28, 2008, Labor Arbiter Thomas T. Que, Jr. rendered a decision[9] finding respondent Dakila to have been illegally dismissed and ordered his reinstatement with full backwages computed from the time of his dismissal on May 1, 2007 until his actual reinstatement as well as the payment of his unpaid benefits under the Collective Bargaining Agreement (CBA). He declared respondent Dakila to be a regular employee on the basis of the unrebutted documentary evidence showing that he was under the petitioners' direct control and supervision and performed tasks that were either incidental or usually desirable and necessary in the trade or business of petitioner corporation for a period of ten years. Having been dismissed without cause and notice, respondent Dakila was awarded moral and exemplary damages in the amount of ₱50,000.00 each. He is also entitled to avail of the corporation's retirement benefits upon his reinstatement.

Ruling of the NLRC

On appeal, the NLRC sustained the Labor Arbiter's (LA) finding that respondent Dakila was a regular employee and that

[8] *Id.* at 64-72.

[9] *Id.* at 198-206.

his dismissal was illegal. However, it noted that since he was already beyond the retirement age, his reinstatement was no longer feasible. As such, it ordered the payment of his retirement pay to be computed from 1997 until the date of the decision. Moreover, it found respondent Dakila entitled to reinstatement wages from the time petitioners received a copy of the LA's Decision on July 7, 2008 up to the date of the NLRC's decision. Thus, it ordered the petitioners to pay respondent Dakila the additional amount of ₱278,508.33 representing reinstatement wages and retirement pay.[10]

The petitioners' motion for reconsideration having been denied in the Resolution[11] dated December 15, 2009, they filed a petition for *certiorari*[12] before the CA raising the following errors:

(1) the complaint should have been dismissed against petitioner Jennifer M. Eñano-Bote absent any showing of bad faith;

(2) respondent Dakila is not a regular employee;

(3) respondent was not illegally dismissed as it was the respondent who resigned; and

(4) the LA's monetary award has no basis.

Ruling of the CA

In the Resolution[13] dated August 31, 2011, the CA dismissed the petition for failure to show that the NLRC committed grave abuse of discretion in affirming the LA's Decision. It found the factual findings of the LA and the NLRC to be supported by substantial evidence and thus, should be accorded respect and finality. Petitioners' motion for reconsideration therefrom was likewise denied in the Resolution[14] dated November 23, 2011.

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[10] *Id.* at 305.

[11] *Id.* at 325-327.

[12] *Id.* at 329-354.

[13] *Id.* at 43-45.

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

Hence, the instant petition reiterating the arguments raised before the CA.

Ruling of the Court

The issue of illegal dismissal is premised on the existence of an employer-employee relationship between the parties herein. It is essentially a question of fact, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court unless there is a clear showing of palpable error or arbitrary disregard of evidence which does not obtain in this case. Records reveal that both the LA and the NLRC, as affirmed by the CA, have found substantial evidence to show that respondent Dakila was a regular employee who was dismissed without cause.

Following Article 279 of the Labor Code, an employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages computed from the time he was illegally dismissed. However, considering that respondent Dakila was terminated on May 1, 2007, or one (1) day prior to his compulsory retirement on May 2, 2007, his reinstatement is no longer feasible. Accordingly, the NLRC correctly held him entitled to the payment of his retirement benefits pursuant to the CBA. On the other hand, his backwages should be computed only for days prior to his compulsory retirement which in this case is only a day. Consequently, the award of reinstatement wages pending appeal must be deleted for lack of basis.

Similarly, the Court finds no basis to hold petitioner Jennifer M. Eñano-Bote, President and General Manager of The New Philippine Skylanders, Inc., jointly and severally liable with the corporation for the payment of the monetary awards. The mere lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith.[15] There must be independent proof of malice or bad faith

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[15] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira,* G.R. No. 170464, July 12, 2010, 624 SCRA 705.

which was not established in this case. Perforce, petitioner Jennifer M. Eñano-Bote cannot be made personally liable for the liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. Moreover, for lack of factual and legal bases, the awards of moral and exemplary damages cannot also be sustained.[16]

WHEREFORE, premises considered, the petition is **PARTLY GRANTED.** The assailed August 31, 2011 and November 23, 2011 Resolutions of the Court of Appeals in CA-G.R. SP No. 113015 are **MODIFIED** as follows:

(1) petitioner Jennifer M. Eñano-Bote is **ABSOLVED** from liability for payment of respondent Francisco N. Dakila's monetary awards;

(2) the awards of reinstatement wages pending appeal as well as the moral and exemplary damages are ordered **DELETED;** and

(3) the computation of backwages should be limited only for a day prior to his compulsory retirement.

The rest of the decision stands.

SO ORDERED.

Carpio (Chairperson), Leonardo-De Castro,[*] *Brion,* and *Perez, JJ.,* concur.

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[16] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012.

[*] Acting Member per Special Order No. 1308 dated September 21, 2012.

EN BANC

[A.M. No. P-06-2161. September 25, 2012]
(Formerly A.M. No. OCA IPI No. 05-2115-P)

ATTY. DENNIS A. VELASCO, *petitioner, vs.* **MYRA L. BATERBONIA,** *respondent.*

[A.M. No. P-07-2295. September 25, 2012]
(Formerly A.M. No. 07-1-16-RTC)

IN RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE RTC BRANCH 38, ALABEL, AND MCTC OF MALUNGON, BOTH IN SARANGANI PROVINCE.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; IT IS THE SACRED DUTY OF EVERY WORKER IN THE JUDICIARY TO MAINTAIN BEFORE THE PEOPLE THE GOOD NAME AND STANDING OF THE COURTS.—** Section 1, Article XI of the 1987 Constitution of the Philippines declares that a public office is a public trust, and mandates public officers and employees at all times to be accountable to the people, to serve the people with utmost responsibility, integrity, loyalty and efficiency, to act with patriotism and justice, and to lead modest lives. In enforcing the constitutional declaration, the Court has been constant and unceasing in reminding all its judicial officers and other workers in the Judiciary to faithfully perform the mandated duties and responsibilities of their respective offices. The Court is ever aware that any act of impropriety on their part, be they the highest judicial officers or the lowest members of the workforce, can greatly erode the people's confidence in the Judiciary. This, because their conduct, good or bad, necessarily reflects on the image of the Judiciary as the temple of justice and right. It is, therefore, the sacred duty of every worker in the Judiciary to maintain before the people the good name and standing of the courts.

2. **ID.; ID.; ID.; CASH CLERK; AS AN ACCOUNTABLE EMPLOYEE CHARGED WITH THE SAFEKEEPING OF FEES COLLECTED FROM LITIGANTS AND THE REST OF THE PUBLIC DEALING WITH THE COURT SHE IS SERVING, SHE IS EXPECTED TO EXERCISE HONESTY AND FIDELITY IN THE DISCHARGE OF THAT DUTY OF SAFEKEEPING BECAUSE SHE WOULD THEREBY ENSURE THE FLOW OF JUDICIAL FUNDS SO ESSENTIAL TO THE ORDERLY ADMINISTRATION OF JUSTICE.—** Based on the findings of the OCA, Baterbonia failed to measure up to the standards of conduct prescribed for her office. As an accountable employee charged with the safekeeping of fees collected from litigants and the rest of the public dealing with the court she was serving, she was expected to exercise honesty and fidelity in the discharge of that duty of safekeeping because she would thereby ensure the flow of judicial funds so essential to the orderly administration of justice. Yet, she frequently violated the trust and confidence reposed in her position by committing serial acts of misappropriation of the funds she had received as fees that amounted to gross dishonesty. She thereby manifested a malevolent tendency to cheat the Judiciary of its funds.

3. **ID.; ID.; ID.; ID.; GRAVE MISCONDUCT, CONCEPT THEREOF, EXPLAINED.—** Baterbonia's misconduct was certainly grave. The Court has explained the concept of grave misconduct in *Imperial v. Santiago*, *Jr*., *viz*: Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. **To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment**. **The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law**. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest. Corruption as an element of grave misconduct

consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others. Certainly, Baterbonia's acts constituted very serious administrative offenses of grave misconduct that called for her dismissal from the service many times over. In that regard, her boldness in repeatedly committing the acts erased all possibility of leniency towards her.

4. **ID.; ID.; ID.; PROPER PENALTY; PROSECUTION FOR THE COMPLEX FELONY OF ESTAFA THROUGH FALSIFICATION FOR TAMPERING THE COURT'S OFFICIAL RECEIPTS, PROPER.—** Baterbonia's grave misconduct, being a grave offense, deserved the ultimate penalty of dismissal for the first offense pursuant to Section 52, A, of the *Uniform Rules on Administrative Cases in the Civil Service*. Moreover, in her defrauding the Judiciary, Baterbonia schemed to have her acts go undiscovered by surreptitiously tampering the ORs to make them appear to contain the much diminished amounts. She thereby clearly abused the trust and confidence reposed in her as the cash clerk of her court. She might have probably incurred criminal liability for the complex felony of *estafa* through falsification for each such occasion of misappropriation. Hence, the Court deems it proper to instruct the OCA to initiate the necessary criminal charges against her in the Department of Justice to make her answer for any crimes she might have been guilty of committing.

5. **ID.; ID.; CLERK OF COURT; MUST UNCEASINGLY BE ALERT TO ANY MISFEASANCE AND MALFEASANCE ON THE PART OF HIS SUBORDINATES FOR HE MAY BE HELD AS RESPONSIBLE TO AN EXTENT FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF THE FUNDS OR PROPERTY ENTRUSTED TO THE COURT HE SERVES AS ANY OF HIS GUILTY SUBORDINATES.—** [T]he Court notes that despite the lack of a showing of a conspiracy in the defraudation of the Judiciary between Baterbonia and Atty. Barluado, her immediate superior officer, the latter concededly failed to exercise utmost diligence in his oversight of her discharge of her duties as the cash clerk. Her misappropriations of substantial sums belonging to the coffers of the Judiciary surely did not happen except over some period of time, and might have been sooner

discovered, if not altogether prevented, had he been diligent and vigilant in supervising her. An admonition for him to be diligent and vigilant in his supervision of his subordinates is, therefore, timely and appropriate, lest such subordinates will take advantage of his laxity and softness in order to defraud the Judiciary some more or to violate the public trust with some degree of impunity. He ought to be reminded that his being the clerk of court requires him to perform delicate functions regarding the custody of judicial funds, revenues, records, properties and premises, and that he should then unceasingly be alert to any misfeasance and malfeasance on the part of his subordinates. He should always bear in mind that he may be held as responsible to an extent for any loss, shortage, destruction or impairment of the funds or property entrusted to the court he serves as any of his guilty subordinates.

D E C I S I O N

PER CURIAM:

A cash clerk of a trial court who defrauds the Judiciary is guilty of the most serious administrative offense that warrants her dismissal from the service. She should also be criminally prosecuted for *estafa* through falsification.

This administrative case stemmed from the complaint dated January 19, 2005 filed by Atty. Dennis A. Velasco (Velasco),[1] then the Clerk of Court VI of Branch 38 of the Regional Trial Court (RTC) in Alabel, Sarangani Province, against RTC Cash Clerk Myra L. Baterbonia (Baterbonia).

In his complaint,[2] Velasco averred that Baterbonia had short-changed the Government on several occasions by not remitting the full amounts of the judicial fees paid by the litigants; that her *modus operandi* had involved a clandestine effort to record in the duplicate and triplicate copies of the official receipts (ORs) amounts smaller than what had actually appeared on the

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[1] Now Presiding Judge of MTCC of Koronodal City.

[2] *Rollo* (P-06-2161), pp. 1-8.

ORs issued to the litigants; that he had discovered her scheme while he was checking the filing fees for a petition for notarial commission to serve as basis for the filing fees to be assessed in the filing of a new petition; that he had then found that what had appeared as paid on the duplicate and triplicate copies of OR No. 21459326 had been the amount of only ₱6.40 for a certified photocopy, instead of the proper amount of ₱1,532.00, and that she had made only the amount of ₱3.60 appear on the duplicate and triplicate copies of OR No. 21459376 covering the payment of a certified photocopy instead of the correct amount of ₱468.00;[3] that his discovery of the fraud had made probe further, resulting in his unearthing other falsified transactions relating to 18 civil actions (*namely*, Civil Case No. 9997, Civil Case No. 2000, Civil Case No. 2001, Civil Case No. 2002, Civil Case No. 2003, Civil Case No. 2004, Civil Case No. 2005, Civil Case No. 2006, Civil Case No. 2007, Civil Case No. 2008, Civil Case No. 2009, Civil Case No. 2011, Civil Case No. 2012, Civil Case No. 2013, Civil Case No. 2014, Civil Case No. 2015, Civil Case No. 2018, Civil Case No. 2019);[4] that she had thereby misappropriated the total sum of ₱43,964.80;[5] and that she had voluntarily admitted and confessed to her misdeeds upon confrontation.[6]

Atty. Velasco requested the conduct of an audit of all the financial records of Branch 38 of the RTC by the Office of the Court Administrator (OCA); and prayed that Baterbonia be punished for her acts of malversation, falsification, dishonesty, and grave misconduct.

Acting upon the recommendation of then Court Administrator Presbitero J. Velasco Jr., the Court ordered: (*a*) that a financial audit and investigation of the accounts handled by Baterbonia be conducted and a report be submitted within 60 days from

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

[4] *Id.* at 2-5.

[5] *Id.* at 5.

[6] *Id.*

completion of the investigation; and (*b*) that Baterbonia be preventively suspended pending the conduct of the investigation.[7]

Findings of the Audit Team

The OCA audit team found Baterbonia primarily responsible for discrepancies between the legal fees received from party litigants and the amounts she had written in the duplicate and triplicate copies of the ORs,[8] as follows:

	Per Legal Fees Form	Recorded Amount per duplicate and triplicate copies	Difference of unrecorded/ unreceipted amount
For JDF:			
Civil Cases	₱213,996.24	₱115, 451.84	₱98,544.40
Miscellaneous Cases	25,300.00	9,508.00	15,792.00
Special Proceedings	5,232.00	2,801.80	2,430.20
Special Civil Actions	21,064.15	11,722.00	9,342.15
Extra-Judicial Foreclosure	157,842.31	98,531.20	59,311.11
TOTAL	423,434.70	238,014.84	185,419.86
For the General Fund			
Civil Cases	31,152.06	20,835.06	10,317.00
Miscellaneous Cases	5,250.00	0.00	5,250.00
Special Proceedings	360.00	328.00	32.00
Special Civil Actions	2,620.00	1,770.00	850.00
Extra-Judicial Foreclosure	6,873.39	3,639.86	3,233.53
For SAJF			
Civil Cases	35,877.06	10,585.60	25,291.46
Miscellaneous Cases	8,254.00	1,899.00	6,355.00
Special Proceedings	3,508.00	1,853.20	1,654.80

[7] *Id.* at 70.

[8] *Id.* at 160-161.

Special Civil Actions	6,588.53	3,478.00	3,110.53
Extra-Judicial Foreclosure	15,727.98	7,790.07	7,937.91
TOTAL	69,955.57	25,605.87	44,349.70
For Sheriff's General Fund			
Civil Cases	14,820.00	11,400.00	3,420.00
Miscellaneous Cases	1,460.00	0.00	1,460.00
Special Proceedings	420.00	420.00	0.00
Special Civil Actions	600.00	300.00	300.00
TOTAL	17,300	12,120.00	5,180.00
GRAND TOTAL	₱ 556,945.72	₱ 302,313.63	₱ 254,632.09

The audit team also found that Baterbonia had not deposited either in the Judicial Development Fund (JDF) or in the Sheriff's General Fund (GF) the amount of ₱36,000.00 representing the withdrawn confiscated bonds.

At this juncture, minor mathematical errors have been detected in summing up the discrepancies uncovered by the audit team. The amount defrauded was only ₱231,699.03.

Atty. Anthony A. Barluado, then the Branch Clerk of Court of Branch 38 of the RTC, was similarly subjected to the audit, and was found to have sufficiently explained all the accountability issues relevant to certain withdrawals. Hence, the matter concerning his withdrawals was deemed closed and terminated.

Findings and Recommendations of the OCA

In its Memorandum dated August 23, 2011, the OCA adopted the findings of the audit team and recommended the following disciplinary actions to be taken, to wit:

1. The letter-compliance dated 14 July 2011 of Atty. Anthony A. Barluado, Clerk of Court VI, Regional Trial Court, Branch 38, Alabel, Sarangani Province, in compliance to the Resolution dated 23 June 2008, submitting certified photo machine copies of the following:

a) the two (2) withdrawal slips in the amount of ₱10,000.00 each duly validated by the Land Bank of the Philippines, both dated 21 March 2000, for Election Case No. 98-10 entitled "*Flora L. Benzonan vs. Enrique Yap*" and Election Case No. 98-11 entitled "*Roselito Wong, et al. vs. Venancio Wata, et al*."; b) two (2) Orders to withdraw said amounts both dated 21 March 2000; c) Acknowledgement Receipts dated 21 March 2000; and d) a photocopy of the LBP Passbook (Fiduciary Fund) with account no. 2071-0148-97 evidencing that only two withdrawals in the amount of ₱10,000.00 each were made on that date, be NOTED.

xxx xxx xxx

4. Respondent Myra L. Baterbonia, Clerk III, RTC Branch 38, Alabel, Sarangani province, be found GUILTY of dishonesty and gross misconduct, and the penalty of DISMISSAL from the service and forfeiture of retirement and all other benefits, except accrued leave credits, with prejudice to re-employment in any government agency, including government-owned and controlled corporations, be imposed upon her.

xxx xxx xxx

7. Atty. Anthony A. Barluado, Clerk of Court VI, Regional Trial Court, Branch 38, Alabel, Sarangani Province, be ADMONISHED for his failure to supervise Acting Cash Clerk Myra L. Baterbonia, which resulted to the mishandling of the court's judiciary funds and be STERNLY WARNED that a repetition of the same infraction shall be dealth with more severely;

xxx xxx xxx

Ruling

We find the foregoing recommendations of the OCA to be warranted by the evidence on record.

Section 1, Article XI of the 1987 Constitution of the Philippines declares that a public office is a public trust, and mandates public officers and employees at all times to be accountable to the people, to serve the people with utmost responsibility, integrity, loyalty and efficiency, to act with patriotism and justice, and to lead modest lives.

In enforcing the constitutional declaration, the Court has been constant and unceasing in reminding all its judicial officers and other workers in the Judiciary to faithfully perform the mandated duties and responsibilities of their respective offices. The Court is ever aware that any act of impropriety on their part, be they the highest judicial officers or the lowest members of the workforce, can greatly erode the people's confidence in the Judiciary. This, because their conduct, good or bad, necessarily reflects on the image of the Judiciary as the temple of justice and right. It is, therefore, the sacred duty of every worker in the Judiciary to maintain before the people the good name and standing of the courts.[9]

Based on the findings of the OCA, Baterbonia failed to measure up to the standards of conduct prescribed for her office. As an accountable employee charged with the safekeeping of fees collected from litigants and the rest of the public dealing with the court she was serving, she was expected to exercise honesty and fidelity in the discharge of that duty of safekeeping because she would thereby ensure the flow of judicial funds so essential to the orderly administration of justice.[10] Yet, she frequently violated the trust and confidence reposed in her position by committing serial acts of misappropriation of the funds she had received as fees that amounted to gross dishonesty. She thereby manifested a malevolent tendency to cheat the Judiciary of its funds.

Baterbonia's misconduct was certainly grave. The Court has explained the concept of grave misconduct in *Imperial v. Santiago, Jr.*,[11] *viz*:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence

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[9] *Office of the Court Administrator v. Recio*, A.M. No. P-04-1813, May 31, 2011, 649 SCRA 552, 566.

[10] *Re: Financial Audit on the Books of Account of Ms. Laura D. Delantar, Clerk of Court, MTC, Leyte, Leyte*, A.M. No. 06-2-43-MTC, March 30, 2006, 485 SCRA 562, 570.

[11] A.M. No. P-01-1449, February 24, 2003, 398 SCRA 75, 85.

by the public officer. **To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment**. **The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. There must also be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law**.

In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest.[12] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others.[13] Certainly, Baterbonia's acts constituted very serious administrative offenses of grave misconduct that called for her dismissal from the service many times over. In that regard, her boldness in repeatedly committing the acts erased all possibility of leniency towards her.

Baterbonia's grave misconduct, being a grave offense, deserved the ultimate penalty of dismissal for the first offense pursuant to Section 52, A, of the *Uniform Rules on Administrative Cases in the Civil Service*.[14]

Moreover, in her defrauding the Judiciary, Baterbonia schemed to have her acts go undiscovered by surreptitiously tampering

[12] *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449, 461; *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578, 599.

[13] *Salazar v. Barriga*, *id.*, pp. 453-454.

[14] Section 52. *Classification of Offenses*. xxx.

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

xxx xxx xxx

3. Grave Misconduct

1st offense – Dismissal

xxx xxx xxx

the ORs to make them appear to contain the much diminished amounts. She thereby clearly abused the trust and confidence reposed in her as the cash clerk of her court. She might have probably incurred criminal liability for the complex felony of *estafa* through falsification for each such occasion of misappropriation. Hence, the Court deems it proper to instruct the OCA to initiate the necessary criminal charges against her in the Department of Justice to make her answer for any crimes she might have been guilty of committing.

Before closing, the Court notes that despite the lack of a showing of a conspiracy in the defraudation of the Judiciary between Baterbonia and Atty. Barluado, her immediate superior officer, the latter concededly failed to exercise utmost diligence in his oversight of her discharge of her duties as the cash clerk. Her misappropriations of substantial sums belonging to the coffers of the Judiciary surely did not happen except over some period of time, and might have been sooner discovered, if not altogether prevented, had he been diligent and vigilant in supervising her. An admonition for him to be diligent and vigilant in his supervision of his subordinates is, therefore, timely and appropriate, lest such subordinates will take advantage of his laxity and softness in order to defraud the Judiciary some more or to violate the public trust with some degree of impunity. He ought to be reminded that his being the clerk of court requires him to perform delicate functions regarding the custody of judicial funds, revenues, records, properties and premises, and that he should then unceasingly be alert to any misfeasance and malfeasance on the part of his subordinates. He should always bear in mind that he may be held as responsible to an extent for any loss, shortage, destruction or impairment of the funds or property entrusted to the court he serves as any of his guilty subordinates.[15]

WHEREFORE, the Court:

1. **FINDS MYRA L. BATERBONIA GUILTY** of dishonesty and gross misconduct; and **DISMISSES** her from the service effective immediately, with prejudice to reemployment

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[15] *Id.*

in any government agency, including government-owned and controlled corporations and with forfeiture of all retirement benefits, except accrued leave credits;

2. **ORDERS MYRA L. BATERBONIA** to restitute within 30 days from her receipt of this decision the amount of ₱231,699.03, which is the total of her shortages consisting of the ₱185,419.86 for the Judiciary Development Fund; the ₱44,349.70 for the Special Allowance for the Judiciary Fund; and the ₱5,180.00 for the Sheriff's Special Fund;

3. **DIRECTS** the Employees Leave Division, Office of Administrative Services, to determine the balance of **MYRA L. BATERBONIA**'s earned leave credits, if any, and to forward the balance to the Finance Division, Fiscal Management Office for the computation of its monetary value, and for the application of the monetary value and any other monetary benefits due to her to the restitution of the aforestated shortages;

4. **REQUIRES** the Office of the Court Administrator to bring to the Department of Justice the necessary criminal complaints for the prompt criminal prosecution of **MYRA L. BATERBONIA**, if warranted; and

5. **ADMONISHES ATTY. ANTHONY A. BARLUADO** to exercise diligent and vigilant supervision of his subordinates, with a warning that a repetition of his lack of diligence and vigilance shall be dealt with more severely.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., no part due to prior action in OCA.

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

Del Castillo, Abad, and *Villarama, Jr., JJ.,* on leave.

EN BANC

[G.R. No. 183533. September 25, 2012]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND THE WRIT OF *HABEAS DATA* IN FAVOR OF FRANCIS SAEZ, FRANCIS SAEZ, *petitioner, vs.* **GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, 22ND MICO, CAPT. LAWRENCE BANAAG, SGT. CASTILLO, CAPT. ROMMEL GUTIERREZ, CAPT. JAKE OBLIGADO, CPL. ROMANITO QUINTANA, PVT. JERICO DUQUIL, CPL. ARIEL FONTANILLA, A CERTAIN CAPT. ALCAYDO, A CERTAIN FIRST SERGEANT, PVT. ZALDY OSIO, A CERTAIN PFC. SONNY, A CERTAIN CPL. JAMES, A CERTAIN JOEL, RODERICK CLANZA and JEFFREY GOMEZ,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; WRITS OF *AMPARO* AND *HABEAS DATA*; CONTENTS OF THE PETITIONS, RULES; COMPLIED WITH.—** Section 5 of A.M. No. 07-9-12-SC (Rule on the Writ of *Amparo*) and Section 6 of A.M. 08-1-16-SC (Rule on the Writ of *Habeas Data*) provide for what the said petitions should contain. In the present case, the Court notes that the petition for the issuance of the privilege of the writs of *amparo* and *habeas data* is sufficient as to its contents. The petitioner made specific allegations relative to his personal circumstances and those of the respondents. The petitioner likewise indicated particular acts, which are allegedly violative of his rights and the alleged participation of some of the respondents in their commission. As to the pre-requisite conduct and result of an investigation prior to the filing of the petition, it was explained that the petitioner expected no relief from the military, which he perceived as his oppressors; hence, his request for assistance from a human rights organization, then a direct resort to the court. Anent the documents sought to be

the subject of the writ of *habeas data* prayed for, the Court finds the requirement of specificity to have been satisfied. The documents subject of the petition include the order of battle, those linking the petitioner to the CPP and those he signed involuntarily, and military intelligence reports making references to him. Although the exact locations and the custodians of the documents were not identified, this does not render the petition insufficient. Section 6(d) of the Rule on the Writ of *Habeas Data* is clear that the requirement of specificity arises only when the exact locations and identities of the custodians are known. The *Amparo* Rule was not promulgated with the intent to make it a token gesture of concern for constitutional rights. Thus, despite the lack of certain contents, which the Rules on the Writs of *Amparo* and *Habeas Data* generally require, for as long as their absence under exceptional circumstances can be reasonably justified, a petition should not be susceptible to outright dismissal. From the foregoing, the Court holds that the allegations stated in the petition for the privilege of the writs of *amparo* and *habeas data* filed conform to the rules. However, they are mere allegations, which the Court cannot accept "hook, line and sinker," so to speak, and whether substantial evidence exist to warrant the granting of the petition is a different matter altogether.

2. **ID.; ID.; PETITION FOR THE PRIVILEGE OF THE WRITS OF *AMPARO* AND *HABEAS DATA*; NOT ONLY DIRECT EVIDENCE, BUT CIRCUMSTANTIAL EVIDENCE, INDICIA, AND PRESUMPTIONS MAY BE CONSIDERED, SO LONG AS THEY LEAD TO CONCLUSIONS CONSISTENT WITH THE ADMISSIBLE EVIDENCE ADDUCED.—** The Court has ruled that in view of the recognition of the evidentiary difficulties attendant to the filing of a petition for the privilege of the writs of *amparo* and *habeas data*, not only direct evidence, but circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the admissible evidence adduced. With the foregoing in mind, the Court still finds that the CA did not commit a reversible error in declaring that no substantial evidence exist to compel the grant of the reliefs prayed for by the petitioner. **The Court took a second look on the evidence on record and finds no reason to**

reconsider the denial of the issuance of the writs prayed for.

3. **ID.; ID.; THE SUPREME COURT IS NOT BOUND BY THE FACTUAL FINDINGS MADE BY THE APPELLATE COURT WHICH RENDERED THE JUDGMENT IN A PETITION FOR THE WRITS OF *AMPARO* AND *HABEAS DATA*; MERE THREATS FALL WITHIN THE MANTLE OF PROTECTION OF THE WRITS; THE THREAT MUST BE SUPPORTED BY INDEPENDENT AND CREDIBLE EVIDENCE.—** Section 19 of both the Rules on the Writ of *Amparo* and *Habeas Data* is explicit that questions of fact and law can be raised before the Court in a petition for review on *certiorari* under Rule 45. As a rule then, the Court is not bound by the factual findings made by the appellate court which rendered the judgment in a petition for the issuance of the writs of *amparo* and *habeas data*. Be that as it may, in the instant case, the Court agrees with the CA that the petitioner failed to discharge the burden of proof imposed upon him by the rules to establish his claims. It cannot be overemphasized that Section 1 of both the Rules on the Writ of *Amparo* and *Habeas Data* expressly include in their coverage even threatened violations against a person's right to life, liberty or security. Further, threat and intimidation that vitiate the free will — although not involving invasion of bodily integrity — nevertheless constitute a violation of the right to security in the sense of "freedom from threat." It must be stressed, however, that such "threat" must find rational basis on the surrounding circumstances of the case. In this case, the petition was mainly anchored on the alleged threats against his life, liberty and security by reason of his inclusion in the military's order of battle, the surveillance and monitoring activities made on him, and the intimidation exerted upon him to compel him to be a military asset. While, as stated earlier, mere threats fall within the mantle of protection of the writs of *amparo* and *habeas data*, in the petitioner's case, the restraints and threats allegedly made lack corroborations, are not supported by independent and credible evidence, and thus stand on nebulous grounds.

4. **ID.; ID.; THE LIBERALITY ACCORDED TO *AMPARO* AND *HABEAS DATA* CASES DOES NOT MEAN THAT A CLAIMANT IS DISPENSED WITH THE ONUS OF PROVING HIS CASE.—** Given that the totality of the evidence

presented by the petitioner failed to support his claims, the reliefs prayed for, therefore, cannot be granted. The liberality accorded to *amparo* and *habeas data* cases does not mean that a claimant is dispensed with the *onus* of proving his case. "Indeed, even the liberal standard of substantial evidence demands *some* adequate evidence."

5. **ID.; ID.; COMMAND RESPONSIBILITY DOCTRINE; ELEMENTS; APPLIES TO *AMPARO* PROCEEDINGS; THE PRESIDENT, AS COMMANDER-IN-CHIEF OF THE ARMED FORCES OF THE PHILIPPINES, CAN BE HELD LIABLE FOR AFFRONT AGAINST THE PETITIONER'S RIGHTS TO LIFE, LIBERTY AND SECURITY PURSUANT TO THE DOCTRINE OF COMMAND RESPONSIBILITY; CONDITIONS.—** In *Noriel Rodriguez v. Gloria Macapagal Arroyo, et al.*, the Court stated: ***a. Command responsibility of the President*** Having established the applicability of the doctrine of command responsibility in *amparo* proceedings, it must now be resolved whether the president, as commander-in-chief of the military, can be held responsible or accountable for extrajudicial killings and enforced disappearances. We rule in the affirmative. To hold someone liable under the doctrine of command responsibility, the following elements must obtain: a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b. the superior knew or had reason to know that the crime was about to be or had been committed; and c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. The president, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. x x x. Pursuant to the doctrine of command responsibility, the President, as the Commander-in-Chief of the AFP, can be held liable for affront against the petitioner's rights to life, liberty and security as long as substantial evidence exist to show that he or she had exhibited involvement in or can be imputed with knowledge of the violations, or had failed to exercise necessary and reasonable diligence in conducting the necessary investigations required under the rules.

6. **ID.; ID.; ID.; THE PRESIDENTIAL PRIVILEGE OF IMMUNITY FROM SUIT CANNOT BE INVOKED BY A**

NON-SITTING PRESIDENT EVEN FOR ACTS COMMITTED DURING HIS TENURE.— The Court also stresses the rule that the presidential immunity from suit exists only in concurrence with the president's incumbency. Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure. Courts look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right.

7. **ID.; ID.; ID.; THE PETITIONER MUST PROVE BY SUBSTANTIAL EVIDENCE THE PRESIDENT'S ACTUAL INVOLVEMENT IN, OR KNOWLEDGE OF THE ALLEGED VIOLATIONS OF HIS RIGHTS TO LIFE, LIBERTY AND SECURITY.—** The petitioner, however, is not exempted from the burden of proving by substantial evidence his allegations against the President to make the latter liable for either acts or omissions violative of rights against life, liberty and security. In the instant case, the petitioner merely included the President's name as a party respondent without any attempt at all to show the latter's actual involvement in, or knowledge of the alleged violations.

8. **ID.; ID.; ID.; WHILE THE PRESIDENT CANNOT BE COMPLETELY DROPPED AS A RESPONDENT IN A PETITION FOR THE PRIVILEGE OF THE WRITS OF *AMPARO* AND *HABEAS DATA* MERELY ON THE BASIS OF THE PRESIDENTIAL IMMUNITY FROM SUIT, THE PETITIONER MUST ESTABLISH THE ACCOUNTABILITY OF THE PRESIDENT UNDER THE DOCTRINE OF COMMAND RESPONSIBILITY.— [P]rior to the filing of the petition, there was no request or demand for any investigation that was brought to the President's attention. Thus, while the President cannot be completely dropped as a respondent in a petition for the privilege of the writs of** *amparo* and *habeas data* merely on the basis of the presidential immunity from suit, the petitioner in this case failed to establish accountability of the President, as commander-in-chief, under the doctrine of command responsibility.

9. **REMEDIAL LAW; RULES OF PROCEDURE; COMPLIANCE WITH TECHNICAL RULES OF PROCEDURE IS IDEAL BUT IT CANNOT BE ACCORDED PRIMACY ESPECIALLY WHERE THERE WAS AT LEAST**

SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS.— Among the grounds cited by the CA in denying the petition for the issuance of the writs of *amparo* and *habeas data* was the defective verification which was attached to the petition. In *Tagitis*, supporting affidavits required under Section 5(c) of the Rule on the Writ of *Amparo* were not submitted together with the petition and it was ruled that the defect was fully cured when the petitioner and the witness personally testified to prove the truth of their allegations in the hearings held before the CA. In the instant case, the defective verification was not the sole reason for the CA's denial of the petition for the issuance of the writs of *amparo* and *habeas data*. Nonetheless, it must be stressed that although rules of procedure play an important rule in effectively administering justice, primacy should not be accorded to them especially in the instant case where there was at least substantial compliance with the requirements and where petitioner himself testified in the hearings to attest to the veracity of the claims stated in his petition. [C]ompliance with technical rules of procedure is ideal but it cannot be accorded primacy. In the proceedings before the CA, the petitioner himself testified to prove the veracity of the allegations in his petition. Hence, the defect in the verification attached to the petition was deemed cured.

APPEARANCES OF COUNSEL

Rex J.M.A. Fernandez for petitioner.

R E S O L U T I O N

REYES, *J.*:

For action by the Court is the Motion for Reconsideration[1] dated September 26, 2010 filed by petitioner Francis Saez of our Resolution[2] dated August 31, 2010 denying the Petition for Review[3] he filed on July 21, 2008.

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[1] *Rollo*, pp. 384-399.

[2] *Id.* at 361-365.

[3] *Id.* at 2-15. The petition bears the docket number G.R. No. 183533.

The Office of the Solicitor General (OSG) filed its Comment[4] thereon stating that it does not find cogent grounds to warrant setting aside our decision.

Antecedent Facts

On March 6, 2008, the petitioner filed with the Court a petition to be granted the privilege of the writs of *amparo* and *habeas data* with prayers for temporary protection order, inspection of place and production of documents.[5] In the petition, he expressed his fear of being abducted and killed; hence, he sought that he be placed in a sanctuary appointed by the Court. He likewise prayed for the military to cease from further conducting surveillance and monitoring of his activities and for his name to be excluded from the order of battle and other government records connecting him to the Communist Party of the Philippines (CPP).

Without necessarily giving due course to the petition, the Court issued the writ of *amparo* commanding the respondents to make a verified return, and referred the case to the Court of Appeals (CA) for hearing and decision. The case before the CA was docketed as CA-G.R. SP No. 00024 WOA.

In the Return of the Writ,[6] the respondents denied the assignment in the units of Captains Lawrence Banaag and Rommel Gutierrez and Corporal Ariel Fontanilla. The respondents also alleged that the names and descriptions of "Capt. Alcaydo," "a certain First Sergeant," "Cpl. James," "Pfc. Sonny," and "Joel" were insufficient to properly identify some of the persons sought to be included as among the respondents in the petition.

On the other hand, respondents General Hermogenes Esperon, Jr. (Gen. Esperon), Capt. Jacob Thaddeus Obligado, Pvt. Rizaldy A. Osio (Pvt. Osio), Pfc. Romanito C. Quintana, Jr. and Pfc. Jerico Duquil submitted their affidavits.

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[4] *Id.* at 526-528.

[5] *Id.* at 18-27. The petition was docketed as G.R. No. 181770.

[6] *Id.* at 98-130.

The CA conducted hearings with an intent to clarify what actually transpired and to determine specific acts which threatened the petitioner's right to life, liberty or security.

During the hearings, the petitioner narrated that starting April 16, 2007, he noticed that he was always being followed by a certain "Joel," a former colleague at *Bayan Muna*. "Joel" pretended peddling *pandesal* in the vicinity of the petitioner's store. Three days before the petitioner was apprehended, "Joel" approached and informed him of his marital status and current job as a baker in Calapan, Mindoro Oriental. "Joel" inquired if the petitioner was still involved with *ANAKPAWIS*. When asked by the CA justices during the hearing if the petitioner had gone home to Calapan after having filed the petition, he answered in the negative explaining that he was afraid of Pvt. Osio who was always at the pier.

CA-G.R. SP No. 00024 WOA

On July 9, 2008, the CA rendered its Decision,[7] denying on formal and substantial grounds the reliefs prayed for in the petition and dropping former President Gloria Macapagal Arroyo as a respondent. The CA ratiocinated:

> There was no attempt at all to clarify how petitioner came to know about Zaldy Osio's presence at their pier if the former had not gone home since the petition was filed and what Zaldy Osio was doing there to constitute violation or threat to violate petitioner's right to life, liberty or security. This Court cannot just grant the privilege of the writs without substantial evidence to establish petitioner's entitlement thereto. This Court cannot grant the privilege of the writs applied for on mere speculation or conjecture. This Court is convinced that the Supreme Court did not intend it to be so when the rules on the writs of *Amparo* and *Habeas Data* were adopted. It is the impression of this Court that the privilege of the writs herein prayed for should be considered as extraordinary remedies available to address the specific situations enumerated in the rules and no other.

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[7] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. Del Castillo (now a Member of this Court) and Romeo F. Barza, concurring; CA *rollo*, pp. 180-201.

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Not only did the petition and the supporting affidavit x x x fail to allege how the supposed threat or violation of petitioner's [right to] life, liberty and security is committed. Neither is there any narration of any circumstances attendant to said supposed violation or threat to violate petitioner's right to life, liberty or security to warrant entitlement to the privilege of the writs prayed for.

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A reading of the petition will show that the allegations therein do not comply with the aforestated requirements of Section 6 [Rule on the Writ of *Habeas Data*] of the pertinent rule. The petition is bereft of any allegation stating with specific definiteness as to how petitioner's right to privacy was violated or threatened to be violated. He did not include any allegation as to what recourses he availed of to obtain the alleged documents from respondents. Neither did petitioner allege what specific documents he prays for and from whom or [sic] from what particular office of the government he prays to obtain them. The petition prays "to order respondents to produce any documents submitted to any of them in the matter of any report on the case of FRANCIS SAEZ, including all military intelligence reports."

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Both the rules on the writs of *Amparo* and *Habeas Data* (Section 17, A.M. No. 07-9-12-SC and Section 16, A.M. No. 08-1-16-SC) provide that the parties shall establish their claims by substantial evidence. Not only was petitioner unable to establish his entitlement to the privilege of the writs applied for, the exigency thereof was negated by his own admission that nothing happened between him and Joel after July 21, 2007. The filing of the petition appears to have been precipitated by his fear that something might happen to him, not because of any apparent violation or visible threat to violate his right to life, liberty or security. Petitioner was, in fact, unable to establish likewise who among the respondents committed specific acts defined under the rules on both writs to constitute violation or threat to violate petitioner's rights to life, liberty or security or his right to privacy thereof.

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x x x The ruling in *David, et al. vs. Gloria Macapagal Arroyo, et al.* (G.R. No. 171396, May 3, 2006, 489 SCRA 160, 224) is aptly instructive:

> "Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. x x x."

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IV. The petition lacks proper verification in violation of Section 12, 2004 Rules on Notarial Practice.[8]

On July 21, 2008, Petition for Review was filed assailing the foregoing CA decision with the following issues submitted for resolution:

WHETHER OR NOT THE CA COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITION AND DROPPING GLORIA MACAPAGAL ARROYO AS PARTY RESPONDENT.

WHETHER OR NOT THE NOTARIAL OFFICER'S OMISSION OF REQUIRING FROM THE PETITIONER IDENTIFICATION CARDS RELATIVE TO THE LATTER'S EXECUTION OF THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING JUSTIFIES THE DENIAL OF THE PETITION.

WHETHER OR NOT THE CA COMMITTED GROSS ABUSE OF DISCRETION WHEN IT FAILED TO CONCLUDE FROM THE EVIDENCE OFFERED BY THE PETITIONER THE FACT THAT BY BEING PLACED IN THE ORDER OF BATTLE LIST, THREATS AND VIOLATIONS TO THE LATTER'S LIFE, LIBERTY AND SECURITY WERE ACTUALLY COMMITTED BY THE RESPONDENTS.[9]

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[8] *Id.* at 195-199.

[9] *Rollo*, pp. 2-15.

Court's Resolution dated August 31, 2010

On August 31, 2010, the Court issued the Resolution[10] denying the petition for review for the following reasons, *viz*:

A careful perusal of the subject petition shows that the CA correctly found that the petition was bereft of any allegation as to what particular acts or omission of respondents violated or threatened petitioner's right to life, liberty and security. His claim that he was incommunicado lacks credibility as he was given a cellular phone and allowed to go back to Oriental Mindoro. The CA also correctly held that petitioner failed to present substantial evidence that his right to life, liberty and security were violated, or how his right to privacy was threatened by respondents. He did not specify the particular documents to be secured, their location or what particular government office had custody thereof, and who has possession or control of the same. He merely prayed that the respondents be ordered "to produce any documents submitted to any of them in the matter of any report on the case of FRANCIS SAEZ, including all military intelligence reports."

Petitioner assails the CA in failing to appreciate that in his Affidavit and Fact Sheet, he had specifically detailed the violation of his right to privacy as he was placed in the Order of Battle and promised to have his record cleared if he would cooperate and become a military asset. However, despite questions propounded by the CA Associate Justices during the hearing, he still failed to enlighten the appellate court as to what actually transpired to enable said court to determine whether his right to life, liberty or security had actually been violated or threatened. Records bear out the unsubstantiated claims of petitioner which justified the appellate court's dismissal of the petition.

As to petitioner's argument that the CA erred in deleting the President as party-respondent, we find the same also to be without merit. The Court has already made it clear in *David v. Macapagal-Arroyo* that the President, during his or her tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if the President can be dragged into court litigations while serving as such. Furthermore, it is important that the President be

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[10] *Id.* at 361-365.

freed from any form of harassment, hindrance or distraction to enable the President to fully attend to the performance of official duties and functions.[11] (Citation omitted)

Hence, the petitioner filed the instant motion for reconsideration.[12]

Petitioner's Arguments

Contrary to the CA's findings, it had been shown by substantial evidence and even by the respondents' own admissions that the petitioner's life, liberty and security were threatened. Military personnel, whom the petitioner had named and described, knew where to get him and they can do so with ease. He also became a military asset, but under duress, as the respondents had documents allegedly linking him to the CPP and including him in the order of battle. The petitioner claims that the foregoing circumstances were not denied by the respondents.

The petitioner likewise challenges the CA's finding that he was not rendered *incommunicado* as he was even provided with a cellular phone. The petitioner argues that the phone was only given to him for the purpose of communicating with the respondents matters relative to his infiltration activities of target legal organizations.

The petitioner cites *Secretary of National Defense v. Manalo*,[13] which pronounced that "in the *amparo* context, it is more correct to say that the 'right to security' is actually the 'freedom from threat.'"[14] According to the petitioner, his freedom from fear was undoubtedly violated, hence, to him pertains a cause of action. Anent the quantum of proof required in a petition for the issuance of the writ of *amparo*, mere substantial evidence is sufficient. The petition "is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for

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

[12] *Id.* at 384-399.

[13] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[14] *Id.* at 54.

damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings."[15] Sadly, in the petitioner's case, the court not only demanded a greater quantum of proof than what the rules require, but it also accorded special preference for the respondents' evidence.

The petitioner also cites a speech delivered in Siliman University by former Chief Justice Reynato Puno who expressed that "the remedy of *habeas data* can be used by any citizen against any governmental agency or register to find out what information is held about his or her person." The person can likewise "request the rectification or even the destruction of erroneous data gathered and kept against him or her." In the petitioner's case, he specifically sought the production of the order of battle, which allegedly included his name, and other records which supposedly contain erroneous data relative to his involvement with the CPP.

OSG's Comment

In the respondents' comment[16] filed by the OSG, it is generally claimed that the petitioner advances no cogent grounds to justify the reversal of the Court's Resolution dated August 31, 2010.

The Court's Disquisition

While the issuance of the writs sought by the petitioner cannot be granted, the Court nevertheless finds ample grounds to modify the Resolution dated August 31, 2010.

The petition conforms to the requirements of the Rules on the Writs of *Amparo* and *Habeas Data*

Section 5[17] of A.M. No. 07-9-12-SC (Rule on the Writ of

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[15] *Id.* at 42.

[16] *Rollo*, pp. 526-528.

[17] Sec. 5. Contents of Petition. — The petition shall be signed and verified and shall allege the following: (a) The personal circumstances of the petitioner; (b) The name and personal circumstances of the respondent

Amparo) and Section 6[18] of A.M. 08-1-16-SC (Rule on the Writ of *Habeas Data*) provide for what the said petitions should contain.

In the present case, the Court notes that the petition for the issuance of the privilege of the writs of *amparo* and *habeas data* is sufficient as to its contents. The petitioner made specific allegations relative to his personal circumstances and those of the respondents. The petitioner likewise indicated particular acts, which are allegedly violative of his rights and the participation of some of the respondents in their commission. As to the pre-requisite conduct and result of an investigation prior to the filing of the petition, it was explained that the petitioner expected no relief from the military, which he perceived as his oppressors, hence, his request for assistance from a human rights organization, then a direct resort to the court. Anent the documents sought to be the subject of the writ of *habeas data* prayed for, the

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responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation; (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and (f) The relief prayed for the petition may include a general prayer for other just and equitable reliefs.

[18] Sec. 6. Petition. — A verified written petition for a writ of *habeas data* should contain: (a) The personal circumstances of the petitioner and the respondent; (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party; (c) The actions and recourses taken by the petitioner to secure the data or information; (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known; (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent. In case of threats, the relief may include a prayer for an order enjoining the act complained of; and (f) Such other relevant reliefs as are just and equitable.

Court finds the requirement of specificity to have been satisfied. The documents subject of the petition include the order of battle, those linking the petitioner to the CPP and those he signed involuntarily, and military intelligence reports making references to him. Although the exact locations and the custodians of the documents were not identified, this does not render the petition insufficient. Section 6(d) of the Rule on the Writ of *Habeas Data* is clear that the requirement of specificity arises only when the exact locations and identities of the custodians are known. The *Amparo* Rule was not promulgated with the intent to make it a token gesture of concern for constitutional rights.[19] Thus, despite the lack of certain contents, which the Rules on the Writs of *Amparo* and *Habeas Data* generally require, for as long as their absence under exceptional circumstances can be reasonably justified, a petition should not be susceptible to outright dismissal.

From the foregoing, the Court holds that the allegations stated in the petition for the privilege of the writs of *amparo* and *habeas data* filed conform to the rules. However, they are mere allegations, which the Court cannot accept "hook, line and sinker," so to speak, and whether substantial evidence exist to warrant the granting of the petition is a different matter altogether.

No substantial evidence exists to prove the petitioner's claims

The Court has ruled that in view of the recognition of the evidentiary difficulties attendant to the filing of a petition for the privilege of the writs of *amparo* and *habeas data*, not only direct evidence, but circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the admissible evidence adduced.[20]

With the foregoing in mind, the Court still finds that the CA did not commit a reversible error in declaring that no substantial evidence exist to compel the grant of the reliefs prayed for by

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[19] *Razon, Jr. v. Tagitis*, G.R. No. 182498, December 3, 2009, 606 SCRA 598, 702.

[20] *Id.* at 690.

the petitioner. **The Court took a second look on the evidence on record and finds no reason to reconsider the denial of the issuance of the writs prayed for**.

In the hearing before the CA, it was claimed that "Joel" once inquired from the petitioner if the latter was still involved with *ANAKPAWIS*. By itself, such claim cannot establish with certainty that the petitioner was being monitored. The encounter happened once and the petitioner, in his pleadings, nowhere stated that subsequent to the time he was asked about his involvement with *ANAKPAWIS*, he still noticed "Joel" conducting surveillance operations on him. He alleged that he was brought to the camp of the 204th Infantry Brigade in Naujan, Oriental Mindoro but was sent home at 5:00 p.m. The petitioner and the respondents have conflicting claims about what transpired thereafter. The petitioner insisted that he was brought against his will and was asked to stay by the respondents in places under the latter's control. The respondents, on the other hand, averred that it was the petitioner who voluntarily offered his service to be a military asset, but was rejected as the former still doubted his motives and affiliations.

Section 19 of both the Rules on the Writ of *Amparo* and *Habeas Data* is explicit that questions of fact and law can be raised before the Court in a petition for review on *certiorari* under Rule 45. As a rule then, the Court is not bound by the factual findings made by the appellate court which rendered the judgment in a petition for the issuance of the writs of *amparo* and *habeas data*. Be that as it may, in the instant case, the Court agrees with the CA that the petitioner failed to discharge the burden of proof imposed upon him by the rules to establish his claims. It cannot be overemphasized that Section 1 of both the Rules on the Writ of *Amparo* and *Habeas Data* expressly include in their coverage even threatened violations against a person's right to life, liberty or security. Further, threat and intimidation that vitiate the free will — although not involving invasion of bodily integrity — nevertheless constitute a violation of the right to security in the sense of "freedom from threat."[21]

[21] *Supra* note 13, at 55.

It must be stressed, however, that such "threat" must find rational basis on the surrounding circumstances of the case. In this case, the petition was mainly anchored on the alleged threats against his life, liberty and security by reason of his inclusion in the military's order of battle, the surveillance and monitoring activities made on him, and the intimidation exerted upon him to compel him to be a military asset. While as stated earlier, mere threats fall within the mantle of protection of the writs of *amparo* and *habeas data*, in the petitioner's case, the restraints and threats allegedly made allegations lack corroborations, are not supported by independent and credible evidence, and thus stand on nebulous grounds.

The Court is cognizant of the evidentiary difficulties attendant to a petition for the issuance of the writs. Unlike, however, the unique nature of cases involving enforced disappearances or extra-judicial killings that calls for flexibility in considering the gamut of evidence presented by the parties, this case sets a different scenario and a significant portion of the petitioner's testimony could have been easily corroborated. In his *Sinumpaang Salaysay*[22] dated March 5, 2008 and the Fact Sheet dated December 9, 2007[23] executed before the Alliance for the Advancement of People's Rights-Southern Tagalog (KARAPATAN-ST), the petitioner stated that when he was invited and interrogated at the military camp in Naujan, Oriental Mindoro, he brought with him his uncle Norberto Roxas, *Barangay* Captain Mario Ilagan and two of his bodyguards, and Edwardo Estabillo — five witnesses who can attest and easily corroborate his statement — but curiously, the petitioner did not present any piece of evidence, whether documentary or testimonial, to buttress such claim nor did he give any reason for their non-presentation. This could have made a difference in light of the denials made by the respondents as regards the petitioner's claims.

The existence of an order of battle and inclusion of the petitioner's name in it is another allegation by the petitioner

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[22] CA *rollo*, pp. 12-16.

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

that does not find support on the evidence adduced. The Court notes that such allegation was categorically denied by respondent Gen. Avelino I. Razon, Jr. who, in his Affidavit dated March 31, 2008, stated that he "does not have knowledge about any Armed Forces of the Philippines (AFP) 'order of battle' which allegedly lists the petitioner as a member of the CPP."[24] This was also denied by Pvt. Osio, who the petitioner identified as the one who told him that he was included in the order of battle.[25] The 2nd Infantry (Jungle Fighter) Division of the Philippine Army also conducted an investigation pursuant to the directive of AFP Chief of Staff Gen. Esperon,[26] and it was shown that the persons identified by the petitioners who allegedly committed the acts complained of were not connected or assigned to the 2nd Infantry Division.[27]

Moreover, the evidence showed that the petitioner's mobility was never curtailed. From the time he was allegedly brought to Batangas in August of 2007 until the time he sought the assistance of *KARAPATAN-ST*, there was no restraint upon the petitioner to go home, as in fact, he went home to Mindoro on several instances. And while he may have been wary of Pvt. Osio's presence at the pier, there was no claim by the petitioner that he was threatened or prevented by Pvt. Osio from boarding any vehicle that may transport him back home. The petitioner also admitted that he had a mobile phone; hence, he had unhampered access to communication and can readily seek assistance from non-governmental organizations and even government agencies.

The respondents also belied the petitioner's claim that they forced him to become a military informant and instead, alleged that it was the petitioner who volunteered to be one. Thus, in his *Sinumpaang Salaysay*[28] executed on March 25, 2008, Pvt.

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[24] *Id.* at 103.

[25] *Id.* at 98.

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

[27] *Id.* at 87.

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

Osio admitted that he actually knew the petitioner way back in 1998 when they were still students. He also stated that when he saw the petitioner again in 2007, the latter manifested his intention to become a military informant in exchange for financial and other forms of assistance.

The petitioner also harps on the alleged "monitoring" activities being conducted by a certain "Joel", *e.g.*, the latter's alleged act of following him, pretending to peddle *pandesal* and asking him about his personal circumstances. Such allegation by the petitioner, however, is, at best, a conclusion on his part, a mere impression that the petitioner had, based on his personal assessment of the circumstances. The petitioner even admitted in his testimony before the CA that when he had a conversation with "Joel" sometime in July 2007, the latter merely asked him whether he was still connected with *ANAKPAWIS*, but he was not threatened "with anything" and no other incident occurred between them since then.[29] There is clearly nothing on record which shows that "Joel" committed overt acts that will unequivocally lead to the conclusion arrived at by the petitioner, especially since the alleged acts committed by "Joel" are susceptible of different interpretations.

Given that the totality of the evidence presented by the petitioner failed to support his claims, the reliefs prayed for, therefore, cannot be granted. The liberality accorded to *amparo* and *habeas data* cases does not mean that a claimant is dispensed with the *onus* of proving his case. "Indeed, even the liberal standard of substantial evidence demands *some* adequate evidence."[30]

The President cannot be automatically dropped as a respondent pursuant to the doctrine of command responsibility

In *Noriel Rodriguez v. Gloria Macapagal Arroyo, et al.*,[31] the Court stated:

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[29] TSN, April 2, 2008, pp. 37-39.

[30] *Miro v. Dosono*, G.R. No. 170697, April 30, 2010, 619 SCRA 653, 667.

[31] G.R. No. 191805, November 15, 2011.

a. Command responsibility of the President

Having established the applicability of the doctrine of command responsibility in *amparo* proceedings, it must now be resolved whether the president, as commander-in-chief of the military, can be held responsible or accountable for extrajudicial killings and enforced disappearances. We rule in the affirmative.

To hold someone liable under the doctrine of command responsibility, the following elements must obtain:

> a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;
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> b. the superior knew or had reason to know that the crime was about to be or had been committed; and
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> c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

The president, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine.

On the issue of knowledge, it must be pointed out that although international tribunals apply a strict standard of knowledge, *i.e.*, actual knowledge, such may nonetheless be established through circumstantial evidence. In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge. This view is buttressed by the enactment of Executive Order No. 226, otherwise known as the *Institutionalization of the Doctrine of 'Command Responsibility' in all Government Offices, particularly at all Levels of Command in the Philippine National Police and other Law Enforcement Agencies* (E.O. 226). Under E.O. 226, a government official may be held liable for neglect of duty under the doctrine of command responsibility if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission. Knowledge of the commission of irregularities, crimes or offenses is presumed when (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been

repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved.

Meanwhile, as to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the president has the power to effectively command, control and discipline the military. (Citations omitted)

Pursuant to the doctrine of command responsibility, the President, as the Commander-in-Chief of the AFP, can be held liable for affront against the petitioner's rights to life, liberty and security as long as substantial evidence exist to show that he or she had exhibited involvement in or can be imputed with knowledge of the violations, or had failed to exercise **necessary and reasonable diligence** in conducting the necessary investigations required under the rules.

The Court also stresses that rule that the presidential immunity from suit exists only in concurrence with the president's incumbency.[32] Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure.[33] Courts look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right.[34]

The petitioner, however, is not exempted from the burden of proving by substantial evidence his allegations against the President to make the latter liable for either acts or omissions violative of rights against life, liberty and security. In the instant case, the petitioner merely included the President's name as a party respondent without any attempt at all to show the latter's actual involvement in, or knowledge of the alleged violations. Further, prior to the filing of the petition, there was no request or demand for any investigation that was brought to the President's

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[32] *Id.*, citing *Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, March 2, 2001, 353 SCRA 452.

[33] *Lozada v. Arroyo*, G.R. Nos. 184379-80, April 24, 2012.

[34] *Supra* note 32.

attention. Thus, while the President cannot be completely dropped as a respondent in a petition for the privilege of the writs of *amparo* and *habeas data* merely on the basis of the presidential immunity from suit, the petitioner in this case failed to establish accountability of the President, as commander-in-chief, under the doctrine of command responsibility.

Compliance with technical rules of procedure is ideal but it cannot be accorded primacy

Among the grounds cited by the CA in denying the petition for the issuance of the writs of *amparo* and *habeas data* was the defective verification which was attached to the petition. In *Tagitis*,[35] supporting affidavits required under Section 5(c) of the Rule on the Writ of *Amparo* were not submitted together with the petition and it was ruled that the defect was fully cured when the petitioner and the witness personally testified to prove the truth of their allegations in the hearings held before the CA. In the instant case, the defective verification was not the sole reason for the CA's denial of the petition for the issuance of the writs of *amparo* and *habeas data*. Nonetheless, it must be stressed that although rules of procedure play an important rule in effectively administering justice, primacy should not be accorded to them especially in the instant case where there was at least substantial compliance with the requirements and where petitioner himself testified in the hearings to attest to the veracity of the claims which he stated in his petition.

To conclude, compliance with technical rules of procedure is ideal but it cannot be accorded primacy. In the proceedings before the CA, the petitioner himself testified to prove the veracity of his allegations which he stated in the petition. Hence, the defect in the verification attached to the petition was deemed cured.

WHEREFORE, premises considered, the petitioner's motion for reconsideration is **DENIED WITH FINALITY.**

SO ORDERED.

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[35] *Supra* note 19.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Del Castillo, J., on official business.

Villarama, Jr., J., on official leave.

Abad, J., on leave.

SECOND DIVISION

[G.R. No. 165355. September 26, 2012]

TOMAS T. TEODORO, FRANCISCO J. TEODORO (substituted upon his death by Tomas T. Teodoro), SALVADOR ILANO and TEODORO EXPLORATION AND MINERAL DEVELOPMENT CORPORATION, *petitioners, vs.* **CONTINENTAL CEMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PLEADINGS AND PRACTICES; FORUM-SHOPPING; GUIDELINES REGARDING NON-COMPLIANCE WITH THE REQUIREMENTS ON, OR SUBMISSION OF A DEFECTIVE CERTIFICATION AGAINST FORUM SHOPPING.—** In *Altres v. Empleo*, the Court issued the following guidelines regarding non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping x x x. **4). As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." 5). The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case**; otherwise, those

who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. 6). Finally, **the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf**. In this case, the petitioners' counsel signed the verification and certification against forum shopping stating that "[p]etitioner Tomas T. Teodoro is currently a resident of the United States of America. While he has authorized Atty. Caguioa to execute on his behalf the Certification against [forum] shopping portion of the Petition for Review, he still has to send the written authorization to the latter by courier.

2. **ID.; ID.; ID.; THE SUBSEQUENT FILING OF THE BOARD RESOLUTION RATIFYING ALL THE ACTS OF THE PARTY'S COUNSEL, COULD NOT CURE THE DEFECT IN THE VERIFICATION OR CERTIFICATION REQUIREMENTS, WHERE THE AUTHORIZING BOARD RESOLUTION HAD BEEN PASSED BEYOND THE REGLEMENTARY PERIOD FOR FILING THE PETITION.—** [T]he subsequent filing on August 4, 2006 of the Secretary's Certificate of Republic Aggregate Realty, Inc., the transferee *pendente lite* of the Teodoros' land, ratifying all the acts of the petitioners' counsel, could not cure the defect in the verification or certification requirements, since the authorizing board resolution had been passed only on August 3, 2006, or twenty (21) months after the petition was filed on November 8, 2004, clearly beyond the reglementary period for filing the petition.

3. **ID.; ID.; ID.; A PETITION IS FLAWED WHEN THE CERTIFICATION IS SIGNED ONLY BY THE COUNSEL AND NOT BY THE PARTY; REASON; RULE MAY BE RELAXED WHEN THE PARTY'S CASE IS MERITORIOUS; NOT APPLICABLE.—** Section 5, Rule 7 of the Rules of Court mandates that it should be the plaintiff or principal party who should sign the certification against forum shopping. A petition is flawed when the certification is

signed only by the counsel and not by the party, because it is the party, and not the counsel, who is in the best position to know whether he actually filed or caused the filing of a petition. While we have relaxed this rule in instances when substantial justice requires it, *i.e.*, when the petitioner's case was meritorious, this case does not fall within this exception.

4. **ID.; ID.; WHEN ISSUES NOT RAISED BY THE PLEADINGS ARE TRIED WITH THE EXPRESS OR IMPLIED CONSENT OF THE PARTIES, THEY SHALL BE TREATED IN ALL RESPECTS AS IF THEY HAD BEEN RAISED IN THE PLEADINGS.—** While the petitioners' answer did not specifically raise the issue of whether the respondent's mining claims exclude the Teodoros' land, we find this issue to be deemed raised in the pleadings under Section 5, Rule 10 of the Rules of Court, which provides that "[w]hen issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." In the course of the trial, Engineer Pada testified that the respondent's mining claims do not include the Teodoros' land, based on a survey and sketch plan he prepared.

5. **ID.; JUDGMENTS; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; FACTS AND ISSUES ACTUALLY AND DIRECTLY RESOLVED IN A FORMER SUIT CANNOT AGAIN BE RAISED IN ANY FUTURE CASE BETWEEN THE SAME PARTIES, EVEN IF THE LATTER SUIT MAY INVOLVE A DIFFERENT CLAIM OR CAUSE OF ACTION.—** [T]he administrative agencies have already settled that the Teodoros' land is within the respondent's mining claims. Under the doctrine of conclusiveness of judgment, "facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action." "Conclusiveness of judgment proscribes the relitigation in a second case of a fact or question already settled in a previous case." Thus, the petitioners are already barred from raising the issue anew. The findings and conclusions in the prior administrative proceedings between the parties, as affirmed by the CA and this Court, are binding upon them.

6. **CIVIL LAW; ESTOPPEL; DOCTRINE APPLIED.—** The petitioners are also estopped from claiming that the Teodoros'

land does not fall within the respondent's mining claims since the petitioners have argued otherwise in the prior proceedings. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." The petitioners' representation in the prior proceedings that the respondent's mining claims include the Teodoros' land cannot now be denied by them as against the respondent, the latter having relied upon their representation.

7. **ID.; DAMAGES; A RESORT TO JUDICIAL PROCESSES IS NOT, *PER SE*, EVIDENCE OF ILL WILL UPON WHICH A CLAIM FOR DAMAGES MAY BE BASED.—** The CA committed no reversible error in denying the petitioners' prayer for damages and attorney's fees for the respondent's filing of the injunction case. The settled rule is that "a resort to judicial processes is not, *per se*, evidence of ill will upon which a claim for damages may be based," for the law could not have meant to impose a penalty on the right to litigate. "[F]ree resort to Courts for redress of wrongs is a matter of public policy. The law recognizes the right of everyone to sue for that which he honestly believes to be his right without fear of standing trial for damages."

8. **REMEDIAL LAW; APPEALS; A PARTY WHO DID NOT APPEAL CANNOT ASSIGN SUCH ERRORS AS ARE DESIGNED TO HAVE THE JUDGMENT MODIFIED; EXCEPTIONS; NOT APPLICABLE.—** As to the respondent's prayer, we can no longer examine the CA's deletion of the monetary amounts awarded by the RTC since the respondent did not appeal from the CA decision. "[A] party who did not appeal cannot assign such errors as are designed to have the judgment modified." The established exceptions to this rule — such as "(1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors" — do not apply to this case.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioners.
Britanico Sarmiento & Franco Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Tomas Teodoro, Francisco Teodoro (substituted upon his death by Tomas Teodoro), Salvador Ilano and Teodoro Exploration and Mineral Development Corporation[2] to challenge the April 15, 2003 decision[3] and the September 9, 2004 resolution[4] of the Court of Appeals (*CA*) in CA-G.R. CV No. 70414.

The Factual Antecedents

a. The Parties' Mining Disputes

On July 13, 1959, PAMI Development Corporation (*PAMI*) registered with the Mining Records of Bulacan its mining claims to a 185.8611-hectare land in Barrio Pinagkamaligan, San Mateo, Norzagaray, Bulacan. On December 23, 1964, the Mining Records of Bulacan issued Placer Lease Contract Nos. V-202 and V-203, later renamed Mining Lease Contracts (*MLCs*),[5] to PAMI for a 25-year period ending in 1989. On January 5, 1965, PAMI sold its mining claims to respondent Continental Cement Corporation.[6]

Fifteen (15) years later, or on April 11, 1980, petitioners Tomas and Francisco filed with the Bureau of Mines and Geo-Sciences (*BMGS*) their Quarry Permit Application Nos. AQP-551 and AQP-552 covering their 12.88-hectare land in Barrio

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[1] Filed under Rule 45 of the Rules of Court; *rollo,* pp. 31-61.

[2] Salvador Ilano is now also deceased and Teodoro Exploration and Mineral Development Corporation has ceased operations and already defunct; per Verification and Certification of Non-Forum Shopping, *id.* at 62.

[3] Penned by Associate Justice Conrado M. Vasquez, Jr., and concurred in by Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang; *id.* at 66-80.

[4] *Id.* at 82-85.

[5] *Id.* at 176-177.

[6] *Id.* at 178-180.

Pinagkamaligan, San Mateo, Norzagaray, Bulacan, titled under Transfer Certificate of Title No. 179806 (T-2038[M]), issued by the Register of Deeds of Bulacan on March 14, 1973. On October 9, 1980, the BMGS denied the Teodoros' applications because **the areas covered thereby conflicted with the respondent's mining claims**.

Earlier, or on September 27, 1980, the Teodoros filed a petition with the then Ministry of Natural Resources (*MNR*) for the cancellation of the respondent's MLCs for the non-development of its mineral claims. On November 25, 1983, the MNR cancelled the respondent's MLCs for the non-performance of its work obligations.

The respondent appealed the cancellation order to the Office of the President (*OP*).[7] Meanwhile, the BMGS issued Quarry Temporary Permit (*QTP*) No. 186 to the Teodoros.

On January 5, 1987, then Deputy Executive Secretary Fulgencio S. Factoran, Jr. found that the respondent actually performed the work obligations on the PAMI mining claims. Thus, he set aside the MNR's cancellation order and reinstated the respondent's MLCs.[8]

Anticipating the expiration of its MLCs, the respondent applied for a renewal on May 16, 1989. On January 5, 1991, the Department of Environment and Natural Resources (*DENR*) issued Administrative Order No. 82 requiring the conversion of all mining lease applications, including renewal applications, to Mineral Production Sharing Arrangement (*MPSA*) applications.

Thus, on April 25, 1991, the respondent filed an MPSA application[9] with the DENR on a 547.68-hectare land in Norzagaray, Bulacan. On November 16, 1992, **Tomas filed a letter-opposition to the respondent's MPSA application, alleging that it covered his titled property**.[10]

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[7] Docketed as O.P. Case No. 2755.

[8] *Rollo*, pp. 181-186.

[9] Docketed as MPSA-P-III-9.

[10] Docketed as DENR Case No. MSC-III-1-93; *rollo*, p. 208.

On May 25, 1993 (when an injunction dispute was already pending between the parties, as described below), the DENR Region III Regional Executive Director dismissed Tomas' opposition to the respondent's MPSA application. Tomas appealed to then DENR Secretary Angel Alcala who, on April 13, 1994, dismissed the appeal for lack of merit.[11] When the DENR Secretary denied the motion for reconsideration that followed, Tomas appealed to the OP.[12]

On September 23, 1996, then Deputy Executive Secretary Renato C. Corona dismissed Tomas' appeal.[13] On motion for reconsideration, then Executive Secretary Ruben Torres reversed the dismissal order and set aside the DENR Secretary's decision. He directed the DENR Secretary to exclude the Teodoros' land from the coverage of the respondent's MPSA.[14]

The respondent elevated the OP's decision to the CA.[15] In a June 26, 1998 decision, the CA set aside the decision of then Executive Secretary Torres and declared **the respondent's MLCs as still subsisting; the respondent had not lost its right to extract limestone deposits within its mining claim area that includes the Teodoros' land**.[16]

Tomas then filed a **Rule 45 petition for review on *certiorari*** with this Court in G.R. No. 134501, **which the Court denied on October 12, 1998** for failure to attach the required certification against forum shopping.[17] The Resolution became final and executory on March 2, 1999 per Entry of Judgment.

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[11] Docketed as DENR Case No. 7428; *id.* at 223-234.

[12] Docketed as O.P. Case No. 6167.

[13] *Rollo*, pp. 235-244.

[14] *Id.* at 245-251.

[15] Docketed as CA-G.R. SP No. 45396.

[16] *Rollo*, pp. 187-207.

[17] *Id.* at 273-274.

b. The Present Injunction Dispute

On February 24, 1992 (or soon after the respondent filed an MPSA application with the DENR, as narrated above), the respondent sent its employees to survey the mining claim area to look for the possible site for its limestone crusher. Salvador Ilano, a caretaker of the Teodoros' land, prevented the entry of the respondent's employees.

On March 25, 1992, the respondent filed a complaint for injunction against the petitioners with the Regional Trial Court (*RTC*) of Bulacan,[18] praying for the issuance of an injunction to restrain the petitioners from preventing the respondent's employees' access to the mining claim area. **This is the case that is now before us.**

While admitting that they denied entry to the respondent's employees, the petitioners countered that they owned the property and they were the legitimate quarry permit applicants.

On October 21, 1992, the RTC granted the respondent's prayer for the issuance of a writ of preliminary injunction.[19] In the course of the hearing, the petitioners presented evidence, among them, the testimony of Geodetic Engineer Rolando Nathaniel Sanchez Pada, that allegedly showed that the respondent's mining claims are outside the Teodoros' land.

The RTC Ruling

In its November 15, 2000 decision,[20] the RTC found the respondent entitled to the injunction prayed for, noting that the respondent's MLCs remained valid and subsisting. It enjoined the petitioners from preventing the respondent's employees' access to the mining claim area. It also ordered the petitioners to pay ₱10 Million as actual damages, ₱500,000.00 as exemplary damages, and ₱250,000.00 as attorney's fees.

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[18] Docketed as Civil Case No. 194-M-92, the case was initially raffled to Branch 15 under Judge Carlos C. Ofilada and then transferred to Branch 9 when Judge Ofilada voluntarily inhibited himself from hearing the case.

[19] *Rollo*, pp. 210-215.

[20] *Id.* at 86-101.

The RTC rejected the petitioners' evidence that allegedly showed that the respondent's mining claims fell outside the Teodoros' land, noting that: (1) the petitioners waived this defense when they failed to allege it in their answer to the complaint, pursuant to Section 1, Rule 9 of the Rules of Court; (2) the petitioners were estopped from arguing that the respondent's mining claims fell outside the Teodoros' land when they have argued otherwise **in prior administrative proceedings**; and (3) the records of the other administrative proceedings showed that the respondent's mining claims and the Teodoros' land were located in the same area.

The CA Ruling

On appeal, the petitioners argued that the RTC erred: (1) in deciding in the respondent's favor since the latter failed to prove that it had a right to enter the Teodoros' land; (2) in disregarding Engineer Pada's testimony that the respondent's mining claims fell outside, or did not cover, the Teodoros' land; and (3) in awarding damages to the respondent.

In its April 15, 2003 decision,[21] the CA set aside the RTC's decision and dismissed the respondent's injunction complaint. It found that the respondent failed to show that it had a clear and positive right to enter the petitioners' property, and the rights the petitioners violated. It specifically noted that the respondent failed to comply with the twin requirements[22] of: (1) a prior notice to the surface owner concerned (Teodoros) of the claimant's (respondent's) right to enter the private land; and (2) the posting of a bond by the claimant with the BMGS or with the concerned Mines Regional Office, duly approved

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[21] *Supra* note 3.

[22] Under Section 12 of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" (effective May 17, 1974), as amended by Section 6 of Presidential Decree No. 1385 (effective May 25, 1978), as well as Section 2 of Presidential Decree No. 512 (effective July 19, 1974), and Section 76 of Republic Act No. 7942 (An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation), otherwise known as the "Philippine Mining Act of 1995" (effective April 14, 1995).

by the Director of Mines or Regional Director of the concerned Mines Regional Office, to guarantee the compensation of whatever damages the private land might sustain as a consequence of the claimant's mining operations. Thus, it deleted the awards of actual and exemplary damages, and the award for attorney's fees.

Dissatisfied, the respondent moved for reconsideration. On the other hand, the petitioners moved for partial reconsideration, arguing that the CA failed to address the issue of whether the respondent's mining claims included the Teodoros' land.[23]

The CA denied both motions.[24] With respect to the respondent's motion for partial reconsideration, the CA reiterated the RTC's observation that the petitioners waived the argument that the respondent's mining claims fell outside the Teodoros' land when they failed to set it up as a defense in their answer.

The petitioners then filed the present Rule 45 petition.

The Petition

The petitioners argue that the parties framed at the inception of the case, thru the complaint and the answer, the issue of whether the respondent's mining claims fell within or outside the Teodoros' land; that under Section 5, Rule 10 of the Rules of Court, issues that are tried, even if not raised by the pleadings, shall be treated in all respects as if they had been raised in the pleadings; that damages and attorney's fees should be awarded in their favor for the respondent's filing of the injunction case.

The Case for the Respondent

The respondent submits that the petition should have been dismissed outright for having a defective verification and certification against forum shopping signed by counsel, and for failure to attach an affidavit of service. On the merits, the respondent insists that the petitioners waived the argument that the respondent's mining claims fell outside the Teodoros' land

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[23] *Rollo*, pp. 102-121.

[24] *Supra* note 4.

when they failed to set it up as a defense in their answer. Nonetheless, the respondent asks the Court to reconsider the CA's deletion of the awards of actual and exemplary damages, and the award for attorney's fees.

The Issue

The core issue is whether the CA committed a reversible error in not ruling on the question of whether the Teodoros' land is excluded from the respondent's mining claims.

Our Ruling

We deny the petition.

On the defective verification and certification against forum shopping, and the absence of proof of service

In *Altres v. Empleo*,[25] the Court issued the following guidelines regarding non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

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[25] G.R. No. 180986, December 10, 2008, 573 SCRA 583.

4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case**; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, **the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf**.[26] (citations omitted; emphases ours)

In this case, the petitioners' counsel signed the verification and certification against forum shopping stating that "[p]etitioner Tomas T. Teodoro is currently a resident of the United States of America. While he has authorized Atty. Caguioa to execute on his behalf the Certification against [forum] shopping portion of the Petition for Review, he still has to send the written authorization to the latter by courier. Accordingly, under authority of the case of *Donato v. Court of Appeals,*[27] x x x, Atty. Caguioa is executing the aforementioned Certification against [forum] shopping."[28]

The counsel's reliance on *Donato* is misplaced. In that case, the petitioner subsequently submitted a certification against forum shopping that he had personally signed. Here, the petitioners' counsel completely failed to submit the petitioners' written authorization.

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[26] *Id.* at 596-598.

[27] 462 Phil. 676 (2003).

[28] *Rollo*, p. 62; italics ours.

Furthermore, the subsequent filing on August 4, 2006[29] of the Secretary's Certificate[30] of Republic Aggregate Realty, Inc., the transferee *pendente lite* of the Teodoros' land, ratifying all the acts of the petitioners' counsel, could not cure the defect in the verification or certification requirements, since the authorizing board resolution had been passed only on August 3, 2006, or twenty (21) months after the petition was filed on November 8, 2004,[31] clearly beyond the reglementary period for filing the petition.[32]

Section 5, Rule 7[33] of the Rules of Court mandates that it should be the plaintiff or principal party who should sign the certification against forum shopping. A petition is flawed when the certification is signed only by the counsel and not by the party,[34] because it is the party, and not the counsel, who is in the best position to know whether he actually filed or caused the filing of a petition.[35] While we have relaxed this rule in instances when substantial justice requires it, *i.e.*, when the petitioner's case was meritorious,[36] this case does not fall within this exception, as will be discussed later.

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[29] *Id.* at 436.

[30] *Id.* at 486.

[31] *Id.* at 31.

[32] See *Eagle Ridge Golf & Country Club v. Court of Appeals,* G.R. No. 178989, March 18, 2010, 616 SCRA 116, 130.

[33] Section 5. *Certification against forum shopping*. — The **plaintiff or principal party** shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith[.]

[34] *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers*, G.R. No. 141117, March 25, 2004, 426 SCRA 329, 334.

[35] *Sps. Chan v. RTC, Zamboanga Del Norte, Dipolog City, Branch 9,* 471 Phil. 822, 834 (2004).

[36] *Ty-De Zuzuarregui v. Villarosa*, G.R. No. 183788, April 5, 2010, 617 SCRA 377, 385; *Clavecilla v. Quitain,* 518 Phil. 53, 65 (2006); and *Sy Chin v. Court of Appeals*, 399 Phil. 442, 454 (2000).

As to the alleged failure to attach an affidavit of service, we find that the affidavit of service executed by Melvyn Bantog, the petitioners' counsel's messenger, stating that he served a copy of the petition by registered mail to the respondent, the CA, and the RTC with the corresponding registry receipts, was actually attached to the petition,[37] contrary to the respondent's allegation.

On the issue of whether the respondent's mining claims included the Teodoros' land

While the petitioners' answer did not specifically raise the issue of whether the respondent's mining claims exclude the Teodoros' land, we find this issue to be deemed raised in the pleadings under Section 5, Rule 10 of the Rules of Court, which provides that "[w]hen issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." In the course of the trial, Engineer Pada testified that the respondent's mining claims do not include the Teodoros' land, based on a survey and sketch plan he prepared.

At any rate, the RTC correctly rejected Engineer Pada's testimony, taking into consideration the following evidence:

1. Exhibit TT-1 — Affidavit dated November 16, 1992 which Tomas T. Teodoro executed and submitted to the Regional Technical Director of the Mines and Geosciences Dev't Service of the DENR making reference to his Application for Quarry Permit 551 and stating: "3. That upon the expiration of said AQP 551, its renewal was held in abeyance by the Department of Environment and Natural Resources, Region III, due to a **conflict with the PAMI Claims held by Continental Cement Corporation**.";

2. Exhibit C (separately marked as Exhibit 41) which Engr. Pada used as one reference material in preparing the sketch plan (Exh. 37) — Survey PLAN for PAMI I and II placer claims duly approved by the Director of Mines on July 1964 which unmistakably

[37] *Rollo*, p. 64.

shows that **portions of the Teodoros' lots are within CCC's mining claims**;

3. Exhibit R- Report [of] Engr. Mabini A. Floresta of the then Bureau of Mines on the field survey conducted on September 6, 1969 which concluded: "**The area of the private lot inside the mining claims is likewise computed and it appears to cover 31.5138 hectares, in which the Psu-6283 (TCT-T-43346) occupies an area of 2.4485 hectares, Psu-160517 Lot 1 covers an area of 11.6683 hectares**.";

4. Exhibit II-1-Memorandum report of Engr. Rosa S. Aniban to the Director of the Bureau of Mines and Geosciences dated December 22, 1980 which reads in part: "xxx. **As per plotting of the Survey Division, portions of these area (referring to the Teodoros' AQP-551 and AQP-552 containing 77.5724 and 12.8800 hectares, respectively) were found to overlap claims PAMI I and PAMI II xxx, presently leased to Continental Cement Corporation.** x x x.";

5. Exhibit UU – Decision of then DENR Regional Executive Director for Region III Samuel R. Peñafiel dated May 25, 1993 dismissing the opposition filed by Tomas Teodoro in MSC-III-1-93 and **denying the exclusion of his titled property from CCC's then pending application for an MPSA**. Such decision was affirmed *in toto* by then DENR Secretary Angel C. Alcala (Exhibit WW);

6. Exhibit KKK – Report dated 25 May 1995 submitted by CENRO Romeo M. Buenaventura to OIC Norberto Polumbarit, Environmental and Natural Resources Officer, Malolos, Bulacan in connection with the verification/ocular inspection conducted on May 23, 1995 stating: "1. **That, based on the ocular inspection conducted, it was verified that the area being quarried by Tomas Teodoro is within the PAMI I, II and III of the Continental Cement Corporation**;";

7. Exhibit XXX – Decision in O.P. Case No. 6167 dated September 23, 1996 of then Deputy Executive Secretary Renato C. Corona which stated: "The conflicting interests between the parties stemmed from the mining claims in Norzagaray, Bulacan. The records show that on December 23, 1964, the PAMI Development Corporation (PAMI for brevity), CCC's predecessor-in-interest, was granted Placer Lease Contracts Nos. V-202 and V-203 for a period of 25 years, which eventually became CCC's mining lease contracts covering an area of approximately 186 hectares. **Within the area of the PAMI are 12.88 hectares of titled land in the name of Benigno Roxas,**

Teodoro's predecessor-in-interest, from whom Teodoro acquired his rights in 1973 and subsequently registered in his name.";

8. Exhibit 28 – Resolution of then Executive Secretary Ruben D. Torres dated December 26, 1996 which reads in part: "It follows therefore that the 44.14 hectares undisputably owned by the Teodoros and all other lands owned by them for that matter which are covered by the **PAMI claims, should be excluded from the coverage of the CCC's MPSA application because over these lands it is the Teodoros who have the preferential right to quarry the mineral resources**[.]"[38]

Clearly, the administrative agencies have already settled that the Teodoros' land is within the respondent's mining claims. Under the doctrine of conclusiveness of judgment, "facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action."[39] "Conclusiveness of judgment proscribes the relitigation in a second case of a fact or question already settled in a previous case."[40] Thus, the petitioners are already barred from raising the issue anew. The findings and conclusions in the prior administrative proceedings between the parties, as affirmed by the CA[41] and this Court,[42] are binding upon them.

The petitioners are also estopped from claiming that the Teodoros' land does not fall within the respondent's mining claims since the petitioners have argued otherwise in the prior proceedings. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved

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[38] *Id.* at 97-98.

[39] *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, G.R. No. 160841, June 23, 2010, 621 SCRA 526, 536; and *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd.,* G.R. No. 169974, April 20, 2010, 618 SCRA 531, 552.

[40] *Ley Construction & Development Corporation v. Philippine Commercial & International Bank, supra*, at 536.

[41] In CA-G.R. SP No. 45396; *rollo*, pp. 187-207.

[42] In G.R. No. 134501; *id.* at 273-274.

as against the person relying thereon." The petitioners' representation in the prior proceedings that the respondent's mining claims include the Teodoros' land cannot now be denied by them as against the respondent, the latter having relied upon their representation.

On the CA's denial of the petitioners' prayer for damages and attorney's fees

The CA committed no reversible error in denying the petitioners' prayer for damages and attorney's fees for the respondent's filing of the injunction case.

The settled rule is that "a resort to judicial processes is not, *per se*, evidence of ill will upon which a claim for damages may be based,"[43] for the law could not have meant to impose a penalty on the right to litigate. "[F]ree resort to Courts for redress of wrongs is a matter of public policy. The law recognizes the right of everyone to sue for that which he honestly believes to be his right without fear of standing trial for damages."[44]

The respondent's prayer for award of damages and attorney's fees

As to the respondent's prayer, we can no longer examine the CA's deletion of the monetary amounts awarded by the RTC since the respondent did not appeal from the CA decision. "[A] party who did not appeal cannot assign such errors as are designed to have the judgment modified."[45] The established exceptions to this rule — such as "(1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors"[46] — do not apply to this case.

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[43] *Sandejas v. Ignacio, Jr.,* G.R. No. 155033, December 19, 2007, 541 SCRA 61, 81.

[44] *Tan, et al. v. CA, et al.,* 216 Phil. 367, 375 (1984).

[45] *Yano v. Sanchez,* G.R. No. 186640, February 11, 2010, 612 SCRA 347, 358.

[46] *Real v. Belo*, G.R. No. 146224, January 26, 2007, 513 SCRA 111, 127; and *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46.

WHEREFORE, the petition is **DENIED** for lack of merit. The April 15, 2003 decision and the September 9, 2004 resolution of the Court of Appeals in CA-G.R. CV No. 70414 are hereby **AFFIRMED.**

Costs against the petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167366. September 26, 2012]

DR. PEDRO DENNIS CERENO, and DR. SANTOS ZAFE, *petitioners, vs.* **COURT OF APPEALS, SPOUSES DIOGENES S. OLAVERE and FE R. SERRANO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMING THAT OF THE TRIAL COURT, ARE GENERALLY FINAL AND CONCLUSIVE; EXCEPTIONS; PRESENT.—** It is well-settled that under Rule 45 of the Rules of Court, only questions of law may be raised. The reason behind this is that this Court is not a trier of facts and will not re-examine and re-evaluate the evidence on record. Factual findings of the CA, affirming that of the trial court, are therefore generally final and conclusive

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[*] Designated as Acting Member in lieu of Associate Justice Mariano C. del Castillo, per Special Order No. 1308 dated September 21, 2012.

on this Court. This rule is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. In this case, We find exceptions (1) and (4) to be applicable.

2. **CIVIL LAW; DAMAGES; MEDICAL NEGLIGENCE; MEDICAL MALPRACTICE REQUISITES; EXPERT TESTIMONIES ARE INDISPENSABLE.—** The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient must prove **that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done**; and that the **failure or action caused injury to the patient**. Stated otherwise, the complainant must prove: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of. The best way to prove these is through the opinions of expert witnesses belonging in the same neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence, the indispensability of expert testimonies. Here, there were no expert witnesses presented to testify that the course of action taken by petitioners were not in accord with those adopted by other reasonable surgeons

in similar situations. Neither was there any testimony given, except that of Dr. Tatad's, on which it may be inferred that petitioners failed to exercise the standard of care, diligence, learning and skill expected from practitioners of their profession. Dr. Tatad, however, is an expert neither in the field of surgery nor of surgical practices and diagnoses. Her expertise is in the administration of anesthesia and not in the determination of whether surgery ought or not ought to be performed.

3. **ID.; ID.; ID.; THE COMPLAINANT HAS THE BURDEN OF ESTABLISHING BREACH OF DUTY ON THE PART OF THE DOCTORS OR SURGEONS; A VERDICT IN MALPRACTICE ACTION CANNOT BE BASED ON SPECULATION OR CONJECTURE.—** In medical negligence cases, it is settled that the complainant has the burden of establishing breach of duty on the part of the doctors or surgeons. It must be proven that such breach of duty has a causal connection to the resulting death of the patient. A verdict in malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony. The parents of Raymond failed in this respect. Aside from their failure to prove negligence on the part of the petitioners, they also failed to prove that it was petitioners' fault that caused the injury. Their cause stands on the mere assumption that Raymond's life would have been saved had petitioner surgeons immediately operated on him; had the blood been cross-matched immediately and had the blood been transfused immediately. There was, however, no proof presented that Raymond's life would have been saved had those things been done. Those are mere assumptions and cannot guarantee their desired result. Such cannot be made basis of a decision in this case, especially considering that the name, reputation and career of petitioners are at stake.

4. **ID.; ID.; ID.; DOCTORS ARE NOT INSURERS AGAINST MISHAPS OR UNUSUAL CONSEQUENCES NOR ARE THEY LIABLE FOR HONEST MISTAKE OF JUDGMENT.—** The Court understands the parents' grief over their son's death. That notwithstanding, it cannot hold petitioners liable. It was noted that Raymond, who was a victim of a stabbing incident, had multiple wounds when brought to the hospital. Upon opening of his thoracic cavity, it was

discovered that there was gross bleeding inside the body. Thus, the need for petitioners to control first what was causing the bleeding. Despite the situation that evening i.e. numerous patients being brought to the hospital for emergency treatment considering that it was the height of the Peñafrancia Fiesta, it was evident that petitioners exerted earnest efforts to save the life of Raymond. It was just unfortunate that the loss of his life was not prevented. In the case of *Dr. Cruz v. CA*, it was held that "[d]octors are protected by a special law. They are not guarantors of care. They do not even warrant a good result. They are not insurers against mishaps or unusual consequences. Furthermore, they are not liable for honest mistake of judgment…"

5. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY; THE HOSPITAL WHERE THE PETITIONERS-DOCTORS ARE EMPLOYED CANNOT BE CONSIDERED AN INDISPENSABLE PARTY.—** This Court affirms the ruling of the CA that the BRMC is not an indispensible party. The core issue as agreed upon by the parties and stated in the pre-trial order is whether petitioners were negligent in the performance of their duties. It pertains to acts/omissions of petitioners for which they could be held liable. The cause of action against petitioners may be prosecuted fully and the determination of their liability may be arrived at without impleading the hospital where they are employed. As such, the BRMC cannot be considered an indispensible party without whom no final determination can be had of an action.

APPEARANCES OF COUNSEL

Esteban R. Abonal for petitioners.
Amador L. Simando for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the annulment and setting

[1] *Rollo,* pp. 9-25.

aside of the 21 February 2005 decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 65800. In the assailed decision, the CA affirmed *in toto* the decision of the Regional Trial Court (RTC), Branch 22, Naga City finding herein petitioners Dr. Pedro Dennis Cereno (Dr. Cereno) and Dr. Santos Zafe (Dr. Zafe) liable for damages.

Culled from the records are the following antecedent facts:

At about 9:15 in the evening of 16 September 1995, Raymond S. Olavere (Raymond), a victim of a stabbing incident, was rushed to the emergency room of the Bicol Regional Medical Center (BRMC). There, Raymond was attended to by Nurse Arlene Balares (Nurse Balares) and Dr. Ruel Levy Realuyo (Dr. Realuyo)—the emergency room resident physician.

Subsequently, the parents of Raymond—the spouses Deogenes Olavere (Deogenes) and Fe R. Serrano—arrived at the BRMC. They were accompanied by one Andrew Olavere, the uncle of Raymond.

After extending initial medical treatment to Raymond, Dr. Realuyo recommended that the patient undergo "*emergency exploratory laparotomy*." Dr. Realuyo then requested the parents of Raymond to procure 500 cc of type "O" blood needed for the operation. Complying with the request, Deogenes and Andrew Olavere went to the Philippine National Red Cross to secure the required blood.

At 10:30 P.M., Raymond was wheeled inside the operating room. During that time, the hospital surgeons, Drs. Zafe and Cereno, were busy operating on gunshot victim Charles Maluluy-on. Assisting them in the said operation was Dr. Rosalina Tatad (Dr. Tatad), who was the only senior anesthesiologist on duty at BRMC that night. Dr. Tatad also happened to be the head of Anesthesiology Department of the BRMC.

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[2] Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Rodrigo V. Cosico and Danilo B. Pine concurring. *Id.* at 26-36.

Just before the operation on Maluluy-on was finished, another emergency case involving Lilia Aguila, a woman who was giving birth to triplets, was brought to the operating room.

At 10:59 P.M., the operation on Charles Maluluy-on was finished. By that time, however, Dr. Tatad was already working with the obstetricians who will perform surgery on Lilia Aguila. There being no other available anesthesiologist to assist them, Drs. Zafe and Cereno decided to defer the operation on Raymond.

Drs. Zafe and Cereno, in the meantime, proceeded to examine Raymond and they found that the latter's blood pressure was normal and "nothing in him was significant."[3] Dr. Cereno reported that based on the x-ray result he interpreted, the fluid inside the thoracic cavity of Raymond was minimal at around 200-300 cc.

At 11:15 P.M., Deogenes and Andrew Olavere returned to the BRMC with a bag containing the requested 500 cc type "O" blood. They handed over the bag of blood to Dr. Realuyo.

After Dr. Tatad finished her work with the Lilia Aguila operation, petitioners immediately started their operation on Raymond at around 12:15 A.M. of 17 September 1995. Upon opening of Raymond's thoracic cavity, they found that 3,200 cc of blood was stocked therein. The blood was evacuated and petitioners found a puncture at the inferior pole of the left lung.

In his testimony, Dr. Cereno stated that considering the loss of blood suffered by Raymond, he did not immediately transfuse blood because he had to control the bleeders first.[4]

Blood was finally transfused on Raymond at 1:40 A.M. At 1:45 A.M., while the operation was on-going, Raymond suffered a cardiac arrest. The operation ended at 1:50 A.M. and Raymond was pronounced dead at 2:30 A.M.

Raymond's death certificate[5] indicated that the immediate cause of death was "*hypovolemic shock*" or the cessation of

[3] Cereno's affidavit, Exhibit "4". Records, p. 118.

[4] TSN, 19 May 1997, p. 31.

[5] Exhibit "B". Records, p. 59.

the functions of the organs of the body due to loss of blood.[6]

Claiming that there was negligence on the part of those who attended to their son, the parents of Raymond, on 25 October 1995, filed before the RTC, Branch 22, Naga City a complaint for damages[7] against Nurse Balares, Dr. Realuyo and attending surgeons Dr. Cereno and Dr. Zafe.

During trial, the parents of Raymond testified on their own behalf. They also presented the testimonies of Andrew Olavere and one Loira Oira, the aunt of Raymond. On the other hand, Dr. Cereno, Dr. Realuyo, Nurse Balares and Security Guard Diego Reposo testified for the defense. On rebuttal, the parents of Raymond presented Dr. Tatad, among others.

On 15 October 1999, the trial court rendered a decision[8] the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court hereby renders judgment:
>
> 1. Dismissing the case against Dr. Ruel Levy Realuyo and Arlene Balares for lack of merit;
> 2. Ordering defendants Dr. Santos Zafe and Dr. Dennis Cereno to pay the heirs of Raymond Olavere, jointly and severally the following amounts:
>
>   1. ₱50,000.00 for the death of the victim;
>   2. ₱150,000.00 as moral damages;
>   3. ₱100,000.00 as exemplary damages;
>   4. ₱30,000.00 for attorney's fees; and
>   5. Cost of suit.[9]

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[6] Cereno's testimony. TSN, 19 May 1997, pp. 32-33.

[7] Records, pp. 1-6.

[8] *Id.* at 271-285.

[9] *Id.* at 285.

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The trial court found petitioners negligent in not immediately conducting surgery on Raymond. It noted that petitioners have already finished operating on Charles Maluluy-on as early as 10:30 in the evening, and yet they only started the operation on Raymond at around 12:15 early morning of the following day. The trial court held that had the surgery been performed promptly, Raymond would not have lost so much blood and, therefore, could have been saved.[10]

The trial court also held that the non-availability of Dr. Tatad after the operation on Maluluy-on was not a sufficient excuse for the petitioners to not immediately operate on Raymond. It called attention to the testimony of Dr. Tatad herself, which disclosed the possibility of calling a standby anesthesiologist in that situation. The trial court opined that the petitioners could have just requested for the standby anesthesiologist from Dr. Tatad, but they did not.

Lastly, the trial court faulted petitioners for the delay in the transfusion of blood on Raymond.

On appeal, the CA in a decision dated 21 February 2005 affirmed in *toto* the judgment rendered by the RTC finding herein petitioners guilty of gross negligence in the performance of their duties and awarding damages to private respondents.

Hence, this petition for review on certiorari under Rule 45 of the Rules of Court assailing the CA decision on the following grounds:

1. THAT THE CA ERRED IN RULING THAT PETITIONERS WERE GROSSLY NEGLIGENT IN THE PERFORMANCE OF THEIR DUTIES;

2. THAT THE CA ERRED IN NOT CONSIDERING THE BICOL REGIONAL MEDICAL CENTER AS AN INDISPENSABLE PARTY AND SUBSIDIARILY

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[10] RTC Decision. *Id.* at 279.

LIABLE SHOULD PETITIONERS BE FOUND LIABLE FOR DAMAGES; and

3. THAT THE CA ERRED IN NOT FINDING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES EXORBITANT OR EXCESSIVE.

We grant the petition.

It is well-settled that under Rule 45 of the Rules of Court, only questions of law may be raised. The reason behind this is that this Court is not a trier of facts and will not re-examine and re-evaluate the evidence on record.[11] Factual findings of the CA, affirming that of the trial court, are therefore generally final and conclusive on this Court. This rule is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[12] In this case, We find exceptions (1) and (4) to be applicable.

The type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm. In order to successfully pursue such a claim, a patient

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[11] *Manila Electric Company v. Benamira*, 501 Phil. 621, 636 (2005).

[12] *International Container Terminal Services, Inc. v. FGU Insurance Corporation,* G.R. No. 161539, 28 June 2008, 556 SCRA 194, 199.

must prove **that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done**; and that the **failure or action caused injury to the patient**.[13] Stated otherwise, the complainant must prove: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of. (Emphasis supplied)

The best way to prove these is through the opinions of expert witnesses belonging in the same neighborhood and in the same general line of practice as defendant physician or surgeon. The deference of courts to the expert opinion of qualified physicians stems from the former's realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating, hence, the indispensability of expert testimonies.[14]

Guided by the foregoing standards, We dissect the issues at hand.

Petitioners Not Negligent

The trial court first imputed negligence on the part of the petitioners by their failure to perform the operation on Raymond immediately after finishing the Maluluy-on operation. It rejected as an excuse the non-availability of Dr. Tatad. The trial court relied on the testimony of Dr. Tatad about a "*BRMC protocol*" that introduces the possibility that a standby anesthesiologist could have been called upon. The pertinent portions of the testimony of Dr. Tatad provides:

Q: Aside from you and Dr. Rebancos, who was the standby anesthesiologist?

A: We have a protocol at the Bicol Medical Center to have a consultant who is on call.

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

[14] *Id.* at 332.

Q: How many of them?
A: One.
Q: Who is she?
A: Dra. Flores.

Q: What is the first name?
A: Rosalina Flores.
Q: Is she residing in Naga City?
A: In Camaligan.
Q: She is on call anytime when there is an emergency case to be attended to in the Bicol Medical Center?
A: Yes sir.[15]

Dr. Tatad further testified:

Q: Alright (sic), considering that you said you could not attend to Raymond Olavere because another patient was coming in the person of Lilia Aguila, did you not suggest to Dr. Cereno to call the standby anesthesiologist?
A: They are not ones to do that. They have no right to call for the standby anesthesiologist.
Q: Then, who should call for the standby anesthesiologist?
A: It is me if the surgeon requested.
Q: But in this case, the surgeon did not request you?
A: No. It is their prerogative.
Q: I just want to know that in this case the surgeon did not request you to call for the standby anesthesiologist?
A: No sir.[16]

From there, the trial court concluded that it was the duty of the petitioners to request Dr. Tatad to call on Dr. Rosalina Flores, the standby anesthesiologist. Since petitioners failed to do so, their inability to promptly perform the operation on Raymond becomes negligence on their part.

This Court does not agree with the aforesaid conclusion.

First. There is nothing in the testimony of Dr. Tatad, or in any evidence on the record for that matter, which shows that

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[15] TSN, 31 October 1997, pp. 15-16.

[16] *Id* at 21.

the petitioners were aware of the "*BRMC protocol*" that the hospital keeps a standby anesthesiologist available on call. Indeed, other than the testimony of Dr. Tatad, there is no evidence that proves that any such "*BRMC protocol*" is being practiced by the hospital's surgeons at all.

Evidence to the effect that petitioners knew of the "*BRMC protocol*" is essential, especially in view of the contrary assertion of the petitioners that the matter of assigning anesthesiologists rests within the full discretion of the BRMC Anesthesiology Department. Without any prior knowledge of the "*BRMC protocol*," We find that it is quite reasonable for the petitioners to assume that matters regarding the administration of anesthesia and the assignment of anesthesiologists are concerns of the Anesthesiology Department, while matters pertaining to the surgery itself fall under the concern of the surgeons. Certainly, We cannot hold petitioners accountable for not complying with something that they, in the first place, do not know.

Second. Even assuming *ex gratia argumenti* that there is such "*BRMC protocol*" and that petitioners knew about it, We find that their failure to request for the assistance of the standby anesthesiologist to be reasonable when taken in the proper context. There is simply no competent evidence to the contrary.

From the testimony of Dr. Tatad herself, it is clear that the matter of requesting for a standby anaesthesiologist is not within the full discretion of petitioners. The "*BRMC protocol*" described in the testimony requires the petitioners to course such request to Dr. Tatad who, as head of the Department of Anesthesiology, has the final say of calling the standby anesthesiologist.

As revealed by the facts, however, after the Maluluy-on operation, Dr. Tatad was *already* assisting in the Lilia Aguila operation. Drs. Zafe and Cereno then proceeded to examine Raymond and they found that the latter's blood pressure was normal and "nothing in him was significant."[17] Dr. Cereno even concluded that based on the x-ray result he interpreted, the fluid inside the thoracic cavity of Raymond was minimal at

[17] Cereno's affidavit, Exhibit "4". Records, p. 118.

around 200-300 cc. Such findings of Drs. Cereno and Zafe were never challenged and were unrebutted.

Given that Dr. Tatad was already engaged in another urgent operation and that Raymond was not showing any symptom of suffering from major blood loss requiring an immediate operation, We find it reasonable that petitioners decided to wait for Dr. Tatad to finish her surgery and not to call the standby anesthesiologist anymore. There is, after all, no evidence that shows that a prudent surgeon faced with similar circumstances would decide otherwise.

Here, there were no expert witnesses presented to testify that the course of action taken by petitioners were not in accord with those adopted by other reasonable surgeons in similar situations. Neither was there any testimony given, except that of Dr. Tatad's, on which it may be inferred that petitioners failed to exercise the standard of care, diligence, learning and skill expected from practitioners of their profession. Dr. Tatad, however, is an expert neither in the field of surgery nor of surgical practices and diagnoses. Her expertise is in the administration of anesthesia and not in the determination of whether surgery ought or not ought to be performed.

Another ground relied upon by the trial court in holding petitioners negligent was their failure to immediately transfuse blood on Raymond. Such failure allegedly led to the eventual death of Raymond through "*hypovolemic shock*." The trial court relied on the following testimony of Dr. Tatad:

Q: In this case of Raymond Olavere was blood transfused to him while he was inside the operating room?
A: The blood arrived at 1:40 a.m. and that was the time when this blood was hooked to the patient.

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Q: Prior to the arrival of the blood, you did not request for blood?
A: I requested for blood.
Q: From whom?
A: From the attending physician, Dr. Realuyo.

Q: What time was that?

x x x x x x x x x

A: 9:30.

x x x x x x x x x

Q: Had this blood been given to you before the operation you could have transfused the blood to the patient?
A: Of course, yes.
Q: And the blood was transfused only after the operation?
A: Because that was the time when the blood was given to us.

x x x x x x x x x

Q: Have you monitored the condition of Raymond Olavere?
A: I monitored the condition during the time when I would administer anesthesia.
Q: What time was that?
A: 11:45 already.
Q: What was the condition of the blood pressure at that time?
A: 60/40 initial.
Q: With that kind of blood pressure the patient must have been in critical condition?
A: At the time when the blood pressure was 60/40 I again told Dr. Cereno that blood was already needed.
Q: With that condition, Doctor, that the patient had 60/40 blood pressure you did not decide on transfusing blood to him?
A: I was asking for blood but there was no blood available.
Q: From whom did you ask?
A: From the surgeon. According to Dr. Zafe there was only 500 cc but still for cross-matching.[18]

From the aforesaid testimony, the trial court ruled that there was negligence on the part of petitioners for their failure to have the blood ready for transfusion. It was alleged that at 11:15 P.M., the 500 cc of blood was given to Dr. Realuyo by Raymond's parents. At 11:45 P.M., when Dr. Tatad was asking for the blood - 30 minutes had passed. Yet, the blood was not ready for transfusion as it was still being cross-matched.[19] It took

[18] TSN, 31 October 1997, pp. 16-18, pp. 19-20.

[19] RTC Decision. Records, p. 282.

another two hours before blood was finally transfused to Raymond at 1:40 A.M. of 17 September 1995.

Again, such is a mistaken conclusion.

First, the alleged delay in the cross-matching of the blood, if there was any, cannot be attributed as the fault of the petitioners. The petitioners were never shown to be responsible for such delay. It is highly unreasonable and the height of injustice if petitioners were to be sanctioned for lapses in procedure that does not fall within their duties and beyond their control.

Second, Dr. Cereno, in his unchallenged testimony, aptly explained the apparent delay in the transfusion of blood on Raymond before and during the operation.

Before the operation, Dr. Cereno explained that the reason why no blood transfusion was made on Raymond was because they did not then see the need to administer such transfusion, *viz*:

Q: Now, you stated in your affidavit that prior to the operation you were informed that there was 500 cc of blood available and was still to be cross-matched. What time was that when you were informed that 500 cc of blood was due for crossmatching?
A: I am not sure of the time.

Q: But certainly, you learned of that fact that there was 500 cc of blood, which was due for crossmatching immediately prior to the operation?
A: Yes, sir.

Q: And the operation was done at 12:15 of September 17?
A: Yes, sir.

Q: And that was the reason why you could not use the blood because it was being crossmatched?
A: No, sir. That was done only for a few minutes. We did not transfuse at that time because there was no need. **There is a necessity to transfuse blood when we saw there is gross bleeding inside the body**.[20] (Emphasis supplied)

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[20] TSN, 19 May 1997, p. 32.

During the operation, on the other hand, Dr. Cereno was already able to discover that 3,200 cc of blood was stocked in the thoracic cavity of Raymond due to the puncture in the latter's left lung. Even then, however, immediate blood transfusion was not feasible because:

Q: Now considering the loss of blood suffered by Raymund Olavere, why did you not immediately transfuse blood to the patient and you waited for 45 minutes to elapse before transfusing the blood?
A: **I did not transfuse blood because I had to control the bleeders. If you will transfuse blood just the same the blood that you transfuse will be lost. After evacuation of blood and there is no more bleeding**…

Q: It took you 45 minutes to evacuate the blood?
A: The evacuation did not take 45 minutes.

Q: So what was the cause of the delay why you only transfuse blood after 45 minutes?
A: **We have to look for some other lesions. It does not mean that when you slice the chest you will see the lesions already**.[21] (Emphasis supplied)

Again, the foregoing testimonies of Dr. Cereno went unchallenged or unrebutted. The parents of Raymond were not able to present any expert witness to dispute the course of action taken by the petitioners.

<u>*Causation Not Proven*</u>

In medical negligence cases, it is settled that the complainant has the burden of establishing breach of duty on the part of the doctors or surgeons. It must be proven that such breach of duty has a causal connection to the resulting death of the patient.[22] A verdict in malpractice action cannot be based on speculation or conjecture. Causation must be proven within a reasonable medical probability based upon competent expert testimony.

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

[22] *Dr. Cruz v. Court of Appeals*, 346 Phil. 827, 885-886 (1997), citing *Abaya v. Favis*, 3 CA Reports 450, 454-455 (1963).

The parents of Raymond failed in this respect. Aside from their failure to prove negligence on the part of the petitioners, they also failed to prove that it was petitioners' fault that caused the injury. Their cause stands on the mere assumption that Raymond's life would have been saved had petitioner surgeons immediately operated on him; had the blood been cross-matched immediately and had the blood been transfused immediately. There was, however, no proof presented that Raymond's life would have been saved had those things been done. Those are mere assumptions and cannot guarantee their desired result. Such cannot be made basis of a decision in this case, especially considering that the name, reputation and career of petitioners are at stake.

The Court understands the parents' grief over their son's death. That notwithstanding, it cannot hold petitioners liable. It was noted that Raymond, who was a victim of a stabbing incident, had multiple wounds when brought to the hospital. Upon opening of his thoracic cavity, it was discovered that there was gross bleeding inside the body. Thus, the need for petitioners to control first what was causing the bleeding. Despite the situation that evening *i.e.* numerous patients being brought to the hospital for emergency treatment considering that it was the height of the Peñafrancia Fiesta, it was evident that petitioners exerted earnest efforts to save the life of Raymond. It was just unfortunate that the loss of his life was not prevented.

In the case of *Dr. Cruz v. CA*, it was held that "[d]octors are protected by a special law. They are not guarantors of care. They do not even warrant a good result. They are not insurers against mishaps or unusual consequences. Furthermore, they are not liable for honest mistake of judgment…"[23]

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[23] *Id.* at 875-879 citing "THE PHYSICIAN'S LIABILITY AND THE LAW OF NEGLIGENCE" by Constantino Nuñez, p. 1, citing Louis Nizer, My Life in Court, New York: Double Day & Co., 1961 in Tolentino, Jr., MEDICINE and LAW, Proceedings of the Symposium on Current Issues Common to Medicine and Law, U.P. Law Center, 1980.

BRMC Not an Indispensable Party

This Court affirms the ruling of the CA that the BRMC is not an indispensible party. The core issue as agreed upon by the parties and stated in the pre-trial order is whether petitioners were negligent in the performance of their duties. It pertains to acts/omissions of petitioners for which they could be held liable. The cause of action against petitioners may be prosecuted fully and the determination of their liability may be arrived at without impleading the hospital where they are employed. As such, the BRMC cannot be considered an indispensible party without whom no final determination can be had of an action.[24]

IN THE LIGHT OF THE FOREGOING, the instant Petition for Review on *Certiorari* is hereby **GRANTED.** The Court of Appeals decision dated 21 February 2005 in CA-G.R. CV No. 65800 is hereby **REVERSED** and **SET ASIDE.** No costs.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Brion,* and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173036. September 26, 2012]

AGOO RICE MILL CORPORATION (represented by its President, Kam Biak Y. Chan, Jr.), *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

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[24] Section 7, Rule III, Rules of Court.

[*] Per Special Order No. 1308 dated September 2012.

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; ESSENTIAL REQUISITES FOR THE ISSUANCE THEREOF.—** "Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action." For an injunction to issue, the following essential requisites must be present: (1) there must be a right in *esse* or the existence of a right to be protected; and (2) the act against which the injunction is directed to constitute a violation of such right.

2. **ID.; ID.; ID.; A PARTY SEEKING TO AVAIL OF AN INJUNCTIVE RELIEF MUST PROVE THAT HE POSSESSES A RIGHT *IN ESSE* OR ONE THAT IS ACTUAL OR EXISTING, CLEAR AND UNMISTAKABLE, AND NOT CONTINGENT, ABSTRACT, OR FUTURE RIGHTS, OR ONE THAT MAY NEVER ARISE.—** The existence of the ARMC's claimed right to the loan restructuring, however, was not clearly established by the ARMC. A party seeking to avail of an injunctive relief must prove that he or she possesses a right *in esse* or one that is actual or existing. Such right must be clear and unmistakable, and not contingent, abstract or future rights, or one that may never arise. In the present case, both the RTC and the CA found that no agreement was forged between the ARMC and the LBP on the restructuring of the ARMC's loans at the time the LBP filed an application to extra-judicially foreclose the ARMC's mortgaged properties; the proposed loan restructuring was not approved by the LBP because the ARMC failed to offer an additional collateral sufficient enough to cover its outstanding loan with the bank. Thus, the ARMC, then, had no actual right to protect or to enforce against the LBP. It failed to satisfy the first requisite, *i.e.,* the existence of a clear and unmistakable right for the issuance of an injunction.

3. **ID.; ID.; ID.; UNDER P.D. 385, AN INJUNCTION CANNOT BE ISSUED AGAINST ANY GOVERNMENT FINANCIAL INSTITUTION, TO ENJOIN THE FORECLOSURE SALE WHERE THE DEBTOR-MORTGAGOR'S ARREARAGES AMOUNT TO AT LEAST 20% OF THE TOTAL OUTSTANDING OBLIGATIONS.—** [T]he LBP had every

right to foreclose on the Real and Chattel Mortgage since the ARMC had defaulted in the payment of its overdue loan obligation with the bank. The foreclosure is supported by the express mandate of P.D. 385, which provides: Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%). Section 2 of the same decree further provides that: Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings. Under these terms, the ARMC cannot secure an injunction against the LBP, a government financial institution.

4. **ID.; ID.; ID.; AN INJUNCTION SUIT BECOMES MOOT AND ACADEMIC AFTER THE ACT SOUGHT TO BE ENJOINED HAD ALREADY BEEN CONSUMMATED.—** The present petition must also be denied because the act sought to be enjoined by the ARMC is already a consummated act. The records show that the foreclosure sale on the ARMC's mortgaged properties was held sometime in June 2005 and the LBP emerged as the winning bidder. An injunction suit becomes moot and academic after the act sought to be enjoined had already been consummated.

APPEARANCES OF COUNSEL

Dela Cruz Albano Gasis and Associates, Paolo M. Olarte and *Rodel T. Lopico* for petitioner.

LBP Legal Services Group for respondent.

D E C I S I O N

BRION, *J*.:

Before us is a petition for review on *certiorari*[1] of the March 28, 2006 decision[2] and the June 6, 2006 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 84458. The CA affirmed the decision[4] of the Regional Trial Court (*RTC*), Branch 30, San Fernando City, La Union, in Civil Case No. 6255 which denied the complaint for injunction filed by Agoo Rice Mill Corporation (*ARMC*) against the Land Bank of the Philippines (*LBP*). The CA denied the petitioner's subsequent motion for reconsideration.

Background Facts

The facts, as gathered from the records, are as follows:

From October 1993 to October 1996,[5] the ARMC obtained from the LBP a Term Loan (*TL*) for ₱2,000,000.00 and two (2) Short-Term Loan Lines (*STLLs*) amounting to a total of ₱15,000,000.00,[6] evidenced by promissory notes. These loans were secured by a Real and Chattel Mortgage over the ARMC's

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-40.

[2] Penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo; *id.* at 45-63.

[3] *Id.* at 65.

[4] Penned by Judge Adolfo F. Alagar; *id.* at 96-99.

[5] *Id.* at 90.

[6] *Id.* at 66-67.

four (4) commercial lots, including their improvements, and its rice mill machineries and generator.[7]

Payment for the ₱2,000,000.00 TL was due on October 29, 1996, and payments for the STLLs, of ₱12,000,000.00 and ₱3,000,000.00, were due on April 28, 1996 and April 8, 1997, respectively.[8]

ARMC made several partial payments to cover the loans' interests,[9] but found it difficult to fully settle its loan obligations on time due to the company's financial liquidity problems; the negative effect of the government's rice importation in 1996 on its sales of rice;[10] and problems brought by the El Niño phenomenon in the region's rice production.[11]

In a letter[12] dated January 6, 1997, the ARMC, through its President Mr. Kam Biak Y. Chan, Jr., requested the LBP for an extension of time to pay its obligations; he asked for a period ending on February 28, 1997.

The LBP, through a letter[13] dated February 25, 1997, reminded ARMC of its commitment to pay on February 28, 1997.

On February 27, 1997, still foreseeing its inability to pay its obligations on the requested date, the ARMC wrote the LBP for the renewal of its loans, particularly the ₱15,000,000.00 STLLs.[14] The LBP allegedly replied with the advice to have the loans restructured instead of renewed.[15]

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[7] *Id.* at 90.

[8] *Ibid.*

[9] *Id.* at 67.

[10] *Id.* at 90.

[11] *Id.* at 85.

[12] *Ibid.*

[13] *Id.* at 122.

[14] *Id.* at 87.

[15] *Ibid.*

Accordingly, in a letter[16] dated March 12, 1997, ARMC requested the LBP to restructure its STLLs. It suggested a payment arrangement of ₱5,000,000.00 every six (6) months, until the whole loan of ₱15,000,000.00 was paid in full.[17]

The LBP deferred the ARMC's proposal and advised it to first secure a waiver of its penalty charges prior to the loan's restructuring.[18]

In a letter[19] dated November 3, 1997, the LBP informed the ARMC that the bank's Domestic Banking Loan Committee has agreed to require an additional collateral from the ARMC, which must be offered on or before November 7, 1997; otherwise, the LBP would be forced to pursue legal action.

In another letter[20] dated November 10, 1997, the LBP informed ARMC that its existing collateral was short of ₱3,400,000.00, based on its outstanding ₱15,000,000.00 loan, and reiterated that ARMC needed to offer additional collateral and to submit the necessary documents; ARMC was given up to November 14, 1997 to comply, but this was extended to November 25, 1997.[21] ARMC responded by asking for a reappraisal of its properties, but the LBP denied the request, insisting that the valuation made by its Property Assessors was fair and reasonable.[22]

On April 15, 1998, the LBP wrote to the ARMC regarding the latter's failure to comply with the LBP's required offer of an additional collateral or to pay its due obligations. The LBP informed the ARMC that non-compliance on or before April

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[16] *Ibid.*

[17] *Ibid.*

[18] In a letter dated July 16, 1997; *id.* at 88.

[19] CA *rollo*, p. 67.

[20] *Id.* at 140.

[21] In a letter dated Nov. 18, 1997; *rollo,* p. 141.

[22] *Ibid.*

30, 1998 would result in the referral of the matter to the bank's Legal Office for appropriate action.[23]

In a letter[24] dated May 22, 1998, the LBP informed the ARMC that its requested loan restructuring was under evaluation with the bank's Loan Approving Authorities; in the meantime, the bank reminded ARMC of its payment for the month, which must be paid on or before May 29, 1998.

Application for Extrajudicial Foreclosure

On July 8, 1998, the LBP sent the ARMC a Final Notice of Payment,[25] informing the ARMC that it had filed, on the same date, an application for the extrajudicial foreclosure of ARMC's mortgaged properties with the Office of the *Ex-Officio* Sheriff of San Fernando City, La Union.[26]

In its application for extrajudicial foreclosure,[27] the LBP alleged, among others, that: (1) despite repeated demands, the ARMC failed to pay its overdue obligations, in violation of the terms and conditions of the Real and Chattel Mortgage; (2) as of July 8, 1998, the ARMC's total unpaid obligation amounted to ₱23,473,320.83, broken down as follows - principal amount of ₱15,000,000.00, interests amounting to ₱7,363,320.83, and penalties amounting to ₱1,110,000.00; and (3) the ARMC had been duly notified, through a letter-notice dated July 8, 1998, of the foreclosure proceedings and of the time, date and place of public auction.

The extrajudicial foreclosure was set for August 26, 1998 at nine o'clock in the morning.[28]

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[23] *Id.* at 121.

[24] *Id.* at 120.

[25] *Id.* at 127.

[26] *Id.* at 14-15.

[27] *Id.* at 104-106.

[28] *Id.* at 15.

Complaint for Injunction

On August 24, 1998, ARMC, through its President, filed with the RTC, Branch 30, San Fernando City, La Union, a complaint for injunction with application for a writ of preliminary injunction and temporary restraining order, and for recovery of damages.[29]

ARMC mainly alleged that LBP's proposed extrajudicial foreclosure should be enjoined for being premature, improper and in violation of ARMC's contractual and property rights since negotiations for the restructuring of its loans were still ongoing. ARMC contended that, unless enjoined, the foreclosure would cause its company grave injustice and irreparable injury.

ARMC also alleged that the LBP's petition for extrajudicial foreclosure contained inconsistent statements on the total amount of its principal obligation, and omitted the following relevant facts: that the ₱15,000,000.00 STLLs and the ₱2,000,000.00 TL were separately secured by a real estate mortgage and a chattel mortgage, respectively; that the ₱2,000,000.00 TL had been fully paid, evidenced by a voucher dated February 27, 1997; and that despite full payment of the ₱2,000,000.00 TL, the LBP did not release the chattel mortgage and still included it in the petition for extrajudicial foreclosure.

Further, ARMC contended that the Real and Chattel Mortgage attached to the LBP's petition for extrajudicial foreclosure referred to a loan previously obtained by ARMC in 1995, which does not reflect the recent loan transactions between the parties, and that the mortgage contract was altered without ARMC's consent by including in the mortgaged chattel the ARMC's "stocks (rice/ palay) inventories."[30]

ARMC denied receipt of the LBP's July 8, 1998 Final Notice of Payment.

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[29] *Id.* at 66-75.

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

Temporary Restraining Order and Writ of Preliminary Injunction

On August 24, 1998, Executive Judge Vicente A. Pacquing, RTC, La Union, issued a 72–hour Temporary Restraining Order (*TRO*) directing the *Ex-Officio* Provincial Sheriff of La Union to cease and desist from proceeding with the August 26, 1998 foreclosure sale.[31] The following day, the RTC ordered the extension of the TRO for seventeen (17) days.[32]

On September 8, 1998, the RTC ordered the proceedings suspended in view of the parties' manifestation to have the case amicably settled.[33] The contemplated settlement, however, failed. Thus, the RTC proceeded with the hearing on the issuance of the writ of preliminary injunction on January 12, 1999.[34]

In an order[35] dated March 18, 1999, Judge Adolfo Alagar, RTC, Branch 30, San Fernando City, La Union, issued a writ of preliminary injunction upon the ARMC's filing of a bond of ₱4,000,000.00.

The RTC's Ruling

In a decision dated August 5, 2004, the RTC found no merit in the ARMC's complaint for injunction.

Contrary to the allegation that the LBP reneged on its commitment to restructure the ARMC's loans, the RTC found that the LBP never agreed to the ARMC's proposed restructuring and, thus, was not in bad faith when it exercised its right to foreclose the ARMC's mortgaged properties; that no agreement was forged between the parties because the ARMC failed to offer an additional collateral, as the LBP required for the approval of the proposed restructuring.

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[31] Records, p. 25.

[32] *Id.* at 68.

[33] *Id.* at 92.

[34] *Id.* at 107.

[35] *Rollo,* pp. 94-95.

Further, the RTC found no inconsistency or vagueness in the petition for extrajudicial foreclosure as to the amount of the ARMC's principal obligation, *i.e.,* ₱15,000,000.00, and that the settlement of the ₱2,000,000.00 TL could not operate to discharge the mortgaged chattel because the Real and Chattel Mortgage was found to be indivisible, *i.e.,* the mortgaged real estate and chattel could not be discharged until the ARMC's total indebtedness under the Real and Chattel Mortgage is fully settled.

The RTC denied the ARMC's complaint on the ground that injunction cannot issue against the exercise of a valid right, the right of the creditor-mortgagee to foreclose on the mortgage where the debtor-mortgagor has defaulted in the payment of its obligations.

The RTC likewise ruled that the LBP's foreclosure was not merely an exercise of its right, but also the performance of its legal obligation under Presidential Decree No. (*P.D.*) 385;[36] the decree requires government financial institutions, such as the LBP, to foreclose mandatorily all loans with arrearages, including interest and charges, amounting to at least twenty percent (20%) of the total outstanding obligation. The same decree also provides that no restraining order, temporary or permanent injunction shall be issued by the court against the foreclosing government financial institution unless 20% of the outstanding arrearages have been paid after the filing of the foreclosure proceedings.

The ARMC moved to reconsider the RTC's decision, but the trial court denied the motion in an order dated February 2, 2005.[37] The ARMC filed a notice of appeal to the CA on February 8, 2005.[38]

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[36] Entitled "REQUIRING GOVERNMENT FINANCIAL INSTITUTIONS TO FORECLOSE MANDATORILY ALL LOANS WITH ARREARAGES, INCLUDING INTEREST AND CHARGES AMOUNTING TO AT LEAST TWENTY (20%) PERCENT OF THE TOTAL OUTSTANDING OBLIGATION"; dated January 31, 1974.

[37] *Rollo,* pp. 100-103.

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

In its appeal to the CA, the ARMC insisted that the restructuring of its ₱15,000,000.00 STLLs was still under negotiation when the LBP filed its application for extrajudicial foreclosure on July 8, 1998, and contended that the LBP was in bad faith and guilty of promissory estoppel when it led the ARMC to believe that it would restructure its loans, yet refused to have the mortgaged properties reappraised by an independent appraiser.

The ARMC further contended that the charges imposed by the LBP were unwarranted and that the stipulated interest on the promissory notes was excessive and unconscionable and should be voided.

Foreclosure Sale

On May 12, 2005, the Sheriff of the RTC of San Fernando City, La Union issued a Notice of Extrajudicial Sale that set the auction sale of the mortgaged properties on June 3, 2005.[39]

The ARMC sought to enjoin the foreclosure sale by filing with the CA an application for the issuance of a writ of preliminary injunction and temporary restraining order, which the CA denied in a resolution dated June 14, 2005.[40]

The LBP emerged as the winning bidder in the auction sale.[41]

The CA's Ruling

In a decision[42] dated March 28, 2006, the CA found no merit in the ARMC's appeal. The CA affirmed the RTC in ruling that, under P.D. 385, an injunction, whether permanent or temporary, could not be issued to enjoin the foreclosure proceedings instituted by the LBP.

The CA likewise found that the LBP did not approve, or even promised to approve, the ARMC's proposed loan

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[39] *Id.* at 32.

[40] *Id.* at 37-39.

[41] *Rollo,* p. 251.

[42] *Supra* note 2.

restructuring; that, in LBP's letter dated May 22, 1998 to ARMC's president, the LBP merely informed the ARMC that its proposal was "under evaluation by [its] Loan Approving Authorities";[43] that nothing in the letter suggested that the LBP made any commitment or assurance to ARMC that it would approve the latter's proposal, thus, the LBP could not be held liable for promissory estoppel; and that, in fact, the LBP repeatedly sent notices demanding payment from ARMC but the latter failed to comply, prompting LBP to file for extrajudicial foreclosure.

The CA did not also find the LBP in bad faith for refusing to have the ARMC's mortgaged properties reappraised by an independent appraiser; the LBP's low valuation on the reappraised properties would even be more beneficial to ARMC in case of redemption.

Neither did the CA find the stipulated interest rates on the promissory notes and the imposed penalty charges excessive, unconscionable and unwarranted, as the interest on the promissory notes ranged from 15.50% to 18.25% per annum and was last fixed at the "prevailing bank rate," while the penalty charge was imposed at 12% per annum. The CA found these rates reasonable and cannot be compared with the 5.5% per month, or 66% per annum, interest that this Court found to be excessive, illegal, iniquitous and unconscionable in *Medel v. Court of Appeals*.[44]

The CA denied the motion for reconsideration that the ARMC subsequently filed, paving the way for the present petition for review on *certiorari* filed with this Court on August 2, 2006.

The Court's Ruling

The basic issue posed for our resolution is the ARMC's entitlement to an injunctive remedy.

"Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It

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[43] *Rollo,* pp. 59-60.

[44] G.R. No. 131622, November 27, 1998, 299 SCRA 481.

may be the main action or merely a provisional remedy for and as an incident in the main action."[45] For an injunction to issue, the following essential requisites must be present: (1) there must be a right in *esse* or the existence of a right to be protected; and (2) the act against which the injunction is directed to constitute a violation of such right.[46]

The ARMC filed a complaint for injunction against the LBP on the ground that the latter's then impending foreclosure of its mortgaged properties was in violation of its contractual and property rights, particularly the right of the ARMC to have its outstanding loan restructured by the LBP. The ARMC alleged that the LBP acted in bad faith and in wanton disregard of its commitment to restructure the former's loans when it hastily filed for extrajudicial foreclosure while negotiations for the loan restructuring were still ongoing.

The existence of the ARMC's claimed right to the loan restructuring, however, was not clearly established by the ARMC. A party seeking to avail of an injunctive relief must prove that he or she possesses a right in *esse* or one that is actual or existing.[47] Such right must be clear and unmistakable,[48] and not contingent, abstract or future rights, or one that may never arise.[49]

In the present case, both the RTC and the CA found that no agreement was forged between the ARMC and the LBP on the restructuring of the ARMC's loans at the time the LBP filed an application to extra-judicially foreclose the ARMC's mortgaged

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[45] *Garayblas v. Atienza, Jr.,* G.R. No. 149493, June 22, 2006, 492 SCRA 202, 217, citing *Bacolod City Water District v. Labayen,* G.R. No. 157494, December 10, 2004, 446 SCRA 110, 122.

[46] *Sales v. Securities and Exchange Commission*, G.R. No. 54330, January 13, 1989, 169 SCRA 109, 127-128.

[47] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413.

[48] *Philippine Leisure and Retirement Authority v. Court of Appeals*, G.R. No. 156303, December 19, 2007, 541 SCRA 85, 100.

[49] *Duvaz Corporation v. Export and Industry Bank, supra* note 47, at 415.

properties; the proposed loan restructuring was not approved by the LBP because the ARMC failed to offer an additional collateral sufficient enough to cover its outstanding loan with the bank. Thus, the ARMC, then, had no actual right to protect or to enforce against the LBP. It failed to satisfy the first requisite, *i.e.,* the existence of a clear and unmistakable right for the issuance of an injunction.

On the other hand, the LBP had every right to foreclose on the Real and Chattel Mortgage since the ARMC had defaulted in the payment of its overdue loan obligation with the bank. The foreclosure is supported by the express mandate of P.D. 385, which provides:

> Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

Section 2 of the same decree further provides that:

> Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

Under these terms, the ARMC cannot secure an injunction against the LBP, a government financial institution.

Injunction Became Moot and Academic

The present petition must also be denied because the act sought to be enjoined by the ARMC is already a consummated act. The records show that the foreclosure sale on the ARMC's mortgaged properties was held sometime in June 2005 and the LBP emerged as the winning bidder. An injunction suit becomes moot and academic after the act sought to be enjoined had already been consummated.[50]

WHEREFORE, we **DENY** the present petition for review on *certiorari* for lack of merit and for being moot and academic. Costs against petitioner Agoo Rice Mill Corporation.

SO ORDERED.

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

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[50] *Philippine Commercial and Industrial Bank v. National Mines and Allied Workers Union (NAMAWU-MIF),* No. L-50402, August 19, 1982, 115 SCRA 873, 882; *Romulo v. Yñiguez,* No. L-71908, February 4, 1986, 141 SCRA 263, 279; and *Rivera v. Florendo,* No. L-57586, October 8, 1986, 144 SCRA 643, 658.

[*] Designated as Acting Member in lieu of Associate Justice Mariano C. del Castillo, per Special Order No. 1308 dated September 21, 2012.

SECOND DIVISION

[G.R. No. 179115. September 26, 2012]

ASIA INTERNATIONAL AUCTIONEERS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; TAX AMNESTY; CONCEPT; THE GRANT OF TAX AMNESTY MUST BE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.—** A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

2. **ID.; TAXES; INDIRECT TAXES DISTINGUISHED FROM WITHHOLDING TAXES.—** Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed

not as a withholding agent but, as the one directly liable for the said deficiency taxes.

3. **ID.; TAX AMNESTY; REPUBLIC ACT 9399 DOES NOT PRECLUDE TAXPAYERS WITHIN ITS COVERAGE FROM AVAILING OF OTHER TAX AMNESTY PROGRAMS AVAILABLE OR ENACTED *IN FUTURO*.—** The CIR also argues that AIA, being an accredited investor/taxpayer situated at the Subic Special Economic Zone, should have availed of the tax amnesty granted under RA 9399 and not under RA 9480. This is also untenable. RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted *in futuro* like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

4. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; ABSENT SUFFICIENT EVIDENCE PROVING THAT THE "CERTIFICATION OF QUALIFICATION" WAS ISSUED IN EXCESS OF AUTHORITY, THE PRESUMPTION THAT IT WAS ISSUED IN THE REGULAR PERFORMANCE OF THE REVENUE DISTRICT OFFICER'S OFFICIAL DUTY STANDS.—** [T]he Court takes judicial notice of the "Certification of Qualification" issued by the Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.

APPEARANCES OF COUNSEL

Valdez Anigan & Associates and *Estanislao L. Cesa, Jr.* for petitioner.

The Solicitor General for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review seeking to reverse and set aside the Decision dated August 3, 2007 of the Court of Tax Appeals (CTA) En Banc,[1] and the Resolutions dated November 20, 2006[2] and February 22, 2007[3] of the CTA First Division dismissing Asia International Auctioneers, Inc.'s (AIA) appeal due to its alleged failure to timely protest the Commissioner of Internal Revenue's (CIR) tax assessment.

The Factual Antecedents

AIA is a duly organized corporation operating within the Subic Special Economic Zone. It is engaged in the importation of used motor vehicles and heavy equipment which it sells to the public through auction.[4]

On August 25, 2004, AIA received from the CIR a Formal Letter of Demand, dated July 9, 2004, containing an assessment for deficiency value added tax (VAT) and excise tax in the amounts of ₱102,535,520.00 and ₱4,334,715.00, respectively, or a total amount of ₱106,870,235.00, inclusive of penalties and interest, for auction sales conducted on February 5, 6, 7, and 8, 2004.[5]

AIA claimed that it filed a protest letter dated August 29, 2004 through registered mail on August 30, 2004.[6] It also

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[1] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova, concurring; *rollo*, pp. 25-39.

[2] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Lovell R. Bautista and Caesar A. Casanova, concurring; *id.* at 40-45.

[3] *Id.* at 46-47.

[4] *Id.* at 353.

[5] *Id.* at 48-49.

[6] *Id.* at 5.

submitted additional supporting documents on September 24, 2004 and November 22, 2004.[7]

The CIR failed to act on the protest, prompting AIA to file a petition for review before the CTA on June 20, 2005,[8] to which the CIR filed its Answer on July 26, 2005.[9]

On March 8, 2006, the CIR filed a motion to dismiss[10] on the ground of lack of jurisdiction citing the alleged failure of AIA to timely file its protest which thereby rendered the assessment final and executory. The CIR denied receipt of the protest letter dated August 29, 2004 claiming that it only received the protest letter dated September 24, 2004 on September 27, 2004, three days after the lapse of the 30-day period prescribed in Section 228[11] of the Tax Code.[12]

In opposition to the CIR's motion to dismiss, AIA submitted the following evidence to prove the filing and the receipt of the protest letter dated August 29, 2004: (1) the protest letter dated

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

[8] *Id.* at 27.

[9] *Id.* at 143-153.

[10] *Id.* at 165-169.

[11] *Section 228. Protesting of Assessment.* — x x x

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[12] *Rollo*, pp. 165-166.

August 29, 2004 with attached Registry Receipt No. 3824;[13] (2) a Certification dated November 15, 2005 issued by Wilfredo R. De Guzman, Postman III, of the Philippine Postal Corporation of Olongapo City, stating that Registered Letter No. 3824 dated August 30, 2004 , addressed to the CIR, was dispatched under Bill No. 45 Page 1 Line 11 on September 1, 2004 from Olongapo City to Quezon City;[14] (3) a Certification dated July 5, 2006 issued by Acting Postmaster, Josefina M. Hora, of the Philippine Postal Corporation-NCR, stating that Registered Letter No. 3824 was delivered to the BIR Records Section and was duly received by the authorized personnel on September 8, 2004;[15] and (4) a certified photocopy of the Receipt of Important Communication Delivered issued by the BIR Chief of Records Division, Felisa U. Arrojado, showing that Registered Letter No. 3824 was received by the BIR.[16] AIA also presented Josefina M. Hora and Felisa U. Arrojado as witnesses to testify on the due execution and the contents of the foregoing documents.

Ruling of the Court of Tax Appeals

After hearing both parties, the CTA First Division rendered the first assailed Resolution dated November 20, 2006 granting the CIR's motion to dismiss. Citing *Republic v. Court of Appeals,*[17] it ruled that "while a mailed letter is deemed received by the addressee in the course of the mail, still, this is merely a disputable presumption, subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter indeed was received by the addressee."[18]

The CTA First Division faulted AIA for failing to present the registry return card of the subject protest letter. Moreover,

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[13] *Id.* at 51.

[14] *Id.* at 69.

[15] *Id.* at 70.

[16] *Id.* at 71.

[17] No. L-38540, April 30, 1987, 149 SCRA 351, 355.

[18] *Rollo*, p. 43.

it noted that the text of the protest letter refers to a Formal Demand Letter dated June 9, 2004 and not the subject Formal Demand Letter dated July 9, 2004. Furthermore, it rejected AIA's argument that the September 24, 2004 letter merely served as a cover letter to the submission of its supporting documents pointing out that there was no mention therein of a prior separate protest letter.[19]

AIA's motion for reconsideration was subsequently denied by the CTA First Division in its second assailed Resolution dated February 22, 2007. On appeal, the CTA *En Banc* in its Decision dated August 3, 2007 affirmed the ruling of the CTA First Division holding that AIA's evidence was not sufficient to prove receipt by the CIR of the protest letter dated August 24, 2004.

Hence, the instant petition.

Issue Before the Court

Both parties discussed the legal bases for AIA's tax liability, unmindful of the fact that this case stemmed from the CTA's dismissal of AIA's petition for review for failure to file a timely protest, without passing upon the substantive merits of the case.

Relevantly, on January 30, 2008, AIA filed a Manifestation and Motion with Leave of the Honorable Court to Defer or Suspend Further Proceedings[20] on the ground that it availed of the Tax Amnesty Program under Republic Act 9480[21] (RA 9480), otherwise known as the Tax Amnesty Act of 2007. On February 13, 2008, it submitted to the Court a Certification of Qualification[22] issued by the BIR on February 5, 2008 stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480.

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[19] *Id.* at 44.

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

[21] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

[22] *Rollo*, p. 106.

With AIA's availment of the Tax Amnesty Program under RA 9480, the Court is tasked to first determine its effects on the instant petition.

Ruling of the Court

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate.[23]

A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[24]

In 2007, RA 9480 took effect granting a tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.[25]

The Tax Amnesty Program under RA 9480 may be availed of by any person except those who are disqualified under Section 8 thereof, to wit:

> Section 8. Exceptions. — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:

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[23] *Bañas, Jr. v. Court of Appeals,* G.R. No. 102967, February 10, 2000, 325 SCRA 259, 273-274, *citing Republic v. Intermediate Appellate Court,* 196 SCRA 335, 339 (1991)*; People v. Judge Castañeda,* 165 SCRA 327, 338-339 (1988); *Nepomuceno v. Montecillo,* 118 SCRA 254, 259 (1982).

[24] *Bañas, Jr. v. Court of Appeals*, *supra*. *See also People v. Castañeda, Jr.,* No. L-46881, September 15, 1988, 165 SCRA 327, 341, *citing E. Rodriguez, Inc. v. The Collector of Internal Revenue,* 28 SCRA 1119 (1969)*; Commissioner of Internal Revenue v. A. D. Guerrero,* 21 SCRA 180 (1967).

[25] RA 9480, Sec. 1.

(a) **Withholding agents with respect to their withholding tax liabilities**;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts. (Emphasis supplied)

The CIR contends that AIA is disqualified under Section 8(a) of RA 9480 from availing itself of the Tax Amnesty Program because it is "deemed" a withholding agent for the deficiency taxes. This argument is untenable.

The CIR did not assess AIA as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under relevant provisions of the Tax Code. Hence, the argument that AIA is "deemed" a withholding agent for these deficiency taxes is fallacious.

Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it.[26] On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity,

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[26] *Silkair v. Commissioner of Internal Revenue,* G.R. No. 184398, February 25, 2010, 613 SCRA 638, 656.

the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions[27] and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes. Moreover, records support the conclusion that AIA was assessed not as a withholding agent but, as the one directly liable for the said deficiency taxes.[28]

The CIR also argues that AIA, being an accredited investor/ taxpayer situated at the Subic Special Economic Zone, should have availed of the tax amnesty granted under RA 9399[29] and not under RA 9480. This is also untenable.

RA 9399 was passed prior to the passage of RA 9480. RA 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs available or enacted *in futuro* like RA 9480. More so, RA 9480 does not exclude from its coverage taxpayers operating within special economic zones. As long as it is within the bounds of the law, a taxpayer has the liberty to choose which tax amnesty program it wants to avail.

Lastly, the Court takes judicial notice of the "Certification of Qualification"[30] issued by the Eduardo A. Baluyut, BIR Revenue District Officer, stating that AIA "has availed and is qualified for Tax Amnesty for the Taxable Year 2005 and Prior Years" pursuant to RA 9480. In the absence of sufficient evidence

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[27] *See* Tax Code, Secs. 57-58 and 78-83.

[28] *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue,* G.R. No. 178797, August 4, 2009, 595 SCRA 234, 255.

[29] An Act Declaring a One-time Amnesty on Certain Tax and Duty Liabilities, Inclusive of Fees, Fines, Penalties, Interest and Other Additions thereto, Incurred by Certain Business Enterprises Operating within the Special Economic Zones and Freeports Created under Proclamation No. 163, Series of 1993; Proclamation No. 216, Series of 1993; Proclamation No. 120, Series of 1994; and Proclamation No. 984, Series of 1997, Pursuant to Section 15 of Republic Act No. 7227, as amended, and For Other Purposes.

[30] *Supra* note 22.

proving that the certification was issued in excess of authority, the presumption that it was issued in the regular performance of the revenue district officer's official duty stands.[31]

WHEREFORE, the petition is **DENIED** for being *MOOT* and *ACADEMIC* in view of Asia International Auctioneers, Inc.'s (AIA) availment of the Tax Amnesty Program under RA 9480. Accordingly, the outstanding deficiency taxes of AIA are deemed fully settled.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193753. September 26, 2012]

LIVING @ SENSE, INC., *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; INDISPENSABLE PARTY; EXPLAINED; THE NATURE OF THE SOLIDARY OBLIGATION UNDER THE SURETY DOES NOT MAKE ONE AN INDISPENSABLE PARTY; THE PRINCIPAL IS NOT AN INDISPENSABLE PARTY IN A COMPLAINT FOR INDEMNIFICATION FILED AGAINST A SURETY WHO BOUND ITSELF

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[31] Rules of Court, Rule 131, Sec. 3(m).

[*] Acting Member per Special Order No. 1308 dated September 21, 2012.

JOINTLY AND SOLIDARILY WITH THE PRINCIPAL FOR THE OBLIGATION UNDER THE BOND.— Records show that when DMI secured the surety and performance bonds from respondent in compliance with petitioner's requirement, respondent bound itself "jointly and severally" with DMI for the damages and actual loss that petitioner may suffer should DMI fail to perform its obligations under the Agreement x x x. The term "jointly and severally" expresses a solidary obligation granting petitioner, as creditor, the right to proceed against its debtors, *i.e.,* respondent *or* DMI. The nature of the solidary obligation under the surety does not make one an indispensable party. An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined mandatorily either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction, thus, without their presence to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable 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. In this case, DMI is *not an indispensable party* because petitioner can claim indemnity directly from respondent, having made itself jointly and severally liable with DMI for the obligation under the bonds. Therefore, the failure to implead DMI is not a ground to dismiss the case, even if the same was without prejudice.

2. **ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION, AS THE REMEDY IN SUCH CASE IS TO IMPLEAD THE PARTY CLAIMED TO BE INDISPENSABLE.—** Even on the assumption that DMI was, indeed, an indispensable party, the RTC committed reversible error in dismissing the complaint. Failure to implead an indispensable party is *not* a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on motion of the party or on its own initiative *at any stage of the action*. Accordingly, the Court finds that the RTC erred in holding that DMI is an indispensable party and, consequently, in dismissing the complaint filed by petitioner without prejudice.

APPEARANCES OF COUNSEL

Ramon S. Untalan for petitioner.
Morente Farolan & Associates for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J*.:

This Petition for Review on *Certiorari* assails, on pure question of law, the Orders dated April 8, 2010[1] and August 25, 2010[2] of the Regional Trial Court (RTC) of Parañaque City, Branch 257 dismissing, without prejudice, the complaint for specific performance and breach of contract filed by petitioner Living @ Sense, Inc. (petitioner) for failure to implead Dou Mac, Inc. (DMI) as an indispensable party.

The Factual Antecedents

Records show that petitioner was the main contractor of the FOC Network Project of Globe Telecom in Mindanao. In connection with the project, petitioner entered into a Sub-Contract Agreement[3] (Agreement) with DMI, under which the latter was tasked to undertake an underground open-trench work. Petitioner required DMI to give a bond, in the event that DMI fails to perform its obligations under the Agreement. Thus, DMI secured surety[4] and performance[5] bonds, both in the amount of ₱5,171,488.00, from respondent Malayan Insurance Company, Inc. (respondent) to answer: (1) for the unliquidated portion of the downpayment, and (2) for the loss and damage that petitioner may suffer, respectively, should DMI fail to perform its

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[1] *Rollo*, pp. 73-74.

[2] *Id.* at 82.

[3] *Id.* at 29-34.

[4] *Id.* at 27, MICO Bond No. 200802896.

[5] *Id.* at 28, MICO Bond No. 200802895.

obligations under the Agreement. Under the bonds, respondent bound itself jointly and severally liable with DMI.[6]

During the course of excavation and restoration works, the Department of Public Works and Highways (DPWH) issued a work-stoppage order against DMI after finding the latter's work unsatisfactory. Notwithstanding the said order, however, DMI still failed to adopt corrective measures, prompting petitioner to terminate[7] the Agreement and seek[8] indemnification from respondent in the total amount of ₱1,040,895.34. However, respondent effectively denied[9] petitioner's claim on the ground that the liability of its principal, DMI, should first be ascertained before its own liability as a surety attaches. Hence, the instant complaint, premised on respondent's liability under the surety and performance bonds secured by DMI.

Seeking the dismissal[10] of the complaint, respondent claimed that DMI is an indispensable party that should be impleaded and whose liability should first be determined before respondent can be held liable.

On the other hand, petitioner asserted[11] that respondent is a surety who is directly and primarily liable to indemnify petitioner, and that the bond is "callable on demand"[12] in the event DMI fails to perform its obligations under the Agreement.

The RTC's Ruling

In its April 8, 2010 Order,[13] the RTC dismissed the complaint without prejudice, for failure to implead DMI as a party defendant.

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[6] "Not exceeding the amount of Five Million One Hundred Seventy One Thousand Four Hundred Eighty Eight," *id.* at 27-28.

[7] *Id.* at 38-39.

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

[9] *Id.* at 44-45.

[10] *Id.* at 57-62.

[11] *Id.* at 64-71.

[12] *Supra* notes 4 and 5.

[13] *Supra* note 1.

It ruled that before respondent could be held liable on the surety and performance bonds, it must first be established that DMI, with whom petitioner had originally contracted, had indeed violated the Agreement. DMI, therefore, is an indispensable party that must be impleaded in the instant suit.

On August 25, 2010, the RTC denied[14] petitioner's motion for reconsideration for failure to set the same for hearing as required under the rules.

The Issue Before The Court

The sole issue to be resolved by the Court is whether DMI is an indispensable party in this case.

The Court's Ruling

Petitioner maintains that the rule on solidary obligations permits it, as creditor, to proceed against any of the solidary debtors, citing Article 1216 of the Civil Code which provides:

> Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

The petition is meritorious.

Records show that when DMI secured the surety and performance bonds from respondent in compliance with petitioner's requirement, respondent bound itself "jointly and severally" with DMI for the damages and actual loss that petitioner may suffer should DMI fail to perform its obligations under the Agreement, as follows:

> That we, DOU MAC INC. as Principal, and MALAYAN INSURANCE CO., INC., x x x are held firmly bound unto LIVING @ SENSE INC. in the sum of FIVE MILLION ONE HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED EIGHTY EIGHT AND 00/100 PESOS ONLY (PHP ***5,171,488.00), PHILIPPINE

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[14] *Supra* note 2.

Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, **jointly and severally**, firmly by these presents x x x[15] (Emphasis Supplied)

The term "jointly and severally" expresses a solidary obligation[16] granting petitioner, as creditor, the right to proceed against its debtors, *i.e.,* respondent *or* DMI.

The nature of the solidary obligation under the surety does not make one an indispensable party.[17] An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined mandatorily either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction, thus, without their presence to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable 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.[18]

In this case, DMI is *not an indispensable party* because petitioner can claim indemnity directly from respondent, having made itself jointly and severally liable with DMI for the obligation under the bonds. Therefore, the failure to implead DMI is not a ground to dismiss the case, even if the same was without prejudice.

Moreover, even on the assumption that DMI was, indeed, an indispensable party, the RTC committed reversible error in dismissing the complaint. Failure to implead an indispensable party is *not* a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on

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[15] *Supra* notes 4 and 5.

[16] *Inciong v. CA*, 327 Phil. 364 (1996).

[17] *Republic v. Sandiganbayan,* 255 Phil. 71 (1989); citing *Operators, Inc. v. American Biscuit Company,* 154 SCRA 738 (1987).

[18] *Lotte Phil. Co., Inc. v. Dela Cruz,* 502 Phil. 816 (2005).

motion of the party or on its own initiative *at any stage of the action*.[19]

Accordingly, the Court finds that the RTC erred in holding that DMI is an indispensable party and, consequently, in dismissing the complaint filed by petitioner without prejudice.

WHEREFORE, the assailed April 8, 2010 and August 25, 2010 Orders of the Regional Trial Court (RTC) of Parañaque City, Branch 257 are hereby **SET ASIDE.** Petitioner's complaint is ordered **REINSTATED** and the case remanded to the RTC for further proceedings.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195909. September 26, 2012]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ST. LUKE'S MEDICAL CENTER, INC.,** *respondent.*

[G.R. No. 195960. September 26, 2012]

ST. LUKE'S MEDICAL CENTER, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[19] *Vda. De Manguerra v. Risos,* G.R. No. 152643, August 28, 2008, 563 SCRA 499, 504 (emphasis supplied).

[*] Acting member per Special Order No. 1308 dated September 21, 2012.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS NOT PRESENT.—** [T]his Court denies the petition of St. Luke's in G.R. No. 195960 because the petition raises factual issues. Under Section 1, Rule 45 of the Rules of Court, "[t]he petition shall raise only questions of law which must be distinctly set forth." St. Luke's cites *Martinez v. Court of Appeals* which permits factual review "when the Court of Appeals [in this case, the CTA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion." This Court does not see how the CTA overlooked relevant facts. St. Luke's itself stated that the CTA "disregarded the testimony of [its] witness, Romeo B. Mary, being allegedly self-serving, to show the nature of the 'Other Income-Net' x x x." This is not a case of overlooking or failing to consider relevant evidence. The CTA obviously considered the evidence and concluded that it is self-serving. The CTA declared that it has "gone through the records of this case and found no other evidence aside from the self-serving affidavit executed by [the] witnesses [of St. Luke's] x x x."

2. **TAXATION; STATUTORY OFFENSES AND PENALTIES; CIVIL PENALTIES AND INTERESTS; RESPONDENT-HOSPITAL IS LIABLE FOR THE PAYMENT OF DEFICIENCY TAX AND DELINQUENCY INTERESTS ON "OTHER INCOME-NET".—** The deficiency tax on "Other Income-Net" stands. Thus, St. Luke's is liable to pay the 25% surcharge under Section 248(A)(3) of the NIRC. There is "[f]ailure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment[.]" St. Luke's is also liable to pay 20% delinquency interest under Section 249(C)(3) of the NIRC. As explained by the CTA *En Banc*, the amount of ₱6,275,370.38 in the dispositive portion of the CTA First Division Decision includes only deficiency interest under Section 249(A) and (B) of the NIRC and not delinquency interest.

3. **ID.; INCOME TAX; TAX ON CORPORATIONS; NATIONAL INTERNAL REVENUE CODE (NIRC), SECTION 27(B) THEREOF DOES NOT REMOVE THE INCOME TAX EXEMPTION OF PROPRIETARY NON-**

PROFIT HOSPITALS UNDER SECTION 30(E) AND (G).— We hold that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). Section 27(B) on one hand, and Section 30(E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1).

4. **ID.; ID.; ID.; PROPRIETARY NON-PROFIT HOSPITALS ARE SUBJECT TO 10% PREFERENTIAL TAX RATE ON THEIR INCOME; QUALIFICATIONS; EXPOUNDED.—** Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any **private** school maintained and administered by **private** individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit. "Non-profit" does not necessarily mean "charitable." In *Collector of Internal Revenue v. Club Filipino Inc. de Cebu,* this Court considered as non-profit a sports club organized for recreation and entertainment of its stockholders and members. The club was primarily funded by membership fees and dues. If it had profits, they were used for overhead expenses and improving its golf course. The club was non-profit because of its purpose and there was no evidence that it was engaged in a profit-making enterprise.

5. **ID.; ID.; ID.; CHARITABLE INSTITUTIONS ARE NOT *IPSO FACTO* ENTITLED TO A TAX EXEMPTION.—** To be a charitable institution, however, an organization must meet the substantive test of charity in *Lung Center.* The issue in *Lung Center* concerns exemption from real property tax and not

income tax. However, it provides for the test of charity in our jurisdiction. Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. **In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government.** Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury. **Charitable institutions, however, are not *ipso facto* entitled to a tax exemption.** The requirements for a tax exemption are specified by the law granting it. The power of Congress to tax implies the power to exempt from tax. Congress can create tax exemptions, subject to the constitutional provision that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress." The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.

6. **ID.; ID.; ID.; SECTION 30 (E) OF THE NIRC; EXEMPTION OF NON-STOCK AND NON-PROFIT CHARITABLE INSTITUTION FROM INCOME TAX, REQUIREMENTS.—** Section 30(E) of the NIRC defines the corporation or association that is exempt from income tax. On the other hand, Section 28(3), Article VI of the Constitution does not define a charitable institution, but requires that the institution "actually, directly and exclusively" use the property for a charitable purpose. Section 30(E) of the NIRC provides that a charitable institution must be: (1) A non-stock corporation or association; (2) **Organized exclusively** for charitable purposes; (3) **Operated exclusively** for charitable purposes; and (4) No part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. Thus, both the organization and operations of the charitable institution must be devoted "**exclusively"** for charitable purposes. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other

constitutive documents. Section 30(E) of the NIRC specifically requires that the corporation or association be non-stock, which is defined by the Corporation Code as "one where no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized." However, under *Lung Center*, any profit by a charitable institution must not only be plowed back "whenever necessary or proper," but must be "devoted or used **altogether** to the charitable object which it is intended to achieve." The operations of the charitable institution generally refer to its regular activities. Section 30(E) of the NIRC requires that these operations be **exclusive** to charity. There is also a specific requirement that "no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person." The use of lands, buildings and improvements of the institution is but a part of its operations.

7. **ID.; ID.; ID.; TO BE EXEMPT FROM INCOME TAXES, THE CHARITABLE INSTITUTION MUST BE ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE OR SOCIAL WELFARE PURPOSES.—** There is no dispute that St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes. This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not *ipso facto* tax exempt. To be exempt from real property taxes, Section 28(3), Article VI of the Constitution requires that a charitable institution use the property "actually, directly and exclusively" for charitable purposes. To be exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be "**organized and operated exclusively"** for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

8. **ID.; ID.; ID.; ID.; A CHARITABLE INSTITUTION ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES IS ALLOWED TO ENGAGE IN ACTIVITIES CONDUCTED FOR PROFIT WITHOUT LOSING ITS TAX-EXEMPT STATUS FOR ITS NOT-FOR-**

PROFIT ACTIVITIES, PROVIDED ITS INCOME OF WHATEVER KIND AND CHARACTER FROM ANY OF ITS ACTIVITIES CONDUCTED FOR PROFIT, REGARDLESS OF THE DISPOSITION MADE OF SUCH INCOME, SHALL BE SUBJECT TO TAX.— [T]he last paragraph of Section 30 of the NIRC qualifies the words "organized and operated exclusively" by providing that: Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from **any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code**. In short, the last paragraph of Section 30 provides that if a tax exempt charitable institution conducts **"any"** activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] **organized and operated exclusively** for x x x charitable x x x purposes x x x." It likewise qualifies the requirement in Section 30(G) that the civic organization must be "operated exclusively" for the promotion of social welfare. Thus, even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the **"income of whatever kind and character"** of a charitable institution **"from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax."** Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.

9. **ID.; ID.; ID.; ID.; INCOME FROM ACTIVITIES FOR PROFIT IS TAXABLE REGARDLESS OF THE DISPOSITION MADE OF SUCH INCOME.—** The Court cannot expand the meaning of the words "operated exclusively" without violating the NIRC. **Services to paying patients are activities conducted for profit. They cannot be considered any other way. There is a "purpose to make profit over and above the cost" of services**. The ₱1.73 billion total revenues

from paying patients is not even incidental to St. Luke's charity expenditure of ₱218,187,498 for non-paying patients. St. Luke's claims that its charity expenditure of ₱218,187,498 is 65.20% of its operating income in 1998. However, if a part of the remaining 34.80% of the operating income is reinvested in property, equipment or facilities used for services to **paying and non-paying** patients, then it cannot be said that the income is "devoted or used **altogether** to the charitable object which it is intended to achieve." The income is plowed back to the corporation not entirely for charitable purposes, but for profit as well. In any case, the last paragraph of Section 30 of the NIRC expressly qualifies that income from activities for profit is taxable **"regardless of the disposition made of such income."**

10. **ID.; ID.; ID.; ID.; TAX EXEMPTIONS FOR CHARITABLE INSTITUTION SHOULD BE LIMITED TO INSTITUTIONS BENEFICIAL TO THE PUBLIC AND THOSE WHICH IMPROVE SOCIAL WELFARE; RESPONDENT-ST. LUKE'S IS NOT OPERATED EXCLUSIVELY FOR CHARITABLE OR SOCIAL WELFARE PURPOSES.—** The Court finds that St. Luke's is a corporation that is **not** "operated exclusively" for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Section 30(E) and (G) of the NIRC requires that an institution be "**operated exclusively**" for charitable or social welfare purposes to be **completely** exempt from income tax. An institution under Section 30(E) or (G) does not lose its tax exemption if it earns income from its for-profit activities. Such income from for-profit activities, under the last paragraph of Section 30, is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B). A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

11. **ID.; ID.; ID.; ID.; REQUIREMENTS TO BE COMPLETELY TAX EXEMPT FROM ALL ITS INCOME, NOT MET BY RESPONDENT-ST. LUKE'S MEDICAL CENTER; RESPONDENT-ST LUKE'S AS A PROPRIETARY NON-PROFIT HOSPITAL, IS ENTITLED TO PREFERENTIAL RATE OF 10% ON ITS NET INCOME FROM ITS FOR-PROFIT ACTIVITIES.—** St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities.

12. **ID.; ID.; ID.; ID.; RESPONDENT-ST. LUKE'S IS LIABLE FOR DEFICIENCY INCOME TAX IN 1998 BASED ON 10% PREFERENTIAL INCOME TAX RATE, WITHOUT SURCHARGES AND INTEREST; GOOD FAITH AND HONEST BELIEF THAT ONE IS NOT SUBJECT TO TAX ON THE BASIS OF PREVIOUS INTERPRETATION OF THE GOVERNMENT AGENCIES TASKED TO IMPLEMENT THE TAX LAW ARE SUFFICIENT JUSTIFICATION TO DELETE THE IMPOSITION OF SURCHARGES AND INTEREST.—** St. Luke's is x x x liable for deficiency income tax in 1998 under Section 27(B) of the NIRC. However, St. Luke's has good reasons to rely on the letter dated 6 June 1990 by the BIR, which opined that St. Luke's is "a corporation for *purely* charitable and social welfare purposes" and thus exempt from income tax. In *Michael J. Lhuillier, Inc. v. Commissioner of Internal Revenue*, the Court said that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.

Quasha Ancheta Peña & Nolasco for St. Luke's Medical Center, Inc.

DECISION

CARPIO, *J.*:

The Case

These are consolidated[1] petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision of 19 November 2010 of the Court of Tax Appeals (CTA) *En Banc* and its Resolution[2] of 1 March 2011 in CTA Case No. 6746. This Court resolves this case on a pure question of law, which involves the interpretation of Section 27(B) *vis-à-vis* Section 30(E) and (G) of the National Internal Revenue Code of the Philippines (NIRC), on the income tax treatment of proprietary non-profit hospitals.

The Facts

St. Luke's Medical Center, Inc. (St. Luke's) is a hospital organized as a non-stock and non-profit corporation. Under its articles of incorporation, among its corporate purposes are:

(a) To establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific hospital which shall give curative, rehabilitative and spiritual care to the sick, diseased and disabled persons; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by patients;

(b) To provide a career of health science education and provide medical services to the community through organized clinics in such specialties as the facilities and resources of the corporation make possible;

(c) To carry on educational activities related to the maintenance and promotion of health as well as provide facilities for scientific and medical researches which, in the opinion of the Board of Trustees,

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[1] The consolidation of the petitions is pursuant to the Resolution of this Court dated 4 April 2011. *Rollo* (G.R. No. 195960), p. 9.

[2] This Resolution denied the motions filed by both parties to reconsider the CTA *En Banc* Decision dated 19 November 2010.

may be justified by the facilities, personnel, funds, or other requirements that are available;

(d) To cooperate with organized medical societies, agencies of both government and private sector; establish rules and regulations consistent with the highest professional ethics;

x x x x x x x x x[3]

On 16 December 2002, the Bureau of Internal Revenue (BIR) assessed St. Luke's deficiency taxes amounting to ₱76,063,116.06 for 1998, comprised of deficiency income tax, value-added tax, withholding tax on compensation and expanded withholding tax. The BIR reduced the amount to ₱63,935,351.57 during trial in the First Division of the CTA.[4]

On 14 January 2003, St. Luke's filed an administrative protest with the BIR against the deficiency tax assessments. The BIR did not act on the protest within the 180-day period under Section 228 of the NIRC. Thus, St. Luke's appealed to the CTA.

The BIR argued before the CTA that Section 27(B) of the NIRC, which imposes a 10% preferential tax rate on the income of proprietary non-profit hospitals, should be applicable to St. Luke's. According to the BIR, Section 27(B), introduced in 1997, "is a new provision intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock, non-profit corporations under Section 26 of the 1997 Tax Code x x x."[5] It is a specific provision which prevails over the general exemption on income tax granted under Section 30(E)

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[3] CTA First Division Decision dated 23 February 2009, citing the earlier decision in *St. Luke's Medical Center, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 6993, 21 November 2008. *Rollo* (G.R. No. 195909), p. 68.

[4] This prompted St. Luke's to file an Amended Petition for Review on 12 December 2003 before the First Divison of the CTA.

[5] CTA First Division Decision, citing the Answer filed by the BIR before the CTA. *Rollo* (G.R. No. 195909), p. 62.

and (G) for non-stock, non-profit charitable institutions and civic organizations promoting social welfare.[6]

The BIR claimed that St. Luke's was actually operating for profit in 1998 because only 13% of its revenues came from charitable purposes. Moreover, the hospital's board of trustees, officers and employees directly benefit from its profits and assets. St. Luke's had total revenues of ₱1,730,367,965 or approximately ₱1.73 billion from patient services in 1998.[7]

St. Luke's contended that the BIR should not consider its total revenues, because its free services to patients was ₱218,187,498 or 65.20% of its 1998 operating income (*i.e.*, total revenues less operating expenses) of ₱334,642,615.[8] St. Luke's also claimed that its income does not inure to the benefit of any individual.

St. Luke's maintained that it is a non-stock and non-profit institution for charitable and social welfare purposes under Section 30(E) and (G) of the NIRC. It argued that the making of profit *per se* does not destroy its income tax exemption.

The petition of the BIR before this Court in G.R. No. 195909 reiterates its arguments before the CTA that Section 27(B) applies to St. Luke's. The petition raises the sole issue of whether the enactment of Section 27(B) takes proprietary non-profit hospitals out of the income tax exemption under Section 30 of the NIRC and instead, imposes a preferential rate of 10% on their taxable income. The BIR prays that St. Luke's be ordered to pay ₱57,659,981.19 as deficiency income and expanded withholding tax for 1998 with surcharges and interest for late payment.

The petition of St. Luke's in G.R. No. 195960 raises factual matters on the treatment and withholding of a part of its income,[9]

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[6] *Id.* at 63.

[7] *Id.* at 65-67.

[8] *Id.* at 67. The operating expenses of St. Luke's consisted of professional care of patients, administrative, household and property expenses.

[9] This income in the amount of ₱17,482,304 was declared by St. Luke's as "Other Income-Net" in its 1998 Income Tax Return/Audited Statements of Revenues and Expenses.

as well as the payment of surcharge and delinquency interest. There is no ground for this Court to undertake such a factual review. Under the Constitution[10] and the Rules of Court,[11] this Court's review power is generally limited to "cases in which only an error or question of law is involved."[12] This Court cannot depart from this limitation if a party fails to invoke a recognized exception.

The Ruling of the Court of Tax Appeals

The CTA *En Banc* Decision on 19 November 2010 affirmed *in toto* the CTA First Division Decision dated 23 February 2009 which held:

> **WHEREFORE,** the Amended Petition for Review [by St. Luke's] is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 deficiency VAT assessment issued by respondent against petitioner in the amount of ₱110,000.00 is hereby **CANCELLED** and **WITHDRAWN**. However, petitioner is hereby **ORDERED** to **PAY** deficiency income tax and deficiency expanded withholding tax for the taxable year 1998 in the respective amounts of ₱5,496,963.54 and ₱778,406.84 or in the sum of ₱6,275,370.38, x x x.
>
> x x x   x x x   x x x
>
> In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the total amount of ₱6,275,370.38 counted from October 15, 2003 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.
>
> **SO ORDERED.**[13]

The deficiency income tax of ₱5,496,963.54, ordered by the CTA *En Banc* to be paid, arose from the failure of St. Luke's

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[10] CONSTITUTION, Art. VIII, Sec. 5(2)(e). Except for criminal cases where the penalty imposed is *reclusion perpetua* or higher, the enumeration under Article VIII, Section 5(1) and (2) of the Constitution generally involves a question of law.

[11] RULES OF COURT, Rule 45, Sec. 1.

[12] CONSTITUTION, Art. VIII, Sec. 5(2)(e). *See* note 10.

[13] *Rollo* (G.R. No. 195909), pp. 82-83. Emphases in the original.

to prove that part of its income in 1998 (declared as "Other Income-Net")[14] came from charitable activities. The CTA cancelled the remainder of the ₱63,113,952.79 deficiency assessed by the BIR based on the 10% tax rate under Section 27(B) of the NIRC, which the CTA *En Banc* held was not applicable to St. Luke's.[15]

The CTA ruled that St. Luke's is a non-stock and non-profit charitable institution covered by Section 30(E) and (G) of the NIRC. This ruling would exempt all income derived by St. Luke's from services to its patients, whether paying or non-paying. The CTA reiterated its earlier decision in *St. Luke's Medical Center, Inc. v. Commissioner of Internal Revenue,*[16] which examined the primary purposes of St. Luke's under its articles of incorporation and various documents[17] identifying St. Luke's as a charitable institution.

The CTA adopted the test in *Hospital de San Juan de Dios, Inc. v. Pasay City,*[18] which states that "a charitable institution does not lose its charitable character and its consequent exemption from taxation merely because recipients of its benefits who are able to pay are required to do so, where funds derived in this manner are devoted to the charitable purposes of the institution x x x."[19] The generation of income from paying patients does not *per se* destroy the charitable nature of St. Luke's.

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[14] *See* note 9. This is one of the errors assigned by St. Luke's in its petition before this Court.

[15] *Rollo* (G.R. No. 195909), p. 65. The revised total deficiency income tax assessed by the BIR is ₱63,113,952.79, which includes the deficiency under "Other Income-Net."

[16] CTA Case No. 6993, 21 November 2008.

[17] These are documentary evidence which, among others, show that government agencies such as the Department of Social Welfare and Development and the Philippine Charity Sweepstakes Office recognize St. Luke's as a charitable institution.

[18] 23 Phil. 38 (1966).

[19] *Id.* at 41 citing 51 Am. Jur. 607.

Hospital de San Juan cited *Jesus Sacred Heart College v. Collector of Internal Revenue,*[20] which ruled that the old NIRC (Commonwealth Act No. 466, as amended)[21] "positively exempts from taxation those corporations or associations which, otherwise, would be subject thereto, because of the existence of x x x net income."[22] The NIRC of 1997 substantially reproduces the provision on charitable institutions of the old NIRC. Thus, in rejecting the argument that tax exemption is lost whenever there is net income, the Court in *Jesus Sacred Heart College* declared: "[E]very responsible organization must be run to at least insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus."[23]

The CTA held that Section 27(B) of the present NIRC does not apply to St. Luke's.[24] The CTA explained that to apply the 10% preferential rate, Section 27(B) requires a hospital to be "non-profit." On the other hand, Congress specifically used the word "non-stock" to qualify a charitable "corporation or association" in Section 30(E) of the NIRC. According to the

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[20] 95 Phil. 16 (1954).

[21] Commonwealth Act No. 466, as amended by Republic Act No. 82, Sec. 27 provides: Exemption from tax on corporation.— The following organizations shall not be taxed under this Title in respect to income received by them as such —

x x x x x x x x x

(e) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, cultural, or educational purposes, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual: Provided, however, That the income of whatever kind and character from any of its properties, real or personal, or from any activity conducted for profit regardless of the disposition made of such income, shall be liable to the tax imposed under this Code[.]

[22] *Jesus Sacred Heart College v. Collector of Internal Revenue*, *supra* note 20 at 21.

[23] *Id.*

[24] The CTA adopted its earlier interpretation in *St. Luke's Medical Center, Inc. v. Commissioner of Internal Revenue. Supra* note 16.

CTA, this is unique in the present tax code, indicating an intent to exempt this type of charitable organization from income tax. Section 27(B) does not require that the hospital be "non-stock." The CTA stated, "it is clear that non-stock, non-profit hospitals operated exclusively for charitable purpose are exempt from income tax on income received by them as such, applying the provision of *Section 30(E) of the NIRC of 1997, as amended*."[25]

The Issue

The sole issue is whether St. Luke's is liable for deficiency income tax in 1998 under Section 27(B) of the NIRC, which imposes a preferential tax rate of 10% on the income of proprietary non-profit hospitals.

The Ruling of the Court

St. Luke's Petition in G.R. No. 195960

As a preliminary matter, this Court denies the petition of St. Luke's in G.R. No. 195960 because the petition raises factual issues. Under Section 1, Rule 45 of the Rules of Court, "[t]he petition shall raise only questions of law which must be distinctly set forth." St. Luke's cites *Martinez v. Court of Appeals*[26] which permits factual review "when the Court of Appeals [in this case, the CTA] manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion."[27]

This Court does not see how the CTA overlooked relevant facts. St. Luke's itself stated that the CTA "disregarded the testimony of [its] witness, Romeo B. Mary, being allegedly self-serving, to show the nature of the 'Other Income-Net' x x x."[28] This is not a case of overlooking or failing to consider relevant evidence. The CTA obviously considered the evidence and

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[25] *Rollo* (G.R. No. 195909), p. 76. Italics in the original.

[26] 410 Phil. 241 (2001).

[27] *Id.* at 257; *rollo* (G.R. No. 195960), pp. 15-16.

[28] *Rollo* (G.R. No. 195960), p. 24.

concluded that it is self-serving. The CTA declared that it has "gone through the records of this case and found no other evidence aside from the self-serving affidavit executed by [the] witnesses [of St. Luke's] x x x."[29]

The deficiency tax on "Other Income-Net" stands. Thus, St. Luke's is liable to pay the 25% surcharge under Section 248(A)(3) of the NIRC. There is "[f]ailure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment[.]"[30] St. Luke's is also liable to pay 20% delinquency interest under Section 249(C)(3) of the NIRC.[31] As explained by the CTA *En Banc*, the amount of ₱6,275,370.38 in the dispositive portion of the CTA First Division Decision includes only deficiency interest under Section 249(A) and (B) of the NIRC and not delinquency interest.[32]

The Main Issue

The issue raised by the BIR is a purely legal one. It involves the effect of the introduction of Section 27(B) in the NIRC of

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[29] *Id.* at 50.

[30] NIRC, Sec. 248(A)(3).

[31] NIRC, Sec. 249(C)(3) provides: "A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax."

[32] CTA *En Banc* Resolution dated 1 March 2011. *Rollo* (G.R. No. 195909), p. 56.

Section 249 of the NIRC provides:

(A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) *per annum*, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for its payment until the amount is fully paid.

(B) *Deficiency Interest* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

x x x x x x x x x

1997 *vis-à-vis* Section 30(E) and (G) on the income tax exemption of charitable and social welfare institutions. The 10% income tax rate under Section 27(B) specifically pertains to proprietary educational institutions and proprietary non-profit hospitals. The BIR argues that Congress intended to remove the exemption that non-profit hospitals previously enjoyed under Section 27(E) of the NIRC of 1977, which is now substantially reproduced in Section 30(E) of the NIRC of 1997.[33] Section 27(B) of the present NIRC provides:

SEC. 27. Rates of Income Tax on Domestic Corporations. —

x x x x x x x x x

(B) Proprietary Educational Institutions and Hospitals. - **Proprietary educational institutions and hospitals which are non-profit shall pay a tax of ten percent (10%) on their taxable income** except those covered by Subsection (D) hereof: *Provided,* That if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. A 'proprietary educational institution' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher

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[33] *Id.* at 21-27. Section 27(E) of the NIRC of 1977 provides:

Sec. 27. *Exemptions from tax on corporations*. - The following organizations shall not be taxed under this Title in respect to income received by them as such -

x x x x x x x x x

(E) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of the net income of which inures to the benefit of any private stockholder or individual.

x x x x x x x x x

Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations. (Emphasis supplied)

St. Luke's claims tax exemption under Section 30(E) and (G) of the NIRC. It contends that it is a charitable institution and an organization promoting social welfare. The arguments of St. Luke's focus on the wording of Section 30(E) exempting from income tax non-stock, non-profit charitable institutions.[34] St. Luke's asserts that the legislative intent of introducing Section 27(B) was only to remove the exemption for "proprietary non-profit" hospitals.[35] The relevant provisions of Section 30 state:

SEC. 30. Exemptions from Tax on Corporations.— The following organizations shall not be taxed under this Title in respect to income received by them as such:

x x x x x x x x x

(E) **Nonstock corporation** or association **organized and operated exclusively for** religious, **charitable**, scientific, athletic, or cultural **purposes**, or for the rehabilitation of veterans, **no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;**

x x x x x x x x x

(G) Civic league or organization not organized for profit but **operated exclusively** for the promotion of social welfare;

x x x x x x x x x

Notwithstanding the provisions in the preceding paragraphs, **the income of whatever kind and character of the foregoing organizations** from any of their properties, real or personal, or **from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax** imposed under this Code. (Emphasis supplied)

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[34] *See* Comment of St. Luke's dated 19 September 2011 in G.R. No. 195909. *Id.* at 105-116.

[35] *Id.* at 106-108.

The Court partly grants the petition of the BIR but on a different ground. We hold that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G). Section 27(B) on one hand, and Section 30(E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27(B) is to subject the taxable income of two specific institutions, namely, proprietary non-profit educational institutions[36] and proprietary non-profit hospitals, among the institutions covered by Section 30, to the 10% preferential rate under Section 27(B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27(A)(1).

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. The only qualifications for hospitals are that they must be proprietary and non-profit. "Proprietary" means private, following the definition of a "proprietary educational institution" as "any **private** school maintained and administered by **private** individuals or groups" with a government permit. "Non-profit" means no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

"Non-profit" does not necessarily mean "charitable." In *Collector of Internal Revenue v. Club Filipino Inc. de Cebu,*[37] this Court considered as non-profit a sports club organized for recreation and entertainment of its stockholders and members. The club was primarily funded by membership fees and dues. If it had profits, they were used for overhead expenses and improving its golf course.[38] The club was non-profit because of its purpose and there was no evidence that it was engaged in a profit-making enterprise.[39]

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[36] *Cf.* NIRC, Sec. 30(H).

[37] 115 Phil. 310 (1962).

[38] *Id.* at 311.

[39] *Id.* at 314.

The sports club in *Club Filipino Inc. de Cebu* may be non-profit, but it was not charitable. The Court defined "charity" in *Lung Center of the Philippines v. Quezon City*[40] as "a gift, to be applied consistently with existing laws, **for the benefit of an indefinite number of persons**, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or [by] **otherwise lessening the burden of government**."[41] A non-profit club for the benefit of its members fails this test. An organization may be considered as non-profit if it does not distribute any part of its income to stockholders or members. However, despite its being a tax exempt institution, any income such institution earns from activities conducted for profit is taxable, as expressly provided in the last paragraph of Section 30.

To be a charitable institution, however, an organization must meet the substantive test of charity in *Lung Center.* The issue in *Lung Center* concerns exemption from real property tax and not income tax. However, it provides for the test of charity in our jurisdiction. Charity is essentially a gift to an indefinite number of persons which lessens the burden of government. **In other words, charitable institutions provide for free goods and services to the public which would otherwise fall on the shoulders of government.** Thus, as a matter of efficiency, the government forgoes taxes which should have been spent to address public needs, because certain private entities already assume a part of the burden. This is the rationale for the tax exemption of charitable institutions. The loss of taxes by the government is compensated by its relief from doing public works which would have been funded by appropriations from the Treasury.[42]

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[40] G.R. No. 144104, 29 June 2004, 433 SCRA 119.

[41] *Id.* at 128-129. Emphasis supplied.

[42] For further discussion of the Subsidy Theory of Tax Exemption, *see* H. Hansmann, *The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation*, 91 YALE L. J. 54 (1981) at 66-75. *See also* M. Hall & J. Colombo, *The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption,* 66 WASH. L. REV. 307 (1991).

Charitable institutions, however, are not *ipso facto* entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it. The power of Congress to tax implies the power to exempt from tax. Congress can create tax exemptions, subject to the constitutional provision that "[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress."[43] The requirements for a tax exemption are strictly construed against the taxpayer[44] because an exemption restricts the collection of taxes necessary for the existence of the government.

The Court in *Lung Center* declared that the Lung Center of the Philippines is a charitable institution for the purpose of exemption from real property taxes. This ruling uses the same premise as *Hospital de San Juan*[45] and *Jesus Sacred Heart College*[46] which says that receiving income from paying patients does not destroy the charitable nature of a hospital.

> As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether out-patient, or confined in the hospital, or receives subsidies from the government, so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.[47]

For real property taxes, the incidental generation of income is permissible because the test of exemption is the use of the property. The Constitution provides that "[c]haritable institutions,

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[43] CONSTITUTION, Art. VI, Sec. 28(4).

[44] *Commissioner of Internal Revenue v. The Philippine American Accident Insurance Company, Inc.*, 493 Phil. 785 (2005); *Lung Center of the Philippines v. Quezon City*, *supra* note 40 at 133-134; *Mactan Cebu International Airport Authority v. Marcos*, 330 Phil. 392 (1996); *Manila Electric Company v. Vera*, 160-A Phil. 498 (1975).

[45] *Supra* note 18.

[46] *Supra* note 20.

[47] *Lung Center of the Philippines v. Quezon City, supra* note 40 at 131-132. Citation omitted.

churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation."[48] The test of exemption is not strictly a requirement on the intrinsic nature or character of the institution. The test requires that the institution use the property in a certain way, *i.e.* for a charitable purpose. Thus, the Court held that the Lung Center of the Philippines did not lose its charitable character when it used a portion of its lot for commercial purposes. The effect of failing to meet the use requirement is simply to remove from the tax exemption that portion of the property not devoted to charity.

The Constitution exempts charitable institutions only from real property taxes. In the NIRC, Congress decided to extend the exemption to income taxes. However, the way Congress crafted Section 30(E) of the NIRC is materially different from Section 28(3), Article VI of the Constitution. Section 30(E) of the NIRC defines the corporation or association that is exempt from income tax. On the other hand, Section 28(3), Article VI of the Constitution does not define a charitable institution, but requires that the institution "actually, directly and exclusively" use the property for a charitable purpose.

Section 30(E) of the NIRC provides that a charitable institution must be:

(1) A non-stock corporation or association;

(2) **Organized exclusively** for charitable purposes;

(3) **Operated exclusively** for charitable purposes; and

(4) No part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

Thus, both the organization and operations of the charitable institution must be devoted **"exclusively"** for charitable purposes. The organization of the institution refers to its corporate form,

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[48] CONSTITUTION, Art. VI, Sec. 28(3).

as shown by its articles of incorporation, by-laws and other constitutive documents. Section 30(E) of the NIRC specifically requires that the corporation or association be non-stock, which is defined by the Corporation Code as "one where no part of its income is distributable as dividends to its members, trustees, or officers"[49] and that any profit "obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized."[50] However, under *Lung Center*, any profit by a charitable institution must not only be plowed back "whenever necessary or proper," but must be "devoted or used **altogether** to the charitable object which it is intended to achieve."[51]

The operations of the charitable institution generally refer to its regular activities. Section 30(E) of the NIRC requires that these operations be **exclusive** to charity. There is also a specific requirement that "no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person." The use of lands, buildings and improvements of the institution is but a part of its operations.

There is no dispute that St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes. This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not *ipso facto* tax exempt. To be exempt from real property taxes, Section 28(3), Article VI of the Constitution requires that a charitable institution use the property "actually, directly and exclusively" for charitable purposes. To be exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be "**organized and operated exclusively"** for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

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[49] CORPORATION CODE (B.P. Blg. 68), Sec. 87.

[50] *Id.*

[51] *Supra* note 40. Emphasis supplied.

However, the last paragraph of Section 30 of the NIRC qualifies the words "organized and operated exclusively" by providing that:

> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from **any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code**. (Emphasis supplied)

In short, the last paragraph of Section 30 provides that if a tax exempt charitable institution conducts **"any"** activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. This paragraph qualifies the requirements in Section 30(E) that the "[n]on-stock corporation or association [must be] **organized and operated exclusively** for x x x charitable x x x purposes x x x." It likewise qualifies the requirement in Section 30(G) that the civic organization must be "operated exclusively" for the promotion of social welfare.

Thus, even if the charitable institution must be "organized and operated exclusively" for charitable purposes, it is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status for its not-for-profit activities. The only consequence is that the **"income of whatever kind and character"** of a charitable institution **"from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax."** Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.

In 1998, St. Luke's had total revenues of ₱1,730,367,965 from services to **paying** patients. It cannot be disputed that a hospital which receives approximately ₱1.73 billion from **paying** patients is **not** an institution "operated exclusively" for charitable purposes. Clearly, revenues from **paying** patients are income

received from "activities conducted for profit."[52] Indeed, St. Luke's admits that it derived profits from its paying patients. St. Luke's declared ₱1,730,367,965 as "Revenues from Services to Patients" in contrast to its "Free Services" expenditure of ₱218,187,498. In its Comment in G.R. No. 195909, St. Luke's showed the following "calculation" to support its claim that 65.20% of its "income after expenses was allocated to free or charitable services" in 1998.[53]

REVENUES FROM SERVICES TO PATIENTS	₱1,730,367,965.00	
OPERATING EXPENSES		
Professional care of patients	₱1,016,608,394.00	
Administrative	287,319,334.00	
Household and Property	91,797,622.00	
	₱1,395,725,350.00	
INCOME FROM OPERATIONS	₱ 334,642,615.00	100%
Free Services	**-218,187,498.00**	**-65.20%**
INCOME FROM OPERATIONS, Net of FREE SERVICES	₱ 116,455,117.00	34.80%

[52] Since the exemption is proportional to the revenue of the institution, Hall & Colombo say that "a general tax exemption suffers from the same 'upside down' effect as many tax deductions: those entities with the highest net revenues or the greatest value of otherwise-taxable property receive the greatest amount of subsidy, yet these are the entities that least need support. From the standpoint of equity among different tax-exempt entities, the result of the general tax exemption is that entities that are the 'poorest' in either an income or property tax sense, and thus most in need of government assistance to serve impoverished and uninsured patients, receive the least government assistance. Because uncompensated care is an expense item, those hospitals with the most net revenues are more likely to have actually rendered the least free care, all other things being equal." Hall & Colombo, *supra* note 42 at 355-356. Citations omitted.

[53] Comment of St. Luke's dated 19 September 2011. *Rollo* (G.R. No. 195909), p. 113.

OTHER INCOME	17,482,304.00	
EXCESS OF REVENUES OVER EXPENSES	**₱133,937,421.00**	

In *Lung Center*, this Court declared:

"[e]xclusive" is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." x x x The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitution and the law. **Solely is synonymous with exclusively**.[54]

The Court cannot expand the meaning of the words "operated exclusively" without violating the NIRC. **Services to paying patients are activities conducted for profit. They cannot be considered any other way. There is a "purpose to make profit over and above the cost" of services**.[55] The ₱1.73 billion total revenues from paying patients is not even incidental to St. Luke's charity expenditure of ₱218,187,498 for non-paying patients.

St. Luke's claims that its charity expenditure of ₱218,187,498 is 65.20% of its operating income in 1998. However, if a part of the remaining 34.80% of the operating income is reinvested in property, equipment or facilities used for services to **paying and non-paying** patients, then it cannot be said that the income is "devoted or used **altogether** to the charitable object which it is intended to achieve."[56] The income is plowed back to the corporation not entirely for charitable purposes, but for profit as well. In any case, the last paragraph of Section 30 of the NIRC expressly qualifies that income from activities for profit is taxable **"regardless of the disposition made of such income."**

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[54] *Supra* note 40 at 137. Emphasis supplied; citations omitted.

[55] *Jesus Sacred Heart College v. Collector of Internal Revenue, supra* note 20 at 20-21.

[56] *Lung Center of the Philippines v. Quezon City, supra* note 40.

Jesus Sacred Heart College declared that there is no official legislative record explaining the phrase "any activity conducted for profit." However, it quoted a deposition of Senator Mariano Jesus Cuenco, who was a member of the Committee of Conference for the Senate, which introduced the phrase "or from any activity conducted for profit."

P. Cuando ha hablado de la Universidad de Santo Tomás que tiene un hospital, no cree Vd. que es una actividad esencial dicho hospital para el funcionamiento del colegio de medicina de dicha universidad?

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R. Si el hospital se limita a recibir enformos pobres, mi contestación seria afirmativa; pero considerando que el hospital tiene cuartos de pago, y a los mismos generalmente van enfermos de buena posición social económica, lo que se paga por estos enfermos debe estar sujeto a 'income tax', y es una de las razones que hemos tenido para insertar las palabras o frase 'or from any activity conducted for profit.'[57]

The question was whether having a hospital is essential to an educational institution like the College of Medicine of the University of Santo Tomas. Senator Cuenco answered that if the hospital has paid rooms generally occupied by people of good economic standing, then it should be subject to income tax. He said that this was one of the reasons Congress inserted the phrase "or any activity conducted for profit."

The question in *Jesus Sacred Heart College* involves an educational institution.[58] However, it is applicable to charitable

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[57] *Supra* note 20 at 29.

[58] *Supra* note 20 at 23. *Jesus Sacred Heart College* distinguished an educational institution from a charitable institution: "More important still, the law applied in the case relied upon by [the BIR] exempted from taxation only such educational institutions as were established for *charitable or philanthropic* purposes. **Consequently, the amount of fees charged or the intent to collect more than the cost of operation or instruction was material to the determination of such purpose.** Upon the other hand, under Section 27(e) of [the old] National Internal Revenue Code, as amended, an institution operated exclusively for educational purposes need not have, in addition thereto, a charitable or philanthropic character, to be exempt from taxation, provided only that no part of its net income 'inures to the

institutions because Senator Cuenco's response shows an intent to focus on the activities of charitable institutions. Activities for profit should not escape the reach of taxation. Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. An institution cannot use its corporate form to prevent its profitable activities from being taxed.

The Court finds that St. Luke's is a corporation that is **not** "operated exclusively" for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Section 30(E) and (G) of the NIRC requires that an institution be "**operated exclusively**" for charitable or social welfare purposes to be **completely** exempt from income tax. An institution under Section 30(E) or (G) does not lose its tax exemption if it earns income from its for-profit activities. Such income from for-profit activities, under the last paragraph of Section 30, is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B).

A tax exemption is effectively a social subsidy granted by the State because an exempt institution is spared from sharing in the expenses of government and yet benefits from them. Tax exemptions for charitable institutions should therefore be limited to institutions beneficial to the public and those which improve social welfare. A profit-making entity should not be allowed to exploit this subsidy to the detriment of the government and other taxpayers.

St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested

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benefit of any private stockholder or individual.'" (Italics in the original; emphasis supplied)

pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities.

St. Luke's is therefore liable for deficiency income tax in 1998 under Section 27(B) of the NIRC. However, St. Luke's has good reasons to rely on the letter dated 6 June 1990 by the BIR, which opined that St. Luke's is "a corporation for *purely* charitable and social welfare purposes"[59] and thus exempt from income tax.[60] In *Michael J. Lhuillier, Inc. v. Commissioner of Internal Revenue*,[61] the Court said that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."[62]

WHEREFORE, the petition of the Commissioner of Internal Revenue in G.R. No. 195909 is **PARTLY GRANTED.** The Decision of the Court of Tax Appeals *En Banc* dated 19 November 2010 and its Resolution dated 1 March 2011 in CTA Case No. 6746 are **MODIFIED.** St. Luke's Medical Center, Inc. is **ORDERED TO PAY** the deficiency income tax in 1998 based on the 10% preferential income tax rate under Section 27(B) of the National Internal Revenue Code. However, it is not liable for surcharges and interest on such deficiency income tax under Sections 248 and 249 of the National Internal Revenue Code. All other parts of the Decision and Resolution of the Court of Tax Appeals are **AFFIRMED.**

The petition of St. Luke's Medical Center, Inc. in G.R. No. 195960 is **DENIED** for violating Section 1, Rule 45 of the Rules of Court.

SO ORDERED.

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[59] Italics supplied.

[60] *See* CTA First Division Decision dated 23 February 2009. *Rollo* (G.R. No. 195909), p. 69.

[61] 533 Phil. 101 (2006).

[62] *Id.* at 108-109.

Leonardo-de Castro,[*] *Brion, Perez,* and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 196161. September 26, 2012]

CYRIL CALPITO QUI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL PENDING APPEAL; THE ALLOWANCE OF BAIL PENDING APPEAL SHOULD BE EXERCISED NOT WITH LAXITY BUT WITH GRAVE CAUTION AND ONLY FOR STRONG REASONS, CONSIDERING THAT THE ACCUSED HAS BEEN IN FACT CONVICTED BY THE TRIAL COURT.—** Bail pending appeal is governed by Sec. 5 of Rule 114, Revised Rules of Criminal Procedure. x x x. Under the present rule, the grant of bail is a matter of discretion upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment, as here. The Court held: Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited. In the exercise of that discretion, the proper courts

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[*] Designated Acting Member per Special Order No. 1308 dated 21 September 2012.

are to be guided by the fundamental principle that the allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons, considering that the accused has been in fact convicted by the trial court.

2. **ID.; ID.; ID.; APPLICANT'S PROPENSITY TO TRIFLE WITH COURT PROCESSES WEIGHS HEAVILY AGAINST A GRANT OF BAIL PENDING APPEAL.—** The CA properly exercised its discretion in denying petitioner's application for bail pending appeal. The CA's determination as to petitioner being a high risk for flight is not without factual mooring. Indeed, the undisputed fact that petitioner did not attend the hearings before the RTC, which compelled the trial court to issue warrants for her arrest, is undeniably indicative of petitioner's propensity to trifle with court processes. This fact alone should weigh heavily against a grant of bail pending appeal. Petitioner's penchant to disobey court processes may also be deduced from the fact that she lied in order to wiggle out of, and justify her non-appearance on the March 8, 2010 hearing before the RTC. Petitioner gave the convenient but false excuse that her father, Cirilo Calpito, was hospitalized on said hearing day (*i.e.*, March 8, 2010) and that Cirilo died on March 24, 2010. The lies foisted on the court were exposed by: (1) the Death Certificate of Cirilo Calpito clearly showing that he died on March 24, 2009 or a year before the aforesaid March 2010 RTC hearing; and (2) the Certification issued by Dr. Aniana Javier stating that Cirilo went to her clinic on March 9, 2009.

3. **ID.; ID.; ID.; ACCUSED'S TRANSFER OF RESIDENCES WITHOUT INFORMING THE BONDSMAN AND THE TRIAL COURT VIEWED AS AN INCLINATION TO EVADE COURT APPEARANCE, AS INDICATIVE OF FLIGHT, AND AN ATTEMPT TO PLACE HERSELF BEYOND THE PALE OF THE LAW.—** Lest it be overlooked, the RTC notice sent to petitioner's bonding company was returned with the notation "moved out," while the notice sent to petitioner's given address was returned unclaimed with the notation "RTS no such person according to Hesita Family" who were the actual occupants in petitioner's given address. The fact of transferring residences without informing her

bondsman and the trial court can only be viewed as petitioner's inclination to evade court appearance, as indicative of flight, and an attempt to place herself beyond the pale of the law.

4. **ID.; ID.; ID.; ID.; AFTER ONE IS CONVICTED BY THE TRIAL COURT, THE PRESUMPTION OF INNOCENCE AND THE CONSTITUTIONAL RIGHT TO BAIL, ENDS.—** Petitioner's argument that she has the constitutional right to bail and that the evidence of guilt against her is not strong is spurious. Certainly, after one is convicted by the trial court, the presumption of innocence, and with it, the constitutional right to bail, ends. As to the strength of evidence of guilt against her, suffice it to say that what is before the Court is not the appeal of her conviction, let alone the matter of evaluating the weight of the evidence adduced against her.

5. **ID.; ID.; ID.; DENIAL OF PETITIONER'S APPLICATION FOR BAIL PENDING APPEAL, SUSTAINED.—** [T]he Court agrees with the appellate court's finding of the presence of the fourth circumstance enumerated in x x x Sec. 5 of Rule 114, Revised Rules of Criminal Procedure, and holds that the appellate court neither erred nor gravely abused its discretion in denying petitioner's application for bail pending appeal. The appellate court appeared to have been guided by the circumstances provided under the Rules. As the Court categorically held in *People v. Fitzgerald*, "[A]s for an accused already convicted and sentenced to an imprisonment term exceeding six years, **bail may be denied or revoked based on prosecution evidence as to the existence of any of the circumstances under Sec. 5, paragraphs (a) to (e)** x x x." Evidently, the circumstances succinctly provided in Sec. 5 of Rule 114, Revised Rules of Criminal Procedure have been placed as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years.

APPEARANCES OF COUNSEL

Leovillo C. Agustin Law Office for petitioner.
The Solicitor General for respondent.

DECISION

VELASCO, JR., *J.*:

In her petition for review under Rule 45, Cyril Calpito Qui assails the merits of the December 17, 2010 Resolution[1] of the Court of Appeals (CA) in CA-G.R. CR No. 33494, which denied her Urgent Petition/Application for Bail Pending Appeal, and the March 17, 2011 CA Resolution[2] which rejected her Motion for Reconsideration.

The pertinent factual antecedents are undisputed.

Petitioner was charged with two counts of violation of Section 10(a),[3] Article VI of Republic Act No. (RA) 7610 or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

In Criminal Case No. Q-00-96544, the Information alleges:

That on or about the month of December 1999 in Quezon City, Philippines, the above-named accused did then and there willfully, unlawfully and feloniously commit acts of cruelty and child abuse upon the person of one Christian John Ignacio, a minor 8 years of age by then and there angrily shouting invectives while pointing her fingers at said minor and threatening to knock down his head which acts are prejudicial to the child's psychological and emotional development, debase, demean and degrade the intrinsic worth and dignity of said Christian John Ignacio as a human being.

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[1] *Rollo*, pp. 49-52. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Amy C. Lazaro-Javier.

[2] *Id*. at 53.

[3] SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*—

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of PD No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

CONTRARY TO LAW.

In Criminal Case No. Q-00-96545, the Information reads:

That on or about the 15th day of March 2000 in Quezon City, Philippines, the above-named accused did then and there willfully, unlawfully and feloniously commit acts of cruelty and child abuse upon the person of one Christian John Ignacio, a minor 8 years of age by then and there angrily shouting invectives and threatening to shoot said minor and which acts are prejudicial to the child's psychological and emotional development, debase, demean and degrade the intrinsic worth and dignity of said Christian John Ignacio as a human being.

CONTRARY TO LAW.

On June 18, 2010, the Regional Trial Court (RTC), Branch 94 in Quezon City convicted petitioner as charged, and sentenced[4] her to two equal periods of imprisonment for an indeterminate penalty of five (5) years, four (4) months and twenty one (21) days of *prision correccional* in its maximum period, as minimum, to seven (7) years, four (4) months and one (1) day of *prision mayor* in its minimum period, as maximum.

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[4] The *fallo* of the RTC Decision reads:

WHEREFORE, premises considered, this Court finds accused CYRIL CALPITO QUI, GUILTY beyond reasonable doubt of Violation of Section 10 (a), Article VI of Republic Act No. 7610 and hereby sentences her as follows:

In Criminal Case No. Q-00-96544, accused is sentenced to suffer an indeterminate penalty of FIVE (5) YEARS, FOUR (4) MONTHS and TWENTY ONE (21) DAYS of *Prision Correccional* in its maximum period as minimum to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Mayor* in its minimum period as maximum and to pay the costs.

In Criminal Case No. Q-00-96545, accused is sentenced to suffer an indeterminate penalty of FIVE (5) YEARS, FOUR (4) MONTHS and TWENTY ONE (21) DAYS of *Prision Correccional* in its maximum period as minimum to SEVEN (7) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Mayor* in its minimum period as maximum and to pay the costs.

SO ORDERED. (*Rollo*, p. 50.)

On July 1, 2010, petitioner filed her Notice of Appeal. With the perfection of her appeal and the consequent elevation of the case records to the CA, petitioner posthaste filed before the appellate court an Urgent Petition/Application for Bail Pending Appeal which respondent People of the Philippines, through the Office of the Solicitor General (OSG), opposed. The OSG urged for the denial of the bail application on the ground of petitioner's propensity to evade the law and that she is a flight-risk, as she in fact failed to attend several hearings before the RTC resulting in the issuance of three warrants for her arrest.

On December 17, 2010, the CA issued the first assailed Resolution denying petitioner's application for bail pending appeal on the basis of Sec. 5(d) of Rule 114, Revised Rules of Criminal Procedure. Petitioner's Motion for Reconsideration was likewise rejected through the March 17, 2011 CA Resolution.

Thus, this Petition for Review on *Certiorari* on the following assignment of errors, to wit: (1) there is a manifest absence of all the conditions justifying a denial of bail under Sec. 5 of Rule 114; (2) the conviction of petitioner is for a bailable offense and the evidence of guilt against her is not strong; and (3) since petitioner's conviction by the RTC is under appeal, hence not yet final, she should be accorded the constitutional guaranty of innocence until proved guilty beyond reasonable doubt, which guaranty entitles her to bail. In gist, the core issue boils down to whether petitioner is entitled to bail pending appeal.

The petition is bereft of merit.

Bail pending appeal is governed by Sec. 5 of Rule 114, Revised Rules of Criminal Procedure, which provides:

Sec. 5. *Bail, when discretionary.* — **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary**. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the

application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;

(c) That he committed the offense while under probation, parole, or conditional pardon;

(d) That the circumstances of his case indicate the probability of flight if released on bail; or

(e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (Emphasis supplied.)

Under the present rule, the grant of bail is a matter of discretion upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment, as here. The Court held:

Indeed, pursuant to the "tough on bail pending appeal" policy, the presence of bail-negating conditions mandates the denial or revocation of bail pending appeal such that those circumstances are deemed to be as grave as conviction by the trial court for an

offense punishable by death, *reclusion perpetua* or life imprisonment where bail is prohibited.[5]

In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that the allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons, considering that the accused has been in fact convicted by the trial court.[6]

The CA denied petitioner's application for bail pending appeal on the ground that she is a flight risk, a bail-negating factor under Sec. 5(d) of Rule 114 quoted above. The appellate court anchored its denial on several circumstances, pointed out by the OSG, which showed petitioner's propensity to evade the law, as when she failed to attend the hearings before the RTC, which compelled said court to issue three warrants for petitioner's arrest. There is no dispute, and petitioner does not deny the fact, that on various dates, specifically on August 24, 2005, February 20, 2006 and March 8, 2010, the RTC issued warrants for her arrest. The March 8, 2010 RTC Order also directed the forfeiture of her bail bond.

Petitioner's plea for bail pending appeal is bereft of merit.

The CA properly exercised its discretion in denying petitioner's application for bail pending appeal. The CA's determination as to petitioner being a high risk for flight is not without factual mooring. Indeed, the undisputed fact that petitioner did not attend the hearings before the RTC, which compelled the trial court to issue warrants for her arrest, is undeniably indicative of petitioner's propensity to trifle with court processes. This fact alone should weigh heavily against a grant of bail pending appeal.

Petitioner's penchant to disobey court processes may also be deduced from the fact that she lied in order to wiggle out of,

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[5] *Leviste v. Court of Appeals*, G.R. No. 189122, March 17, 2010, 615 SCRA 619, 648.

[6] *Yap v. Court of Appeals*, G.R. No. 141529, June 6, 2001, 358 SCRA 564, 573.

and justify her non-appearance on the March 8, 2010 hearing before the RTC. Petitioner gave the convenient but false excuse that her father, Cirilo Calpito, was hospitalized on said hearing day (*i.e.*, March 8, 2010) and that Cirilo died on March 24, 2010. The lies foisted on the court were exposed by: (1) the Death Certificate of Cirilo Calpito clearly showing that he died on March 24, 2009 or a year before the aforesaid March 2010 RTC hearing; and (2) the Certification issued by Dr. Aniana Javier stating that Cirilo went to her clinic on March 9, 2009.

Lest it be overlooked, the RTC notice sent to petitioner's bonding company was returned with the notation "moved out," while the notice sent to petitioner's given address was returned unclaimed with the notation "RTS no such person according to Hesita Family" who were the actual occupants in petitioner's given address. The fact of transferring residences without informing her bondsman and the trial court can only be viewed as petitioner's inclination to evade court appearance, as indicative of flight, and an attempt to place herself beyond the pale of the law.

Petitioner's argument that she has the constitutional right to bail and that the evidence of guilt against her is not strong is spurious. Certainly, after one is convicted by the trial court, the presumption of innocence, and with it, the constitutional right to bail, ends.[7] As to the strength of evidence of guilt against her, suffice it to say that what is before the Court is not the appeal of her conviction, let alone the matter of evaluating the weight of the evidence adduced against her.

Consequently, the Court agrees with the appellate court's finding of the presence of the fourth circumstance enumerated in the above-quoted Sec. 5 of Rule 114, Revised Rules of Criminal Procedure, and holds that the appellate court neither erred nor gravely abused its discretion in denying petitioner's application for bail pending appeal. The appellate court appeared to have

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[7] *Leviste v. Court of Appeals*, *supra* note 5, at 650; citing *Obosa v. Court of Appeals*, G.R. No. 114350, January 16, 1997, 266 SCRA 281 and *Yap v. Court of Appeals*, *supra* note 6.

been guided by the circumstances provided under the Rules. As the Court categorically held in *People v. Fitzgerald*, "[A]s for an accused already convicted and sentenced to an imprisonment term exceeding six years, **bail may be denied or revoked based on prosecution evidence as to the existence of any of the circumstances under Sec. 5, paragraphs (a) to (e)** x x x."[8] Evidently, the circumstances succinctly provided in Sec. 5 of Rule 114, Revised Rules of Criminal Procedure have been placed as a guide for the exercise of the appellate court's discretion in granting or denying the application for bail, pending the appeal of an accused who has been convicted of a crime where the penalty imposed by the trial court is imprisonment exceeding six (6) years.

In all, the Court finds the CA to have exercised its discretion soundly when it denied petitioner's application for bail pending appeal.

WHEREFORE, the instant petition is **DENIED** for lack of merit. Accordingly, the assailed December 17, 2010 and March 17, 2011 Resolutions of the Court of Appeals in CA-G.R. CR No. 33494 are **AFFIRMED.** No costs.

SO ORDERED.

Sereno, C.J.,[*] *Perez,*[**] *Mendoza,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[8] G.R. No. 149723, October 27, 2006, 505 SCRA 573, 583.

[*] Additional member per Special Order No. 1311 dated September 21, 2012.

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

[***] Additional member per Special Order No. 1320 dated September 21, 2012.

THIRD DIVISION

[G.R. No. 197205. September 26, 2012]

JESSIE V. DAVID, represented by his wife, MA. THERESA S. DAVID, and children, KATHERINE and KRISTINA DAVID, *petitioners, vs.* **OSG SHIPMANAGEMENT MANILA, INC. and/or MICHAELMAR SHIPPING SERVICES,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT AGENCY STANDARD EMPLOYMENT CONTRACT (POEA-SEC); UNLESS CONTRARY EVIDENCE IS PRESENTED BY THE EMPLOYER, THE ILLNESS SUFFERED BY A SEAFARER DURING THE TERM OF HIS CONTRACT IS DISPUTABLY PRESUMED AS WORK-RELATED.—** Deemed read and incorporated into the Contract of Employment between David and respondents are the provisions of the 2000 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). Section 20(B) of the POEA-SEC reads: SECTION 20. COMPENSATION AND BENEFITS. — B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESSES. The liabilities of the employer **when the seafarer suffers work-related injury or illness** during the term of his contract are as follows: x x x **4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.** In this case, David suffered from malignant fibrous histiocytoma (MFH) in his left thigh. MFH is not one of the diseases enumerated under Sec. 32 of the POEA-SEC. However, Sec. 20(B)(4) of the POEA-SEC clearly established a disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of his contract. This disputable presumption works in favor of the employee pursuant to the mandate under Executive Order No. (EO) 247 dated July 21, 1987 under which the POEA-SEC was created: "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." Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.

2. **ID.; ID.; ID.; IT IS NOT NECESSARY THAT THE NATURE OF THE EMPLOYMENT BE THE SOLE AND ONLY REASON FOR THE ILLNESS SUFFERED BY THE SEAFARER FOR IT IS SUFFICIENT THAT THERE IS A REASONABLE LINKAGE BETWEEN THE DISEASE SUFFERED BY THE EMPLOYEE AND HIS WORK TO LEAD A RATIONAL MIND TO CONCLUDE THAT HIS WORK MAY HAVE CONTRIBUTED TO THE ESTABLISHMENT OR, THE AGGRAVATION OF ANY PRE-EXISTING CONDITION HE MIGHT HAVE HAD.—** David showed that part of his duties as a Third Officer of the crude tanker M/T Raphael involved "overseeing the loading, stowage, securing and unloading of cargoes." As a necessary corollary, David was frequently exposed to the crude oil that M/T Raphael was carrying. The chemical components of crude oil include, among others, sulphur, vanadium and arsenic compounds. Hydrogen sulphide and carbon monoxide may also be encountered, while benzene is a naturally occurring chemical in crude oil. It has been regarded that these hazardous chemicals can possibly contribute to the formation of cancerous masses. In this case, David was diagnosed with MFH (now known as undifferentiated pleomorphic sarcoma [UPS]), which is a class of soft-tissue sarcoma or an illness that account for approximately 1% of the known malignant tumors. As stated by Dr. Peña of the MMC, who was consulted by the company-designated physician, the etiology of soft tissue sarcomas are multifactorial. However, some factors are associated with a higher risk. These factors include exposure to chemical carcinogens like some of the chemical components of crude oil. Clearly, David has provided more than a reasonable nexus between the nature of his job and the disease that manifested itself on the sixth month of his last contract with respondents. It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

3. ID.; ID.; ID.; AN ILLNESS THAT HAS BEEN RECOGNIZED AT THE OUTSET BY THE EMPLOYER AS WORK-RELATED CANNOT EVOLVE TO AN ILLNESS NOT CONNECTED TO THE SEAFARER'S EMPLOYMENT.— It is significant to note that OSG Manila issued the June 28, 2007 Certification after the issuance of the letters/certifications regarding the possible etiology of David's illness, where it was tacitly suggested by the MMC doctors that David's illness could be work-related provided there is a documented exposure to carcinogenic chemicals. It can be easily deduced, therefore, that the certification impliedly fills in the information required by Dr. Peña in his last letter to the company-designated physician regarding the nature of the work performed by David and his exposure to chemical carcinogens that could have led to his illness. After all, respondents, as David's employers, have knowledge regarding the functions of a Third Officer on board a crude tanker and the nature of the cargo transported in their vessels. Without a doubt, the certification issued by OSG Manila encompasses not only the gravity of David's illness but also its nature and relation to the employment undertaken by David in their crude tankers. This conclusion is corroborated by respondents' contemporaneous act of extending to David sickness allowance under Sec. 20(B) of the POEA-SEC, since an employer is liable for the payment of sickness allowance only "when the seafarer suffers work-related injury or illness during the term of his contract." Surely, an illness that has been recognized at the outset by the employer as work-related cannot evolve to an illness not connected to the seafarer's employment.

4. ID.; ID.; ID.; THE QUANTUM OF EVIDENCE REQUIRED IN LABOR CASES TO DETERMINE THE LIABILITY OF AN EMPLOYER FOR THE ILLNESS SUFFERED BY THE EMPLOYEE UNDER THE POEA-SEC IS MERE SUBSTANTIAL EVIDENCE; MET.— The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In this case, in accordance with the foregoing disquisitions, We find that there is substantial evidence to support the decision of the LA and the NLRC.

APPEARANCES OF COUNSEL

Maila V. Tagay-Reyes for petitioners.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Decision[1] and Resolution[2] dated March 11, 2011 and June 1, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 114616, overturning the January 22, 2010 and March 30, 2010 Resolutions[3] of the National Labor Relations Commission (NLRC), Second Division in NLRC NCR OFW Case No. (M)09-10261-07.

The facts are not disputed. On May 10, 2006, petitioner Jessie David (David) entered into a six-month Contract of Employment[4] with respondent OSG Shipmanagement Manila, Inc. (OSG Manila), for and in behalf of its principal Michaelmar Shipping Services, Inc., as a Third Officer of the crude tanker M/T Raphael. The engagement was the third contract of employment between David and OSG Manila. OSG Manila previously hired and deployed David to work aboard crude tankers since December 2004.[5]

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[1] *Rollo*, pp. 49-62. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

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

[3] CA *rollo*, pp. 56-78. Penned by NLRC Commissioner Teresita Castillon-Lora and concurred in by Presiding Commisioner Raul T. Aquino. Commissioner Napoleon M. Menese took no part.

[4] *Id.* at 121.

[5] Prior to the May 2006 contract, David had been working on board two other crude tankers of the respondents since December 2004. (Certification dated January 11, 2007; *id.* at 144.)

Prior to his embarkation, David underwent a pre-employment medical examination (PEME) and was declared "fit for further sea duty."[6] David then boarded the ship M/T Raphael on May 23, 2006.[7] Barely six months into his employment or in November 2006, David complained of an intolerable pain on his left foot so that he consulted a doctor at the port of Rotterdam. The doctor diagnosed him as suffering from "lipoma [on the] left upper leg"[8] and a possible "calcaneus spur of [the] left foot."[9] Although found to be fit for work, David was nonetheless advised to undergo further treatment upon repatriation to the Philippines.[10]

Immediately after his return to the country on December 4, 2006, OSG Manila referred David to the company-designated physician, Dr. Robert Lim (Dr. Lim) of the Metropolitan Medical Center (MMC), who referred him to the Cardinal Santos Medical Center for a Magnetic Resonance Imaging (MRI), which reflected the following impressions:

Large soft tissue mass of the anterior left thigh, as described. Considerations include neoplasm such as benign/malignant nerve sheath tumor, hemangioma, soft tissue sarcoma or inflammatory process such as intramuscular abscess.[11]

The Pathology Report of the MMC also showed the following: "Left anterior thigh mass excision: Malignant fibrous histiocytoma, myxoid type. Margins of resection negative for tumor."[12]

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[6] *Id.* at 122, Medical Examination Records.

[7] *Id.* at 12.

[8] *Id.* at 123, Medical Report dated November 9, 2006.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 145; *rollo*, p. 107, MRI of the Left Thigh with and without Contrast dated January 15, 2007.

[12] *Id.* at 146; *rollo*, p. 108, Pathology Report dated February 14, 2007.

On February 27, 2007, OSG Manila certified David's entitlement "to sickness allowance from the company or principal equivalent to basic salary of member."[13]

On March 2, 2007, Dr. Christopher Co Peña (Dr Peña), also of MMC, wrote Dr. Lim, informing the latter of the etiology of soft tissue sarcoma, viz:

The following are the etiology of soft tissue sarcoma:

1. Ionizing radiation
2. Genetic predisposition
3. Chemical exposure – Phenoxyacetic acid, cholorophenols, thorotrast, vinyl chloride, arsenic
4. Chronic lymphedema

Whether work-related or not will depend on the exposure of the above mentioned factors.[14]

On March 5, 2007, the Marine Medical Services of MMC certified that David had undergone medical and surgical evaluation treatment at its establishment from December 21, 2006 due to "malignant fibrous histiocytoma, left thigh calcaneal spur, left; s/p with excision of mass left thigh."[15]

Apparently as a result of another inquiry regarding David's illness and its relation to his work, Dr. Peña again addressed a letter to Dr. Lim stating:

Dear Dr. Lim,

This is with regards to Mr. Jessie David, diagnosed case of Malignant Fibrous Histiocytoma last February 2007. S/P Resection. Etiology has already been mentioned in my previous letter dated March 2, 2007. It is difficult to determine exactly whether his work history

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[13] *Id.* at 147; *rollo*, p. 109.

[14] *Id.* at 124. The contents of the letter were reiterated in a letter/ certification dated April 23, 2007.

[15] *Id.* at 148; *rollo*, p. 110.

would have bearing as etiology is multifactorial. Unless there is documented exposure to the previously mentioned chemicals.[16]

Despite the non-conclusive findings of the company designated physician and Dr. Peña, **respondents issued on June 28, 2007 a Certification stating that David has been given a "permanent disability Grade One (1)"[17] by the Marine Medical Services**, *viz*:

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that **MR. JESSIE V. DAVID**, a resident of Block 3 Lot 4, NWSA Compound Tondo, Manila, **has been given a permanent disability Grade of One (1) by Marine Medical Services**.

This certification is being issued 28th day of June 2007 for whatever legal purpose it may serve him best.

Very truly yours,

OSG SHIPMANAGEMENT MANILA INC.
As Agent Only, acting for and in behalf of the Owners

(SGD.) MS. MA. CRISTINA G. PARAS
President

Due to his condition, David underwent chemotherapy per the advice of the company-designated physician. However, despite several requests, respondents refused to shoulder David's expenses and medication. Hence, after an unsuccessful grievance proceeding, David filed on September 17, 2007 a complaint against respondents for total and permanent disability benefits, medical and transportation expenses, moral and exemplary damages, and attorney's fees.[18]

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[16] *Id.* at 125.

[17] *Id.* at 149; *rollo*, p. 111.

[18] *Id.* at 90-92.

In his Decision of March 31, 2008 finding for David, Labor Arbiter (LA) Legerio V. Ancheta noted that there was no categorical denial on the part of respondents that David's disability was not work-related. Instead, respondent OSG Manila, through its President, issued a certification that David has a Grade I disability. According to LA Ancheta, this certification should bind the respondents.[19] Hence, LA Ancheta declared David to be permanently and totally disabled, entitled to be paid his total disability compensation, plus damages and attorney's fees in the total amount of USD 115,500 and PhP 426,645.69.[20]

The NLRC affirmed the Decision of the LA *in toto* holding that the respondents, by certifying David's Grade I disability and by paying his sickness allowance, are estopped from impugning the work-related nature of David's illness.[21]

Undaunted, respondents elevated the case to the CA. In its Decision dated March 11, 2011, the appellate court ruled against David's entitlement to the benefits he claimed, and accordingly nullified the resolutions of the NLRC.[22] The CA ratiocinated, thus:

In the case at bar, there is no question that private respondent (David) reported to the company-designated physician for treatment

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[19] *Id.* at 86.

[20] *Id.* at 88-89. The dispositive portion of LA Ancheta's Decision dated March 31, 2008 provides:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered finding and ORDERING all the respondents jointly and severally liable to pay complainant JESSIE V. DAVID the following:

1.	**Disability Benefits**	US$105,000.00
2.	**Reimbursement of Medical Expenses**	PhP187,859.72
3.	**Moral Damages**	PhP100,000.00
4.	**Exemplary Damages**	PhP100,000.00
5.	**Attorney's Fees** 10% of the above awards	US$ 10,500.00 + PhP38,785.97

GRAND TOTAL: US$115,500.00 + PhP426,645.69

[21] *Id.* at 58-78.

[22] *Rollo*, pp. 49-62.

immediately upon arriving in the Philippines. Problems arose, however, when private respondent was diagnosed to be suffering from malignant fibrous histiocytoma and **while his condition was given a grade I disability rating,** Dr. Chrisopher Co Pe[ñ]a who diagnosed private respondent's condition opined that it is difficult to determine whether work history would have a bearing to his illness as etiology is multifactorial. Dr. Pe[ñ]a was short of declaring private respondent's illness as non-work related. It is noted, however, that **aside from the certification by the president of petitioner OSG stating that the Marine Medical Services,** the record is bereft of the actual medical certificate coming from the Marine Medical Services itself which shows that indeed it issued a Grade I disability rating for private respondent's illness.

x x x x x x x x x

Malignant Fibrous Histiocytoma is not listed as an occupational disease under Section 32-A thereof. Nonetheless, Section 20(B), paragraph (4) provides that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The burden is, therefore, placed upon private respondent to present substantial evidence x x x. Private respondent, however, failed to do this. Private respondent did not, by way of a contrary medical finding, assail the diagnosis arrived at by the company-designated physician x x x.

x x x x x x x x x

As to the issue that there was an admission on the part of petitioner OSG that private respondent was already assessed to have a grade I disability, the same only shows that indeed private respondent is suffering from a disability. But going back to the provisions of the POEA Standard Employment Contract, such disability must have a causal relation to the work of private respondent to be compensable.[23]

In due time, David filed a Motion for Reconsideration of the CA's March 11, 2011 Decision.[24] Pending the resolution of his motion, David succumbed and died on April 9, 2011[25] and was substituted in the case by his wife and children.[26] On June 14,

[23] *Id.* at 59-61.

[24] *Id.* at 63-83.

[25] *Id.* at 14.

[26] *Id.* at 10-15; CA *rollo*, pp. 600-605.

2011, the CA issued a resolution denying the motion for reconsideration.

Hence, this petition.[27]

Petitioners argue that the appellate court grievously erred in overturning the NLRC and the LA's decisions considering that it is presumed that David's illness was work-related and it behooves the respondents to present substantial evidence to overcome this presumption. To petitioners, respondents have failed to discharge this burden. On the contrary, respondents admitted that David was suffering from a Grade I disability. Petitioners further add that there is a reasonable causal connection between David's illness and the duties he performed as a Third Officer on board respondents' crude tanker.

In their comment, respondents counter that the appellate court's denial action was correct since "convenient presumption regarding work-relation will not suffice to justify an award of disability benefits"[28] and David failed to submit any real and substantial evidence "to dispute the opinion of the company physician confirming [the] absence of work-relation."[29] Respondents posit that if David was indeed convinced that his illness was work-related, he should have procured supporting opinion from his various doctors.[30]

The petition has merit.

Deemed read and incorporated into the Contract of Employment between David and respondents are the provisions of the 2000 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). Section 20(B) of the POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS. —

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESSES

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[27] *Id.* at 18-47.

[28] *Id.* at 127.

[29] *Id.*

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

The liabilities of the employer **when the seafarer suffers work-related injury or illness** during the term of his contract are as follows:

1. x x x x x x x x x

2. x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, **the seafarer is entitled to sickness allowance** equivalent to his basic wage until he is declared fit to work, or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

   x x x x x x x x x

4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.**[31] (Emphasis supplied.)

In this case, David suffered from malignant fibrous histiocytoma (MFH) in his left thigh. MFH is not one of the diseases enumerated under Sec. 32 of the POEA-SEC. However, Sec. 20(B)(4) of the POEA-SEC clearly established a disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of his contract. This disputable presumption works in favor of the employee pursuant to the

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[31] The foregoing provisions are reiterated in the Collective Bargaining Agreement between respondents and David's union, which pertinently states:

20.1.4 Compensation for Disability

20.1.4.1 A seafarer who suffers permanent disability as a result of work-related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving on board including accidents and work related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement. In determining work related illness, reference shall be made to the Philippine Employees Compensation Law and/or Social Security Law.

mandate under Executive Order No. (EO) 247 dated July 21, 1987 under which the POEA-SEC was created: "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith"[32] and "to promote and protect the well-being of Filipino workers overseas."[33] Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.[34]

In this case, David not only relies on this disputable presumption of the compensability of his illness but further alleges that the following conditions provided in Sec. 32-A of the POEA-SEC have all been satisfied:

SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks describe herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.

David showed that part of his duties as a Third Officer of the crude tanker M/T Raphael involved "overseeing the loading, stowage, securing and unloading of cargoes."[35] As a necessary corollary, David was frequently exposed to the crude oil that M/T Raphael was carrying.[36] The chemical components of crude oil include, among others, sulphur, vanadium and arsenic

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[32] EO 247, Sec. 3(i).

[33] *Id.*, Sec. 3(j); *Fil-Star Maritime Corporation v. Rosete*, G.R. No. 192686, November 23, 2011, 661 SCRA 247, 254.

[34] *Fil-Star Maritime Corporation v. Rosete*, *supra* note 33, at 255.

[35] *Rollo*, p. 31.

[36] *Id.*

compounds.[37] Hydrogen sulphide and carbon monoxide may also be encountered,[38] while benzene is a naturally occurring chemical in crude oil.[39] It has been regarded that these hazardous chemicals can possibly contribute to the formation of cancerous masses.[40]

In this case, David was diagnosed with MFH (now known as undifferentiated pleomorphic sarcoma [UPS]),[41] which is a class of soft-tissue sarcoma or an illness that account for approximately 1% of the known malignant tumors.[42] As stated by Dr. Peña of the MMC, who was consulted by the company-designated physician, the etiology of soft tissue sarcomas are multifactorial.[43] However, some factors are associated with a higher risk.[44] These factors include exposure to chemical carcinogens[45] like some of the chemical components of crude oil. Clearly, David has provided more than a reasonable nexus between the nature of his job and the disease that manifested itself on the sixth month of his last contract with respondents. It is not necessary that

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[37] *Labour Administration Training Material: Labour Inspection Skills in the Petroleum Industry* (Bangkok: International Labour Organisation, 1991), p. 18.

[38] *Rollo*, p. 32; *see*

<http://www.cancer.org/Cancer/CancerCauses/OtherCarcinogens/IntheWorkplace/benzene> (visited July 31, 2011).

[39] Jahn, Frank, Cook, Mark, and Graham, Mark, *HYDROCARBON EXPLORATION AND PRODUCTION 112* (2nd ed., 2008).

[40] *Id. See also* Fontham, Elizabeth T.H. and Trapido, Edward, Oil and Water. Environ Health Perspect. 2010 October; 118(10): A422–A423 <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2957937/> (visited July 31, 2011).

[41] Per the new classification of adopted by the World Health Organization in 2002 Kransdorf, Mark. J. and Murphey, Mark. D., *IMAGING OF SOFT TISSUE TUMORS 1* (2nd ed., 2006).

[42] M. van Vliet, M. Kliffen, G. P. Krestin and C. F. van Dijke, *SOFT TISSUE SARCOMAS AT A GLANCE: CLINICAL, HISTIOLOGICAL, AND IMAGING FEATURES OF MALIGNANT EXTREMITY SOFT TISSUE TUMORS. EUROPEAN RADIOLOGY*, Volume 19, Number 6 (2009), 1499-1511.

[43] CA *rollo*, p. 125.

[44] M. van Vliet, *et al.*, *supra* note 42.

[45] *Id.*

the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[46]

This reasonable connection has not been convincingly refuted by respondents. On the contrary, respondents do not deny the functions performed by David on board M/T Raphael or the cargo transported by the tanker in which he was assigned. At best, respondents have cited contrary researches suggesting that the chemicals in crude oil do not induce the kind of disease contracted by David—a soft tissue sarcoma, which can supposedly occur to anybody regardless of the nature of their employment.[47] Furthermore, respondents harp on the alleged "opinion of the company physician confirming absence of work-relation"[48] that "explicitly stated that there is no documented exposure to previously cited etiology."[49]

A review of the documentary evidence submitted by parties will readily show that there is no such "opinion of the company physician confirming absence of work-relation," much less an explicit statement that David had "no documented exposure" to the etiology cited by Dr. Peña in his letter to the company-designated physician, Dr. Lim.[50] There is only an imprecise and ambivalent medical opinion regarding the work-relation of the MFH/UPS suffered by David that can be construed in favor of the employee.

With more reason, such construal in favor of David and the relation of his illness to the nature of his work must be sustained

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[46] *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 699; *NYK-Fil Ship Management v. Talavera*, G.R. No. 175894, November 14, 2008, 571 SCRA 183.

[47] *Rollo*, p. 136.

[48] *Id.* at 130.

[49] *Id.* at 129.

[50] CA *rollo*, p. 124.

considering that **the employers, through respondent OSG Manila, admitted that David had suffered a Grade I disability**. Notably, respondents have not denied the authenticity and genuineness of the Certification dated June 28, 2007 wherein the admission was made.[51] Instead, respondents whimsically argue that the admission merely pertains to the gravity of the ailment suffered by David but not its nature. This hair-splitting argument presented by respondents, and accepted by the appellate court, does not persuade. It ignores the fact that employers do not have the business of certifying the gravity of an illness suffered by an employee unless it is in relation to the latter's employment. Hence, the certification issued by OSG Manila regarding the classification/grading of David's illness can only be taken as a strong validation of the relation between David's illness and his employment as a seafarer with the respondents.

It is significant to note that OSG Manila issued the June 28, 2007 Certification after the issuance of the letters/certifications regarding the possible etiology of David's illness, where it was tacitly suggested by the MMC doctors that David's illness could be work-related provided there is a documented exposure to carcinogenic chemicals. It can be easily deduced, therefore, that the certification impliedly fills in the information required by Dr. Peña in his last letter to the company-designated physician regarding the nature of the work performed by David and his exposure to chemical carcinogens that could have led to his illness. After all, respondents, as David's employers, have knowledge regarding the functions of a Third Officer on board a crude tanker and the nature of the cargo transported in their vessels. Without a doubt, the certification issued by OSG Manila encompasses not only the gravity of David's illness but also its nature and relation to the employment undertaken by David in their crude tankers.

This conclusion is corroborated by respondents' contemporaneous act of extending to David sickness allowance under Sec. 20(B) of the POEA-SEC, since an employer is liable

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[51] *Rollo*, pp. 138-140.

for the payment of sickness allowance only "when the seafarer suffers work-related injury or illness during the term of his contract." Surely, an illness that has been recognized at the outset by the employer as work-related cannot evolve to an illness not connected to the seafarer's employment.

The quantum of evidence required in labor cases to determine the liability of an employer for the illness suffered by an employee under the POEA-SEC is not proof beyond reasonable doubt but mere substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[52] In this case, in accordance with the foregoing disquisitions, We find that there is substantial evidence to support the decision of the LA and the NLRC.

WHEREFORE, the petition is **GRANTED.** The March 11, 2011 Decision of the CA and its June 1, 2011 Resolution are hereby **REVERSED** and **SET ASIDE,** and the January 22, 2010 and March 30, 2010 Resolutions of the NLRC are **REINSTATED.**

SO ORDERED.

Sereno, C.J.,[*] *Perez,*[**] *Mendoza,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

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[52] *Government Service Insurance System v. Besitan*, G.R. No. 178901, November 23, 2011, 661 SCRA 186, 195.

[*] Additional member per Special Order No. 1311 dated September 21, 2012.

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

[***] Additional member per Special Order No. 1320 dated September 21, 2012.

SECOND DIVISION

[G.R. No. 202914. September 26, 2012]

GOVERNMENT SERVICE INSURANCE SYSTEM, represented by ROBERT G. VERGARA, *petitioner, vs.* **HEIDI R. CHUA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTION, PRESENT.—** The Court, in a Rule 45 petition, is not a trier of facts. An exception occurs when the findings of fact of the CA are at variance with the findings of the administrative bodies like the GSIS and the CSC; in this exceptional case, the Court reviews the evidence in order to arrive at the correct findings based on the records. In the present case, the GSIS and the CSC opine that the respondent's act of encoding false information in a computer terminal, to which the respondent has sole access, considered with the haste in the grant and release of the loan applications, was sufficient evidence of her concerted participation in the fraudulent scheme to defraud the GSIS. On the other hand, the CA opines that the above circumstances are not substantial evidence warranting her dismissal from the service, on the ground that the performance of the respondent's assigned tasks enjoys the presumption of regularity. After our review of the records, we find that the CA did not commit any reversible error when it downgraded the respondent's offense. The GSIS failed to adduce substantial evidence that the respondent was part of the fraudulent scheme that supported the finding of grave misconduct, dishonesty and reasonable violation of office rules and regulations against her, and the imposition of the penalty of dismissal from the service.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; RESPONDENT FOUND GUILTY OF SIMPLE MISCONDUCT, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, AND VIOLATION OF REASONABLE RULES; ABSENT THE ELEMENT OF CORRUPTION IN**

PERFORMING THE ACTS COMPLAINED OF, THE EMPLOYEE IS GUILTY ONLY OF SIMPLE MISCONDUCT.— [T]he CA is correct in ruling that the respondent is liable for simple misconduct, conduct prejudicial to the best interest of the service, and violation of reasonable office rules. The respondent admitted that she failed to follow SVP Order No. 02-99 and by allowing other individuals to use her computer terminal and the operator's code despite her knowledge of the prohibition under the rules. In addition, considering the nature of her work, she should have been more circumspect in observing the GSIS rules to ensure the integrity of the information found in its database. Lastly, the element of corruption by the respondent in violating SVP Order No. 02-99 and in encoding false salary updates was not proven. "Corruption as an element of grave misconduct consists in the act of an official or fiduciary person who **unlawfully** and **wrongfully uses** his station or character to procure **some benefit** for himself or for another person, contrary to duty and the rights of others." All these, taken together, only amount to simple misconduct.

3. **ID.; ID.; ID.; PROPER PENALTY FOR THE OFFENSES OF SIMPLE MISCONDUCT, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND VIOLATION OF REASONABLE OFFICE RULES.—** [T]he penalty imposed on the respondent (suspension for seven [7] months and two [2] days without salary and other benefits) requires modification. Section 55, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service (*Uniform Rules*) provides: Section 55. ***Penalty for the Most Serious Offense.*** If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the **most serious charge** or count and the rest shall be considered as **aggravating circumstances.** The respondent was found liable for three administrative offenses under Section 52, Rule IV of the Uniform Rules, these are: **first,** conduct prejudicial to the best interest of the service, which is classified as a grave offense penalized with suspension for six (6) months and one (1) day to one (1) year for the first offense; **second,** simple misconduct, which is classified as a less grave offense with the corresponding penalty of suspension for one (1) one month and one (1) day to six (6) months for the first offense; **and third,** violation of reasonable office rules

and regulations, a light offense imposing the penalty of reprimand for the first offense. Applying Section 55, Rule IV of the Uniform Rules, the respondent should be imposed a penalty ranging from suspension without pay for six (6) months and one (1) day to one (1) year. On account of aggravating circumstances that must be recognized because of the two other administrative liabilities — simple misconduct and violation of reasonable office rules and regulations — we consider her suspension for one (1) year without pay to be appropriate.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Joseph C. Cerezo for respondent.

R E S O L U T I O N

BRION, *J*.:

Heidi R. Chua (*respondent*) was employed as a Social Insurance Specialist in the Membership Division of petitioner Government Service Insurance System (*GSIS*), Pasig District Office. One of her duties was to update the Member's Service Profile in the GSIS Membership Database, which includes the salary updates of GSIS members to be used in the determination of the amount for loan applications. For this task, the respondent was assigned a computer terminal that can only be accessed using her ID and an operator's code to avoid unauthorized alteration and tampering of encoded records.

An administrative complaint charging grave misconduct, dishonesty and conduct prejudicial to the best interest of the service was filed against the respondent in connection with the false alteration by "padding" the salary updates of two (2) applicants, enabling them to receive salary loans in excess of what they were eligible to borrow. The respondent claimed good faith and lack of knowledge of any of the fraudulent scheme. She emphasized that she relied on the documents submitted to her in updating the records of the two (2) applicants.

The GSIS and CSC rulings

The GSIS found the respondent liable and ordered her dismissal from the service. It ruled that the fraudulent scheme could not have been perpetrated without the respondent's participation as terminal operator. The GSIS explained the fraudulent scheme in the following manner:

> And as pointed out by the respondent herself, the updating was done at the Pasig District Office while the loans were processed at the Manila District Office. More importantly, the loans of Messrs. Moncawe and San Diego were released by the Manila District Office only minutes after their basic salaries were updated at the Pasig District Office. This indicates that there was [a] **close coordination** between the employee who updated the basic salaries of PPC employees and the person who filed the application because the update should already have been done at the time of the filing of the application. Seen against this backdrop, the role of the employee who updated the basic salaries of the PPC employees assumes a whole new perspective. Clearly, this employee was handpicked to do something to ensure the timeliness of her actions *vis-à-vis* the filing of the loan applications. The respondent was the chosen one and using her computer terminal, she proceeded to do her role to complete the transaction.[1] (emphasis ours)

In addition, the GSIS noted that the respondent failed to present evidence that another person could have used her computer terminal to do the false alteration. It reasoned out that, in any event, the respondent knew that allowing another person to use her computer terminal was prohibited by the GSIS rules and regulations under SVP Order No. 02-99. It was also established that the exclusive use of a computer terminal by the designated terminal operator and the use of an operator's code with a tracing capability are security features not previously known to all terminal operators and operator code owners.

The Civil Service Commission (*CSC*) affirmed the GSIS decision and its conclusion that the respondent intentionally and with bad faith made the salary adjustments in order to allow

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[1] *Rollo*, p. 31.

the release of salary loans in excess of what the concerned applicants were eligible to apply for.

The CA's Ruling

The Court of Appeals (*CA*) modified the rulings of the GSIS and of the CSC by finding the respondent liable for simple misconduct, conduct prejudicial to the best interest of the service and violation of reasonable office rules and regulations. These violations carry the penalty of suspension for seven (7) months and two (2) days without salary and benefits, and the "reprimand" that a repetition of the same or similar acts shall be severely dealt with.[2]

In contrast with the GSIS and CSC, the CA found that the respondent merely performed her duties, *i.e.*, to encode information from documents submitted by the applicants after following the routine examination procedure laid down by the GSIS. Under this procedure, she had to ascertain the genuineness of the documents by checking the authorized signatories. The CA found that the documents subject of the unlawful transactions were processed at the Manila District Office and were merely encoded at the Pasig District Office.

The CA also considered that the respondent had no training in measures against forgery and falsification of documents, and had never been involved in anomalous transactions during her employment with the GSIS.

The Petition

This is a petition for review on *certiorari*[3] under Rule 45 of the Rules of Court filed by the GSIS to assail the CA's decision[4] dated February 17, 2012 which modified the decisions of the GSIS and the CSC with regard to the administrative offenses

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[2] *Id.* at 57.

[3] *Id.* at 3-37.

[4] Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba; *id.* at 43-58.

and the penalty imposed upon the respondent, from dismissal from the service to suspension with reprimand.

The Issue

The issues raised in the petition are the determinations of the administrative offense/s the respondent committed and of the proper imposable penalty. The GSIS argues that substantial evidence supports the commission by the respondent of the administrative charges warranting her dismissal from the service. The GSIS asserts that the respondent's participation in the perpetration of the fraudulent scheme in granting and releasing loan proceeds was vital, in that:

(a) The respondent is the owner of the computer terminal used that had access to the GSIS database; she also had knowledge of the operator's code used in the alteration of the members' records in the GSIS database.

(b) There is a presumption of exclusive use and control, which flows from the ownership of the computer terminal under SVP Order No. 02-99.

The GSIS imputes the following errors in the CA's decision, namely:

(a) Applying the presumption of regularity in the grant and release of the subject loan proceeds.

(b) In not finding that the unlawful modification of the records stems from a corrupt fraudulent scheme employed by the respondent and her cohorts, as shown by the evidence of the timing and separate situs of the grant and release of the loan proceeds, and the manipulation of the database to pave way for the payment of excessive loan benefits.

(c) In not giving respect to the factual findings of the GSIS and the CSC, which were supported by substantial evidence.

The Court's Ruling

We deny the petition outright as the CA did not commit any reversible error in ruling on the merits of the case. We find, however, a modification of the penalty imposed to be in order.

The Court, in a Rule 45 petition, is not a trier of facts.[5] An exception occurs when the findings of fact of the CA are at variance with the findings of the administrative bodies like the GSIS and the CSC; in this exceptional case, the Court reviews the evidence in order to arrive at the correct findings based on the records.[6]

In the present case, the GSIS and the CSC opine that the respondent's act of encoding false information in a computer terminal, to which the respondent has sole access, considered with the haste in the grant and release of the loan applications, was sufficient evidence of her concerted participation in the fraudulent scheme to defraud the GSIS. On the other hand, the CA opines that the above circumstances are not substantial evidence warranting her dismissal from the service, on the ground that the performance of the respondent's assigned tasks enjoys the presumption of regularity.

After our review of the records, we find that the CA did not commit any reversible error when it downgraded the respondent's offense. The GSIS failed to adduce substantial evidence that the respondent was part of the fraudulent scheme that supported the finding of grave misconduct, dishonesty and reasonable violation of office rules and regulations against her, and the imposition of the penalty of dismissal from the service.

The circumstance the GSIS and the CSC found sufficient to hold the respondent administratively liable was the fact that she alone — being the owner of the computer terminal used and having access to the operator's code to effect the alteration — could have done the encoding of the false salary updates. As the records show, the respondent did not deny that she might have made the false salary updates. What she contests is the sufficing circumstance as substantial evidence to support her participation in the fraudulent scheme against the GSIS.

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[5] *Civil Service Commission v. Belagan*, 483 Phil. 601, 614 (2004).

[6] *Castillo v. CA*, 329 Phil. 150, 159-160 (1996); see also *Civil Service Commission v. Belagan*, *supra*, at 614.

The records also disclose that:

First. The records do not contain any proof that the respondent's encoding of false salary updates was intentional and had been made in bad faith. We note that the GSIS failed to adduce evidence that the respondent's work in making updates in the GSIS' records was more than "clerical." The fact that the respondent was given her own computer terminal and access codes only proved the delicate nature of her work. The GSIS' use of security features alone does not indicate the true nature of the respondent's work and duties. The records show that the encoding of information in the GSIS database is based on the documents supplied the respondent by the applicants and encoding is done only after a routine examination is made, in accordance with procedures of the GSIS. In other words, the respondent encodes the information supplied to her, so long as it passes through GSIS' established routine examination procedure.

Second. There is no basis to support the GSIS' and the CSC's conclusions that there had been "close coordination" between the respondent and the other perpetrators; there was no evidence to establish a causal link between the fact of encoding (which was part of the respondent's regular assigned task) and the haste in the grant and release of salary loans (which were done in the Manila District Office).

Notably, the GSIS failed to show proof that she was actually a part of the fraudulent scheme. The records show that all the documents supplied to the respondent were prepared and executed at the Manila District Office and submitted to her by the applicants. The evidence does not show that she had a hand in the preparation of these documents. Neither is there evidence that she knew the employees working in the Manila District Office or the applicants. In fact, the records show that the liaison officer of the Philippine Postal Corporation, who was found to have been part of the anomalous transactions, barely knew the respondent. The records also show that, prior to this administrative complaint, the respondent was among the top employees in the Pasig District Office in her six (6) years of service and had not been involved in any anomalous transaction. Incidentally, no

evidence was adduced establishing that the respondent derived any form of benefit in performing the acts complained of.

Under the circumstances, the CA is correct in ruling that the respondent is liable for simple misconduct, conduct prejudicial to the best interest of the service, and violation of reasonable office rules. The respondent admitted that she failed to follow SVP Order No. 02-99 and by allowing other individuals to use her computer terminal and the operator's code despite her knowledge of the prohibition under the rules. In addition, considering the nature of her work, she should have been more circumspect in observing the GSIS rules to ensure the integrity of the information found in its database. Lastly, the element of corruption by the respondent in violating SVP Order No. 02-99 and in encoding false salary updates was not proven. "Corruption as an element of grave misconduct consists in the act of an official or fiduciary person who **unlawfully** and **wrongfully uses** his station or character to procure **some benefit** for himself or for another person, contrary to duty and the rights of others."[7] http://sc.judiciary.gov.ph/jurisprudence/2004/oct2004/132164.htm - _ftn39 All these, taken together, only amount to simple misconduct.

In these lights, the penalty imposed on the respondent (suspension for seven [7] months and two [2] days without salary and other benefits) requires modification. Section 55, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service (*Uniform Rules*) provides:

> Section 55. ***Penalty for the Most Serious Offense.*** If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the **most serious charge** or count and the rest shall be considered as **aggravating circumstances.** [emphases ours; italics supplied]

The respondent was found liable for three administrative offenses under Section 52, Rule IV of the Uniform Rules, these are: **first,** conduct prejudicial to the best interest of the service,

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[7] *Civil Service Commission v. Belagan*, *supra*, at 599 (emphases ours).

which is classified as a grave offense penalized with suspension for six (6) months and one (1) day to one (1) year for the first offense; **second,** simple misconduct, which is classified as a less grave offense with the corresponding penalty of suspension for one (1) one month and one (1) day to six (6) months for the first offense; **and third,** violation of reasonable office rules and regulations, a light offense imposing the penalty of reprimand for the first offense.

Applying Section 55, Rule IV of the Uniform Rules, the respondent should be imposed a penalty ranging from suspension without pay for six (6) months and one (1) day to one (1) year. On account of aggravating circumstances that must be recognized because of the two other administrative liabilities — simple misconduct and violation of reasonable office rules and regulations — we consider her suspension for one (1) year without pay to be appropriate.

WHEREFORE, premises considered, respondent Heidi R. Chua is ordered **SUSPENDED** for one (1) year without pay, as penalty for the offenses of simple misconduct, conduct prejudicial to the best interest of the service and violation of reasonable office rules. She is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

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[*] Designated as Acting Member in lieu of Associate Justice Mariano C. del Castillo, per Special Order No. 1308 dated September 21, 2012.

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— Liable for any loss, shortage, destruction, or impairment of the court's funds and revenues as custodians of these funds. *(Id.)*

— Primarily accountable for all funds collected for the Court and liable for any loss, shortage, destruction or impairment of these funds and properties; may be dismissed from the service for violation of this duty. (OCAD *vs*. Castillo, A.M. No. P-10-2805 [Formerly A.M. No. 10-4-57-MCTC), Sept. 18, 2012) p. 128

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— Shall be independent like all other Constitutional Commissions; Constitutional Commissions not under the control of the President even if they discharge functions that are executive in nature; Congress had no power to review the rules promulgated by the COMELEC for the implementation of R.A. No. 9189 or The Overseas Absentee Voting Act of 2003. *(Id.)*

— The constitutionally guaranteed independence of the COMELEC is preserved by the practice of delegation of authority or deputation; the DOJ is a mere deputy or delegate of the COMELEC whenever the latter directly acts in the fact-finding and preliminary investigation of election offenses. *(Id.)*

Prosecutorial power — COMELEC has the power to investigate and prosecute election offenses as an adjunct to the enforcement and administration of all election laws; has concurrent jurisdiction with the other prosecuting arms of the government, such as the Department of Justice, to conduct preliminary investigation of all election offenses and to prosecute the same. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

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(People of the Phils. *vs*. De Jesus *y* Apacible, G.R. No. 191753, Sept. 17, 2012) p. 114

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Findings thereof — Accorded the highest respect and are generally conclusive upon the Supreme Court, in the absence of grave abuse of discretion or palpable error. (Gulf Air Co. Phil. Branch [GF] *vs*. Commissioner of Internal Rev., G.R. No. 182045, Sept. 19, 2012) p. 493

COURT PERSONNEL

Cash clerk — An accountable employee charged with the safekeeping of fees collected from litigants and the rest of the public dealing with the court she was serving; expected to exercise honesty and fidelity in the discharge of that duty of safekeeping because she would thereby ensure the flow of judicial funds so essential to the orderly administration of justice. (Atty. Velasco *vs*. Baterbonia, A.M. No.P-06-2161[Formerly A.M. No. OCA IPI No. 05-2115-P], Sept. 25, 2012) p. 769

Conduct of — Must at all times act with propriety and decorum and, above all else, be beyond suspicion. (OCAD *vs*. Fontanilla, A.M. No. P-12-3086 [Formerly A.M. No. 11-7-75-MCTC], Sept. 18, 2012) p. 142

Duties — It is the sacred duty of every worker in the Judiciary to maintain before the people the good name and standing of the courts. (Atty. Velasco *vs*. Baterbonia, A.M. No.P-06-2161 [Formerly A.M. No. OCA IPI No. 05-2115-P], Sept. 25, 2012) p. 769

Grave misconduct — Committed by estafa through falsification for tampering the court's official receipts; dismissal, penalty for the first offense. (Atty. Velasco *vs*. Baterbonia, A.M. No.P-06-2161 [Formerly A.M. No. OCA IPI No. 05-2115-P], Sept. 25, 2012) p. 769

— To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. *(Id.)*

COURTS

Doctrine of hierarchy of courts — This principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court; direct invocation of the Supreme Court's jurisdiction allowed for special and important reasons. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

DAMAGES

Award of — Petitioners' prayer for damages and attorney's fees for the respondent's filing of the injunction case, denied; a resort to judicial processes is not, per se, evidence of ill-will upon which a claim for damages may be based, for the law could not have meant to impose a penalty on the right to litigate. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

Exemplary damages — Imposed in a criminal case as part of the civil liability when the crime was committed with one or more aggravating circumstances; awarded by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. (People of the Phils. *vs*. Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

Indemnity for medical negligence — Petitioners exerted earnest efforts to save the life of the patient and cannot be liable for loss of life; doctors are not insurers against mishaps or unusual consequences nor liable for honest mistake of judgment. (Dr. Cereno *vs*. CA, G.R. No. 167366, Sept. 26, 2012) p. 820

— Requisites are: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of; indispensability of expert testimonies. *(Id.)*

— The complainant has the burden of establishing breach of duty on the part of the doctors or surgeons; a verdict in malpractice action cannot be based on speculation or conjecture but must be proven within a reasonable medical probability based upon competent expert testimony. *(Id.)*

DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425)

Chain of custody rule — How to ascertain the identity of the illegal drugs presented in court as the ones actually seized from the accused. (People of the Phils. *vs*. Angkob *y* Mlang, G.R. No. 191062, Sept. 19, 2012) p. 528

— Not automatically impaired when the marking was not immediately made at the crime scene as long as the integrity and evidentiary value of the seized items have been preserved; marking at the police station and in the presence of the accused was sufficient compliance. *(Id.)*

Prosecution of illegal sale of dangerous drugs — Non-presentation as witnesses of other persons such as the investigator and the forensic chemist, not a crucial point against the prosecution. (People of the Phils. *vs*. Angkob *y* Mlang, G.R. No. 191062, Sept. 19, 2012) p. 528

DENIAL OF THE ACCUSED

Defense of — Essentially the weakest form of defense and can never overcome an affirmative testimony, particularly when it comes from the mouth of a credible witness. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

ELECTION CONTESTS

Appeal — The timely perfection of an appeal in an election case requires the payment of two different appeal fees, one to be paid in the trial court together with the filing of the notice of appeal within five days from notice of the decision, and the other to be paid in the COMELEC Cash Division within the 15-day period from the filing of the notice of appeal. (Lloren *vs*. COMELEC, G.R. No. 196355, Sept. 18, 2012) p. 288

Election protest — May be summarily dismissed when insufficient in form and content and in the payment of the cash deposit. (Lloren *vs*. COMELEC, G.R. No. 196355, Sept. 18, 2012) p. 288

EMPLOYMENT, TERMINATION OF

Dismissal — Due process must be observed; due process requirement is two-fold, procedural and substantive. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

— It is incumbent upon the employer to prove that employees were dismissed for just causes, including the duty to prove that the leave was large-scale in character and unauthorized. *(Id.)*

Due process in termination of employment case — A written notice of termination should embody the facts and circumstances to support the grounds justifying the termination. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

— Charges must be set for hearing or conference in accordance with Sec. 2, Book V, Rule XIII of the Implementing Rules and Regulations of the Labor Code and in line with ruling in King of Kings Transport, Inc. *(Id.)*

Illegal dismissal — An employee unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages computed from the time he was illegally dismissed. (New Philippine Skylanders, Inc. and/or Jennifer M. Eñano-Bote *vs*. Dakila, G.R. No. 199547, Sept. 24, 2012) p. 762

— Petitioners entitled to reinstatement and backwages for illegal dismissal; owing to the strained relations between the parties, separation pay in lieu of reinstatement, proper; petitioners entitled to nominal damages for violation of procedural due process. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

— The mere lack of authorized or just cause to terminate one's employment and the failure to observe due process do not ipso facto mean that the corporate officer acted with malice or bad faith. (New Philippine Skylanders, Inc. and/or Jennifer M. Eñano-Bote *vs*. Dakila, G.R. No. 199547, Sept. 24, 2012) p. 762

Reinstatement — Reinstatement is the rule; exception of "strained relations," when applicable. (Apo Chemical Manufacturing Corp. *vs*. Bides, G.R. No. 186002, Sept. 19, 2012) p. 519

Requirements of notice — The period of 24 hours allotted to petitioners to answer the notice, severely insufficient and in violation of the Implementing Rules of the Labor Code; "reasonable opportunity" to file a response, elucidated in King of Kings Transport, Inc. and under the Omnibus Rules. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

— Written notice served on the employee must specify the grounds for termination; mere allegation of "illegal strike" is insufficient to comply with the provisions of the law. *(Id.)*

Serious misconduct — A justifying ground for the dismissal of an employee, as explained in Aliviado v. Procter & Gamble, Phils., Inc. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

ENERGY REGULATORY COMMISSION (ERC)

Policy guidelines — The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective; they did not take away or impair any vested rights of the rural electric cooperatives but merely

interpret R.A. No. 7832 and its Implementing Rules and Regulations. (Association of Southern Tagalog Electric Cooperatives, Inc. [ASTEC] *vs*. Energy Regulatory Commission, G.R. No. 192117, Sept. 18, 2012) p. 243

ESTAFA

Commission of — Requires a clear showing that offended party parted with his money or property upon offender's false pretenses, and suffered damage thereby; damage as an element of estafa must be proved as conclusively as the offense itself. (People of the Phils. *vs*. Chua, G.R. No. 187052, Sept. 13, 2012) p. 16

EVIDENCE

Ill-motive — The Court finds defenses of ill-motive tenuous, shallow, specious and downright incredulous; such alleged motives cannot prevail over the positive and credible testimonies of complainants. (People of the Phils. *vs*. Garcia *y* Gumay, G.R. No. 200529, Sept. 19, 2012) p. 576

Substantial evidence — The quantum of evidence required in labor cases to determine the liability of employer for the illness suffered by an employee under the POEA-SEC; such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (David *vs*. OSG Shipmanagement Mla, Inc., and/or Michael Mar Shipping Services, G.R. No. 197205, Sept. 26, 2012) p. 906

FORUM SHOPPING

Certification of non-forum shopping — Guidelines regarding non-compliance with the requirements on, or submission of a defective verification and certification against forum shopping, explained. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

Concept — Forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of certiorari; elucidated. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Existence of — Explained; test to determine whether it exists. (Heirs of Leonardo Banaag *vs.* AMS Farming Corp., G.R. No. 187801, Sept. 13, 2012) p. 36

— The decision in the Department of Agrarian Reform Adjudication Board case will not constitute *res judicata* to the civil case before the RTC. *(Id.)*

HEARSAY RULE, EXCEPTIONS TO

Res gestae — Requisites: (a) that the principal act, the *res gestae*, must be a startling occurrence; (b) the statements were made before the declarant had the time to contrive or devise a falsehood; and (c) the statements must concern the occurrence in question and its immediate attending circumstances. (People of the Phils. *vs.* Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

ILLEGAL POSSESSION OF PROHIBITED DRUGS

Commission of — Elements: 1) the accused is in possession of an item or object which is identified to be a prohibited drug; 2) such possession is not authorized by law; and 3) the accused freely and consciously possessed the said drug. (People of the Phils. *vs.* De Jesus *y* Apacible, G.R. No. 191753, Sept. 17, 2012) p. 114

INCOME TAX

Deficiency tax — Respondent hospital liable for the payment of deficiency tax on "Other Income-Net." (Commissioner of Internal Rev. *vs.* St. Luke's Medical Center, Inc., G.R. No. 195909, Sept. 26, 2012) p. 867

INFORMATION

Sufficiency of — Not negated by an incomplete or defective designation of the crime in the caption or other parts of the information but by the narration of facts and circumstances which adequately depicts a crime and sufficiently apprises the accused of the nature and cause of the accusation against him. (People of the Phils. *vs.* Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

INJUNCTION

Application in foreclosure of real and chattel mortgage — No injunction can be issued against the Land Bank of the Philippines to foreclose on the real and chattel mortgage since the petitioner corporation had defaulted in the payment of its overdue loan obligation with the bank; foreclosure supported by the express mandate of P.D. No. 385. (Agoo Rice Mill Corp. *vs*. Land Bank of the Phils., G.R. No. 173036, Sept. 26, 2012) p. 837

Main action for injunction — Distinguished from preliminary injunction. (BP Phils., Inc. *vs*. Clark Trading Corp., G.R. No. 175284, Sept. 19, 2012) p. 481

— Requisites are: (1) the existence of a right to be protected; and (2) acts which are violative of said right. *(Id.)*

— Seeks a judgment embodying a final injunction. *(Id.)*

Nature — A judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act; may be the main action or merely a provisional remedy for and as an incident in the main action; requisites. (Agoo Rice Mill Corp. *vs*. Land Bank of the Phils., G.R. No. 173036, Sept. 26, 2012) p. 837

— An injunction suit becomes moot and academic after the act sought to be enjoined had already been consummated. *(Id.)*

Proof required — A party seeking to avail of an injunctive relief must prove that he or she possesses a right *in esse* or one that is actual or existing; must be clear and unmistakable, and not contingent, abstract or future rights, or one that may never arise. (Agoo Rice Mill Corp. *vs*. Land Bank of the Phils., G.R. No. 173036, Sept. 26, 2012) p. 837

INSURANCE

Limited liability clause — Declared void for being against public policy; explained. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Reyes, J., dissenting opinion*) p. 169

Right of subrogation — The insurer can be subrogated only to the rights as the insured may have against the wrongdoer. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012) p. 169

INTERLOCUTORY ORDER

Nature — An order denying a motion to quash is interlocutory and, therefore, not appealable, nor can it be the subject of a petition for certiorari; remedy. (Querijero *vs*. Palmes-Limitar, G.R. No. 166467, Sept. 17, 2012) p. 106

INTERPLEADER

Petition for — The defendants-in-interpleader must be assessed the payment of the correct docket fee arising from their respective claims. (Bank of Commerce *vs*. Planters Dev't. Bank, G.R. Nos. 154470-71, Sept. 24, 2012) p. 627

— When proper; discussed; the remedy merely provides an avenue for the conflicting claims on the same subject matter to be threshed out in an action. *(Id.)*

JUDGES

Conduct unbecoming of a judge — Manifested by his rude behavior in dealing with the public. (Magtibay *vs*. Judge Indar, A.M. No. RTJ-11-2271 [Formerly OCA IPI No. 09-3239-RTJ], Sept. 24, 2012) p. 617

Errors committed in the exercise of their adjudicative function — A judge cannot be held administratively liable for every erroneous decision; the error must be gross and deliberate, a product of a perverted judicial mind, or a result of gross ignorance of the law. (Prosec. Baculi *vs*. Judge Belen, A.M. No. RTJ-09-2179 [Formerly A.M. OCA IPI No. 08-2873-RTJ], Sept. 24, 2012) p. 598

Gross inefficiency — Committed by respondent judge, especially because her inability to decide the case within the required period was absolutely devoid of excuse; warranted the imposition of administrative sanction against her; penalty. (Atty. Maturan *vs.* Judge Gutierrez-Torres, A.M. OCA IPI No. 04-1606-MTJ, Sept. 19, 2012) p. 430

Undue delay in the disposition of cases — Committed when judge did not act on the motion pending before his court; violation of Rule 3.05 of the Code of Judicial Conduct. (Magtibay *vs.* Judge Indar, A.M. No. RTJ-11-2271 [Formerly OCA IPI No. 09-3239-RTJ], Sept. 24, 2012) p. 617

JUDGMENTS

Annulment of — An exceptional remedy that may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud; safeguards instituted by the Court. (Dare Adventure Farm Corp. *vs.* Hon. CA, G.R. No. 161122, Sept. 24, 2012) p. 681

— Remedy of annulment extends only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. *(Id.)*

— The annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with; petitioner's proper recourse was either an action for quieting of title or an action for reconveyance of the property. *(Id.)*

Conclusiveness of judgment — A judgment of a court is conclusive and binding only upon the parties and those who are their successors in interest by title after the

commencement of the action in court; the principle conforms to the constitutional guarantee of due process of law. (Dare Adventure Farm Corp. *vs*. Hon. CA, G.R. No. 161122, Sept. 24, 2012) p. 681

— Facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action; doctrine, applied. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

Finality of judgment —It is only when the decision is void, as when there is denial of due process or when it is rendered by a court without jurisdiction, that there can be a reopening of the case. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Brion, J., dissenting opinion*) p. 169

— The court loses jurisdiction over a case that has attained finality except for purposes of its execution; the final judgment begins to carry the effect of *res adjudicata*. *(Id.)*

— The doctrine of finality of judgment is not absolute; recognized exceptions to the rule on the non-reviewability of final judgments are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and when relief from judgment is provided when circumstances transpire rendering the execution of a final decision unjust and inequitable. *(Id.)*

— The Supreme Court itself is bound by the finality of the judgment because: (1) the finality is by reason of the Rules that the Court itself promulgated; and (2) of societal reasons deeper than what the Rules of Court expressly provides. *(Id.)*

Immutability of final judgment — A decision that has attained finality becomes immutable and unalterable and cannot be modified in any respect; exceptions, among them: (a) the correction of clerical errors; (b) the so-called *nunc pro*

tunc entries that cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision that render its execution unjust and inequitable. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012) p. 169

(Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Brion, J., dissenting opinion*) p. 169

— A final judgment may be reopened and reviewed by the Court in order to render just and equitable relief. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Abad, J., concurring opinion*) p. 169

— Cannot be disregarded by the Supreme Court without causing damage to itself and to the society that it serves; without this element of finality, the Court loses ground in the areas of respect and credibility. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Brion, J., dissenting opinion*) p. 169

— Two-fold purpose: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. (Dare Adventure Farm Corp. *vs*. Hon. CA, G.R. No. 161122, Sept. 24, 2012) p. 681

Stare decisis— Applied. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Reyes, J., dissenting opinion*) p. 169

JUDICIAL DEPARTMENT

Speedy disposition of cases — Period to decide or resolve cases or matters; mandate of the Constitution is for justices and judges to be efficient and speedy in the disposition

of cases or matters pending in their courts. (Atty. Maturan *vs*. Judge Gutierrez-Torres, A.M. OCA IPI No. 04-1606-MTJ, Sept. 19, 2012) p. 430

JURISDICTION

Concurrent jurisdiction — The doctrine means equal jurisdiction to deal with the same subject matter; concurrent jurisdiction of the Department of Justice and the COMELEC in conducting preliminary investigation of election offenses; rule is discussed. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Doctrine of Primary Jurisdiction — The interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the courts construing such rule or regulation. (Bank of Commerce *vs*. Planters Dev't. Bank, G.R. Nos. 154470-71, Sept. 24, 2012) p. 627

JUSTIFYING CIRCUMSTANCES

Self-defense — Elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense; burden of proof on person who invokes it; unlawful aggression as the most important element. (People of the Phils. *vs*. Laurio *y* Rosales, G.R. No. 182523, Sept. 13, 2012) p. 1

— Mere allegation by appellant that the victim pulled out a knife is insufficient to prove unlawful aggression and warrant justification of the victim's killing. *(Id.)*

LAND REGISTRATION

Action for reconveyance of property — The remedy belongs to the landowner whose property has been wrongfully or erroneously registered in another person's name, and such landowner demands the reconveyance of the property in the proper court of justice. (Dare Adventure Farm Corp. *vs*. Hon. CA, G.R. No. 161122, Sept. 24, 2012) p. 681

LAWS

Effect and application of laws — Publication required in order for administrative rules and regulations to be effective; purpose. (Association of Southern Tagalog Electric Cooperatives, Inc. [ASTEC] *vs*. Energy Regulatory Commission, G.R. No. 192117, Sept. 18, 2012) p. 243

— Publication requirement does not apply to the Committee Rules in case at bar because they merely complement and reiterate Rule 112 of the Rules on Criminal Procedure. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012; *Carpio, J., separate concurring and dissenting opinion*) p. 302

— The policy guidelines of the Energy Regulatory Commission are not required to be filed with the U.P. Law Center. (Association of Southern Tagalog Electric Cooperatives, Inc. [ASTEC] *vs*. Energy Regulatory Commission, G.R. No. 192117, Sept. 18, 2012) p. 243

— The policy guidelines of the Energy Regulatory Commission did not modify, amend or supplant the Implementing Rules and Regulations; publication not necessary for their effectivity. *(Id.)*

Publication requirement — A necessary component of procedural due process to give as wide publicity as possible so that all persons having an interest in the proceedings may be notified thereof; covers administrative regulations and issuances. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

— Exceptions to the requirement of publication: 1.) an interpretative regulation; 2.) a regulation that is merely internal in nature; and 3.) a letter of instruction issued by an administrative agency concerning rules or guidelines to be followed by subordinates in the performance of their duties. (Association of Southern Tagalog Electric Cooperatives, Inc. [ASTEC] *vs*. Energy Regulatory Commission, G.R. No. 192117, Sept. 18, 2012) p. 243

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — Acting as a cashier is considered as a principal by direct participation; the provisions of Article 13(b) of the Labor Code and Section 6 of R.A. No. 8042 unequivocal that illegal recruitment may or may not be for profit. (People of the Phils. *vs*. Chua, G.R. No. 187052, Sept. 13, 2012) p. 16

Illegal recruitment and estafa — A person may be convicted for both illegal recruitment and estafa; elements of estafa by means of deceit: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. (People of the Phils. *vs*. Chua, G.R. No. 187052, Sept. 13, 2012) p. 16

Illegal recruitment in large scale — Considered as an offense involving economic sabotage; punishable by life imprisonment and a fine of not less than ₱500,000 not more than ₱1,000,000; maximum penalty imposed if committed by a non-licensee or non-holder of authority. (People of the Phils. *vs*. Chua, G.R. No. 187052, Sept. 13, 2012) p. 16

— Elements: 1) the offender undertakes any of the activities within the meaning of “recruitment and placement” under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of R.A. No. 8042); 2) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; and 3) the offender commits any of the acts of recruitment and placement against three or more persons, individually or as a group. *(Id.)*

MOTION TO DISMISS

Issues raised — Issues which are matters of defense are not proper in a motion to dismiss and must be threshed out in a full-blown trial on the merits. (Belle Corp. *vs*. De Leon-Banks, G.R. No. 174669, Sept. 19, 2012) p. 467

NATIONAL INTERNAL REVENUE CODE

Section 27(b) of — Does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G); effect. (Commissioner of Internal Rev. *vs*. St. Luke's Medical Center, Inc., G.R. No. 195909, Sept. 26, 2012) p. 867

— Imposition of 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals; qualifications for hospitals, expounded. *(Id.)*

Section 30 (E) of — A charitable institution organized and operated exclusively for charitable purposes is allowed to engage in activities conducted for profit without losing its tax-exempt status for its not-for-profit activities; its income of whatever kind and character from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax. (Commissioner of Internal Rev. *vs*. St. Luke's Medical Center, Inc., G.R. No. 195909, Sept. 26, 2012) p. 867

— Defines the corporation or association that is exempt from income tax; requirements: (1) A non-stock corporation or association; (2) Organized exclusively for charitable purposes; (3) Operated exclusively for charitable purposes; and (4) No part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. *(Id.)*

— To be exempt from income taxes, the charitable institution must be organized and operated exclusively for charitable purposes and for social welfare. *(Id.)*

NEGLIGENCE

Medical malpractice — Requisites are: (1) that the health care provider, either by his act or omission, had been negligent, and (2) that such act or omission proximately caused the injury complained of; indispensability of expert testimonies. (Dr. Cereno *vs.* CA, G.R. No. 167366, Sept. 26, 2012) p. 820

PARTIES TO CIVIL ACTIONS

Indispensable parties — The hospital where petitioner doctors are employed cannot be considered an indispensable party. (Dr. Cereno *vs.* CA, G.R. No. 167366, Sept. 26, 2012) p. 820

— The nature of the solidary obligation under the surety does not make one an indispensable party; failure to implead an indispensable party is not a ground for the dismissal of an action, as the remedy is to implead the party claimed to be indispensable; RTC erred in dismissing the complaint without prejudice. (Living @ Sense, Inc. *vs.* Malayan Ins. Co., Inc., G.R. No. 193753, Sept. 26, 2012) p. 861

PERSONS CRIMINALLY LIABLE

Principal by indispensable cooperation — Explained; the acts of the appellant were not indispensable in the commission of the crime of rape. (People of the Phils. *vs.* Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application — Deemed read and incorporated into the contract of employment of seafarers; disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of his contract; unless contrary evidence is presented by the seafarer's employer/s, disputable presumption stands. (David *vs.* OSG Shipmanagement Mla, Inc., and/or Michael Mar Shipping Services, G.R. No. 197205, Sept. 26, 2012) p. 906

Compensability of illness — An illness that has been recognized at the outset by the employer as work-related cannot evolve to an illness not connected to the seafarer's employment. (David *vs*. OSG Shipmanagement Mla, Inc., and/or Michael Mar Shipping Services, G.R. No. 197205, Sept. 26, 2012) p. 906

— It is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer; it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or aggravation of any pre-existing condition he might have had. *(Id.)*

PLEADINGS

Certification — A petition is flawed when the certification is signed only by the counsel and not by the party; reason; rule relaxed for meritorious cases. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

Construction — When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

Ultimate facts — The important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant; the principal, determinative, constitutive facts upon the existence of which the cause of action rests. (Belle Corp. *vs*. De Leon-Banks, G.R. No. 174669, Sept. 19, 2012) p. 467

Verification and certification of non-forum shopping —The subsequent filing of the secretary's certificate, ratifying all the acts of the petitioners' counsel, could not cure the defect in the verification or certification requirements, where the authorizing board resolution had been passed

beyond the reglementary period for filing the petition. (Teodoro *vs*. Continental Cement Corp., G.R. No. 165355, Sept. 26, 2012) p. 803

PRELIMINARY INJUNCTION

Issuance of TRO — Order for intervenors to submit their comments on the application for issuance of a TRO constitutes substantial compliance since the latter do not strictly call for a formal or trial-type hearing. (Magtibay *vs*. Judge Indar, A.M. No. RTJ-11-2271 [Formerly OCA IPI No. 09-3239-RTJ], Sept. 24, 2012) p. 617

Writ of — The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case. (Magtibay *vs*. Judge Indar, A.M. No. RTJ-11-2271 [Formerly OCA IPI No. 09-3239-RTJ], Sept. 24, 2012) p. 617

PRELIMINARY INVESTIGATION

Absence or irregularity thereof — Effect; proper course of action. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Nature — Can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012; *Mendoza, J., separate concurring opinion*) p. 302

— The conduct of preliminary investigation is subject to the requirements of both substantive and procedural due process; considered as a judicial proceeding wherein the prosecutor or investigating officer acts as a quasi-judicial officer. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

— The right to a preliminary investigation is not a mere formal or technical right but a substantive one, forming part of due process in criminal justice; a judicial inquiry; a judicial proceeding. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012; *Mendoza, J., separate concurring opinion*) p. 302

Preliminary investigation of election offenses — COMELEC given the power, concurrent with the other prosecuting arms of the government such as the DOJ, to conduct preliminary investigation of all election offenses; power granted by the Constitution, statutes, and the Rules of Court. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Proceedings — Not the occasion for the full and exhaustive display of the parties' respective evidence but the presentation only of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof and should be held for trial. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Purpose — The proceeding involves the reception of evidence showing that, more likely than not, a respondent could have committed the offense charged and should be held for trial; intended to protect the accused from hasty, malicious and oppressive prosecution; the right to this proceeding, absent an express provision of law, cannot be denied. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012; *Mendoza, J., separate concurring opinion*) p. 302

Purpose and nature — Discussed; not a mere formal or technical right but a substantive one, forming part of due process in criminal justice; basic due process rights, enumerated. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

PRESIDENT

Doctrine of command responsibility — Applies to *amparo* proceedings; the President, as Commander-in-Chief of the Armed Forces of the Philippines, can be held liable for affront against the party's rights to life, liberty and security;

elements. (In the Matter of the Petition for the Writ of *Amparo* and the Writ of *Habeas Corpus Dat*a in Favor of Francis Saez *vs*. Arroyo, G.R. No. 183533, Sept. 25, 2012) p. 781

Immunity from suit — Exists only in concurrence with the President's incumbency; cannot be invoked by a non-sitting president even for acts committed during his or her tenure. (In the Matter of the Petition for the Writ of *Amparo* and the Writ of *Habeas Corpus Data* in Favor of Francis Saez *vs*. Arroyo, G.R. No. 183533, Sept. 25, 2012) p. 781

— The President cannot be completely dropped as a respondent in a petition for the privilege of the writs of *amparo* and habeas data merely on the basis of the presidential immunity from suit; petitioner failed to establish accountability of the President under the doctrine of command responsibility. *(Id.)*

Power of control — Administrative Order 161 prohibited the establishment of separate productivity and performance incentive awards; also expressly revoked all administrative authorization/decrees relative to the grant of incentive award or bonus. (Dr. Velasco *vs*. COA, G.R. No. 189774, Sept. 18, 2012) p. 226

— Administrative Orders 161 and 103 were issued in the valid exercise of the President's constitutional power of control and authority over the executive departments; the grant of the incentive awards without the imprimatur of the Office of the President is null and void. *(Id.)*

PRESUMPTIONS

Presumption of regularity — Cannot prevail over the facts proven and already established in the records of the case finding that the Deed of Sale of Undivided Parcel of Land was fictitious and simulated. (De Belen vda. De Cabalu *vs*. Sps. Renato Tabu and Dolores Laxamana, G.R. No. 188417, Sept. 24, 2012) p. 729

Presumption of regularity in the performance of official duty — Stands, absent sufficient evidence proving that the certification of qualification issued by the revenue district officer was issued in excess of authority. (Asia International Auctioneers, Inc. vs. Commissioner of Internal Rev., G.R. No. 179115, Sept. 26, 2012) p. 852

PREVENTIVE SUSPENSION

Prerequisites — Before an order of preventive suspension pending an investigation may validly issue, two prerequisites need to be shown: 1) that the proper disciplining authority has served a formal charge to the affected officer or employee; and 2) that the charge involves either dishonesty, oppression, grave misconduct, neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of the charges which would warrant her removal from the service. (Trade and Investment Dev't.Corp. of the Phils.*vs*. Manalang-Demigillo, G.R. No. 176343, Sept. 18, 2012) p. 152

Purpose — Preventing the subordinate officer or employee from influencing the witnesses and tampering the documentary evidence under her custody. (Trade and Investment Dev't.Corp. of the Phils.*vs*. Manalang-Demigillo, G.R. No. 176343, Sept. 18, 2012) p. 152

When authorized — If the charge involves dishonesty, oppression, or grave misconduct, or neglect in the performance of duty, or there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service. (Trade and Investment Dev't.Corp. of the Phils.*vs*. Manalang-Demigillo, G.R. No. 176343, Sept. 18, 2012) p. 152

PUBLIC OFFICERS AND EMPLOYEES

Accountability of — The employees, who had no participation in the approval of the subject incentives, were neither in bad faith nor grossly negligent for having received the benefits under the circumstances; they are under no obligation to refund them. (Dr. Velasco *vs*. COA, G.R. No. 189774, Sept. 18, 2012) p. 226

Gross negligence — Public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith. (Dr. Velasco *vs*. COA, G.R. No. 189774, Sept. 18, 2012) p. 226

QUALIFYING CIRCUMSTANCES

Treachery — Appellant's act of stabbing the victim while he was down demonstrates treachery; defined. (People of the Phils. *vs*. Laurio *y* Rosales, G.R. No. 182523, Sept. 13, 2012) p. 1

QUIETING OF TITLE

Action for — A common law remedy designed for the removal of any cloud upon, or doubt, or uncertainty affecting title to real property; may be brought whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title. (Dare Adventure Farm Corp. *vs*. Hon. CA, G.R. No. 161122, Sept. 24, 2012) p. 681

RAPE

Commission of — The essence of rape is carnal knowledge of a female either against her will (through force or intimidation) or without her consent (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented); carnal knowledge of a female while she was asleep constituted rape. (People of the Phils. *vs*. Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

Prosecution of rape cases — Direct evidence, not the only means of proving rape beyond reasonable doubt; also established by circumstantial evidence. (People of the Phils. *vs*. Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

— The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence; private nature of the crime justifies the acceptance of the lone testimony of a credible victim to convict. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

Statutory rape — Proven by the victim's categorical and spontaneous testimony and corroborated by medical findings of hymenal laceration. (People of the Phils. *vs*. Garcia *y* Gumay, G.R. No. 200529, Sept. 19, 2012) p. 576

— The prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. *(Id.)*

RELIEF FROM JUDGMENT

Petition for — Properly dismissed since it was filed out of time; the CIR's filing with the CTA of the petition for relief did not conform to the 60-day requirement. (Commissioner of Internal Rev. *vs*. Court of Tax Appeals, G.R. No. 190680, Sept. 13, 2012) p. 55

RES JUDICATA

Bar by prior judgment — Explained; elements. (Solid Bank *vs*. Metropolitan Bank and Trust Co., G.R. No. 153799, Sept. 17, 2012) p. 66

Concepts — Defined; requisites for *res judicata*, in its concept as a bar by former judgment to apply. (Solid Bank *vs*. Metropolitan Bank and Trust Co., G.R. No. 153799, Sept. 17, 2012) p. 66

Elements — Enumerated. (Rizal Commercial Banking Corp. *vs*. Hilario, G.R. No. 160446, Sept. 19, 2012) p. 452

Identity of parties — Only substantial identity of the parties is necessary; when present. (Rizal Commercial Banking Corp. *vs*. Hilario, G.R. No. 160446, Sept. 19, 2012) p. 452

Requisites — A judicial compromise in another action which will fully adjudicate or settle the issues raised in the action under consideration has the effect of *res judicata*. (Rizal Commercial Banking Corp. *vs*. Hilario, G.R. No. 160446, Sept. 19, 2012) p. 452

RULES OF PROCEDURE

Application — Technical rules of procedure cannot be accorded primacy when there was at least substantial compliance with the requirements and where petitioner himself testified in the hearings. (In the Matter of the Petition for the Writ of Amparo and the Writ of Habeas Corpus Data in Favor of Francis Saez *vs*. Arroyo, G.R. No. 183533, Sept. 25, 2012) p. 781

Liberal construction — Technicalities liberally construed in exceptional cases; outright dismissal of cases rendered unjust by the presence of a satisfactory and persuasive explanation. (Rivera-Pascual *vs*. Sps. Lim, G.R. No. 191837, Sept. 19, 2012) p. 543

SALES

Null and void contract of absolute sale — Produces no legal effects and transmits no rights whatsoever. (De Belen *vda. De* Cabalu *vs*. Sps. Laxamana, G.R. No. 188417, Sept. 24, 2012) p. 729

SHERIFFS

Dishonesty, grave misconduct and dereliction of duty — Committed when sheriff failed to observe the proper procedure in collecting execution expenses and conducting an execution sale. (Pilot *vs*. Baron, A.M. No. P-12-3087 [Formerly A.M. OCA IPI No. 08-2720-P], Sept. 24, 2012) p. 592

Duties — As a ministerial officer, a sheriff is expected to faithfully perform what is incumbent upon him, even in the absence of instruction; in serving court writs and processes and in implementing court orders, he cannot afford to err

without affecting the integrity of his office and the efficient administration of justice. (Pilot *vs*. Baron, A.M. No. P-12-3087 [Formerly A.M. OCA IPI No. 08-2720-P], Sept. 24, 2012) p. 592

— Sheriff has the mandated ministerial duty to execute judgments without delay "unless restrained by a court order"; serving a notice to vacate but nothing more for the two months following the issuance of the Writ of Execution, not a discharge of duty. (Nazar *vda. de* Feliciano *vs*. Rivera, A.M. No. P-11-2920 [Formerly OCA IPI No. 09-3300-P], Sept. 19, 2012) p. 441

— Sheriff has the mandated ministerial duty to serve writs of execution with utmost dispatch; unreasonable failure or neglect to perform such function constitutes inefficiency and gross neglect of duty. *(Id.)*

Simple neglect of duty — Committed by unreasonable delay in implementing the Writ of Execution; defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference; classified as a less grave offense; penalty. (Nazar *vda. de* Feliciano *vs*. Rivera, A.M. No. P-11-2920 [Formerly OCA IPI No. 09-3300-P], Sept. 19, 2012) p. 441

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Civil liability of appellant — Award of damages consistent with the objective of R.A. No. 7610; civil indemnity to the child, proper in case of violation of Section 5 (a), Article III of R.A. No. 7610; also in compliance with Article 100 of the RPC. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

Penalty — For violation of Section 5, Article III of R.A. No. 7610, the penalty prescribed is reclusion temporal in its medium period to *reclusion perpetua;* Indeterminate Sentence Law, applicable. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

Purpose of the law — To provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; rationale. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

Section 5 (a) — Elements. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

Violation of — The appellant facilitated or induced child prostitution; liability under Section 5 (a), of Article III, R.A. No. 7610. (People of the Phils. *vs*. Dulay *y* Pascual, G.R. No. 193854, Sept. 24, 2012) p. 742

STATUTORY RAPE

Commission of — Minority of the victim, not sufficiently established in accordance with the guidelines laid down by the Court in People *vs*. Pruna. (People of the Phils. *vs*. Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

STRIKES

Evidence of — Explanation letters that the employees agreed to go on leave to stress their demands against the company, not accepted as direct testimony; they cannot overcome the clear and categorical statements of petitioners in verified position papers which are entitled to great weight and value. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

Illegal strike — An ordinary striking worker cannot be terminated for mere participation in an illegal strike; there must be proof that he committed illegal acts during a strike. (Naranjo *vs*. Biomedica Health Care, Inc., G.R. No. 193789, Sept. 19, 2012) p. 551

— That there was temporary stoppage of work by the "concerted" action of employees, not proven in case at bar; erroneous to liken the alleged mass leave to an illegal strike much less to terminate petitioners' services for it. *(Id.)*

SUPREME COURT

Court en banc — In exceptional cases, it has reopened and accepted for review decisions that have otherwise attained finality; it has suspended the rules of procedure when there are special and compelling reasons to alter a judgment that has been declared final even by the Court itself. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Abad, J., concurring opinion*) p. 169

Internal Rules of the Supreme Court — A second motion for reconsideration shall not be entertained, except in the "higher interest of justice" by a two-thirds vote of the Court en banc's members; movant must substantially show that the assailed ruling is both (1) legally erroneous, and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Brion, J., dissenting opinion*) p. 169

— Matters and cases cognizable by the Court en banc, enumerated. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012) p. 169

— Resolution and disposition of a case by the Court en banc, explained. *(Id.)*

— The Court en banc has the power to review and take cognizance of cases of sufficient importance; second motion for reconsideration, when entertained. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Abad, J., concurring opinion*) p. 169

Jurisdiction — The Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation; exception. (Arroyo *vs*. Dept. of Justice, G.R. No. 199082, Sept. 18, 2012) p. 302

Powers of — Supreme Court has express constitutional power to review judgments of lower courts, on appeal or on certiorari, and not to reopen and review its own judgment that has lapsed to finality. (Keppel Cebu Shipyard, Inc. *vs*. Pioneer Ins. and Surety Corp., G.R. Nos. 180880-81, Sept. 18, 2012; *Brion, J., dissenting opinion*) p. 169

TAX AMNESTY

Concept — A general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violating a tax law; the grant thereof must be construed strictly against the taxpayer and liberally in favor of the taxing authority. (Asia International Auctioneers, Inc. *vs*. Commissioner of Internal Rev., G.R. No. 179115, Sept. 26, 2012) p. 852

Coverage — R.A. No. 9399 does not preclude taxpayers within its coverage from availing of other tax amnesty programs; R.A. No. 9480 does not exclude from its coverage taxpayers operating within special economic zones; liberty of taxpayer to choose a tax amnesty program as long as it is within the bounds of the law. (Asia International Auctioneers, Inc. *vs*. Commissioner of Internal Rev., G.R. No. 179115, Sept. 26, 2012) p. 852

TAX EXEMPTION

Charitable institutions — Not ipso facto entitled to a tax exemption; an organization must meet the substantive test of charity in the Lung Center case; requirements for tax exemption specified by the law granting it. (Commissioner of Internal Rev. *vs*. St. Luke's Medical Center, Inc., G.R. No. 195909, Sept. 26, 2012) p. 867

TAX LAWS

Interpretation — Rules and regulations interpreting the Tax Code and promulgated by the Secretary of Finance given weight and respect by the courts; absent any showing that Revenue Regulations No. 6-66 is inconsistent with the provisions of the NIRC, its stipulations shall be upheld

and applied accordingly; principle of legislative approval by re-enactment, applied. (Gulf Air Co. Phil. Branch [GF] *vs*. Commissioner of Internal Rev., G.R. No. 182045, Sept. 19, 2012) p. 493

Operation — Tax laws, including rules and regulations, operate prospectively unless otherwise legislatively intended by express terms or by necessary implication. (Gulf Air Co. Phil. Branch [GF] *vs*. Commissioner of Internal Rev., G.R. No. 182045, Sept. 19, 2012) p. 493

TAX REFUND

Construction — Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State; construed strictly against a taxpayer and liberally in favor of the State. (Gulf Air Co. Phil. Branch (GF) *vs*. Commissioner of Internal Rev., G.R. No. 182045, Sept. 19, 2012) p. 493

TAXES

Indirect taxes — Distinguished from withholding taxes; the deficiency VAT and excise tax cannot be deemed as withholding taxes merely because they constitute indirect taxes. (Asia International Auctioneers, Inc. *vs*. Commissioner of Internal Rev., G.R. No. 179115, Sept. 26, 2012) p. 852

TRIAL

Allegation of bad faith — Bad faith is a question of fact and is evidentiary; has to be established with clear and convincing evidence; best passed upon after a full-blown trial on the merits. (Belle Corp. *vs*. De Leon-Banks, G.R. No. 174669, Sept. 19, 2012) p. 467

WITNESSES

Credibility of — Assessment of both the RTC and the CA as to credibility of witness, accorded great weight by the Supreme Court, absent any showing that the RTC, in the first instance, and the CA, on review, had ignored,

misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense. (People of the Phils. *vs*. Lupac *y* Flores, G.R. No. 182230, Sept. 19, 2012) p. 505

— Courts inclined to give credit to testimonies of rape victim of tender age, coupled with her voluntary submission to medical examination and willingness to undergo public trial. (People of the Phils. *vs*. Garcia *y* Gumay, G.R. No. 200529, Sept. 19, 2012) p. 576

— 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.)*

(People of the Phils. *vs*. De Jesus *y* Apacible, G.R. No. 191753, Sept. 17, 2012) p. 114

(People of the Phils. *vs*. Laurio *y* Rosales, G.R. No. 182523, Sept. 13, 2012) p. 1

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